WIRC
Reference Manual
2019-20

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by WIRC of ICAI.

CA. Priti Savla
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Powered by Professionalism
Driven by Values

MOTTO

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।
तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।
तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

Ya eṣa supteṣu jāgarti kāmam kāmam purūṣo nirmimāṇah I
Tadeva śukram tad brahma tadevāmṛtamucyate I
Tasminlokāh ṣritāh sarve tadu nātyeti kaścan I Etad vai tat II

That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman that, indeed is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends'.

Source: Kathopanishad

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(Set up by an act of Parliament)

WIRC Reference Manual 2019-20

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Published by
CA. Priti Savla, *Chairperson, WIRC of ICAI*
ICAI Tower, G Block, Opp. MCA Ground, Next to Standard Chartered Bank,
Bandra Kurla Complex, Bandra (East), Mumbai-400 051
Phone : 022-3367 1400/3367 1500
E-mail : wirc@icai.in
WIRC Website : http://www.wirc-icai.org

ICAI Bhawan, 27, Cuffe Parade, P. B. No. 6081, Colaba, Mumbai-400 005.

Head Office

"ICAI Bhawan", Indraprastha Marg, New Delhi-110 002.
Phone : +91-11-3989 3989
E-mail : icaiho@icai.org
ICAI Website : http://www.icai.org

Printed by
Finesse Graphics & Prints Pvt. Ltd.
309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel (West), Mumbai-400 013.
Tel. : +91-22-4036 4600 • Fax : +91-22-2496 2297

Message

Dear Colleagues,

The profession of Chartered Accountancy has always been recognised for the quality of its education, training and strong reservoir of knowledge, skills and professional values. In the emerging scenario, there is a paradigm shift in the role of Chartered Accountants which is not only restricted to subject areas of Accountancy, Audit and Taxation but also encompasses management consultancy services, insolvency, valuation, risk management, corporate governance and strategic management etc. “Learning gives creativity, creativity leads to thinking, thinking provides knowledge, and knowledge makes you great.”, as truly said by Dr. A. P. J. Abdul Kalam, there is no end to learning. This is also applicable for the Chartered Accountants who render knowledge and skill-based services. Our members need to put concerted efforts to be well versed with the contemporary developments being taking place very rapidly.

At this juncture, it is heartening to note that the Western India Regional Council (WIRC) of the Institute of Chartered Accountants of India (ICAI) is bringing out a “WIRC Reference Manual 2019-20” covering all the important aspects relating to the profession such as Chartered Accountants Act & Regulations, Accounting & Auditing Standards, Guidance and information on Direct Taxes, GST and Other Indirect Taxes including UAE VAT, Company law, Insolvency and Bankruptcy Law, Valuation etc. This Reference Manual has been developed to apprise and update our members with all the relevant information at one place. I am sure that the members will find this compilation very useful in their day-to-day reference needs and this will act as one-point ready reference for all.

I place on record my compliments to the entire team associated with the compilation and finalisation of this Reference Manual.

With best wishes,

CA. Prafulla Premsukh Chhajed
President,
The Institute of Chartered Accountants of India

Respected Members,

The Accounting profession is playing an active role in progress driven by reforms and technological advances, both nationally and globally. ICAI is mindful of its responsibility to continuously improve and innovate the services rendered by the members through knowledge enrichment, to be future ready to guide and support clients in the dynamic marketplace. Technical excellence and adherence to high ethical standards are essential conditions for growth and development of any profession. The Institute has been quite proactive in realigning its vision by imbibing best global practices in its educational curriculum with the changing business environment.

As a profession, being agent of change, it is expected of the CA fraternity to ensure both, to promote public interest as well as sustained economic growth by acquiring requisite and updated knowledge and skills to remain on the forefront in the changing paradigm. In fact, in the changing scenario, it is all the more important for the CA fraternity to enhance its intellect and skills, totally equipped with the knowledge of all the important economic, commercial and business laws and cases related to such laws, as also the various amendments to rules and regulations from time-to-time.

The task of learning and development is demanding for a CA, with professional commitments, timelines, which by themselves are quite challenging. In this background the concise WIRC Reference Manual will definitely be an excellent resource, wherein they can instantly refer, for various references and guidance, to arrive at solutions.

I compliment the efforts of the members of Western India Regional Council for compiling, documenting and collating the required information with appropriate comments in bringing out this useful publication.

I am also confident that the same will prove to be immensely beneficial to all the members and users of this reference manual.

CA. Atul Kumar Gupta
Vice-President,
The Institute of Chartered Accountants of India

About ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established by an Act of Parliament, viz. The Chartered Accountants Act, 1949 (Act No. XXXVIII of 1949) for regulating the profession of Chartered Accountancy in the country. The Institute, functions under the administrative control of the Ministry of Corporate Affairs, Government of India. The ICAI is the second largest professional body of Chartered Accountants in the world, with a strong tradition of service to the Indian economy in public interest.

The affairs of the ICAI are managed by a Council in accordance with the provisions of the Chartered Accountants Act, 1949 and the Chartered Accountants Regulations, 1988. The Council constitutes of 40 members of whom 32 are elected by the Chartered Accountants and remaining 8 are nominated by the Central Government generally representing the Comptroller and Auditor General of India, Securities and Exchange Board of India, Ministry of Corporate Affairs, Ministry of Finance and other stakeholders.

Over a period of time the ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for maintaining highest standards in technical, ethical areas and for sustaining stringent examination and education standards. Since 1949, the profession has grown leaps and bounds in terms of members and student base.

The activities of the ICAI can be broadly divided into Regulatory, Standard Setting, Disciplinary and Education & Training.

About WIRC of ICAI

The Western India Regional Council (WIRC of ICAI) which is located at Mumbai is the largest Regional Council of Institute of Chartered Accountants of India amongst the Five Regional Councils, catering to the membership of more than 1,16,000 Chartered Accountants and about 2,25,000 CA students, spread across the network of 35 branches in the three States — Maharashtra, Gujarat, Goa and the Union Territories of Daman, Diu, Dadra & Nagar Haveli. These CA members are either in practice or in business or holding eminent positions in various industries as well as Government Organizations spread across the Region.

“Powered By Professionalism. Driven By Values” – is the theme of WIRC. These simple words carry with them a tremendous promise – our commitment to professionalism driven by integrity. In this perspective, WIRC of ICAI has always been in the forefront in organizing conferences, seminars, workshops and webinars which are important tools for the propagation of relevant information and dissemination of knowledge. WIRC of ICAI also makes representations on the practice of various laws through Central Committees or directly to the respective offices of State Governments of Maharashtra, Gujarat, Goa and the Union Territories. It also organises various programmes for the benefit of the public at large. These are ideal platforms for the Chartered Accountants to participate and gain the benefits from the doyens of the profession in Industry, Technology, Financial Services and matters related to Professional Development and contemporary relevance, which is considered the need of the hour. As a testimony of its continuous effort the WIRC of ICAI has been consistently adjudged as the Best Regional Council of ICAI. Our students have also proved their mettle by bagging the most acclaimed ‘Best Student's Association’ on regular basis.

The WIRC of ICAI also publishes a monthly newsletter for the benefit of the members, wherein all information relating to forthcoming programmes, law updates, event highlights for the benefit of students are published. It also includes matters relating to Corporate laws, Direct and Indirect Tax laws, SEBI guidelines, various allied laws, etc. to mention a few areas.

The members are our great brand ambassadors, and make us proud. It is always our constant endeavour to keep constant connect with them and create platforms for constant networking at all the times.

Students Education Courses and Classes are also organised regularly for the benefit of CA students. In order to attract new entrants into the CA learning programmes, WIRC organises regularly Career Counselling Programmes in high schools and colleges throughout the Western Region.

In so far as research activities relating to Finance and Accounts domain, WIRC has always been in the forefront in supporting such research activities.

WIRC also brings out some unique and eye catching publications. This Reference Manual is a compilation of various laws useful to our profession. It also contains gist of Accounting & Auditing Standards, CA Act & Rules. This Reference Manual is the result of contribution of 119 members including our esteemed Central Council Members. This Reference Manual is very well appreciated by Regulators & Members in Industry and also continues to be highly appreciated by members of other Regions.

Foreword

Presenting the WIRC Reference Manual 2019 is a huge privilege for us. The WIRC Reference Manual has grown from strength-to-strength over the years. This publication has been continuously innovating and redefining itself. Today, it has grown into a treasure trove of information on a vast gamut of subjects reflecting the growing areas of practice of a finance professional.

This year we are highlighting the qualities which define the very core of Chartered Accountants – Professionalism and Values. This is a reflection of our motto 'Powered by Professionalism. Driven by Values." These simple words carry with them a tremendous promise – our commitment to professionalism driven by integrity.

Contemporary circumstances and various legal developments bring in new challenges. These challenges have opportunities within them. The dynamic regulatory environment would necessitate every professional to keep on learning and exploring new ideas. Current trends point towards a sea change for practices, especially the pace at which inputs are required to match pace globally. Given the aggressive pace of progression, today's accounting and finance landscape is a perfect example of the quote "The Only Constant is Change Itself".

A closer look at industry developments suggest that while adapting to today's market is critical, an even greater determinant of success lies in anticipating future trends and taking steps to prepare for what's ahead, well before it comes to fruition. Development of such vision requires strong insight into the conditions of today's accounting and finance landscape.

The WIRC, being a catalyst for the professionals and their need to remain updated on the developments, will have a very important role to play going forward. The 2019 Reference Manual is a step in that direction. In this context, the WIRC Reference Manual, which acts as a ready reckoner, has been the bible for instant reference, guidance for responses and most importantly to resolve issues and arrive at solutions.

I thank CA. Jayesh Kala, CA. Lalit Bajaj and CA. Vishal Doshi for taking the lead jointly and ensuring a Reference Manual of the highest relevance and validity. I also appreciate the dedicated efforts of members who have devoted their valuable time and made meticulously gathered, documented and collated updated information validated with insightful analysis.

The motivation and the support of my other colleagues in the Regional Council and guidance of the Central Council Members in bringing out this publication is well appreciated. I am sure that this Reference Manual will prove immensely beneficial to all the members.

CA. Priti Savla
Chairperson, WIRC of ICAI

Preface

In a constantly changing world, the Chartered Accountants profession is also constantly evolving. The main reason, we have continued to provide excellent service to all stakeholders is with the help of continuous research and learning endeavours of the Institute. In this context, the WIRC Reference Manual, which acts as a ready reckoner, is a powerful resource which members and students can access instantly, not only for various references but also for guidance to finalise their responses and to arrive at solutions. Thus, it is with great pride that we present to you the new WIRC Reference Manual 2019-20.

Over the last few years our industry has grown tremendously and along the way we have earned great respect and trust through our positive contributions to the nation and to society. But in today's fluid professional environment it is imperative that we remain at the cutting edge, totally aware of every new law and every new amendment of rules and regulations.

The WIRC Reference Manual 2019-20 is the perfect instrument for our profession, providing us with relevant and vital information on the spot. It has all the laws, regulations and the latest amendments to prepare for any and all exigencies. Every relevant piece of information and all pertinent knowledge bytes have been included in this exhaustive Reference Manual. You will appreciate the fact that this manual, with all its encyclopaedic facts and figures has also been made available digitally, making it a very handy virtual Reference Manual.

This publication has been made on the back of numerous recommendations and insightful feedback furnished by our members. I deeply appreciate the efforts of all the contributors who acknowledged the various inputs while putting forward their own endeavours at the same time. The Reference Manual has been put together through the selfless efforts of members who have drawn on years of valuable experience to present data to you in the best possible way.

As WICASA Chairman, it gives me great pride to see our students take great interest in accessing this Manual. By publishing this Manual, WIRC gives them a strong resource providing instant knowledge to all their queries thus creating a culture of diligence.

I am sure that this Reference Manual will prove to be immensely beneficial to all our WIRC members and students.

I would like to convey my sincere thanks to all the Contributors of the Reference Manual who have gifted knowledge and time; their most invaluable assets, in order to create this Manual.

I also thank Central Council Members and Regional Council Members for providing guidance and able leadership toward this publication. I would also like to acknowledge the untiring efforts of CA Priti Savla, Chairperson, WIRC and her team to bring the Reference Manual in the present form. I am confident that this publication will be extremely useful to the members and students of the Institute.

CA. Jayesh Kala
Chairman, WICASA

Preface

Respected Members,

It is my privilege and honour to present before you one of the premier publication of WIRC "Reference Manual 2019-20". This is an annual publication used by most of the members, whether in practice or in industry. The WIRC Reference Manual is an easy reference compilation of assorted Laws, Rules, Regulations, Procedures, Pronouncements, Notifications, etc. It covers topics suitable for all accounting, tax and legal professionals. A comprehensive yet handy guide, the Manual is a distillation of the expertise of some of the best minds in our profession.

To equip our members with recent updates and updating their knowledge required in day-to-day practice, team WIRC has been publishing reference manual every year. I am happy to say that manual provides most regularly referred laws, regulations and latest amendments in this just one exhaustive and handy compilation.

I would like to convey my sincere thanks to all the contributors of the Reference Manual who have put their efforts tirelessly in publishing this Manual for our members.

I wish to personally thank our Hon. President, CA. Prafulla Chhajed and all Central Council Members for their guidance and support regularly. I am Grateful to our Chairperson, CA. Priti Savla for giving me this opportunity to be part of Referencer compilation group. I compliment the efforts of Regional Council Members CA. Vishal Doshi and CA. Jayesh Kala for their efforts and initiative for timely availability of publication. I am thankful to all my council colleagues for their support.

I am much confident that this Manual will be extremely helpful to our Members and Students. I request our members to kindly give their input and suggestion to make this publication more better in future.

CA. Lalit Bajaj

Regional Council Member - WIRC of ICAI

Dear Professional colleagues,

It gives me immense pleasure to present before you ***"WIRC Reference Manual 2019-20".***

The WIRC Reference Manual is a much-awaited annual publication of WIRC of ICAI. The WIRC Reference Manual is comprehensive not only in respect of the coverage of various laws and standards but also about the details covered under each section.

The law is never static. However, the pace of change is at unprecedented highs. In such times, it becomes difficult for a professional to keep track of all the changes. The WIRC Reference Manual serves as a one-stop-publication where all the updated laws are readily and easily available.

This is the 16th successive year of WIRC Reference Manual. This Manual is used not only by practising Chartered Accountants but also by account and finance teams in industries, other professionals and students.

I thank the contributors for their untiring efforts to ensure that this publication gets updated in a short time. I also thank Ms. Priti Savla, Chairperson, WIRC of ICAI to have reposed faith in me and entrusted me with the responsibility of being part of the team to update the *WIRC Reference Manual 2019-20*.

At WIRC of ICAI it is our endeavour to ensure that we release latest and timely publications which are helpful to members, students and other stakeholders and I am sure everyone will reap the benefits of these efforts.

CA. Vishal P. Doshi

Regional Council Member - WIRC of ICAI

Regional Council Members — WIRC of ICAI 2019-20

Sr. No.	Name	Address (Office)	Mobile No.	Phone No. (O)	E-Mail ID
1	**CA. Priti Savla** Chairperson	1004, Level 10, Sunshine Tower, Senapati Bapat Marg, Elphinstone Road, Mumbai-400 013	9321426883	022-32918397/ 25410049 / 24322268	priti@psaindia.net
2	**CA. Umesh Sharma** Vice-Chairman	2nd Floor, Block Nos. 7 & 8, Shangrilla Complex, Samarth Nagar, Aurangabad-431 001	9881880073/ 9561096073	0240-2332511	rbsharmaandco@gmail.com; fcaumeshsharma@gmail.com
3	**CA. Rakesh Alshi** Secretary	Indiabulls Finance Centre, Tower 3, 28th Flr., Elphinstone (West), Mumbai-400 013	9819427242	022-61854306	ralshi@deloitte.com
4	**CA. Yashwant Kasar** Treasurer	12-14, Meher Arihant Building, Opp. Bank of Maharashtra, Near Garware College, Karve Road, Pune-411 004	9822488777	020-48603010	yashwant@icai.org
5	**CA. Jayesh Kala** Chairman, WICASA	504, Rainbow Chambers, Near MTNL Telephone Exchange, S. V. Road, Poinsur, Kandivali West, Mumbai-400 067	9820010113		jayeshkala@gmail.com
6	**CA. Abhijit Kelkar**	Ground Floor, Shrinivas Kelkar Building, Badkas Chowk Mahal, Nagpur-440 032	9422126890	0712-2734514	abhijit@kelkarcoca.com
7	**CA. Anand Jakhotiya**	8, Hari Om Empire, Model Colony, Off. S. B. Road, Near Sadhana Institute, Pune-411 016	9325444644	020-2565 1452	anandjakhotiya@yahoo.co.in
8	**CA. Arpit Kabra**	301, D Definity, 1st J. P. Road, Above Cosmos Bank, Near Dominos Pizza, Goregaon East, Mumbai-400 063	9819007027	022-2685 0152	arpit.kabra@icai.org
9	**CA. Arun Anandagiri**	No. 2-5, First Floor, Lokmanya House, Lokmanya Colony, Paud Road, Kothrud, Pune-411 038	8796005669		arun.giri@taxsutra.com
10	**CA. Balkishan Agarwal**	B 310, International Commerce Centre, Ring Road, Surat-395 002	9377110634	0261-3112634	balkishan@dbsassociates.in; balkishan@icai.org
11	**CA. Chintan Patel**	804, Mauryansh Elanza, Near Parekh's Hospital, Shyamal Cross Road, Satellite, Ahmedabad-380 015	9099921163	079-26752544 / 45	chintan@nareshco.com
12	**CA. Drushti Desai**	3rd Floor, Metro House, Dhobi Talao, Mumbai-400 020.	9820335923	022-22004002	desai.drushti@bsmco.net; drushti.desai@bsmco.net
13	**CA. Hitesh Pomal**	G-4, Capstone, Opp. Chirag Motors, Sheth Mangaldas Road, Ellis Bridge, Ahmedabad-380 006	9824049402	079-26470000 / 26470033	hp@msglobal.co.in
14	**CA. Kamlesh Saboo**	1, Shree Ram Laxmi Niwas CHS, Near Anthony Bakery, Kolbad, Thane (West), Thane-400 601	9819195333	022-25477009	kamleshsaboo@gmail.com; kamleshsaboo@yahoo.com
15	**CA. Lalit Bajaj**	Office No 5, Barsana, Salasar Brij Bhoomi, Near Maxus Mall, Bhayander (West), Bhayander-401 101	9867692321	022-28040048	lalitbajaj179@gmail.com

Sr. No.	Name	Address (Office)	Mobile No.	Phone No. (O)	E-Mail ID
16	**CA. Manish Gadia**	3rd & 4th Floor, Vaastu Darshan Bldg, B-Wing, Above Central Bank of India, Adj. to BMC Office, Azad Road, Andheri (East), Mumbai-400 069	9820537986	022-61919200	manish@gmj.co.in
17	**CA. Murtuza Kachwala**	Shop No. 11 & 12, Regency Avenue, Syndicate, Murbad Road, Kalyan West-421 301	9833015334	0251-2303786	kachwalamurtuza@gmail.com
18	**CA. Shilpa Shinagare**	201, Autumn Grove, Lokhandwala Township, Kandivali (East), Mumbai-400 101	9820053395	022-29663395	ssca28@rediffmail.com
19	**CA. Sushrut Chitale**	2nd Floor, Kapur House, Paranjape B Scheme Road No. 1, Vile Parle (East), Mumbai-400 057	9821112904	022-26633505	sushrut@mmchitale.com
20	**CA. Vikash Jain**	204, Wall Street - 1, Opp. Orient Club, Near Gujarat College, Ellis Bridge, Ahmedabad-380 006	9327715892	079-40071446/ 26401351	ca.vikasjain1@icai.org
21	**CA. Vimal Agrawal**	No. 11, Krishna Kunj, Above HDFC Bank, 150th Road, Bhayander West, Thane-401 101	9320617447		vimalpagarwal@rediffmail.com
22	**CA. Vishal P. Doshi**	Meghdhanush, Race Course Circle, Vadodara-390 007	9824059901	0265-2440407	vishal.doshi@kcmehta.com

The Institute of Chartered Accountants of India
Western India Regional Council (2019-20)

Sitting from L-R : CA. Jayesh Kala, Chairman, WICASA, CA. Rakesh Alshi, Secretary, CA. Priti Savla, Chairperson, CA. Umesh Sharma, Vice Chairman, CA. Yashwant Kasar, Treasurer

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Central Council Members

Sr. No.	Name	Address (Office)	Mobile No.	Phone No. (O)	E-Mail ID
1	CA. Prafulla Chhajed President, ICAI	B-3, Vimal Udyog Bhavan, 2nd Floor, Opp. Star City, Matunga (West), Mumbai-400 016	9821090612	022-24361274	praful.fca@gmail.com; pchhajed@yahoo.com
2	CA. Aniket Talati	2nd Floor Ambica Chambers, Nr Old High Court, Navrangpura, Ahmedabad-380009	9825551448		aniket@talatiandtalati.com
3	CA. Anil Bhandari	901, Kamla Executive Park, Off Andheri Kurla Road, J. B. Nagar, Andheri (East), Mumbai-400 059	9821037605	022-42215300	anilbhandari@anilashok.com; anil.bhandari@anbglobal.com
4	CA. Chandrashekhar Chitale	3 Gurukrupa,1317 Shukrawar Peth, Pune-411002	9822088833		shekhar@cvchitale.com
5	CA. Dhiraj Khandelwal	511/512, Atlanta Estate, Nr. Virwani Industrial Estate, Opp. Westin Hotel, Western Express Highway, Goregaon (East), Mumbai-400 063	9867642684	022-2977196/ 97/98	dk@cadhiraj.com; kdhiraj123@ yahoo.co.in; info@cadhiraj.com
6	CA. Durgesh Kabra	803-804, Ashok Heights, Nicco Circle, Near Bhuta School, Old Nagardas 'X' Road, Gundavali, Andheri (East), Mumbai-400069	9869015418	022-26824800/ 900/ 022-26830973/ 972	durgeshkabra@gmail.com
7	CA. Jay Chhaira	3rd Floor, Platinum Plaza, Opp. V. T. Choksi Law College, Athwalines, Surat-395 007	9825196241	0261-2210532	jaychhaira@yahoo.com
8	CA. Nandkishore Hegde	Indiabulls Finance Centre, Tower 3, 28th Floor, Senapati Bapat Marg, Elphinstone Road (West), Mumbai-400 013	9820423420	022-62451040 022-61854130	nhegde@deloitte.com
9	CA. Nihar Jambusaria	A/132, Shantiwan, Devidas Lane, Nr. St. Lawrence High School, Borivali (West), Mumbai-400 103.	9820237681	022-40613006	nihar.jambusaria@gmail.com; nihar.jambusaria@ril.com
10	CA. Shriniwas Joshi	103 Varadlaxmi Gokhale Road Mulund (E) Mumbai-400 081	9821096079		syjoshi13@gmail.com
11	CA. Tarun Ghia	101, Amrapali Building, Near GPM College, Opp. Masjid, Telli Galli, Andheri (East), Mumbai-400 069	9821345687	022-26846993	tarunghiaca@yahoo.co.in

The Institute of Chartered Accountants of India

Members of Twenty-Fourth Council and ICAI Acting Secretary [as on 12th February 2019]

1st Row (L to R): CA. G. Sekar, CA. Kemisha Soni, Shri Rakesh Sehgal (Acting Secretary), CA. Atul Kumar Gupta (Vice-President), CA. Prafulla Premsukh Chhajed (President), Shri Vijay Kumar Jhalani (Govt. Nominee), Dr. P. C. Jain (Govt. Nominee), Dr. Ravi Gupta (Govt. Nominee)

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Past Presidents of ICAI from Western Region

Sr. No.	Name	Year
1	Late CA. G. P. Kapadia	1949-52
2	Late CA. N. R. Modi	1954-55
3	Late CA. C. C. Chokshi	1959-60
4	Late CA. S. N. Desai	1961-62
5	Late CA. R. C. Cooper	1963-64
6	Late CA. M. P. Chitale	1965-66
7	CA. V. B. Haribhakti	1967-68
8	Late CA. H. B. Dhondy	1969-70
9	CA. B. L. Kabra	1977-78
10	CA. Y. H. Malegam	1979-80
11	CA. Bansidhar S. Mehta	1981-82
12	CA. Pradyumna N. Shah	1983-84

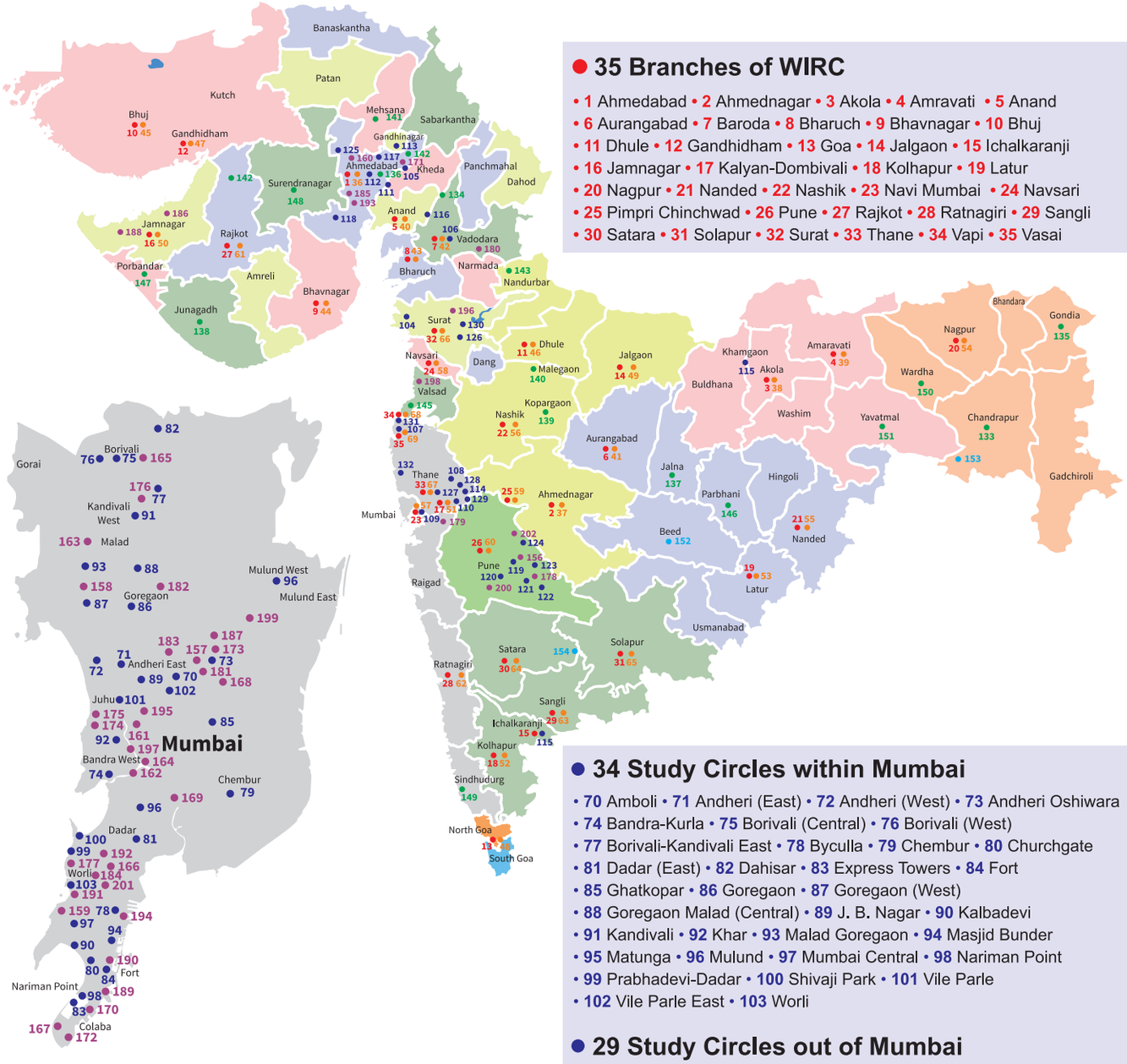
Sr. No.	Name	Year
13	Late CA. P. A. Nair	1985-86
14	CA. Arvind H. Dalal	1989-90
15	CA. N. P. Sarda	1993-94
16	CA. Y. M. Kale	1995-96
17	CA. M. M. Chitale	1997-98
18	Late CA. S. P. Chhajed	1999-2000
19	CA. Ashok Chandak	2002-03
20	CA. Kamlesh Vikamsey	2005-06
21	CA. Sunil H. Talati	2007-08
22	CA. Uttam Prakash Agarwal	2009-10
23	CA. Jaydeep N. Shah	2012-13
24	CA. Nilesh Vikamsey	2017-18

Past Chairpersons of WIRC of ICAI

Sr. No.	Name	Year
1	Late CA. Ambalal S. Thakkar	1952-53
2	Late CA. B. N. Pardiwala	1953-54
3	Late CA. H. S. Banjali	1954-55
4	Late CA. S. V. Ghatalia	1955-56 & 1957-58
5	Late CA. J. K. Doshi	1956-57
6	Late CA. R. P. Shah	1958-59
7	CA. V. B. Haribhakti	1959-60
8	Late CA. S. G. Argade	1960-61
9	Late CA. H. M. Damania	1961-62
10	CA. Arvind H. Dalal	1962-63
11	Late CA. Manubhai A. Parikh	1963-64
12	Late CA. G. B. Pardiwala	1964-65
13	Late Dr. Nanbhoy S. Davar	1965-66
14	CA. Pradyumna N. Shah	1966-67
15	Late CA. G. H. Palkar	1967-68
16	CA. C. N. Sanghvi	1968-69
17	Late CA. J. R. Dadyburjor	1969-70
18	Late CA. P. A. Nair	1970-71
19	CA. Mahendra A. Parikh	1971-72
20	Late CA. R. M. Chokshi	1972-73
21	CA. T. P. Tarapore	1973-74
22	CA. Pravin N. Vepari	1974-75
23	CA. Ramesh H. Doshi	1975-76
24	CA. H. C. Dhagat	1976-77
25	CA. N. P. Sarda	1977-78
26	CA. N. H. Kishnadwala	1978-79
27	CA. V. C. Darak	1979-80
28	CA. R. N. Karanjia	1980-81
29	CA. Omprakash Kanoongo	1981-82
30	CA. Gautam B. Doshi	1982-83
31	Late CA. V. R. Tater	1983-84
32	CA. M. M. Chitale	1984-85

Sr. No.	Name	Year
33	CA Dilip M. Shah	1985-86
34	Late CA. Madan M. Chaturvedi	1986-87
35	CA. S. V. Haribhakti	1987-88
36	CA. P. C. Ghadiali	1988-89
37	CA. Govind G. Goyal	1989-90
38	CA. R. S. Chokshi	1990-92
39	CA. Bhavna Doshi	1992-93
40	CA. Pradeep D. Joshi	1993-94
41	CA. Harish N. Motiwalla	1994-95
42	CA. K. C. Jain	1995-96
43	CA. Rajesh V. Shah	1996-97
44	CA. Rajkumar S. Adukia	1997-98
45	CA. Jayant P. Gokhale	1998-99
46	CA. Pankaj I. Jain	1999-2000
47	CA. Uttam Prakash Agarwal	2000-01
48	CA. Atul C. Bheda	2001-02
49	CA. Vipul K. Choksi	2002-03
50	CA. Mitil R. Chokshi	2003-04
51	CA. Nihar N. Jambusaria	2004-05
52	CA. Sanjeev Maheshwari	2005-06
53	CA. Sunil Goyal	2006-07
54	CA. Prafulla Chhajed	2007-08
55	CA. Brijmohan Agarwal	2008-09
56	CA. B. C. Jain	2009-10
57	CA. Sanjeev D. Lalan	2010-11
58	CA. Shriniwas Y. Joshi	2011-12
59	CA. Durgesh Kumar Kabra	2012-13
60	CA. Mangesh P. Kinare	2013-14
61	CA. Anil Bhandari	2014-15
62	CA. Sunil Kumar Patodia	2015-16
63	CA. Shruti Shah	2016-17
64	CA. Vishnu Agarwal	2017-18
65	CA. Sandeep Jain	2018-19

Western India Regional Council (2019-20)



35 Branches of WIRC

- 1 Ahmedabad • 2 Ahmednagar • 3 Akola • 4 Amravati • 5 Anand
- 6 Aurangabad • 7 Baroda • 8 Bharuch • 9 Bhavnagar • 10 Bhuj
- 11 Dhule • 12 Gandhidham • 13 Goa • 14 Jalgaon • 15 Ichalkaranji
- 16 Jamnagar • 17 Kalyan-Dombivali • 18 Kolhapur • 19 Latur
- 20 Nagpur • 21 Nanded • 22 Nashik • 23 Navi Mumbai • 24 Navsari
- 25 Pimpri Chinchwad • 26 Pune • 27 Rajkot • 28 Ratnagiri • 29 Sangli
- 30 Satara • 31 Solapur • 32 Surat • 33 Thane • 34 Vapi • 35 Vasai

34 Study Circles within Mumbai

- 70 Amboli • 71 Andheri (East) • 72 Andheri (West) • 73 Andheri Oshiwara
- 74 Bandra-Kurla • 75 Borivali (Central) • 76 Borivali (West)
- 77 Borivali-Kandivali East • 78 Byculla • 79 Chembur • 80 Churchgate
- 81 Dadar (East) • 82 Dahisar • 83 Express Towers • 84 Fort
- 85 Ghatkopar • 86 Goregaon • 87 Goregaon (West)
- 88 Goregaon Malad (Central) • 89 J. B. Nagar • 90 Kalbadevi
- 91 Kandivali • 92 Khar • 93 Malad Goregaon • 94 Masjid Bunder
- 95 Matunga • 96 Mulund • 97 Mumbai Central • 98 Nariman Point
- 99 Prabhadevi-Dadar • 100 Shivaji Park • 101 Vile Parle
- 102 Vile Parle East • 103 Worli

29 Study Circles out of Mumbai

- 104 Anuvrat Dwar • 105 Ashram Road • 106 Baroda • 107 Bhayander
- 108 Bhiwandi • 109 DAKC • 110 Dombivali • 111 Ellisbridge
- 112 Gandhigram • 113 Gandhinagar • 114 Kalyan • 115 Khamgaon
- 116 Nadiad • 117 Navjivan • 118 Odhav Bapunagar • 119 Pune Camp
- 120 Pune Central • 121 Pune City • 122 Pune Deccan • 123 Pune West
- 124 Sarasbaug • 125 Satellite • 126 Textile Market Surat • 127 Thane
- 128 Thane Mid-town • 129 Ulhasnagar • 130 Varachha Kamrej
- 131 Vasai Virar • 132 Panvel

19 Study Chapters out of Mumbai

- 133 Chandrapur • 134 Godhra • 135 Gondia • 136 Himatnagar
- 137 Jalna • 138 Junagadh • 139 Kopargaon • 140 Malegaon
- 141 Mehsana • 142 Morbi • 143 Nandurbar • 144 Palanpur - Banaskantha
- 145 Palghar • 146 Parbhani • 147 Porbandar • 148 Sindhudurg
- 149 Surendranagar • 150 Wardha • 151 Yavatmal

3 Study Groups out of Mumbai

- 152 Beed • 153 Gadchandur • 154 Pandharpur

Office Bearers of WIRC Branches for 2019

Name of the Branch	Branch E-mail ID	Chairperson		Vice-Chairman		Secretary		Treasurer		Branch Nominees - Regional Council Members
		Name	Mobile No.	Name	Mobile No.	Name	Mobile No.	Name	Mobile No.	
Ahmedabad	ahmedabad@icai.org	CA. Ganesh Thanabalan Nadar	9974477447	CA. Fenil Rajendra Shah	8905030507	CA. Harit Ashok Dhariwal	9978942299	CA. Anjali Nirav Choksi	9825773179	CA. Hitesh Pomal, CA. Chintan Patel, CA. Vikash Jain
Ahmednagar	ahmednagar@icai.org	CA. Paresh P. Bora	9822287677	CA.Kiran P.Bhandari	9422227810	CA. Sandeep M. Desarda	8275033158	CA. Sandeep M. Desarda	8275033158	CA. Jayesh Kala
Akola	akola@icai.org	CA. Deepak Prakashchandra Agrawal	9422860653	CA. Jalaj Rameshchandra Baheti	9552598020	CA. Keyur Shantilal Dedhia	9011090524	CA. Keyur Shantilal Dedhia	9011090524	CA. Arpit Kabra
Amravati	amravati@icai.org	CA.Damodar D.Khandelwal	9423123323	CA Vipul R. Patel	8308758880	CA. Sunil D. Salampuria	942155668	CA.Pawan M. Jajoo	9422917369	CA. Anand Jakhotiya
Anand	anand@icai.org	CA Harbinder Shreni	9898484240	CA Bhavesh Thakkar	9426378760	CA Hardik Patel	9723403561	CA Sanat Soni	9825328966	CA. Chintan Patel
Aurangabad	aurangabad@icai.org	CA. Rohan Mansukh Achalia	9823375900	CA Ganesh Suresh Shilwant	9975803861/ 9923061181	CA Ganesh Prakash Bhalerao	9850952620	CA Praveen Kacharulal Bangad	9766706000	CA. Umesh Sharma
Baroda	baroda@icai.org	CA. Hitesh Agrawal	9998028737	CA. Krunal Brahmbhatt	7383796096	CA. Vinod Pahilwani	9898078176	CA. Manoj Sahu	9099094500	CA. Vishal Doshi
Bharuch	bharuch@icai.in	CA Mahavir R Jain	9898539057	CA Harshit B Shah	9428290828	CA Rushi Gandhi	9099919372	CA Akshar Mehta	9426858801	CA. Vishal Doshi
Bhavnagar	bhavnagar@icai.org	CA. Jayesh K. Shah	9426245560/ 9106148940	CA. Manojkumar Parshottambhai Gohil	9374822413/ 9275118811	CA. Adhish R Rokadia	9998943399/ 9426604770	CA. Adil A. Daula	9429131358	CA. Jayesh Kala
Bhuj	bhuj@icai.org	CA. Hardik P. Thacker	9825858580	CA. Jitendra Thacker	9825537937	CA. Ramesh Pindolia	9825662808	CA. Ashish Gadhvi	9925738543	CA. Hitesh Pomal
Dhule	dhule@icai.org	CA Rajaram R. Kulkarni	9823083312	CA Nilesh G. Agrawal	9822117173	CA Avinash Ghundiyal	9890770536	CA Nilesh K. Agrawal	9823618311	CA. Lalit Bajaj
Gandhidham	gandhidham@icai.org	CA Atulkumar Kakkad	9687757400	CA Karan Thacker	9979878590	CA Jainish Patel	9979956793	CA Sanjay Chotara	9712737192	CA. Vishal Doshi
Goa	goa@icai.org	CA. Ulhas Dhumaskar	9422386716	CA. Varsha Deshpande	9850453327	CA. Gaurav Kenkre	9822154328	CA. Dattaram Vengurlekar	9823229975	CA. Yashwant Kasar
Ichalkaranji	ichalkaranji@icai.org	CA Nagnath Basude	9422415078	CA Vijay Dudharkar	9850082233	CA Nitin Ladha	9860049695	CA Mukesh Malani	9923004845	CA. Arpit Kabra
Jalgaon	jalgaon@icai.org	CA Smita Bafna	9422209501	CA Sagar Patni	9422362638	CA Saurabh Subhash Lodha	9702716834	CA Prashant Agrawal	9860940777	CA. Umesh Sharma
Jamnagar	jamnagar@icai.org	CA. Sanjeev Chamanlal Buddh	9898006770	CA. Dipesh Lalitchandra Bhoot	9574337180	CA. Sheela Mansukhlal Dattani	9998124385	CA. Kirit Shantilal Bheda	8866008801	CA. Hitesh Pomal
Kalyan Dombivali	kalyan-dombivali@icai.org	CA Saurabh Marathe	9870117150	CA Ankit Agarwal	9321559191	CA Jeetu Ramrakhiyani	9820285636	CA Mayur Jain	9820135050	CA. Murtuza Kachwala
Kolhapur	kolhapur@icai.org	CA. Amit Madanrao Shinde	9764484115	CA. Anil Rajaram Chikodi	9673000690	CA. Tushar Ganesh Anturkar	9822010775	CA. Chetan Vijaykumar Oswal	9890828242	CA. Yashwant Kasar
Latur	latur@icai.org	CA Salunke Vinod Balaji	9860000330	CA. Rajesh Brijkishor Agrawal	9823468483	CA. Dwarkadas Ramanuj	9422425911	CA. Vishal Narsing Chavan	9822666763	CA. Sushrut Chitale
Nagpur	nagpur@icai.org	CA. Suren Duragkar	9422148300/ 9730022226	CA. Kirit Kalyani	9823053751	CA. Saket Bagdia	9823272345	CA. Jitendra Saglani	9970166954	CA. Abhijit Kelkar
Nanded	nanded@icai.org	CA. Kunal Malpani	9890028387	CA Anand Kabra	9422170705	CA Mayur Agarwal	9405383852	CA Tousif Ahmed	9270126411	CA. Lalit Bajaj
Nashik	nashik@icai.org	CA Harshal Deelip Surana	9766220747	CA Rohan Vasant Andhale	9860602515	CA Rajendra Vishram Shete	9850099580	CA Sohil Paresh Shah	9850202122	CA. Arun Anandgiri
Navi Mumbai	navimumbai@icai.org	CA Jayawant D. Tandel	9892394398	CA Santosh Sharma	9323582884	CA Abhishek Shah	9773050495	CA Sanjay Bhujbal	9821385698	CA. Murtuza Kachwala
Navsari	navsari@icai.in	CA Vidhyut B. Ghael	9924124236	CA Jarviz N. Suratwala	8866774692	CA. Suhail H. Memon	8866230892	CA. Amit A.Mehta	9327744001	CA. Rakesh Alshi
Pimpri Chinchwad	pimpri.chinchwad@icai.org	CA. Santosh Chandulalji Sancheti	9822277501	CA Simran Kamlesh Lilwani	7038833788	CA. Pankaj Kalyanmal Patni	9850095351	CA. Sachin Ramniwas Bansal	9422008734	CA. Anand Jakhotiya
Pune	pune@icai.org	CA. Chitale Ruta Subhash	8390610136	CA. Dhamne Abhishek Shashikant	9890541551	CA. Ladda Sameer Purshottam	9850838461	CA. Pathare Kashinath Balasaheb	9890625758	CA. Yashwant Kasar, CA. Anand Jakhotiya, CA. Arun Anandgiri
Rajkot	rajkot@icai.org	CA. Bhavin Mehta	9974741312	CA. Vinay Sakariya	9638982500	CA. Hardik Vyas	9879428512	CA. Jignesh Rathod	9924516576	CA. Drushti Desai
Ratnagiri	ratnagiri@icai.org	CA. Anthony John Rajshekhar	9422429122/ 9049023810	CA. Bipin Rasiklal Shaha	9422430893	CA. Anand Manohar Pandit	9422432617	CA. Shashikant Sadashiv Kale	9422052120/ 8149693420	CA. Shilpa Shnagare
Sangli	sangli@icai.org	CA. Bhupalsingh Baldevsingh Sulhyan	9822242006	CA. Rajesh Chandrakant Bhate	9822081175	CA. Mahesh Vitthal Thanedar	9823240515	CA. Umeshkumar Madhukar Mali	9970258974	CA. Drushti Desai
Satara	satara@icai.org	CA Atul Doshi	9822064767	CA Anand Kasat	9860233366	CA Rushikesh Wangade	9403347908	CA Jivan Jagtap	9890308884	CA. Abhijit Kelkar
Solapur	solapur@icai.org	CA.Chandrakant R. Injamuri	9960795979	CA.Prabhakar V. Gunjal	9823459633	CA. Nilasha D. Nogaja	9423472620	CA Anand A. Peshwe	9422798055	CA. Manish Gadia
Surat	surat@icai.org	CA. Mihir R. Thakkar	9825888440	CA. Ishwar Jivani	9624867495	CA. Naveen Jain	9825239913	CA. Pooja Murarka	9825526067	CA. Sushrut Chitale
Thane	thane@icai.org	CA. Prasade Yogesh Sudhakar	9594757778	CA. Thakurdesai Suren Shrikrishna	9892544556	CA. Gharat Rahul Narayan	9820741936	CA. Chhadwa Chetan Hirji	9820396395	CA. Kamlesh Saboo
Vapi	vapi@icai.org	CA Gagan Chaturvedi	9825402117	CA Shyam Sundar Purohit	9974802912	CA Vinayak Bafana	9727242266	CA Kiran Shah	9998623210	CA. Arpit Kabra
Vasai	vasaibranch@gmail.com	CA. Xavier M Rajan	9371720027	CA. Ankit Rathi	9029059911	CA. Amit Agarwal	9821374485/ 8097042555	CA. Sorabh Agrawal	9930357066	CA. Vimal Agarwal

"Western India Chartered Accountants Students Association (WICASA) Western Region Network Details given in CD"

Organisational Chart DCO, Mumbai & WIRC

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
WESTERN REGIONAL OFFICE – MUMBAI
NAMES, TELEPHONE NOS and E-MAIL IDs OF OFFICERS — DEPARTMENT WISE

ICAI Tower, C-40, G Block Opp. MCA Ground, Bandra Kurla Complex, Bandra (E), Mumbai-400051
Phone: 022-33671400/500; e-mail: wro@icai.in

SENIOR OFFICERS		
Firms Section		
Name & Designation	Contact Details	Particulars
CA. Leena Khanvilkar Deputy Secretary	leena.khanvilkar@icai.in 022-33671463	a) Firms Section lead responsible for Firms activity & support to Firms; & Daily MIS Report b) Resolving All-India WIP cases through other ROs'; MIS Reports, Grievances, Interaction and Response to Members/ Firms
Mr. Yogesh Shetty Assistant Secretary	yogesh@icai.in 022-33671505	a) Firms Module lead responsible for SSP Firms Module implementation, update, smooth functioning and resolution of all issues b) Coordinate and resolve all Firms activities including grievances, replies to members/ enquires, etc.
CA. Jayashree Mitra Assistant Secretary	Jayashree.mitra@icai.in 022-33671462	a) Resolving Technical issues related to Firms in coordination with TCS team.
Mr. Dinesh D. Amin Sr. Executive Officer	amin@icai.in 022-33671497	a) All Firms related activities of NRO
Mrs. Josephine Castelino Sr. Executive Officer	josphine@icai.in 022-33671545	a) All Firms related activities of SRO
Mrs. Deepa Dhule Section Officer	deepali@icai.in 022-33671525	a) All Firms related activities of WRO
Ms. Kanchan Nadkarni Section Officer	kanchan@icai.in 022-33671518	a) All Firms related activities of CRO & MIS Report
Mrs. Asha Anant Sawant DEO (Gr. UDC)	asha.sawant@icai.in 022-33671508	a) All Firms related activities of ERO & Assisting MIS Report
Mr. M. B. Shelke LDC (Grade-Attendant-1)	shelke@icai.in 022-33671539	a) Registration of sole practice/sole proprietor firm b) Noting of Paid Assistant Entries
Articles Section		
Mr. Paul Gomes Deputy Secretary	gomes@icai.in 022-33671501 9321239896	a) Articles Section lead responsible for SSP Articles Module implementation, update, smooth functioning, resolution of all issues & support to Members &Students b) WRO Technology/ EDP Management
CA. Sunita Sahu Assistant Secretary	sunita@icai.in 022-33671443	a) Responsible for Completion of Articles (108) and Industrial Training (105), Supplementary Registration (107) and Permission for other courses on All India Basis (112) DCO Accounts/ Establishment/ HRD matters and Liaison Officer for arrangement of HO Meetings
Mrs. Shobhana Rajendran Assistant Secretary	shobna@icai.in 022-33671519	a) Responsible for all activities related to Registration and Re-Registration (103), Industrial Training Registration (104) and Termination (109) for all Regions
Mr. Ajit Yewale DEO (Gr. UDC)	ajit.yewale@icai.in 022-33671452	a) All activities related to Articles Registration (103) and Industrial Training Registration (104) for all Regions
Mrs. Rupali Sore UDC	rupali@icai.in 022-33671506	a) All activities related to Articles Re- Registration (103) for all Regions b) Termination (109) for all Regions.
Mrs. Deepali Pawar Data Entry Operator (Gr. UDC)	Deepali.pawar@icai.in 022-33671533	a) All activities related to Permission for other Courses (112) for all Regions b) All activities related to Articles Registration (103) and Industrial Training Registration (104) for all Regions
Mr. Sandeep Pawar Data Entry Operator (Gr. UDC)	Sandeep.pawar@icai.in 022-33671537	a) All activities related to Articles Registration (103) and Industrial Training Registration (104) for all Regions
Mrs. Smita Velekar DEO (Gr. UDC)	Smita.velekar@icai.in 022-33671556	a) All matters related to technical issues related to Article activities for students of all regions b) Managing Articles WIP cases by interacting with other Regions under supervision of CA Sunita Sahu c) MIS Reports, Grievances, Response to Members & students
Mrs. Priya Rokade Data Entry Operator (Gr. UDC)	Priya.rokade@icai.in 022-33671538	a) All activities related to Completion of Articles Training (108), Supplementary Registration (107) for all Regions

Name & Designation	Contact Details	Particulars
Members & Students Section		
Mrs. Geeta Unni Assistant Secretary	geeta@icai.in 022-33671503	a) All matters related to technical issues related to Members and students for Western Region
Mrs. Latika S. Jadhav Data Entry Operator (Gr. UDC)	Latika.tembulkar@icai.in 022-33671496	a) Handling of WIP cases for Members of WRO and current issues
Mr. Prakash Padwal LDC	Prakash.padwal@icai.in 022-33671546	a) Handling of WIP cases for Students of WRO and current issues
Information Technology Training (wroitt@icai.in)		
Mrs. Srabani Kapoor Sr. Faculty (Gr. Deputy Director)	kapoor@icai.in 022-33671578 9321239894	IT & Adv. ITT Course. HO Programmes
Accounts (Members & Students Fees collection) (wroacc@icai.in)		
CA. Sonal Malik Assistant Secretary	sonal@icai.in 022-33671458	Functional In Charge-WRO Accounts Section - DCO Office Accounts & Fees of Members and Students
Mrs. Sukhada Shitap DEO (Gr. UDC)	sukhada.shitap@icai.in 022-33671448	Bills Payable, Petty Cash Transactions.
Mr. Mahendra Darekar DEO (Gr. UDC)	mahendra.darekar@icai.in 022-33671451 9321239897	Assistant to President & Vice President, HO Committee Meetings, Travel & Stay Arrangements
E.D.P/ Office Technology		
Mr. Paul Gomes Deputy Secretary	gomes@icai.in 022-33671501 9321239896	WRO Technology/ EDP Management
OFFICE OF THE WESTERN INDIA REGIONAL COUNCIL (wirc@icai.in)		
CA. Amita Kavle Assistant Secretary	amita.bapat@icai.in 022-33671429	Accounts & GST Compliance Officer
Mr. George Sequeira Assistant Secretary	sequeira@icai.in 022-33671409	Career Counselling, Seminars and programs
Mrs. Rupali Khatkhate Librarian (Gr. SO-SU)	rupali.khatkhate@icai.in 022-33671488	Library
Mrs. Pallavi Vankar DEO (Gr. UDC)	Pallavi.vankar@icai.in wircevents@icai.in 022-33671421/417	CPE Program/ Seminar Registration, CPE Hours
Mr. Vijay Gaikwad DEO (Gr. UDC)	Vijay.gaikwad@icai.in wircevents@icai.in 022-33671422/424	GMCS, Students activities.
Mr. Vijay Shirke DEO (Gr. UDC)	Vijay.shirke@icai.in wircaccounts@icai.in 022-33671431	Accounts
Mrs. Seema Majgaonkar DEO (Gr. UDC)	Seema.majgaonkar@icai.in wirc@icai.in 022-33671425	PS to Chairman
Mr. Pravin B Shitap DEO (Gr. UDC)	Pravin.shitap@icai.in 022-33671435	WIRC Events, Travel Arrangement
Mr. Subhash Gurav Sr. Peon	wircevents@icai.in 022-33671419	Events and Newsletter Publication
Mr. Mandar Bhosale Sr. Peon	022-33671571	Sale of Publications
Mr. Ravi. K. Arora Joint Director	raviarora@icai.in 022-33671403, 9321139897	In-charge WRO & WIRC

BOS CLASSIFICATION OF TASKS/ACTIVITIES	SINGLE POINT OF CONTACT
For Academic Queries / suggestions	Ms. Prem Bhutani, Joint Secretary, prem@icai.in; 0120-3045911
Orientation Course and GMCS	Dr. Mitali Pathak, Assistant Secretary mitali.khosla@icai.in; 0120-3045915
Oral Coaching through Regional Councils, Branches and Accredited Institutions. Coaching Classes through Webcasts and Mock Test.	Dr. Ranjit Sarmah, Sr. Assistant Director, ranjit.sarmah@icai.in; 0120-3045966,
Reading Rooms Facility & Mass e-mails & SMSs	Ms. Smita Abrol, Section Officer (SU) smita.taneja@icai.in; 0120-3045931
Students Conferences	Ms. Ginni Goel, Assistant Secretary ginni@icai.in; 0120-3045914
BoS Grants	Mr. Gagandeep Singh, Section Officer gagandeepsingh@icai.in; 0120-3045931
IT Training and Advanced IT Training	Mr. Manna Dey, Assistant Director, mannadey@icai.in; 0120-3045924
e-Learning/Webcast/Video Lectures	Ms. Nidhi Aggarwal, Assistant Secretary nidhi.aggarwal@icai.in; 0120-3045927

Departments and Committee Executives of ICAI

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up by an Act of Parliament]
ICAI Bhawan, Indraprastha Marg,
PO Box No. 7100, New Delhi-110 002
Phone: 91-113989 3989 Extn. 421, Fax: +91 11 30110581
Website: www.icai.org

Department	Tel. No.	E-mail ID
Accountancy Museum of India	[+91] (120) 3045 955, 3876 863	accountancy.museum@icai.in
Audit Cell	[+91] (120) 3045 936	audit@icai.in
Council Affairs	[+91] (11) 3011 0488, 3011 0410, 3011 0543, 3011 0584	councilaffairs@icai.in
Disciplinary	[+91] (11) 3011 0433, 3011 0434, 3011 0435, 3011 0436, 3011 0437, 3011 0509	disc@icai.in
Examination	[+91] (11)(120) 3989 398, 3054 800, 3054 851/2/3 Helpline Nos. 851, 852, 853, 854	exam@icai.in; examhelpline@icai.in
Finance & Accounts	[+91] (120) 3876 851, 3876 852, 3876 853, 3876 854, 3876	accounts@icai.in
HRD (Admin)	[+91] (11) 3011 0421, 3011 0423	genadmin@icai.in
HRD	[+91] (11) 3011 0424, 3011 0470, 3011 0545	hrd@icai.in, personnel@icai.in
Internal Audit	[+91] (120) 3045 909	internal.audit@icai.in
International Affairs	[+91] (11) 3011 0443, 3011 0485, 3011 0487, 3011 0448, 3011 0499, 3011 0542	ia@icai.in
Electronic Data Processing	[+91] (120) 3045 912/959/991	edp@icai.in
Infrastructure Development	[+91] (120) 3045967	idc@icai.in
Journal	[+91] (120) 3045 926, 3045 955	journal@icai.in
Legal	[+91] (11) 3011 0428, 3011 0429, 3011 0431, 3011 0432, 3011 0442, 3011 0447, 3011 0461, 3011 0541	legal@icai.in
Library	[+91] (11) 3011 0419, 30110420	library@icai.in
Monitoring & **co-ordination —** Members Students **Services (M&C MSS)**	[+91] (120) 3045 997, 3045 998	mss@icai.in, msr@icai.in firmname@icai.in, fna@icai.in, goodstanding@icai.in, cabf@icai.in, js_mss@icai.in
Noida Stores	[+91] (120) 3045 947, 3045 943, 3045 951	noidastores@icai.in
NRO	[+91] (11) 3021 0600 – 0605, 3989 3990	nro@icai.in
Peer Review	[+91] (120) 3045 941, 3045 970	peerreviewboard@icai.in
Postal Sales	[+91] (120) 3045 947	postalsales@icai.in
Publication Department	[+91] (120) 3045 942	pubn.dept@icai.in
Public Relations	[+91] (11) 3011 0559	prc@icai.in,
Regional Branch Affairs (RBA)	[+91] (120) 3045 0409	rba@icai.in
RTI Cell	[+91] (11) 3011 0588	cpio@icai.in
Travel Desk	[+91] (11) 3011 0558	traveldesk@icai.in

COMMITTEE SECRETARIES FOR THE YEAR 2019-20

Name of the Committee	Secretary to the Committee	Telephone No.	Mobile No.
A. Standing Committees			
Executive Committee	Shri Rakesh Sehgal	011-30110402	9350799913
Examination Committee			
Finance Committee			
Disciplinary Committee [u/s. 21D]			
B. Non-Standing Committees			
Accounting Standards Board	CA. Vidhyadhar Kulkarni	011-30110467	9867695584
Audit Committee	CA. Pramod Arora	0120-3045909	9811292768
Auditing & Assurance Standards Board	CA. Megha Saxena	0120-3045920	9311142157
Board of Studies	CA. Vandana D. Nagpal	0120-3045901	9350381189
Banking Financial Services & Insurance Committee	CA. Mukesh Kumar	011-30110471	8130577979
Committee for Capacity Building of Members in Practice	Dr. Sambit Kumar Mishra	0120-3045994	9312085025
Committee on Capital Market and Investors Protection	Mr. Priyanshu Malhotra	011-30110473	9810887871
Corporate Laws & Corporate Governance Committee	CA. Sarika Singhal	0120-3045971	8527197168
Direct Taxes Committee	CA. Mukta K. Verma	0120-3045978	9350572177
Committee on Economic, Commercial Laws & Economic Advisory	Ms. Shalini Kathuria Gulati	011-30110499	9910085492
Editorial Board	Shri Nadeem Ahmed	0120-3045926	9313511454
Ethical Standards Board	Shri Ashish Swaroop Bhatnagar	0120-3876857	9818372928
Expert Advisory Committee	CA. Parul Gupta	011-30110465	
Financial Reporting Review Board	CA. Aakanksha Khanna Kapoor	0120-3045982	8851880998
Committee on Public and Government Financial Management	CA. Namrata Khandelwal	0120-3876860	9871790070
Co-ordination Committee with Sister Institutes	Shri Rakesh Sehgal	011-30110402	9350799913
GST & Indirect Taxes Committee	CA. Sharad Singhal	0120-3045954	9310542608
Digital Accounting and Assurance Board	CA. Jyoti Singh	0120-3045995	9310542606
Internal Audit Standards Board	CA. Arti Bansal	0120-3045995	9350799912
International Affairs Committee	CA. Mudit Vashishtha	011-30110448	9350594067
Committee on International Taxation	CA. Mukta K. Verma	0120-3045978	9350572177
Committee on Management Accounting	CA. Shalini Jindal	0120-3876877	9650453677
Committee for Members in Industry & Business	Dr. Amit Kumar Agarwal	011-30110430	9350572094
Peer Review Board	CA. Sonali Das Halder	0120-3045970	9310542609
Professional Development Committee	Ms. Seema Gerotra	011-30110547	9599036704
Research Committee	CA. Ashok Kapoor	011-30110468	9350799907
Committee for Export of CA Services & WTO	CA. Monika Jain	011-30110448	9310542602
Taxation Audits Quality Review Board	CA. Nidhi Singh	0120- 3876868	8800092351
Infrastructure Development Committee	Shri Om Prakash	0120-387688	9350571955
Management Committee	Shri Rakesh Sehgal	011-30110402	9350799913
Committee for Members in Enterpreneurship & Public Service and Strategic & Perspective Monitoring Committee	CA. Anita Suneja		7042782840
Committee on Insolvency & Bankruptcy Code	Ms. S. Rita	0120-3876869	9350799929
Valuation Standards Board	CA. Sarika Singhal	0120-3876884	8527197168
Groups			
CPE Directorate	Dr. Baldev Raj	011-30110422	8800780048
Digital Transformation and Process Re-engineering Group	Shri Anupam Kaushik	0120-3045904	9711163511
Women Members Empowerment Group	CA. Rashmi Jasoriya	011-30110431	8800182085
GMCS Coordination Group (under BoS)	Ms. Mithali Khosla	0120-3045915 0120-3045988	9354846946
ITT Coordination Group (under BoS)	Shri Manna Dey	0120-3045925	9350799943
Co-ordination Group for Members and Student Services	Shri Shivam Kumar	011-30210654 011-30210636 0120-3045997	9350799922
Legal Co-ordination Group	Mr. S. V. Krishamohan	011-20110561	9969009303
UDIN Directorate	CA.Turan Jain	011-30110411	9810372842
Publication Directorate	Sh G Ranganathan	0120-3876885	9350799933
Publication Relations Group	Ms. Ritu Bahl	011-30110559	9350799935
Career Counselling Group	Dr. Sambit Kumar Mishra	0120-3045994	9312085025
Ind AS Implementation Group under ASB	CA . Geetanshu Bansal	011-30110466	9650035652
C. Other Committees			
Board of Discipline [u/s. 21A] Bench 1	CA Sanjay Kumar Goyal, Director (Discipline)	011-30110452	9352995574
Board of Discipline [u/s 21A] Bench 2	CA Sanjay Kumar Goyal, Director (Discipline)	011-30110452	9352995574
Disciplinary Committee [u/s. 21B] Bench 1	Shri Bhaskar R. Bhardwaj	011-30110442	9350799937
Disciplinary Committee [u/s. 21B] Bench 2	CA. Sanjay Kumar Goyal, Director (Discipline)	011-30110452	9352995574
Disciplinary Committee [u/s. 21B] Bench 3 (For Government/Regulators/Public Interest Cases)	CA. Rashmi Goel	011-30110489	9350572197

ICAI Offices

HEAD OFFICE

The Institute of Chartered Accountants of India,
ICAI Bhawan, Post Box. No. 7100, Indraprastha Marg, New Delhi - 110 002
• Phone: [+91] (11) 39893989 • Fax: [+91] (11) 23370502
Toll free • Members — 1800 200 2500 • Students — 1800 200 2501
• E-mail: icaiho@icai.in • Website: http://www.icai.org

ADMINISTRATIVE OFFICES (HEAD OFFICE)

- ICAI Bhawan, C-1, Sector 1,
  Noida-201 301 Dist. Gautam Budh Nagar (U.P.)
  Phone: [+91] (120) 3989 398
  Fax: [+91] (120) 3054 843, 3054 841
  E-mail: exam@icai.in

- ICAI Bhawan, C-5, Sector-1
  Noida-201301
  Gautam Budh Nagar (U.P.)
  Phone: [+91] (120) 3894 800, 3894 830
  Fax : [+91] (120) 3894 816

- ICAI Bhawan, A-29,
  Sector 62,
  Noida-201 309,
  Dist. Gautam Budh Nagar (U.P.)

  Fax: [+91] (120) 3045 940
  (ITDC, AASB, DTC, CFM&IP,
  CIT, IASB),
  3045 926 (AMI, Journal),
  3045 942 (Pubn. Deptt.),
  3045 948 (Stores)

- Northern Regional Office,
  ICAI Bhawan,
  52-53-54, Institutional Area,
  Vishwas Nagar, Shahdara,
  Near Karkardooma Court,
  Delhi-110 032.
  Phone: EPABX [+91] (11) 3989 3990,
  3021 0600-605
  E-mail: nro@icai.in

Regional Offices

Western India Regional Council

8th Floor, ICAI Tower, 'G' Block, Opp MCA
Ground, Bandra Kurla Complex,
Bandra (East), Mumbai-400 051

ICAI Bhawan, 27, Cuffe Parade,
P. B. No. 6081, Colaba,
Mumbai-400 005.

- **Regional Council Office**
  Phones: [+91] (22) 33671400 / 33671500
  E-mail: wirc@icai.in
  Website: http://www.wirc-icai.org

- **Decentralised Office**
  Phone: [+91] (22) 33671403
  E-mail: wro@icai.in

Central India Regional Council

- **Regional Council Office**
  ICAI Bhawan, 16/77-B, Civil Lines, Behind
  Reserve Bank of India, Kanpur. 208 001 (U.P)
  Phone: [+91] (512) (0512) 2396501, 2396502
  E-mail: circ@icai.in
  Website: http://www.circ-icai.org

- **Decentralised Office**
  ICAI Bhawan, Plot No. 9, Block No. A-1,
  Lakhanpur, Kanpur 208 024 (UP)
  Phones: [+91] ((512) 2334200, 2334201,
  E-mail: cro@icai.in
  Website: http://www.circ-icai.org

Northern India Regional Council

- **Regional Council Office**
  ICAI Bhawan, 5th Floor,
  Annexe Building Indraprastha Marg,
  New Delhi-110 002
  Phone: [+91] (11) 3010 0500
  Fax: [+91] (11) 2337 8051
  E-mail: nirc@icai.in
  Website: http://www.nirc-icai.org

- **Decentralised Office**
  ICAI Bhawan, 52-53-54, Institutional Area,
  Vishwas Nagar, Shahdara Near Karkardooma
  Court, Delhi-110 032
  Phones: [+91] (11) 3989 3990, 3021 0601-605
  Fax: [+91] (11) 3021 0680
  E-mail: nro@icai.in

Eastern India Regional Council

- **Regional Council Office**
  'ICAI Bhawan', 7, Anandilal Poddar Sarani (Russell
  Street), Kolkata-700071
  Phones: [+91] (33) 39893989, 30211107,30211140/41,
  (Reception Section)
  Phones: [+91] (33) 3021 1133, 3021 1134, 3021
  1104/08 (EIRC Secretariat)
  E-mail: eirc@icai.in • Website:http://www.eirc-icai.org

- **Decentralised Office**
  ICAI Bhawan, 382/A, Prantik Pally, Rajdanga,
  Near Garden High School, Kasba,
  Kolkata-700 107
  Phone: [+91] (33) 3084 0201/02/03/10 (Reception
  Section) • Fax: [+91] (33) 3084 0275
  E-mail: ero@icai.in

Southern India Regional Council

- **Regional Council Office**
  ICAI Bhawan 122, Mahatma Gandhi Road
  Post Box No. 3314, Nungambakkam,
  Chennai-600 034
  Phone: [+91] (44) 3989 3989 /30210385
  Fax: [+91] (44) 3021 0355
  E-mail: sirc@icai.in
  Website: http://www.sircoficai.org

- **Decentralised Office**
  Phone: [+91] (44) 3021 0300/3989 3989
  Fax: [+91] (44) 3021 0355
  E-mail: sro@icai.in

ICAI Global Presence

Africa–Middle East

- Abu Dhabi
  ICAI, Abu Dhabi Chapter, P.O Box-115078
  Abu Dhabi, United Arab Emirates
  E-mail: chairman@icaiauh.org
  chairman.abudhabi@icai.in
  Website: www.icaiauh.com
- Bahrain
  P. O. Box No. 10924, Diplomatic Area,
  Bahrain, Ph: [+973] 39944907,
  Fax: [+973] 17100004
  E-mail: chairman.bahrain@icai.in
  Web Site: www.bahrain-icai.org
- Botswana
  Plot No.: 8934, African Mall, Box 1816,
  Gaborone, Botswana, Ph: [00267] 312805,
  Fax: [00267] 359638
  E-mail: chairman.botswana@icai.in
- Doha
  PO Box 20459, St. 44/45 Salwa Industrial Area,
  Doha, State of Qatar
  E-mail: icaidohachapter@gmail.com
  chairman.doha@icai.in
  Website: http://icaidohachapter.org/
- Dubai
  P.O. Box : 500725, G-18, Block 2B,
  Knowledge Village, Dubai (U.A.E.)
  Mobile: 97143672250
  E-mail: chairman@icai.dubai.org
  icai@dubaiinternetcity.net
- **Eastern Province (Saudi Arabia)**
  PB No. 3705, Alkhobar-31952,
  Kingdom of Saudi Arabia,
  Phones: 00966-3-8498582, 8825414
  E-mail: chairman.saudiarabia@icai.in
- Jeddah
  Irfan Yusuf Bhimdiwala, C/o. Avon Beauty (Arabia)
  LLC, P.O. Box 17161, Jeddah 21484
  E-mail: chairman.jeddah@icai.in
- **Nairobi (Kenya)**
  C/o. Tact Consultancy Services,
  P.O. Box 18307 - 00 500, 3rd floor,
  Centre Point, Nairobi, Kenya,
  E-mail: chairman@icaikenya.org
  chairman.kenya@icai.in
  Webste: www.icaikenya.org
- Kuwait
  Block No. 4, Street No. 9, House 17, Surra, Kuwait
  E-mail: chairman.kuwait@icai.in
  chairman@icaikw.org
  Website: http://:icaikw.org
- Nigeria
  Plot 251-B, Sapara Williams Street,
  Victoria Island, Lagos, Nigeria
  E-mail: chairman.nigeria@icai.in
- **Muscat (Oman)**
  C/o. College of Banking and Financial Studies
  P.O. Box 3122, PC 112, Ruwi, Sultanate of Oman
  E-mail: chairman.muscat@icai.in
  Website: http://icaimuscat.org/icai-muscat/
- **Riyadh**
  Group Finance Manager, National Co. for Glass
  Industries, P.O. Box No. 88646, Riyadh-11672,
  Saudi Arabia
  E-mail: chairman.riyadh@icai.in
- **Dar Es Salaam (Tanzania)**
  P.O. Box – 38337, Upanga,
  Dar-es-Salaam, Tanzania
  E-mail: chairman@icaitanzania.org;
  chairman@icaitz.in; chairman.tanzania@icai.in
  Website: http://www.icaitz.in/home/
- **Kampala (Uganda)**
  C/o. The Indian Association Uganda,
  Plot No. 10/12, Nakasero Lane, P.O. Box 21138,
  Kampala, Uganda
  E-mail: chairman@icaiug.org
  chairman.kampala@icai.in
- **UAE (Ras Al Khaimah)**
  Ras Al Khaimah Chapter of ICAI, P.O. Box 28981
  E-mail: chairman.rak@icai.in
- Zambia
  P.O. Box No. 31162, Lusaka, Zambia,
  Fax: 00260-1-242150
  E-mail: chairman.zambia@icai.in

Asia

- Indonesia
  C/o. Arun Dalmia, Apartment Mitra Oasis
  B/903, Jl. Senen Raya 135-137, Jakarta 10410,
  Indonesia
  Tel: +62-8158956955
  E-mail: chairman.indonesia@icai.in
- Singapore
  Institute of Chartered Accountants of India,
  Singapore Chapter, 3 Shenton Way #22-09A
  Shenton House, Singapore – 068805
  E-mail: icaisingapore@gmail.com
  chairman.singapore@icai.in
  Website: http://icai.org.sg/
- **Thailand (Bangkok)**
  Post Box No.1451, Bangkok-10112
  E-mail: dka@indorama.net,
  chairman.bangkok@icai.in

Australasia–Oceania

- **Melbourne (Australia)**
  4 Midlothian Court, Point Cook, VIC 3030
  E-mail: chairman.melbourne@icai.in
  chairman@melbourneicai.org
  Website: https://melbourneicai.org/
- **Sydney (Australia)**
  P.O. Box 2253, Homebush West NSW 2140,
  Australia
  E-mail: chairman@icai.org.au
  chairman.sydney@icai.in
  Website: www.icai.org.au
- **Brisbane (Australia)**
  Lives Lived Well, PO Box 332, Spring Hill,
  Queensland 4004, Australia
  E-mail: surenqld@gmail.com
  chairman.brisbane@icai.in
- **Port Moresby (Papua New Guinea)**
  Society of Indian Chartered Accountants Inc,
  P.O. Box 7260, Boroko 111, TLI Haus, Badili,
  Hubert Murray H/Way,
  Port Moresby NCD,
  Papua New Guinea
  E-mail: president.papuanewguinea@icai.in
  Website: www.sica.org.pg
- **New Zealand (Auckland)**
  E-mail: chairman@icai.org.nz;
  chairman.newzeland@icai.in Europe
- **London (UK)**
  97A Wheatley Close, London, NW44LF
  E-mail: chairman.london@icai.in

North America

- **San Francisco (USA)**
  42086 Via San Gabriel Fremont
  California 94539
  E-mail: chairman.sfo@icai.in
- **New York (USA)**
  503 Jerusalem Av, Hicksville,
  NY 11801, USA
  E-mail: chairman.newyork@icai.in
  Website: www.icainewyork.org
- **Toronto (Canada)**
  66 Wellington Street West,
  P.O. Box 1069,
  Toronto, ON, M5K 1P2, Canada,
  E-mail: chairman.toronto@icai.in
  Website: http://icaitoronto.com
- **British Columbia (Canada)**
  707-1050, Burrard Street,
  Sheraton Vancouver Wall Centre,
  Vancouver, B.C. Canada, V6Z 2S3,
  Ph. (1-778)-316-4156,
  Ph/Fax: (1-604) - 596-5212
  E-mail: chairman.vancouver@icai.in
  Website: www.icaivancouver.com

Our Thanks to
The Compilers of
WIRC Reference Manual 2019-20

CA. Abhay Arolkar
CA. Alok Pansari
CA. Amit Joshi
CA. Amit Mohare
CA. Amrin Pathan
CA. Anand Banka
CA. Anand Bathiya
CA. Anil Doshi
CA. Ankit Bahal
CA. Arun Deherkar
CA. Ashit Shah
CA. Ashwin Shah
CA. Atul Mehta
CA. Atul Suraiya
CA. B. L. Maheshwari
CA. Bhadresh Doshi
CA. Bharat Gosar
CA. Bhaumik Goda
CA. Bhavesh Vora
CA. C. N. Vaze
CA. Chandresh Shah
CA. Darshana Mankad
CA. Deepali C. Shah
CA. Dilip Shah
CA. Dinesh Gandhi
CA. Gaurish Zaoba
CA. Gautam Mota
CA. Gautam Shah
CA. Geeta Ramrakhiani
CA. Girish Jain
CA. Gopal Bohra
CA. I. B. Sonawalla
CA. Jaimish Patel
CA. Jay Kalra
CA. Jayant Adhyapak
CA. Jayant Bhatt
CA. Jayesh Gogri
CA. K. C. Jain
CA. Kavita Sethia
CA. Ketan Saiya
CA. Ketul Patel
CA. Khushroo Panthaky
CA. Kiran Nisar
CA. Kshamin Shah
CA. Kshitij Vardhan
CA. Kushal Shah
CA. Mahendra Mehta
CA. Manish Chokshi
CA. Manish Jajoo
CA. Manoj Pati
CA. Manoj Shah
CA. Mayur Momaya
CA. Mehul Shah
CA. Mihir Patki
CA. Mihir Vora
CA. Milan Mody
CA. Milind Gramopaddhye
CA. Mousami Nagarsenkar
CA. Naresh Ajwani
CA. Navneet Lahoti
CA. Nidhi Gandhi
CA. Nilesh Saiya
CA. Nilesh Vichare
CA. Nirmit M. Mehta
CA. Pankaj Majithia
CA. Paras K. Savla
CA. Pawan Agarwal
CA. Piyush Chhajed
CA. Pramod Dhamankar
CA. Pramod Shingte
CA. Pranav Kapadia
CA. Prashant Kotecha
CA. Prashant Vora
Adv. Praveen Veera
CA. Rachesh Kotak
CA. Rajan Kamat
CA. Rajesh Athavale
CA. Rajesh Patil
CA. Rajesh Sanghavi
CA. Rakesh Agarwal
CA. Ravi B. Gupta
CA. Ritika Sharma
CA. Rohit Parekh
CA. Roshan Mundhara
CA. Rucha Vyas
CA. Rutvij Vyas
CA. Sachin Maher
CA. Sahil Garud
CA. Samir Parekh
CA. Sanjay Gajra
CA. Sanjay Gangal
CA. Shardul Shah
CA. Shikha Kabra
CA. Smita Parulkar
CA. Sudha Bhushan
CA. Sudhir Amin
CA. Suhas Malankar
CA. Sujal Shah
CA. Sunil Patodia
CA. Suril Mehta
CA. Tarun Singhal
CA. Tejas Jobanputra
CA. Tushar Doctor
CA. Utpal Doshi
CA. Vallabh Gokhale
CA. Vijay Bhatt
CA. Vijay Joshi
CA. Vijay Kewalramani
CA. Vijay Maniar
CA. Vijay Shetty
CA. Vinay Ganesan
CA. Vinit Deo
CA. Virag Shah
CA. Viral Chheda
CA. Virat Bhavsar
CA. Vishal Palwe
CA. Vishwas Mehendale
CA. Vyankatesh Joshi
CA. Walter D'souza

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PART 1
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2019

JULY

S		7	14	21	28
M	1	8	15	22	29
T	2	9	16	23	30
W	3	10	17	24	31
T	4	11	18	25	
F	5	12	19	26	
S	6	13	20	27	

AUGUST

	4	11	18	25
	5	12	19	26
	6	13	20	27
	7	14	21	28
1	8	15	22	29
2	9	16	23	30
3	10	17	24	31

SEPTEMBER

1	8	15	22	29
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OCTOBER

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NOVEMBER

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DECEMBER

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2020

JANUARY

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FEBRUARY

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MARCH

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APRIL

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MAY

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JUNE

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The Chartered Accountants Act, 1949 and Regulations

1. THE CHARTERED ACCOUNTANTS ACT, 1949 (THE ACT)

It is an Act enacted by Parliament w.e.f. 1st July, 1949 — as amended by Chartered Accountant (Amendment) Act, 2011 for the regulation of the profession of Chartered Accountancy in India. The regulation is exercised through the Institute of Chartered Accountants of India. For the management of the affairs and for discharging the functions assigned to it by the Act, there is a Council of the Institute.

The Act has eight chapters, which deal with provisions relating to membership of the Institute, Council and Regional Councils, misconduct, penalties, power to make various regulations, etc.

The Act also has two Schedules relating to professional misconduct.

By virtue of Section 30 of the Chartered Accountants Act, 1949, the Council of the Institute has made regulations, which are called the Chartered Accountants Regulations, 1988. The same came into force from 1st June, 1988 and have been amended from time-to-time. The Council has issued guidelines for the members pursuant to the provisions of the Chartered Accountants Act, 1949. Important aspects of these guidelines have been suitably covered under appropriate heads the Chartered Accountants Regulations, 1988.

Some of the important regulations relevant for members and students are given hereinbelow:

2. ENROLMENT AS MEMBER (SECTIONS 4 & 8, REGULATION 4)

Eligibility Criteria

The applicant should have:

(a) Completed the prescribed period of practical training.

(b) Passed the final C.A. Examinations.

(c) Has attained twenty one years of age.

(d) Undergone course on General Management and Communication Skills (Applicable to candidates passing Both Groups of Final C.A. Examinations held in November, 2002 and thereafter).

(e) Undergone Advanced Course in Information Technology.

3.1 ELIGIBILITY TO TRAIN ARTICLED ASSISTANTS (AS PER THE REVISED REGULATIONS)

The Chartered Accountants Regulations, 1988 with regard to the eligibility to train the articled assistants has been amended vide Notification dated 17th August, 2007 and as per the amended Regulations, the eligibility of practicing member to train articled assistant(s) is as under.

TABLE-I

(Applicable to members practicing the profession of chartered accountants in his individual name or as proprietor or as partner)

Category	Period of continuous practice of an Associate or a Fellow member	Entitlement of articled assistant or assistants
(i)	For a period up to 3 years	**1**
(ii)	For any period from 3 years to 5 years	**3**
(iii)	For any period from 5 years to 10 years	**7**
(iv)	For any period from 10 years	**10**

TABLE-II

(Applicable to members who are in full time salaried employment under a chartered accountant in practice or a firm of such chartered accountants)

Category	Number of full time salaried employees — irrespective of whether associate or fellow	Entitlement of articled assistant or assistants
(i)	Up to 100	1 per employee
(ii)	Between 101 and 500	100 + 50% of such employees above 100 (i.e., a maximum of 300)
(iii)	From 501 or more	300 + 20% of the number of such employees above 500

Stipend payable would be as under:

Sr. No.	Classification of the normal place of the service of the articled assistant	During the first year of training	During the second year of training	During the remaining period of training
(i)	Cities/towns having a population of twenty lakhs and above	₹ 2,000	₹ 2,500	₹ 3,000
(ii)	Cities/towns having a population of above four lakhs but less than twenty lakhs	₹ 1,500	₹ 2,000	₹ 2,500
(iii)	Cities/towns having a population of less than four lakhs	₹ 1,000	₹ 1,500	₹ 2,000

3.2 PRACTICAL TRAINING RECORD (REGULATION 64)

A weekly record of practical training of the Articled/Audit Assistants is required to be maintained, specifying the areas in which the articled assistant has obtained work experience and a report of the practical training is to be enclosed with Form 108/109, in cases of completion/termination.

Transfer of article assistants allowed on permissible grounds.

Students/articled assistants have to ensure that coaching classes they join/attend should not have timing between 9.30 am and 5.30 pm. Such timing is not permissible to students during their training period.

3.3 TRANSFER/TERMINATION OF ARTICLESHIP [REGULATION 56(1)]

The transfer/termination of articleship in terms of Regulation 56(1) of the Chartered Accountants Regulations, 1988 shall be permissible on the grounds as stated below:—

i. Transfer/termination of articles is permitted without any restriction during the first year of articles.

ii. During rest of the articleship on satisfying any one or more of the conditions as stated below:—

   1. Medical grounds requiring discontinuance of articles for a minimum period of three months (on production of a Medical Certificate issued by a Government Hospital).
   2. Transfer of parent(s) to any other city.
   3. Misconduct involving moral turpitude.
   4. Other justifiable circumstances/reasons.

iii. Grounds already permissible in the Chartered Accountants Regulations, 1988 (on submission of requisite proof of the act warranting transfer/termination of articleship).

   a. Industrial Training (Regulation 51).
   b. Secondment of articles (Regulation 54).
   c. Conversion from PCC to IPCC (for termination of articles only. Re-registration of articles to be allowed only after passing Group-I of IPCC).
   d. Death of Principal [Regulation 57(1)(c)].
   e. Ceasing of practice by the Principal [Regulation 57(1)(a)].
   f. Removal of name of the Principal from the Register of Member due to any reason [Regulation 57(1)(b)].

iv. Marriage basis (only if there is relocation to another city involving distance of 50 kms).

v. Irregular payment or non-payment of stipend with reference to Regulation 67.

vi. Articled assistant desires to serve balance period of training outside India.

vii. Shifting by the Principal to another city involving distance more than 50 kms.

The articled assistants are required to get the consent of the Institute before getting Form 109 signed by the Principal.

The request, on any one or more of the aforesaid grounds, of an articled assistant on a plain paper along with the recommendation/consent of the Principal for transfer/termination of articleship accompanied by evidence/proof (self-attested by the articled assistant) to the satisfaction of the Institute is required to be made. Request for transfer not accompanied by consent of Principal shall not be accepted by the Institute.

In case of dispute between principal and articled assistant, the matter be settled amicably among the articled assistant and the Principal concerned and the Institute shall not interfere in such cases.

4. CODE OF ETHICS — SALIENT PROVISIONS

4.1 A Chartered Accountant in practice is PROHIBITED

- To pay commission/brokerage or share of profits of his professional business to/with any person other than a member of the Institute.
- From soliciting clients or professional work by circular, advertisements etc. except for advertisement as per the guidelines dated 14th May, 2008 issued by the Council.
- From being Director of a Holding Company in whose subsidiary he is the auditor.
- From expressing his opinion on financial statements of any business or enterprise in which one or more persons who are his 'relatives' within the meaning of Accounting Standards-18 (AS-18) has/have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

4.2 A Chartered Accountant in practice CANNOT

- Use any designation other than Chartered Accountant on professional documents, visiting cards, letterheads or signboard. The Council has decided that a member of the institute shall not be permitted to use initials "CPA" (standing for Certified Public Accountant) on his visiting card.
- Charge fees on a percentage of profits or which are contingent upon the findings, or results of such work provided that
   a) In the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets.
   b) In the case of an auditor of a co-operative society the fees may be based on a percentage of the paid-up capital or the working capital, etc.
   c) In the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.
   d) In the case of certain management consultancy services as may be decided by the resolution of the Council from time-to-time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work.
   e) In the case of certain fund raising services, the fees may be based on a percentage of the fund raised.
   f) In the case of debt recovery services, the fees may be based on a percentage of the debt recovered.
   g) In the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived.
   h) Any other service or audit as may be decided by the Council.
- Engage in any business other than the profession of chartered accountants unless permitted by the Council.
- Accept position as auditor previously held by another chartered accountant without first communicating with him in writing.

- Accept any other work/assignment/service on a remuneration, which exceeds the fees payable for statutory audit of the same undertaking. (Applicable only in respect of statutory audits of public sector undertakings/Govt. Companies/Listed companies/other public companies with turnover of ₹ 50 crore or more in a year— Ref: Chapter IX of Council General Guidelines, 2008.

4.3 A Chartered Accountant shall not

- Accept appointment as an auditor of an entity in case the undisputed audit fees of outgoing auditor for carrying out statutory audit has remained unpaid. This is not applicable in case of sick units.
- Accept in a financial year, more than sixty tax audit assignments under Section 44AB of the Income-tax Act, 1961.
- Accept appointment as Tax Auditor of an entity where he is appointed as Internal Auditor
- Accept appointment as auditor of a concern while indebted to the concern or has given a guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases amount exceeding ` 10,000.
- Accept the appointment as statutory auditor of Public Sector Undertaking(s)/Government Company(ies) having turnover of ₹ 50 crore or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same undertaking(s)/Company(ies) on a remuneration which in total exceeds the fee payable carrying out the statutory audit of the same Undertaking/ Company however in case appointing authority(ies)/ regulatory body(ies) lay down more stringent condition(s) restriction(s), the same shall apply instead of the conditions/restrictions specified under these Guidelines.

  The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together.
- Without following the direction given by the Council or an appropriate committee or on behalf of any of them, accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s).

4.4 A Chartered Accountant in practice CAN

1. Share profits of business or other similar arrangements with certain categories of non-members, to be prescribed, from time- to-time, in the Regulations.
2. Enter into multi-disciplinary partnership, in or outside India, with certain categories of non-members, to be prescribed, from time-to-time, in the Regulations subject to the Council Guidelines.
3. The members can use the Logo (released by the Institute on 1st July, 2007) which consists of the letters 'CA' and a tick mark upside down inside a rounded rectangle with white background. (Members can use this Logo as per Institute's guideline available on its website/Refer The CA Journal July, 2007).
4. Advertise through a write-up setting out their particulars of their firms and services provided by them subject to the Guidelines No. 1–CA(7)/council guidelines/01/2008, dated 14th May, 2008 issued by the Council pursuant to Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. (Refer The CA Journal July, 2008 for the detailed guidelines).
5. Give his name and his firm's name under specified groups in telephone directory viz., Yellow Pages brought by telephone authorities, subject to the prescribed restrictions appearing in the Code of Ethics, 2009 at p. No. 138.
6. Use the designation 'CA' as well as the name of the firm in greeting cards and invitation cards.
7. Be a director simpliciter in a company without permission of the Council.
8. Be a promoter director in a company without prior permission of the Council.
9. Render Management Consultancy and Other Services in Corporate form, subject to the guidelines issued by the Institute in this regard. (Decision in the 261st Council meeting. Published on page 629 of October 2006 issue of CA Journal).
10. Create his own website subject to overall guidelines laid down by the Council and should ensure that their websites are run on a "pull" and not "push" method.
11. The members of ICAI who are also members of AICPA and are eligible to sign the financial statements as CPAs (i.e., as members of the AICPA), may do so. So far as ethical standards are concerned, the ICAI ethical standards will apply. When the ICAI members sign the financial documents as CPAs, they should indicate in an appropriate manner, that their firm is an Indian accounting firm registered with the Institute of Chartered Accountants of India under the Chartered Accountants Act, 1949. In other words, such a member should ensure to appropriately reflect the fact in the relevant document(s) that his firm falls within the purview of the ICAI. (Decision in the 257th Council meeting. Published on page 145 of July 2006 issue of CA Journal).

5. OTHERS

- Firm registration number allotted by ICAI is required to be mentioned in the audit report and certificate issued by the Firm/member.
- Resolution regarding appointment of statutory auditors should bear Firm's registration number.
- Indian CA firms having tie-up/affiliation with international entities/network to furnish certain documents/details to the Institute (For details refer 'The Chartered Accountant', November 2010 issue page 805). In case, the Institute comes to know of any firms which have international tie-up/affiliation, but yet had not come forward to disclose the same and submit the documents/details called for, then necessary action under the provisions of the Chartered Accountants Act, 1949 shall be taken against them.
- MAINTENANCE OF RECORD OF AUDIT ASSIGNMENTS

  A chartered accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of chartered accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible, in the following format:

Sr. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance	Date on which Form 23-B filed with Registrar of Companies

6. SELF REGULATORY MEASURES

1. Branch Audits of a Company not to be conducted by its statutory auditors consisting of ten or more members but to be entrusted to local firm of auditors consisting of less than 10 members except where accounting records of branches are maintained at the Head Office of the Company or significant operations are carried out at the branch office.
2. Where large Companies desire to appoint firm with less than five partners as joint auditors, the senior audit firms should not object to the same.
3. A practising firm of CAs engaged in audit work should have at least one member for five non-qualified members of the staff, excluding articled clerks, typists, peons and other persons not engaged directly in such professional work.
4. As a good and healthy practice, auditors should make a disclosure of payments received by them for other services through the medium of a different firm or firms in which the said auditor may be either partner or proprietor.
5. To ensure professional independence, fees for audit and other services received by a firm, its partners individually and by any other firm in which a partner or partners are partners, from one or more clients or companies under same management should not exceed 40% of the gross annual fees of firm, other firms and partners referred above. This restriction does not apply in cases where such fees do not exceed ₹ 2 lakhs from the group or where fees relate to audit of Government companies or where appointment is made by the Government.

7. MINIMUM RECOMMENDED SCALE OF FEE CHARGEABLE FOR THE WORK DONE BY THE MEMBERS OF ICAI

The Committee for **Capacity Building of Members in Practice (CCBMP)** of ICAI as a part of its commitment to strengthen the Members in Practice, has initiated the Minimum Recommended Scale of Fees for the professional assignments done by Chartered Accountants. The recommendation is about the fee to be charged as per the work performed for various professional assignments. **The committee has further revised the prescribed Minimum Recommended Scale of Fees. The fee has been recommended separately for Class A & Class B cities.**

The details about the Minimum Recommended Scale of Fees for the professional assignments to be done by the Chartered Accountants for **Class A & Class B** cities can be seen at *https://resource.cdn.icai.org/47945ccbmp37942.pdf*

8. CHARTERED ACCOUNTANTS' BENEVOLENT FUND

The Chartered Accountants' Benevolent Fund (CABF) established in 1962 by ICAI, is one of the largest body providing welfare and support to the Chartered Accountants fraternity. It provides financial assistance for medical treatment, education, maintenance or any other similar purpose to necessitous persons of the CA fraternity. Financial assistance in lump sum is also given to the widows/relatives of the deceased member in case of accidental/unnatural death at age below 55 years. A considerable number of members/family is already getting such assistance from CABF.

9. MEMBER IN PART TIME PRACTICE

- The Council has decided that the members in part time practice shall not be entitled to perform attest function w.e.f. 1-4-2005. The Council in this connection also clarified that the attest function would cover services pertaining to audit, review, certification, agreed upon procedures and compilations as defined in the framework of statements on standard auditing practices and guidance notes on related services published in the July, 2001 issue of the Institute journal.
- A member who is not entitled to perform attest function shall not be entitled to train the articled assistants.

10. NETWORK, MERGER, DEMERGER AMONGST THE FIRMS REGISTERED WITH THE INSTITUTE

The Council has accepted the report of the study group on capacity building measures of CA firms. The report as accepted has been hosted in the website of the Institute under the title "Capacity building measures 2004". The Council has also decided the rules of network amongst the firms registered with ICAI, rules of merger and demerger, etc. The Council has also decided that while, in the constitution certificate, the actual date(s) of (joining of partner)(s)) the merging firm(s) would continue to be the respective date(s) of joining the merged firm, however, against each such entry the clarificatory words "deemed date of joining" should be mentioned without fail. The principles of seniority and choosing the name of merged firm will be effective in respect of all mergers of CA firms which have taken place from April 2005 onwards. Members holding COP and practising on full time basis without any break and practising in individual name (without using any firm/trade name) are also allowed the benefit of merger. Demerger of firms under Merger may take place before period of five years after Merger and firms remaining in merger may continue further by filing its particulars in Form 18 to the respective office of ICAI.

11. CPE HOURS REQUIREMENTS FOR THE BLOCK PERIOD OF 3 YEARS (1-1-2017 TO 31-12-2019) TO BE COMPLIED WITH BY DIFFERENT CATEGORIES OF MEMBERS

A. All the members (aged less than 60 years) who are holding Certificate of Practice (except all those members who are residing abroad) are required to:
   (a) Complete at least 120 CPE credit hours in a rolling period of three-years.
   (b) Complete minimum 20 CPE credit hours of structured learning in each calendar year.
   (c) Balance 60 CPE credit hours (minimum 20 CPE credit hours in each calendar year) can be completed either through Structured or Unstructured learning (as per Member's choice).

B. All the members (aged less than 60 years) who are not holding Certificate of Practice; and all the members who are residing abroad (whether holding Certificate of Practice or not) are required to:
   (a) Complete at least 60 CPE credit hours either structured or unstructured learning (as per Member's choice) in rolling period of three-years.

(b) Complete minimum 15 CPE credit hours of either structured or unstructured learning (as per Member's choice) in each calendar year.

C. All the members (aged 60 years & above) who are holding Certificate of Practice, are required to:

(a) Complete at least an aggregate of 90 CPE credit hours of either Structured or Unstructured Learning (as per Member's choice) in a rolling period of three years.

(b) Complete minimum of 20 CPE credit hours being an aggregate of either Structured or Unstructured Learning (as per Member's choice) in each calendar year.

EXEMPTION FROM THE REQUIREMENTS OF STATEMENT ON CPE

All members of the Institute are required to meet the CPE credit hours requirement(s) as specified by the Council from time-to-time subject to following exemption:

a) A member is exempted only for the particular calendar year during which he gets his membership for the first time.

b) The following class of members are exempted from CPE credit hours requirement:

(i) All the members (aged 60 years and above) who are not holding Certificate of Practice.

(ii) Judges of Supreme Court, High Court, District Courts and Tribunal

(iii) Members of Parliament/MLAs/MLCs

(iv) Governors of States

(v) Centre and State Civil Services

(vi) Entrepreneurs (owners of Business (manufacturing) organisations other than professional services)

(vii) Judicial officers

(viii) Members in Military Service

c) Temporary Exemptions:

(i) Female members for one Calendar year on the grounds of pregnancy

(ii) Physically disabled members on case to case basis having permanent disability of not less than 40% and above (Supported with medical certificates from any doctor registered with Indian Medical Council with relevant specialisation as evidenced by Post Qualifications (M.D., M.S. etc.).

(iii) Members suffering from prolonged critical diseases/ illnesses or other disability as may be specified or approved by the CPEC. (Supported with medical certificates from any doctor registered with Indian Medical Council with relevant specialisation as evidenced by Post Qualifications (M.D., M.S. etc.).

d) A member or class of members to whom the CPEC may in their absolute discretion grant full/partial exemption specifically or generally on account of facts and circumstances of the case which in their opinion prevent such person(s) from compliance with the requirements of CPE as specified in the Statement.

12. PEER REVIEW

The Securities & Exchange Board of India (SEBI), *vide* its Circular No. CIR/CFD/DIL/1/2010 dated April 5, 2010, has made mandatory with effect from April 1, 2010 for the listed entities, that limited review/statutory audit reports submitted to the concerned stock exchanges shall be given only by those auditors who have subjected themselves to peer review process and who hold a valid certificate issued by the 'Peer Review Board' of the Institute.

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Continuing Professional Education – CPE

CPE hours requirements for the block period of 3 years (1-1-2017 to 31-12-2019) to be complied with by different categories of members

A. All the members (aged less than 60 years) who are holding Certificate of Practice (except all those members who are residing abroad) are required to:

(a) Complete at least 120 CPE credit hours in a rolling period of three-years.

(b) Complete minimum 20 CPE credit hours of structured learning in each calendar year.

(c) Balance 60 CPE credit hours (minimum 20 CPE credit hours in each calendar year) can be completed either through Structured or Unstructured learning (as per Member's choice).

B. All the members (aged less than 60 years) who are not holding Certificate of Practice; and all the members who are residing abroad (whether holding Certificate of Practice or not) are required to:

(a) Complete at least 60 CPE credit hours either structured or unstructured learning (as per Member's choice) in rolling period of three-years

(b) Complete minimum 15 CPE credit hours of either structured or unstructured learning (as per member's choice) in each calendar year.

C. All the members (aged 60 years & above) who are holding Certificate of Practice, are required to:

(a) Complete at least an aggregate of 90 CPE credit hours of either Structured or Unstructured Learning (as per member's choice) in a rolling period of three years

(b) Complete minimum of 20 CPE credit hours being an aggregate of either Structured or Unstructured Learning (as per member's choice) in each calendar year.

EXEMPTION FROM THE REQUIREMENTS OF STATEMENT ON CPE

All members of the Institute are required to meet the CPE credit hours requirement(s) as specified by the Council from time-to-time subject to following exemption:

a) A member is exempted only for the particular calendar year during which he gets his membership for the first time.

b) The following class of members are exempted from CPE credit hours requirement:

(i) All the members (aged 60 years and above) who are not holding Certificate of Practice.

(ii) Judges of Supreme Court, High Court, District Courts and Tribunal

(iii) Members of Parliament/MLAs/MLCs

(iv) Governors of States

(v) Centre and State Civil Services

(vi) Entrepreneurs (owners of Business (manufacturing) organizations other than professional services)

(vii) Judicial officers

(viii) Members in Military Service

c) Temporary Exemptions:

(i) Female members for one Calendar year on the grounds of pregnancy

(ii) Physically disabled members on case to case basis having permanent disability of not less than 40% and above (Supported with medical certificates from any doctor registered with Indian Medical Council with relevant specialisation as evidenced by Post Qualifications (M.D., M.S. etc.).

(iii) Members suffering from prolonged critical diseases/ illnesses or other disability as may be specified or approved by the Continuing Professional Education Directorate (CPED). (Supported with medical certificates from any doctor registered with Indian Medical Council with relevant specialisation as evidenced by Post Qualifications (M.D., M.S. etc.).

d) A member or class of members to whom the CPED may in their absolute discretion grant full/partial exemption specifically or generally on account of facts and circumstances of the case which in their opinion prevent such person(s) from compliance with the requirements of CPE as specified in the Statement.

The CPE learning activities, which are eligible for CPE Credit hours are divided into Structured Learning Activities (SLAs) and Unstructured Learning Activities (ULAs). Accordingly, the Council has approved Advisories on Structured and Unstructured Activities. The Advisories are meant as guidance and direction to the members who want to avail CPE Credit hours through SLAs and ULAs.

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Peer Review

The Peer Review Board was established in April 2002. The Statement on Peer Review (the Statement) was released in early 2002 (revised in 2008 and in 2011). It aims to maintain and enhance the quality of assurance services. Peer Review process is based on the principle of systematic monitoring of the procedures adopted and records maintained while carrying out audit & assurance services in the course of one's professional responsibility to ensure and sustain quality. Peer Review is primarily directed towards ensuring as well as enhancing the quality of audit and assurance services of Chartered Accountants in Practice. The Peer Review is conducted of a Practice Unit by an independent evaluator known as a Peer Reviewer. The main objective of Peer Review is to ensure that in carrying out the assurance service assignments, the members of the Institute (a) comply with Technical, Professional and Ethical Standards as applicable including other regulatory requirements thereto and (b) have in place proper systems including documentation thereof, to amply demonstrate the quality of the assurance services.

As far as possible, in order that the reviewers carry out review assignment(s) as per globally accepted standards, the Board has brought out a comprehensive Peer Review Manual providing an insight into various aspects of peer review process and modalities and another important publications of the Board in this regard are the Training Modules for Peer Reviewers, Handbook on advisories for Peer Reviewers and Handbook on Advisories for Practice Units. The Board has also come out with a publication on Frequently Asked Questions (FAQs) to facilitate the reviewers in Peer Review process. The Peer Review process can be spelt out, in nutshell, under the following sub-headings:

(i) Selection of Practice Unit

Peer Review is being introduced in three levels with different types of practice units being included at each such level. At each level, certain practice units, satisfying the criteria laid down in the revised Statement, are selected for Peer Review on a random basis. The Board is empowered to decide the proportion of practice units to be included in this selection during each phase of implementation. At present selection of practice units is made as under—

(a) Practice units falling under Level I would be subjected to be peer reviewed at least once in three years.

(b) Practice units falling under Levels II & III may be subjected to review every four and five years respectively.

However, if the Board so decides or otherwise at the request of practice unit, the Peer Review of a practice unit can be conducted at shorter intervals in respect of practice units falling under Levels I, II & III.

Therefore, a provision has been included in the Revised Statement to ensure that all practice units may like to undergo periodic review in view of the benefit accruing out of such a process. In addition to above peer review can be conducted in following cases —

(a) An auditee may also request the Board for the conduct of peer review of its auditor; i.e., practice unit.

(b) A firm (practice unit) may also apply for suo motu/voluntary peer review by requesting the same to the Peer Review Board office.

In both the above cases specific request should be made to the Peer Review Board.

(ii) Intimation to the Practice Unit

Once a practice unit has been selected for peer review, an intimation in writing is sent by the Board to the practice unit informing of its selection for peer review. Along with the intimation, a copy of declaration is forwarded to the Practice Unit which has to be filled up and submitted to the Board.

On receipt of the Practice Unit declaration, the following documents are sent to the practice unit:

1. A panel of three local trained reviewers.
2. A copy of the questionnaire to be filled by Practice unit and submitted to the reviewer for selection of sample therefrom.
3. Circular for notification cost.

The practice unit is required to intimate the Board, the name of the reviewer from the panel, whom he selects for conducting the peer review of his firm. On receipt of the intimation from the practice unit, the Board contacts the reviewer for submission of his acceptance for the review alongwith Declaration of confidentiality, for himself and one Qualified Assitant, if any.

On receipt of the above information, the Board intimates the Practice Unit and the reviewer that the review may now be conducted and report submitted. The Practice Unit thereafter submits the duly filled Questionnaire to the reviewer for conducting of review.

(iii) Selection of Sample Assurance Services Engagements and Communication to Practice Units

The reviewer, on the basis of the information given in the questionnaire or after seeking such other information as he thinks necessary, selects a sample of assurance services engagements on random basis for review. The criterion of selection of samples for review, out of the complete list of assurance service clients, is intimated to the reviewer by the Board at the time of appointment.

However, the reviewer is required to select a sample that is representative of the practice unit's client.

After the selection of sample of assurance service engagements for review, the reviewer sends a written intimation to the practice unit about the sample selected by the reviewer, 5 days in advance, from the date the reviewer intends to begin the review. The intimation also contains a request for ready availability of the relevant records relating to the assurance service engagements selected for the review.

(iv) Method of Review

Reviewer may adopt either compliance approach or substantive approach or a combination of both.

(v) Cost of Peer Review

Cost of Peer Review as laid down by the Board is borne by Practice Unit.

(vi) Declaration of Confidentiality

Reviewer is not supposed to keep any paper(s) — original or photocopy, of practice unit. He can retain only his working papers. The Reviewer, his qualified assistant/s, if any, has to sign declaration of confidentiality, before commencing the review. All Board Members, Officers and Staff assisting the Board are also subject to similar declaration of confidentiality signed by them.

(vii) Certificate of Peer Review

On the basis of the report submitted by the Reviewer, the Board shall consider and issue a Certificate to the practice unit.

(viii) Illustrative time schedule

Peer Review is a time bound process and the total time involved in the process is 90 days.

REPORT OF THE PEER REVIEWER

Preliminary Report

After completing the on-site review, the Reviewer, before making his report to the Board, shall communicate his findings to the practice unit if in his opinion, the systems and procedures are deficient or non-compliant with reference to any matter that has been noticed by him or if there are other matters where he wants to seek clarifications. The practice unit shall within 5 days after the date of receipt of the findings, make any submissions or representations, in writing to the Reviewer.

Final Report

At the end of an on-site review, if the Reviewer is satisfied with the reply received from the practice unit, he shall submit a Peer Review Report to the Board along with his initial findings, response by the practice unit and the manner in which the responses have been dealt with. A copy of the report shall also be forwarded to the practice unit.

In case, the Reviewer is of the opinion that the response by the practice unit is not satisfactory, the Reviewer shall accordingly submit a Qualified Report to the Board incorporating his reasons for the same. The Reviewer shall also submit initial findings, response by the practice unit and the manner in which the responses have been dealt with. A copy of the report shall also be forwarded to the practice unit.

In case of a Qualified Report, the Board shall order for a "Follow on" Review after a period of one year from the date of issue of report as mentioned above. If the Board so decides, the period of one year may be reduced but shall not be less than six months from the date of issue of the report.

As per the revised Statement on Peer Review the Practice Units subject to Review

Every practice unit, based on their category as determined below will be subject to Peer Review in accordance with revised Statement on Peer Review.

Level I

A practice unit which has undertaken any of the under-mentioned assurance services in the period under review:

(i) Central Statutory Audit of Public Sector Banks, Private Sector Banks, Foreign Banks, Co-operative Banks and Public Financial Institutions;

(ii) Central Statutory Audit of Central or State Public Sector Undertakings and Central Co-operative Societies based on criteria such as turnover or paid-up capital etc., as may be decided by the Board;

(iii) Central Statutory Audit of Insurance Companies;

(iv) Statutory Audit of asset management companies or mutual funds;

(v) Statutory Audit of enterprises whose equity or debt securities are listed in India or abroad.

(vi) Statutory Audit of Entities which have raised funds from public or banks or financial institutions of over rupees Fifty crore during the period under Review.

(vii) Statutory Audit of Entities which have raised donations and/or contributions over rupees Fifty crore during the period under Review.

(viii) Statutory Audit of entities having Net Worth of more than rupees five hundred crore at any time during the period under Review.

(ix) Statutory Audit of entities which have been funded by Central and/or State Government(s) schemes of over rupees fifty crore during the period under Review.

Level II

A practice unit which has undertaken any of the under-mentioned assurance services in the period under review:

(i) Statutory/Internal/Concurrent/Systems/Tax audit and/or Departmental Review of Branches/Offices of

- (a) Public Sector or Private Sector and/or Foreign Banks;
- (b) Insurance Companies;
- (c) Co-operative Banks;
- (d) Statutory Audit of Regional Rural Banks;
- (e) Statutory Audit of Non-Banking Financial Companies (NBFCs).

(ii) Statutory Audit of entities having Net Worth of over rupees five crore or an annual turnover of more than rupees fifty crore during the period under Review.

Level III

Any other practice unit providing assurance services not covered in Level I and Level II hereinabove.

Recognition of the Peer Review of Auditors in India

- Circular of SEBI dated 5-4-2010 brought up para (d) of clause 41(1)(h) regarding requirement of a valid peer review certificate for statutory auditors, as under:
  - (i) The Institute of Chartered Accountants of India (ICAI/ Institute) has specified a Peer Review mechanism to ensure that the quality of services rendered by the members of the Institute is maintained and enhanced on a continuous basis. Firms of chartered accountants (proprietary as well as partnership) and members of the Institute practicing individually are required to undergo the peer review process.
  - (ii) It has been decided that in respect of all listed entities, limited review/statutory audit reports submitted to the concerned stock exchanges shall be given only by those auditors who have subjected themselves to the peer review process of ICAI and who hold a valid certificate issued by the 'Peer Review Board' of the said Institute.
- The Comptroller and Auditor General of India (C&AG) has also recognised Peer Review Board's work as it seeks additional details from the Chartered Accountants firms about their Peer Review status in the application form for allotment of audit for public sector undertakings. C&AG every year makes allotment of audits to the firms which are holding a valid Peer Review Certificate issued by Peer Review Board of ICAI. Furthermore, from last few years the C&AG annually seeks details from the institute of those firms which have been issued certificates from the Peer Review Board.
- Information of Peer Review Certificates is also included in the Multipurpose Empanelment form submitted by the Practice units to the Professional Development Committee of ICAI.
- Peer Review Certificates information is regularly updated on C&AG site and trained reviewers list is also updated on Peer Review page of ICAI website www.icai.org.

Training Initiatives

The Peer Review Board is continuously striving towards organising training programmes for Peer Reviewers in various parts of the country. The response for the training programmes has been very impressive. More and more Reviewers are actively participating in the said programmes. The Board has successfully conducted 192 training programmes for Peer Reviewers. Refresher courses for the trained Reviewers are also organised to enable them to update and upgrade their knowledge and skills.

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Accounting Standards

CRITERIA FOR CLASSIFICATION OF ENTITIES INTO DIFFERENT CATEGORIES

1. Criteria for classification of Non-corporate entities as decided by the Institute of Chartered Accountants of India ("ICAI")

Level I Entities

Non-corporate entities which fall in any one or more of the following categories, at the end of the relevant accounting period, are classified as Level I entities:

i. Entities whose equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India.

ii. Banks (including co-operative banks), financial institutions or entities carrying on insurance business.

iii. All commercial, industrial and business reporting entities, whose turnover (excluding other income) exceeds rupees fifty crore in the immediately preceding accounting year.

iv. All commercial, industrial and business reporting entities having borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year.

v. Holding and subsidiary entities of any one of the above.

Level II Entities (SMEs)

Non-corporate entities which are not Level I entities but fall in any one or more of the following categories are classified as Level II entities:

i. All commercial, industrial and business reporting entities, whose turnover (excluding other income) exceeds rupees one crore but does not exceed rupees fifty crore in the immediately preceding accounting year.

ii. All commercial, industrial and business reporting entities having borrowings (including public deposits) in excess of rupees one crore but not in excess of rupees ten crore at any time during the immediately preceding accounting year.

iii. Holding and subsidiary entities of any one of the above.

Level III Entities (SMEs)

Non-corporate entities which are not covered under Level I and Level II are considered as Level III entities.

2. Criteria for classification of companies under the Companies (Accounting Standards) Rules, 2006 [Refer Rule 7 to the Companies (Accounts) Rules, 2014]

Small and Medium-sized Company (SMC) as defined in Clause 2(f) of the Companies (Accounting Standards) Rules, 2006:

(f) "Small and Medium-sized Company" (SMC) means, a company—

(i) whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;

(ii) which is not a bank, financial institution or an insurance company;

(iii) whose turnover (excluding other income) does not exceed rupees fifty crore in the immediately preceding accounting year;

(iv) which does not have borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year; and

(v) which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation.— For the purposes of clause (f), a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

Non-SMCs

Companies not falling within the definition of SMC are considered as Non-SMCs.

HARMONISATION OF DIFFERENCES BETWEEN THE ACCOUNTING STANDARDS ISSUED BY ICAI AND THOSE NOTIFIED BY THE CENTRAL GOVERNMENT

The Central Government, on December 7, 2006, notified the Accounting Standards under the Companies (Accounting Standards) Rules, 2006. These Standards have since been amended mainly with respect to accounting of employee benefits and accounting of exchange fluctuations. It must be noted that the provisions relating to Accounting Standards contained in the notified Rules govern only corporate entities.

Accounting Standards as per the Rules were different in certain respects from the Accounting Standards issued by the Council of ICAI and therefore, the Council decided to harmonise these differences and clarify as to the applicability of both the sets of Accounting Standards to various entities.

APPLICABILITY OF ACCOUNTING STANDARDS UNDER THE COMPANIES ACT, 2013

As per Section 133 of the Companies Act, 2013, the Central Government is to prescribe the Accounting Standards as recommended by ICAI in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA). The Government has vide notification dated 21st March, 2018 notified the Rules for formation of NFRA. NFRA is yet to be constituted. Till such time, Rule 7 of the Companies (Accounts) Rules, 2014 provides that the Accounting Standards as specified under the Companies Act, 1956 shall be deemed to be Accounting Standards for the purposes of the Companies Act, 2013, that is, those standards which are notified (and as amended) under the Companies (Accounting Standards) Rules, 2006 ("the Rules").

Harmonisation of Differences caused by Accounting Standards Interpretations (ASIs)

The consensus portion of most of the ASIs has been included as *'Explanation'* to the relevant paragraphs in the notified Accounting Standards. The Council has decided to follow the same. Accordingly, Standards issued by ICAI also have these ASIs built in the respective Standard itself. Thus, the Standards

have been amended to incorporate the consensus portion of the ASIs as `Explanation' to the relevant paragraphs.

Withdrawal of Accounting Standards Interpretations

ASI 2, Accounting for Machinery Spares (Relating to AS 2 and AS 10) and ASI 11, Accounting for Taxes on Income in case of an Amalgamation (Relating to AS 22) have been withdrawn. These ASIs are not included in the Standards.

Issuance of Guidance Notes in lieu of ASIs

Following ASIs have also been withdrawn, as Guidance Notes are to be separately issued for the same:

ASI 12	Applicability of AS 20 (Relating to AS 20)
ASI 23	Remuneration paid to key management personnel — whether a related party transaction (Relating to AS 18)
ASI 27	Applicability of AS 25 to Interim Financial Results (Relating to AS 25)
ASI 29	Turnover in case of Contractors [Relating to AS 7 (Revised 2002)]

Issuance of Guidance Note after April 2015

	Guidance Note on Accounting for Oil and Gas Producing Activities (for entities to whom Ind AS is applicable) (December 14, 2016)
	Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable) (May 10, 2016)
GN(A) 35	Guidance Note on Accounting for Depreciation in Companies in the Context of Schedule II to the Companies Act, 2013 (February 6, 2016)
GN(A) 33	Guidance Note on Accounting for Derivative Contracts (June 1, 2015)
GN(A) 34	Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities. (May 15, 2015)

Harmonisation of Definition of Smaller Companies

The Council has retained three levels of entities for non-corporate Entities. However, ICAI has harmonised criteria for classification of Small and Medium-sized Entities (SMEs) keeping in view the definition of Small and Medium-sized Companies (SMCs) in the Companies (Accounting Standards) Rules, 2006.

The applicability of Accounting Standards to various entities is summarised in the following tables.

Notes:

- Undermentioned Accounting Standards are applicable to **all corporate entitie**s for accounting periods commencing on or **after December 7, 2006;**
- For **Non-corporate entities**, the same are applicable from **April 1, 2008** (including Standards which are amended to incorporate changed definitions of SMEs and the consensus portion of ASIs).

Applicability of Accounting Standards – An overview

Accounting Standards		*To all Corporate Entities As per Rules*	*To all Non-Corporate Entities*
AS 1	Disclosure of Accounting Policies	Y	Y
AS 2	Valuation of Inventories	Y	Y
AS 4	Contingencies and Events Occurring After the Balance Sheet Date	Y	Y
AS 5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies	Y	Y
AS 7	Construction Contracts (Revised 2002)	Y	Y
AS 9	Revenue Recognition	Y	Y
AS 10	Property, Plant & Equipments	Y	Y
AS 11	The Effects of Changes in Foreign Exchange Rates (Revised 2003)	Y	Y
AS 12	Accounting for Government Grants	Y	Y
AS 13	Accounting for Investments	Y	Y
AS 14	Accounting for Amalgamations	Y	Y
AS 15	Employee Benefits (Refer Note 1)	Y	Y
AS 16	Borrowing Costs	Y	Y
AS 18	Related Party Disclosures	Y	Not applicable to Level III
AS 19	Leases (Refer Note 2)	Y	Y

Accounting Standards		To all Corporate Entities As per Rules	To all Non-Corporate Entities
AS 20	Earnings Per Share (Refer Note 3)	Y	Y
AS 22	Accounting for Taxes on Income	Y	Y
AS 24	Discontinuing Operations	Y	Not applicable to Level III
AS 25	Interim Financial Reporting (Refer Note 6)	Y	Y
AS 26	Intangible Assets	Y	Y
AS 28	Impairment of Assets (Refer Note 4)	Y	Y
AS 29	Provisions, Contingent Liabilities and Contingent Assets (Refer Note 5)	Y	Y

Notes referred to in the previous table are given in the table titled "Relaxations of certain requirements for SMCs/Level II and Level III Entities" below.

The Exemptions or relaxations available to both, SMCs (i.e., governed by the Rules) and also available to Level II and Level III Entities (i.e., governed by ICAI Accounting Standards), in entirety, are given in the following table:

AS 3	Cash Flow Statements [Refer Note (i) below]
AS 17	Segment Reporting
AS 21	Consolidated Financial Statements [Refer Note (ii) below]
AS 23*	Accounting for Investments in Associates in Consolidated Financial Statements [Refer Note (ii) below]
AS 27*	Financial Reporting of Interests in Joint Ventures (to the extent of requirement relating to Consolidated Financial Statements) [Refer Note (ii) below]

Notes:

i. Since under the Companies Act, 2013, the financial statements include a Cash Flow Statement, **every company is required to prepare a Cash Flow Statement, unless it is a One Person Company**, dormant company or small company. As per the Rules, every company is required to prepare a Cash Flow Statement, unless it is an SMC. Thus, the requirement of a Cash Flow Statement may be summarised as under:

As per Companies Act, 2013	As per the Rules	Whether Cash Flow Statement is to be prepared
Small Company	SMC	No
Small Company	Non-SMC	Yes
Not a Small Company	SMC	Yes
Not a Small Company	Non-SMC	Yes

In other words, the exemption to prepare a Cash Flow Statement is available if and only if a company is small company within the meaning of the Companies Act, 2013 and it is also an SMC as per the Rules.

ii. AS 21, 23 and 27 are applicable only when the relevant regulator requires compliance of these standards.

The Companies Act, 2013 requires a company (when it is a holding company, that is, parent) to prepare consolidated financial statements (CFS) along with its standalone financial statements. As per Explanation to Section 129(3), the CFS will have to be prepared even if the company does not have a subsidiary, but has associates and joint ventures.

iii. Since the Companies Act, 2013 does not contain any mention of AS 17 dealing with Segment Reporting, only SMC as defined in the Companies (Accounting Standards) Rules, 2006 is exempt from complying with the requirements of this AS.

RELAXATIONS OF CERTAIN REQUIREMENTS FOR SMCS/LEVEL II & LEVEL III ENTITIES

Note	*Accounting Standards*	*Relaxations available*
1	**AS 15, Employee Benefits**	• **Paragraphs 11-16 dealing with recognition and measurement** of short-term accumulating compensated absences which are non-vesting (i.e. for which no cash payment for unused entitlement on leaving). • **Paragraphs 46 and 139 dealing with discounting of amounts** that fall due more than 12 months after the balance sheet date. • **Paragraphs 50-116 dealing with recognition and measurement of Defined Benefit Plans – actuarial determination of the accrued liability is required; however, Level II/III Entities (not SMCs) having less than 50 to be their average number of employees, it can use other rational method for the accrued liability.** • **Paragraphs 117-123 dealing with presentation and disclosure requirements of Defined Benefit Plans.** • **Paragraphs 129-131 dealing with recognition and measurement of other long-term benefits – actuarial determination of the accrued liability is required; however, Level II/III Entities (not SMCs) having less than 50 to be their average number of employees, it can use other rational method for the accrued liability.**
2	**AS 19, Leases**	• **Requirements relating to disclosures as given in paragraphs 22(c)**, (e) and (f); 25(a), (b) and (e); 37(a) and (f); and 46(b) and (d) are not applicable to SMCs and Level II/III Entities. • Further to the above relax**ations, Level III Entities are also not** required to give disclosures as per Paragraphs 37(g) and 46(e).
3	**AS 20, Earnings per Share**	• **Diluted earnings per share (both including and excluding extraordinary** items) is not required to be disclosed for SMCs and Level II/III non-corporate Entities. • **Further, Information required by paragraph 48(ii) regarding** disclosures for parameters used in calculation of EPS, are also not required to be disclosed by Level III entities.
4	**AS 28, Impairment of Assets**	• **Value in use can be based on reasonable estimate instead of computing** it by present value technique. • Further, information required by paragraph 121(g) relating to discount rate used, need not be disclosed.
5	**AS 29, Provisions, Contingent Liabilities and Contingent Assets**	• **Paragraphs 66 and 67 relating to disclosures for amount and description** for each class of provision are not required to be disclosed.
6	**AS 25, Interim Financial Reporting**	• **AS 25 is applicable only if a company/non-corporate entity elects** to prepare and present an interim financial report. Only certain Non-SMCs/Level I entities are required by the concerned regulatory to present interim financial results, e.g., quarterly financial results required by the SEBI.

AS 1 — DISCLOSURE OF ACCOUNTING POLICIES

- Certain fundamental accounting assumptions underlie the preparation and presentation of financial statements, they are –

  (a) Going Concern (b) Consistency (c) Accrual (going concern assumption is assessed for a foreseeable future, that is, at least for a period of one year).
- If a fundamental accounting assumption is not followed, the fact thereof should be disclosed.
- Accounting Policies are the specific accounting principles and methods of applying those principles in the preparation and presentation of financial statements.
- Accounting Policies selected by the enterprise should represent true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date.
- Major considerations governing selection and application of accounting policies are: (a) Prudence, (b) Substance over form, and (c) Materiality.
- Significant Accounting Policies adopted in the preparation and presentation of financial statements should be disclosed in one place and form part of the financial statements.

- Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of an item in the accounts.
- Any change in the accounting policies and material effect thereof should be disclosed.

AS 2 — VALUATION OF INVENTORIES (REVISED)

- Inventories should be valued at the lower of cost and net realisable value (NRV).NRV is the estimated selling price in ordinary course of business less the estimated cost of completion and the estimated cost necessary to make the sale.
- Inventories include goods purchased and held for resale, finished goods produced, work-in-progress being produced by the enterprise and materials, maintenance supplies, consumables and loose tools awaiting use in the production process.
- Inventories do not include spare parts, servicing equipment and standby equipment which meet the definition of Property, Plant & Equipment as per (AS) 10.
- The cost of inventories should comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.
- Specific identification manner to arrive at cost to be followed when goods are not ordinarily interchangeable.
- In other circumstances, the enterprise may use either weighted average cost or FIFO formula. The formula to provide the fairest possible approximation of the cost incurred.
- Standard Costing Method or Retail Inventory Method can be adopted only as a technique of measurement, provided the results approximate the actual results.
- Inventories are written down below cost to net realisable value as assets and not be carried in excess of amounts to be realised from their sale or use. It is usually written down to net realisable value on an item-by-item basis.

Disclosures

- (a) the accounting policies adopted in measuring inventories, including the cost formula used; and (b) the total carrying amount of inventories and its classification appropriate to the enterprise.

AS 3 — CASH FLOW STATEMENTS

- The Standard sets out the requirements where the cash flow statement is presented. The statement should disclose a movement in “cash and cash equivalents” classifying the cash flows from operating, investing and financing activities. It requires certain specific items to be addressed in the cash flows and certain supplemental disclosures for non-cash transactions.
- **Cash comprises** cash in hand and demand deposits with banks.
- **Cash equivalents** are short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value.
- Cash flows are inflows and outflows of cash and cash equivalents.
- **Operating activities** are the principal revenue-producing activities of the enterprise and other activities that are not investing or financing activities. Examples, cash receipts from the sale of goods and the rendering of services; cash receipts from royalties, fees, commissions and other revenue; cash payments to suppliers for goods and services; cash payments to and on behalf of employees; cash payments or refunds of income taxes.
- **Investing activities** are the acquisition and disposal of long-term assets and other investments not included in cash equivalents. Examples — cash payments to acquire fixed assets and cash receipts from disposal of fixed assets (including intangibles), cash payments to acquire shares, warrants or debt instruments of other enterprises and interests in joint ventures (other than payments for those instruments considered to be cash equivalents and those held for dealing or trading purposes), cash advances and loans made and repayment of such advances and loans.
- **Financing activities** are activities that result in changes in the size and composition of the owners’ capital (including preference share capital in the case of a company) and borrowings of the enterprise. Examples — cash proceeds from issuing shares or other similar instruments; cash proceeds from issuing debentures, loans, notes, bonds, and other short or long-term borrowings; cash repayments of amounts borrowed.
- The enterprise can choose either direct method or indirect method for presentation of its cash flows.
- Under the direct method, major classes of gross cash receipts and gross cash payments are disclosed.
- Under the indirect method, net profit or loss is adjusted for the effects of transactions of non-cash nature (depreciation, provisions, deferred taxes, and unrealised foreign exchange gains and losses), any deferrals or accruals of past or future operating cash receipts or payments, and items of income and expense associated with investing or financing cash flows.
- Cash flows arising from transactions in a foreign currency should be recorded in an enterprise’s reporting currency by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of

the cash flows. The effect of changes in exchange rates on cash and cash equivalents held in a foreign currency should be reported as a separate part of the reconciliation of the changes in cash and cash equivalents during the period.

- Cash flows from interest paid and interest and dividends received in case of a financial enterprise is classified as from operating activities. Other enterprises, should classify interest paid as cash flows from financing activities, whole interest and dividends as from interest activities. Dividends paid should be classified as cash flows from financing activities.
- Disclose the components of cash and cash equivalents and present reconciliation with the same presented in the balance sheet.
- Disclose with a commentary by management that such cash and cash equivalent balances held are not available for use.

AS 4 — CONTINGENCIES AND EVENTS OCCURRING AFTER THE BALANCE SHEET DATE

Contingencies

- The amount of a contingent loss should be provided for by a charge in the Statement of Profit and Loss, if (a) it is probable that future events (based on the events occurring after the balance sheet date) will confirm that, after taking into account any related probable recovery, an asset has been impaired or a liability has been incurred as at the balance sheet date, and (b) a reasonable estimate of the amount of the resulting loss can be made.
- This Standard covers with impairment of assets not covered by other ASs, example, and impairment of receivables.
- The existence and nature of the contingency should be disclosed in the financial statements, if either of the conditions in above paragraph is not met; however, the same should not be disclosed, if the possibility of a loss is remote.
- Contingent gains should not be recognised in the financial statements.

Events occurring after the Balance Sheet Date

- Assets and liabilities are to be adjusted for events occurring after the balance sheet date that provide additional evidence for estimation of the amounts relating to conditions existing at the balance sheet date or that indicate that the assumption of going concern is not appropriate.
- Dividend declared after the balance sheet date but before the financial statement are approved for issue will not be recognised as a liability at the balance sheet date. Such dividend will be disclosed as part of notes to accounts.
- Disclosure is to be made in the report of the approving authority of those events occurring after the balance sheet date that do not affect the figures stated in the financial statements and that represent material changes and commitments affecting the financial position of the enterprise.

Disclosures

- If a contingent loss is not provided for, the following information must be disclosed:
  - i. the nature of the contingency,
  - ii. the uncertainties that may affect the future outcome,
  - iii. an estimate of the financial effect, or a statement that such an estimate cannot be made.
- If disclosure of events occurring after the balance sheet date in the report of the approving authority is required, then to disclose:—
  - i. the nature of the event,
  - ii. an estimate of the financial effect, or a statement that such an estimate cannot be made.

AS 5 — NET PROFIT/LOSS FOR THE PERIOD, PRIOR PERIOD ITEMS AND CHANGES IN ACCOUNTING POLICIES

- The standard sets out the requirements regarding disclosure of certain items of net profit or loss for the period.
- **Ordinary activities** are activities, which are undertaken by an enterprise as part of its business, and such related activities which are furtherance of, incidental to, or arising from, these activities.

  Extraordinary items are income or expenses that arise from events or transactions that are clearly distinct from the ordinary activities of the enterprise and, therefore, are not expected to recur frequently or regularly.

  Whether an event or a transaction is from ordinary activities of the enterprise is determined by nature of event or transaction in relation to the business ordinarily carried out by the enterprise.

  Prior period items are incomes or expenses that arise in the current period as a result of errors or omissions of one or more prior periods.

  Accounting Estimates are approximations, by their nature, that may need revision if changes occur regarding the circumstances on which the estimate was based, or as a result of new information, more experience or subsequent developments.

Accounting treatment and disclosures

- **Ordinary activities:** Items of income and expense from ordinary activities are of such size, nature or incidence that their disclosure is relevant to explain the performance for the period, the nature and amount of such items should be disclosed separately. Such circumstances are the write-down of inventories to net realisable value, disposal of items of fixed assets, disposal of long-term investments, legislative changes having retrospective application, etc.
- **Extraordinary Items** is to be disclosed as a part of net profit or loss for the period. The nature and the amount (of each extraordinary item) are to be separately disclosed in a manner that its impact on current profit or loss can be perceived. Examples of events that lead to extraordinary items – attachment of property of the enterprise or an earthquake.
- **Prior Period:** The nature and amount of prior period items should be separately disclosed in a manner that their impact on the current profit or loss can be perceived. Alternatively, prior period items should be shown after the determination of current net profit or loss.
- **Changes in Accounting Estimates:** The effect of a change in an accounting estimate should be included in the determination of net profit or loss (under the same classification as used previously) in:—

  (a) the period of the change, if the change affects the period only; or

  (b) the period of the change and future periods, if the change affects both.
- **Changes in Accounting Policies:** A change is made only if the adoption of a different accounting policy is required — by statute or for compliance with Accounting Standard or the change would result in a more appropriate presentation of the financial statements.
- Where the change in accounting policy is on account of events or transactions that differ in substance from previously occurring events or transactions or which did not occur previously or which were immaterial, the same shall not be treated as a change in accounting policy and accordingly, no disclosure is required.
- Change in an accounting policy which has a material effect should be disclosed. The impact of, and the adjustments resulting from, such change, if material, should be shown in the financial statements of the period in which such change is made, to reflect the effect of such change.

  Where the effect of such change is not ascertainable, wholly or in part, the fact is to be indicated.

  If a change is made in the accounting policies which has no material effect on the financial statements for the current period but which is reasonably expected to have a material effect in later periods, the fact of such change should be appropriately disclosed in the period in which the change is adopted.
- A change in accounting policy consequent upon the adoption of an Accounting Standard should be accounted for in accordance with the specific transitional provisions, if any, contained in that Accounting Standard. However, disclosures required as above should be made unless the transitional provisions of any other Accounting Standard require alternative disclosures in this regard.

AS 7 — ACCOUNTING FOR CONSTRUCTION CONTRACTS

- This Standard should be applied in accounting for construction contracts in the financial statements of contractors. It is not applicable for construction project undertaken by the entity on behalf of its own, for example, a builder constructing flats for the purpose of sale. It is also not applicable to Service Contracts which are not related to the construction of assets.
- A Construction Contract may be negotiated for the construction of a single asset (bridge, building, road, etc.) or of a number of assets, which are interrelated or interdependent in terms of design, technology and function or ultimate purpose or use (refineries or complex pieces of plant and machinery).
- Construction contracts are classified as fixed price contracts and cost plus contracts. Some construction contracts may contain characteristics of both.
- Contract revenue should comprise: (a) the initial amount of revenue agreed in the contract; (b) variations in contract work, claims and incentive payments;
- Contract costs should comprise costs that: (a) relate directly to the specific contract; (b) are attributable to contract activity in general and can be allocated to the contract; and (c) are specifically chargeable to the customer under the terms of the contract.
- According to AS 7 (Revised) the enterprise should follow only percentage completion method.
- When the outcome of a construction contract cannot be estimated reliably: (a) revenue should be recognised only to the extent of contract costs incurred of which recovery is probable; and (b) contract cost should be recognised as an expense in the period in which they are incurred.
- When it is probable that the loss is expected from the contract the same should be recognised immediately.
- Under percentage of completion method, appropriate allowance for future contingencies shall be made.

Disclosures

- Contract revenue recognised, the methods used to determine revenue and stage of completion of contracts.

- For contracts in progress – aggregate costs incurred and recognised profits (less recognised losses), the amount of advances received and retentions.
- The gross amount due from customers for contract work as an asset and due to customers for contract work as a liability.

AS 9 — REVENUE RECOGNITION

- Revenue from sales or service transactions should be recognised when, at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim, it is not reasonable to expect ultimate collection, revenue recognition should be postponed.
- In a transaction involving the sale of goods, performance should be regarded as being achieved when (i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods. Inter-divisional transfers should not be recognised as sales.
- In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. In this case also no significant uncertainty should exist regarding the amount of the consideration that will be derived from rendering the service.
- Revenue arising from the use of other enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists.
  - (i) Interest is recognised on a time proportion basis taking into account the amount outstanding and the rate applicable.
  - (ii) Royalties are recognised on an accrual basis in accordance with the terms of the relevant agreement.
  - (iii) Dividends from investments in shares are recognised when the owner's right to receive payment is established.

Disclosures

- In addition to 'Disclosure of Accounting Policies' per (AS 1), for revenue recognition; an enterprise should also disclose the circumstances in which revenue recognition has been postponed pending the resolution of significant uncertainties.
- In any revenue from sales transactions (turnover) involves collection of excise duty, the enterprise is required to disclose revenue at gross as reduced by the excise duty amount and finally reflecting net sales on the face of the Statement of Profit and Loss. The excise duty related to the difference between the closing and opening stock is recognised separately in the Statement of Profit and Loss with the explanatory note in this regard.
- The standard is followed by an appendix that though is not part of the Standard, illustrates the application of the Standard to a number of commercial situation deals with various situations in an endeavor to assist in clarifying application of the Standard.

AS 10 — PROPERTY, PLANT & EQUIPMENT

- The title of the existing Standard is to change from 'Accounting for fixed assets' to 'Property Plant and Equipment'.
- This Standard has been revised primarily to (i) improve accounting for fixed assets by requiring component based accounting; (ii) clarifying that only those costs that are necessary to be incurred to make the asset available for use in the intended manner; (iii) incorporate changes consequential to the requirements contained in Accounting Standard 29, Provisions, Contingent Liabilities and Contingent Assets, (iv) improve accounting for spares; and (v) bring about consistency between this Standard and other Accounting Standards.
- This Standard does not specifically deal with the fixed assets owned by the entity jointly with others since AS 27 would basically cover these jointly controlled assets.
- The Standard also deals with Depreciation aspects which are presently covered by the existing AS 6.
- The scope extends to include bearer plants related to agricultural activity. A bearer plant is a plant that is used in the production or supply of agricultural produce; is expected to bear produce for more than one period; and has a remote likelihood of being sold as an agricultural produce, except for incidental scrap sales.
- The Standard defines 'Property, plant and equipment' to cover tangible items that are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and are expected to be used during more than one period.
- Further it lays down the recognition criteria (a) it is probable that future economic benefits associated with the item will flow to the entity, and (b) the cost of the item can be measured reliably.
- The Standard provides for accounting of 'enabling assets' (Assets which assist in creation of intended assets, e.g., road constructed during the construction of hydro-electric project so that material can be smoothly transferred and later on such road shall be used by company as well as general public).
- The Standard also provides accounting of assets to be used for administrative purpose.

- It provides the same recognition principles for initial costs as well as subsequent costs. Existing Standard, on the other hand, prescribes separate recognition principles for subsequent expenditure. At present, subsequent expenditure related to an item of fixed asset is capitalised only if it increases the future benefits from the existing asset beyond its previously assessed standard of performance.
- The Standard does not prescribe 'unit of measure' for recognition. Judgment is required to specific circumstances of an enterprise. A 'project' of construction of a manufacturing plant rather than individual assets to be considered for the purpose of capitalisation.
- The estimated costs of dismantling and removing the item and restoring the site on which an enterprise is located not already capitalised should be capitalised with a corresponding provision created as per the requirements of AS 29 on Provisions, Contingent Liabilities and Contingent Assets.
- The Standard specifically provides accounting of regular and substantial inspection costs incurred for smooth functioning of property, plant and equipment. It requires the cost of major inspection costs to be capitalised with the consequent derecognition of any remaining carrying amount of the cost of the previous inspection.
- It simplifies the accounting for spare parts, standby and service equipment. Such items are to be capitalised if they meet the definition of property, plant and equipment, otherwise the same should be treated as inventory under AS 2, Valuation of Inventories. Spare parts, which hitherto were being treated as inventory are now required to be capitalised in accordance with the requirements of this Standard and should be capitalised at their respective carrying amounts. The spare parts so capitalised should be depreciated over their remaining useful lives prospectively.
- This Standard prescribes component approach. Under this, each part of an item of property plant and equipment with a cost that is significant in relation to the total cost of the item is depreciated separately. As a corollary, cost of replacing such parts is capitalised, if recognition criteria are met with consequent derecognition of carrying amount of the replaced part. The cost of replacing those parts which have not been depreciated separately is also capitalised with the consequent derecognition of the replaced parts. If it is not practicable for an entity to determine the carrying amount of the replaced part, it may use the cost of the replacement as an indication of what the cost of the replaced part was at the time it was acquired or constructed.
- An entity must choose either the cost model or the revaluation model as its accounting policy and apply that policy to an entire class of property, plant and equipment. Under revaluation model, revaluation must be made with reference to the fair value of items of property plant and equipment. It also requires that revaluation should be done with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the balance sheet date.
- An increase in the carrying amount of an asset arising on revaluation is required to be credited directly to owners' interests under the heading revaluation surplus unless it reverses a revaluation decrease of the same asset previously recognised in the statement of profit and loss; in that case, the same should be recognised in the statement of profit and loss.
- A decrease in the carrying amount of an asset arising on revaluation is required to be charged to the statement of profit and loss, unless there is a credit balance in the revaluation surplus for that asset; in that case, to the extent of credit balance, the revaluation surplus should be debited.
- The revaluation surplus included in owners' interest in respect of an item of property plant and equipment may be transferred to the revenue reserves when the asset is derecognised.
- Change in depreciation method is to be considered as a change in accounting estimate and treated accordingly.
- It requires the residual value and useful life of property, plant and equipment should be reviewed at least at each financial year-end and, if expectations differ from previous estimates, the change(s) should be accounted for as a change in an accounting estimate in accordance with AS 5.
- This Standard deals with the treatment of PPE on retirement and derecognition in detail.
- An item of PPE retired from active use and held for disposal is to be stated at the lower of their carrying amount and net realisable value and the write-down thereon is to be recognised in the statement of profit and loss.
- When an item of PPE is derecognised, any gain or loss arising thereon is to be included in the statement of profit and loss and such gain is not be classified as revenue as defined in AS 9, Revenue Recognition.
- Disclosure requirements have been significantly enhanced.
- The Standard provides for the treatment as per Transitional provisions for the item of PPE acquired in an exchange of assets, the component approach, the spare parts which were being treated as inventory, the capitalisation of dismantling and removing costs, the application of revaluation model.

AS 11 — ACCOUNTING FOR EFFECTS OF CHANGES IN FOREIGN EXCHANGE RATES

It is applicable to transactions in foreign currency and translating financial statements of foreign subsidiary/branches and accounting of foreign currency transactions of forward exchange contracts.

Foreign currency transactions

- Initially, a foreign currency transaction should be recorded using the exchange rate prevailing on the date of transaction.

- At the balance sheet date,
  - monetary items should be reported using the exchange rate at the date of the balance sheet.
  - non-monetary items which are carried at historical cost, should be reported using the rate at the date of the transaction. However, such items which are carried at fair value, should be using the rate existed at the date of determination of fair value.
- Exchange differences arising on the settlement or on reporting of monetary items should be considered as income or as expenses in the period in which they arise.
- Exchange differences arising on monetary item which is a part of net investment in a non-integral foreign operation, is to be accumulated in the foreign currency translation reserve until the disposal of the net investment. On disposal, the aggregate of exchange differences is to be recognised as income or as expenses in the period in which the gain or loss on disposal is recognised.

Financial Statements of Foreign operations

- To translate the financial statement of foreign operations, the latter are classified as either "integral foreign operations" or "non-integral foreign operations".
- For an integral operation, the translation shall be on the same basis as the foreign currency transactions of the enterprise.
- For non-integral operation, both monetary and non-monetary assets and liabilities, are to be translated using the closing exchange rate and income and expenses are to be translated using the rate at the date of transaction. Exchange differences arising are to be accumulated in the foreign currency translation reserve. On the disposal of a non-integral foreign operation, the amount lying in the reserve shall be recognised as income or as expense in the period in which the gain or loss on disposal is recognised.
- In case of changes in the classification, the translation procedure shall be applicable from the date of the change in the classification.

Amendment to Accounting Standard (AS) 11[1]

In exercise of the powers conferred by sub-section (1) of Section 469 of the Companies Act, 2013, the Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby made the following amendment in the Companies (Accounting Standards) Rules, 2006 in the "ANNEXURE", under the heading "ACCOUNTING STANDARDS" under "AS 11, The Effects of Changes in Foreign Exchange Rates":-

- An enterprise may dispose of its interest in a non-integral foreign operation through sale, liquidation, repayment of share capital, or abandonment of all, or part of that operation. The payment of dividend forms part of a disposal only when it constitutes a return of the investment. Remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of the investment. In the case of a partial disposal, only the proportionate share of the related accumulated exchange differences is included in the gain or loss. A write-down of the carrying amount of a non-integral foreign operation does not constitute a partial disposal. Accordingly, no part of the deferred foreign exchange gain or loss is recognised at the time of a write-down.

Forward exchange contracts

- Any premium or discount arising at the inception of a forward exchange contract, other than contract for trading or speculation purposes, is to be amortised over the life of the contract and the resulting exchange difference is to be recognised in the Statement of Profit and Loss. On cancellation or renewal of the contract, profit or loss thereon is to be recognised as income or as expense for the period.
- A gain or loss on forward exchange contract for trading or speculation purposes, is to be calculated by multiplying the contract amount by the difference between the rate of the contract for remaining maturity at the reporting date and the forward contract rate. The gain or loss (and not the premium or discount) is to be recognised in the Statement of Profit and Loss for the period.

Disclosures

- Amount of exchange difference recognised in the Statement of Profit and Loss;
- Exchange difference in the foreign currency translation reserve and its reconciliation at the beginning and end of the period;
- When the reporting currency is different from the local currency, the reason for using currency other currency;
- Changes in the classification of a significant foreign operation - nature, reason and financial impact of such change.

Option to account Exchange Differences on Long-term Foreign Currency Monetary Items (LTFCMI) – applies to companies – this option is also applicable to non-corporate entities

- LTFCMI is the asset or liability in a foreign currency which has a term of 12 months or more at the date of its origination.
- For accounting periods commencing on or after April 1, 2011, an entity has an option to account exchange differences arising on LTFCMI – (a) if it is related to the acquisition of a depreciable capital asset, to add to or deduct from the cost of the asset

1. The MCA has notified the Companies (Accounting Standards) Amendment Rules, 2018, to amend **Accounting Standard (AS) 11: The Effects of Changes in Foreign Exchange Rates (revised 2003)** applicable w.e.f. 1 April, 2018.

and to depreciate over the balance life of the asset; (b) if it is for others, to accumulate in Foreign Currency Monetary Item Translation Difference Account and amortise over the balance period of such long-term asset/liability.

- This option is irrevocable and is to be applied to all such foreign currency monetary items.
- MCA has clarified that companies applying this option should not consider exchange differences on borrowings to the extent difference between interest on local and foreign currency borrowings as borrowing costs as specified under Para 4(e) of AS 16. In other words, an entity would be able to defer the entire amount LTFCMI under the above option.

Disclosures

- Fact of such options is exercised.
- Amount remaining to be amortised of the period in which such option is exercised.
- This disclosure should be made in every subsequent period till exchange differences remain unamortised.

AS 12 — ACCOUNTING FOR GOVERNMENT GRANTS

- Government grants should not be recognised unless reasonably assured that (i) the enterprise will comply with the condition attached to them, and (ii) the grants will be received.
- Grants towards specific assets should be presented in the Balance Sheet as a deduction from gross value and if the grant equals to the whole of the cost of the asset, the asset is to be reflected at a nominal value. Alternatively, Government grants should be treated as deferred income and to be recognised in the Statement of Profit and Loss on a systematic and rational basis over the useful life of the asset.
- Grants related to non-depreciable asset should be credited to capital reserve; however if a grant requires fulfilment of any obligation it should be credited to income during the concerned period to fulfil such obligation.
- Balance of deferred income should be disclosed separately in the financial statements. Grants related to revenue should be recognised on a systematic basis in a Statement of Profit and Loss over the period necessary to match them with the related costs. Grants of the nature of promoter's contribution, should be credited to capital reserve and treated as a part of share holders' funds.
- Grants in the form of non-monetary assets given at concessional rate should be accounted at their acquisition cost.

  A non-monetary asset given free of cost should be recorded at nominal value.
- Grants receivable as compensation for losses or expenses incurred in the previous period should be recognised and disclosed in the Statement of Profit and Loss in the year in which it is receivable and shown as an extraordinary item and if appropriate, in terms of AS 5.
- Contingency related to grant should be treated in accordance with AS 4. When grants become refundable, they should be shown as an extraordinary item in terms of AS 5.
- Grants related to revenue, on becoming refundable, should be adjusted first against unamortised deferred credit balance of the grant and then be charged to Statement of Profit/Loss.
- Grants against specific assets, on becoming refundable, should be recorded by increasing the book value of the respective assets or by reducing the capital reserve or the deferred income balance of the grant, as appropriate.
- Grants in the nature of promoter's contribution, on becoming refundable, should be reduced from the capital reserve.

Disclosures

- Accounting policy adopted for grants including methods of presentation, the nature and extent of recognition in financial statements (including grants of non-monetary assets given at concession/free of cost).

AS 13 — ACCOUNTING FOR INVESTMENTS

- Investments are classified and disclosed distinctly as current investments and long-term investments on the basis of nature of investment. If an investment is readily realisable and is intended to be held for not more than one year (from the date of investment) then it is classified as current investment. An Investment other than current investment is classified as a long-term investment.

  Investment property is to be accounted for in accordance with cost model as prescribed in Accounting Standard (AS) 10 'Property, Plant & Equipment'. The cost of any shares in a cooperative society or company, the holding of which is directly related to the right to hold the investment property to be included in the carrying amount of the investment property.
- The cost of an investment includes acquisition charges such as brokerage, fees and duties.
- Current investments should be carried at the lower of cost and fair value.
- Long-term investments should be carried at cost. Provision for decline in the value (other than temporary) is to be determined and made for each investment individually.

- Reduction in the carrying amount or any reversal thereof or any profit or loss on disposal of an investment should be charged or credited to the Statement of Profit and Loss.
- The provisions relate to current investments, are also applicable to shares, debentures and other securities held as stock-in-trade, except that the cost is determined by applying FIFO, Average cost, etc., (that is those specified in AS 2).

Disclosures

- (a) Accounting policy adopted for determination of carrying amount of investments (b) classification of investments (c) income from current and long-term investments separately for (i) interest, dividends and rentals; (ii) profit/loss on disposal and changes in carrying amount of investments; (d) significant restrictions on right of ownership, realisability of investments or remittance of income and proceeds of disposal; (e) aggregate amount of quoted and unquoted investments giving aggregate market value of quoted investments (f) other disclosures required by the relevant statute, governing the enterprise e.g. Non-banking financial companies.

AS 14 — ACCOUNTING FOR AMALGAMATIONS

- This Standard is applicable only where amalgamation is made pursuant to a scheme sanctioned by statute.
- When an amalgamation is considered as an amalgamation in the nature of merger, it should be accounted for under the pooling of interest method.
- When an amalgamation is considered as an amalgamation in the nature of purchase, it should be accounted for under the purchase method.

  For adoption of 'pooling of interest method' five criteria are mentioned. These criteria relate to mode of payment of consideration of merger, shareholding pattern pre and post-merger, intention to carry-on business after the merger, pooling of all assets and liabilities after the merger and an intention to continue to carry the carrying amounts of assets and liabilities after the merger.
- Under Purchase Method, the assets and liabilities of the transferor company are incorporated at existing carrying amounts, or alternatively, the consideration should be allocated to individual identifiable assets and liabilities on basis of their fair values at the date of amalgamation. Any excess or shortfall of the consideration over the value of net assets acquired is recognised as goodwill arising on amalgamation or capital reserve.
- Under the Pooling of Interest Method, assets, liabilities and reserves of the transferor company are recorded at existing carrying amount and in the same form as at the date of amalgamation.
- In case of conflicting accounting policies existing in transferor and transferee companies a uniform set of policies should be adopted on amalgamation; the effects of any changes in accounting policies should be disclosed as per AS 5.

Disclosures (in the financial statements following the amalgamation)

- When an amalgamation is effected after the balance sheet date but before the issuance of financial statements of either party, disclosure should be made in accordance with AS 4, but the amalgamation should not be incorporated in the financial statements.
- Names and general nature of business of amalgamating companies.
- Effective date
- The method of accounting to reflect the amalgamation.
- Particulars of scheme
- Under the Pooling of Interest Method –
  - (a) description and number of shares issued, together with the percentage of each company's equity shares exchanged to effect the amalgamation;
  - (b) the amount of any difference between the consideration and the value of net identifiable assets acquired, and the treatment thereof.
- Under the Purchase method –
  - (a) consideration for the amalgamation and a description of the consideration paid or contingently payable; and
  - (b) the amount of any difference between the consideration and the value of net identifiable assets acquired, and the treatment thereof including the period of amortisation of any goodwill arising on amalgamation.

  Under the existing Standard a disclosure was required in a situation where the scheme of amalgamation prescribed a different treatment to be given to the reserves of the transferor company as compared to the requirement of the Standard. The said disclosure is not required in respect of any scheme of amalgamation approved under the Companies Act, 2013. Now the accounting treatment prescribed in the scheme of amalgamation has to be in conformity with the Accounting Standard.

AS 15 — EMPLOYEE BENEFITS

- The method of accounting of retirement benefits depends on the nature of retirement benefits and in practice it may not be incorrect to say that it also depends on the mode of funding.
- On the basis of nature, a retirement benefit scheme can be classified either as defined benefit plan or defined contribution plan.

  Defined contribution schemes are schemes where the amounts to be paid as retirement benefits are determined by contributions to a fund together with earnings thereon; e.g., provident fund schemes. Defined benefit schemes are retirement benefit schemes under which amounts to be paid as retirement benefits are determinable usually by reference to employee's earnings and/or years of service; e.g., gratuity schemes.

  For defined contribution schemes, contribution payable by employer is charged to the Statement of Profit and Loss.
- For defined benefit schemes, accounting treatment will depend on the type of arrangements which the employer has made.
- If payment for retirement benefits is made out of employers' funds, appropriate charge to the Statement of Profit and Loss is to be made through a provision for accruing liability, calculated according to actuarial valuation.
- If liability for retirement benefit is funded through creation of trust, the excess/shortfall of contribution paid against amount required to meet accrued liability as certified by actuary is treated as pre-payment or charged to the Statement of Profit and Loss.
- If liability for retirement benefit is funded through a scheme administered by an insurer, an actuarial certificate or confirmation from insurer is obtained. The excess/shortfall of the contribution paid against the amount required to meet accrued liability as confirmed by insurer is treated as pre-payment or charged to the Statement of Profit and Loss.
- Any alteration in the retirement benefit cost should be charged or credited to the Statement of Profit and Loss and change in actuarial method is to be disclosed.
- Financial statements to disclose method by which retirement benefit cost have been determined.
- This Standard improves the existing practices mainly in the following areas:
  - It is broad in its applicability as it covers all short-term and long-term employee benefits. For example, annual paid leave (though not encashable), long-term service rewards, subsidised goods or services, etc. are also covered
  - Additional disclosures are required in relation to any defined benefits plans including:
    - (i) The reconciliation of (opening to closing) of Projected Benefit Obligation.
    - (ii) The reconciliation of (opening to closing) of Fair Value of Plan Assets.
    - (iii) The reconciliation of (opening to closing) of Net Liability/Prepaid Asset.
    - (iv) Components of charge during the year.
    - (v) Principal actuarial assumptions.

FAQ on accounting treatment of increase in gratuity limit[2]

- The ICAI has issued FAQ to clarify accounting treatment of the increased liability arising from enhancement of gratuity ceiling from Rs. 10 Lac to Rs. 20 Lac, i.e. Payment of Gratuity (Amendment) Act 2018, under the AS-15 (Employee Benefits).
- ICAI has clarified that aforementioned accounting standards do not provide any exemption/ one-time relief with regard to the accounting treatment of increase in liability arising on account of past service cost.
- Accordingly, ABC Ltd. is required to account for any increase in the liability on account of increase in gratuity ceiling as expense as per the requirements of the relevant applicable Standard.

AS 16 — BORROWING COSTS

Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds.

- Borrowing costs that are directly attributable to the acquisition, construction or production of any qualifying asset should be capitalised as part of the cost of that asset. Other borrowing costs are recognised as an expense in the period in which they are incurred.

  A qualifying asset is an asset that necessarily takes a substantial period of time (ordinarily, a period of twelve months) to get the asset ready for its intended use or sale.
- If funds are borrowed specifically for obtaining a qualifying asset, actual borrowing costs incurred as reduced by income on the temporary investment of the borrowed funds should be capitalised.

2. This FAQ on accounting treatment of increase in liability on account of enhancement of the gratuity ceiling from ₹ 10 lakhs to ₹ 20 Lakhs due to Payment of Gratuity (Amendment) Act 2018 (vide notification no. S.O. 1420 (E) dated March 29, 2018) has been issued by the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI).

- If funds are borrowed generally and used for obtaining a qualifying asset, borrowing costs determined on the basis of the weighted average rate should be capitalised.
- The capitalisation of borrowing costs should commence when all the following conditions are satisfied: (a) expenditure for the acquisition, construction or production of a qualifying asset and borrowing costs are being incurred, and (b) activities that are necessary to prepare the asset for its intended use or sale are in progress.
- Capitalisation should be suspended during extended periods in which active development is interrupted.
- Capitalisation should cease when substantially all the activities necessary to prepare a qualifying asset for its intended use or sale are complete.
- When the construction of a qualifying asset is completed in parts and a completed part is capable of being used while construction continues for the other parts, capitalisation of borrowing costs in relation to a part should cease when substantially all activities necessary to prepare that part for its intended use or sale are complete.

  Further, in view of Circular No. 35/2014 issued by the Ministry of Corporate Affairs, in case of power projects where one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalised in relation to that part once the part is ready for commercial production.
- Statement does not deal with the actual or imputed cost of owners' equity as also preference capital, which is not treated as borrowing costs.

Disclosures

- (a) the accounting policy adopted for borrowing costs; and (b) the amount of borrowing costs capitalised during the period.

AS 17 — SEGMENT REPORTING

- AS 17 requires reporting of financial information about different types of products and services an enterprise provides and different geographical areas in which it operates.
- A business segment is distinguishable component of an enterprise providing a product or service or group of products or services that are subject to risks and returns that are different from other business segments.
- A geographical segment is distinguishable component of an enterprise providing products or services in a particular economic environment that is subject to risks and returns that are different from components operating in other economic environments.
- Internal financial reporting system and organisation structure are normally the basis for identifying the primary and secondary segments.
- The dominant source and nature of risk and returns of an enterprise should govern whether its primary reporting format will be business segments or geographical segments.
- If the risk and returns are affected mainly due to difference in products and services, then the primary reportable segment shall be business segment. Similarly, if risk and returns are affected by the operation in different geographical areas, then the primary reportable segment shall be the geographical segment.
- A business segment or geographical segment is a reportable segment if
  - Revenue from sales to external customers and from transactions with other segments is 10% or more than the total revenue (external and internal) of all segments; or
  - Segment result, whether profit or loss is 10% or more of (i) combined result of all segments in profit or (ii) combined result of all segments in loss whichever is greater in absolute amount; or
  - Segment assets are 10% or more of total assets of all the segments.
- If total external revenue attributable to reportable segment constitutes less than 75% of total revenues then additional segments should be identified.
- A business or geographical segment that is not identified as a reporting segment, may be designated as a reporting segment at the discretion of the management of the enterprise.
- Any segment earlier recognised as reportable segment shall continue to be reportable segment in the current period, even though it doesn't satisfy 10% threshold.
- The accounting policies followed for preparing the financial statements of the enterprise, as a whole should be followed in presenting segment information.
- Assets or liabilities that relate jointly to two or more segments should be allocated to segments only if the income and expenses relating to jointly held assets has also been allocated.

Disclosures

Primary segment information

- For each reportable segment the enterprise should disclose (a) external and internal; (b) segment revenue; (c) segment result; (d) carrying amount of segment assets and liabilities; (e) cost of fixed assets acquired; (f) depreciation, amortisation of assets; and (g) other non-cash expenses.

- Reconciliation of information provided for reportable segments and information in financial statements of the enterprise is also to be provided.

Secondary segment information

- Secondary segment information is also required to be disclosed. This includes information about revenues, assets and cost of fixed assets acquired.
- If primary format is based on geographical segments, certain further disclosures are required.
- Total acquisition cost of segment assets, if it is 10% or more of total segment assets.

Disclosures are also required relating to intra-segment transfers and composition of the segment.

Any changes in the segment reporting having material effect shall also be disclosed.

It may be mentioned that the illustrative disclosure attached to Standard as appendix (though not forming part of the Standard) illustrate in detail; determination of reportable segments, information about business segments and summary of required disclosures.

AS 18 — RELATED PARTY DISCLOSURES

- Parties are considered to be related if, at any time during the reporting period, one party has ability to control or exercise significant influence over the other party in making financial and/or operating decisions.
- This standard deals with following related party relationships: (a) Enterprises that directly, or indirectly, through one more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise. (b) Associates, Joint Ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture, (c) Individuals owning an interest in voting power of the reporting enterprise that gives them control or significant influence over the enterprise and relatives of any such individual, (d) Key management personnel and their relatives, and (e) Enterprises over which any of the persons in (c) or (d) are able to exercise significant influence. Other relationships are not covered by this Standard.
- Following are not deemed to be related parties (a) Two companies simply because of common director, (b) Customer, supplier, franchiser, distributor or general agent merely by virtue of economic dependence; and (c) Financiers, trade unions, public utilities, government departments and bodies merely by virtue of their normal dealings with the enterprise.
- Disclosure under the Standard is not required in the following cases (i) If such disclosure conflicts with enterprise's duty of confidentially under statute, duty cast by a regulator or a component authority; (ii) In consolidated financial statements in respect of intragroup transactions, and (iii) In case of State-controlled enterprises regarding related party relationships and transactions with other State-controlled enterprises.
- Relative (in relation to an individual) means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting entity.
- The Standard also defines inter alia control, significant influence, associate, joint venture and key management personnel.

Disclosures

- If there have been transactions between the related parties, during the existence of relationship, information relating to:— name of the related party, description of the relationships between the parties, nature of transactions and its volume of transactions (as an amount or proportion), other elements of transaction if necessary for an understanding of the financial statements, amount or appropriate proportion outstanding pertaining to related parties, provision for doubtful debts from related parties, amounts written off or written back in respect of debts due from or to related parties.
- Names of the related parties and nature of related party relationship, even where there are no transactions but the control exists.
- Items of similar nature may be disclosed in aggregate by type of the related party.

AS 19 — LEASES

- The Standard applies in accounting for all leases other than —
  - (a) Lease agreements to explore for or use natural resources,
  - (b) Licensing agreements for items such as motion pictures, films, video recordings plays, etc., and
  - (c) Lease agreements to use lands.
- Leases are classified as finance lease or operating lease. But such classification shall be governed by the risk and rewards transferred.
- A lease shall be a financial lease, if:—
  - (a) The ownership is transferred at the end of lease term;
  - (b) Lessee has an option to purchase the asset at a price which is sufficiently lower than the fair value at the date the option becomes exercisable.

(c) Lease term is for substantial part of economic life of the asset,

(d) Present value of minimum lease payment at the inception of the lease is substantially equal to the assets fair value, and

(e) The asset leased is of specialised nature such that only lessee can use it without major modifications made to it.

- An operating lease is a lease other than a finance lease.

Treatment in the books of lessee

In case of finance lease —

- At the inception of the lease, the lessee shall recognise the asset at lower of fair value or present value of minimum lease payment. The discount rate shall be interest rate implicit in the lease or incremental borrowing rate.
- Lease payments should be apportioned between finance charges and principal amount outstanding. The finance charges shall be allocated over the lease term to produce a constant periodic rate of return.
- The depreciation policy for leased asset should be consistent with that for depreciable assets that are owned.
- Disclosure should be made of —

  (a) Assets acquired under finance lease,

  (b) Net carrying amount at the balance sheet date,

  (c) Reconciliation between the total minimum lease payments at balance sheet date and their present value,

  (d) Contingent rent recognised as expense.

  (e) the total of future minimum sub-lease payments expected to be received, and

  (f) General description of significant leasing arrangements.

In case of operating lease —

- The lease payments should be recognised as an expense on straight-line basis, unless other systematic basis is more representative of the time pattern of the user's benefit.
- Disclosures should be made of —

  (a) The total of future minimum lease payments under non-cancellable sub-leases:

  (b) The total of future minimum sub-lease payments expected to be received under non-cancellable sub-leases;

  (c) Lease payments recognised in the statement of Profit & Loss, with separate amounts of minimum lease payments and contingent rents,

  (d) Sub-lease payments recognised in the statement of Profit & Loss, and

  (e) General description of significant leasing arrangements.

Treatment in the books of lessor

In case of finance lease —

- The lessor should recognise the asset in its balance sheet as a receivable at an amount equal to net investment in the lease.
- The recognition of finance income should be based on a pattern reflecting a constant periodic return on the net investment of the lessor outstanding.
- In case of any reduction in the unguaranteed residual values, income allocation over the remaining lease term should be revised.
- Initial direct cost are either recognised immediately in the profit and loss statement or allocated against the finance income over the lease term.
- Disclosure should be made of —

  (a) Total gross investment in lease and the present value of the minimum lease payments at specified periods and reconciliation thereof at the balance sheet date,

  (b) Unearned finance income,

  (c) Accruing unguaranteed residual value benefit,

  (d) Accumulated provision for uncollectible minimum lease payments receivable,

  (e) Contingent rent recognised,

  (f) General description of significant leasing arrangements and

  (g) Accounting policy adopted in respect of initial direct costs.

In case of operating lease —

- The asset given under lease shall continue to be recognised as fixed assets.
- The lease income should be recognised on a straight-line basis over the lease term.
- Costs, including depreciation, incurred are recognised as an expense.

- Initial direct cost are either deferred and allocated to income over the lease term in proportion to rent income recognised or are recognised immediately in the profit and loss statement.
- Disclosure should be made of —
  (a) Gross carrying amount of the leased assets, accumulated depreciation and impairment loss at the balance sheet date and depreciation and impairment loss recognised or reversed for the period,
  (b) The future minimum lease payments under non-cancellable in aggregate and for the periods specified,
  (c) Total contingent rent recognised as income,
  (d) A general description of the significant leasing arrangements, and
  (e) Accounting policy for initial direct costs.

Lease by manufacturer or dealer

- The manufacturer or dealer lessor should recognise the transaction in accordance with policy followed for outright sales. Initial direct costs should be recognised as an expense at the inception of the lease. Artificial low rates of interests are quoted, profit on sale should be restricted to that which would apply if a commercial rate of interest were charged.

Sale and leaseback transactions

- If the transaction of sale and leaseback results in a finance lease, any excess or deficiency of sale proceeds over the carrying amount, it should be deferred and amortised over the lease term in proportion to the depreciation of the leased assets.
- If the transaction results in an operating lease,
  — Profit or loss should be recognised immediately, if the transaction is at fair value.
  — If the sale price is below the fair value, any profit or loss should be recognised immediately, except that, if the loss is compensated by future lease payments at market price, it should be deferred and amortised.
  — If the sales price is above fair value, the excess over the fair value should be deferred and amortised.
- In an operating lease, if the fair value at the time of sale and leaseback transaction is less than the carrying amount of the asset, a loss equal to the amount of the difference between the carrying amount and fair value should be recognised immediately.

AS 20 — EARNINGS PER SHARE

- Basic and diluted Earnings Per Share (EPS) are required to be presented on the face of the statement of Profit and Loss with equal prominence for all the periods presented. EPS is required to be presented even when the amounts disclosed are negative.
- Basic EPS should be calculated by dividing net profit or loss for the period attributable to equity shareholders by the weighted average number of equity shares outstanding during the period.
- The net profit or loss for the period attributable to equity shareholder is arrived at after deducting the amount of preference dividends and any tax attributable thereto for the period.
- The weighted average number of shares, for all the periods presented, is adjusted for bonus issue or any element thereof in rights issue, share split and consolidation of shares.
- For calculating diluted EPS, the net profit or loss attributable to equity shareholders (as adjusted for dividends, interest and other charges in expenses or income relating to the dilutive potential equity shares) and the weighted average number of shares are adjusted for the effects of dilutive potential equity shares (i.e., assuming conversion of all dilutive potential equity shares into equity).
- Potential equity shares are treated as dilutive when, and only when, their conversion into equity would result in a decrease in net profit per share from continuing ordinary operations.
- The effects of anti-dilutive potential equity shares are ignored in calculating diluted EPS.

Disclosures

- i. Basic and diluted EPS excluding extraordinary items (net of expenses), if the net profit or loss includes such items.
  ii. (a) The amounts used as numerators in calculating basic and diluted EPS and a reconciliation of those amounts to the net profit or loss for the period; (b) The weighted average number of equity shares used as the denominator in calculating the basic and diluted EPS and a reconciliation between the two denominators to each other; and (c) the nominal value of shares along with EPS per share figures.
- In case the number of equity or potential equity shares changes as a result of bonus, split or reverse split, the calculation of basic and diluted EPS is adjusted for all the period presented.

AS 21 — CONSOLIDATED FINANCIAL STATEMENTS

- This Standard is applied in the preparation and presentation of consolidated financial statements for a group of enterprises under the control of a parent.
- This Standard also applies to an enterprise which does not have a subsidiary but has an associate and /or Joint Venture. Such enterprise should prepare consolidated financial statement in accordance with this Standard.
- Consolidated financial statements are to be presented in addition to separate financial statements.
- Control means the ownership, directly or indirectly, of more than one-half of the voting power of an enterprise or control of the composition of the board of directors or such other governing body.
- Control of composition implies power to appoint or remove all or a majority of directors.
- When there is more than one investor in a company in which one of the investors controls the composition of board of directors and some other investor holds more than half of the voting power, both these investors are required to consolidate the accounts of the investee in accordance with this Standard.
- All subsidiaries, domestic and foreign to be consolidated except where control is intended to be temporary as to be disposed in the near future or the subsidiary operates under severe long-term restriction impairing transfer of funds to the parent.
- 'Near Future' should be considered as not more than twelve months from acquisition of relevant investments unless a longer period can be justified on the basis of facts and circumstances of the case.
- Financial statements of the parent and its subsidiaries should be combined on a line by line basis by adding like items of assets, liabilities, income and expenses.
  - For the purpose of consolidation, the cost to the parent of its investment in each subsidiary and the parent's portion of equity of each subsidiary, at the date of investment, should be eliminated.
  - Excess of cost over parent's portion of equity, should be shown as goodwill.
  - Where cost to the parent is less than the parent's portion, of equity, difference to be shown as capital reserve.
  - Minority interest in the net income to be adjusted against income of the group.
  - Minority interest in net assets to be shown separately as a liability.
- While preparing consolidated financial statements, the tax expense to be shown in the consolidated financial statements should be the aggregate of the amounts of tax expense appearing in the separate financial statements of the parent and its subsidiaries.
- Where two or more investments are made in a subsidiary, equity of the subsidiary to be generally determined on a step-by-step basis.
- Intra-group balances and intra-group transactions and resulting unrealised profits should be eliminated in full. Unrealised losses should also be eliminated unless cost cannot be recovered.
- Financial statements used in consolidation should be drawn up to the same reporting date. If reporting dates are different, adjustments for the effects of significant transactions/events between the two dates should be made provided difference is not more than six months.
- Consolidation should be prepared using uniform accounting policies, unless it is not practicable to use the same. If the accounting policies followed are different, the fact should be disclosed together with proportion of such items.
- In the year in which parent subsidiary relationship ceases to exist, consolidation to be made up-to-date of cessation.

Disclosures

- (a) a list of all subsidiaries giving name, country of incorporation or residence, proportion of ownership and if different, that of voting power; (b) if applicable – (i) the nature of relationship between parent and subsidiary, (ii) effect of the acquisition and disposal of subsidiaries on the financial position, the results and corresponding amounts for the preceding period; and (iii) names of subsidiaries whose reporting dates are different than that of the parent.
- When the consolidated statements are presented for the first-time figures for the previous year need not be given.

  Not all the notes appearing in standalone financial statements are required to be disclosed in the consolidated financial statements. Typically notes, which are not required to be included, are: managerial remuneration, CIF value of import, capacity, quantitative details, etc.

AS 22 — ACCOUNTING FOR TAXES ON INCOME

- This Standard deals with accounting for taxes on income.
- Tax expense/(tax savings) is current tax and deferred tax charged or credited in the Statement of Profit and Loss for the period.
- Deferred tax is the tax effect of timing differences (the differences between taxable and accounting income that originate in one period and capable of reversal in the subsequent period/s).
- Deferred tax should be recognised for all the timing differences that may result in creation of deferred tax asset or liability.

- Deferred tax assets for unabsorbed depreciation or carry forward of losses should be recognised only when there is virtual certainty of sufficient future taxable income with supported convincing evidence, to recover the amount of deferred tax assets.
- Reversal of deferred tax during the tax holiday period should not be recognised to the extent the enterprise's gross total income is subject to deduction during the tax holiday period as per the provision Income-tax Act. Deferred tax which reverses after the tax holiday period is recognised when the timing differences originate. Timing differences which originate first should be considered as reversing first, when the timing differences originate.
- At each balance sheet date, assessment of unrecognised deferred tax assets is to be made. When there is reasonable or virtual certainty that sufficient taxable income will be available in the future to realise deferred tax asset, it should be accordingly recognised. At the same time, in case of the recognised deferred tax asset, there are evidences that it cannot be realised in the future, then it should be written down.
- Measurement
  - — Current tax should be measured using applicable tax rates, while the deferred tax should be measured using the tax rate that have been enacted or substantively enacted by the balance sheet date.
  - — When the enterprise is required to pay tax under section 115JB of Income-tax Act, the deferred tax should be measured using the regular tax rates and not that of 115JB.
- Deferred tax assets and liabilities should not be discounted to their present value.

Presentation and Disclosure

- An enterprise should offset assets and liabilities representing current tax if it – (a) has a legally enforceable right to set off the recognised amounts; and (b) Intends to settle the asset and the liability on a net basis.
- An enterprise should offset deferred tax assets and deferred tax liabilities if it —
  - (a) has a legally enforceable right to set off assets against liabilities representing current tax; and
  - (b) the deferred tax assets and the deferred tax liabilities relate to taxes on income levied by the same governing taxation laws.
- Deferred tax assets and liabilities should be shown separately in the balance sheet date after Investments and Unsecured Loans, respectively. (In case of companies, as per Schedule III, the same have to be shown separately as Non-current Assets or Non-current Liabilities, as the case may be).
- The break-up of deferred tax assets and deferred tax liabilities into major components of the respective balances.
- The nature of the evidence supporting the recognition of deferred tax assets, if an enterprise has unabsorbed depreciation or carry forward of losses under tax laws.

AS 23 — ACCOUNTING FOR INVESTMENT IN ASSOCIATES IN CONSOLIDATED FINANCIAL STATEMENTS

- This statement should be applied in accounting for investments in associates in the preparation and presentation of consolidated financial statements by an investor.
- An investment in an associate should be accounted for in a consolidated financial statement under the equity method.
- Equity method is not applied when:
  - (a) The investment is acquired and held exclusively with a view to its subsequent disposal in the near future, or
  - (b) The associate operates under severe long-term restrictions that significantly impair its ability to transfer funds to its investors. Investment in such associates should be accounted for in accordance with the Accounting Standard (AS) 13, Accounting for Investments.
- The reason for not applying the equity method in accounting for investments in an associate should be disclosed in the consolidated financial statements.
- An investor should discontinue the use of equity method from the date that:
  - (a) It ceases to have significant influence in an associate but retains, either in whole or in part, its investments, or
  - (b) The use of the equity method is no longer appropriate because the associate operates under severe long-term restrictions that significantly impair its ability to transfer funds to the investors. From the date of discontinuing the use of equity method, investments in such associates should be accounted for in accordance with Accounting Standard (AS) 13, Accounting for Investments. For this purpose, the carrying amount of investments at that date should be regarded as the cost thereafter.
- Goodwill/capital reserve arising on the acquisition of an associate by an investor should be included in the carrying amount of investment in the associate but should be disclosed separately.
- In using equity method for accounting for investment in an associate, unrealised profits and losses resulting from transactions between the investor (or its consolidated subsidiaries) and the associate should be eliminated to the extent of the investor's interest in the associate. Unrealised losses should not be eliminated if and to the extent the cost of the transferred asset cannot be recovered.

- The carrying amount of investment in an associate should be reduced to recognise a decline, other than temporary, in the value of the investment, such reduction being determined and made for each investment individually.
- In addition to the disclosures as indicated earlier, an appropriate listing and description of associates including the proportion of ownership interest and, if different, the proportion of voting power held should be disclosed in the consolidated financial statements.
- Investments in associates accounted for using the equity method should be classified as long-term investments and disclosed separately in the consolidated balance sheet. The investor's share of the profits or losses of such investments should be disclosed separately in the consolidated statement of profit and loss. The investor's share of any extraordinary or prior period items should also be separately disclosed.
- The name(s) of the associate(s) of which reporting date(s) is/are different from that of the financial statements of an investor and the differences in reporting dates should be disclosed in the consolidated financial statements.
- In case an associate uses accounting policies other than those adopted for the consolidated financial statements for transactions and events in similar circumstances and it is not practicable to make appropriate adjustments to the associate's financial statements, the fact should be disclosed along with a brief description of the differences in the accounting policies.
- On the first occasion when investment in an associate is accounted for in consolidated financial statements in accordance with this statement, the carrying amount of investment in the associate should be brought to the amount that would have resulted had the equity method of accounting been followed as per this statement since the acquisition of the associate. The corresponding adjustment in this regard should be made in the retained earning in the consolidated financial statements.
- Adjustments to the carrying amount of investment in an associate arising from changes in the associate's equity that have not been included in the Statement of Profit and Loss of the associate should be directly made in the carrying amount of investment without routing it through the consolidated Statement of Profit and Loss. The corresponding debit/credit should be made in the relevant head of the equity interest in the consolidated balance sheet. For example, in case the adjustment arises because of revaluation of fixed assets by the associate, apart from adjusting the carrying amount of investment to the extent of proportionate share of the investor in the revalued amount, the corresponding amount of revaluation reserve should be shown in the consolidated balance sheet.

AS 24 — DISCONTINUING OPERATIONS

- This Standard deals with discontinuing operations of an enterprise.
- A discontinuing operation is a component of an enterprise that the enterprise, pursuant to a single plan, is: (1) disposing of substantially in its entirety, such as by selling the component in a single transaction or by demerger or spin-off of ownership of the component to the enterprise's shareholders; or (2) disposing of piecemeal, such as by selling off the component's assets and settling its liabilities individually; or (3) terminating through abandonment; and that represents a separate major line of business or geographical area of operations; and that can be distinguished operationally and for financial reporting purposes.
- For a discontinuing operation, **the initial disclosure event** is the earlier occurrence of (a) the enterprise entering into a binding sale agreement for substantially all of the assets attributable to the discontinuing operation; or (b) the enterprise's board of directors or similar governing body having (i) approved a detailed, formal plan for the discontinuance, and (ii) made an announcement of the plan.
- An enterprise should apply the **principles of recognition and measurement** that are set out in other Accounting Standards (e.g. AS 4, AS 28) for the purpose of deciding as to when and how to recognise and measure the changes in assets and liabilities and the revenue, expenses, gains, losses and cash flows relating to a discontinuing operation.
- In the financial statements for the period in which the initial disclosure event occurs : (a) a description of the discontinuing operation; (b) the business or geographical segment in which it is reported; (c) the date and nature of the initial disclosure event; (d) the date or period in which the discontinuance is expected to be completed if known or determinable; (e) the carrying amounts, as of the balance sheet date, of the total assets to be disposed of and the total liabilities to be settled; (f) the amounts of revenue and expenses in respect of the ordinary activities attributable to the discontinuing operation during the current financial reporting period; (g) the amount of pre-tax profit or loss from ordinary activities attributable to the discontinuing operation during the current reporting period, and the income tax expense related thereto. (h) the amounts of net cash flows attributable to the operating, investing, and financing activities of the discontinuing operation during the current reporting period.

Disclosures

- At the time of disposal of assets or settlement of liabilities attributable to a discontinuing operation or entering into binding agreements for the sale of such assets or the settlement of such liabilities, (a) for any gain or loss recognised on the disposal of assets or settlement of liabilities attributable thereto (i) the amount of the pre-tax gain or loss, and (ii) income tax expense relating to the gain or loss; and (b) the net selling price or range of prices (which is after deducting expected disposal costs) of those net assets, the expected timing of receipt of those cash flows and the carrying amount of those net assets on the balance sheet date.
- In addition, an enterprise should include, for periods subsequent to the one in which the initial disclosure event occurs, a description of any significant changes in the amount or timing of cash flows relating to the assets to be disposed or liabilities to be settled and the events causing those changes.

- The disclosures required should be continued till the period in which of the discontinuance is completed.
- Any disclosure required should be presented separately for each discontinuing operation.
- Disclosures are to be presented in the Notes, however, the following are to be disclosed on the face of the Statement of Profit and Loss —
  (a) the amount of pre-tax Profit or Loss from ordinary activities of the discontinuing operation, and income-tax expense thereto.
  (b) the amount of the pre-tax gain or loss on the disposal of assets company settlement liabilities of the discounting operations.
- An appendix to the Standard (though not a part of the Standard) sets out detailed illustration explaining significant disclosure requirements of the Standard.

AS 25 — INTERIM FINANCIAL REPORTING

- This Standard is applied when an enterprise is required or elects to prepare and present an interim financial report.
- Interim period is a financial reporting period shorter than a full financial year. Interim financial report means a financial report containing either a complete set of financial statements or a set of condensed financial statements for an interim period.
- An enterprise has an option to present a complete or condensed set of financial statements in its interim financial report.
- An interim financial report should include, at a minimum —
  (a) condensed balance sheet;
  (b) condensed statement of profit and loss;
  (c) condensed cash flow statement; and
  (d) selected explanatory notes.
- The following information, as a minimum, should be included in the notes, if material and if not disclosed elsewhere in the interim financial report:
  (a) a statement that the same accounting policies are followed in the interim financial statements as those followed in the most recent annual financial statements or, if those policies have been changed, a description of the nature and effect of the change;
  (b) explanatory comments about the seasonality of interim operations;
  (c) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence, net profit or loss for the period, prior period items and changes in accounting policies;
  (d) the nature and amount of changes in estimates of amounts reported in prior interim periods of the current financial year or changes in estimates of amounts reported in prior financial years, if those changes have a material effect in the current interim period;
  (e) issuances, buy-backs, repayments and restructuring of debt, equity and potential equity shares;
  (f) dividends, aggregate or per share (in absolute or percentage terms), separately for equity shares and other shares;
  (g) segment revenue, segment capital employed (segment assets minus segment liabilities) and segment result for business segments or geographical segments, whichever is the enterprise's primary basis of segment reporting (disclosure of segment information is required in an enterprise's interim financial report only if the enterprise is required, in terms of AS 17, Segment Reporting, to disclose segment information in its annual financial statements);
  (h) the effect of changes in the composition of the enterprise during the interim period, such as amalgamations, acquisition or disposal of subsidiaries and long-term investments, restructurings, and discontinuing operations; and
  (i) material changes in contingent liabilities since the last annual balance sheet date.
- Interim reports should include interim financial statements (condensed or complete) for periods as –
  (a) balance sheet as of the end of the current interim period and a comparative balance sheet as of the end of the immediately preceding financial year;
  (b) statements of profit and loss for the current interim period and cumulatively for the current financial year to date, with comparative statements of profit and loss for the comparable interim periods (current and year-to-date) of the immediately preceding financial year;
  (c) cash flow statement cumulatively for the current financial year-to-date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year.
- An enterprise should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except for accounting policy changes made after the date of the most recent annual financial statements that are to be reflected in the next annual financial statements.
- The frequency of an enterprise's reporting (annual, half-yearly, or quarterly) should not affect the measurement of its annual results and therefore, measurements for interim reporting purposes should be made on a year-to-date basis.

- Users may refer four appendices attached to the Standard (which though not a part of the Standard) set out detailed illustrations explaining inter alia:
  1. Illustrative format of condensed balance sheet, condensed profit and loss account, condensed cash flows.
  2. Illustration of periods required to be presented.
  3. Examples of applying the recognition and measurement principles.
  4. Examples of the use of estimates.
- It may be mentioned that the companies required to disclose quarterly results are not required to follow the disclosure-related requirements of the Standard. Thus, the presentation format is not mandatory. However, it is a normal practice to adopt the recognition and measurement principles.

AS 26 — INTANGIBLE ASSETS

- This Standard should be applied by all enterprises in accounting for intangible assets, except intangible assets that are covered by another Accounting Standard; financial assets; mineral rights and expenditure on the exploration for, or development and extraction of minerals, oil, natural gas and similar non-regenerative resources; intangible assets arising in insurance enterprises from contracts with policyholders and expenditure in respect of termination benefits.
- An asset is a resource; (a) controlled by an enterprise as a result of past events; and (b) from which future economic benefits are expected to flow to the enterprise. An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes.
- An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes. An intangible asset is identifiable when it can be separated from the goodwill arising under the amalgamation. An asset is separable, if the enterprise could rent, sell, exchange or distribute the specific future economic benefits of the asset. Research is original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding. Development is the application of research findings or other knowledge to a plan or design for the production of new or substantially improved materials, devices, products, processes, systems or services prior to the commencement of commercial production or use.
- An acquired intangible asset is recognised if it is (a) identifiable, (b) controllable by enterprise, (c) where future benefit is expected and (d) cost of acquisition can be measured reliably.
- An intangible asset shall initially be measured at cost. Examples for measuring intangible assets are as follows:—
  - — Separate acquisition, it shall be recorded at the purchase price paid for the acquisition.
  - — In the scheme of amalgamation, it shall be accounted for as per AS 14.
  - — Acquisition through Government grant, it shall be recorded at the concessional fee paid or nominal amount.
  - — Exchange of assets, it shall be recorded as per AS 10.
  - — Internally generated goodwill should not be recognised as an asset.
  - — Expenditure incurred on internally generated intangible asset is expensed to the extent that it related to Research Phase.
  - — An intangible asset arising from development (or from the development phase of an internal project) should be recognised if, and only if, an enterprise can demonstrate all of the following:
    - i. The technical feasibility of completing the intangible asset so that it will be available for use or sale;
    - ii. Its intention to complete the intangible asset and use or sell it;
    - iii. Its ability to use or sell the intangible asset;
    - iv. How the intangible asset will generate probable future economic benefits. Among other things, the enterprise should demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it is to be used internally, the usefulness of the intangible asset;
    - v. The availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and
    - vi. Its ability to measure the expenditure attributable to the intangible asset during its development reliably.
- In the subsequent periods, the intangible asset shall be carried at cost less accumulated amortisation and accumulated impairment loss. The amortisation of the intangible asset shall depend upon the best estimate of its useful life. There is rebuttable presumption that the useful life of an intangible asset will not exceed ten years from the date when the asset is available for the use. If the control over future economic benefits from an intangible asset is achieved through legal rights that have been granted, then the useful life of the intangible asset shall not exceed period of the legal rights unless the legal rights are renewable and renewal is certain.
- The amortisation method used should reflect the pattern in which asset's economic benefits are consumed by the enterprise. If the pattern cannot be estimated reliably, straight-line method should be used. The amortisation method and period should be reviewed at the end of each of financial year. If there is any change in the expected useful life or pattern of economic benefits, then the amortisation period or method should be changed accordingly.

- An enterprise should estimate the recoverable amount of the following intangible assets at least at each financial year and even if there is no indication that the asset is impaired: (a) an intangible asset that is not yet available for use; and (b) an intangible asset that is amortised over a period exceeding ten years from the date when the asset is available for use.
- An intangible asset should be derecognised on disposal or when no future economic benefits are expected from it. Gains or losses on the disposal shall be the difference between the net disposal proceeds and the carrying amount.
- The Standard is supplemented with two appendices one of which covers exhaustive illustration on accounting of website development cost and software generated for internal use and other one covers various examples on application of various aspects of the standard.

Disclosures

- The useful lives or amortisation rates used;
- Amortisation method;
- Gross carrying amount and the accumulated amortisation at the beginning and at the end of the period;
- Reconciliation of the carrying amount at the beginning and end of the period.
- If an intangible asset is amortised for more than ten years, then reasons for the same.

AS 27 — FINANCIAL REPORTING OF INTERESTS IN JOINT VENTURES

- The standard defines what a **joint venture** is. Some of the important concepts include; joint venture is a contractual arrangement whereby two or more parties undertake an economic activity, which is subject to joint control. Joint control is the contractually agreed sharing of control over an economic activity.
- Control is the power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.

  Proportionate consolidation is a method of accounting and reporting whereby a venturer's share of each of the assets, liabilities, income and expenses of a jointly controlled entity is reported as separate line items in the venturer's financial statements.
- The accounting treatments depends on the nature of joint venture which can be one of the three, i.e. Jointly Controlled Entity or Jointly Controlled Operations or Jointly Controlled Assets.
- In respect of its interests in jointly controlled operations, a venturer should recognise in its separate financial statements and consequently in its consolidated financial statements: (a) the assets that it controls and the liabilities that it incurs; and (b) the expenses that it incurs and its share of the income that it earns from the joint venture.
- In respect of its interest in jointly controlled assets, a venturer should recognise, in its separate financial statements, and consequently in its consolidated financial statements: its share of the jointly controlled assets, classified according to the nature of the assets; any liabilities which it has incurred; its share of any liabilities incurred jointly with the other venturers in relation to the joint venture; any income from the sale or use of its share of the output of the joint venture, together with its share of any expenses incurred by the joint venture; and any expenses which it has incurred in respect of its interest in the joint venture.
- In respect of jointly controlled operations the accounting treatment depends upon whether it is to be accounted in standalone financial statements or consolidated financial statements. In case of standalone financial statements the investments are accounted at cost in accordance with AS 13 whereas in case of consolidated financial statements where these are prepared (or required to be prepared) the investment in joint venture is accounted using proportionate consolidation method unless these are subsidiaries in which case these are consolidated under AS 21.

AS 28 — IMPAIRMENT OF ASSETS

- This Standard should be applied in accounting for the impairment of all assets, other than: (1) Inventories (see AS 2, Valuation of Inventories); (2) Assets arising from construction contracts (see AS 7, Accounting for Construction Contracts); (3) Financial assets, including investments that are included in the scope of AS 13, Accounting for Investments; and (4) Deferred tax assets (see AS 22 – Accounting for Taxes on Income). Prominent concepts introduced by the standards include:

  An impairment loss is the amount by which the carrying amount of an asset exceeds its recoverable amount. **Recoverable** amount is the higher of an asset's net selling price and its value in use. **Value in use** is the present value of estimated future cash flows expected to arise from the continuing use of **an asset** and from its disposal at the end of its useful life. Carrying amount is the amount at which an asset is recognised in the balance sheet after deducting any accumulated depreciation (amortisation) and accumulated impairment losses thereon. **A cash-generating** unit is the smallest identifiable group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets.
- Corporate assets are assets other than goodwill that contribute to the future cash flows of both the cash-generating unit under review and other cash-generating units.
- At each balance sheet date it needs to be assessed as to whether there is triggering event that requires the impairment testing to be made. Triggering event shall be assessed based on external information like fall in interest rate or industry growth rate,

change in law, etc., and internal information like forecasts, obsolescence, damage, etc. Where there is a triggering event the impairment loss needs to be assessed at the level of each Cash Generating Unit. Where all the assets of the enterprise are allocated to cash generating unit, only bottom-up testing method is applied and in case there is some portion of asset that is not allocated or corporate assets, then bottom-up testing method coupled with and followed by top-down testing method is applied.

- In measuring value in use the Standard specifies certain factors that need to be considered in arriving the discount rate and cash flow projection.
- Discount rate shall be independent of capital structure of the enterprise or its incremental borrowing cost. As a starting point, the enterprise may take into account the following rates: the enterprise's weighted average cost of capital determined using techniques such as the Capital Asset Pricing Model; the enterprise's incremental borrowing rate; and other market borrowing rates. These rates are adjusted: to reflect the way that the market would assess the specific risks associated with the projected cash flows; and to exclude risks that are not relevant to the projected cash flows.

Consideration is given to risks such as country risk, currency risk, price risk and cash flow risk

- Cash flow projections should be based on reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the remaining useful life of the asset. Greater weight should be given to external evidence; cash flow projections should be based on the most recent financial budgets/forecasts that have been approved by management. Projections based on these budgets/forecasts should cover a maximum period of five years, unless a longer period can be justified; and cash flow projections beyond the period covered by the most recent budgets/forecasts should be estimated by extrapolating the projections based on the budgets/forecasts using a steady or declining growth rate for subsequent years, unless an increasing rate can be justified. This growth rate should not exceed the long-term average growth rate for the products, industries, or country or countries in which the enterprise operates, or for the market in which the asset is used, unless a higher rate can be justified. Project cash flows shall not consider impact of future capital expenditure or restructuring unless these are committed.
- Reversal of impairment loss is allowed to an extent that would be additional carrying amount of asset had there be no impairment.

  However in case of reversal of impairment loss relating to goodwill additional condition needs to be satisfied.
- The detailed text of the standard spreads across 124 paragraphs and is supplemented with 8 examples (which are not part of the Standard). Users are expected to go through it in detail before applying the Standard.

Disclosures

- The amount of the impairment loss recognised and reversed in the Statement of Profit and Loss;
- The amount of the impairment loss adjusted against the revaluation reserve;
- Basis of determination of the recoverable amount;
- Nature of the individual asset;
- Description of the cash generating unit;
- Any change in the aggregation of the assets for identifying cash generating unit and the reasons.

AS 29 — PROVISIONS, CONTINGENT LIABILITIES AND CONTINGENT ASSETS

- The Standard prescribes the accounting and disclosure for all provisions, contingent liabilities and contingent assets, except:
  - (a) Those resulting from financial instruments that are carried at fair value;
  - (b) Those resulting from executory contracts, except where the contract is onerous. Executory contracts are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent;
  - (c) Those arising in insurance entities from contracts with its policyholders; or
  - (d) Those covered by another Standard.

Provisions

The Standard defines provisions as a liability which can be measured only by using a substantial degree of estimation. A provision should be recognised when, and only when:

1. (a) An entity has a present obligation (legal or constructive) as a result of a past event;
   - (b) It is probable (i.e., more likely than not) that an outflow of resources embodying economic benefits will be required to settle the obligation; and
   - (c) A reliable estimate can be made of the amount of the obligation. The Standard notes that it is only in extremely rare cases that a reliable estimate will not be possible.

- The amount recognised as a provision should be the best estimate of the expenditure required to settle the present obligation at the balance sheet date.

- The provisions shall not be discounted. However, the provision recognised under AS 10 with respect to decommissioning, restoration and similar liabilities needs to be discounted. The discount rate should be pre tax rate that reflects the current market assessment of the time value of money and the risks specific to the liability.
- Gains from the expected disposal of assets should not be taken into account, even if the expected disposal is closely linked to the event giving rise to the provision.
- An entity may expect reimbursement of some or all of the expenditure required to settle a provision (for example, through insurance contracts, indemnity clauses or suppliers' warranties). An entity should: (a) recognise a reimbursement when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The amount recognised for the reimbursement should not exceed the amount of the provision; and (b) recognise the reimbursement as a separate asset. In the income statement, the expense relating to a provision may be presented net of the amount recognised for a reimbursement.
- Provisions should be reviewed at each balance sheet date and adjusted to reflect the current best estimate. If it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.
- A provision should be used only for expenditure for which the provision was originally recognised.
- Provisions should not be recognised for future operating losses. An expectation of future operating losses is an indication that certain assets of the operation may be impaired. In this case, an entity tests these assets for impairment under AS 28 Impairment of Assets.
- The Standard defines a restructuring as a programme that is planned and controlled by management, and materially changes either: (a) the scope of a business undertaken by an entity; or (b) the manner in which that business is conducted.
- A provision for restructuring costs is recognised only when the general recognition criteria for provisions are met.

Disclosures

- The reconciliation of the amount of the provision at the beginning and at the end of the period, it should cover additional provisions made, amounts used and unused amounts recovered;
- Nature of the obligation and timing of the outflow;
- Any uncertainties relating to an outflow;
- Any expected reimbursement.

Contingent Liabilities

The Standard defines a contingent liability as:

1. (a) A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or

   (b) A present obligation that arises from past events but is not recognised because:

      (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or

      (ii) the amount of the obligation cannot be measured with sufficient reliability.

- An entity should not recognise a contingent liability. At the balance sheet date, the enterprise shall disclose brief description of contingent liability. If practicable, it shall also disclose, estimate of the financial effect, uncertainties relating to an outflow and possibility of any reimbursement. In case of non-disclosure of such information, the fact should be disclosed

Contingent Assets are not to be recognised

Summary of Companies (Accounting Standard) Rules, 2006

The rules are applicable to Companies whose accounting periods commence on or after December 7, 2006. The key features of the rules are:

- Codified, almost all the accounting standards, accounting standard interpretations and limited revision in one single document
- Reworded certain jargons, like "Preface to Accounting Standards" is now referred as "General Instructions",
- Introduced new definition on SME enterprises. (Only 2 levels as against present practice of 3 levels.)

EXPOSURE DRAFTS

ICAI has issued exposure drafts either to revise or for the limited revision of certain Accounting Standards, key features of the proposed revision are explained hereinafter. Features have been indicated as if the Exposure Draft will be the Standard in its present draft form.

AS 1 — DISCLOSURE OF ACCOUNTING POLICIES

- The Standard requires an explicit statement in the financial statements regarding compliance with all the Accounting Standards.
- It also provides criteria for classification of Current/Non-Current assets/liabilities and its presentation.
- A classification of the expenses to be presented in the statement of profit and loss based on nature is also required to be made.
- The management is required to disclose the judgments made by it while framing accounting policies. Also, key assumptions about the future and other sources of measurement uncertainty that have significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within next financial year are required to be disclosed.
- In respect of reclassification of items, the Standard besides requiring disclosure of reclassification adjustments in the statement of profit and loss, also requires disclosure of nature, amount and reason for reclassification in the notes to financial statements.
- The financial statements are to include movements in Equity, to be shown as a part of the balance sheet which, inter alia, includes reconciliation between opening and closing balance for each component of equity.

AS 5 — NET PROFIT/LOSS FOR THE PERIOD, PRIOR PERIOD ITEMS AND CHANGES IN ACCOUNTING POLICIES

- The revision is to bring about changes in the Standard commensurate with the requirements of the existing law and the existing notified Accounting Standards.
- The objective is to prescribe the criteria for selecting and changing accounting policies, together with the accounting treatment and disclosure of changes in accounting policies, changes in accounting estimates and correction of errors.
- Keeping in view that AS 1, Presentation of Financial Statements (Revised), is silent about the presentation of any item of income or expense as extraordinary item, this Standard does not deal with the same, which at present is dealt with by the existing AS 5.
- The Standard broadens the definition of accounting policies to include bases, conventions, rules and practices (in addition to principles) applied by an entity in the preparation and presentation of financial statements.
- An entity shall select and apply its accounting policies consistently for similar transactions, other events and conditions, unless an AS specifically requires or permits categorisation of items for which different policies may be appropriate.
- Changes in accounting policies should be accounted for with retrospective effect subject to limited exceptions, viz., where it is impracticable to determine the period specific effects or the cumulative effect of applying a new accounting policy.
- The Standard uses the term prior period errors and relates it to errors or omissions arising from a failure to use or misuse of reliable information (in addition to mathematical mistakes, mistakes in application of accounting policies etc.) that was available when the financial statements of the prior periods were approved for issuance and could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements. Errors include frauds, which is not covered in existing AS 5.
- The Standard requires rectification of material prior period errors with retrospective effect, as compared to the prospective effect in the existing AS, subject to limited exceptions viz., where it is impracticable to determine the period specific effects or the cumulative effect of applying a new accounting policy.
- The disclosure requirements have been made more detailed.

AS 12 — ACCOUNTING FOR GOVERNMENT GRANTS

- It is to synchronise the presentation requirements with the presentation requirements prescribed under Schedule III to the Companies Act, 2013.
- In the case of companies, deferred government grants should be disclosed separately under the head Non-current Liabilities to the extent entity expects not to recognise the same within the next 12 months after the end of reporting period and the remaining balance should be disclosed separately under the head Current Liabilities.

AS 20 — EARNINGS PER SHARE

- It is primarily to address the conceptual lacuna in arriving at earnings for computing EPS.

- For the purpose of calculating basic earnings per share, the net profit or loss for the period attributable to equity shareholders should be the net profit or loss for the period after
  (i) deducting preference dividends and any attributable tax thereto for the period; and
  (ii) adjusting the amount in respect of an item of income or expense that is debited or credited to share premium account/ reserves, which is otherwise required to be recognised in the statement of profit and loss in accordance with Accounting Standards.

AS 22 — ACCOUNTING FOR TAXES ON INCOME

- It is primarily to synchronise the presentation requirements of AS 22, with the presentation requirements prescribed under Schedule III, notified under the Companies Act, 2013.
- In the case of companies, deferred tax assets (net of the deferred tax liabilities, if any), is disclosed on the face of the balance sheet separately under the head "Non-current Assets' after the subhead 'Non-current investments' and deferred tax liabilities (net of the deferred tax assets, if any), is disclosed on the face of the balance sheet separately under the head 'Non-current Liabilities' after the sub-head 'Long-term borrowings'.

THE FOLLOWING ARE THE EXPOSURE DRAFTS ISSUED BY ICAI ON ACCOUNTING STANDARDS AS A PART OF MCA INITIATIVE TO ALIGN EXISTING ACCOUNTING STANDARDS (AS) WITH IND AS (INCLUDING NUMBERING OF THE AS) DURING THE PERIOD FROM APRIL'18 TO JUNE'19

AS 1 — PRESENTATION OF FINANCIAL STATEMENTS

Line by line comparison is not possible since the proposed standard is wider and the scope is larger.

- AS 1, Presentation of Financial Statements, requires that an entity shall make an explicit statement in the financial statements of compliance with all the Indian Accounting Standards. AS 1, Disclosure of Accounting Policies, does not provide so.
- AS 1, Presentation of Financial Statements, requires presentation and provides criteria for classification of Current / Non-Current assets / liabilities. AS 1, Disclosure of Accounting Policies, does not provide so.
- AS 1, Presentation of Financial Statements, specifically prohibits presentation of any item as 'Extraordinary Item' in the statement of profit and loss or in the notes.
- AS 1 requires disclosure of judgments made by management while framing of accounting policies. Also, it requires disclosure of key assumptions about the future and other sources of measurement uncertainty that have significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within next financial year.
- AS 1, Presentation of Financial Statements, requires the financial statements to include a 'Statement of Changes in Equity' to be shown as a separate statement, which, inter alia, includes reconciliation between opening and closing balance for each component of equity. AS 1, Disclosure of Accounting Policies, does not require so.
- AS 1, Presentation of Financial Statements, requires that an entity shall present a single statement of profit and loss, with profit or loss and other comprehensive income presented in two sections. The sections shall be presented together, with the profit or loss section presented first followed directly by the other comprehensive income section. AS 1, Disclosure of Accounting Policies, does not require so.
- AS 1, Presentation of Financial Statements, clarifies that long-term loan arrangement need not be classified as current on account of breach of a material provision, for which the lender has agreed to waive before the approval of financial statements for issue. (Paragraph 74 of AS 1). AS 1, Disclosure of Accounting Policies, does not provide so.

AS 11 — CONSTRUCTION CONTRACTS

- AS 11 requires to recognize contract revenue at transaction price, whereas AS 7 requires that contract revenue to be measured at consideration received / receivable. Accordingly, definition of transaction price has been included in AS 11.
- Paragraph 1A has been added in AS 11 which provides that the impairment of any contractual right to receive cash or another financial asset arising from this Standard shall be dealt in accordance with AS 109, Financial Instruments.

AS 17 — LEASES

- AS 19 excludes from its scope accounting of lease agreements to use lands. AS 17 does not have such scope exclusion. It has specific provisions dealing with accounting of leases of land and building.

- AS 17 is not applicable as the basis of measurement for:
  i. property held by lessees that is accounted for as investment property and investment property provide by lessor under operating leases and
  ii. biological assets held by lessees under finance leases / provided by lessors under operating leases that are covered within the scope of AS 41, Agriculture.

  AS 19 does not contain such scope exceptions since AS 13, Accounting for Investments, dealing with Investment Property does not have such special provision and there was no Accounting Standard on Agriculture.
- AS 17 makes a distinction between 'inception of lease' and 'commencement of lease' and defines these two terms differently whereas AS 19 does not define the term commencement of lease although this term is used at few places. AS 17, requires the lessee to recognise finance leases as assets and liabilities in the balance sheet at the commencement of the lease term whereas as AS 19 requires recognition at the inception of the lease. Further, AS 17 deals with adjustment of lease payments during the period between inception of the lease and the commencement of the lease term. This aspect is not dealt with in AS 19.
- AS 17 requires that in case of operating lease, where payments to the lessor are structured to increase in line with the expected general inflation so as to compensate the lessor for expected inflationary cost increases shall not be straight lined. AS 19 does not provide for the same.
- The term 'initial direct costs' has been specifically defined in AS 17 and definition of the term 'interest rate implicit in the lease' has been modified in AS 17. There is difference in treatment of initial direct costs incurred by a non-manufacturer / non-dealer lessor in respect of a finance lease. Under AS 19, it can either be recognised as expense immediately or allocated against the finance income over the lease term. Under AS 17 no such provisions are there as interest rate implicit in the lease is defined in such a way that the initial direct costs are included automatically in the finance lease receivable.
- In case of finance lease, in the financial statements of lessor, AS 17 does not specifically mention about the treatment of upward adjustment of the estimated residual value. AS 19 specifically mentions that upward adjustment of the estimated residual value is not made.
- AS 17 requires current/non-current classification of lease Liabilities if such classification is made for other liabilities. Also, it makes reference to AS 105, Noncurrent Assets Held for Sale and Discontinued Operations. These aspects were not addressed in AS 19.

AS 18 — REVENUE

- Definition of 'revenue' given in AS 18 is broad compared to the definition of 'revenue' given in AS 9 because it covers all economic benefits that arise in the ordinary course of activities of an entity which result in increases in equity, other than increases relating to contributions from equity participants.
- Definitions of completed service contract method and proportionate completion method of AS 9 have not been included in AS 18.
- AS 18 requires to recognize contract revenue at transaction price, whereas AS 9 requires that contract revenue to be measure at consideration received/receivable. Accordingly, definition of transaction price has been included in AS 18.
- Paragraph 1A of AS 18 requires interest to be recognized using the effective interest method in accordance with AS 109, Financial Instruments. AS 9 requires the recognition of revenue from interest on time proportion basis.
- Paragraph 1B has been added in AS 18 to provide that the impairment of any contractual right to receive cash or another financial asset arising from this Standard shall be dealt in accordance with AS 109, Financial Instruments.
- AS 18 provides guidance on application of recognition criteria to the separately identifiable components of a single transaction in order to reflect the substance of the transaction (paragraph 9). AS 9 does not specifically deal with the same.
- AS 18 specifically deals with the exchange of goods and services with goods and services of similar and dissimilar nature. In this regard specific guidance is given regarding barter transactions involving advertising services (paragraph 12). This aspect is not dealt with in the AS 9.
- Paragraph 12A* has been added in AS 18 to provide guidance on customer loyalty programmes.
- AS 18 specifically provides guidance regarding revenue recognition in case the entity is under any obligation to provide free or discounted goods or services or award credits to its customers due to any customer loyalty programme. AS 9 does not deal with this aspect.
- AS 9 specifically deals with disclosure of excise duty as a deduction from revenue from sales transactions. AS 18 does not specifically deal with the same.
- Disclosure requirements given in the AS 18 are more detailed as compared to AS 9.
- Illustrations on Sale of Goods and Rendering of Services of AS 9 have not been included in AS 18.

  *12A. Sometimes, as part of a sales transaction, an entity grants its customer a loyalty award that the customer may redeem in the future for free or discounted goods or services. In this case, the entity shall account for the award credits as a separately identifiable component of the initial sales transaction. The entity shall allocate the transaction price between the

award credits and the other components of the sale on a relative stand-alone selling price basis. If the stand-alone selling price for a customer's option to acquire additional goods or services is not directly observable, an entity shall estimate it. That estimate shall reflect the discount that the customer would obtain when exercising the option, adjusted for both of the following: (a) any discount that the customer could receive without exercising the option; and (b) the likelihood that the option will be exercised.

AS 19 — EMPLOYEE BENEFITS

- In AS 19, employee benefits arising from constructive obligations are specifically covered whereas AS 15 does not specifically covers the same. (Paragraph 4(c) of AS 19).
- The term 'employee' includes directors in AS 19 whereas under AS 15 'employee' includes whole-time directors.
- Definitions of short-term employee benefits, other long-term employee benefits and past service cost as per AS 15 have been changed in AS 19 (Paragraph 8 of AS 19).
- Paragraph 37 of AS 19 deals with the situation where there is a contractual agreement between a multi-employer plan and its participants that determine how the surplus in the plan will be distributed to the participants (or the deficit funded). AS 15 does not deals with the same.
- Paragraph 42 of AS 19 provides that participation in a defined benefit plan sharing risks between various entities under common control is a related party transaction for each group entity and some disclosures are required in the separate or individual financial statements of an entity. AS 15 does not contain similar provisions.
- AS 19 encourages, but does not require, an entity to involve a qualified actuary in the measurement of all material post – employment benefit obligations whereas AS 15 though does not require involvement of a qualified actuary, does not specifically encourage the same (Paragraph 59 of AS 19).
- AS 19 requires recognition of actuarial gains and losses in other comprehensive income. AS 15 requires recognition of actuarial gains and losses immediately in the profit and loss.
- Paragraph 80 of AS 19 makes it clear that financial assumptions shall be based on market expectations, at the end of the reporting period, for the period over which the obligations are to be settled. AS 15 does not clarify the same.
- Paragraph 83 of AS 19 provides that subsidiaries, associates, joint ventures and branches domiciled outside India shall discount post-employment benefit obligations arising on account of post-employment benefit plans using the rate determined by reference to market yields at the end of the reporting period on high quality corporate bonds. Under AS 15, rate used to discount post-employment benefit obligations is determined by reference to market yields at the balance sheet date on government bond.
- Under AS 19, there is a concept of assets ceiling, i.e., net defined benefit liability (asset) is adjusted for any effect of limiting a net defined benefit asset to the asset ceiling. AS 15 does not have such concept.
- Paragraph 165 of AS 19 provides guidance for timing of recognition of termination benefits. No guidance is available under AS 15.

AS 34 — INTERIM FINANCIAL REPORTING

- As per AS 25, the contents of an interim financial report include, at a minimum, a condensed balance sheet, a condensed statement of profit and loss, a condensed cash flow statement and selected explanatory notes. AS 34 requires, in addition to the above, a condensed statement of changes in equity. (Consequential to change in AS 1).
- Reference to extraordinary items (in the context of materiality) has been deleted in AS 34 in line with AS 1. However, AS 25 contains the reference of extraordinary items.
- *Illustration I:* Illustrative Format of Condensed Financial Statements' of AS 25 has not been included in AS 34.

AS 37 — PROVISIONS, CONTINGENT LIABILITIES AND CONTINGENT ASSETS

- Unlike AS 29, AS 37 requires creation of provisions in respect of constructive obligations also [However, AS 29 requires creation of provisions arising out of normal business practices, custom and a desire to maintain good business relations or to act in an equitable manner]. This has resulted in some consequential changes also. For example, definitions of provision and obligating event have been revised in AS 37, while the terms 'legal obligation' and 'constructive obligation' have been inserted and defined in AS 37. Similarly, the portion of AS 29 pertaining to restructuring provisions has been revised in AS 37.
- AS 37 makes it clear that before a separate provision for an onerous contract is established, an entity should recognize any impairment loss that has occurred on assets dedicated to that contract in accordance with AS 36. There is no such specific provision in AS 29.
- AS 29 states that identifiable future operating losses up to the date of restructuring are not included in a provision. AS 37 gives an exception to this principle viz. such losses related to an onerous contract.

- AS 38 contains scope exclusion with regard to the amortization method for intangible assets arising from service concession arrangements in respect of toll roads recognised in the financial statements before the beginning of the first upgraded AS reporting period. AS 26 (paragraph 5) provides that accounting issues of specialised nature that arise in respect of accounting for discount or premium relating to borrowings and ancillary costs incurred in connection with the arrangement of borrowings, share issue expenses and discount allowed on the issue of shares are excluded from Standard. AS 38 does not include any such exclusion specifically as these are covered by other Accounting Standards.
- AS 26 defines an intangible asset as an identifiable non-monetary asset without physical substance held for use in the production or supply of goods or services, for rental to others, or for administrative purposes whereas in AS 38, the requirement for the asset to be held for use in the production or supply of goods or services, for rental to others, or for administrative purposes has been removed from the definition of an intangible asset (Paragraph 8 of AS 38).
- AS 38 provides detailed guidance in respect of identifiability (paragraphs 11 and 12 of AS 38). AS 26 did not define 'identifiability' but stated that an intangible asset could be distinguished clearly from goodwill if the asset was separable, but that separability was not a necessary condition for identifiability.
- As per AS 38, in the case of separately acquired intangibles, the criterion of probable inflow of expected future economic benefits is always considered satisfied, even if there is uncertainty about the timing or the amount of the inflow. However, there was no such provision in AS 26 (Paragraph 25 of AS 38).
- In AS 38, there is a rebuttable presumption that an amortization method that is based on the revenue generated by an activity that includes the use of an intangible asset is inappropriate. AS 38 allows use of revenue based method of amortisation of intangible asset, in a limited way. AS 26 did not specifically deal with revenue based amortisation method (Paragraph 98A of AS 38).
- Under AS 38, if payment for an intangible asset is deferred beyond normal credit terms, the difference between this amount and the total payments is recognised as interest expense over the period of credit unless it is capitalised as per AS 23. However, there was no such provision in AS 26 (Paragraph 32 of AS 38).
- AS 38 deals in detail in respect of intangible assets acquired in a business combination. On the other hand, AS 26 referred only to intangible assets acquired in an amalgamation in the nature of purchase and did not refer to business combinations as a whole.
- AS 38 provides guidance for the treatment of subsequent expenditure on an in-process research and development project acquired in a business combination whereas AS 26 was silent regarding the treatment of such expenditure (Paragraphs 42 and 43 of AS 38).
- AS 38 require recognition of subsequent expenditure as intangible assets if it meets the definition of intangible assets and recognition criteria laid down in the standard (refer paragraph 18 and 20). AS 26 provided separate guidance for recognition of subsequent expenditure as intangible assets which was primarily based on generation of future economic benefits in excess of its originally assessed standard of performance (refer paragraph 59 of AS 26).
- In AS 38, guidance is available on cessation of capitalisation of expenditure (Paragraph 30 of AS 38), de-recognition of a part of an intangible asset (Paragraph 115 of AS 38) and useful life of a reacquired right in a business combination (Paragraph 94 of AS 38). There was no such guidance in AS 26 on these aspects.
- AS 38 provides more guidance on recognition of intangible items recognised as expense. AS 38 clarifies that in respect of prepaid expenses, recognition of an asset would be permitted only upto the point at which the entity has the right to access the goods or upto the receipt of services. Further, unlike AS 26, mail order catalogues have been specifically identified as a form of advertising and promotional activities which are required to be expensed.
- AS 38 (paragraph 94) acknowledges that the useful life of an intangible asset arising from contractual or legal rights maybe shorter than the legal life. AS 26 does not include such a provision.
- As per AS 26 (paragraph 73), there will rarely, if ever, be persuasive evidence to support an amortisation method for intangible assets that results in a lower amount of accumulated amortisation than under straight-line method. AS 38 does not contain any such provision.
- Under AS 38, the residual value is reviewed at least at the end of each financial year and, if expectations differ from previous estimates. If it increases to an amount equal to or greater than the asset's carrying amount, amortisation charge is zero unless the residual value subsequently decreases to an amount below the asset's carrying amount. However, AS 26 specifically required that the residual value is not subsequently increased for changes in prices or value.
- As per AS 38 (paragraph 104), change in the method of amortisation is a change in accounting estimate whereas as per AS 26, this was a change in accounting policy.
- AS 38 also requires certain additional disclosures as compared to AS 26.
- AS 38 does not deal with the assets 'held for sale' because the treatment of such assets is covered in Ind AS 105, Non-current Assets Held for Sale and Discontinued Operations. AS 26 dealt with accounting for intangible assets retired from active use and held for sale.

AS 40 — INVESTMENT PROPERTY

- AS 13 provides limited guidance on investment properties. As per AS 13, an enterprise holding investment properties should account for them as per cost model prescribed in AS 10, Property, Plant and Equipment. However, AS 40 is a detailed standard dealing with various aspects of investment property accounting.

THE FOLLOWING ARE THE EXPOSURE DRAFTS ISSUED BY ICAI IN RESPECT OF NEW ACCOUNTING STANDARDS DURING THE PERIOD FROM APRIL'18 TO JUNE'19, WHICH HAVE BEEN FORMULATED ON THE BASIS OF EXISTING IND AS

AS 41 — AGRICULTURE

- Currently, there is no Accounting Standard on Agriculture. Considering the need of AS on the subject, the Accounting Standards Board (ASB) of ICAI has formulated draft AS 41, Agriculture, on the basis of Ind AS 41, Agriculture.
- AS 41 applies to biological assets and agricultural produce.
- A biological asset shall be measured on initial recognition and at the end of each reporting period at its fair value less costs to sell. There are two exceptions to this general principle :
  - i. When the asset is at its early age
  - ii. When the fair value cannot be measured reliably on initial recognition.
- The first exception is a practical expedient. AS 41 allows that cost may sometimes approximate fair value where little biological transformation has taken place since the initial cost was incurred (for example, for fruit tree seedlings planted immediately before the balance sheet date). The same applies when the impact of the biological transformation on price is not expected to be material (for example, for the initial growth in a 30-year pine plantation cycle).
- The second exception that fair value cannot be reliably measured is rarely relevant. AS 41 includes a presumption that fair value can be measured reliably for a biological asset. That presumption can be rebutted only on initial recognition for a biological asset for which market-determined prices or values are not available and for which alternate estimates of fair values are determined to be clearly unreliable.
- Bearer plants are excluded from the scope of AS 41. It is treated just like property, plant and equipment.
- A gain or loss arising on initial recognition of a biological asset at fair value less costs to sell and from a change in fair value less costs to sell a biological asset shall be included in profit or loss for the period in which it arises.

AS 109 — FINANCIAL INSTRUMENTS

- Currently, there is no Accounting Standard on Financial Instruments under Companies (Accounting Standards) Rules, 2006. Considering the need of AS on the subject, the Accounting Standards Board (ASB) of ICAI has formulated draft AS 109, Financial Instruments, on the basis of Ind AS 109, Financial Instruments.
- However, certain guidance with regards to financial instruments exist which is provided under:
  - i. AS 11, The Effects of Changes in Foreign Exchange Rates
  - ii. AS 13, Accounting for Investments
  - iii. Guidance Note on Accounting for Derivative Contracts
- Financial instruments contains guidance on the recognition, derecognition, classification and measurement of financial instruments, including impairment and hedge accounting.
- A financial instrument is defined as any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another liability.
- Section A, Basic Financial Instrument and Section B, Other Financial Instruments together deal with recognising, presenting, derecognising, measuring and disclosing financial instruments (financial assets and financial liabilities).
- Section A applies to basic financial instruments and is relevant to all entities. Section B applies to other, more complex financial instruments and transactions. If an entity enters into only basic financial instrument transactions then Section B is not applicable. However, even entities with only basic financial instruments shall consider the scope of Section B to ensure they are exempt.
- Section C Liabilities and Equity establishes principles for classifying financial instruments as either liabilities or equity and addresses accounting for equity instruments issued to individuals or other parties acting in their capacity as investors in equity instruments (i.e. in their capacity as owners).
- Trade receivables and payables, bank loans and overdrafts, issued debt, equity and preference shares, investment in securities (e.g. shares and bonds) and various derivatives are just some of the examples of financial instruments.

EXPOSURE DRAFTS ISSUED BY ICAI ON REVISED GUIDANCE NOTES DURING THE PERIOD FROM APRIL'18 TO JUNE'19

EXPOSURE DRAFT ON REVISED GUIDANCE NOTE ON ACCOUNTING OF POLITICAL PARTIES

- The objective of this exposure draft is to raise the bar on the quality of financial disclosures.
- For the first time, the political parties are required to disclose the nature and type of services-in-kind received by them.

REVISION IN GUIDANCE NOTES DURING THE PERIOD FROM APRIL'18 TO JUNE'19

PUBLICATION	***OVERVIEW***
Revised guidance note on Division I - Non Ind AS Schedule III to the Companies Act, 2013	Existing guidance note is being revised. The objective of this Guidance Note is to provide guidance in the preparation and presentation of financial statements for companies following non -Ind AS i.e. IGAAP.
Revised guidance note on reports in Company prospectuses	This revised guidance note contains details on applicability, amendments in SEBI (Issue of capital and disclosure requirements) Regulation, 2018 and illustrative format of reports. This guidance note is applicable to all IPO and related filings which are filed on or after 21st January 2019. The earlier application is voluntary.
Revised guidance note on Audit of Banks	This guidance note contains details on Bank statutory central audit, audit of foreign exchange transactions and integrated treasury in banks, and Bank branch audit other than foreign exchange transactions.

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Statements & Guidance Notes issued by ICAI

STATEMENTS

1.00 Authority

The 'Statements' have been issued with a view to secure compliance by members on matters, which, in the opinion of the Council, are critical for the proper discharge of their functions. Statements are therefore mandatory. Accordingly while discharging the attest function, it will be the duty of the members of the Institute:—

(a) To examine whether 'Statements' relating to accounting matters are complied with the presentation of financial statements covered by their audit. In the event of any deviation from the statements, adequate disclosure should be made in the audit reports.

(b) To ensure that the statements relating to auditing matters are followed in the audit of financial information covered by their audit reports. If, for any reason, a member is not able to perform an audit in accordance with such statements, his report should draw attention to the material departure therefrom.

The ICAI has published 'Handbook of Auditing Pronouncements 2019 edition (Volume I.B) Compendium of Standards and Statements' wherein the Statements on auditing are given.

2.00 A list of statements on Auditing (As on August 01, 2019)

(i) Statement on Reporting under section 227(1A) of the Companies Act, 1956.

2.01 Statement on Reporting under section 227(1A) of the Companies Act, 1956

The Council at its 269th meeting held on July 18 to 20, 2007 decided to withdraw the 'Statement on Qualifications in Auditor's Report' except paragraphs 2.1 to 2.30 dealing with reporting under section 227(1A) of the Companies Act, 1956 and to rename the statement as 'Statement on Reporting under section 227(1A) of the Companies Act, 1956'.

GUIDANCE NOTES

1.00 Guidance Notes are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a Guidance Note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly while discharging his attest function, a member should examine whether the recommendations in a Guidance Note relating to an accounting matter have been followed or not. If the same have not been followed, the members should consider, keeping in view the circumstances of the case, a disclosure in his report necessary.

2.00 The ICAI has published the list of Guidance Notes on Accounting, Auditing and on Reporting Aspects. In addition to these there are Industry Specific Guidance Notes. The following is the brief introduction to some of the Guidance Notes issued by the ICAI. The members are requested to refer to the text of the Guidance Notes for complete guidance.

Guidance Notes on Accounting Aspects

2.01 Terms used in Financial Statements (under Revision)

This Guidance Note contains broad and basic definitions of certain important terms used in the preparation and presentation of financial statements. The objective is to clarify the meaning of these terms so as to establish their significance and promote their understanding by preparers and users of financial statements.

2.02 Guidance Note on Accrual Basis of Accounting (under Revision)

Consequent to the amendments made in the Companies Act in 1988 requiring all companies to maintain accounts under accrual system, this Guidance Note provides a comprehensive background on the subject. It discusses the concept of accrual vs. cash methods and provides general guidance on recognition of revenues, expenses, assets and liabilities under this method. The concept of materiality in case of non-compliance and manner of reporting by the auditor is also discussed therein.

2.03 Accounting for Dotcom Companies (under Revision)

This Guidance Note prescribes the treatment of certain transactions, which are unique to Dotcom companies. They include cases such as the timing and amount of revenue to be recognised from online sales/auctions and membership fees, the valuation and accounting of advertising barter transactions, the identification and financial recording of website development costs, rebates and discounts offered and loyalty programmes for members. It also prescribes certain disclosure requirements for Dotcom companies.

2.04 Accounting for Oil and Gas Producing Activities (Revised 2013)

This Guidance Note aims at providing guidance on accounting for costs incurred on activities relating to acquisition of mineral interests in properties, exploration, development and productions of oil and gas. The Guidance Note suggests that there are two alternative methods for accountings for acquisition, exploration and development costs viz.

(a) Successful Efforts Method (SEM) and

(b) Full Cost Method (FCM). On overall considerations SEM is recommended to be the preferred method. The Guidance Note is under revision.

The 2013 edition of this Guidance Note comes into effect in respect of accounting periods commencing on or after 1st April, 2013. The revised Guidance Note includes accounting for acquisition phase, nature of operations like side tracking, accounting for impairment, definition of industry specific terms particularly reserves, presentation and disclosure requirements.

2.05 Accounting treatment for MODVAT/CENVAT

The Guidance Note provides the guidance in respect of accounting for MODVAT and CENVAT credits. The Guidance Note also discusses briefly the salient features of MODVAT and CENVAT credit schemes. The treatment of these credits in valuation of inventory of inputs as well as capital goods is also given herein.

2.06 Measurement of Income Tax for Interim Financial Reporting in the context of AS 25

The Guidance Note explains the measurement of provision for tax in preparation of the interim financial reporting statements.

2.07 Accounting for Credit Available in Respect of Minimum Alternative Tax under the Income-tax Act, 1961

The Finance Act, 1997 introduced the amendments in Income-tax Act, 1961 by which the Minimum Alternative Tax (MAT) paid could be carried forward and set-off for five succeeding years. The guidance for the accounting treatment for carried forward credit is given in the Guidance Note. Whether MAT credit can be considered as an asset? If so how it should be presented in the financial statements is given.

2.08 Accounting by Schools

The Guidance Note recommends application of sound accounting principles pertaining to recognition, measurement and disclosure of various items of income and expenses, assets and liabilities in the financial statements of schools keeping in view the peculiarities of the activities and formats of financial statements keeping in view not-for-profit being the objective of the school, with a view to harmonise the accounting practices being followed.

2.09 Accounting for State-level Value Added Tax

The State-level Value Added Tax comes into effect from 1st April, 2005 in place of the sales tax structure prevalent in various States. This Note provides guidance in respect of accounting various aspects of State-level Value Added Tax (VAT) including accounting for credit/set off available for input tax paid on purchases and accounting for VAT payable on sales.

2.10 Accounting for Employee Share-based Payments

Some employers use share-based payments as a part of remuneration package for their employees. This Guidance Note establishes financial accounting principles for employee share-based payment plans, viz., ESOPs, ESPPs and stock appreciation rights.

2.11 Accounting Treatment for Excise Duty

This Note discusses the nature of excise duty and recommends that excise duty should be treated as a manufacturing expense and included in inventory valuation. Where provision for such liability is not made in the accounts, the auditor should qualify his report.

2.12 Accounting for Corporate Dividend Tax (CDT)

The Note recommends that the liability for CDT should be recognised in the accounts of the year in which the dividend is recognised by a separate disclosure 'below the line'. The liability on account of CDT should be disclosed separately under the head 'Provisions' in the Balance Sheet.

2.13 Turnover in case of Contractors

This Guidance Note deals with the issue whether the revenue recognised in the financial statements of contractors as per the requirements of Accounting Standard (AS) 7, Construction Contracts (revised 2002), can be considered as 'turnover'.

2.14 Applicability of AS 25 to Interim Financial Results

This Guidance Note deals with the issue whether Accounting Standard (AS) 25, Interim Financial Reporting, is applicable to interim financial results presented by an enterprise pursuant to the requirements of a statute/ regulator, for example, quarterly financial results presented under Clause 41 of the Listing Agreement entered into between Stock Exchanges and the listed enterprises.

2.15 Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities (Issued May 15, 2015)

This Guidance Note provides guidance on recognition, measurement, presentation and disclosure of expenditure on activities relating to corporate social responsibility. It does not deal with identification of activities that constitute CSR activities but only provides guidance on accounting for expenditure on CSR activities in line with the requirements of the generally accepted accounting principles including the applicable Accounting Standards. It shall be effective from its date of issuance.

2.16 Guidance Note on Accounting for Derivative Contracts (Issued 2015)

The objective of this Guidance Note is to provide guidance on recognition, measurement, presentation and disclosure for derivative contracts so as to bring uniformity in their accounting and presentation in the financial statements. This Guidance Note also provides accounting treatment for such derivatives where the hedged item is covered under notified Accounting Standards, e.g., a commodity, an investment, etc., because except AS 11, no other notified Accounting Standard prescribes any accounting treatment for derivative accounting. This Guidance Note, however,

does not cover foreign exchange forward contracts which are within the scope of AS 11. This Guidance Note is an interim measure to provide recommendatory guidance on accounting for derivative contracts and hedging activities considering the lack of mandatory guidance in this regard with a view to bring about uniformity of practice in accounting for derivative contracts by various entities.

2.17 Guidance Note on Accounting for Real Estate Transactions (Revised 2012) (w.e.f. 1-4-2012)

This Guidance Note recommends accounting treatment by enterprises dealing in 'Real Estate' as sellers or developers. The term 'real estate' refers to land as well as buildings and rights in relation thereto. Enterprises who undertake such activity are generally referred to by different terms such as 'real estate developers', 'builders' or 'property developers'.

2.18 Guidance Note on Accounting for Rate Regulated Activities

This Guidance Note deals with the effects on an entity's financial statements of its operating activities that provide goods or services whose prices are subject to cost-of-service regulation. The objectives of this Guidance Note are to recommend:

(i) The recognition of a regulatory asset or regulatory liability if the regulator permits the entity to recover specific previously incurred costs or requires it to refund previously collected amounts and to earn a specified return on its regulated activities by adjusting the prices it charges to its customers;

(ii) The measurement basis of a regulatory asset or regulatory liability both on initial recognition and at the end of each subsequent reporting period; and

(iii) The disclosures that identify and explain the amounts recognised in the entity's financial statements arising from a regulatory asset or regulatory liability and assist users of those financial statements to understand the nature and financial effects of its rate-regulated activities.

2.19 Guidance Note on Accounting for Self-generated Certified Emission Reductions (CERs) (Issued 2012)

This Guidance Note deals with accounting for Certified Emission Reductions (CERs). This Guidance Note does not address the accounting issues involved in carbon credits under Joint Implementation and International Emission Trading — the other two mechanisms under the Kyoto Protocol. This Guidance Note also does not deal with purchased CERs or with the use of CERs in own business.

2.20 Guidance Note on Accounting and Auditing of Political Parties (Issued 2012)

This Guidance Note contains a standardised framework for preparation and presentation of financial statements of Political Parties, using sound accounting principles pertaining to recognition, measurement and disclosures. The guidance provided under this Guidance Note is applicable to the Political Parties registered with the Election Commission of India under the Representation of People Act, 1951.

2.21 Guidance Note on Accounting for Depreciation in companies in the context of Schedule II to the Companies Act, 2013

The Guidance Note provides guidance on multiple shift depreciation, revaluation of assets, as well as component approach besides providing guidance on estimation of residual value, depreciation on low value items, pro rata depreciation etc. Few illustrations have also been included with view to provide guidance on application of the principles provided in the Guidance Note.

2.22 Guidance Note on Combined and Carve–Out Financial Statements (September 2016)

This Guidance Note provides the meaning of combined/ carve-out financial statements, indicative situations in which these may be required to be prepared and procedure for preparation of the same and required disclosures. This Guidance Note applies in the preparation and presentation of combined/carve-out financial statements.

2.23 Guidance Note on Accounting for Oil and Gas Producing Activities (Ind AS)

This Guidance Note is to provide guidance on the accounting principles contained in Ind ASs to accounting for costs incurred on activities relating to acquisition of interests in properties, exploration, development and production of oil and gas.

3 Guidance Notes on Auditing Aspects

3.1 Provision for Proposed Dividend

This Guidance Note summarises the Council's view regarding the responsibility of the auditor relating to the provision for and disclosure of proposed dividend and replaces all earlier statements on this subject.

3.2 Auditing of Accounts of Liquidators

Members of the profession are called upon to conduct the audit of the accounts submitted by a Liquidator in a voluntary winding-up under Section 551. There are no statutory provisions in regard to the manner of conducting such audit, nor is there any statutory provision regarding the form in which the auditors' report is to be submitted after such an audit under Section 551. The Research Committee has considered this question in all its aspects and gave its recommendations in this connection in this pronouncement.

3.3 Guidance Note on Independence of Auditors (Revised)

This Guidance Note aims to clarify the meaning of independence while performing their duties as Auditors. Professional integrity and independence is an essential characteristic of all the professions but is more so in the case of accountancy profession. Independence implies that the judgment of a person is not subordinate to the wishes or direction of another person who might have

engaged him, or to his own self-interest. This Guidance Note provides guidance to the members about the specific circumstances and relationships that may create threats to independence. The Guidance Note also provides safeguards that should be employed by the auditors to mitigate the risk arising from such circumstances and relationship leading to the threats to independence.

3.4 Preparation of Financial Statements on Letter-heads and Stationery of Auditors

The Research Committee's attention has been drawn to the fact that financial statements of some enterprises are prepared on letter-heads and stationery of their auditor carrying the latter's names and address. The Committee wishes to point out that the above practice is liable to be misinterpreted and, as such, should be avoided. The members are, therefore, requested to note and follow the above recommendation.

3.5 Guidance Note on Certificate to be Issued by the Auditor of a Company Pursuant to Companies (Acceptance of Deposits) Rules, 1975

The Companies (Acceptance of Deposits) Amendment Rules, 1978 promulgated on 30th March, 1978 to amend the Companies (Acceptance of Deposits) Rules, 1975 issued under Section 58A of the Companies Act, inter alia, have introduced a new requirement of certification of the Return of Deposits to be filed with the Registrar of Companies under Rule 10, by the auditor of the Company. There are inherent practical problems involved in this certification. Having regard to the problems, this Guidance Note had been issued for aiding the members in correctly understanding the implications involved and for securing uniformity in approach.

3.6 Guidance Note on the Duty Cast on the Auditors under Section 45-MA of the Reserve Bank of India Act, 1934

The Reserve Bank of India (Amendment) Act, 1974 has inserted a new Section 45-MA in the Reserve Bank of India Act, 1934 with effect from 13th December, 1974. This Section requires the auditors of non-banking institutions to enquire whether or not the institution, in case it has accepted deposits, has furnished to the Reserve Bank of India statements, information or particulars relating to the 'deposits' as are required to be furnished under Chapter IIIB of the Reserve Bank of India Act. The Guidance Note provides guidance on the Duty Cast on the Auditors under the above Section of the RBI Act, 1934.

3.7 Guidance Note on Reports or Certificates for Special Purposes (Revised 2016)

The Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) was issued in October 2016. This Guidance Note is thoroughly revised edition of the Guidance Note on Audit Reports and Certificates for Special Purposes issued in 1984. The Guidance Note provides detailed guidance on engagements which require practitioners to issue reports or certificates for special purposes e.g. reports/certificates required under various laws and statutes or those required by management of entities for their own special purposes. The main highlights of this Guidance Note are given below:—

1 The Guidance Note provides guidance in the situations where format of assurance report has been prescribed under the applicable laws or regulations.

2 The Guidance Note also provides guidance in the situations where assurance report issued by practitioner in accordance with the Guidance Note is rejected by the concerned authorities.

3 The Guidance Note contains illustrative formats of reports or certificates for special purposes.

3.8 Guidance Note on Section 293A of the Companies Act and the Auditor

The hitherto complete ban on any contribution by companies to any political party or for any political purpose was relaxed to a great extent by the Companies (Amendment) Act, 1985, by which the provisions of the then existing Section 293A of the Companies Act, 1956 were totally substituted with effect from 24-5-1985, the day on which the said Amendment Act of 1985 received the assent of the President of India. For ready reference, the old Section 293A as well as the new one are reproduced in an Annexure to this Guidance Note. The Guidance Note lays down guidance for auditors' duties in this regard.

3.9 Guidance Note on Audit of Property, Plant and Equipment

This Guidance Note has replaced the Guidance Note on Audit of Fixed Assets. The Guidance Note provides Guidance to the members on audit of property, plant and equipment. The Guidance Note does not apply to audit of investment property and intangible assets.

3.10 Guidance Note on Audit of Accounts of Non-Corporate Entities (Bank Borrowers)

The Institute issued this Guidance Note in 1985 when RBI issued a circular advising all scheduled banks to ensure that non-corporate borrowers enjoying aggregate working capital credit limits of ` 10 lakh or more from the banking system get their accounts audited by chartered accountants in the prescribed manner. The aspects covered by the Guidance Note include: Introduction, the relevant circular of the Reserve Bank of India, books of account and records, formats of financial statements, audit procedures, audit report, special audit report, non-corporate entities and credit facility, financial statements, profit & loss account, depreciation, taxation, balance sheet, funds flow statement, reporting requirements and special audit.

3.11 Guidance Note on Reports in Company Prospectuses (Revised 2019)

The Guidance Note on Reports in Company Prospectuses (Revised 2019) was issued in January , 2019. The purpose of this Guidance Note is to provide guidance on compliance with the provisions of the Companies Act, 2013

and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended), relating to the reports required to be issued by chartered accountants in prospectus issued by the companies for the offerings made in India.

3.12 Guidance Note on Certification of Documents for Registration of Charges

Companies registered under the Companies Act, 1956 ('the Act') are required to file periodically, various forms and documents with the Registrar of Companies, as prescribed under the Act. The Department of Company Affairs has issued two circulars, whereunder Registrars of Companies ('the Registrar') are to take on record documents relating to charges filed by companies, duly certified as correct by a chartered accountant/cost accountant/company secretary, in practice, within a reasonable period. This Guidance Note deals with the certification of the forms relating to registration, modification and satisfaction of charges by a practising chartered accountant and provide guidance on the important aspects, which should be kept in mind while certifying the forms.

3.13 Guidance Note on Audit of Inventories

The Guidance Note deals with procedures of the auditor in respect of audit of inventories. It outlines the peculiar features of inventories, which impact the audit procedures. It covers important aspects of audit of inventories such as internal control evaluation, verification, examination of records, attendance at stock taking, confirmation from third parties, examination of valuation and disclosures, analytical review procedures, special considerations in case of work-in-progress, management representations, documentation by the auditor. The Guidance Note also gives illustrated set of instructions to be issued by the client to its staff responsible for stock taking, illustrative letter of confirmation of inventories held by others, illustrative letter of confirmation of inventories held by the entity on behalf of others and an illustrative management representation letter for inventories.

3.14 Guidance Note on Audit of Investments

This Guidance Note deals with the procedures that might be employed by the auditor for auditing investments. The Guidance Note also throws light on the exceptional features of investments which have an impact on the audit procedures. The important aspects of audit of investments covered by the Guidance Note are internal control evaluation, verification of transactions, physical verification, examination of valuation and disclosures, analytical review procedures, management representations.

The Guidance Note, for the benefit of the members, also give a gist of legal requirements, including disclosure norms, relating to investments under certain prominent statutes, illustrative letter of confirmation for investments held by banks, and management representation letter for investments.

3.15 Guidance Note on Audit of Debtors, Loans and Advances

The Guidance Note deals with the audit procedures that might be employed by the auditor in case of audit of debtors, loans and advances. The relevant areas covered by the Guidance Note are internal control evaluation in respect of debtors, verification: audit evidence regarding existence, completeness, valuation and disclosure, examination of records, special considerations in case of loans and advances, direct confirmation procedures, analytical review procedures, disclosure, management representations, documentation. The Guidance Note also contains illustrative confirmation letters to be sent to debtors and management representation letter for debtors, loans and advances.

3.16 Guidance Note on Audit of Cash and Bank Balances

The Guidance Note deals with the audit procedures that might be employed by auditor while auditing cash and bank balances. The relevant areas covered by the Guidance Note are internal control evaluation, verification of cash balances, verification of bank balances, examination of valuation and disclosure. The Guidance Note also gives an illustrative letter of confirmation for bank balances.

3.17 Guidance Note on Audit of Liabilities

This Guidance Note contains recommended audit procedures in case of audit of liabilities. The relevant areas discussed in the Guidance Note are internal control evaluation in respect of loans and borrowings, internal control evaluation in respect of trade creditors, current liabilities, provisions, trade deposits, examination of records of loans and borrowings, examination of records of trade creditors and other current liabilities, examination of records of provisions, examination of records of contingent liabilities, direct confirmation procedures, examination of disclosures, analytical review procedures, special considerations in case of a company: compliance with the relevant sections of the Companies Act, 1956, management representations, documentation. The Guidance Note also contains illustrative letter of confirmation to be sent to creditors and management representation letter for liabilities and contingencies.

3.18 Guidance Note on Audit of Revenue

The Guidance Note contains recommended audit procedures in case of audit of revenue. The areas covered by the Guidance Note are:—

- Assertions Regarding Revenue: Occurrence, completeness, measurement, presentation and disclosure
- Internal Control Evaluation
- Examination of Records: Compliance with AS 9, cut-off procedures, sales journal, dispatch documents, sales to intermediate parties, realisation in installments, export sales, revenue from services rendered

– Examination of Presentation and Disclosure
– Analytical Procedures: comparison of various relevant components of revenue
– Special Considerations in Case of a Company: compliance with relevant statutory requirements
– Documentation

3.19 Guidance Note on Certification of Corporate Governance (Revised)

This Guidance Note provides guidance to the members while certifying corporate governance pursuant to clause 49 of the Listing Agreement. The important aspects covered by the Guidance Note are management's responsibility, auditor's responsibility, general principles, documentation, verification of compliance of conditions of corporate governance: board of directors, audit committee, remuneration of directors, board procedures, management, shareholders, report on corporate governance, management representations, auditor's certificate, role of auditor in audit committee and certification of corporate governance. The appendices to the Guidance Note contain the circular issued by the Secondary Market Department of SEBI on the extent of applicability of Clause 49 of the Listing Agreement to the listed entities which are body corporates but not companies, clause 49 of the Listing Agreement, and the format of the certificate to be issued by the auditor pursuant to clause 49.

3.20 Guidance Note on Section 227(3)(e) and (f) of the Companies Act, 1956 (Revised)

The above Guidance Note provides guidance to the members regarding reporting on clauses (e) and (f) of sub-section 3 of Section 227 of the Companies Act, 1956 which were inserted by the Companies (Amendment) Act, 2000. The Institute issued the Guidance Note on the same in the year 2001. The Department of Company Affairs, in the year 2003, notified the Companies (Disqualifications of Directors under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003. Though the issuance of the said Rules did not per se change the scope of the statutory audit of the companies or the reporting responsibilities under Section 227(3) of the Companies Act, 1956, yet they did have an implication on Sections 227(3)(e) and (f) and 274(1)(g). Thus, to help the members understand the said Rules and their implications and properly fulfil their duties as auditors the Institute has revised the Guidance Note originally issued in the year 2001.

The introductory part of the Guidance Note contains the reporting requirements for the auditors under Section 227(3) of the Companies Act, 1956. It also throws light on the guidance in respect of the same provided by the Statement on Qualifications in the Auditor's Report, issued by the Institute.

The section dealing with clause (e) begins with the requirements of the newly inserted clause. It then goes on to interpret the phrase "adverse effect on the functioning of the company" since the Companies Act is silent on the meaning of the phrase. The Guidance Note then dwells upon the change, if any, in the scope of the audit and the auditor's role pursuant to the insertion of the said clause. It also deals with the treatment of the negative or adverse remarks of the auditor in the report under CARO, 2003 vis-a-vis the requirements of clause (e).

The next part of the Guidance Note deals with the reporting requirements under clause (f) of sub-section (3) of Section 227 of the Companies Act, 1956. It guides the members as to the harmonious interpretation of clause (f) of Section 227(3) with Section 274(1)(g) of the Companies Act, 1956. The Revised Guidance Note also contains illustrative auditor's report under various situations as well as the illustrative format of the auditor's certificate envisaged by the Companies (Disqualifications of Directors under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003.

3.21 Guidance Note on Audit of Expenses

This Guidance Note deals with the illustrative audit procedures that might be employed by the auditors in auditing various items of expenses. The introductory part of the Guidance Note deals with the explanation of the term "expense" and the different approaches to identify the expense. It also deals with the peculiar features of "expenses" which impact the audit procedures as also the assertions to be examined in respect thereof. The relevant aspects of audit of expenses covered by the Guidance Note are Internal Control Evaluation, Verification – Examining Records and Analytical Procedures, Examination of Presentation and Disclosure, Management Representation, Documentation, Special Considerations in the Case of a Company. The Guidance Note also contains illustrative audit procedures for the following items of expenses, viz., goods and raw materials consumed, purchases and purchase returns, wages and salaries, bonus, retirement benefits, other conversion costs, establishment and general administrative expenses, interest and financial charges, depreciation, research and development expenses, repairs and maintenance, contingencies, and taxes on income.

3.22 Guidance Note on Audit of Miscellaneous Expenditure (Revised)

Though the Institute had in October 1995 issued the Guidance Note on Audit of Miscellaneous Expenditure Shown in Balance Sheet, the same has been revised pursuant to the issuance of the Accounting Standard 26 and the changed accounting principles in respect of intangible assets contained therein.

The revised Guidance Note contains detailed guidance for auditors in respect of audit of various items covered under "Miscellaneous Expenditure", for example, preliminary expenses, commission or brokerage on underwriting or subscription of shares etc. The issues touched upon by the Guidance Note include internal control evaluation, verification and disclosure of such expenditure pursuant to issuance of AS 26.

3.23 Guidance Note on Audit of Consolidated Financial Statements (Revised 2016)

The Guidance Note on Audit of Consolidated Financial Statements (Revised 2016) was issued in October 2016. The basic objective of the Guidance Note is to provide detailed guidance to the members in understanding and resolving critical issues that might arise while auditing consolidated financial statements, for example, the objective of audit of consolidated financial statements, expectations from the auditors of consolidated financial statements vis-a-vis applicability of Engagement and Quality Control Standards (Formerly known as Auditing and Assurance Standards) to audit of consolidated financial statements, salient features of consolidated financial statements having an impact on audit thereof, types of consolidated adjustments, reporting responsibilities, situations where the auditor of parent's financial statements is also the auditor of the consolidated financial statements and situations where he is not. The appendices to the Guidance Note contain illustrative formats of audit reports on consolidated financial statements and the Definitions of Terms used in the Guidance Note.

3.24 Guidance Note on Computer Assisted Audit Techniques (CAATs)

The Guidance Note deals extensively, with the concept of CAATs and related pertinent issues such as what CAATs are, where they may be used, considerations in use of CAATs, how to use CAATs, testing of CAATs, controlling application of CAATs, documentation required when using CAATs, use of CAATs in small entities, etc. The Guidance Note also contains a comprehensive appendix containing examples of CAATs, their description and comparable advantages and disadvantages of each of these CAATs.

3.25 Guidance Note on Audit of Payment of Dividend

The Auditing and Assurance Standards Board of the Institute of Chartered Accountants of India had issued the Guidance Note on Audit of Payment of dividend in order to keep the members abreast in resolving the technical intricacies involved in auditing of payment of dividend. The Guidance Note deals, in detail, about internal control evaluation and various verification procedures required to be done by the auditor in audit of payment of dividend. The Guidance Note takes into account both, corporate as well as non-corporate entities. The Appendix to the Guidance Note contains extracts of various relevant Acts and Rules relating to payment of dividend, the objective being to make the Guidance Note a complete, self-contained document for use by the members and others.

3.26 Guidance Note on Audit of Capital and Reserves

The Auditing and Assurance Standards Board of Institute of Chartered Accountants of India (ICAI) had issued the Guidance Note on Audit of Capital and Reserves in order to keep the members abreast in resolving the technical intricacies involved in auditing of capital and reserves. The Guidance Note discusses the auditing aspect of capital and reserves separately. It deals in detail, with different principle related aspects dealing with the audit of capital and reserves including implications of key legal requirements. This Guidance Note not only gives special consideration to companies but partnerships and sole proprietary concerns as well. The Guidance Note also incorporates circulars issued by the Government and other regulatory authorities wherever applicable.

The Guidance Note discusses significant aspects of audit of capital and reserves such as evaluation of internal controls and verification, the audit evidence, the auditing procedure to be followed in case of issue of shares for consideration other than cash and in case of issue of Sweat Equity shares etc. The Guidance Note also deals with various types of reserves and their accounting treatment while discussing auditing aspects. It also lays down the documentation requirements for the audit of capital and reserves.

3.27 Guidance Note on Certification of XBRL Financial Statements

The objective of the Guidance Note is to provide guidance to the practitioners in certification of XBRL formatted statements in terms of the requirements of the Ministry's General Circular No. 57/2011 dated July 28, 2011 read with MCA's General Circular No. 43/2011 dated July 7, 2011. These Circulars require that besides signing by signatories as specified under Section 215 of the Companies Act, 1956, the financial statements prepared in XBRL mode for filing on MCA-21 portal would also need to be certified by, inter alia, a Chartered Accountant. The financial statements referred here would mean the balance sheet, the profit and loss account, the cash flow statements and the related notes to account. The text of relevant circulars issued by the MCA in respect of XBRL mode financial statements in India is given in APPENDIX B to this Guidance Note.

3.28 Guidance Note on Reporting on Fraud under Section 143(12) of the Companies Act, 2013 (Revised 2016)

The Guidance Note gives detailed guidance to the members regarding requirements for Reporting on Fraud under the Companies Act, 2013. The Guidance Note covers aspects such as Introduction, Issues for Consideration by Auditors for Reporting under Section 143(12), applicability of Standards on Auditing, Technical Guidance on Reporting on Fraud under Section 143(12). The Appendices to Guidance Note contain illustrative matters for engagement team discussion on fraud, illustrative checklist for inquiries with board/audit committee, management and internal auditor, illustrative Fraud Risk Factors, Illustrative Possible Audit Procedures to Address the Assessed Risks of Material Misstatement due to Fraud, illustrative format for reporting to board or the audit committee on fraud, Form ADT-4 and illustrative Management Representation Letter.

3.29 Guidance Note on Reporting under Sections 143(3)(f) and (h) of the Companies Act, 2013

This Guidance Note is intended to assist the auditors in discharging their duties in respect of clauses (f) and (h) of sub-section (3) of section 143 of the Companies Act, 2013. Clause (f) of the said sub-section creates a requirement for the auditor to consider his observations or comments on financial transactions or matters which have an adverse effect on the functioning of the company. Such observations or comments would ordinarily lead to the modification of auditor's report or an emphasis of matter paragraph in the auditor's report on financial statements.

3.30 Guidance Note on Audit of Internal Financial Controls over Financial Reporting

The Guidance Note gives detailed guidance to the members regarding requirements for reporting on internal financial controls under the Companies Act, 2013. The Guidance Note covers aspects such as Background, Scope of reporting on internal financial controls under Companies Act, 2013, Overview of internal controls as per SA 315, Technical guidance on audit of Internal Financial Controls, Implementation guidance on audit of Internal Financial Controls. For the benefit of the members, the Appendices to the Guidance Note include Illustrative Engagement Letter, Illustrative Management Representation Letter, Illustrative Reports on Internal Financial Controls, Illustrative Risks of Material Misstatement, Related Control Objectives and Control Activities, Text of Standard on Internal Audit (SIA) 5 – Sampling, Examples of Control Deficiencies,. The illustrative formats of the report on internal financial controls also include an illustrative format in case of audit of consolidated financial statements.

3.31 Guidance Note on the Companies (Auditor's Report) Order, 2016

The Ministry of Corporate Affairs issued the Companies (Auditor's Report) Order, 2016 (CARO 2016) vide Order dated 29th March 2016. The Order would be applicable for audit of the financial statements for the period beginning on or after April 1, 2015. The Order contains several changes and new reporting requirements which were not covered in earlier CARO. These substantial changes made by the CARO 2016 necessitated the revision of the Statement on CARO 2003 earlier issued by ICAI. This Guidance Note supersedes the earlier Statement on CARO 2003 for audit of financial statements for the period beginning on or after April 1, 2015. The Guidance Note contains detailed guidance for the members on the various Clauses of CARO 2016 and the various issues and intricacies involved therein.

4 Industry Specific Guidance Notes

4.1 Guidance Note on Audit of Banks 2019 Edition

The Guidance Note on Audit of Banks is an important resource that provides detailed guidance to the bank auditors on the various aspects of bank audits. The 2019 edition of Guidance Note *inter alia*, has been updated for the impact of developments that have taken place in the Banking Sector which requires attention of Statutory Auditors, such as, Master Directions/Circulars and other relevant circulars issued by RBI, relevant pronouncements of the ICAI having bearing on bank audits, amendments/ changes in applicable laws or regulations. For the benefit of the members, the CD accompanying the Guidance Note contains Illustrative formats of Engagement Letter, Auditor's Report both in case of Nationlised Banks and Banking Companies, Mangement Representation Letter, Illustrative list of special purpose/exception reports in CBS, Illustrative audit checklist for capital adequacy, Illustrative checklist on audit considerations in a CIS Environment, Features of the Gold Monetization Scheme, Suggested Abbreviations used in the Banking Industry, Basis of Selection of Advances Accounts in case of bank branch audit, updated bank branch audit programme for the year 2018-19, Verification of the aspects of the Treasury/ Investments of the Bank in Statutory Audit, Flow Charts for Use of Core Banking Solution software in case of Bank Branch Audit, the text of Master Directions, Master Circulars and other relevant Circulars issued by RBI.

4.2 Audit of Accounts of Members of Stock Exchanges (Revised)

This industry specific Guidance Note provides guidance to the members in carrying out an audit of accounts of members of stock exchanges. The Guidance Note also aims to assist the members in effective and efficient discharge of such engagements by, among other things, strengthening their knowledge of the business being carried on by the members of stock exchanges.

4.3 Audit of Companies Carrying on General Insurance Business

The Guidance Note provides detailed guidance on various important aspects of the audit of companies in the business of general insurance. It deals extensively with the basic knowledge about the Industry, which the auditors need to possess to effectively conduct audit of a general insurance company. The Guidance Note begins with by giving a brief background of the insurance industry, evolution of the Industry, its regulation, organisation structure of the insurance companies, and the scope of the Guidance Note.

4.4 Audit of Companies Carrying on Life Insurance Business

This Guidance Note provides detailed guidance to the members in discharge of their work as an auditor of a life insurance company. The following points give a brief insight into the relevant aspects of audit of an iInsurance company covered by the Guidance Note:

- ***Introduction***: Evolution and regulation of the insurance business, organisation structure in a life insurance company, scope of the Guidance Note.
- ***Principles of Life Insurance***: Life insurance contract, risk, principles of life insurance, classes of life insurance policies – endowment, whole life,

convertible whole life, money back, children's deferred assurance, pension plan etc.

- ***Legal Framework***: Insurer, registration of insurer, certification of soundness of terms of policy, appointment of actuary, regulation on advertisement, requirement of share capital and deposits, important provisions of Insurance Act, 1934, Insurance Rules, 1939, Companies Act, 1956, Income-tax Act, 1961, applicable accounting standards, corporate governance, statutory books and returns, valuation of assets, liabilities for solvency margin, valuation of assets and liabilities etc.
- ***Accounting Framework and System***: Accounting system, accounting records, work flow in life insurance companies, accounting framework, comparison of accounting treatments/formats in pre and post-IRDA period, accounting policies and in formation, signatures and reports to be attached with accounts and statements, conformity with accounting standards.
- ***Auditing Framework***: Audit of accounts, qualifications of auditor, appointment of auditor, remuneration of auditor, power of auditor, auditor's report, audit of branch vis-a-vis head office, engagement letter, developing audit plan and audit programme, co-ordination with branch management and branch auditor.
- ***Internal Controls***: Salient features in case of life insurance companies, specific internal control procedures in life insurance companies, use of service organisations, compliance with regulations, independent checks, internal audit, investigation and inspection powers of IRDA.
- ***Audit of Branch/Divisional Office***: Items under policyholders' account, limitation on expenses of management, funds for future appropriation.
- Audit at Head Office: Areas of audit, scrutiny of head office accounts, consolidation of branch/divisional/ regional offices' accounts, verification of important items of revenue account, profit and loss account and balance sheet.
- ***Audit of Reinsurance:*** Definitions, types, accounting aspects, legal requirements regarding reinsurance, segment-wise audit of reinsurance.
- ***Investments:*** Legal requirements, IRDA guidelines, prudential norms, other considerations, balance sheet disclosures, valuation of investments, investment committee, audit procedures, reporting considerations. The appendices to the Guidance Note contain the Revenue Account and the specimen auditor's report.

Guidance Note on tax Audit u/s. 44AB of the Income-tax Act, 1961 — Edition 2014

The Guidance Note explains the scope of Tax Audit requirements. It has been emphasised that in any audit assignment the general principles of audit have to be followed. The members accepting these assignments will have to use their professional skill and expertise while expressing their opinion on the financial statements and other particulars required to be stated.

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Summary of Standards of Auditing (SA) issued by Institute of Chartered Accountants of India

BRIEF ABOUT THE ENGAGEMENT AND QUALITY CONTROL STANDARDS

1. SQC 1, Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements

- This Standard is mandatory for all engagements relating to accounting periods beginning on or after April 1, 2009.
- The purpose of this Standard is to establish standards and provide guidance regarding a firm's responsibilities for its system of quality control for audits and reviews of historical financial information, and for other assurance and related services engagements. This Standard is to be read in conjunction with the requirements of CA Act, 1949, Code of Ethics and other relevant pronouncements of ICAI.
- It requires the audit firms to establish a system of quality control designed to provide it with reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partner(s) are appropriate in the circumstances.
- As per this Standard, the firm's system of quality control should include policies and procedures addressing each of the following elements:
  - o Leadership responsibilities for quality within the firm.
  - o Ethical requirements.
  - o Acceptance and continuance of client relationships and specific engagements.
  - o Human resources.
  - o Engagement performance.
  - o Monitoring.

2. SA 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It establishes the independent auditor's overall responsibilities when conducting an audit of financial statements in accordance with SAs. Specifically, it sets out the overall objectives of the independent auditor, and explains the nature and scope of an audit designed to enable the independent auditor to meet those objectives.
- It also explains the scope, authority and structure of the SAs, and includes requirements establishing the general responsibilities of the independent auditor applicable in all audits, including the obligation to comply with the SAs.
- SA 200 is the mother Standard for all SAs as it provides the authority for other SAs.

3. SA 210, Agreeing the Terms of Audit Engagements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibilities in agreeing the terms of the audit engagement with management and, where appropriate, those charged with governance. This includes establishing that certain preconditions for an audit, responsibility for which rests with management and, where appropriate, those charged with governance, are present.
- It requires the auditor to agree the terms of audit engagement with the management and establishing that preconditions for an audit are present.

4. SA 220, Quality Control for an Audit of Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the specific responsibilities of the auditor regarding quality control procedures for an audit of financial statements. It also addresses, where applicable, the responsibilities of the engagement quality control reviewer.
- It covers various aspects of system of quality control viz. Leadership Responsibilities for Quality on Audits, Relevant Ethical Requirements, Acceptance and Continuance of Client Relationships and Audit Engagements, Assignment of Engagement Teams, Engagement Performance, Monitoring and Documentation.

5. SA 230, Audit Documentation

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It deals with the auditor's responsibility to prepare audit documentation for an audit of financial statements. The specific documentation requirements of other SAs do not limit the application of this SA. Laws or regulations may establish additional documentation requirements.
- It provides principles regarding what to document, how to document, how long to retain audit documentation.

6. SA 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It deals with the auditor's responsibilities relating to fraud in an audit of financial statements. Specifically, it expands on how SA 315 and SA 330, are to be applied in relation to risks of material misstatement due to fraud.
- It provides responsibilities of the management and the auditor regarding fraud in an audit of financial statements. It also provides various procedures to be followed by the auditor to comply with this SA.

7. SA 250, Consideration of Laws and Regulations in an Audit of Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.

- It deals with the auditor's responsibility to consider laws and regulations when performing an audit of financial statements. This SA does not apply to other assurance engagements in which the auditor is specifically engaged to test and report separately on compliance with specific laws or regulations.
- It provides responsibilities of the management and the auditor regarding compliance with laws and regulations in an audit of financial statements. It also provides various procedures to be followed by the auditor to comply with this SA.

8. SA 260(Revised), Communication with Those Charged with Governance

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2017.
- This Standard deals with the auditor's responsibility to communicate with those charged with governance in an audit of financial statements.
- It does not establish requirements regarding the auditor's communication with an entity's management or owners unless they are also charged with a governance role.
- The standard provides principles regarding:
  - To whom to communicate,
  - Matters to be communicated,
  - Manner of communication.

9. SA 265, Communicating Deficiencies in Internal Control to Those Charged with Governance and Management

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibility to communicate appropriately to those charged with governance and management deficiencies in internal control that the auditor has identified in an audit of financial statements.
- It does not impose additional responsibilities on auditor regarding obtaining an understanding of internal control and designing and performing tests of controls over and above the requirements of SA 315 and SA 330.
- It provides principles regarding whom to communicate deficiencies, manner of communication of different types of deficiencies.

10. SA 299(Revised), Joint Audit of Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- The standard contains requirements and application guidance regarding the following aspects:
  - Audit Planning, Risk Assessment and Allocation of Work.
  - Responsibility and Co-ordination among Joint Auditors.
  - Audit Conclusion and Reporting.
  - Communication with Those Charged with Governance.

11. SA 300, Planning an Audit of Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2008.
- It deals with the auditor's responsibility to plan an audit of financial statements. This SA is framed in the context of recurring audits. Additional considerations in initial audit engagements are separately identified.
- It covers various aspects of planning the audit engagement.

12. SA 315, Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2008.
- It deals with the auditor's responsibility to identify and assess the risks of material misstatement in the financial statements, through understanding the entity and its environment, including the entity's internal control.
- It covers various risk assessment procedures, how to obtain understanding of the entity, various components of internal controls.

13. SA 320, Materiality in Planning and Performing an Audit

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibility to apply the concept of materiality in planning and performing an audit of financial statements.
- This Standard covers various aspects of audit materiality like determining materiality during the planning stage, revision of materiality during the audit.

14. SA 330, The Auditor's Responses to Assessed Risks

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2008.
- It deals with the auditor's responsibility to design and implement responses to the risks of material misstatement identified and assessed by the auditor in accordance with SA 315.

15. SA 402, Audit Considerations Relating to an Entity Using a Service Organisation

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the user auditor's responsibility to obtain sufficient appropriate audit evidence when a user entity uses the services of one or more service organisations.
- This standard covers various considerations for an auditor when his client is using the services of service organization(s).

16. SA 450, Evaluation of Misstatements Identified During the Audit

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibility to evaluate the effect of identified misstatements on the audit and

of uncorrected misstatements, if any, on the financial statements.

- It covers various considerations for auditor regarding evaluation of misstatements identified during the audit.

17. SA 500, Audit Evidence

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It explains what constitutes audit evidence in an audit of financial statements and deals with the auditor's responsibility to design and perform audit procedures to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.
- This Standard explains the concept of sufficient appropriate audit evidence. It also covers various types of audit procedures for obtaining audit evidence.

18. SA 501, Audit Evidence—Specific Considerations for Selected Items

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with specific considerations by the auditor in obtaining sufficient appropriate audit evidence in accordance with SA 330, SA 500 and other relevant SAs, with respect to certain aspects of inventory, litigation and claims involving the entity, and segment information in an audit of financial statements.
- This SA covers additional audit procedures w.r.t. three specific items of financial statements viz. inventory, litigation and claims involving the entity and segment information.

19. SA 505, External Confirmations

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's use of external confirmation procedures to obtain audit evidence in accordance with the requirements of SA 330 and SA 500. It does not address inquiries regarding litigation and claims which are covered by SA 501.
- This SA covers aspects regarding considerations in using external confirmation procedures, management refusal to allow these procedures, results of these procedures, evaluation of evidence obtained.

20. SA 510, Initial Audit Engagements – Opening Balances

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibilities relating to opening balances when conducting an initial audit engagement. When the financial statements include comparative financial information, the requirements and guidance in SA 710 also apply.
- This SA covers audit procedures regarding opening balances. It also provides illustrative formats of auditor's report in case of opening balances.

21. SA 520, Analytical Procedures

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's use of analytical procedures as substantive procedures and as procedures near the end of the audit that assist the auditor when forming an overall conclusion on the financial statements.
- It provides various considerations for auditor in using analytical procedures.

22. SA 530, Audit Sampling

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- This SA applies when the auditor has decided to use audit sampling in performing audit procedures.
- It deals with the auditor's use of statistical and non-statistical sampling when designing and selecting the audit sample, performing tests of controls and tests of details, and evaluating the results from the sample.

23. SA 540, Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It deals with the auditor's responsibilities regarding accounting estimates, including fair value accounting estimates, and related disclosures in an audit of financial statements. Specifically, it expands on how SA 315 and SA 330 and other relevant SAs are to be applied in relation to accounting estimates.
- It also includes requirements and guidance on misstatements of individual accounting estimates, and indicators of possible management bias.

24. SA 550, Related Parties

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibilities regarding related party relationships and transactions when performing an audit of financial statements. Specifically, it expands on how SA 315, SA 330 and SA 240 are to be applied in relation to risks of material misstatement associated with related party relationships and transactions.
- This SA covers special audit considerations for auditor in case the entity has related party relationships and transactions with those parties.

25. SA 560, Subsequent Events

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It deals with the auditor's responsibilities relating to subsequent events in an audit of financial statements.
- It covers auditor's responsibilities for different types of subsequent events.

26. SA 570(Revised), Going Concern

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2017.

- The standard deals with the auditor's responsibilities relating to going concern and the implications for the auditor's report.
- The standard requires a separate section in audit report "Material Uncertainty Related to Going Concern" when a material uncertainty exists and disclosures in financial statements in this regard are adequate.
- The standard requires a modified opinion (qualified or adverse) when a material uncertainty exists and disclosures in financial statements in this regard are inadequate.
- It contains illustrations of auditor's report on Going Concern.

27. SA 580, Written Representations

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2009.
- It deals with the auditor's responsibility to obtain written representations from management and, where appropriate, those charged with governance.
- This SA covers aspects regarding from whom to obtain written representations, matters on which written representations needs to be obtained, date and period of written representations, form of written representations etc.

28. SA 600, Using the Work of Another Auditor

- This Standard is effective for all audits related to accounting periods beginning on or after April 1, 2002.
- This SA contains various principles when the principal auditor of a group uses the work of other auditors (auditors of the components of the group) in the case of group audits.

29. SA 610(Revised), Using the Work of Internal Auditors

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2016.
- It deals with the external auditor's responsibilities if using the work of internal auditors. This includes (a) using the work of the internal audit function in obtaining audit evidence and (b) using internal auditors to provide direct assistance under the direction, supervision and review of the external auditor.
- This SA does not apply if the entity does not have an internal audit function.

30. SA 620, Using the Work of an Auditor's Expert

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2010.
- It deals with the auditor's responsibilities regarding the use of an individual or organisation's work in a field of expertise other than accounting or auditing, when that work is used to assist the auditor in obtaining sufficient appropriate audit evidence.
- This SA covers various considerations for auditor in case he needs to use the work of an auditor's expert.

31. SA 700(Revised), Forming an Opinion and Reporting on Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- The Standard deals with the auditor's responsibility to form an opinion on the financial statements and also deals with form and content of the auditor's report.
- It provides the various elements of audit report.
- It contains Illustrations of auditor's report in case of unmodified opinions.
- It is the parent Standard for other reporting standards.

32. SA 701, Communicating Key Audit Matters in the Independent Auditor's Report"

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- It deals with auditor's responsibility to communicate key audit matters (KAM) in the auditor's report.
- It addresses both the auditor's judgment as to what KAM to communicate and the form and content of communication of KAM.
- It contains requirements and guidance for determining and communicating KAM.
- It explains the relationship of KAM with other elements of the audit report.

33. SA 705(Revised), Modifications to the Opinion in the Independent Auditor's Report

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- The Standard deals with the auditor's responsibility to issue an appropriate report in circumstances when, auditor is required to issue a modified opinion (i.e. qualified opinion or adverse opinion or disclaimer of opinion).
- It contains Illustrations of auditor's report in case of modified opinions.

34. SA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- The Standard deals with additional communication in auditor's report when the auditor considers it necessary to include an Emphasis of Matter (EOM) paragraph or Other Matter (OM) paragraph in the audit report.
- It explains the interrelationship between EOM and KAM and provides that EOM/OM cannot be used as substitute for KAM.
- It contains Illustrations of auditor's report containing EOM and OM paragraph.

35. SA 710, Comparative Information—Corresponding Figures and Comparative Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2011.
- It deals with the auditor's responsibilities regarding comparative information in an audit of financial statements. When the financial statements of the prior period have been audited by a predecessor auditor or were not audited, the requirements and guidance in SA 510 regarding opening balances also apply.

- This SA covers audit procedures and audit reporting regarding comparative information. It also provides Illustrative formats of auditor's report both for corresponding figures framework and comparative financial statements framework.

36. SA 720(Revised), "The Auditor's Responsibilities relating to Other Information"

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2018.
- This Standard deals with the auditor's responsibilities relating to other information, included in an entity's annual report.
- It provides that the auditor's responsibilities relating to other information (other than applicable reporting responsibilities) apply regardless of whether the other information is obtained by the auditor prior to, or after, the date of auditor's report.
- It contains Illustrations of auditor's report on Other Information.

37. SA 800, Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2011.
- It deals with the special considerations in the application of other SAs (SAs in 100-700 series) to an audit of financial statements prepared in accordance with a special purpose framework.
- This SA provides illustrative formats of auditor's report on financial statements prepared in accordance with a special purpose framework.

38. SA 805, Special Considerations—Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2011.
- This SA deals with special considerations in the application of other SAs (SAs in 100-700 series) to an audit of a single financial statement or of a specific element, account or item of a financial statement.
- This SA provides illustrative formats of auditor's report in case of single financial statements and in case of specific element/account/item of a financial statement.

39. SA 810, Engagements to Report on Summary Financial Statements

- This Standard is effective for audits of financial statements for periods beginning on or after April 1, 2011.
- It deals with the auditor's responsibilities when undertaking an engagement to report on summary financial statements derived from financial statements audited in accordance with SAs by that same auditor.
- This SA provides illustrative formats of auditor's report on summary financial statements.

40. SRE 2400(Revised), Engagements to Review Historical Financial Statements

- This Standard is applicable for reviews of financial statements for periods beginning on or after April 1, 2016.
- This Standard deals with the practitioner's responsibilities when engaged to perform a review of historical financial statements, when the practitioner is not the auditor of the entity's financial statements; and the form and content of the practitioner's report on the financial statements.
- This Standard does not address a review of an entity's financial statements or interim financial information performed by a practitioner who is the independent auditor of the entity's financial statements.

41. SRE 2410, Review of Interim Financial Information Performed by the Independent Auditor of the Entity

- This Standard is applicable for reviews of interim financial information for periods beginning on or after April 1, 2010.
- This Standard establishes standards and provides guidance on the auditor's professional responsibilities when the auditor undertakes an engagement to review interim financial information of an audit client, and on the form and content of the report.

42. SAE 3400, The Examination of Prospective Financial Information

- This Standard is effective in relation to reports on projections/forecasts, issued on or after April 1, 2007.
- This Standard establishes standards and provides guidance on engagements to examine and report on prospective financial information including examination procedures for best-estimate and hypothetical assumptions.
- This Standard does not apply to the examination of prospective financial information expressed in general or narrative terms, such as that found in management's discussion and analysis in an entity's annual report, though many of the procedures outlined in this Standard may be suitable for such an examination.

43. SAE 3402, Assurance Reports on Controls at a Service Organisation

- This Standard is effective for assurance reports covering periods ending on or after April 1, 2011.
- This Standard deals with assurance engagements undertaken by a professional accountant in public practice to provide a report for use by user entities and their auditors on the controls at a service organization that provides a service to user entities that is likely to be relevant to user entities' internal control as it relates to financial reporting.
- This Standard applies only when the service organization is responsible for, or otherwise able to make an assertion about, the suitable design of controls. This Standard does not deal with assurance engagements:
  - To report only on whether controls at a service organization operated as described, or

- o To report only on controls at a service organization other than those related to a service that is likely to be relevant to user entities' internal control as it relates to financial reporting (for example, controls that affect user entities' production or quality control).

44. SAE 3420, Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus

- This Standard is effective for assurance reports dated on or after April 1, 2016.
- This Standard deals with reasonable assurance engagements undertaken by a practitioner to report on the responsible party's compilation of pro forma financial information included in a prospectus.
- This Standard applies where:
  - o Such reporting is required by securities law or the regulation of the securities exchange in the jurisdiction in which the prospectus is to be issued; or
  - o This reporting is generally accepted practice in such jurisdiction.

45. SRS 4400, Engagements to Perform Agreed-upon Procedures Regarding Financial Information

- This Standard is applicable to all agreed upon procedures engagements beginning on or after April 1, 2004.
- This Standard establishes standards and provides guidance on the auditor's professional responsibilities when an engagement to perform agreed-upon procedures regarding financial information is undertaken and on the form and content of the report that the auditor issues in connection with such an engagement.

46. SRS 4410 (Revised), Compilation Engagements

- This Standard is effective for compilation engagements undertaken after March 31, 2016.
- This Standard deals with the practitioner's responsibilities when engaged to assist management with the preparation and presentation of historical financial information without obtaining any assurance on that information, and to report on the engagement in accordance with this Standard.
- This Standard applies to compilation engagements for historical financial information. It may be applied, adapted as necessary, to compilation engagements for financial information other than historical financial information, and to compilation engagements for non-financial information.

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The Companies (Auditor's Report) Order, 2016 (CARO)

The Central Government, in exercise of the powers conferred, under subsection (11) of section 143 of the Companies Act, 2013 (the "Act"), issued the Companies (Auditor's Report) Order, 2016, ("CARO 2016" or "the Order") vide Order No. S.O. 1228(E) dated 29th March, 2016. CARO, 2016 contains matters on which the auditors of companies (except of those categories of companies which are specifically exempted under the Order) have to make a statement in their audit report.

1. Short title, application and commencement

(1) This Order may be called the Companies (Auditor's Report) Order, 2016.

(2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except–

(i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(ii) an insurance company as defined under the Insurance Act,1938 (4 of 1938);

(iii) a company licensed to operate under section 8 of the Companies Act;

(iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and

(v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.

2. Auditor's report to contain matters specified in paragraphs 3 and 4

Every report made by the auditor under section 143 of the Companies Act, 2013 on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after 1st April, 2015, shall in addition, contain the matters specified in paragraphs 3 and 4,as may be applicable:

Provided the Order shall not apply to the auditor's report on consolidated financial statements.

3. Matters to be included in the auditor's report

The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:-

(i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;

(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

(c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;

(ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account;

(iii) whether the company has granted any loans, secured or unsecured to companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so,

(a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest;

(b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;

(c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;

(iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof.

(v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?

(vi) whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained.

(vii) (a) whether the company is regular in depositing undisputed statutory dues including provident

fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;

(b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute).

(viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and government, lender wise details to be provided).

(ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;

(x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;

(xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same;

(xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;

(xiii) whether all transactions with the related parties are in compliance with section 177 and 188 of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;

(xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance;

(xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act, 2013 have been complied with;

(xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.

4. Reasons to be stated for unfavourable or qualified answers

(1) Where, in the auditor's report, the answer to any of the questions referred to in paragraph 3 is unfavourable or qualified, the auditor's report shall also state the basis for such unfavourable or qualified answer, as the case may be.

(2) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with the reasons as to why it is not possible for him to give his opinion on the same.

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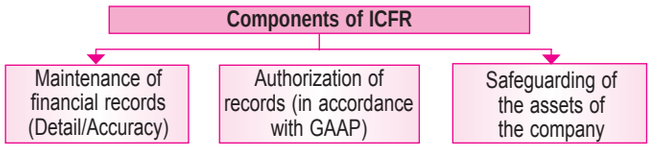
Internal Financial Controls over Financial Reporting (ICFR)

INTERNAL FINANCIAL CONTROLS OVER FINANCIAL REPORTING (ICFR)

Internal financial controls over financial reporting (ICFR) mean controls specifically designed to address risks related to financial reporting. A Companies' internal financial control over financial reporting includes those policies and procedures that:

- Pertain to the maintenance of the records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company
- Provides reasonable assurance that transactions are recorded as necessary to permit preparation of financial statement in accordance with generally accepted accounting principles, and those receipts and expenditures of the company are being made only in accordance with authorizations of management and director of the company.
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material impact on the financial statement.



INTERNAL FINANCIAL CONTROLS TESTING — OBJECTIVE AND SCOPE

The objective of Internal Financial Control (IFC) testing is to assist the management in evaluating and testing the effectiveness of financial controls that are in place to mitigate the risks faced by the Company and thereby achieve its business objectives.

RESPONSIBILITY OF STAKEHOLDERS

Company Management	*Auditors*	*Audit committee/ Independent Director*	*Board of Directors*
• Create & test the framework of internal controls • IFC (including operational & compliance) • Controls documentation	• Focus on internal controls, to the extent these relate to the financial reporting • Auditors responsibility limited to evaluation of 'Financial reporting controls'	• Would like to see a robust framework that is aligned to acceptable standards • Review & question the basis of your controls design & ongoing assessments	• Would rely on the assessment & view of the audit committee • They may ask for additional information

LEGAL REQUIREMENTS

Relevant clauses	*Requirements*	*Applicability*
Directors' Responsibility Statement: Section 134(5)(e)	Director's responsibility statement should state that the directors have laid down internal financial controls to be followed by the company and such controls are adequate and were operating effectively.	Listed companies
Section 143(3)(i) – Auditor's Report	Auditor's report should state the adequacy and operating effectiveness of the company's internal financial controls. *MCA vide its notification dated 13th June 2017 (G.S.R. 583(E)) amended the notification of the Government of India, In the Ministry of Corporate of Affair, vide No G.S.R. 464(E) dated 05th June 2015 providing exemption from Internal Financial Controls to certain private companies.*	All companies with turnover greater than ₹ 50 crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or body corporate at any point of time during the financial year more than ₹ 25 crores.

Relevant clauses	Requirements	Applicability
Section 177 – Audit Committee	Audit Committee may call for auditor's comments on internal control systems before their submission to the board and may also discuss any related issues with the internal & statutory auditors and the management of the company.	All companies having an AC
Schedule IV Independent Directors	The independent directors should satisfy themselves on the integrity of financial information and ensure that financial controls & systems of risk management are robust and defensible.	All companies
Board Report: Rule 8(5)(viii) of the Companies (Accounts) Rules, 2014	Board of Directors to report on adequacy of internal financial controls with reference to financial statements.	All companies

WHAT IS INTERNAL FINANCIAL CONTROL (IFC)?

Clause (e) of sub-section 5 of Section 134 explains the meaning of internal financial controls as "the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information."

Components of IFC

Once remediation plans have been implemented successfully and the controls are fully functional, the controls would have to be tested again. The testing for these should be conducted only after sizeable transactions have occurred under the purview of these controls. For example:

- If the control is being used several times a day or once a day, at least one month should have passed before the control effectiveness can be tested
- If the control is being used once a month, at least one quarter should have passed before it can be tested
- If the control is being used once a quarter, at least six months should have passed before it can be tested

Based on the results of re-testing, the sub-certifier responsible for functioning of the control will certify as to operating effectiveness of the control.

Furthermore, on an ongoing basis, the management would have to conduct the below mentioned exercise:

- Refresh the RCMs in lines with the remediated controls or any other modification in existing controls.
- Test the operating effectiveness of the control with a reasonable sample size.
- Draw out remediation plans for 'Ineffective' controls and implement the same.

Entity level Controls	Internal Controls over Financial Reporting	Operational Controls	Anti Fraud Controls	IT General Controls
Organisation Level Controls impacting culture, ethical standards, oversight, responsibility and accountability	Controls to provide reasonable assurance on the reliability of financial reporting for external purposes	Controls designed to provide reasonable assurance on business operations, process efficiency and effectiveness.	Controls, either preventive or detective, that are designed to counter frauds, misuse of assets or errors.	Controls, which relates to the environment within which application system are developed, maintain and operated

Steps in designing Internal Financial Controls of a company

The following steps will facilitate 'Designing of Internal Financial Controls:

1. Scoping
2. Design assessment
3. Design Gap remediation
4. Operating effectiveness
5. Overall assessment & reporting

IFC DESIGNING & DOCUMENTATION – WORK STEPS

Key work – steps for Scoping

- Map/Identify significant accounts, processes and key areas of business
- Segregate scope between business process and IT enabled services
- Discuss/align the scope with External Auditors
- Define materiality, finalize scope exclusion and validate with auditor
- Define scope of process/activity performed by third parties
- Align Audit Committee and board
- Finalize templates, documentation standards, reporting templates
- Conduct training or workshops with process owners
- Nominate IFC Champion across process/locations
- Set up steering committee to review progress/remediation plan

DESIGN ASSESSMENT – (WORK STEPS)

Key work-steps in design assessment

- Finalize process owners across each process
- Perform and document walkthroughs
- Document process maps if any
- Segregate process into Entity Level, Process Level & IT General Controls (ITGC)
- Segregate the controls into Manual/Automated, Preventive/ Detective, etc.
- All the identified controls needs to be documented under a Risk & Control Matrix (RCM) document
- Identify design gaps based on walkthroughs, interviews or discussions etc.
- Benchmarking of IFC controls – consolidate/remove redundancy
- Perform segregation of duties analysis

GAP REMEDIATION:- (WORK STEPS)

- Prioritize financial gaps into material/non material
- Prioritize operation/reputational gaps if any into (H/M/L) impact
- Co-develop remediation plan with owners & implementation timelines
- Periodic monitoring of remediation plans
- Enhance optimize IT controls
- Standardize/Centralize processes
- Enhance SOP/MIS/DOS etc.
- Interim testing to confirm remediated gaps

OPERATING EFFECTIVENESS — (WORK STEPS)

Key work-steps for Operating Effectiveness

- Align Sampling strategy with auditors
- Prepare testing plans & templates
- Timing of testing
- Finalize resources competency & independence/objectivity
- Document Testing Results
- Prioritize testing gaps into Material/Non-material
- Identify mitigation/compensating controls for material gaps
- Co-develop remediation plans for testing gaps

ASSESSMENT & REPORTING — (WORK STEPS)

Key work – steps for gap remediation

- Finalize material weakness and update Executive Management
- Report to Audit Committee and Board

WAY FORWARD — POST IMPLEMENTATION OF IFC

Once remediation plans have been implemented successfully and the controls are fully functional, the controls would have to be tested again. The testing for these should be conducted only after sizeable transactions have occurred under the purview of these controls. For example

- If the control is being used several times a day or once a day, at least one month should have passed before the control effectiveness can be tested
- If the control is being used once a month, at least one quarter should have passed before it can be tested
- If the control is being used once a quarter, at least six months should have passed before it can be tested

Based on the results of re-testing, the sub-certifier responsible for functioning of the control will certify as to operating effectiveness of the control.

Furthermore, on an ongoing basis, the management would have to conduct the below mentioned exercise:

- Refresh the RCMs in lines with the remediated controls or any other modification in existing controls.
- Test the operating effectiveness of the control with a reasonable sample size.
- Draw out remediation plans for 'Ineffective' controls and implement the same.

BENEFITS OF INTERNAL FINANCIAL CONTROLS

Beyond compliance, IFC will facilitate in:

- Business process re-designing to plug revenue leakages & cost containment opportunities
- Rationalizing the number of controls across organizations
- Standardizing policies & procedures for multi-location/multi-business companies
- Developing control conscious work culture for people behind controls
- Assurance to Top Management as well as optimizing business performance

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Income from Salaries

BASIC CONCEPT

Any payment made by an employer to an employee for the services rendered by him is chargeable to tax as salary and envisages a 'contract of employment'. The employer – employee relationship or master-servant relationship is an essential ingredient of a 'contract of employment' as against a 'contract for employment'.

The distinguishing feature of a 'contract of employment' that differentiates it from a 'contract for employment' is that the master or employer has the right to supervise and control the work done by the employee and not only directs what and when the work is to be done, but also how it should be done, and the employee is bound to carry out the said instructions. On the other hand, under a contract for employment, the master merely directs what is to be done, while the methodology for carrying out the work is left to the discretion of the servant. E.g. any fees received by a part-time consultant will not be assessed as salary but will be taxed as income from business or profession, or as income from other sources. Similarly, in the absence of master – servant relationship, any remuneration received by a partner from his firm is not regarded as salary.

BASIS OF CHARGE: [SECTION 15]

As per Section 15, salary consists of the following:

- any salary **due** from an employer or a former employer to an assessee in the previous year, whether actually paid or not;
- Any salary **paid or allowed** to him in the previous year by or on behalf of an employer or a former employer, though not due or before it became due;
- Any **arrears of salary** paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Salary is chargeable to tax either on 'due' basis or on 'receipt' basis, whichever is earlier. Once taxed on due basis, the same salary will not once again be taxed on receipt and *vice versa*.

TAX TREATMENT OF DIFFERENT FORMS OF SALARIES

Type of salary	*Taxability*
Advance salary	Taxable on receipt basis, in the year in which it is received. Relief under section 89 available.
Arrears of salary	Taxable on receipt basis if the same is not taxed earlier on due basis. Relief under section 89 available
Salary in lieu of notice period	Taxable under section 15
Salary to a partner	Salary paid to a partner is an appropriation of profits. It is therefore not taxable under the head "Salaries" but is taxable under head "profit and gains of business or profession"
Fees and commission	Taxable as salary irrespective of the fact that they are paid in addition to or in lieu of salary
Salary paid tax free	Taxable amount includes the salary as well as the tax borne by the employer
Salary forgone	Application of salary already due; hence taxable
Salary diverted at source by overriding title	Not taxable
Deferred Salary	Taxable at the point of deferral if deferral is at the option of the employee

DEDUCTIONS FROM SALARIES [SECTION 16]

1. Standard Deduction [Section 16(ia)]

A standard deduction is allowed against the salary income subject to a limit of ₹ 50,000/- or the amount of salary whichever is less.

2. Entertainment Allowance [Section 16(ii)]

Entertainment allowance is a taxable allowance and forms a part of the taxable salary. However, Government employees who are in receipt of such an allowance are eligible for a deduction in respect of the entertainment allowance received by them to the extent of the least of the following:

- ₹ 5,000/-
- 1/5th of salary excluding allowances or benefits or perquisites
- Actual entertainment allowance received

The actual expenditure incurred for the purposes of entertainment is not relevant to the calculation of the deduction. No such deduction is available to employees other than Government employees.

3. Tax on Employment [Section 16(iii)]

- Certain Indian States levy a tax on employment commonly known as Profession tax which is required to be recovered by the employer from the salary paid to the employee and deposited into the treasury. Such tax paid by an employee is allowed as deduction from his Salary.
- Deduction is available in the year in which profession tax is actually paid, regardless of which year the profession tax pertains to.

- If Profession Tax is reimbursed/borne by the employer, then such Profession Tax reimbursed/borne by the employer is first included in the taxable income as a perquisite & then allowed as deduction under section 16(iii).

SALARY, PERQUISITES AND PROFITS IN LIEU OF SALARY [SECTION 17]

Section 17 provides inclusive definition of 'salary', 'perquisites' and 'Profits in Lieu of Salary'. Hence, the scope of these terms cannot be restricted to and can extend beyond the specific components listed in the definitions.

Salary	*Perquisite*	*Profit in lieu of salary*
• Wages • Annuity or pension • Gratuity • Fees, commission, perquisites or profits in lieu of or in addition to any salary or wages • Advance salary • Leave encashment • Employer contributions to Provident Fund (PF) and interest in excess of the prescribed limits • Taxable portion of the balance transferred to a newly recognized provident fund • Employer's contributions to National Pension Scheme (NPS)	• Rent-free accommodation • Accommodation provided at concessional rates • Benefit or amenity granted free of cost or at concessional rates to specified employees • Obligation of employee met by the employer • Sum payable by the employer (whether directly or through a fund) to effect an assurance on the life of the employee or to effect a contract for annuity except through a recognised PF, Approved Superannuation Fund and Deposit Linked Insurance Fund • Securities and Stock Awards (ESOP) • Employers contribution to approved Superannuation Fund in excess of ₹ 150,000 • Any other fringe benefit or amenity as prescribed in Rule 3 of the Income Tax Rules, 1962	Compensation from the employer or former employer at or in connection with termination of employment or modification of the terms and conditions of employment • Any payment from the employer or former employer or from a PF or other fund, to the extent it does not consist of employee's contribution or interest thereon • Any sum received under a Keyman insurance policy including bonus on such policy • Any amount received in lumpsum or otherwise from any person before joining or after cessation of employment

ALLOWANCES

An allowance is a fixed amount of money paid regularly in addition to the salary for meeting specific requirements of the employees. As a general rule, any fixed allowance received by an employee forms part of his taxable salary unless specifically exempted. The taxability of various allowances an employee could receive is summarized in the table below:

Allowances	*Taxability/Limits*	*Section*
Leave Travel Allowance (LTA)	Assessee who incurs expenditure for • travel for assessee and his family (up to 2 children) • on leave to any destination in India is eligible for exemption in respect of LTA to the extent of expenses actually incurred for the purpose of such travel subject to the following limits: **Situations** / **Exemption** Journey performed by air / Amount of economy class air fare of the national carrier (Air India or Indian Airlines) by the shortest route or amount spent, whichever is less Journey performed by rail / Amount of air-conditioned first class rail fare by the shortest route, or amount spent, whichever is less Place of origin and destination are connected by rail and journey performed by any other mode / Amount of air-conditioned first class rail fare by the shortest route, or amount spent, whichever is less	10(5) read with Rule 2B

Allowances	Taxability/Limits	Section
	<table><tr><th>Situations</th><th>Exemption</th></tr><tr><td>Place of origin and destination are not connected by rail</td><td></td></tr><tr><td>a) where a recognized public transport exists</td><td>First class or deluxe class fare by the shortest route or the amount spent whichever is less</td></tr><tr><td>b) where no recognized public transport exists</td><td>Amount equivalent to air conditioned first class rail fare for the distance of the journey by the shortest route (as if the journey had been performed by rail) or the amount spent, whichever is less</td></tr></table> Exemption only in 2 out of a block of 4 years (current block: 1st January 2018 to 31st December 2021) with option to claim exemption for 1 journey (out of the 2) in the calendar year immediately following the end of the block.	
Allowance granted to Government Employees outside India	Fully Exempt	10(7)
House Rent Allowance (HRA)	The least of the following is exempt: • 40% of salary [50% if house situated at Mumbai, Kolkata, Delhi or Chennai] • HRA actually received in respect of the period during which the accommodation is occupied on rent. • Rent Paid - (Salary x 10%) [Salary = Basic + Dearness Allowance (if provided by the terms of employment) + commission based on fixed % of turnover] Exemption shall not be allowed, if the employee resides in a house that is owned by him or if no actual expenditure is incurred by the employee on rent	10(13A) read with Rule 2A
Uniform Allowance	Exempt from tax, to the extent it is expended to meet actual expenditure on purchase or maintenance of uniform	10(14) read with Rule 2BB(1)
Academic, research and training allowance	Exempt from tax, to the extent it is actually expended by the employee for the purpose of academic, research and training pursuits in educational and research institutions	10(14) read with Rule 2BB(1)
Travel allowance	Exempt from tax, to the extent it is actually expended by the employee to meet cost of travel on tour or on transfer. This includes any sum paid in connection with transfer, packing and transportation of personal effects on transfer	10(14) read with Rule 2BB(1)
Per diem	Exempt from tax, to the extent it is actually expended to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty while on tour or for the period of journey in connection with transfer	10(14) read with Rule 2BB(1)
Conveyance allowance (official duties)	Exempt from tax, to the extent it is actually expended by the employee to meet expenditure incurred on conveyance in performance of duties of an office or employment of profit. Exemption is not available if free conveyance is provided by the employer	10(14) read with Rule 2BB(1)

Allowances	Taxability/Limits	Section
Helper allowance	Exempt from tax, to the extent it is actually expended to meet the expenditure incurred on a helper where such helper is engaged for the performance of the duties of an office or employment of profit	10(14) read with Rule 2BB(1)
Children Education allowance	Exempt up to ₹ 100 per month per child; maximum 2 children	10(14) read with Rule 2BB(2)
Children hostel allowance	Exempt up to ₹ 300 per month per child; maximum 2 children	10(14) read with Rule 2BB(2)
Allowance granted to an employee working in any transport system	Lower of 70% of allowance or ₹ 10,000 per month is exempt Exemption is not available if the employee is in receipt of a daily allowance	10(14) read with Rule 2BB(2)
Transport Allowance (between residence and office) to an employee who is blind or deaf and dumb or orthopedically handicapped with disability of lower extremities	Exempt up to ₹ 3,200 per month	
Tribal area allowance	Exempt up to ₹ 200 per month in specified areas	10(14) read with Rule 2BB(2)
Compensatory field area allowance	Exempt up to ₹ 2,600 per month in specified areas	10(14) read with Rule 2BB(2)
Compensatory modified field area allowance	Exempt up to ₹ 1,000 per month in specified areas	10(14) read with Rule 2BB(2)
Special Compensatory hill area or high altitude	Exempt up to ₹ 300 per month to ₹ 7,000 per month in specified areas	10(14) read with Rule 2BB(2)
Border area, remote area, Difficult/disturbed area allowance	Exempt up to ₹ 200 per month to ₹ 1,300 per month for specified areas	10(14) read with Rule 2BB(2)
High altitude allowance (Non-congenial climate)	Exempt up to ₹ 1,060 per month (Altitude for 9,000 ft. to 15,000 ft.), ₹ 1,600 per month (above 15,000 ft.)	10(14) read with Rule 2BB(2)
Special compensatory for highly active field area allowance to member of armed force	Exempt up to ₹ 4,200 per month.	10(14) read with Rule 2BB(2)
Underground allowance to an employee working in uncongenial, unnatural climate in underground mines	Exempt up to ₹ 800 per month	10(14) read with Rule 2BB(2)
Island duty allowance to member of armed force	Exempt up to ₹ 3,250 per month in Andaman & Nicobar and Lakshwadeep Group of Islands	10(14) read with Rule 2BB(2)
Counter Insurgency Allowance to member of armed forces operating in areas away from their permanent locations	Exempt up to ₹ 3,900 per month	10(14) read with Rule 2BB(2)
Dearness allowance	Fully Taxable	17
Overtime allowance	Fully Taxable	17
Medical allowance	Fully Taxable	17
City Compensatory allowance	Fully Taxable	17
Interim allowance	Fully Taxable	17
Servant allowance	Fully Taxable	17
Project allowance	Fully Taxable	17

Allowances	Taxability/Limits	Section
Tiffin/Lunch/Dinner allowance	Fully Taxable	17
Warden allowance	Fully Taxable	17
Any other cash allowance	Fully Taxable	17

VALUATION OF PERQUISITES [RULE 3]

Perquisites, for the purposes of taxation, are to be valued on the basis of valuation methodology as prescribed in Rule 3 of the Income Tax Rules. It is pertinent to note that the cost of the perquisite to the employer may be different from the taxable value of the perquisite. The taxable value of the perquisite provided by the employer is chargeable to tax whether or not expressly agreed in the contract of employment. A perquisite may be provided to the employee or any member of his household and may be provided before, during or after the employment by virtue of the employer- employee relationship. The beneficiary of the perquisite should be individually identifiable – Group benefits which are not identifiable to any particular employee are not taxable.

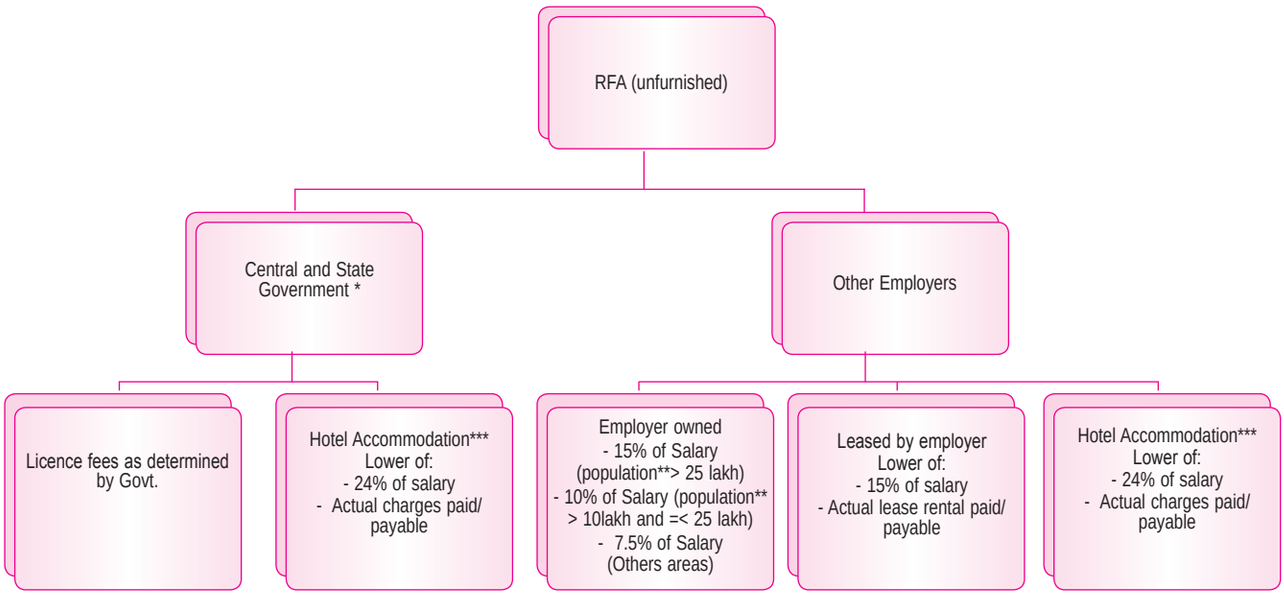
1. RENT FREE ACCOMMODTION ['RFA']

Accommodation includes accommodation provided in

- House
- Flat
- Farm House or part thereof
- Caravan
- Mobile home
- Ship or other floating structures
- Hotel

Hotel Accommodation includes accommodation in

- Motels
- Service apartment
- Guest house



* Only to employees holding office or post in connection with the affairs of the Union or State
**As per 2001 census
*** Not taxable if hotel accommodation is provided for not more than 15 days on transfer of employee from one place to another

Furnished Accommodation

In case furniture including TV, washing machine, air conditioner, refrigerator and other household appliances are provided then the value of accommodation should be increased further by the following:

- 10% p.a. of cost of furniture, if the furniture is owned by the employer or
- actual hire charges, if the furniture is hired from a third party

Accommodation provided at concessional rate

For accommodation provided at concessional rate, the rent actually paid or recovered from the employee should be reduced from the value of the accommodation determined as above.

For the purpose of above calculation, Salary includes all emoluments paid to an employee but excludes dearness allowance which is not included in the computation for retirement benefits, allowances which are exempt from tax, value of perquisites under section 17(2), employer's contribution to PF and lumpsum payments received on retirement/termination.

Accommodation provided to an employee working on a mining site, onshore exploration site, project site, dam site power generation site or any other offshore site with prescribed specifications in a remote area is not taxable.

If at the time of transfer from one place to another, an employee is provided accommodation at the new place while he retains accommodation at the other place, the accommodation with a lower perquisite valuation will be taxed for 90 days and thereafter the value of both accommodations will be taxable as perquisite.

2. MOTOR CAR

A car provided by the employer to an employee is a popular tax efficient component of compensation especially among the senior employees of an organisation. The taxable value of a car provided by the employer is determined as per the valuation rules provided in the Income Tax Rules. The table below summarises the taxable value of a motor car provided by the employer:

Purpose	*CC* of engine =< 1.6 litres*	*CC* of engine > 1.6 litres*
Motor car owned/leased by the employer		
Official	NIL$	NIL$
Personal purposes only	Actual cost of R&M** of car + driver's salary + normal wear and tear @ 10% per annum of the actual cost of car less any charges recovered from the employee	Actual cost of R&M of car + driver's salary + normal wear and tear @ 10% per annum of the actual cost of car less any charges recovered from the employee
Personal & Official – R&M met by employer	₹1,800 p.m. + ₹ 900 p.m. (If driver is provided)	₹ 2,400 p.m. + ₹ 900 p.m. (If driver is provided)
Personal & Official – R&M met by employee	₹ 600 p.m. + ₹ 900 p.m. (If driver is provided).	₹ 900 p.m. + ₹ 900 p.m. (If driver is provided).
Employee owns motor car but R&M and Driver's salary met by employer		
Official	NIL$	NIL$
Personal & Official – R&M met by employer	Actual expenses less ₹ 2,700 p.m.	Actual expenses less ₹ 3,300 p.m.
Employee owns any other automotive conveyance but R&M is met and reimbursed by employer		
Official	NIL$	Not Applicable
Personal & Official – R&M met and reimbursed by employer	Actual expenses less ₹ 900 p.m.	Not Applicable

*CC – Cubic capacity

**R&M – Running and maintenance

$ – The employer is required to maintain complete details of journey undertaken for official purpose by the employee with date of journey, destination, mileage and the amount of expenditure actually incurred. Further, the employer is required to issue a certificate that such expenditure was incurred wholly and exclusively for official purpose.

3. DOMESTIC SERVANTS

Servants	*Perquisite Value*
Sweeper, Gardener, Watchman or Personal attendant	Actual Cost to the employer less amount recovered from employee

4. GAS, ELECTRICITY OR WATER SUPPLIED BY EMPLOYER

Source	*Perquisite Value*
Provided from own source	Manufacturing cost to the employer less amount recovered from employee
Provided from outside supplier	Amount paid to the supplier less amount recovered from employee

5. EDUCATION FACILITIES

Facility provided to	*Value of perquisite*	
	Provided in the school owned by the employer	**Provided in any other school**
Children	Cost of such education in similar school if it exceeds ₹ 1,000 per month per child	Cost of such education if it exceeds ₹ 1,000 per month per child
Other household member	Cost of such education in similar institution in or near the locality	Cost of such education incurred

The amount if any, recovered from the employee shall be reduced from the perquisite value.

6. SPECIFIED SECURITY OR SWEAT EQUITY SHARES ALLOTTED

1. "Specified Security" means the securities as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 and also includes securities offered under an Employee Stock Option Plan (ESOP);
2. Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in nature of Intellectual Property Rights or value additions.
3. Perquisite will be taxable as the difference between the fair market value (FMV) of the share on the date of exercise of the options less the exercise price.

Calculation of FMV on date of exercising the option

Particulars	*FMV*
Listed on a recognised stock exchange	Average of opening and closing price on that date
Listed on more than one recognised stock exchange	Average of opening and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share
If there is no trading in the share on any recognised stock exchange on that date:	
If share listed on a recognised stock exchange	Closing price of share on any recognised stock exchange on a date closest to date of exercising the option and immediately preceding such date
If share listed on more than one recognised stock exchanges	Closing price of share on any recognised stock exchange, which records the highest volume of trading in such share on a date closest to date of exercising the option and immediately preceding such date
If shares not listed on a recognised stock exchange or any specified security other than equity shares	Such value as determined by a Category I merchant banker listed with SEBI on the specified date (i.e. Date of exercise or any date not being more than 180 days prior to the date of exercise)

Note: Where the stock exchange quotes both "buy" and "sell" prices, the opening and closing price shall be the "sell" price of the first and last settlement respectively.

7. MEDICAL EXPENSES

Certain medical expenses borne/reimbursed by the employer are not considered to be a perquisite and are specifically exempted under section 17(2). Such expenses are:

- Medical treatment provided to an employee or any member of his family:
  - in the hospital maintained by the employer;
  - in the hospital maintained by the Government/Local authority/any other hospital approved by the government for the medical treatment of its employee;
  - in respect of prescribed disease or ailments in any hospital approved by the Chief Commissioner having regards to the prescribed guidelines and supported by a certificate and receipt from the hospital;
- premium paid/borne by the employer in respect of health insurance of employee or a member of his family under a scheme approved by the Central Government or the IRDA;
- In case of an employee whose gross total income does not exceed ₹ 2 lakh, any expenditure incurred outside India on the medical treatment of an employee or member of his family including travel and stay abroad for the patient and one attendant, subject to limits prescribed by Reserve Bank of India.

8. INTEREST FREE LOAN

Where the employer grants a loan to an employee interest free or at a concessional rate of interest, a notional interest thereon is charged to tax in the hands of the employee. As per the Income tax rules, the value that will chargeable to tax shall be calculated on the maximum outstanding monthly balance based on the interest rates charged by the State Bank of India as on the 1st day of the financial year in respect of loans for the same purpose advanced by it (refer the page on interest rate for the purpose of perquisite valuation on **https://www.sbi.co.in**) as reduced by the interest actually recovered from the employee.

However no notional interest is charged to tax in the case of the following loans:

- A loan given for the purpose of medical treatment of certain prescribed diseases as mentioned in Rule 3A of the Income-tax rules (and is not reimbursed to the employee under a medical insurance scheme)
- A loan not exceeding in the aggregate ₹ 20,000/-.

In case the loan is given for medical purpose the employer should obtain the bills, certificate, supporting, etc. from the employee evidencing the fulfilment of the prescribed conditions.

9. USE OF MOVABLE ASSETS

Assets given	*Value of benefit*
a) Use of laptops and computers	Nil
b) Movable asset other than laptops and computers	i. 10% p.a of the actual cost, if owned by employer ii. the amount of rent paid or payable by the employer if hired As reduced by the amount recovered from employee

10. MOVABLE ASSETS SOLD TO EMPLOYEE

Assets given	*Value of benefit*
Computers and electronics	Depreciated value of the asset (depreciation is computed @50% on WDV for each completed year of usage) Less: amount recovered from employee
Motor Cars	Depreciated value of the asset (depreciation is computed @20% on WDV for each completed year of usage) Less: amount recovered from employee
Any other asset	Depreciated value of the asset (depreciation is computed @10% on SLM for each completed year of usage) Less: amount recovered from employee

11. TOUR OR TRAVEL

Benefit provided	*Value of benefit*
Value of tour, travel and accommodation provided to an employee or member of his household paid or borne by employer and not covered under section 10(5)	Amount of expenditure actually incurred Less: Amount recovered from the employee
Value of tour, travel and accommodation provided to an employee or member of his household where the facility is maintained by the employer and is not provided uniformly to all employees	Value at which such services are offered to public by other agencies Less: Amount recovered from the employee
Value of tour, travel and accommodation provided to a member of the employee's household where the employee is on official tour*	Amount of expenditure actually incurred Less: Amount recovered from the employee
***Where an official tour is extended as vacation, the value of benefit shall be restricted to the extended period of stay or vacation.**	

12. MISCELLANEOUS

Particulars	*Value of benefit*
Free food and non-alcoholic beverages during office hours (Free meal in remote area or offshore installation area is not a taxable perquisite)	Food and non-alcoholic beverages during office hours or by way of vouchers is valued as the actual cost to the employer in excess of ` 50 per meal Less: amount recovered from employee, if any Tea and snacks provided during working hours is not taxable
Value of any gift or voucher or token other than gifts made in cash or convertible into money (e.g., gift cheques) on ceremonial occasion	Value of gift. In case the aggregate value of gift during the previous year is less than INR 5,000, then it is not a taxable perquisite.
Expenditure incurred on credit card or add on card including membership fee and annual fee	Actual expenditure to the employer is taxable Less: amount recoverable from employee If it is incurred for official purpose and supported by necessary documents (including a certificate from the employer) then it is not taxable

Particulars	Value of benefit
Expenditure on club (other than health club or sports club or similar facilities provided uniformly to all the employees)	Actual expenditure incurred by the employer Less: Amount recoverable from employee If the expenditure is incurred exclusively for official purpose and supported by necessary documents (including a certificate from the employer) then it is not taxable. Initial fee of corporate membership of a club is not a taxable perquisite
Any other benefit or amenities or service or right or privilege provided by the employer other than telephone or mobile phone	Cost to the employer Less: Amount recovered from the employee
Any sum paid to keep in effect an assurance on the life of an assessee or to keep in effect a contract for annuity**	Cost to the employer Less: Amount recovered from the employee
Value of any benefit or amenity resulting from providing an employee or member of his household for personal use or private journey or the movement of goods for personal use in the employer's owned transport where the employer is engaged in the carriage of goods or passenger ***	Value at which such benefit is offered to the public Less: Amount recovered from the employee
Use of vehicle provided by the employer for the journey of the employee from his residence to office or any other place or work or *vice versa*.	NIL. This is not to be regarded as benefit or amenity granted to employee free of cost or at concessional rate
****Will not apply if amount is paid to a recognised provident fund or approved superannuation fund or a Deposit Linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provision Act, 1948 or under section 6C of the Employees Provident Funds and Miscellaneous Provisions Act, 1952** *****Does not apply to employees of an airline or railways**	

13. SUPERANNUATION FUND

Superannuation is a retirement benefit provided by employer. The employer's contribution to an approved Superannuation Fund is exempt from tax in the employee's hands if it does not exceed ` 150,000 per annum.

Any payment from an approved superannuation fund made on the death of the employee or in commutation of an annuity on his retirement at a specified age or on his becoming incapacitated prior to such retirement is exempt from tax under section 10(13).

EXEMPTIONS

1. GRATUITY [SECTION 10(10)]

Gratuity is exempt only when it is received on – (a) retirement, or (b) becoming incapacitated prior to such retirement; or (c) resignation; or (d) termination of services.

Exemption is also available for gratuity received by the widow, children or dependents of the employee on his death.

Particulars	Amount of exemption
Gratuity received by Government & Local Authority Employees	Fully exempt under section 10(10)(i)
Gratuity in case of employees covered by Payment of Gratuity Act, 1972	Lower of following amount is exempt: a. [15/26] x Salary last drawn x completed years of service or part thereof in excess of 6 months b. Maximum amount ₹ 20,00,000 c. Actually received [Salary = Basic Pay + Dearness Allowance]
Gratuity in respect of any other employee	Lower of following amount is exempt: a. 1/2 x average salary x completed years of service (ignore fraction) b. Maximum amount ₹ 20,00,000 c. Actually received [Salary = Basic Pay + Dearness Allowance + Commission based on the % of Turnover

Notes:

1. Average Salary = Average salary drawn for last 10 months preceding month of retirement.
2. Gratuity received during continuation of service is not exempt under this section.
3. The aggregate exemption allowable to an employee in one or more previous years should not exceed the maximum amount (currently ` 20 lakh)
4. Completed years of service include period of service under current employer as well as previous employer (if no gratuity has been received from the former employers at that time)

2. PENSION: [SECTION 10(10A)]

Particulars	*Government Employee*	*Non-Government Employee receiving gratuity*	*Non-Government Employee not receiving gratuity*	*From approved pension fund of LIC or other Insurer*
Uncommuted Pension	Fully Taxable	Fully Taxable	Fully Taxable	Fully Taxable
Commuted Pension	Fully Exempt [section 10(10A)(i)]	1/3rd of full value will be exempt [section 10(10A)(ii)]	1/2 of full value will be exempt [section 10(10A(iii)]	Fully Exempt

3. LEAVE SALARY (ENCASHMENT): [SECTION 10(10AA)]

Particulars	*Central or State Government Employee*	*For any other employee*
Encashment of leave during service	Fully Taxable. However relief can be taken under section 89	Fully Taxable. However relief can be taken under section 89
Encashment of leave during retirement	Fully Exempt	Amount exempt shall be lower of following: • Earned leave in months x Average Salary; • Average monthly Salary x 10; • Maximum Amount ₹ 3,00,000; • Actual amount received

Average monthly salary for this purpose means average salary drawn in last 10 months immediately preceding the retirement.

The aggregate exemption allowable to an employee in one or more previous years should not exceed the maximum amount (currently ₹ 3 lakh)

Salary = Basic Pay + Dearness Allowance (forming part of retirement benefits) + Commission based on the % of turnover

Steps to determine period of leave in months:

1. No. of actual completed years of service
2. Number of days leave entitlement for each completed year of service as per rules of the employer (not exceeding 30 days for each year)
3. Gross total leave in days (step 1 x step 2)
4. Less: Leave enchased & availed during continuation of service (in days)
5. Period of earned leave (in days) (step 3 - step 4)
6. Period of leave in months (step 5/30)

4. RETRENCHMENT COMPENSATION [SECTION 10(10B)]

Compensation received at time of retrenchment, is exempt from tax to the extent of lower of the following:

- 15 days' average pay for each completed year of service or any part in excess of six months
- Maximum amount ₹ 500,000
- Actual amount received

5. VOLUNTARY RETIREMENT COMPENSATION [SECTION 10(10C)]

Any amount received or receivable by an employee of —

- A public sector company
- Any other company
- Authority established under a Central, State or Provincial Act
- A local authority
- A co-operative society
- A university established under a Central, State or Provincial Act or covered under the University Grants Commission Act
- Notified Indian Institute of Technology
- Notified Institute of Management
- Indian Institute of Foreign Trade, New Delhi
- Any State Government
- Any Central Government
- Any other Institute notified by Central Government

at the time of his voluntary retirement under a scheme framed in accordance with guidelines prescribed by Rule 2BA is exempt up to specified limits.

Exemption is least of the following:

- Actual amount received under the Voluntary Retirement Scheme.
- ₹ 5 lakhs (to be reduced by total exemptions claimed in the past) in total from one or more employer

6. TAX PAID BY EMPLOYER ON BEHALF OF EMPLOYEE [SECTION 10(10CC)]

Tax paid by the employer on behalf of the employee is ordinarily considered to be a perquisite in the hands of the employee. However, tax paid by the employer, at his option, on behalf of the employee, on a perquisite provided to the employee other than by way of monetary payment – e.g. motor car, accommodation, etc., shall be exempt in the hands of employee. Such tax shall not be allowed as a deduction to the employer in terms of Section 40(a)(v).

PROVIDENT FUND AND NPS – COMPARATIVE ANALYSIS

Particulars	*Employer's contribution*	*Employee's contribution*	*Income credited*	*Lump sum payment received at the time of retirement or termination of service or withdrawal*
Statutory provident fund	Not taxable	Eligible for deduction under section 80C	Fully exempt	Exempt under section 10(11)
Recognised provident fund	Not taxable up to 12% of salary	Eligible for deduction under section 80C	Exempt up to 9.5%*	Exempt from tax under section 10(12) Subject to conditions: not taxable if employee retires after 5 years of service or due to inability to work. Otherwise treated as URPF
Unrecognised provident fund (URPF)	Not taxable	Not eligible for deduction under section 80C	Not taxable at the time of credit	Employee's contribution exempt from tax and interest thereon is taxable under the head 'income from other sources'. Employer's contribution and interest thereon is taxable as 'Profits in lieu of salary' under the head "Salaries"
Public provident fund	Employer does not contribute	Eligible for deduction under section 80C	Exempt from tax	Exempt under section 10(11)
National pension system	Taxable as salary and deductible under section 80CCD (2) up to 14% of employee's salary in case of government employees and 10% in case of all non-government employees.	Eligible for deduction under sections 80CCD(1) [10% of salary] and 80CCD(1B) [₹ 50,000]	Exempt from tax	60% of NPS corpus tax exempt on lump sum withdrawal on closure of account. Amount of corpus utilised for purchase of annuity is also exempt. No tax will be levied on partial withdrawal, not exceeding 25% of contribution, from NPS. The 25% withdrawal is permitted not on corpus but on contribution. Further, NPS subscriber has a one-time option to transfer funds from recognised provident fund/ superannuation fund to his Tier I NPS account. This amount so transferred will neither be treated as income of the year of transfer nor will be eligible for any claim of contribution/deduction.
*CBDT No. Notification No. 24/2011/F.No.142/14/2010-SO (TPL) dated 13 May 2011				

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Income from House Property

INCOME CHARGEABLE REAL & NOTIONAL

This is the only head of income, where the charging provision provides for taxing notional income i.e. Income under this head may be charged irrespective of income actually received or not (In exceptional circumstances notional income is computed under the head capital gains and income from other sources). Therefore, taxability under this head of income may not necessarily be of actual rent or income received but the fair amount of rent which the property could reasonably fetch when let out. Accordingly, if a person owns a property which even if it is lying vacant, notional income with respect to such property may be liable to tax even though the owner may not have received any income from such property. Further, if the property is let out and the rent received is less than the fair rent which the property could fetch when let-out would also be liable to tax. Thus tax would be payable on the rent which the owner should have received and not on the actual rent so received (Refer heading – "Determination of annual value"). Though the head of chargeability of the income is Income from house property what is charged under this head is not only the income from house (dwelling) but all income arising out of letting of building (whether used for dwelling or commercial purpose). In other words Sections 22 to 27 are silent as to the purpose for which a building or a house property is to be used. This head of income can be aptly described as income from properties.

CHARGEABILITY U/S. 22

(a) What is chargeable under this head?

Annual value of property consisting of any buildings or lands appurtenant thereto except such property which is used by assessee for the purpose of business and profession. If the building is used by the assessee for the purposes of his business or profession, no notional income from such building can be assessed to tax under the head "Income from house property" and no deduction on account of notional repairs is available to the assessee while computing the income under the head "Income from business or profession

(b) In whose hand such income is taxable?

(b) In whose hand such income is taxable?

Income from house property is taxable in the hands of owner/deemed owner of the property. Owner is a person who is entitled to receive income from property in his own right. Income is chargeable in the hands of person even if he is not a registered owner. Rental income from sub-letting of property acquired on monthly tenancy basis or on lease for a period of less than twelve years may be taxable either as "Income from business or profession", where such letting is the business of the assessee or taxable as "Income from other sources". This would depend upon facts of each case.

Property owned by co-owners (Section 26)

Where property consisting of buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not be assessed as an A.O.P. (Association of Persons) but the share of each person in the income from the property as computed under sections 22 to 25 (i.e., income from house property) shall be included in their individual total income respectively.

Owner includes deemed owner u/s. 27 as under:

— A person, who transfers to his/her spouse otherwise than under the agreement to live apart, without adequate consideration or to a minor child not being a married daughter

— Holder of impartible estate shall be deemed to be owner of all the properties comprised in the estate

— A member of a co-operative society, company or other association to whom a building is allotted or leased under a house building scheme of such society, company or other association as a case may be

— A person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act,1882 (4 of 1882)

— A person who acquires any lease rights of not less than twelve years (excluding any rights by way of a lease from month to month or for a period not exceeding one year)

Official assignee can be treated as owner for the purpose of section 22 except when the receiver is appointed by court.

INCOME FROM PROPERTIES UNDER THE PURVIEW OF THE HEAD "INCOME FROM HOUSE PROPERTY"

(a) Predominantly, only income from letting out of building or land appurtenant thereto is taxable under the head "Income from house property". Accordingly, if letting out is of a bungalow along with the garden surrounding it, the income of the entire bungalow along with land appurtenant thereto; i.e., the garden would be taxed under this head. If the letting out is only of the vacant land, the rent received from such letting out of land is not taxable under the head "Income from house property". It may be taxable under the head "Income from business or profession" if the business of the assessee is to let out land or may be taxable as "Income from other sources" if letting out of land is not the business of the assessee. Further if composite rent is received for property as well as services and amenities (if such services/ amenities are not incidental / subservient to letting of property) , the annual value of such property is assessable under section 22 and profits arising from services and amenities is chargeable to tax under section 28; i.e., business income or under section 56; i.e., income from other sources.

(b) Rental income from letting out of residential and, or commercial buildings is covered under this head of income, However, where business of assessee is to let out property, income is covered under the head Profits and Gains of Business & Profession. Further if letting out is subservient to the main business, the annual value will not be chargeable u/s. 22 rather it will be chargeable under Profits and Gains of Business & Profession.

(c) Where an assessee let machinery, plant or furniture and also buildings, and the letting out of buildings is inseparable from the letting of the machinery, plant

or furniture, the income from such letting, if it is not chargeable to tax under the head "Income from business or profession" would be taxable under the head "Income from other sources". However, provision of services are incidental to the predominant object of letting out of the property and the income arising there from is inseparable the income shall be charged under this head.

(d) Where, even if, the property is held as stock-in Trade and is not let outlet out during the whole or part of the year , the notional rent is taxable under this head if such property in stock is held for more than one year from the date of receipt of completion certificate of construction from the competent authority. However in case where the property held as stock in trade is held for less than one year from the date of completion certificate so received the annual value shall be treated as Nil.

— Refer section 56(2)(iii) and decision of the Hon'ble Supreme Court in the case of *Shambhu Investments (P.) Ltd. vs. CIT (2003) 263 ITR 143 (SC)* as also decision in case of Chennai Properties (Supreme Court in CIVIL APPEAL NO. 4494 of 2004 April 9, 2015)

DETERMINATION OF ANNUAL VALUE

For determining the annual value, one has to first determine the Gross Annual Value (GAV) which is the higher of:

(a) The sum for which the property might reasonably be expected to let from year to year. In cases of properties where Standard rent has been fixed, such sum cannot exceed the standard rent fixed (Refer *Sheila Kaushish vs. CIT [1981] 7 Taxman 1 (SC) & Amolak Ram Khosla vs. CIT [1981] 7 Taxman 51 (SC))*. However where property let and was vacant during the whole or part of the previous year and rent actually received or receivable owing to such vacancy is less than expected rent, then rent actually received or receivable is taken as GAV.

(b) Where property is actually let out and the rent received or receivable is more than the amount determined in (a) above, the annual value would be the actual rent received.

ANNUAL VALUE TO BE TAKEN AS 'NIL' IN CERTAIN CASES

(a) The annual value of a property which is in occupation of the owner for the purposes of his residence would be considered to be nil if he does not derive any other benefit from the said residential house. If the owner has more than two houses for the purpose of his residence, the annual value of any two of such houses, at his option, would be considered to be nil. Notional income of other residential houses would be liable to tax. In such case owner may choose to consider the annual value nil (for computation purposes) in respect of the two properties at his option.

(b) Similarly, if the assessee is owner of only two residential houses which he is unable to occupy on account of his employment, business or profession carried on at any other place and on account of which he has to reside at that other place in a building not owned by him, the annual value of such houses shall be nil.

(c) The annual value of the property held as stock in trade and not let out for whole or part of the year, shall be taken as Nil for the period up to one year from the date of completion certificate of construction is obtained from the competent authority.

DETERMINATION OF NET ANNUAL VALUE (NAV)

The following amounts are required to be reduced while determining the net annual value:

(a) Any taxes levied by any local authority, which are liable to be paid by the owner, only on actual payment thereof during the previous year in which such payment is made irrespective of method of accounting followed; and

(b) The unrealisable rent subject to satisfaction of following conditions where the amount of unrealised rent shall be equal to the amount of rent payable but not paid by a tenant of the assessee and is proved to be lost and irrecoverable where,—

- the tenancy is bona fide
- the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property
- the defaulting tenant is not in occupation of any other property of the assessee
- 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.

UNREALISED RENT REALISED SUBSEQUENTLY — SECTIONS 25A/25AA (UP TO A.Y. 2016-17)

- The entire amount of unrealised rent received in any of the PY, which is not subjected to tax in earlier year as per section 24(1)(x), (effective up to A.Y. 2002-03) shall be chargeable to tax in the year in which such amount is actually received. (The deduction u/s. 23/24 shall not be allowed if the unrealised rent pertains to period up to A.Y. 2001-02 & deduction u/s. 24(1)(x) in respect thereof was allowed in earlier years.)
- Unrealised rent received subsequently is chargeable to tax even if the house property is not owned by the assessee in the year of such recovery.

ARREARS OF RENT RECEIVED — SECTION 25B (UP TO A.Y. 2016-17)

Where any arrears of rent is received which was not taxed earlier, such rent shall be assessed under the head "Income from house property" in the year in which such arrears are received. The arrears would be taxable under this head irrespective of the fact whether the assessee is the owner of the buildings in the year in which such arrears are received. However, a deduction of 30% on account of repairs on the arrears of rent received would be allowed in the year in which such arrears are taxable.

SPECIAL PROVISION FOR ARREARS OF RENT AND UNREALISED RENT RECEIVED SUBSEQUENTLY

Section 25A : (substituted for sections 25A, 25AA and 25B w.e.f. A.Y. 2017-18)

- The arrears of rent or unrealised rent received from a tenant subsequently shall be deemed to be the income from House property in respect of the financial year in which such rent is received or realised and shall be chargeable to tax under the head Income From House Property, irrespective of the fact that the assessee is the owner of such property in that financial year or not.
- From the above income sum equal to 30% of such rent shall be allowed as deduction while computing such

income from arrears of rent or unrealised rent so received and included in total income.

DEDUCTIONS ALLOWED WHILE COMPUTING INCOME UNDER THIS HEAD

The following deductions shall be allowed from the annual value u/s. 24:

a. 30% of the annual value as computed.

b. Interest payable on borrowed capital for the purpose of acquisition, construction, repairs, renewals or reconstruction of house property (subject however in case of self occupied property it is subject to conditions and limits as mentioned hereinafter).

- Interest to the extent it is not claimed/allowed under any of the provisions of the Act, for the period prior to acquisition or construction of the premises would be deductible in five equal installments starting from the year in which property is acquired or constructed.
- However In case of self occupied House Property or the property not occupied due to employment etc. interest allowable is subject to following conditions:

Sr. No.	*Particulars*	*Limit of Deduction (in ₹)*
1.	Property acquired/constructed after 1st April, 1999 with borrowed capital (deduction is allowed only where such acquisition or construction is completed within 3 years (5 years w.e.f. F.Y. 2016-17) from the end of the financial year in which capital was borrowed)	2,00,000/- w.e.f. 2015-16
2.	In case of property acquired/ constructed before 1st April, 1999	30,000/-

Notes:

a. Interest on new loan taken to repay original loan is considered as loan taken for such acquisition, construction, etc. (Refer CBDT Circular No. 28 dated 20-8-1969).

b. Where interest is claimed as a deduction, a certificate from the lender certifying the amount of interest payable should be furnished by the assessee.

c. The list of deduction specified u/s. 24 are exhaustive, no other deduction can be claimed other than specified therein.

d. Interest on borrowed money which is payable outside India shall not be allowed as deduction u/s. 24(b) unless the tax on the same has been paid or deducted at source and in respect of which, there is a person in India, who may be treated as agent of the recipient for such purpose.

e. Brokerage or commission paid to arrange a loan for house construction will not be allowed.

f. A new section 80EE was introduced by Finance Act, 2013 to allow additional interest of ₹ 1,00,000 w.e.f. 1st April, 2014 (i.e. A.Y. 2014-15) against loan obtained for acquiring a residential house by an individual where such loan is sanctioned after 1-4-2013 but before 31-3-2014.

The said section 80EE has been amended by Finance Act, 2016, w.e.f. 1st April, 2017 (i.e. A.Y. 2017-18) to provide for a deduction of interest up to ₹ 50,000/- for loans sanctioned on after 1-4-2016 but before 31-3-2017) subject to such conditions as mentioned therein.

COMPUTATION OF INCOME FROM HOUSE PROPERTY IN NUTSHELL

Particulars		*Types of Property*					
		Let-out Property u/s. 23(1)		*Self-occupied House Property u/s. 23(2)*		*Deemed to be Let-out Property u/s. 23(4)*	
		Amt. ₹	*Amt. ₹*	*Amt. ₹*	*Amt. ₹*	*Amt. ₹*	*Amt. ₹*
(i)	Reasonably Expected Rent		XXX		NIL		XXX
(ii)	Actual rent received or receivable		XXX		NIL		NIL
Gross Annual Value (GAV)			XXX				
1.	**(i) or,**						
2.	**(ii)>(i), then (ii) or,**						
3.	**(ii)<(i) due to vacancy then (ii)**				NIL		XXX

Particulars		Types of Property					
		Let-out Property u/s. 23(1)		Self-occupied House Property u/s. 23(2)		Deemed to be Let-out Property u/s. 23(4)	
		Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹	Amt. ₹
Less : Municipal Taxes paid to local authority by the owner			(XXX)		NIL		(XXX)
1.	**Net Annual Value (NAV)**		XXX		NIL		XXX
Less: Deduction u/s. 24							
(a)	30% of NAV	XXX		NIL		XXX	
(b)	Interest on loans as allowed	XXX		XXX		XXX	
2.	**Total Deductions (a) + (b)**		(XXX)		(XXX)		(XXX)
A.	Income from House Property (1 - 2)		**XXX**		**(XXX)**		**XXX**
B.	Add Unrealised Rent Received subject to conditions of deduction u/ss. 23/24		**XXX**		**NIL**		**NIL**
C.	Add arrears of Rent Received	XXX		NIL		NIL	
Less: 30% of arrears of Rent		(XXX)	**XXX**	NIL	**NIL**	NIL	**NIL**
Total Income from House Property (A + B + C)			**XXX**		**XXX**		**XXX**

Note: The rent received may be charged under the head business income or income from other sources where the assessee carries out an organized activity of letting out of the properties and/or the predominant object of receiving such rent is the commercial exploitation of such property.

Section 23(5): Where the property consists of any building or land appurtenant thereto or any part thereof which is held as stock in trade and not let out for the whole or any part of previous year the annual value of such property shall be taken as NIL for the period of 1 year from the end of the Financial year in which certificate of completion of property is obtained from authority concerned. Conversely now the property held in stock and not let out shall also be subjected to tax to be determined as above.

Section 71(3A): Income being loss under the head House property shall not be allowed to be set off against income under any other head in excess of ₹ 2,00,000/- Ref Sec 71(3A) w.e.f 01.04.2018.

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Taxation of Charitable Organisations

Charitable organisations are non-profit organisations; however, not all non-profit organisations are charitable organisations. All Charitable organisations may exist as non-profit companies, societies or trusts. However, structure or management is not the essence of the charitable organisation. It is the objectives, which distinguish a charitable organisation from a business organisation. Its functions can range from helping others in times of disaster, giving financial aid, medical services, public works and conducting human right activities. It also encompasses a wide-range of activities, including designing and implementing innovative programmes in various sectors of development, research, documentation, and training and advocacy. They range from very small people's organisations to highly sophisticated and technologically advanced research and health care or educational institutions. They generally function as a welfare organisation and work for the improvement of the society through their charitable function.

A charitable organisation is usually managed by 'Board of Trustees' or 'Governing Council' and not controlled from the outside. Key participants in the management of a charitable organisation are supposed to act in fiduciary capacity. A charitable organisation cannot distribute profits. It can earn and retain a profit, which is referred to as surplus. A charitable organisation should not serve private cause and public element for its activities is very important.

'Charitable Purpose' includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forest and wildlife), preservation of monuments or places or objects of artistic or historic interest and the advancement of any object of general public utility - [Section 2(15)]. The Finance Act, 2015 has added one more limb to the definition with effect from Assessment Year 2016-17 i.e. "Yoga", thus taking such activities outside the term "advancement of any other object of general public utility". Where predominant object of the activity is to carry out charitable purpose, it would not lose its character of charitable purpose, merely because some profit arises from such activity. The Finance Act, 2009, has amended the definition of 'charitable purpose' to provide that 'advancement of any other object of general public utility' will not be considered as 'charitable purpose' if it involves carrying on of any activity in the nature of trade, commerce, or business or any activity of rendering any service in relation to any trade, commerce or business for any fee, cess or other consideration irrespective of nature of use or application or retention of the income from such activity.

A retrospective amendment is made in the Finance Act, 2010 with effect from A.Y. 2009-10, to the effect that if the aggregate value of the receipts from such activities is not more than ₹ 10,00,000 during the year, such purpose would still be charitable. The monetary limit of ₹ 10,00,000 has been enhanced to ₹ 25,00,000 (A.Y. 2012-13 i.e., w.e.f. 1st April, 2011). *From the assessment year 2016-17 onwards monetary limit has been changed to 20% of total receipts of the relevant previous year of the trust undertaking such activities (provided the benefit of monetary limit has been changed to 20% of total receipts of the relevant previous year is available only if such activity is undertaken in the course of actual carrying out of such advancement or any other object of general public utility, regardless of nature of use or application, or retention, of the income from such activity).* The effect of this amendment would therefore be that in a particular year, an object of the trust may be regarded as a charitable purpose, but in a subsequent year or an earlier year, it may not be so regarded depending upon the amount of receipts from such activity. Promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Circular No. 395, dated September 24, 1984.

The Bombay High Court in case of *DIT (E) vs. Shree Nashik Panchvati Panjrapole (2017) 81 taxmann.com 375 (Bom.)* has held that incidental activity which may result in receipt of money, by itself would not make it trade, commerce or business nor an activity in the nature of trade, commerce or business to be hit by the proviso to section 2(15). There is no bar in law to a trust selling its produce at market price – this factor alone will not make it an activity of trade, commerce or business or even in its nature.

Similarly, Hyderabad High Court in case of *CIT (E) vs. Water & Land Management Training & Research Institute* has held that activity carried on by trust had direct connection with preservation of environment, it was not a fit case for invoking first proviso to section 2(15). Though the assessee was providing guidance to farmers and rendering consultancy services to various other organizations as well by charging certain fee the said activity had a direct casual connection to the activity of preservation of environment.

Further Delhi High Court in case of *Delhi Bureau of Text Books vs. DIT (E) [2017] 81 taxmann.com 412 (Del.)* has held that "Preparation & distribution of text books certainly contributes to the process of training & development of the mind and the character of students. There does not have to be a physical school/institution to be eligible for exemption. What is important is the activity. It has to be intrinsically connected to 'education'. Merely because the assessee had generated profits out of the activity of publishing and selling of school text books it did not cease to carry on the activity of 'education'. The question to be asked was whether the activity of the assessee contributed to the training and development of the knowledge, skill, mind and character of students?"

Also in case of *CIT (E) vs. Patanjali Yogapeeth (NYAS) [2017] 87 taxmann.com 54 (Delhi),* Delhi High Court has held that "The mere inclusion of yoga specifically w.e.f. 1-4-2016 did not per se imply that it came to be included as a specific charitable category on the same lines as education, medical relief, relief to the poor, etc., but that dissemination of yoga or Vedic philosophy or the practice of yoga or education with respect to yoga was well within the larger term "medical relief".

1. Franchise fees collected for setting up schools at different locations and used for maintenance of own school. Exemption cannot be denied – *DIT (E) & Others vs. Delhi Public School Society & Others (2018) 403 ITR 49 (Del).*
2. Institution for training Government officials in water and land management has a direct connection with the preservation of environment, which is covered under Charitable purpose, and hence it is entitled to registration as a trust – *CIT vs. Water and Land Management Training and Research Institute (2017) 398 ITR 283 (T&AP).*

3. Society created by RBI to assist banks and financial institutions was carrying out objective of general public utility and was not engaged in trade, thus exemption can be availed – *Pr. CIT (E) vs. Institute of Development and Research in Banking Technology (2018) 400 ITR 66 (T & AP).*

INCOME OF THE TRUST

Subject to sections 60 to 63, Income derived from property under trust wholly for charitable or religious purposes is exempt to the extent such income is applied on the objects of the trust in India, during the previous year. The trust must apply at least 85% of such income on the objects. In such cases balance 15% will deemed to be accumulated for the purpose of charity and exempt.

Section 11 provides exclusion of income of a trust subject to the provision of sections 60 to 63. Therefore before excluding any portion of income, first of all it is necessary, to find that income in question is includible in the total income of trust or not. For, if any income received by trust, is includible in the total income of another person by virtue of Section 60 to 63, then the question of exemption doesn't arise.

An explanation has been inserted to sub-section (1) of section 11 by the Finance Act, 2017, w.e.f. 1-4-2018. According to said explanation any amount credited or paid, out of income from property held under the trust to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes. Similar provision is added as twelfth proviso to section 10(23C).

Clause (ba) has been inserted to sub-section (1) of section 12A by the Finance Act, 2017, w.e.f. 1-4-2018 which mandates furnishing of return of income within due date specified under section 139(4A) for claiming exemption under section 11 and 12. The issue that arises is whether the corpus donations received by trust will be liable to tax as return of income is not filed in time? The view that corpus donations received by the trust is not taxable as it assumes the nature of "capital receipt" the moment the donation is given to the "Corpus of the Trust" despite of the fact whether such trust is registered under section 12A/12AA is recently confirmed by Pune Tribunal in case of *ITO vs. Serum Institute of India Research Foundation [2018] 90 taxmann.com 229 (Pune).*

In the case of *CIT vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom.),* the Bombay High Court held that income derived from the trust property is to be computed on commercial principles. Accordingly, adjustment of expenses incurred by the trust for charitable purpose in the earlier years against the income earned by the trust in the subsequent year will have to be regarded application of income of the trust in the subsequent year. The High Court has also held that the depreciation debited in the books should be treated as expenditure for this purpose. The concept of commercial income necessarily envisages deduction of depreciation on assets of the trust. Section 11 provides that the income of the trust is to be computed on commercial basis i.e., as per normal accounting principles. Normal accounting principles clearly provide for deducting depreciation to arrive at income. Also Hon'ble P & H Court in case of *CIT vs. Market Committee, Pipli (2011)* held that deduction of depreciation in the case of a charitable/religious trust does not amount to double deduction. Further the Hon'ble P & H Court in case of *CIT vs. Tiny Tots Education Society (2011) 330 ITR 21* has distinguished the decision in *Escorts v. Union of India (1993) 199 ITR 43 (SC)* that in present case the income of the assessee being exempt, the assessee is only claiming that the depreciation should be reduced from the income for determining the percentage of funds which have to be applied for the purposes of trust and hence it cannot be held that double deduction is given in allowing the claim for depreciation for computing income for the purposes of section 11. In order to avoid this double benefit, The Finance (No. 2) Act, 2014, now provides that from A.Y. 2015-16 depreciation will not be allowed in computing the income of the trust in respect of an asset where its cost of acquisition has already been claimed as application of income in the current or any of earlier years.

However, recently the Hon'ble Supreme Court in case of "Rajasthan & Gujarati Charitable Foundation Poona" has upheld the validity of depreciation claim while computing income for charitable purpose as per section 11. It has also concurred with the view of Delhi High Court regarding prospective nature of amendment brought in by Finance Act No. 2/2014. The Court further held that once the assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

In the case of *CIT vs. Maharana of Mewar Charitable Foundation (1987) 164 ITR 439,* the Rajasthan High Court has considered the Circular dated 24th Jan, 1973 of CBDT where CBDT has considered the question as to whether "where a trust incurs a debt for the purpose of the trust, the repayment of the debt would amount to an application of income for the purpose of trust." According to said circular, if the trust wants to spend more money on charitable and religious purpose, then, in a particular year, it can take a loan and the said loan can be repaid out of the income of the subsequent year & the repayment of the said loan amount out of the income of the subsequent year would amount to application of income for charitable & religious purpose under section 11(1)(a) of the Act. Also in decision of 2009 in the case of *DDIT (E) vs. Govindu Naicker Estate (Mad.) 227 CTR 283* it was held that repayment of loan is to be treated as application under Section 11.

The word 'applied' not necessarily to be understood to mean 'spent'. It has a wider connotation so that even a provision may require to be understood as applied – *CIT (E) vs. Ohio University Christ College (2018) 408 ITR 352 (Kar.).*

Income can be applied by a trust outside of India with a specific permission from CBDT as follows:

a. Charities established on or before 1-4-1952 for charitable purpose outside India.

b. Charities established after 1-4-1952 for international welfare in which India is interested.

If a trust or institution expends or applies more than its income, it can only mean that such excess amount is from corpus or future income. If such deficit is debited to corpus in accounts, it means that the corpus is used to apply for the trust. However, if the deficit is merely carried forward, such deficit is to be absorbed against future income. Hence the excess application in an earlier year may be set off against next year's income.

Under the existing provisions of section 11, the corpus donations given by one trust to another trust were considered as application of income in the hands of donor trust. Further, the recipient trust was able to claim the exemption in respect of such corpus donations without applying them for charitable or religious purposes. In order to curb such a practice, amendment of the section provides

that any corpus donation out of the income to any other trust or institution registered u/s. 12AA shall not be treated as application of income of donor trust for charitable or religious purposes.

Similar amendment has been made in section 10(23C) in respect of corpus donations given by any fund, trust, institution, any university, educational institution, any hospital or other medical institution referred to in Section 10(23C)(iv) to (via) or to any other trust or institution registered u/s. 12AA.

1. Where due to reason that whole or any part of the income has not been received during the year, the amount can be applied in the year of receipt or in the following year. However, intimation in writing must be sent to AO in Form 9A before the expiry of time allowed u/s. 139(1) for furnishing the return. In case the amount is not applied, it will be deemed to be the income of previous year immediately following year of receipt [Clause (1) of Explanation 1 to Section 11(1) & section 11(1B)].
2. If due to any other reason, income is not applied during the previous year; such income can be applied in the following previous year. However intimation in writing must be sent to AO in Form 9A before the expiry of time allowed u/s. 139(1) for furnishing the return. If such income is not applied, it shall be deemed to be the income of previous year immediately following the year in which such income was derived [Clause (2) of Explanation 1 to Section 11(1)]. This option can be exercised by uploading Form No. 9A (either under digital signature or electronic verification code) before the expiry of time allowed for submission of return of income under section 139(1).

If the amount applied by the trust is less than 85%, the shortfall in application is not taxable in the following cases [Section 11(2)] —

1. Income is accumulated up to 5 years and the purpose of accumulation is specified to the AO in Form No. 10 along with copy of resolution passed. If accumulated amount could not be applied due to order/ injunction of the court, such period will be excluded. The time limit for filing Form No. 10 is the same as time limit for filing return u/s. 139(1) (Rule 17). The benefit of accumulation is not available (with effect from the assessment year 2016-17) if the return of income and Form No. 10 is not furnished before the due date of filing of return under section 139(1). With effect from April 1, 2014, notice in Form No. 10 should be submitted electronically. From the assessment year 2016-17, the benefit of accumulation is not available if Form No. 10 is not uploaded before the due date of filing return of income specified under section 139(1) for the fund or institution.
2. The income accumulated must be applied for the specified purpose within the period of accumulation as per application in Form 10. Till the accumulated amount is applied, it must be invested in the forms and modes as specified in Section 11(5). This requirement of Section 11(5) is applicable also to those trusts who are claiming exemption under clauses (iv), (v), (vi) and (via) of Section 10(23C). If the accumulated income is credited/ paid to any trust registered u/s. 12AA or referred to in sub-clauses (iv), (v), (vi) or (via) of section 10(23C), it shall not be treated as application of income.

   Thus effectively corpus donations to be made would now need to be funded either out of corpus donations received or out of 15% accumulation.
3. In the case of dissolution of the trust, the AO may, on application made to him in this behalf, allow the application of such income accumulated u/s 11(2) in the year in which it is dissolved by way of transfer of the accumulated funds to other trust registered u/s. 12AA or institution referred to in Section 10(23C) [2nd proviso to Section 11(3A)].
4. If there is violation of any of the conditions relating to accumulation of income, such income will be deemed to be income of the previous year in which the conditions are violated or the previous year immediately following the expiry of the period of accumulation. [section 11(3)] However, if due to circumstances beyond the control of the trust, the said amount invested as per section-11(5), can not be applied for the purpose for which it was accumulated during the specified period, the AO, on an application made to him in this behalf,, allow to apply such accumulated income for such other charitable / religious purpose as specified in he application which shall be in conformity with the objects of the trust. [Section-3A]
5. A charitable trust is entitled to accumulate its unspent balance for multiple purposes. In *Director of Income-tax (Exemption) vs. Daulat Ram Education Society(2005) 278 ITR 260 (Del.)* it was held that merely because more than one purpose has been specified and the details about plans which the assessee has for spending on such purposes are not given, the Assessing Officer cannot deny the claim of exemption u/s. 11(2).

Section 11, 12, 12A, 12AA & 13 are the complete code dealing with the Charitable Trusts/Institutions and they are required to function under these sections in order to claim exemption. However certain Trusts/Institutions claim exemption under general provisions of Section 10 of the IT Act on their income. Vide The Finance (No. 2) Act, 2014 a trust will now not be entitled to claim exemption under any of the general provisions of section 10. Agricultural income of such a trust however will continue to enjoy exemption as provided under section 10(1). Similarly, a trust eligible for exemption under section 11 will not be barred from claiming exemption under section 10(23C).

Further, the entities registered u/s. 12AA are required to file return of income, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. A new clause (ba) has been inserted in section 12A(1) so as to provide for a further condition that the trust shall furnish the return of income within the time allowed u/s. 139 of the Act. In case the return of income is not filed by a trust in accordance with the provisions of section 139(4A), within the time allowed, the trust or institution will lose exemption u/ss. 11 and 12.

REGISTRATION

The trust shall make an application to the Commissioner for registration u/s. 12A in Form 10A within one year of creation of trust. In such cases registration can be granted from the date of creation of trust. In case of delay, the registration could be granted from inception if Commissioner was satisfied with the reasons of delay. W.e.f. 1-6-2007 Commissioner's power of condonation of delay was withdrawn. So, the registration would be granted from 1st day of financial year in which application is made. Charitable organisations eligible for exemption & fulfilling other substantive condition were facing genuine hardship due to non application of retrospective registration. In order

to provide relief to such charitable organisations, amended section 12A vide the Finance (No. 2) Act, 2014, provides that exemption benefit shall be allowed also in respect of the trust for any preceding assessment year the assessment proceedings for which are pending as on the date of grant of registration provided the objects & activities of the trust remain the same for such preceding assessment year. Further if such organisation has not obtained registration u/s. 12AA for earlier years, no reopening on grounds of non registration would be permitted. The benefits of the amendments would not be available for organisations, which have applied for registration in earlier years and were either refused or cancelled. The Commissioner on receipt of application can call for such documents/information as he thinks fit to satisfy himself about genuineness of activities of trust. On being satisfied, an order shall be passed in writing registering the trust or institution. If not satisfied, an order shall be passed in writing, refusing to register. Every order granting or rejecting registration has to be passed within 6 months from the end of the month in which application is made. The Commissioner can revoke the registration granted to the trust after giving an opportunity of being heard. The appeal against the order u/s. 12AA can be made to Appellate Tribunal.

At present, there is no explicit provision in the Act which mandates the trust or institution to approach for fresh registration in the event of adoption of new object or modifications of the objects after the registration has been granted. Section 12A has now been amended by the Finance Act, 2017, w.e.f. 1-4-2018 which mandates furnishing of fresh registration application, within a period of thirty days from the date of said adoption or modification, in case trust has adopted or undertaken modifications of the objects which do not conform to the conditions of existing registration. Upon failure to comply with these conditions, the trust will lose the exemption.

Rule 17A of The Income Tax Rules has been substituted by the Income-tax (First Amendment) Rules, 2018, w.e.f. 19-2-2018 and accordingly now the application for registration of charitable or religious trust needs to be furnished electronically through DSC or EVC, as applicable along with requisite documents listed as per amended rule.

Income of the charitable and religious trust or institution is exempt subject to fulfilment of specified conditions. One of the condition is to obtain registration from the Principal Commissioner or Commissioner. Section 12AA of the Act provides for the procedure to be followed by the Principal Commissioner or Commissioner in order to grant registration under the Act.

Under the existing provisions, in order to grant registration, Principal Commissioner or Commissioner is required to satisfy himself about the genuineness of the activities of the trust or institution. Now it is also proposed to provide that Principal. Commissioner or Commissioner satisfy himself with respect to the compliance of such requirement or any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects. Various judicial precedents have held that registration of trust or institution cannot be rejected on the ground that the trust is not registered with the Registrar of Societies or with applicable States trust laws or with the Registrar of Documents. Hence, now trust or institution is required to get itself registered, if State laws so provide since such registration is material to achieve its object.

The incomes of the following Institutions are exempt u/s 10.

Sub-section	*Trust or Institution*
10(23C)(i)	The Prime Minister's National Relief Fund
10(23C)(ii)	The Prime Minister's Fund (Promotion of Folk Art)
10(23C)(iii)	The Prime Minister's Aid to Students Fund
10(23C)(iiia)	The National Foundation for Communal Harmony
10(23C)(iiiaa)	The Swachh Bharat Kosh, set up by the Central Government
10(23C) (iiiaaa)	The Clean Ganga Fund, set up by the Central Government
10(23C) (iiiaaaa)	The CM's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union Territory
10(23C)(iiiab)	Educational Institution wholly or substantially financed by the Government
10(23C)(iiiac)	Medical Institution wholly or substantially financed by the Government
10(23C)(iiiad)	Educational Institution — Annual receipts do not exceed 1 crore rupees
10(23C)(iiiae)	Medical Institution — Annual receipts do not exceed 1 crore rupees
10(23C)(iv)**	Institution of National importance notified by the Govt.
10(23C)(v)**	Trust or Institution notified by the Central Government as for charitable purposes
10(23C)(vi)**	Educational Institution other than those mentioned in sub-clauses (iiiab) & (iiiad) and approved by prescribed Authority
10(23C)(via)**	Medical Institution other than those mentioned in sub-clauses (iiiac) & (iiiae) and approved by prescribed Authority

** Subject to the condition of application of income to the extent of 85% of the income. Further, Investment of the accumulation has also to be in accordance with provisions of Section 11(5) of the Act. In respect of other institutions listed above, these conditions do not apply.

As per Explanation to clause (iiiac) of section 10(23C), any university or other educational institution, hospital or other institution referred to in sub-sections (iiiab) and (iiiac) of section 10(23C) shall be considered as substantially financed by the Government for any previous year, if the Government grant to such institution exceeds prescribed percentage for total receipts (including voluntary contributions) of such institution during the relevant previous year. From A.Y. 2016-17 onwards such institutions are mandatorily required to file their return of income.

The Finance Act, 2012 has amended sections 10(23C) and 13 of the Act retrospectively from 1st April, 2009 to ensure that if the purpose of a trust or institution does not remain charitable due to the application of the amended definition of the term "charitable purpose" on account of commercial receipt in a

previous year, then such organisation should not get benefit of tax exemption u/s. 10(23) irrespective of whether or not the registration or approval granted or notification issued is cancelled withdrawn or rescinded. Further the memorandum also explains that, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

Charities registered for Charitable purpose u/s 12A or u/s. 10(23C) may apply for recognition u/s. 80G (5). Charities shall be existing for charitable purpose and not for religious purpose. The charity shall be registered under general law governing charities such as Maharashtra Public Trust Act, 1950 or Society Registration Act, 1860 or Company's Act, 1956 under section 25/under section 8 of Companies Act, 2013. Upon getting this recognition any donation paid to such charities will be eligible for deduction in the hands of the donor.

Recognition u/s. 80G(5) is governed by rule 11AA and such recognition could be granted up to a period of five years. This position of law has undergone change w.e.f. 1-10-2009. The registration valid and subsisting as on 1-10-2009 will continue to be so recognized in perpetuity. Commissioner of Income Tax has power to recall this recognition after giving opportunity of being heard to charity whose recognition is proposed to be withdrawn.

Orders passed under section 12AA or under Section 80G, rejecting the registration of trust/rejecting approval granted under section 80G, are appealable. The appeal lies to the Income Tax Appellate Tribunal.

CANCELLATION OF REGISTRATION

Section 12AA (3) provides for cancellation of registration of a charitable trust, where the Commissioner is satisfied that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust. With effect from 1st October, 2014 the power of Commissioner to cancel registration has been widened to also cover the issues wherein the trust or institution are noticed carrying on activities in contravention of Section 13(i), namely: (1) Income does not ensure for the benefit of the public; (2) Income is applied for the benefit of any religious community or caste; (3) Income is applied for the benefit of specified persons; (4) Funds are invested in prohibited modes. The Tribunal, in the case of *Bharati Vidyapeeth vs. ITO 119 TTJ (Pune) 261,* had held that this provision does not empower a Commissioner to cancel registration granted under Section 12A before the insertion of Section 12AA. The ratio of this decision is being reversed, by extending the right to cancel registration even to trusts registered under Section 12A. No order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

In a case where the trust deed has been amended for appointment of successor trustee, the same shall not be considered as change in objects warranting cancellation of registration. Appointing a successor trustee is merely a matter of powers of management and shall not be a case of dealing with objects of the trust – *CIT vs. Sadguru Narendra Maharaj Sansthan (2018) 407 ITR 12 (Bom).*

At present, the Principal Commissioner or Commissioner has no explicit power to cancel registration of the trust or institution in case such trust or institution has not complied with the applicable laws while carrying out its objects. However, the Madras High Court in case of *R.K. Deivendra Nadar Trust [2014]52 taxmann.com 168 (Madras)* has held that, the appropriate authority has power to verify the charitable trust and take action whenever there is a breach of the objects of the trust and the authority empowered shall take action against such charitable trusts if there is any violation of the objects of the Trust.

It is now proposed to specifically empower the Pr. Commissioner or Commissioner to cancel the registration if, he notices that the trust or institution has materially not complied with the provisions of the other applicable laws for achieving its object and the order, direction or decree, by whatever name called has been passed for such violation and trust or institution has not disputed such order or such order has attained finality.

AUDIT

Where total income before the exemptions u/ss. 11 and 12 of the trust exceeds the maximum amount not chargeable to tax; i.e., ₹ 2,50,000 in order to get exemption u/ss. 11 and 12, the accounts have to be audited by an accountant as defined in explanation below sub-section 2 of Section 288, who will give his report in Form 10B.

If the income of the trust/institution referred to in clause (iv), (v), (vi) or (via) of Section 10(23C) without giving effect to the provisions of these clauses exceeds the maximum amount not chargeable to tax, such trusts will have to get their accounts audited by the accountant as defined in Explanation below sub-section (2) of Section 288 (As provided in the Taxation (Amendment) Act, 2006) in Form 10BB.

From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for the period prior to April 1, 2014, audit report may be retained by the assessee and it may be furnished in original whenever the Assessing Officer wants to examine it in assessment proceedings or otherwise).

INVESTMENTS

All investments of the trust must be in forms and modes provided in Section 11(5), which are as under —

1. Investment in Government savings certificates/other securities/certificates issued by the Central Government under Small Savings Scheme;
2. Deposit in any account with the Post Office Saving Bank;
3. Deposit in any account with a scheduled/co-operative society engaged in carrying on the business of banking (including co-operative land mortgage bank or a co-operative land development bank);
4. Investment in units of the Unit Trust of India;
5. Investment in any security of the Central/State Government;
6. Investment in debentures whose principal and interest are fully and unconditionally guaranteed by Central/State Government;
7. Investment or deposit in any public sector company (PSC); Shares of PSC may be retained for three years and other investments or deposits till its maturity once PSC ceases to be a PSC;

8. Deposits with or investment in any bonds issued by
   a. an approved financial corporation which is engaged in providing, long-term finance for industrial development in India;
   b. a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes,
   c. public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India;
9. Investment in immovable property;
10. Deposit with the Industrial Development Bank of India;
11. Any other prescribed form or mode of investment or deposit (Please refer Rule 17C).
   a. investment in the mutual fund units referred to in Section 10(23D) of the Income-tax Act, 1961;
   b. any transfer of deposits to the Public Account of India;
   c. deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;
   d. investment by way of acquiring equity shares of a depository as defined in section 230(1)(e) of the Depositories Act, 1996.
   e. investment made by a recognised stock exchange referred to in section 2(f) of the Securities Contracts (Regulation) Act, 1956 (hereafter referred to as investor) in the equity share capital of a company (hereafter referred to as investee)
   f. investment by way of equity share capital of a specified company
   g. investment by way of acquiring equity shares of an incubate by an incubator.
   h. investment by way of acquiring equity shares of National Skill Development Corporation.
   i. Investment in debt instruments issued by any infrastructure finance company registered with RBI
12. Investment in "Indira Vikas Patra" and "Kisan Vikas Patra" are in accordance with the norms and modes specified in section 11(5) – Circular No. 566, dated 17-7-1990.

   However, this provision will not apply to:
   1. Any asset held as part of the corpus as on 1-6-1973 and any accretion thereto by way of bonus shares.
   2. Any debentures acquired before 1-3-1983. If debentures acquired between 28-2-1983 and 25-7-1991, exemption is denied only in respect of income from such debentures, provided debentures are disinvested by 31-3-1992.

All investments of the trust must be in modes provided in Section 11(5). If not, they must be brought in conformity within 1 year from the end of the previous year in which such investments are acquired, or 31st March, 1993, whichever is later. Contravention results in income and wealth of the trust being taxed at maximum marginal rate.

CORPUS DONATION

Where a trust receives voluntary contributions (Income-tax Act 2(24(iia)) made with a specific direction that they will form part of the corpus, such donation will not be included in the total income of the trust [Section 11(1)(d) r.w.s. 12]. Although corpus donation is fully exempt but these are to be considered for the limit of maximum amount, which is not chargeable to income tax i.e., ₹ 250,000/- prescribed for audit of accounts. However, u/s. 12 other voluntary contributions would be deemed to be income of the trust.

Subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government as the case may be shall not form part of income of such trust or institution.

BUSINESS INCOME

Section 11(4A) provides that tax exemption will not apply in relation to any income of a trust being profits and gains of the business unless the business is incidental to the attainment of the objectives of the trust and separate books of account are maintained by such trust in respect of such business.

The benefit of exemption to a trust, having the object of advancement of general public utility, would be lost if any business is carried on with gross receipt in excess of ₹ 25 lakh by virtue of proviso to section 2(15). This restriction of ₹ 25 lakh does not apply to a trust having object other than the object of advancement of general public utility. From the assessment year 2016-17 onwards monetary limit has been changed to 20% of total receipts of the relevant previous year of the trust undertaking such activities (the benefit of monetary limit changed to 20% of total receipts of the relevant previous year is available only if such activity is undertaken in the course of actual carrying out of such advancement or any other object of general public utility, regardless of nature of use or application, or retention, of the income from such activity).

CAPITAL GAINS

Where a capital asset is transferred and entire net consideration is utilised to acquire a new capital asset, the whole of capital gains is deemed to have been applied for charitable/religious purposes. If part of the net consideration is used to acquire a new capital asset, then the capital gains equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset, will be deemed to have been applied for charitable/religious purposes [Section 11(1A)]. There is no period of holding of the asset for availing such exemption by re-investment. Also refer Instruction 883 dated 24-9-1975.

TDS

The trust is required to deduct tax at source under Chapter XVIIB as per the provisions of the Act. The trust may obtain certificate from the AO u/s. 197 so that it can receive income without deduction of tax at source.

The Finance Act, 2018 had extended the application of provisions of section 40(a)(ia) with effect from A.Y. 2019-20 to section 11 for the purposes of determining the amount of application under clause (a) or clause (b) of sub-section (1) thereof. Therefore from A.Y. 2019-20, if a trust fails to comply with the provisions Chapter XVIIB then claim of expenses as application of income will not be allowed. Accordingly so much of expenses not regarded as application will become

subject to tax. Also the benefit of exemptions applicable under section 11(1)/(2) cannot be extended to said income.

EXEMPTION U/S. 11 NOT TO APPLY IN CERTAIN CASES (SECTION 13)

Section 13(1)(a)	–	Trust for private religious purposes
Section 13(1)(b)	–	Trust established for the benefit of any particular religious community or caste
Section 13(1)(c)	–	Income of the trust is applied directly or indirectly for the benefit of persons referred to in sub-section (3)
Section 13(1)(d)	–	Funds are invested otherwise than in any form or modes specified in 11(5)

MISCELLANEOUS POINTS

1. If whole or part of the relevant income is not exempt u/ss. 11 or 12 by virtue of provisions contained in clauses 13(1)(c) and (d), the tax will be charged at maximum marginal rate. [Proviso to Section 164].
2. Section 115BBC — Anonymous donation means any voluntary contribution where a person receiving such donation does not maintain record of identity indicating the name and address of person making such contribution. The anonymous donations will be taxed @ 30% (plus Surcharge and Education Cess), except in the following two situations:
   a. The trust or institution is established wholly for religious purposes; and
   b. If it is for both religious and charitable purposes, unless the donation is specifically for the educational or medical institution run by such trust.

   In case of partly religious and partly charitable institutions where the anonymous donations are directed towards medical or educational institutions run by such entities or anonymous donations are received by wholly charitable institutions, it will be taxable to the extent such donations exceeds 5% of total donations received or ₹ 1,00,000 whichever is more. Such anonymous donations in excess of 5% of the total donations received or ₹ 1 lakh (whichever is higher) are taxed at the rate of 30% and the residual income of such trust is computed after deducting the anonymous donations, would be chargeable to tax as per Regular Slab applicable to the assessee. Such residual income will be eligible for exemption under sections 11/10(23C) subject to satisfaction of conditions of that section. Finance (No. 2) Act, 2014 has provided that the residual income of the trust will be computed by reducing from the total income of the trust, the anonymous donations that have been taxed at the rate of 30% and not the total anonymous donations received by the trust.
3. Filing of return [Secion 139(4A)] on or before 30th September.
4. Filing of return by the institutions referred to in clauses 21, 22B, 23A, 23B, sub-clauses (a) and (b) of clause 24 of Section 10 and sub-clauses (iv), (v), (vi), (via) of clause 23C [Section 139(4C)] on or before 30th September.
5. Application for grant of approval or continuance thereof, wherever required in Section 10(23C), shall be filed by 30th September of the relevant assessment year for the assessment year for which exemption is sought (e.g., for A.Y. 2010-11, it should be filed on or before 30-9-2010, Finance Act (No. 2) of 2009, with effect from 1-4-2009). The Taxation (Amendment) Act, 2006, has replaced the present system of obtaining approval periodically in case the annual receipts are more than ₹ 1 crore by a one-time approval u/s. 10(23C). This approval shall be granted or rejected within a period of 12 months from the end of the month in which such application is received.
6. Late fee of ₹ 5,000 or ₹ 10,000 as the case may be for failure to furnish return of income within time prescribed under 139(1).
7. Penalty of ₹ 100 per day for failure to furnish return under sub-sections 4A and 4C of Section 139 [Section 272A(2)(e)].
8. 13B [Electoral Trust]: The Finance Act (No. 2) of 2009 has recognized the concept of electoral trust for tax purposes. The salient features are
   a. approved by CBDT as per scheme notified by Central Government
   b. Donations received are exempt from tax if:—
      a. 95% of donations received plus surplus brought forward from earlier years is distributed to registered political parties.
      b. trust functions as per rules framed by Central Government.

   Contribution to Electoral Trust eligible for deduction while computing taxable income u/s. 80GGB for Indian Companies or u/s. 80GGC for any assessee except local authority and every artificial juridical person wholly or partly funded by the Government.
9. Any charitable trust, desirous of receiving any foreign contribution from a foreign source, is required to obtain registration u/s. 6(1) of Foreign Contribution (Regulation) Act, 1976 (FCRA). Any such association which is not registered or which has been denied registration, can receive foreign contribution only after obtaining prior permission from Home Ministry of the Central Government under Section 6(1A) of (FCRA) Act.
10. Section 80G provides for deduction of amounts contributed by way of donations to various institutions set up for charitable purposes. This section has been amended as under:—
    i. Two funds, namely, "Swachh Bharat Kosh" and "Clean Ganga Fund" have been established by the Central Government. With a view to encourage people to participate in this national effort, section 80G is amended from A.Y. 2015-16 to provide that deduction of 100% of the donation to any of these funds will be allowed. Since this amendment has been made effective from A.Y. 2015-16, such donation made up to 31-3-2015 will be eligible for deduction under the amended section. It may be noted that such donation made by a company in pursuance of Corporate Social Responsibility (CSR) expenditure u/s. 135(5) of the Companies Act, 2013, will not qualify for this deduction. It may be noted that section 10(23C) has been amended from A.Y. 2015-16 to provide that income of "Swachh Bharat Kosh" and "Clean Ganga Fund" will be exempt from Income Tax.

ii. By another amendment to section 80G from A.Y. 2016-17 donation made to "The National Fund for Control of Drug Abuse" will now be eligible to 100% deduction.

11. A University or Educational Institution, Hospital or other Institution which is wholly or substantially financed by the Government and which is exempt u/s. 10(23C)(iiiab) or (iiiac) is not required to mandatorily file its return of income. By amendment of section 139(4C), it is now provided that these entities will have to mandatorily file Return of Income from A.Y. 2016-17. Sections 10(23C)(vi) and (via) provides that educational Institution or hospital specified in section 10(23C)(iiiab) or (iiiac) have to obtain approval from the prescribed authority. If this approval is denied there is at present no specific remedy.

    Section 253(1) is now amended from 1-6-2015 to provide that appeal to ITA Tribunal can be filed against any order for denying such approval.

12. W.e.f. 1st April, 2018 no deduction under Section 80G shall be available to a payer if the donation is in cash and exceeds ₹ 2,000 (₹ 10,000 up to A.Y. 2017-18.)

13. The Finance Act, 2018 has extended the application of provisions of sections 40A(3)/(3A) with effect from A.Y. 2019-20 to section 11 for the purposes of determining the amount of application under clause (a) or clause (b) of sub-section (1) thereof. Therefore from A.Y. 2019-20, if a trust makes payment of expenses in excess of ₹ 10,000 in cash then claim of expenses as application of income will not be allowed. Accordingly so much of expenses not regarded as application will become subject to tax.

    Also the benefit of exemptions applicable under sections 11(1)/(2) cannot be extended to said income.

14. Section 115TD is inserted with effect from June 1, 2016. This section provides for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution.

15. The accretion in income of the trust or institution shall be taxable on conversion of trust or institution into a form not eligible for registration under section 12AA or on merger into an entity not having similar objects and registered under section 12AA or non-distribution of assets on dissolution to any charitable institution registered under section 12AA or approved under section 10(23C) within a period of 12 months from dissolution.

    A trust or institution shall be deemed to have been converted into any form (not eligible for registration under section 12AA) in a previous year, if—

    a. The registration granted to it under section 12AA has been cancelled; or

    b. It has modified its objects and not applied for fresh registration (or fresh registration application has been rejected).

16. Accreted income shall be amount of aggregate of total assets as reduced by the liability as on the specified date. The asset and the liability of the charitable organisation which have been transferred to another charitable organisation within specified time will be excluded while calculating accreted income.

17. So much of the accreted income as is attributable to the following asset and liability, if any, related to such asset shall be ignored for the purposes of computation of accreted income-

    - Any asset which is established to have been directly acquired by the trust or institution out of agricultural income as is referred to in section 10(1).
    - Any asset acquired by the trust/institution during the period beginning from the date of its creation and ending on the date from which the registration under section 12AA became effective or deemed effective (however, this rule is valid only if the trust/institution has not been allowed any benefit of sections 11 and 12 during the said period). "Deemed" effective covers a case where due to first proviso to section 12A(2) the benefit of sections 11 and 12 have been allowed to the trust/institution in respect of any previous year prior to the year of registration.

18. The taxation of accreted income shall be at the maximum marginal rate (i.e., 35.535 per cent for the assessment year 2017-18).

19. This levy shall be in addition to any income chargeable to tax in the hands of the entity. There is no express provision for refund of accreted tax paid, even if it is held to be invalid. Thus, the institution will have to take recourse to constitutional remedies.

20. This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

21. In case of failure of payment of tax within the prescribed time a simple interest @ 1 per cent per month (or part of it) shall be applicable for the period of non-payment.

22. For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be assessee in default and all provisions related to the recovery of taxes shall apply. The AO can consider almost any person connected with the management as the principal officer of the institution. Again, there is no provision that the liability is restricted to the assets of the institution. Hence, on a plain language, the tax could be recovered from the personal assets of the principal officer also. He would also be liable to pay interest on the default. He will also be deemed to the assessee in default in respect of the amount to be payable by him!! Further the recipient of assets of the trust, which is not a charitable organisation, shall also be liable to be held as assessee in default in case of non-payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

23. The capital gain on transfer of asset held by a trust or an institution in respect of which accreted income has been computed and tax paid (under Chapter XII-EB), the cost of acquisition of such asset is deemed to be the FMV of the asset considered for computation of accreted income as on the specified date referred in section 115TD(2).

IMPORTANT CIRCULARS OF CBDT

a. Instruction 883 dated 24-9-1975 – Fixed Deposit exceeding 6 months is also a capital asset.

b. No. 5-P (LXX, 6) dated 19-6-1968 — The income of the trust is to be computed in the commercial sense; i.e., "book income". Even when the trust derives income from

property, or dividends, such income will be computed on actual commercial basis and not under provisions relating to income from house property or income from other sources.

c. No. 100 dated 24-1-1973 — The repayment of loans originally taken to fulfil any of the objects of the trust is also considered as an application. The loan given by an educational trust is also an application for charitable purpose.

d. No. 566 dated 17-7-1990 — Indira Vikas Patras and Kisan Vikas Patras are permitted investments u/s. 11(5)(i).

THERE ARE ALTERNATIVE NAMES USED FOR REFERRING TO CHARITIES IN INDIA

- NPO — Not for Profit Organisation
- NGO — Non-Governmental Organisation
- VO — Voluntary Organisation
- CSO — Civil Society Organisation
- CBO — Community Based Organisation
- Charitable Organisation
- TSO — Third Sector Organisation

However, whatever the term used to describe a charitable organisation, a few important points must be remembered with regard to the charity sector:

- There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists in India, in contrast to other countries where a Charity Commissioner regulates the individual organisation on nationwide basis.
- Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take.
- Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.
- Non-profit organisations are not permitted to be involved in any 'political activity'. Bombay Public Trusts Act even puts 'political education' outside the scope of 'charitable purpose'. However Section 20 of the Societies Registration Act, 1860 allows registration of a society whose object may be 'diffusion of political education'.
- India, being a secular State, does not allow distinction of caste, colour and creed in formation of a charity. However, it is possible to create a valid trust for the benefit of a particular section of the community. Although, this kind of trust would not enjoy income tax exemption.
- Religious trusts established for the benefit of a particular religious community are also not exempt from income tax.

In the case of *CIT vs. Indian Society of the Church of Jesus Christ of Latter day Saints (2017) 397 ITR 762* the Delhi High Court held that, though assessee incurred expenditure for upkeep of priests who belonged to particular community, the programmes conducted by assessee are open to public at large, the activities of assessee are not considered to be exclusively meant for one particular religious community and hence assessee is entitled to exemption u/s. 11.

❑❑

Depreciation under Income-tax Act

WHAT IS DEPRECIATION?

Depreciation as per law of lexicon is defined as positive decline in the real value of a tangible asset because of consumption, wear and tear or obsolescence. In accountancy, depreciation refers to two aspects of the same concepts:

1. The decrease in value of assets;
2. The allocation of cost of assets over a period in which the assets are used.

In Income Tax , depreciation is a charge against the income. It is an allowance on capital assets acquired and put to use. There are different methods of calculating the depreciation like straight-line method or written down value (WDV) method. The Income-tax Act, 1961 ('the Act') recognises WDV method, save and except for undertaking engaged in generation or generation and distribution of power.

BLOCK OF ASSETS [SECTION 2(11)]

Prior to the 1986, the Income-tax Act allowed the calculation of depreciation in respect of each capital asset separately. The computation of depreciation allowance was a detailed and time-consuming exercise on part of taxpayer and the tax department due to difference in rate of depreciation depending on the date of purchase, the type of asset, the intensity of use etc.. Moreover, the system of granting the terminal allowance or taxing the balancing charge at the time an asset was sold, demolished, discarded, etc., necessitated the maintenance of records of depreciation already allowed in respect of each asset.

To simplify the cumbersome process of calculating depreciation and maintenance of records, the Finance Minister in his budget speech for the year 1986-87 announced new provisions for allowing depreciation in respect of blocks of asset. The concept of 'block of assets' was introduced by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 1-4-1988.

Section 2(11) of the Act defines the term block of assets as —

"block of assets means a group of assets falling within a class of assets comprising –

a) tangible assets, being building, machinery, plant or furniture;

b) intangible assets, being knowhow, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed."

CONDITIONS FOR CLAIMING DEPRECIATION [SECTION 32(1) OF THE ACT]

The following are four basic conditions for claiming the depreciation:

1. The asset must be **owned, wholly or partly**, by the assessee. (**not** necessary to be a registered owner)
2. The asset should be actually **used for the purpose of business or profession of the assessee**.
3. The asset should have been **used during the relevant year** in which depreciation allowance is claimed
4. The **assets must fall under eligible block** of assets

Further, the following points can be noted in respect of depreciation:

- Co-owners are entitled to claim depreciation to the extent of the value of the asset owned by each co-owner.
- Depreciation is not allowable on the cost of land.
- Depreciation is mandatory from A.Y. 2002-03 and shall be allowed or deemed to have been allowed irrespective of claim made in the profit & loss account or not [Explanation 5 to section 32(1)(ii)].
- Where the asset is not exclusively used for the purpose of business or profession, the depreciation shall be allowed proportionately with regards to such usage of assets [section 38(2)].

WRITTEN DOWN VALUE [SECTION 43(6) OF THE ACT]

Section 32(1) of the Act provides that depreciation is to be computed at the prescribed percentage on the written down value of the asset which in turn is calculated with reference to actual cost of the assets. In the context of computing depreciation, it is important to understand the meaning of the term 'WDV' & 'Actual Cost'.

WDV under the Act, means

a. Where the asset is acquired in the previous year the actual cost of asset shall be treated as WDV.

b. Where the asset is acquired in earlier year WDV shall be equal to the actual cost incurred less depreciation actually allowed under the Act or under the Indian Income-tax Act, 1922 or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886) was in force.

Sr. No.	Particulars	Amount	Amount
1	In case of any P.Y. relating to A.Y. 1988-89		
	a. The aggregate WDV of all assets falling within the same block in the beginning of P.Y. relating to A.Y. commencing from 1-4-1988	XXX	
	b. *Add* : Actual cost of assets acquired during the previous year falling in the same block	XXX	

Sr. No.	Particulars	Amount	Amount
	c. *Less*: Moneys payable (including the scrap value) on assets sold, discarded or demolished or destroyed during the previous year to the extent it does not exceed (a+b)	(XXX)	XXX
2	In case of slump sale in relation to any P.Y. relating to A.Y. 1988-89		
	a. Actual cost of assets falling in the same block	XXX	
	b. *Less* : Depreciation actually allowed in A.Ys. prior to 1988-89	(XXX)	
	c. *Less* : Depreciation allowable in respect of A.Y. beginning on or after 1-4-1988 as if the asset was the only asset in the relevant block. (However deduction under b & c shall not exceed a.)	(XXX)	XXX
3.	In case of P.Y. relevant to A.Y. commencing on 1-4-1989 the WDV would be the amount of WDV of block of assets in immediately preceding P.Y. as reduced by depreciation actually allowed in respect of said preceding P.Y. and as adjusted by clauses b & c of 1 above.		
• The WDV in the case of the assessee whose income includes agricultural income shall be computed as the assets were used for the purpose of business and the whole depreciation is allowed under this Act.			

Income Tax

ACTUAL COST [SECTION 43(1)]

Actual Cost as per the Act, means:

Sr. No.	Particulars	Actual Cost would mean
1.	Asset is acquired by the assessee in previous year	Actual cost of asset to the assessee as reduced by cost met by any other person or authority directly or indirectly (in the form of subsidy or grant or reimbursement). However, if any such amount of subsidy or grant or reimbursement is of such nature that it cannot be directly related to asset acquired, then the cost of the asset would be reduced on proportionate basis. In case of motor car acquired before 1-3-1975 but after 31-3-1967 and not used for run it on hire the actual cost shall be restricted to ₹ 25,000/-. Further, expenditure incurred for acquisition of any assets or part thereof shall be ignored while determining actual cost, if the payment for that expenditure is made otherwise than: • by an account payee cheque drawn on a bank; or • an account payee bank draft; or • use of electronic clearing system through a bank account; or • through such other electronic mode as may be prescribed and the amount of payment to a person exceeds INR 10,000 in a day
2.	Asset acquired and used for scientific research when ceases to be so used on which depreciation has to be allowed	The amount of actual cost of asset to the assessee as reduced by any deduction allowed u/s. 35(1)(iv) of the Act or similar deductions allowed under the Income-tax Act, 1922.
3.	Conversion of inventory into capital asset	Fair market value of inventory as on the date of conversion will be considered as actual cost for the purpose of claiming depreciation.
4.	An asset is acquired by way of gift or inheritance	Actual cost to the previous owner as reduced by a. The depreciation actually allowed under the Income-tax Act, 1922 or this Act in respect of previous years prior to 1-4-1988; and

Sr. No.	Particulars	Actual Cost would mean
		b. The amount that would have been allowed to the assessee for assessment year starting from 1-4-1988 (taking the asset as the only asset in the block).
5.	The assets which were previously used by any other person	If the assessing officer is satisfied that the main purpose of transfer of assets is to reduce the tax liability the actual cost shall be an amount as determined by the Assessing Officer with prior approval of Joint Commissioner of Income Tax.
6.	An asset once belonging to the assessee and was used by him for the purpose of his business or profession and thereafter it ceased to be his property which is reacquired by him	Actual cost when he first acquired it, as reduced by the depreciation actually allowed in respect of previous year related to Assessment Year commencing from 1-4-1988 and the amount that would have been allowed to the assessee for assessment year starting from 1-4-1988 (taking the asset as the only asset in the block) Or The actual price for which the asset is reacquired WHICHEVER IS LESS.
7.	Where the assessee acquires the assets which were previously used at any time by any other person for the purpose of his business or profession & depreciation was allowed to such other person and such other person acquires the same assets on lease, hire or otherwise from the assessee	The written down value of such assets at the time of transfer by the other
8.	A building previously the property of the assessee is brought into use for the purpose of the business or profession after 28-2-1946	Actual cost of building to the assessee as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the business or profession since the date of its acquisition by the assessee.
9.	Any asset is transferred by a holding company to its subsidiary company or vice versa, and if conditions of clauses (iv) or (v) of section 47 of the Act are satisfied	The actual cost shall be the same as if the transferor company continued to hold the asset.
10.	In a scheme of amalgamation, asset transferred by amalgamating company to amalgamated Indian company	The actual cost shall be the same as if the amalgamating company had continued to hold the asset for the purpose of its own business.
11.	In a scheme of demerger, asset transferred by demerged company to resulting Indian company	The actual cost shall be the same as if the demerged company had continued to hold the asset for the purpose of its own business. Provided the actual cost shall not exceed the WDV of such asset in the hands of demerged company.
12.	Asset is acquired outside India by a non-resident assessee and is brought into India for the use in business or profession	Actual cost to the assessee as reduced by an amount equal to the depreciation calculated at the rate in force that would have been allowable as if the asset had been used in India for the business or profession since the date of its acquisition by the assessee.
13.	Any asset is acquired under a scheme of Corporatisation of a recognised stock exchange in India, approved by SEBI	The amount which would have been regarded as actual cost had there been no such Corporatization
14.	Any asset on which deduction has been allowed or allowable u/s. 35AD of the Act	NIL In either case of assessee or the other assessee acquiring the asset by way of gift, will, trust or distribution of liquidation of a company or any such mode referred to in Clauses (i), (iv), (v), (vi), (vib), (xiii), (xiiib) and (xiv) of section 47 of the Act.

Sr. No.	Particulars	Actual Cost would mean
		However, if the deduction under section 35AD of the Act is withdrawn, the actual cost of assets shall be the actual cost of the assets to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purpose of business since the date of acquisition
15.	Any block of assets is transferred by a private company or unlisted public company to an LLP where conditions u/s. 47(xiiib) of the Act are satisfied	The actual cost shall be WDV of the block of assets as in the case of the said company on the date of conversion of the company into an LLP.

Notes:

— Any amount paid or payable as interest in connection with the acquisition of an asset and the same is related to the period after the asset is first put to use shall not be included in actual cost of the asset.

— The actual cost for the assets acquired on or after 1-3-1994 shall be reduced by the amount of duty of excise or additional duty leviable under section 3 of The Customs and Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules,1944.

The term actual cost has not been defined under the Act and hence this expression has to be construed in accordance with the generally accepted principles of accounting. Accordingly, the actual cost of a depreciable asset comprises its purchase price (including import duties and other non-refundable taxes or levies) and any directly attributable cost of bringing the asset to its working condition for its intended use. Actual cost to the assessee would be what the assessee has in fact expended or laid out for the purpose of acquiring the asset.

DEPRECIATION ALLOWED [SECTION 32(1)]

- ***For all assessees other than Power Sector*** — Depreciation is calculated on written down value of "Block of Assets", except for Power Sector, at rates provided in Appendix I read with Rule 5(1).
- ***For Power Sector assessees*** — Under Section 32(1)(i) in case of undertaking engaged in generation or generation and distribution of power, the depreciation will be allowed on actual cost (i.e. on straight-line method) at the rates provided in Appendix IA read with Rule 5(1A). Such undertaking however has an option to claim depreciation on Written Down Value method at the rates provided in New Appendix I if the assessee exercises such option before the due date of filing the return as per provisions of section 139(1). In case of —
  - a) Undertaking which began to generate power prior to 1-4-1997, for the A.Y. 1998-99 onwards.
  - b) In other case, for the A.Y. relevant to the P.Y. in which it begins to generate power.
- Once the option is exercised to claim depreciation on WDV method, it will apply for all subsequent assessment years.
- The rate of depreciation should be restricted to fifty per cent of rates prescribed if the assets acquired by the assessee during the previous year and put to use for the period less than one hundred and eighty days in that previous year.
- Depreciation allowable to predecessor and successor company in case of succession of business due to amalgamation or demerger shall not exceed in any previous year the amount of depreciation that would have been allowed as if there was no such succession and the depreciation so computed shall be divided between the amalgamating and amalgamated company or demerged and resulting company as the case may be on the basis of number of days the assets were used by such companies.
- Accounting standard on lease issued by ICAI requires capitalisation of the assets by the lessees in financial lease transaction. In such leases, the lessee can exercise the rights of the owner in his own right and hence depreciation is available to the lessee.

TERMINAL DEPRECIATION [Asset Sold or Discarded]

When such asset on which depreciation is allowed is sold, discarded or demolished in a previous year, and if the insurance, salvage, compensation or sale value, as the case may be, receivable in respect of such asset falls short of the written down value, such difference would be allowed as deduction [Terminal Depreciation] u/s. 32(1)(iii) of the Act. The condition for allowing such deduction is that such deficiency is actually written off in the books of account. Similarly, excess of insurance, salvage, compensation or sale value, as the case may be, receivable in respect of such asset over the written down value is chargeable to tax [Balancing Charge] u/s. 41(2) of the Act up to the amount of actual cost of the asset. Since Section 50 of the Act does not apply to such assets, the provisions of capital gains in respect of these assets shall apply as if it is a transfer of asset not forming part of the block of assets.

ADDITIONAL DEPRECIATION

In case of any new machinery or plant (other than ships and aircraft) acquired and installed after March 31, 2005 by an assessee engaged in the business of manufacture or production of any article or thing additional depreciation of 20% of actual cost shall be allowed. From A.Y. 2013-14 the same is also allowed to assessee engaged in the business of generation or generation and distribution of power, where the depreciation is provided on WDV method as per Appendix I.

From assessment year 2017-18 the same is also allowed to the assessee engaged in the business of transmission of power.

However no such additional depreciation will be allowed in respect of machinery or plant—

— Used by any other person in India or outside India before its installation.

— Installed in any office premises or any residential accommodation, including a guest house.

— Any office appliances or road transport vehicles.

— The whole of actual cost of which is allowed as deduction in computing income chargeable under the head Profit and Gain of Business or Profession of any one previous year.

From assessment year 2016-17 where an assessee set up an undertaking for manufacture or production of articles on or after 1st April, 2015 in any notified backward area in the State of Andhra Pradesh, Bihar, Telangana or in West Bengal and acquires or install any new machinery or plant (other than ships or aircraft) after 1st April, 2015 but before 1st April, 2020 then the additional depreciation shall be allowed at 35% of cost of acquisition as against 20%.

- Where an asset acquired during the previous year and is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, depreciation allowance shall be restricted to 50% of the amount calculated at prescribed rates, w.e.f. 1st April, 2016 the balance amount of 50% of such depreciation shall be allowed in the immediate subsequent year.
- In case of an asset acquired under hire purchase agreement, where the terms of the agreement provide that the equipment shall eventually become the property of the hirer or confer on the hirer an option to purchase the equipment, the hirer is entitled to claim depreciation allowance.

  For computing the depreciation allowance, the difference between the aggregate amount of the periodical payments under the agreement and the initial value (i.e., the amount for which the hired subject would have been sold for cash at the date of agreement) would be spread evenly over the term of the agreement. (Circular No. 9, dated 23-3-1943).
- Fans, air-conditioners, refrigerators, etc., provided by the employer at the residence of the employees, is considered to have been used wholly for the purpose of the employer's business and full depreciation in accordance with the rules, is allowed in the assessment of the employer. (F. No. 10/14/66-IT (A-I), dated 12-12-1966).
- Where the business or profession is carried on in a building not owned by assessee and any capital expenditure is incurred for construction of any structure or for renovation, improvement or extension of the building, then depreciation will be allowed in respect of such capital expenditure at the rates prescribed for "building".
- No depreciation is allowable in respect of motor car manufactured outside India acquired after 25th February, 1975 but before 1st April, 2001 unless it is used by the assessee:

  — In the business of running it on hire for tourists.

  — In his business or profession outside India.
- In case of inadequate profit or loss any depreciation which could not be fully allowed for want of profit, the amount which could not be given full effect of shall be carried forward in the subsequent year and shall form part of the depreciation of such subsequent previous year. [This condition is subject to Section 72(2) of the Act & Section 73(3) of the Act].

RATES OF DEPRECIATION		(%)
(I)	Buildings:	
	(a) Buildings which are used mainly for residential purposes except hotels and Boarding House	5
	(b) Buildings which are not used mainly for residential purposes and other than mentioned in a & c	10
	(c) Buildings acquired on or after 1-9-2002 for installing P&M forming part of water supply project; or water treatment system and put to use for the purpose of providing infrastructure facilities u/s. 80-IA(4)(i) of the Act	40
	(d) Purely temporary erections such as wooden structures	40
	Note • "Buildings" include roads, bridges, culverts, wells and tube wells. • A building shall be deemed to be a building used mainly for residential purposes, if the built up floor area thereof used for residential purposes is not less than sixty-six and two-thirds per cent of its total built-up floor area and shall include any such buildings in the factory premises. • Water treatment system includes system for desalination, demineralisation and purification of water.	
(II)	Furniture and fittings including electrical fittings	10
	• Electrical fittings include electrical wiring, switches, sockets, other fitting and fans, etc.	
(III)	Machinery and plant: Plant has been held to include : • Movable partitions • Sanitary & pipeline fitting • Ceiling and pedestal fans	

RATES OF DEPRECIATION		(%)
	• Wells • Hospital However, w.e.f. A.Y. 2004-05, it shall not include buildings, furniture and fittings.	
	1) Machinery & Plant other than those covered by sub-items 2, 3 and 8 below: • Machinery and plant includes pipes needed for delivery from the source of supply of raw water to the plant and from the plant to the storage facility	15
	2) Motor-cars (other than those used in business of running them on hire) acquired or put to use on or after 1st April, 1990	15
	3) (i) Aeroplane-Aeroengines	40
	(ii) Motor buses, Motor lorries and Motor used in a business of running them on hire	30
	(iii) Commercial vehicles acquired on or after 1-10-1998 but before 1-4-1999 and is put to use before 1-4-1999 for the purposes of business or profession	40
	(iv) New commercial vehicles acquired on or after 1-10-1998 but before 1-4-1999 and is put to use before 1-4-1999 in replacement of condemned vehicles of over 15 years of age for the purpose of business or profession	40
	(v) New commercial vehicles acquired on or after 1-4-1999 but before 1-4-2000 in replacement of condemned vehicles of over 15 years of age and is put to use before 1-4-2000 for the purpose of business or profession	40
	(vi) New commercial vehicles acquired on or after 1-4-2001 but before 1-4-2002 and is put to use before 1-4-2002 for the purpose of business or profession	40
	(vii) New Commercial vehicles acquired on or after 1-1-2009 but before 1-10-2009 and put to use before 1-10-2009 for the purpose of business or profession • "Commercial vehicle" means — heavy goods vehicle, heavy passenger motor vehicle, light motor vehicle, medium goods vehicle, medium passenger motor vehicle. • It does not include "maxi-cab", "motor-cab", "tractor" and "road-roller".	40
	(viii) Moulds used in rubber and plastic goods factories	30
	(ix) Air pollution control equipments	40
	(x) Water pollution control equipments	40
	(xi) Solid waste control equipments	40
	(xii) Machinery and plant used in semi-conductor industry	30
	(xiii) Life saving medical equipments	40
	(xiv) Any new plant and machinery installed in or after the P.Y. pertaining to A.Y. 1988-89 for manufacture of articles or things by using any technology or know-how developed or an article invented in a laboratory owned by a public sector company, Government, recognised University subject to specified conditions (See Rule 5(2))	40
	4) Containers made of glass or plastic used as refills	40
	5) Computers (including computer software) • "Computer Software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.	40
	6) Machinery and plants used in weaving, processing and garment sector of textile industry purchased under TUFS on or after 1-4-2001 but before 1-4-2004 and is put to use before 1-4-2004	40
	7) Machinery and plant, acquired and installed on or after 1-9-2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility under 80-IA(4)(i)	40
	8) For other items of Plant & Machinery refer to Rule 5 App. 1	40

RATES OF DEPRECIATION		(%)
	9) (i) Books owned by assessees carrying on a profession — Annual publications — Other books	 40 40
	(ii) Books owned by assessees carrying on business in running lending libraries	40
(IV)	Ships • "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed, it will plane, i.e., its bow will rise from the water.	20
(V)	Intangible Assets Know-how patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature acquired on or after 1-4-1998.	25

More details regarding the Rates of Depreciation under SLM and WDV methods can be viewed on CD.

Note : For details under items listed above please refer New Appendixes I & 1A (power companies) to Rule 5.

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Taxation of HUF

Under the Income-tax Act, 1961 ("the Act") & Wealth Tax Act, 1957, a Hindu Undivided Family ("HUF") is treated as a separate person for the purpose of taxation.

The term HUF is not defined under the Act. Hindu law defined it as consisting of all members lineally descending from a common ancestor, including their wives and daughters. Daughter even after her marriage continues to remain

co-parcener of HUF of her father. Thus female on her marriage, is at the same time member of two HUFs i.e. HUF of her father and HUF of her husband. Even family with husband & wife without child constitute HUF (*Gowli Buddanna vs. CIT [1966] 60 ITR 293*). The income of a HUF would be assessed as such if there were a coparcenership. The relation amongst the members of HUF arises out of legal status and not from a contract. The HUF is a creation of Hindu Law, it exists even without any nucleus or ancestral joint family property. The common hotchpotch can be filled by partition of a larger HUF, devolution of interest in coparcenary property of a coparcener who dies intestate, inheritance through a specific bequest under a will, reunion of separated coparceners, receipt of gift, blending of individual property with the family hotchpotch, doing joint labour for benefit of HUF, etc. Gifts and Wills are the most common way for activating dormant HUF. However special care needs to be taken in drafting of the gift deed or the document evidencing the gift by the parent for the benefit of the said HUF. As per section 56(2)(vii), where any sum of money, the aggregate value of which exceeds rupees fifty thousand is received without consideration by an Individual /HUF in any previous year, the whole of such sum shall be included in the total income of recipient. The aforesaid limit of ₹ 50,000/- will not apply to any sum received from relative. Explanation to section 56(2)(vii) defines the meaning of relative. In case of HUF relative means any member thereof. Gift received by the assessees from the HUF falls under section 10(2). For getting exemption under section 10(2), two conditions are to be satisfied. Firstly, he is a member of HUF and secondly he receives the sum out of the income of such HUF, may be of earlier year.

The HUFs are not recognised in the State of Kerala after the enactment of Kerala Joint Family System (Abolition) Act, 1975 with effect from 1-12-1976.

There are two schools of Hindu Law viz. Dayabhaga prevailing in West Bengal & Assam and Mitakshara applicable to all other places. Under Dayabhaga School of law, a son does not acquire any interest by birth in the ancestral property. He acquires interest only upon death of father. Father is the absolute owner of property during his lifetime. Accordingly, father is assessed as individual and not as a HUF. Further, on death of father, by operation of law son does not spontaneously, become the member of the joint family. He along with others remains co-owner with definite shares in the property left by the father unless they voluntarily decide to live as joint family. However, under the Mitakshara School of law each child acquires equal interest in the ancestral property. Hindu Law does not govern Jain & Sikh family, but for the purpose of Act such families are treated as HUF.

Residential status of the HUF would depend upon where the control and management of the affairs of HUF is situated. HUF would be non-resident where whole of the control and management of its affairs is situated outside India. As such, the income earned by HUF will enjoy all exemptions and deductions; including the basic exemption under the Income-tax & Wealth-tax Acts, so far as applicable. The total income of a HUF is determined on the similar lines as that of Individual; various deductions available to the individual are also available to the HUF. Similarly, the various provisions under the Act such as advance tax, TDS, penalty, interest, fine, etc. are also applicable to HUF.

Adjustments should be made for clubbing & losses i.e. under sections 60 to 63 of the Act, income belonging to some other person, may be taxable as income of a HUF & losses of the current year as well as preceding years will be set off u/ss. 70 to 80 of the Act. After such adjustments, the total of the five heads of income is gross total income. Further, after computing gross total income, the deductions u/ss. 80C to 80U (whichever is applicable) are to be made in order to arrive at net total income. The provision of furnishing a return of Income of HUF is governed by section 139 of the Act i.e. similar to provisions as applicable to individuals.

The total income will be subject to applicable tax rates. HUF's income may include agricultural income for rate purpose.

Subject to the provisions of section 64(2) of the Act, any sum received by an individual as a member of HUF, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family, is exempt from tax. Any of the coparcener can claim for the partition of the HUF. On partition, there is severance of status of HUF. In order to be acceptable partition u/s. 171 of the Act, a partition should be complete with respect to all members of HUF and in respect of all properties of HUF and there should be actual division of property by metes & bounds. However, as per Hindu law partition need not be by metes and bounds. It can be total or partial. Income-tax Act does not recognise partial partition. Setting apart certain assets of HUF in favour of certain coparceners on condition that no further claim in properties will be made by them is nothing but partial partition and not a family arrangement and that is not recognised u/s. 171(9) of the Act. Unequal divisions of properties knowingly made may not spell invalidity and mathematical equality may not be maintained always in a partition while, ordinarily, substantial fairness in division is required to be shown.

A member of the HUF throwing his money into the common pool or the family hotchpotch is out of the question, thanks to section 64(2) which would tax the income earned by the HUF on that money in the individual member's hands only. But the clubbing provisions can be bypassed if the HUF invests the money in the instruments yielding tax-free income. The tax-free income can then be reinvested to earn even taxable income – Income on Income is out of the clubbing provisions.

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Presumptive Taxation

Businesses have grown over the period of time due to growth of economy. However at the same time various numbers of business and service providers, irrespective of their area of operations, earning substantial income are outside the tax net. Presumptive income scheme has been introduced to bring such business & service providers within tax net with lesser compliance cost for such taxpayers and lesser corresponding administrative burden on revenue. Scheme of presumptive taxation (other than presumptive taxation scheme applicable to non-residents) for small businesses is operated by sections 44AD, 44ADA and 44AE.

SECTION 44AD

- **Applicability**

  Any business except the business of plying, hiring or leasing goods carriages referred in section 44AE and whose turnoveris less than ₹ 200 lakh (₹ 100 lakh till Previous Year 2015-16) during the previous year.

- **Class of eligible assessees**

  Applies to any resident individual, HUF, partnership firm excluding LLPs, provided that no deduction u/s. 10A, 10AA, 10B, 10BA, 80HH to 80RRB is claimed in the relevant assessment year. Provisions are also not applicable in case of person carrying profession as specified u/s. 44AA(1) or earning income in the nature of commission or brokerage or carrying on any agency business. (Introduced by Finance Act, 2012 w.r.e.f. A.Y. 2011-12).

- **Presumptive or estimated income**

  Sum equal to 8% of the total turnover or gross receipt of the assessee shall be deemed to be the profits chargeable to tax. However, in respect of that turnover which is received by account payee cheque or such bank draft or through electronic clearing system, a sum equal to 6% of such total turnover shall be deemed to be the profits and gains chargeable to tax.

  Higher or lower income

  Assessee at his option can claim such higher or lower amount earned by him. If assessee claims to have earned an income lower than specified amount, he has to fulfil the conditions of maintenance of books of account and getting the same audited.

- **Restriction on availing the presumptive taxation scheme (Sub-clause 4)**

  Where an assessee declares presumptive income u/s. 44AD but within any of the next five succeeding Assessment years declares profit under normal scheme by maintaining books u/s. 44AA, then he shall not be eligible to claim benefit of 44AD for next five Assessment years starting from the year in which he claimed income under normal scheme.

  E.g. If in A.Y. 2017-18 and 2018-19, the assessee declared income u/s. 44AD. If in A.Y. 2019-20 he opts out of this presumptive taxation scheme (due to either NP ratio being lower than 8% or turnover higher than 2 crore) and files return by maintaining books of account u/s. 44AA, then he shall not be eligible to avail benefit for 44AD till A.Y. 2024-25, i.e. for 5 A.Y.s subsequent to A.Y. 2019-20 and shall be liable to audit u/s. 44AB of the Act. Thus an assessee has to spend atleast six Assessment years by maintaining books of account before he gets back an option to avail Section 44AD benefit.

- **Maintenance of books of account and getting them audited**

  Where an assessee is the person who falls under sub clause (4) and whose income is more than maximum amount not chargeable to taxthen it is mandatory for him to maintain books of account and other documents as specified u/s. 44AA and also get them audited from the accountant and furnish report as required u/s. 44AB. Thusif an assessee is restricted from availing benefit of Section 44AD due to above provisions, he shall be liable to get the books audited even if he has a turnover of less than 2 crore and a profit ratio of more than 8% or 6% as the case may be.

  E.g: If an assessee declares income u/s. 44AD for A.Y. 2017-18 and 2018-19 but not u/s. 44AD for AY 2019-20, then he shall be liable to get the books of accounts audited for the assessment years 2019-20 to 2024-25 subject to his income been more than maximum amount not chargeable to tax

- **Deduction from presumptive income**

  No deduction is allowable under provisions of sections 30 to 38. Further written down value of any depreciable asset of such business shall be calculated as if depreciation has been actually allowed.

- **No deduction for salary and interest to be paid to partners**

  Up to A.Y. 2016-17, salary and interest paid to the partners, where eligible assessee is a firm, was allowable as a further deduction after computing profits and gains chargeable to tax at the rate of 8%. However from A.Y. 2017-18, no such deduction shall be further allowed once profits are computed as per section 44AD at the rate of 8% or 6% as the case may be. Thus, for eligilble assessees being firms who wish to avail benefit of presumptive taxation under this section, the profits chargeable to tax after paying salary and interest to partners, shall not be less than the prescribed percentage.

- **Advance tax**

  No specific provision exempting assessees from payment of advance tax. [Unlike specific provision exempting such assessees from advance tax payment till A.Y. 2016-17]. However only the last installment date of 15th March is applicable for such assessees.

SECTION 44ADA

- **Applicable**

  An Assessee being resident, engaged in profession mentioned in Section 44AA(1) and whose gross receipts does not exceed ₹ 50 lakh during the previous year.

- **Presumptive or estimated income**

  Sum equal to minimum 50% of the gross receipts of the assessee.

  Higher or lower income

  Assessee at his option can claim such higher/lower amount earned by him. Assessee can claim to have earned income lower than specified amount, subject to

fulfilment of conditions as to maintenance of books of account and getting the same audited.

- **Maintenance of books of account**

  Where an assessee claims that he has earned income lower than specified percentage and such income is more than maximum amount not chargeable to tax, or the turnover of such assessee is more than ` 50 lakh, then it is mandatory for him to maintain books of account and other documents as specified u/s. 44AA and also get them audited from the accountant and furnish report as required u/s. 44AB.

- ***Advance tax***

  Advance tax payment is applicable for such assessees, however only the last installment date of 15th March is applicable for such assessees, where they are required to pay the whole amount of advance tax by that date.

- No restriction on availing the presumptive taxation scheme

  Like section 44AD, there is no restriction on availing the presumptive taxation scheme if an assessee opts out of the 44ADA scheme in one year. Thus, such assessee can still avail the benefit of the scheme u/s. 44ADA in succeeding year if he wishes to, subject to turnover limits available for 44ADA.

- **Deduction from presumptive income**

  No deduction is allowable under provisions of sections 30 to 38. Further written down value of any depreciable asset of such business shall be calculated as if depreciation has been actually allowed.

- **No deduction for salary and interest to be paid to partners**

SECTION 44AE

- **Applicable**

  Assessee engaged in business of plying, hiring or leasing goods carriages and who owns not more than 10 goods carriages anytime during the previous year. However unlike section 44AD, there is no condition of maximum turnover of the assessee. Assessee shall be deemed to be owner of goods vehicles taken on hire purchase or on installment basis, whether whole or part of the amount is payable, when such vehicles are in the possession of such assessee.

- **Applicable to class of taxpayer**

  All assessees including LLP and company.

- **Presumptive or estimated income for AY 2019-20**

Type of Vehicle	*Deemed Income*
For each of heavy goods vehicle	₹ 1,000 for every ton of gross vehicle weight or unladen weight (₹ 7,500 up to A.Y. 2018-19) per month or part of month
For Each of Vehicle Other than Heavy Vehicle	₹ 7,500 (₹ 7,500 up to A.Y. 2018-19) per month or part of month
OR	
Profit higher than aggregate of above as may be declared by the assessee	

Terms 'goods carriage', 'gross vehicle weight' and 'unladen weight 'shall have meaning as per Motor Vehicles Act, 1988. The term 'heavy goods vehicle' means goods carriage whose gross vehicle weight exceeds 12,000 kgs.

Higher or lower income

Assessee at his option can claim such higher/lower amount earned by him. Assessee can claim to have earned income lower than specified amount, subject to fulfilment of conditions as to maintenance of books of account, and getting them audited u/s. 44AB of the Act.

- **Maintenance of books of account**

  Assessee offering income on presumptive basis is not required to maintain books of account & other documents as prescribed u/s. 44AA and audit u/s. 44AB. However in case assessee claims that he has earned income lower than specified amount, sections 44AE(7) and 44AA(2)(iii), mandates him to maintain books of account and other documents as specified u/s. 44AA, get them audited from the accountant and furnish report as required u/s. 44AB.

- **Deduction from presumptive income**

  No deduction is allowable under provisions of sections 30 to 38. However in case of partnership firm remuneration to partner and interest on partner's capital is allowable. For the computation of allowable partner's remuneration, book profits would be deemed to be income less interest to partners subject to limits specified in Section 40(b). Further written down value of any depreciable asset of such business shall be calculated as if depreciation has been actually allowed.

- **Advance tax**

  No specific provision exempting assessees from payment of advance tax.

- **No restriction on availing the presumptive taxation scheme**

  Like stated section 44AD, there is no restriction on availing the presumptive taxation scheme if an assessee opts out of the 44AE scheme in one year. Thus, such assessee can still avail the benefit of the scheme u/s. 44AE in succeeding year if he wishes to, subject to no. of goods carriages being within the limits available for 44AE.

SECTION 211

- **Applicability and payment of Advance Tax**

  Up to A.Y. 2016-17, all assessees (except companies) were required to pay advance in three installments viz. 15th September (30% of tax), 15th December (60% of tax) and 15th March (100% of tax).

  Now as per amended s. 211, from A.Y. 2017-18 all the assessees except assessees filing return u/s. 44AD and u/s. 44ADA, are required to pay advance tax in four installments viz. 15th June (15% of total tax), 15th September (cumulative 45% of tax), 15th December (cumulative 75% of tax) and 15th March (aggregate 100% of tax). For assessees availing benefit of section 44AD and 44ADA, only the due date of last installment of 15th March is mandatory.

❑❑

Income from Capital Gains

1. CHARGEABILITY U/S. 45

Profits or gains arising from the transfer of a capital asset is chargeable to tax in the year in which transfer takes place under the head "Capital Gains".

Definitions

Transfer: Section 2(47)

Transfer in relation to a capital asset includes sale, exchange, or relinquishment of the asset or extinguishment of any rights therein or the compulsory acquisition thereof under any law or conversion of the asset by the owner in stock-in-trade of a business carried on by him or the maturity or redemption of a zero coupon bond, any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882) or any transaction which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 2 to the section clarifies the following:—

"transfer" includes disposing of or parting with the asset or creating any interest in any asset directly or indirectly (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights is being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

Capital Asset: Section 2(14)

As per Clause 14 of Section 2 —

"capital asset" means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992,

but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)

(ii) Personal effects of the assessee;

(iii) Agricultural land in a rural area (Definition of agricultural land has been amended by Finance Act, 2013, w.e.f. 1st April, 2014);

(iv) 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government;

(v) Special Bearer Bonds, 1991 issued by the Central Government;

(vi) Gold Deposit Bonds issued under Gold Deposit Scheme 1999 and deposit certificates issued under the Gold Monetisation Scheme, 2015.

Explanation 1 — "property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Explanation 2 —

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to Section 115AD.

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.

Short-term capital asset: Section 2(42A): means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, with effect from the 1st day of April, 2015, in the following cases, an asset, held for not more than twelve months, is treated as short-term capital asset—

(a) A security (other than a unit) listed in a recognised stock exchange in India.

(b) Units of Unit Trust of India.

(c) Units of an equity oriented fund.

(d) Quoted or unquoted zero coupon bonds.

Additionally, the following assets would be treated as short term capital assets if they were held for a period of 24 months or less immediately preceding the date of its transfer:

(a) Share of company (not being a share listed in a recognized stock exchange in India) [Finance Act, 2016 w.e.f AY 2017-18].

(b) Immovable property being land or building or both [Finance Act, 2017, w.e.f. AY 2018-19].

Finance Act, 2017, w.e.f. AY 2018-19, has inserted a new sub-clause in Explanation 1 to Section 2(42A) stating that the period for which the preference shares were held shall be included for computing period of holding of resulting equity share, on conversion of said preference shares, for the purpose of determining whether equity shares are short term capital asset or long term capital asset.

Finance Act, 2018, w.e.f. AY 2019-20, has inserted a new sub-clause (ba) in Explanation 1(i) to Section 2(42A) stating that in case, inventory is converted into capital asset, the period of holding shall be computed from the date of conversion of such inventory.

Following is the list indicating period of holding in situations covered under Explanation 1(i) to Section 2(42A):

Sr. No.	*Explanation*	*Particulars*	*Period of holding*
1	2(42A)(i)(a)	Shares held in a company in liquidation	Excludes period subsequent to the date on which company goes into liquidation
2	2(42A)(i)(b)	When capital asset becomes property of the assessee in circumstances mentioned in Section 49(1)	Includes period for which capital asset was held by previous owner

Sr. No.	Explanation	Particulars	Period of holding
3	2(42A)(i)(ba)	Conversion or treatment of inventory as capital asset as referred to U/s. 2(via)	Excludes period prior to such conversion or treatment
4	2(42A)(i)(c)	Shares acquired by shareholder in a scheme of amalgamation of shares held by him in consideration of shares in amalgamated company provided the amalgamated company is an Indian company and the shareholder itself is not the amalgamated company as referred to u/s. 47(vii)	Includes period for which shares were held in amalgamating company
5	2(42A)(i)(d)	Right shares or securities	Begins from the date of allotment of such right shares or securities
6	2(42A)(i)(e)	Right to subscribe to any shares or securities which has been renounced in favour of another	Begins from the date of offer of such right to the person
7	2(42A)(i)(f)	Bonus shares or securities	Begins from the date of allotment of such shares or securities
8	2(42A)(i)(g)	Shares in an Indian company acquired as a consideration of a demerger	Includes period of holding of shares of demerged company
9	2(42A)(i)(h)	Trading and clearing rights of a recognized stock exchange in India acquired by pursuant to demutualisation or corporatisation of the exchange	Includes period for which the person was member of the exchange immediately prior to such demutualisation or corporatisation
10	2(42A)(i)(ha)	Equity shares acquired as a result of circumstances in (i)(h) as referred to u/s 47(xiii)	Includes period for which the person was member of the exchange immediately prior to such demutualisation or corporatisation
11	2(42A)(i)(hb)	Sweat equity shares or security transferred free of cost or at concessional rate by employer to employee	Begins from the date of allotment of such shares or securities
12	2(42A)(i)(hc)	Units of a business trust acquired in exchange of share of a special purpose vehicle as referred to u/s. 47(xvii)	Includes period for which shares were held
13	2(42A)(i)(hd)	Units in consolidating scheme of mutual fund as referred to u/s. 47(xviii)	Includes period for which units were held in consolidating scheme of mutual funds
14	2(42A)(i)(he)	Shares acquired on redemption of GDR by non-resident assessee as referred to u/s. 115AC(1)(b)	Begins from the date on which such request for redemption was made
15	2(42A)(i)(hf)	Convertible preference shares	Begins from date preference shares held were by the assessee
16	2(42A)(i)(hg)	Units in consolidating plan of mutual fund scheme as referred to u/s. 47(xix)	Includes period for which units were held in consolidating plan of mutual funds scheme

Long-term capital asset : Section 2(29A): Means a capital asset which is not a short-term capital asset.

2. YEAR OF CHARGEABILITY TO TAX

Capital gains are generally charged to tax in the year in which 'transfer' takes place. Exceptions —

(a) Section 45(1A) — Insurance Claim — In the year of receipt.

(b) Section 45(2) — Conversion of capital asset into stock-in-trade — In the year of actual sale of the stock in trade.

(c) Section 45(5) — Compulsory acquisition — When consideration or part thereof is first received. Compensation received in pursuance of an interim order of a court is chargeable to tax in the previous year in which the final order of such court is made.

(d) Section 45(5A) — Special provisions for computation of capital gains in case of joint development agreement (Inserted by Finance Act 2017, w.e.f. AY 2018-19).

In case of an assessee being individual or HUF who transfers a capital asset under a specified agreement[1], the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of

completion for the whole or part of the project is issued by the competent authority.

For the purposes of section 48, full value of consideration shall be stamp duty value, on the date of issue of the said certificate, of the individual's/ HUF'S share in the project, as increased by the consideration received in cash, if any, as result of transfer of said capital asset.

1. Specified Agreement means 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.

The above section 45(5A) shall not apply where the assessee transfers his share in the project on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and full value of consideration shall be determined as per the general provision of the Act.

Exempt Capital Gains under section 10

10(33) : Transfer of Unit Scheme 1964 on or after April 1, 2002.

10(36) : Long-term capital gain arising from transfer of long-term capital asset being eligible equity share purchased after 1st March, 2003 but before 1st March 2004.

10(37) : Compulsory acquisition of Urban Agriculture Land where consideration is received after March 31, 2004.

10(37A) : Exemption to Capital Gains from transfer of land under land pooling scheme [Inserted by Finance Act, 2017 w.r.e.f. 1-4-2015]

Any income chargeable under the head "Capital gains" in respect of transfer of a specified capital asset[2] arising to an assessee, being an individual or a H.U.F., who was the owner of such specified capital asset as on the 2nd day of June, 2014 and transfers that specified capital asset under the Land Pooling Scheme (herein referred to as "the scheme") covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 (Andhra Pradesh Act 11 of 2014) and the rules, regulations and Schemes made under the said Act.

2. For the purposes of this clause, "specified capital asset" means,—

(a) the land or building or both owned by the assessee as on the 2nd day of June, 2014 and which has been transferred under the scheme; or

(b) the land pooling ownership certificate issued under the scheme to the assessee in respect of land or building or both referred to in clause (a); or

(c) the reconstituted plot or land, as the case may be, received by the assessee in lieu of land or building or both referred to in clause (a) in accordance with the scheme, if such plot or land, as the case may be, so received is transferred within two years from the end of the financial year in which the possession of such plot or land was handed over to him.]

10(38) : Due to insertion of new Section 112A as per Finance Act, 2018 w.e.f. 1-4-2018, exemption on long term Capital Gains arising on transfer of equity share and unit of an equity oriented fund or a unit of a business trust not allowed

3. COMPUTATION OF CAPITAL GAINS (SECTION 48)

The method of computation depends on the nature of capital asset transferred. It is as follows:—

Short-term Capital Gains	*Long-term Capital Gains*
A. Find out Full Value of Consideration	A. Find out Full Value of Consideration
B. Deduct:	B. Deduct:
(i) Expenditure incurred wholly and exclusively in connection with such Transfer	(i) Expenditure incurred wholly and exclusively in connection with such Transfer
(ii) Cost of Acquisition	(ii) Indexed Cost of Acquisition (see exceptions mentioned below)
(iii) Cost of Improvement	(iii) Indexed Cost of Improvement
(iv) Exemption provided by Sections 54B, 54D & 54G, 54GA	(iv) Exemption provided by Sections 54, 54B, 54D, 54EC, 54ED, 54F & 54G, 54GA, 54GB
C. (A-B) is short-term Capital Gains	C. (A-B) is a long-term Capital Gains

Exceptions:

- It shall be noted that indexation is not allowed in the following cases:

  Transferor:

  (I) Any Person

  (a) In case of Bonds and Debentures other than:

  (i) Capital Indexed Bonds issued by G.O.I.

  (ii) Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.

  (b) Depreciable assets (other than an asset used by a power generating unit eligible for depreciation on Straight line basis).

  (c) Undertaking/division transferred by way of slump sale as covered by Section 50B.

  (II) Resident Individual

  Global Depository Receipts (GDR) purchased in foreign currency as given in Section 115ACA.

  (III) Non-Resident:

  For transfer of long term capital asset by non-resident in the following cases:

  (i) Shares in or debentures of an Indian Company acquired by utilizing convertible foreign exchange as mentioned in first proviso to Section 48.

  (ii) Global Depository Receipts (GDR) purchased in foreign currency as given in Section 115AC.

  While computing Capital Gains arising to a non-resident assessee on redemption of rupee

denominated bond of an Indian company held[4] by him, the gain arising on account of appreciation of rupee against a foreign currency shall be ignored for the purpose of computation of full value of consideration.

4 With a view to provide relief to non-resident secondary holders in respect of gains arising on account of appreciation of rupee against foreign currency, the word "subscribed" has been substituted by "held" by Finance Act, 2017 (w.e.f. A.Y. 2018-19).

(IV) Offshore fund:

(i) Units purchased in foreign currency as given in Section 115AB.

(V) Foreign Institutional Investors (FIIs):

(i) Securities as given in Section 115AD.

- Also see summary of Sections 111A and 112A of this chapter.

4. FULL VALUE OF CONSIDERATION

(i) For transfer of land or building or both: Section 50C

Higher of the following:—

(a) Full value of the consideration received or accruing

(b) Value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.

However, if value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall be deemed to be the full value of the consideration as per Section 48 as inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20.

(ii) For transfer of share other than quoted share : Section 50CA (Inserted by Finance Act, 2017, w.e.f. AY 2018-19)

Higher of the following:—

(a) Full value of the consideration received or accruing

(b) Fair Market Value in such manner as may be prescribed

(iii) Fair market value shall be deemed to be full value of consideration : Section 50D

Where the consideration received or accruing as a result of transfer of capital asset is not ascertainable or cannot be determined, then, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration.

Finance Act, 2019 has inserted a proviso to state that provisions of this section shall not apply to certain prescribed class of persons.

5. INDEXED COST OF ACQUISITION =

Cost of acquisition X Cost inflation index for the financial year in which the asset is transferred

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Cost inflation index for the first financial year in which the asset was held by the assessee or the year beginning on 1-4-2001, whichever is later or the year of improvement of the asset

Earlier base year was 1981 which has now been shifted to 2001. i.e. As per Finance Act, 2017 (w.e.f. AY 18-19) Section 55 has been amended so as to provide that the cost of acquisition of an asset acquired before 1-4.2001 (earlier 1-4-1981) shall be allowed to be taken as fair market value as on 1st April, 2001 (earlier 1-4-1981) and the cost of improvement shall include only those capital expenses which are incurred after 1-4-2001 (earlier 1-4-1981).

Cost inflation index chart considering 2001-02 as base year

Financial Year	*Cost Inflation Index*	*Financial Year*	*Cost Inflation Index*	*Financial Year*	*Cost Inflation Index*	*Financial Year*	*Cost Inflation Index*
2001-02	100	2006-07	122	2011-12	184	2016-17	264
2002-03	105	2007-08	129	2012-13	200	2017-18	272
2003-04	109	2008-09	137	2013-14	220	2018-19	280
2004-05	113	2009-10	148	2014-15	240	2019-20	
2005-06	117	2010-11	167	2015-16	254		

6. SECTION 111A: TAX ON SHORT TERM CAPITAL GAIN IN CERTAIN CASES

Short term capital gains arising on transfer of equity share in a company where on sale of such shares STT is payable or a unit of an equity oriented fund or (w.e.f. 1st day of April, 2015) unit of a business trust shall be eligible for tax at the rate of 15% provided it satisfies the other conditions specified under the said section.

The above provision shall not apply if the units of the business trust were acquired by an assessee in consideration of transfer of a share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor as referred to in clause (xvii) of section 47.

7. SECTION 112A: TAX ON LONG TERM CAPITAL GAIN IN CERTAIN CASES

1. Long term capital gains arising on—

(i) transfer of equity shares or a unit of an equity oriented fund or unit of a business trust (w.e.f. 1st day of April, 2018) and

(ii) STT is paid —

a) on acquisition and transfer of equity share (however the Central Government may by notification specify nature of acquisitions where STT is not paid); or

b) on transfer of unit of an equity oriented fund or unit of a business trust is chargeable to tax at the rate of 10% on long term capital gain exceeding ₹ 1,00,000/-.

2. The cost of acquisition [see Section 55A(2)(ac)] for the purposes of computing capital gains acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of—
   (i) the actual cost of acquisition of such asset; and
   (ii) the lower of —
      (a) the fair market value of such asset #; and
      (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

   #Fair Market Value means
      (a) Highest Price of Equity Shares on 31-1-2018 or
      (b) Net Asset Value of an equity oriented fund or unit of a business trust on 31-1-2018.

3. The cost of acquisition for the purposes of computing capital gains acquired by the assessee on or after the 1st day of February, 2018 shall be computed without indexation.

8. COMPUTATION OF LONG TERM CAPITAL GAINS ON SHARES BOTH EQUITY AND PREFERENCE, LISTED OR UNLISTED AND DEBENTURES

Sr. No.	***Capital Assets***	***If it is not covered by STT***	
		Long-term	
		Without indexation	***With indexation***
A	Listed securities other than those covered by Section 112A w.e.f. A.Y. 2019-20	10%	20%
B	Unit of a Mutual Fund specified under clause (23D) of Section 10 transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014	10%	20%
C	(w.e.f. the 1st day of April, 2015) Units not covered above	NA	20%
D	Unlisted equity shares (other than in the case of non-resident Indians or foreign companies)	NA	20%
E	Listed Preference shares	10%	20%
F	Unlisted Preference shares	NA	20%
G	Zero Coupon Bonds	10%	NA
H	Unlisted Debenture	NA	20%

9. CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER (SECTION 47)

Section	***Transfer of a capital asset***
47(i)	On total or partial partition of HUF
47(iii)	Under gift or will or an irrevocable trust (not applicable to gift of shares, etc. by company to employees under ESOP)
47(iv)	By holding co. to subsidiary co. on fulfilment of certain conditions
47(v)	By wholly owned subsidiary co. to holding co. which is Indian company
47(vi)	In scheme of amalgamation by amalgamating co. to amalgamated co.
47(via)	Transfer of shares in Indian company in scheme of amalgamation between two foreign cos. on fulfilment of certain conditions
47(viaa)	In a scheme of amalgamation between a banking co. and a banking institution
47(viab)	being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company (w.e.f. 1st April, 2016) on fulfilment of certain conditions
47(vib)	In a demerger by demerged company to resulting company.

Section	Transfer of a capital asset
47(vic)	Being shares in Indian company in scheme of demerger between two foreign cos. on fulfilment of certain conditions
47(vica)	In a business reorganisation by predecessor co-operative bank to the successor co-operative bank
47(vicb)	Being shares by shareholder of a predecessor co-operative bank in a business reorganisation
47(vicc)	Being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company (w.e.f. 1st April, 2016) on fulfilment of certain condition
47(vid)	Transfer or issue of shares by resulting company to the shareholders of demerged co. in a scheme of demerger
47(vii)	Being shares by share holder of amalgamating company in a scheme of amalgamation on fulfilment of certain conditions
47(viia)	Bonds or shares referred to in Section 115AC(1), made outside India by a non-resident to another non-resident
47(viiaa) [Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19]	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.
47(viiab)	any transfer of a capital asset, being - (a) bond or Global Depository Receipt referred to in sub-section (1) of Section 115AC; or (b) rupee denominated bond of an Indian company; or (c) derivative, made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency
47(viib)	Being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident (w.e.f. the 1st day of April, 2015)
47(ix)	Being works of art, archaeological, scientific or art collection to Government/University/National Museum, etc.
47(x)	Being conversion of bonds or debentures or debenture-stock or deposit certificate into shares or debentures
47(xa)	Conversion of bonds referred to in Section 115AC(1)(a) into shares or debentures
47(xb) [Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19]	Conversion of preference shares of a company into equity shares of that company
47(xii)	Being land of a sick industrial company
47(xiii)	On succession of the firm by a company or on demutualisation or corporatisation of a recognised stock exchange on fulfilment of certain conditions
47(xiiia)	Membership right by a member of recognised stock exchange in a scheme of demutualisation or corporatization
47(xiiib)	On conversion of a company into limited liability partnership on fulfilment of certain conditions
47(xiv)	On succession of a sole proprietary by a company on fulfilment of certain conditions
47(xv)	In a scheme for lending any securities under an agreement subject to guidelines issued by SEBI
47(xvi)	In a transaction of reverse mortgage as notified by Central Government
47(xvii)	Being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor (w.e.f. the 1st day of April, 2015)
47(xviii)	Being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund (w.e.f. 1st April, 2016)
47(xix)	Any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund

10. COST OF ACQUISITION IN CERTAIN CASES (SECTION 49)

Section		Cost of acquisition
49(1)	(i) Distribution of assets on total or partial partition of HUF (ii) Gift or will (iii) Succession, inheritance or devolution (iv) Distribution of assets on liquidation of company (v) Transfer to a revocable or an irrevocable trust (vi) Transfer as mentioned in clauses (iv), (v), (vi), (via), (viaa), (vic)*, (vica), (vicb), (xiii), (xiiib), (xiv) of Section 47 *Inserted by Finance Act, 2017, w.e.f. A.Y. 2018-19	Cost to the previous owner
49(2)	Transfer of shares received by existing shareholder in the scheme of amalgamation referred to in Section 47(vii)	Cost of such shares shall be cost of shares of amalgamating co.
49(2A)	On conversion of bonds or debentures, etc. or bonds referred to in Section 115AC(1)(a) into shares	Cost of shares is proportionate to the cost of the portion of bonds, debentures, etc. converted
49(2AA)	Transfer of specified security or sweat equity shares referred to in Section 17(2)(vi)	Cost of such security shall be fair market value
49(2AAA)	Transfer of right of a partner in LLP consequent to conversion referred to in Section 47(xiiib)	Cost of the right shall be cost of shares in company before conversion
49(2AB)	Transfer of specified security or sweat equity shares	Cost would be fair market value while calculating fringe benefits under Section 115WC(1)(ba)
49(2AC)	Transfer of a unit of a business trust, which became the property of the assessee in consideration of a transfer share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor as referred to in clause (xvii) of Section 47.	Cost of acquisition of such unit shall be deemed to be the cost of acquisition to him of the share of the special purpose vehicle
49(2AD)	Transfer of unit or units in a consolidated scheme of a mutual fund which became the property of the assessee in consideration of a transfer referred to in clause (xviii) of Section 47	Cost of acquisition of the unit or units shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund
49(2AE) [Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19]	Equity share of a company which became property of the assessee upon conversion of preference share	Cost of acquisition shall be deemed to be that part of the cost of preference share in relation to which such asset is acquired by the assessee.
49(2AF)	a unit or units in a consolidated plan of a mutual fund scheme, became the property of the assessee in consideration of a transfer referred to in clause (xix) of Section 47	Cost of acquisition shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating plan of the scheme of the mutual fund
49(2C)	Where shares of resulting company acquired in a scheme of demerger are transferred	Cost of such shares would be proportionate to the value of assets transferred to resulting co. in demerger
49(2D)	Cost of acquisition of original shares in demerged company shall be cost after reducing the amount arrived in clause (2C) above	
49(2E)	The provisions of sections (2), (2C) and (2D) of section 49 shall apply accordingly to business reorganization of a co-operative bank also.	
49(4)	Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax u/s. 56(2)(vii), (viia) or (x)	Cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (viia) or clause (x)
49(5)	Where the capital gain arises from the transfer of an asset declared under the Income Declaration Scheme, 2016, and the tax, surcharge and penalty have been paid in accordance with the provisions of the Scheme on the fair market value of the asset as on the date of commencement of the Scheme	The cost of acquisition of the asset shall be deemed to be the fair market value of the asset which has been taken into account for the purposes of the said Scheme

Section		Cost of acquisition
49(6)	Where the capital gain arises from the transfer of a specified capital asset referred to in clause (c) of the Explanation to clause (37A) of section 10, which has been transferred after the expiry of two years from the end of the financial year in which the possession of such asset was handed over to the assessee	The cost of acquisition of such specified capital asset shall be deemed to be its stamp duty value as on the last day of the second financial year after the end of the financial year in which the possession of the said specified capital asset was handed over to the assessee
49(7)	Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in sub-section (5A) of section 45, not being the capital asset referred to in the proviso to the said sub-section	The cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section
49(8)	Where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of Chapter XII-EB	The cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD
49(9)	Where the capital gain arises from transfer of capital asset, which originally were held as inventory (Inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20)	The cost of acquisition of such asset shall be deemed to be the fair market value of inventory as on the date on which stock-in-trade is converted into capital asset

11. SECTION 50: SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS

Opening W.D.V. of the Block of Assets

Less: Full value of consideration received or accruing as a result of transfer or transfers of asset falling within the concerned block of assets during the relevant previous year

Less: Expenditure incurred wholly and exclusively in connection with such transfer or transfers. This deduction would not be available in a case where the entire block ceases to exist as such, for the reason that all the assets in that block are transferred during the year.

Add: Actual cost of any asset falling within the concerned block of assets acquired during the relevant previous year.

Closing WDV/short-term capital gains/short-term capital loss

Where the resultant figure is negative, the same is chargeable as deemed short-term capital gains u/s. 50.

In case it is positive and the entire block ceases to exist as such, the resultant figure indicates deemed short-term capital loss (refer CBDT Circular No. 469 dated 23-9-1986 — reported in 162 ITR (Stat) 21, 30).

If the resultant figure is positive and the block continues to exist, the assessee will be entitled to claim depreciation on the resultant figure.

12. SECTION 50B: SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF SLUMP SALE

1. As per Section 2(42), slump sale means transfer of one or more undertakings as a result of the sale of lump sum consideration without values being assigned to the individual assets and liabilities.
2. Where the undertaking is held for more than thirty six months, the gains would be deemed as long term capital gains.
3. Where the undertaking is held for not more thirty six months, the gains would be deemed as short-term capital gains.
4. Cost of acquisition in this case would be the "net worth" of the undertaking or division.
5. "Net worth" means aggregate value of total assets as reduced by the value of liabilities.

13. SECTION 51: ADVANCE MONEY RECEIVED

W.e.f. 1st day of April, 2015, any sum received as advance or otherwise in course of negotiations for transfer of capital asset and which has been taxed under clause (ix) of Section 56(2), then such sum shall not be deducted in computing the cost of acquisition.

14. SECTION 55A: AS PER SECTION 55A THE AO MAY REFER TO THE VALUATION OFFICER FOR ASCERTAINING THE FAIR MARKET VALUE OF THE ASSET UNDER FOLLOWING CIRCUMSTANCES

1. Where in view of the AO the value of the asset claimed by the assessee in accordance with the estimate made by a registered valuer, is less than is FMV or w.e.f. 1-7-2012, Section 55A, clause (a) is amended as follows:
2. Where in view of the AO, the value of the asset claimed by the assessee in accordance with the estimate made by a registered valuer is at variance with its fair market value, or
3. Where in view of the AO the value of the asset claimed by the assessee is less than the FMV by so much percentage or by so much amount as may be prescribed, or
4. Having regard to the nature of the asset and other relevant circumstances, it is necessary to do so.

15. CAPITAL GAINS — VARIOUS EXEMPTIONS DETAILS

	Section	*54*	*54B*	*54D*	*54EC*
(a)	**Kind of assets transferred**	Long-term Capital Assets being House Property used for residential purpose	Land used for agricultural purposes	Land and Building or any right therein used by an industrial undertaking compulsorily acquired under any law	Land or Building or both w.e.f. A.Y. 2019-20
(b)	**Eligible Assessee**	Individual & HUF	Individual & HUF	All	All
(c)	**Condition of period of holding of original Asset**	2 years	2 years	2 years	2 years
(d)	**Condition of utilisation of consideration**	Purchase of one Residential House in India within 2 years after or 1 year prior to date of transfer: or construction of one residential house in India within 3 years from the date of transfer Where capital gain does not exceed ₹ 2 crore, the assessee has the option to purchase/construct two houses. This option is available once in a lifetime of assessee	Purchase of Agricultural Land within 2 years from the date of transfer	Purchase/ construction of land, building, or any right there in within 3 years from the date of transfer by way of compulsory acquisition for the purpose of shifting/ re-establishing/ setting up another industrial undertaking	Investment of whole or any Part of Capital Gains in 'specified assets'. Refer note 9 below Investment should be made within 6 months from the date of transfer
(e)	**Exempt Amount**	The amount of gain or, the cost of new asset, whichever is less	Lower of the Capital Gains or the Cost of acquisition of new agricultural land	Lower of the Capital Gain or the Cost of acquisition of new land and building	Refer Note 9
(f)	**Other requirements**	See notes 1, 2 & 4	Assessee or his parents or HUF must have used the land for agricultural purpose for preceding two years (Also see Note 1)	See notes 1, 2 & 4. Must have been used for business of industrial undertaking for preceding 2 years	See notes 1, 2 & 4 Rebate u/s. 88 or deduction u/s. 80C not to be granted for the same investment. New Asset must be retained for a period of 5 years

16. CAPITAL GAINS — VARIOUS EXEMPTIONS DETAILS

	Section	*54EE*	*54F*	*54G*	*54GA*	*54GB*
(a)	**Kind of assets transferred**	Any Long-term Capital Asset (inserted by Finance Bill, 2016)	Any long term capital asset other than residential house	Land or Building or any right therein or Plant or Machinery in Urban Area used for the business	Land or Building or any right therein or Plant or Machinery in Urban Area used for the business	Long-term capital asset being a residential property (a house or a plot of land)

	Section	54EE	54F	54G	54GA	54GB
(b)	**Eligible Assessees**	Any assessee	Individual & HUF	Industrial undertakings in urban area shifting to an area other than urban area	Industrial undertakings in urban area shifting to any Special Economic Zone	Individual & HUF
(c)	**Condition of period of holding of original Asset**	1 year for listed Shares, Listed Securities, Units of UTI/ Mutual Fund specified u/s. 10(23D), Zero-coupon bonds, 2 years for unlisted shares and land and building, 3 years for other capital assets	1 year for listed Shares, Listed Securities, Units of UTI/ Mutual Fund specified u/s. 10(23D), Zero-coupon bonds, 2 years for unlisted shares and any immovable property other than residential house, 3 years for other capital assets	No period specified	No period specified	2 Years
(d)	**Condition of utilisation of consideration**	Investment of whole or any Part of Capital Gain in 'long term specified assets' as stipulated in the section. Investment should be made within 6 months from the date of transfer. Also see note 10.	Purchase of one Residential House in India within 2 years after or 1 year prior to date of transfer; or construction of one residential house in India within 3 years from date of transfer	Acquire similar assets and incur expenses on shifting original asset, within 1 year before, or 3 years from the date of transfer	Acquire similar assets and incur expenses on shifting original asset, within 1 year before, or 3 years from the date of transfer	a. Subscribe to equity shares of an eligible company before due date of return filing b. The company within 1 year of subscription should utilise the amount for purchase of new asset (refer note 6)
(e)	**Exempt Amount**	Investment made by an assessee in the long-term specified asset, from capital gains arising from the transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed ₹ 50 lakh.	Refer Note 5	The amount of gain or the aggregate cost of new asset, and shifting expenses, whichever is lower	The amount of gain or the aggregate cost of new asset, and shifting expenses, whichever is lower	Refer Note 5

	Section	54EE	54F	54G	54GA	54GB
(f)	**Other requirements**	See Note 1	Must not own more than 1 residential house other than the new asset on the date of transfer of original asset	Must have been shifted to non-urban area. See notes 1 & 2	See notes 1, 2, 3 and 4	Assessee should hold shares for a period of 5 years as well as the company should hold new asset for 5 years. If the new asset purchased by company is computer or computer software, the condition of holding is relaxed to three years by Finance Act, 2019 (Refer Note 7)

17. NOTES

1 In case New Asset is transferred before 3 years from date of purchase/construction, the Capital Gains exempted earlier will be chargeable to tax in year of transfer of new asset.

2 In order to avail the exemption, gains are to be reinvested, before the due date of return u/s. 139(1). If the amount is not so reinvested, it is to be deposited on or before that date in account of specified bank/institution and it should be utilised within specified time limit for purchase/construction of new asset.

3 U/s. 54F Capital Gains exempted earlier shall be chargeable to tax — if (a) If the assessee purchases within 2 years or constructs within 3 years any residential house other than the one in which reinvestment is made & (b) If the new asset is transferred within a period of 3 years from the date of its purchase/construction.

4 As per Section 54H, where the transfer is by way of compulsory acquisition, the period available for acquiring the new asset u/ss. 54, 54B, 54D, 54EC and 54F shall be computed from the date of receipt of compensation and not the date of transfer.

5 If cost of new asset is more than the net consideration of original asset, the whole of the gains is exempt. If cost of specified asset is less than net consideration, proportionate amount of the gains will be exempt i.e. Capital Gains X Cost of New Asset/Net Consideration on sale of asset.

6 Under Section 54GB—

"Eligible company" means a company which fulfils the following conditions, namely:—

i. it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of Section 139 by the assessee;

ii. it is engaged in the business of manufacture of an article or a thing;

iii. it is a company in which the assessee has more than 50% share capital or more than 50% voting rights after the subscription in shares by the assessee; and

iv. it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

"New asset" means new plant and machinery but does not include—

i. any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;

ii. Any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

iii. Any office appliances including computers or computer software;

iv. Any vehicle; or

v. any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and Gains of Business or Profession" of any previous year.

7 U/s. 54GB, if the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gains arising from the transfer of the residential property which was not charged to tax, shall be deemed to be the income of the assessee chargeable under the head "Capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

8 The exemption u/s. 54GB is available in case of any transfer of residential property made on or before 31st March, 2019. However, the time period has been extended from 31st March, 2019 to 31st March, 2021 in case the investment is made in an 'eligible start-up'. (Inserted by

Finance Act, 2016 w.e.f. 1-4-2017 [term 'eligible start-up – as defined in explanation below section 80-IAC(4)].

9 Exemption u/s. 54EC

Lower of the Capital Gain or the actual amount invested in specified assets.

However the aggregate investment made by assessee in the specified asset, during the financial year in which the original asset/assets are transferred and in the subsequent financial year should not exceed fifty lakh rupees.

In accordance with Finance Act, 2017 (w.e.f. A.Y.18-19) investment in any bond redeemable after three years which has been notified by Central government in this behalf shall be eligible for exemption. Earlier investment only in bonds of NHAI and Rural Electrification Corporation were eligible for exemption

In accordance with Finance Act, 2018 (w.e.f. A.Y.19-20) investment under this section means-

(i) any bonds which are issued after 31-3-2007 but before 1-4-2018, redeemable after three years and issued on or after the 1st day of April, 2007 but before 1st day of April, 2018;

(ii) any bonds which are issued on or after 1-4-2018, redeemable after five years and issued on or after 1-4-2018 by the NHAI or by Rural electrification corporation or any other bond notified in the Official Gazette by the Central Government in this behalf shall be eligible for exemption.

10 Long term specified asset means unit or units issued before 1-4-2019 of fund notified by Central Government in this behalf.

11 Clarification relating to Indirect transfer provision :

The Finance Act, 2012 inserted Explanation 5 in Section 9(1)(i) w.e.f. 1st April, 1962 clarifying that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Finance Act, 2017 w.r.e.f. 1-4-2015, clarifies that above Explanation shall not apply to any asset or capital asset mentioned therein being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor, and registered as Category-I or Category-II Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992.

TAXATION OF MUTUAL FUND

The following table gives a glimpse of holding period classification of mutual funds:

	Short-term	***Long-term***
Equity funds	Less than 12 months	12 months and more
Balanced funds	Less than 12 months	12 months and more
Debt funds	Less than 36 months	36 months and more

Taxation on different types of mutual funds

	Short-term capital gains (STCG) tax	***Long-term capital gains (LTCG) tax***
Equity mutual funds	15%	10% on LTCG in excess of ₹ 1 lakh
Balanced mutual funds Balanced funds are equity-oriented hybrid funds that invest at least 65% of their assets in equities.	15%	10% on LTCG in excess of ₹ 1 lakh
Debt mutual funds	As per tax slab	20% after indexation

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Income from Other Sources

Synopsis

Section 2(24) defines the term "income" under the Act, and the same is charged to tax by section 4 of the Act. Section 14 enumerates the different heads under which the income of an assessee is classified, viz.

A. Salaries,

B. Income from house property,

C. Profit and gains of business or profession,

D. Capital gains, and

E. Income from other sources.

Income of every kind which is not to be excluded from the total income under the Act, and if it is not charged to tax under the heads A to D specified in section 14, shall be charged under the head Income from other sources. Thus section 56 deals with this residuary head of income and covers all such taxable income.

Nature of income and the basis of charge

Sub-section 2 to section 56 enumerates various types of income which would be chargeable to tax under the residuary head, viz.

(a) Income by way of dividends [which includes deemed dividend as has been referred to in section 2(22)(e) of the Act].

Exemptions are:

(i) Dividend income referred to in section 115-O (on which dividend distribution tax has been paid),

(ii) Any income by way of income received in respect of units of a Mutual Fund, Administrator of a specified undertaking or from a specified company; (income arising from transfer of units is not exempt).

(b) Income by way of winning from lotteries, crossword puzzles, races, card games and other games, gambling or betting, etc. [Section 2(24)(ix)].

(c) Any sum received from employees by way of contribution to any P.F., ESIC or superannuation fund if such income is not chargeable under the head Profit and Gains of Business or Profession [Section 2(24)(x)].

(d) Any sum received under a keyman insurance policy including amount allocated by way of bonus on such policy, if not chargeable under the head Salaries or Profit and gains of business or profession [Section 2(24)(xi)].

(e) Income by way of interest on securities if not chargeable under the head Profit and Gains of Business or Profession [Section 2(24)(id)].

(f) Income from letting of machineries, plant or furniture belonging to assessee, if not chargeable to tax under the head Profit and Gains of Business or Profession [Section 2(24)(ii)].

(g) Income from letting of machineries, plant or furniture belonging to assessee and also building, where letting of building is not separable from letting of such machineries, etc., then entire income therefrom, if not chargeable to tax under the head Profit and Gains of Business or Profession. [Section 2(24)(iii)].

THE PROVISIONS OF SUB-SECTION (v) TO (viib) WHICH APPLIED TO GIFTS RECEIVED BY INDIVIDUALS, HUFS, FIRMS, CLOSELY HELD COMPANIES WHICH WERE APPLICABLE DURING DIFFERENT PERIODS FROM 1-4-2006 TO 31-3-2017 AND WERE COVERED IN EARLIER REFERENCERS ARE NOT BEING REPEATED, AS DELETED.

THE NEW SUB SECTION (x) WHICH IS APPLICABLE FROM 1-4-2017 TO ALL ASSESSEES ARE ENUMERATED FOR REFERENCE:

(h) With effect from 1st April 2017:

Where any person (which includes individual, HUF, AOP, BOI, artificial juridical person, firm, cooperative society, company) receives, in any previous year, from any person or persons:

any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

any immovable property,—

without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration; and the amount equal to 5 per cent of the consideration. (AY 2019-20 onwards)

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

any property, other than immovable property,—

without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

EXCEPTIONS

Any sum of money or any property received—

- from any relative; or
- On the occasion of the marriage of the individual; or
- under a will or by way of inheritance; or
- in contemplation of death of the payer or donor, as the case may be; or
- from any local authority as defined in the Explanation to clause (20) of section 10; or
- from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- from or by any trust or institution registered under section 12A or section 12AA; or
- by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
- by way of transaction not regarded as transfer under section 47:

clause (i) i.e. any distribution of capital assets on the total or partial partition of HUF; or

clause (iv) i.e. transfer of a capital asset by a holding company to a subsidiary company before 29.2.1988

clause (v) ie. Transfer by wholly owned subsidiary company to Indian holding company before 29.2.1988

or clause (vi), i.e. 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; or

clause (via), i.e. any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamate foreign company, subject to conditions;

clause (viaa), i.e. any transfer in a scheme of amalgamation of a banking company with a bank; or

clause (vib), i.e. any transfer, in a demerger, of a capital asset by the demerged company to the resulting Indian company; or

clause (vic) i.e. any transfer in a demerger, of a capital asset being the shares of an Indian company, by the demerged foreign company to the resulting foreign company, subject to certain conditions; or

clause (vica) I.e. any transfer, in a business reorganization, of a capital asset of a co-operative bank to the successor co-operative bank; or

clause (vicb) I.e. any transfer by a shareholder, in a business reorganization, of a capital asset being a share or shares in the predecessor cooperative bank =, subject to conditions; or

clause (vid) i.e. any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of a demerged company, in the light of the demerger; or

clause (vii) i.e. any transfer by a shareholder in a scheme of amalgamation of a capital asset being a share held by him in the amalgamating company, subject to conditions.

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

For the purposes "Relative" means –

In the case of an individual:

Spouse of the individual;

Brother or sister of the individual;

Brother or sister of the spouse of the individual;

Brother or sister of either of the parents of the individual;

Any lineal ascendant or descendant of the individual;

Any lineal ascendant or descendant of the spouse of the individual;

Spouse of any of the above

In the case of HUF any member thereof.

(i) With effect from 1-4-2019 (AY 2019-20) compensation or other payment due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto.

Applicability of [Section 145(1)] in case of income chargeable under this head

Section 145(1) provides that income chargeable under the head Income from other sources shall be computed either on cash or mercantile system of accounting, depending on the method of accounting regularly employed by the assessee. The assessee is also required to follow the Accounting Standards notified by The Central Government (for Accounting Standard refer Notification No. 9949 [F. No. 132/7-95-TPL] dated 25-1-1996).

DEDUCTION ALLOWED FROM INCOME CHARGEABLE UNDER THIS HEAD [SECTION 57]

In case of income from dividend (other than Dividend referred in section 115-O) or interest on securities

Any reasonable sum, paid by way of commission or remuneration to a banker or any other person for the purpose for realising dividend (other than dividend referred to in Section 115-O), or interest as the case may be on behalf of the assessee.

In case of sum received by assessee from his employees as contribution to any funds, etc. as referred to in Section 2(24)(x)

Any amount paid or credited by the assessee to the employee's account of the relevant fund/s as referred to in section 2(24)(x) of the Act, provided such sum is paid or credited by the assessee to the employee's account of the relevant fund on or before due date specified under those Acts.

In case of letting of machinery, plant, furniture, and building

In respect of building:

(1) amount paid by the assessee on the account of current repairs to the premises if the premises are occupied by the assessee otherwise than as the tenant.

(2) any premium paid for the risk of damage or destruction to the premises, and

(3) depreciation and unabsorbed depreciation as per section 32(i), subject however, to the provisions of section 38 which restrict such allowance based on usages.

In respect of plant and machinery and furniture

(1) amount paid by the assessee on the account of current repairs to the plant and machineries

(2) any premium paid for the risk of damage or destruction to such plant and machineries and

(3) depreciation and unabsorbed depreciation as per section 32, subject however, to the provisions of section 38 which restrict such allowance based on usages.

In case of income in the nature of family pension received by family of the employee in whose hand such amount is chargeable

Deduction is allowed to the extent of lower of (a) one-third of such income or (b) ₹ 15,000 (₹ 12,000 up to the assessment year 1997-98).

For this purpose family pension means a regular monthly amount payable by the employer to a person belonging to the family of the employee in the event of his death.

In case of income of the nature Interest on compensation or on enhanced compensation received in any year

Deduction is allowed of a sum equal to 50% of such Interest on compensation or on enhanced compensation received in any year. Other than this no other deduction will be allowed under any other clause of this section.

Any other expenditure [General deductions Section 57(iii)]

Any other expenditure (not being in nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning income chargeable under the head 'Income from other sources', is deductible.

For the purpose of claiming deduction under this clause it is not necessary that expenditure incurred should result in earning of income [CIT vs. Rajendra Prasad Moody 115 ITR 519 (SC)].

AMOUNTS NOT DEDUCTIBLE

Following sum irrespective of whatever or not allowed as deduction under Section 57, shall not be deductible in computing the income under the head "Income from Other Sources".

(1) Personal expenses of the assessee.

(2) Any interest which is payable outside India on which tax has not been paid or deducted.

(3) Any payment chargeable under the head Salaries, payable outside India, if tax has not been paid or deducted therefrom.

(4) Any amount disallowable u/s 40(a)(i) or (ia) – i.e. for failure to deduct tax at source, if applicable (AY 2019-20).

(5) Any amount disallowed as per section 40A in so far as they are applicable to the income chargeable under this head as they may apply to income chargeable under profits and gains of business and profession.

(6) In case of foreign company, expenditure in respect of royalty or fees for technical services as deductible under the provision of section 44D in so far as they are applicable to income chargeable under the head profits and gains.

(7) In case of income in the nature of winning from lotteries, crossword puzzles, races including horse race and games of any sorts, etc., no deduction for expenses or allowances shall be allowed which are incurred in connection with such income. However, this provision of disallowance does not apply in computing income from the activity of owning and maintaining race horses of an assessee being the owner of the horses maintained by him for running in horse races.

APPLICABILITY OF SECTION 14A

Further by virtue of section 14A, no deduction is allowed in respect of expenditure incurred by the assessee in relation to the income which does not form part of the total income under the Act.

PROFITS CHARGEABLE TO TAX [SECTION 59]

Section 59 provides for applicability of section 41(1) of the Act as it would be applicable to income chargeable under the head Profits and Gains of Business and Profession. Thus if any expenditure, loss or trading liabilities incurred by the assessee in any previous year and is allowed as deduction while computing the Income under this head and if later any amount of recovery is made against any such expenses, for which deduction was previously allowed under this head, shall be included in the income of the assessee in the year in which such recovery is made as "Income from Other Sources".

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Clubbing of Income

Section	Nature of Transaction	Clubbed in the Hands of	Conditions/Exceptions	Relevant Reference
60	Transfer of Income without transfer of Assets	Transferor who transfers the income	Irrespective of: 1. Whether such transfer is revocable or not 2. Whether the transfer is effected before or after the commencement of IT Act	1. Section 60 does not apply if corpus itself is transferred. [*Grandhi Narayana Rao 173 ITR 593 (AP)*]
61	Revocable transfer of Assets	Transferor who transfers the Assets	Clubbing not applicable if: 1. Trust/transfer irrevocable during the lifetime of beneficiaries/transferee or to transferor 2. Transfer made prior to 1-4-1961 and not revocable for a period of 6 years. Provided the transferor derives no direct or indirect benefit from such income in either case	Transfer held as revocable 1. If there is provision to re-transfer directly or indirectly whole/part of income/asset 2. If there is a right to reassume power, directly or indirectly, the transfer is held revocable and actual exercise is not necessary. [*S. Raghbir Singh 57 ITR 408 (SC)*] 3. Where no absolute right is given to transferee and asset can revert to transferor in prescribed circumstances, transfer is held revocable. [*Jyotendrasinhji vs. S. I. Tripathi 201 ITR 611 (SC)*] 4. Trust in favour of minor children of assessee- stipulation that income from trust not to be given or used for beneficiaries until they attain majority, Income not to be clubbed – Section 64(1)(iii) Expl. 2A [*Kapoor Chand vs. CIT 376 ITR 450 SC*]
64(1)(ii)	Salary, Commission, Fees or remuneration paid to spouse from a concern in which an individual has a substantial* interest	Spouse whose total income (excluding income to be clubbed) is greater	Clubbing not applicable if: Spouse possesses technical or professional qualification and remuneration is solely attributable to application of that knowledge/ qualification. (burden of proof of qualification is on assessee — *Yashwant Chhajta vs Dy. CIT 210 Taxmann 280*)	1. Income for the purpose of Section 64 includes losses. [*P. Doraiswamy Chetty 183 ITR 559 (SC)*] [also see Expl. (2) to Section 64] 2. The relationship of husband and wife must subsist at the time of accrual of the income. [*Philip John Plasket Thomas 49 ITR 97 (SC)*] 3. Income other than salary, commission, fees or remuneration is not clubbed under this clause
64(1)(iv)	Income from assets transferred directly or indirectly to the spouse without adequate consideration	Individual transferring the asset	Clubbing not applicable if: The assets are transferred; 1. With an agreement to live apart 2. Before marriage 3. Income earned when relation does not exist 4. By Karta of HUF gifting coparcenary property to his wife. *L. Hirday Narain vs. ITO 78 ITR 26 (SC)* 5. Property acquired out of pin money. *R.B.N.J. Naidu vs. CIT 29 ITR 194 (Nag.)*	1. Income earned out of Income arising from transferred assets not liable for clubbing. [M.S.S. Rajan 252 ITR 126 (Mad.)] 2. Cash gifted to spouse and he/she invests to earn interest. [*Mohini Thaper vs. CIT 83 ITR 208 (SC)*] 3. Capital gain on sale of property which was received without consideration from spouse [*Seventilal M. Sheth vs. CIT 68 ITR 503 (SC)*] 4. Transaction must be real. *[O.N. Mohindroo 99 ITR 583 (Delhi)*]

Section	Nature of Transaction	Clubbed in the Hands of	Conditions/Exceptions	Relevant Reference
64(1)(vi)	Income from the assets transferred to son's wife	Individual transferring the Asset	Condition: The transfer should be without adequate consideration	Cross transfers are also covered [*C.M. Kothari 49 ITR 107 (SC)*]
64(1)(vii), (viii)	Transfer of assets by an individual to a person or AOP for the immediate or deferred benefit of his: (vii) — Spouse (viii) — Son's wife	Individual transferring the Asset	Condition: 1. The transfer should be without adequate consideration	1. Transferor need not necessarily have taxable income of his own. [*P. Murugesan 245 ITR 301 (Mad.)*] 2. Wife means legally wedded wife. [*Executors of the will of T.V. Krishna Iyer 38 ITR 144 (Ker)*]
64(1A)	Income of a minor child [Child includes step child, adopted child and minor married daughter].	1. If the marriage subsists, in the hands of the parent whose total income is greater; or; [*Anju Mehara vs. CIT 357 ITR 416 (P&H)*] 2. If the marriage does not subsist, in the hands of the person who maintains the minor child 3. Income once included in the total income of either of parents, it shall continue to be included in the hands of same parent in the subsequent year and not in the income of other parent unless AO is satisfied that it is necessary to do so (after giving that parent opportunity of being heard)	Clubbing not applicable for:— 1. Income of a minor child suffering any disability specified u/s. 80U 2. Income on account of manual work done by the minor child 3. Income on account of any activity involving application of skills, talent or specialised knowledge and experience	1. Income out of property transferred for no consideration to a minor married daughter, shall not be clubbed in the parents' hands [Section 27] 2. The parent in whose hands the minor's income is clubbed is entitled to an exemption up to ₹ 1,500 per child [Section 10(32)] 3. Minors admitted to benefits of partnership—Clubbing provision was held to be applicable [*CIT vs. Shardaben Kishorebhai Patel (2014) 225 Taxman 375/48 taxmann.com 296 (Guj.)(HC)*]
64(2)	Income of HUF from property converted by the individual into HUF property	Income is included in the hands of individual & not in the hands of HUF	Clubbing applicable even if: The converted property is subsequently partitioned; income derived by the spouse from such converted property will be taxable in the hands of individual	Fiction under this section must be extended to computation of income also. [M. K. Kuppuraj 127 ITR 447 (Mad.)]

Note: 1) An individual shall deemed to have substantial interest in a concern for the purpose of Section 64(1)(ii).

IF THE CONCERN IS A COMPANY	IF THE CONCERN IS OTHER THAN A COMPANY
Person's beneficial shareholding should not be less than 20% of voting power either individually or jointly with relatives at any time during the previous year. (Shares with fixed rate of dividend shall not be considered)	Person either himself or jointly with his relatives is entitled in aggregate to not less than 20% of the profits of such concern, at any time during the previous year

2) The clubbed income retains the same head under which it is earned.

3) Income includes loss.

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Set-off and Carry Forward of Losses

STEPS IN CARRY FORWARD AND SET-OFF OF LOSSES

Step 1
- Determination of loss under each respective source of income after claiming exemptions, if any under such head of income e.g., Section 54EC

Step 2
- Inter source adjustment of losses wherever allowed u/s. 70 (Intra head)

Step 3
- Inter head adjustment wherever allowed, where such losses are not fully set off u/s. 71

Step 4
- Carry forward of losses wherever allowed, where such losses are partly/fully not set off under steps 2 & 3 - Sections 71B, 72, 73, 73A, 74

Step 5
- Carry forward/set-off of losses is subject to anti-avoidance provisions of sections 72A(4), 78, 79, 80, 94(7), 94(8)
- Amalgamated/resulting co./bank, conversion of proprietary concern/firm into company, conversion of pvt. co./unlisted public co. into LLP - Sections 72A, 72AA, 72AB

Sr. No.	*Section*	*Types of Loss*	*Set-off against Income*		*Can be carried forward (subject to Notes 4 and 8)*
			In same Assessment Year	*In subsequent Assessment Year*	
1	71B	House Property	Any income under any head of Income (Note 1- restricted up to 2 lakhs)	Income from House Property	8 years
2	71/72	Business or Profession (other than speculation/specified business or depreciation)	Any income under any head except salaries	Business income only (Note 2)	8 years
3	72 r.w.ss. 32(2) & 35(1)(iv)	Unabsorbed Depreciation and Unabsorbed Capital Expenditure for Scientific Research	Any income under any head except Salaries	Any income under any head except Salaries	No restriction on number of years
4	73	Speculation Loss (Notes 2 & 3)	Speculation Profit Only	Speculation Profit Only	4 years (w.e.f. A.Y. 2006-07)
5	70/74	Short-term Capital Loss r.w.s. 94(7) in respect of units of Mutual Funds/securities & 94(8) in respect of units of Mutual Funds or UTI (Notes 8 and 9)	Any Capital Gain	Any Capital Gains	8 years
6	70/74	Long-term Capital Loss [other than equity shares or units of equity oriented mutual fund or units of a business trust which are subjected to STT	Long-term Capital Gain	Long-term Capital Gains	8 years

Sr. No.	Section	Types of Loss	Set-off against Income		Can be carried forward (subject to Notes 4 and 8)
			In same Assessment Year	In subsequent Assessment Year	
7	71/74	Long-term Capital Loss on equity shares & units of equity oriented mutual fund or units of a business Trust which are subjected to STT (See Note 12)	Long-term Capital Gain (See Note 12)	Long-term Capital Gain (See Note 12)	N.A.
8	74A	Loss from Owning and Maintaining race horses	Only against income from horse races	Only against income from horse races	4 years
9	71	Other Sources	Any income under any head of income	Unutilized loss not allowed for carry forward	N.A.
10	72A(1) r.w. Rule 9C	In case of amalgamation			
		a. Accumulated Business Losses (other than speculation business loss) of the Amalgamating Company	For Conditions regarding transfer of accumulated Business losses – See Note 17	Business Income of the Amalgamated Company See Notes 16 & 17	8 years from the expiry of the year of amalgamation
		b. Unabsorbed Depreciation of the Amalgamating Company	For Conditions regarding transfer of unabsorbed depreciation – See Note 17	Any Income of the Amalgamated Company	Indefinitely
11	72A(4)	In case of Firm/Prop. Concern succeeded by Company			
		a. Accumulated Business losses (other than speculation business loss) of Demerged Company	For Conditions regarding transfer of accumulated Business losses – See Note 18	Business Income of the Resulting Company See Notes 16 & 18	Unexpired period out of total permissible period of 8 years
		b. Unabsorbed Depreciation of the Demerged Company	For Conditions regarding transfer of unabsorbed depreciation – See Note 18	Any Income of the Successor Company	Indefinitely
12	72A, 72A(6)	In case of Firm/Prop. Concern succeeded by Company			
		a. Accumulated Business losses (other than speculation business loss) of Firm/Prop. Concern	For Conditions regarding set off of accumulated Business Loss – See Note 19	Business Income of the Successor Company See Notes 16 & 19	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of the Firm/ Prop. Concern	For Conditions regarding set off of unabsorbed Depreciation – See Note 19	Any Income of the Successor Company	Indefinitely
13	72A(6A)	Conversion of Private Company, Unlisted Public Company into LLP (w.e.f. A.Y. 2011-12)			
		a. Accumulated Losses (other than speculation losses) of such Company	For Conditions regarding setoff of accumulated Business Loss – See Note 20	Business income of the successor LLP See Notes 16 & 20	8 years from the expiry of the year of Conversion

Sr. No.	Section	Types of Loss	Set-off against Income		Can be carried forward (subject to Notes 4 and 8)
			In same Assessment Year	In subsequent Assessment Year	
		b. Unabsorbed Depreciation of such Company	For Conditions regarding set off of unabsorbed depreciation – See Note 20	Any Income of the successor LLP	Indefinitely
14	72AA	Amalgamation of Banking Company with a Banking Company (w.e.f. A.Y. 2005-06)			
		a. Accumulated Losses (other than speculation losses) of such bank	For Conditions regarding set off of accumulated Business Loss – See Note 22	Business income of the successor bank (See Notes 21 & 22)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For Conditions regarding set off of unabsorbed depreciation – See Note 20	Any Income of the successor bank	Indefinitely
15	72AB(1)	Amalgamation of Co-op. Banks (w.e.f. A.Y. 2008-09)			
		a. Accumulated Losses (other than speculation losses) of such bank	For definition of Accumulated Loss – See Note 23	Business income of the successor bank (See Note 23)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For definition of unabsorbed depreciation – See Note 23	Any Income of the successor bank	Indefinitely
16	72AB(3)	Demerger of Co-operative Bank			
		a. Accumulated Losses (other than speculation losses) of such bank	For Conditions regarding set off of accumulated Business Loss – See Note 24	Business income of the successor bank (See Notes 23 & 24)	8 years from the expiry of the year of Conversion
		b. Unabsorbed Depreciation of such bank	For Conditions regarding set off of unabsorbed depreciation – See Note 24	Any Income of the successor bank	Indefinitely
17	73A r.w.s. 35AD	Losses of Specified Business	Income from Specified Business	Income from Specified Business	No Time Limit

Notes

1. Where in respect of any assessment year, the net result of the computation under the head "Income from House Property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.
2. From A.Y. 2000-01, conditions as to continuation of the same business in which the loss was incurred, has been dispensed with.
3 Losses from under mentioned transactions would not be considered as speculation transactions and such losses can be set-off against any other income.
   - Transactions entered into by the assessee to guard against the future price fluctuations of the raw material or merchandise in course of his manufacturing or merchandising [u/s. 43(5) proviso (a)].
   - Transactions of trading in derivatives (referred in section 2(ac) of Securities Contracts (Regulation) Act, 1956) entered into on recognised stock exchange through a broker or SEBI recognised intermediary and supported by a time stamped contract note [u/s. 43(5) proviso (d)].
   - Transaction in respect of trading in commodity derivatives carried out in a recognised association which is chargeable to commodities transaction tax shall not be considered to be a speculative transaction [u/s. 43(5) proviso (e)]

4. As per the Explanation to Section 73 Losses from purchase and sale of shares would be treated as speculation losses except in case of following companies
   - company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from House Property", "Capital gains" and "Income from Other Sources"
   - a company whose principal business is the business of banking or the granting of loans and advances (A.Y. 2014-15 & onwards)
   - a company whose principal business is the business of trading in share or banking or the granting of loans and advances (A.Y. 2015-16 & onwards)
5. Priority for set off of depreciation, business loss may be in the following order:
   - Current Year's Depreciation
   - Unabsorbed Carried Forward Business Loss
   - Unabsorbed Carried Forward Depreciation
6. In case of firm, where a change has occurred in the constitution of a firm, the firm shall not be entitled to carry forward and set off so much of the loss in proportion to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year [Section 78(1)]. However, such restriction shall not be applicable where any person is succeeded by way of inheritance [Section 78(2)].
7. In the case of a company, not being a company in which the public are substantially interested, carry forward of the loss is not allowed where a on the last day of the previous year, the shares of the such company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred. However this shall not apply:
   - to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift;
   - to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent. shareholders of amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company;
   - to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;
   - to a company, and its subsidiary and the subsidiary of such subsidiary, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner
   - to an eligible start up as referred to in section 80-IAC, provided if all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.
8. In terms of section 80, the losses other than depreciation & house property loss can be carried forward only if determined in pursuance of the return filed within the time prescribed u/s. 139(1). However in case return is filed late, Income Tax Authorities have the power to condone delay on the basis of limit of losses – Circular No. 8/2001 dated 16-5-2001.
9. As per section 94(7) if any person
   - buys units of mutual funds/securities within the period of 3 months prior to record date for dividend, and
   - transfers/sells such securities within 3 months of such record date or transfers/sells units within the period of 9 months of such record date
   - dividend or income received or receivable on such securities/units is exempt

   Then, the loss arising to the extent of the amount of dividend received or receivable shall be ignored while computing his total income chargeable to tax.
10. As per section 94(8) if any person
    - buys units of mutual funds or UTI within the period of 3 months prior to record date for issue of bonus units and receives bonus units on such date
    - transfers/sells all or any of the original units within period of 9 months of such record date
    - he continues to hold all or any of the bonus units

    Then the loss arising in respect of such purchase & sale transaction shall be ignored while computing his total income. However loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units as are held on the date of sale or transfer.
11. Capital gain resulted from the transfer of a depreciable asset held for a period of more than three years, may be set off against the brought forward loss from the long-term capital assets.
12. In case of buy-back of shares which is subject to tax u/s. 115QA, arisen losses may not be allowed to be set off or carried forward.
13. Long-term capital losses except in case of sale/transfer of shares/units of equity oriented mutual funds/units of a business trust subjected to STT to be set off only against taxable long-term capital gains and not against exempt long-term capital gains. However, set off of indexed long-term capital loss can be set off against long-term capital gain without indexation.

14. Provisions of sections 70, 71 and 72 are applicable even in respect of loss incurred in business which are eligible for deduction under section 80-IA, 80-IB, etc. Where section 71 grants an option to an assessee for set off of any head of loss against any head of income, then at the option of assessee such loss could be set off against respective income. E.g. where assessee has suffered loss under head 'Business' at his option such loss could be set off against 'Income from other sources', in first instance, and only surviving loss could be set off against 'income from capital gains'.

15. For the purpose of section 72A, Accumulated loss, Unabsorbed Depreciation and Industrial undertaking has been defined as :

"Accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and Gains of Business or Profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganization of business or conversion or amalgamation or demerger had not taken place.

'Industrial undertaking" means any undertaking engaged in the manufacture or processing of goods, or the manufacture of computer software or in the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircraft or rail systems or the business of providing telecommunication services whether basic or cellular including radio paging, domestic satellite service, network of trunking, broadband network and internet services.

"Specified bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955) or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

16. In case of Amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company or of a banking company as referred to in section 5(c) of the Banking Regulations Act, 1949 with a specified bank or of a public sector company engaged in the business of operation of aircraft with one or more public sector companies engaged in the similar business, the accumulated loss and unabsorbed depreciation of Amalgamating (transferor) company can be transferred to Amalgamated (transferee) company, if

(a) Amalgamated company holds continuously 3/4th book value of fixed assets acquired from Amalgamating Company for at least 5 years from date of Amalgamation.

(b) Amalgamated company continues to carry on the business of the amalgamating company for at least 5 years.

(c) The Amalgamated company shall achieve the level of production of at least 50% of the installed capacity of the said undertaking before the end of the four years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. The amalgamated company shall also furnish to Assessing Officer a certificate in Form No. 62 providing prescribed production particulars, duly verified by chartered accountant. (Rule 9C). However, on application to Central Government, this condition may be relaxed

(d) Amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years.

(e) Amalgamating company has held continuously as on the date of amalgamation at least 3/4th of the book value of fixed assets held by it 2 years prior to the date of amalgamation.

17. In case of Demerger, accumulated loss and unabsorbed depreciation of Demerged Company can be transferred to Resulting Company:

(a) where such losses and unabsorbed depreciation is directly relatable to undertaking transferred, the whole of such losses or unabsorbed depreciation to be allowed to be carried forward and set off in the hands of the resulting company.

(b) where such losses and unabsorbed depreciation is not directly relatable to undertaking transferred, then such losses and unabsorbed depreciation would be apportioned in ratio of assets retained by the Demerged Company and transferred to the Resulting Company.

(c) The Central Government may by a notification in *Official Gazette,* specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

18. Carry forward and set off of loss incurred by the erstwhile Partnership firm and proprietary concern is allowed only if conditions prescribed u/s. 47(xiii)/47(xiv) is complied. In case prescribed conditions are not complied, aggregate set off of such losses or allowance of depreciation in any previous year shall be income of the successor company of the previous year in which such conditions are violated.

19. Carry forward and set off of loss incurred by the erstwhile Private company or Unlisted public company is allowed only if conditions prescribed u/s. 47(xiiib) are complied. In case prescribed conditions are not complied, aggregate set off of such losses or allowance of depreciation in any previous year shall be income of the successor LLP of the previous year in which such conditions are violated.

20. For the purpose of section 72AA Accumulated loss and Unabsorbed Depreciation has been defined as:

"Accumulated Loss" means so much of the loss of the amalgamating banking company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company, would have been entitled to carry forward and set-off under the provisions of section 72 if the amalgamation had not taken place.

"Unabsorbed Depreciation" means so much of the allowance for depreciation of the amalgamating banking company which, would have been allowed to such banking company as if the amalgamation had not taken place.

21. (a) There is amalgamation of a banking company with any other banking institution.

    (b) Amalgamation is sanctioned u/s. 45(7) of Banking Regulation Act, 1949.

    (c) Condition of sections 72A and 2(1B)(i)/(ii)/(iii) need not be satisfied.

22. For the purpose of section 72AB Accumulated loss and Unabsorbed Depreciation has been defined as:

    "Accumulated Loss" means so much of the loss of the amalgamating co-operative bank or the demerged co-operative bank, under the head Profits and gains of business or profession (other than speculation loss), which such amalgamating co-operative bank or the demerged bank would have been entitled to carry forward or set off as if the business reorganization had not taken place.

    "Unabsorbed Depreciation" means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, which would have been allowed to such amalgamating co-operative bank or the demerged co-operative bank as if the business reorganization had not taken place.

23. (a) The predecessor bank is engaged in banking business for 3 or more years.

    (b) The predecessor bank has held at least 3/4th of the book value of fixed assets as on the date of business reorganization, continuously for 2 years prior to the date of business reorganisation.

    (c) The successor bank holds at least 3/4th of book value of fixed assets of the predecessor bank, continuously for minimum 5 years from the date of business reorganisation.

    (d) The successor continues the business of the predecessor bank, continuously for minimum 5 years from the date of business reorganisation.

    (e) The successor fulfils such other conditions as may be prescribed.

24. In case of amalgamation/demerger, unabsorbed capital expenditure e.g., scientific research, family planning may also be allowed to be carried forward and set off in the hands of resulting company.

25. Any loss under any head of income cannot be set off against the income from winnings from lotteries, crossword puzzles, race horses etc.

26. It is proposed to provide that no expenditure or allowance or set off of any loss shall be allowed in respect of undisclosed income determined by the Assessing Officer under section 115BBE of the Act.

27. It is proposed that the provision of section 79 of the Income-tax Act (the Act) regarding restriction on shareholding for the purpose of carry forward loss shall not apply in case of change of shareholding pursuant to an approved resolution plan under IBC, 2016 where an opportunity of being heard has been given to the Principal Commissioner or Commissioner.

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Reliefs under Income-tax Act, 1961

INCOME TAX	RELIEFS
SECTION 87A	**REBATE FROM INCOME TAX PAYABLE WHEN THE NET TOTAL INCOME OF THE RESIDENT INDIVIDUAL IS NOT EXCEEDING ₹ 5,00,000/-**
Persons Covered	The rebate under this section is allowed only to the resident individual whose net total income is not exceeding ₹ 5,00,000/-
Rebate	Rebate under this section is available for amount which is lower of: (i) 100% of tax payable on total income, or (ii) ₹ 12,500/-
SECTION 89	**RELIEF FROM INCOME TAX PAYABLE WHEN SALARY/FAMILY PENSION/GRATUITY PAID IN ARREARS/ADVANCE**
Persons Covered	Any assessee in receipt of any kind of salary or profits in lieu of salary or family pension or gratuity, which is received in arrears or in advance
Relevant Conditions	1. The assessee's total income due to receipt of such arrears or advance gets assessed at a rate higher than that at which it would otherwise have been assessed. 2. The assessee being a government servant or an employee in a company, co-operative society, local authority, university, institution, association who is entitled to claim relief u/s. 89, may furnish to his employer, the particulars specified in Form 10E. The employer in such case shall compute the relief u/s. 89 on the basis of such particulars and take it into account while deducting TDS [vide section 192(2A)]. 3. As per Circular No. 431 dated 12-9-1985, the relief u/s. 89 shall be admissible in respect of encashment of leave salary by an employee when in service. 4. The relief is to be given in the assessment in which the extra payment by way of arrears, advance, etc., is taxed. 5. In order to claim relief, the assessee should send an application to concerned assessing officer on plain paper.
Relevant Percentage/Amount	Method of computation of relief u/s. 89 [Rule 21A] Find out two rates of tax. First is the rate of tax applicable to the extra amount (arrears or advance) in the year of receipt/ getting taxed. Second is finding out the rate of tax on extra amount for the years to which they relate. Difference between the two is extent of relief. The mode of computation of relief for different types of receipts is given below: **A. In respect of salary/family pension paid in arrears/advance {Additional Salary}** 1. Calculate tax on total income, including the additional salary of the previous year in which the same is received; 2. Calculate the tax on total income as reduced by the additional salary of the previous year in which the same is received; 3. Calculate the difference between tax at (1) and (2). The resultant figure is tax on additional salary in the year of receipt; 4. Ascertain the previous years to which the additional salary relates; 5. Calculate the tax on the total income as increased by the relevant additional salary in respect of each such previous years and total up such taxes for all such previous years; 6. Calculate the tax on total income without including such additional salary in respect of each such previous years and total up the taxes for all such previous years; 7. Calculate the difference between tax at (5) and (6). The resultant figure is tax on additional salary for the year to which it pertains; 8. The excess of tax computed at (3) over the tax computed at (7) is the amount of relief admissible.

B. In respect of Gratuity

a. Where payment of gratuity is for past service of 15 years or more:—

1. Calculate the tax on total income including the amount of gratuity [in excess of exempt u/s. 10(10)] of the previous year in which gratuity is received;
2. Find out the average rate of tax on total income by dividing the tax arrived at in (1) by the total income (including the amount of gratuity) of the previous year in which the gratuity is received;
3. Find out tax payable on gratuity in year of receipt by multiplying the average rate of tax arrived at in (2) with the amount of gratuity;
4. Add one-third of the amount of gratuity to the total income of each of the three years immediately preceding the previous year in which such gratuity is received;
5. Find out tax on total income (after including one-third gratuity), for each of the three preceding previous years arrived at in (4);
6. Find out the average rate of tax on total income of each of three preceding previous years by dividing the tax arrived at in (5) of the relevant previous year by the total income (including the amount of one-third gratuity) of that year;
7. Total the average rates of these three years and divide the result by three in order to work out the average of these three average rates;
8. Multiply the average of these three average rates arrived at as per (7) with the amount of gratuity received [in excess of exempt u/s. 10(10)];
9. The excess of tax computed at (3) over the tax computed at (8) is the amount of relief admissible.

b. Where payment of gratuity is for past service >5 and <15 years:

The method of calculating the relief will be the same as in (a) above except that the total income of each of the two (instead of three) immediately preceding previous years is to be increased by one-half (instead of one-third) of the amount of gratuity and accordingly average of average rates of preceding two years (instead of three) is to be computed.

c. Where payment of gratuity is for past service of less than 5 years:

No relief is admissible in such cases.

C. In respect of compensation on termination of employment

Where compensation is received by assessee from his employer or former employer at or in connection with the termination of his employment after continuous service of not less than three years and the unexpired portion of his service is also not less than three years then, the relief is calculated in the same manner as if gratuity was paid to employee in respect of service rendered for a period of 15 years or more [same as (B)(a) above]. Relief u/s. 89(1) is admissible even/also in respect of compensation received under Voluntary Retirement Scheme/Voluntary Separation Scheme, to the extent the same is taxable. An employee of public sector company receiving any amount on his voluntary retirement or termination of service or voluntary separation in accordance with the specified scheme, will either be entitled to exemption up to ₹ 5,00,000 under Section 10(10C) or relief under Section 89 of spreading the taxability of such income over several years, but not both. These two sections being distinct in their scope, the assessee can claim the benefit u/s. 89 in respect of the amount in excess of the amount exempt under Section 10(10C).

D. In respect of Commutation of Pension

In case of commutation of pension [in excess of exempt u/s. 10(10A)], the relief is calculated in the same manner as if gratuity was paid to employee in respect of service rendered for a period of 15 years or more [same as (B)(a) above].

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Transfer Pricing – International Transactions

INDIAN TRANSFER PRICING PROVISIONS

The Finance Act, 2001 introduced detailed provisions relating to transfer pricing, requiring all 'international transactions' between 'associated enterprises' to be at arm's length. These provisions are applicable to the transactions with effect from 1st April, 2001. The Finance Act, 2012 had extended the provisions of transfer pricing regulations to certain specified domestic transactions ('SDTs') which fulfil the prescribed conditions which was then modified vide Finance Act, 2017 limiting the covered SDTs to certain specified entities. The Finance Act, 2017 had also introduced the concept of secondary adjustments and provisions pertaining to limitation of interest deduction within the Indian Transfer pricing regulations. The Finance Act, 2018 did not bring major changes to this chapter. The Finance (No.2) Bill, 2019[1] has provided clarification to the concept of secondary adjustments and it has also provided that every constituent entity of an international group shall be required to file master file even when there is no international transaction undertaken by such constituent entity. Further, It is also provided that the assessing officer or Commissioner of Income Tax (Appeals) cannot obtain master file from the taxpayer.

SCOPE OF APPLICATION OF THE PROVISIONS

Any income/expense arising from an international transaction with an associated enterprise must be computed having regard to the arm's length price. Also, costs or expenses allocated or apportioned between two or more associated enterprises based on mutual agreement or arrangement, should be determined having regard to arm's length price. The transfer pricing provisions are wide enough to cover transactions between a foreign entity and its permanent establishment in India. The transfer pricing provisions would however not apply in cases wherein the application of the arm's length price results in a downward revision in the income chargeable to tax in India or results in an increase in the loss.

INTERNATIONAL TRANSACTIONS

- The term 'international transactions' covers a wide range of revenue and capital transactions between two or more associated enterprises where either or both are non-residents;
- The term also includes arrangements between associated enterprises for cost sharing in connection with benefits, services or facilities provided to any of such enterprises.

Additionally, under certain circumstances transactions between two unrelated entities can be deemed to be an international transaction. This is when an enterprise, say X Ltd., has entered into a transaction with an unrelated person, say A Inc. and there exists a prior agreement in relation to this transaction between A Inc. and Y Inc. (an associated enterprise of X Ltd.); or the terms of this transaction (i.e., the transaction between X Ltd. and A Inc.) are determined in substance between A Inc. and Y Inc. The Finance Act 2014 has provided that the deeming provision should also apply to cases where the third party is an Indian resident.

The Finance Act, 2012 has added an explanation to clarify the expression "international transaction". It includes:

- business restructuring or re-organisation irrespective of bearing on profit, income, losses – current or future;
- capital financing, lending or guarantee, any type of advance, receivables, etc.;
- provision of services including marketing research, technical service, repairs, legal or accounting, etc.;
- tangible property – which is defined to include building, transportation vehicle, machinery, furniture, equipment, etc. or commodity or any other article, product or thing; and
- intangible property – which is defined to include customer list, franchise, marketing channel, brand, etc., or any other business or commercial rights of similar nature or any other similar items that derive value from its intellectual content rather than physical attributes.

ASSOCIATED ENTERPRISE

The term 'Associated Enterprise' is defined based on the criteria of direct or indirect participation in the management, control or capital of the other enterprise or by the same persons in such enterprise. The regulation gives inter alia, an illustrative list of relationships to which transfer pricing rules apply:

- equity holding of 26%;
- control of board of directors;
- loans/guarantees;
- dependence on the use of specified intangibles of the other enterprise;
- influence over supply of raw material/finished products, etc.

Transfer pricing provisions have also been made applicable to transactions with parties located in Notified Jurisdictional Areas. The benefit of variation between actual and arm's length price is not applicable to such transactions.

COMPUTATION OF ARM'S LENGTH PRICE

The arm's length price in relation to an international transaction is to be determined using the most appropriate method out of the specified methods as prescribed by the Central Board of Direct Taxes ('CBDT'/'Board') in Rule 10B, having regard to the nature or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as may be prescribed. The six specified methods are:

- Comparable Uncontrolled Price Method ('CUP');
- Resale Price Method ('RPM');
- Cost Plus Method ('CPM');
- Profit Split Method ('PSM');
- Transactional Net Margin Method ('TNMM'); and
- Other Method

1. The Finance (No.2) Bill, 2019 was proposed in the Union Budget of India 2019 on 05 July 2019. The said bill has been presented before Loka Sabha, later it will be presented before Rajya Sabha and post receiving the consent of The President of India; the same shall be converted to The Finance Act, 2019.

CBDT has introduced the sixth method by way of Notification No. 18/2012, dated May 23, 2012. The new method inserted by way of Rule 10AB states that "any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all relevant facts", shall be considered as one of the methods for determination of arm's length price. This Rule is applicable from FY 2011-12 onwards. The Indian regulations refers to the 'most appropriate method' and has no preference of one method over the other.

USE OF MULTIPLE YEAR DATA AND INTER QUARTILE RANGE

The Finance Act, 2014 has introduced the concept of range and the use of multiple year data. The new rules shall apply to international transactions entered on or after 1st April, 2014.

Data to be used for application of TNMM, RPM or CPM

- The current year data shall continue to be used for comparability analysis;
- Where current year data is not available at the time of filing return of income, data pertaining to preceding financial year can be used;
- However, at the time of transfer pricing assessment, if the relevant data for current year is available, then such data will be used for determination of arm's length price irrespective of the fact that the same was not available at time of filing return of income.

Range concept

- The range concept can be applied for determining arm's length price under each of the transfer pricing methods namely, CUP, TNMM, RPM or CPM.
- Selection of a minimum of six comparable entities is required. However, the earlier concept of arithmetic mean and benefit of +/- 1% or 3% will continue in cases where the number of comparable are inadequate.
- Three-year data of comparables would be considered and the weighted average of the three-year data of each comparable would be used to construct the data set. In certain circumstances, data of two out of three years could also be used. Additionally, single year data can be used, provided that the data is for the current year in which the tested transaction is undertaken or a year prior to the current year in the case of non-availability of data for the current year.
- An arm's length range is between the 35th and 65th percentile of the data set, pursuant to the definition provided in the amended rules.
- If the taxpayer's transaction price of the international transaction falls within the range, then the transaction price will be considered as arm's length and no adjustments will be required.
- If the taxpayer's transaction price of the international transaction falls outside the arm's length range then the median (50th percentile) of the dataset will be considered as arm's length price. Accordingly the difference between transaction price and median will be the adjustment.

REFERENCE TO TRANSFER PRICING OFFICER

The CBDT has issued new guidelines[2], providing detailed procedures to be followed by the Assessing Officers and the Transfer Pricing Officers for scrutiny of transfer pricing cases. The new guidelines state categorically that the selected cases for scrutiny involving transfer pricing transactions would need to be referred to the Transfer Pricing Officer, and would not be done by the Assessing Officer under Section 92C(3) of the Act. This reference to the Transfer Pricing Officer would be after recording the basis of selection through transfer pricing risk assessment to satisfy the requirement of "necessary and expedient" under Section 92CA(1) of the Act, and after obtaining the due approval of the jurisdictional Principal Commissioner of income tax or the Commissioner of income tax. For the cases selected for scrutiny on non– transfer pricing parameters, the case could be referred to the Transfer Pricing Officer only if the Assessing Officer finds any transfer pricing transaction during the course of assessment. Such cases would be referred by the Assessing Officer to the Transfer Pricing Officer only after giving an opportunity of being heard to the taxpayer. The Assessing Officer would also be required to record his reasons and would seek necessary approval of the Commissioner or Principal Commissioner in each of such cases before referring to the Transfer Pricing Officer.

Transfer Pricing Officer can determine arm's length price of any international transaction that comes to his notice in the course of proceedings even if the transaction is not referred to him by the Assessing Officer. Further the Transfer Pricing Officer is also granted additional powers of survey, so as to conduct on-the-spot enquiry and verification. The Finance Act, 2012 has empowered the Transfer Pricing Officer to determine arm's length price of any transaction entered into by the assessee, as if they are international transactions, even when such transactions are not reported by the taxpayer.

The Transfer Pricing Officer shall determine the arm's length price and send a copy of his written order to the Assessing Officer and to the taxpayer. Wherever the Assessing Officer proposes to make any variation in the income or loss returned of the assessee as a consequence of the above order of the Transfer Pricing Officer, the Assessing Officer shall forward the draft order to assessee for its objections (if any).

On receipt of draft order the assessee shall communicate either its acceptance or file objections against such order with Dispute Resolution Panel ('DRP') within 30 days. The DRP which is a collegium of three Commissioners of Income Tax shall issue binding directions to Assessing Officer after due consideration of objections and evidences filed by assessee. The DRP is empowered to include any matter arising out of the assessment proceedings, irrespective whether such matter was raised by the taxpayer or not.

The Assessing Officer shall pass appropriate order in conformity with the directions of DRP within 30 days from the end of the month, in which the directions are forwarded to the Assessing Officer. By virtue of the Finance Act, 2016, the Income Tax Department will have no right to appeal against the order issued in conformity with the directions of the DRP, however the assessee has the option to appeal against the final assessment order before the Income Tax Appellate Tribunal.

2. Instruction No. 3/2016 dated 10th March, 2016.

COMPUTATION OF TOTAL INCOME

Where the Assessing Officer computes the total income of the taxpayer having regard to the arm's length price so determined by the Transfer Pricing Officer, no tax benefits under sections 10A, 10AA or 10B or under Chapter VI-A of the Act will be allowed in respect of the amount of income by which the total income of the tax-payer is enhanced after such computation by the Assessing Officer.

NO ADJUSTMENT TO ASSOCIATED ENTERPRISE'S INCOME

In cases where the total income of a taxpayer is re-computed after determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible at source, the income of the other associated enterprise shall not be recomputed by reason of such re-determination of arm's length price in the case of the tax-payer.

STATUTE OF LIMITATIONS ON ASSESSMENT

The time limit for concluding tax assessments involving transfer pricing is reduced from thirty six months to thirty three months with the Transfer Pricing Officer to pass order sixty days prior to the said time limit. For instance, the transfer pricing assessment for AY 2015-16 shall be required to be concluded by the Transfer Pricing Officer by 31st October, 2018. The amendment is effective from 1st June, 2016.

By virtue of amendment to section 92CA (3), the time limit for transfer pricing assessment is extended beyond the limitation period so as to allow the Transfer Pricing Officer at least sixty days for passing the transfer pricing order after excluding the period for which the assessment proceedings before the Transfer Pricing Officer are stayed by any court; or the information is sought from any other country under the exchange of information process. The amendment is effective from 1st June, 2016.

The Finance Act, 2017 has reduced the time limit for concluding the tax assessments involving transfer pricing for AY 2018-19 and for AY 2019-20 onwards to thirty months and twenty-four months respectively from the time limit of thirty-three months.

ALTERNATE DISPUTE RESOLUTION MECHANISM

The Finance (No. 2) Act, 2009 had introduced section 144C in respect of the provisions relating to Alternate Dispute Resolution Mechanism ('ADRM'). The dispute resolution mechanism is applicable for taxpayers subject to transfer pricing adjustment and to foreign companies. The entire process of ADRM would be handled by a dispute resolution panel ('DRP') comprising of three Commissioners of Income Tax constituted by the Board and having powers as vested in a Civil Court. The DRP may confirm, reduce or enhance the adjustment as proposed by the Assessing Officer. The Finance Act, 2012 has empowered the DRP to include any matter arising out of the assessment proceedings, irrespective whether such matter was raised by the taxpayer or not.

SECONDARY ADJUSTMENTS

The Finance (No. 2) Act, 2017 had introduced section 92CE in respect of the Secondary adjustment in certain cases. "Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices , it is proposed to insert a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC; or is made as per the safe harbour rules framed under section 92CB; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A.

It is provided that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner prescribed under Rule 10CB.

It is also provided that such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed one crore rupees and the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.

A new Rule 10CB has been notified by the Central Board of Direct Taxes[3] notifying the time period of 90 days (after certain events as specified in the said rule) for repatriation of excess money and interest rates to be considered in the case of failure to repatriate the excess money within the prescribed time limit. Separate interest rates for international transactions denominated in Indian rupee and foreign currency have been prescribed as under:

- For Indian rupee denominated transaction – one year marginal cost of fund lending rate of State Bank of India as on 1st April of the relevant previous year plus 325 basis points; or
- For foreign currency denominated transaction – six month London Interbank Offered Rate as on 30th September of the relevant previous year plus 300 basis points.

In order to address concerns and to make the secondary adjustment regime more effective and easy to comply with, The Finance Bill (No. 2), 2019 has proposed to amend section 92CE so as to provide that:-

(i) the condition of threshold of one crore rupees and of the primary adjustment made up to assessment year 2016-17 are alternate conditions;

(ii) the assessee shall be required to calculate interest on the excess money or part thereof;

3. Notification no. 52/2017 dated 15 June 2017.

(iii) the provision of this section shall apply to the advance pricing agreements which have been signed on or after 1st April, 2017; however,no refund of the taxes already paid till date under the pre amended section would be allowed;

(iv) the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India;

(v) in a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional tax is proposed to be increased by a surcharge of 12 %;

(vi) the tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid;

(vii) the deduction in respect of the amount on which such tax has been paid , shall not be allowed under any other provision of this Act; and

(viii) if the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

The amendments proposed in (i) to (iv) above will take effect retrospectively from the 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

Further, the amendments proposed in (v) to (viii) will be effective from 1st September, 2019.

LIMITATION OF INTEREST DEDUCTION IN CERTAIN CASES

The Finance (No. 2) Act, 2017 had introduced section 94B in respect of the limitation of interest deduction in certain cases in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.

The provision shall be applicable to an Indian company, or a permanent establishment of a foreign company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower. Further, the debt shall be deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender or deposits a corresponding and matching amount of funds with the lender.

The provisions shall allow for carry forward of disallowed interest expense to eight assessment years immediately succeeding the assessment year for which the disallowance was first made and deduction against the income computed under the head "Profits and Gains of business or Profession to the extent of maximum allowable interest expenditure.

In order to target only large interest payments, it is provided that a threshold of interest expenditure of one crore rupees exceeding which the provision would be applicable. Further, Banks and Insurance business are excluded from the ambit of the said provisions keeping in view of special nature of these businesses.

DOCUMENTATION

Every person who has entered into an international transaction with an associated enterprise would be required to keep and maintain the prescribed information and documentation. Such information and documentation need not be maintained in cases where the aggregate book value of international transactions entered into by the taxpayer does not exceed INR one crore. However, in such cases, the taxpayer would need to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with the arm's length principle.

The Finance Act, 2016 has provided that w.e.f. 1st April, 2017, every person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as prescribed in rule 10DA and rule 10DB. The details regarding the same are provided separately in the chapter on country-by-country reporting.

The Finance Bill (No.2), 2019 has proposed to substitute the sub-section (1) to section 92D to provide that the information and document to be kept and maintained by a constituent entity of an international group, and filing of required form, shall be applicable even when there is no international transaction undertaken by such constituent entity. It is also proposed to provide that information shall be furnished by the constituent entity of an international group to the prescribed authority. The said amendment will take effect from 1st April, 2020.

Further, it is proposed to amend the sub-section (3) to section 92D, to provide that the assessing officer or Commissioner of Income Tax (Appeals) cannot obtain master file from the taxpayer

RELAXATION OF REQUIREMENT TO MAINTAIN FRESH DOCUMENTATION

It is prescribed that in cases wherein an international transaction continues to have effect over more than one financial year, fresh documentation need not be maintained separately in respect of each financial year, unless there is any significant change in the nature or terms of the international transaction, in the assumptions made, or in any other factor which could influence the transfer price. In case there is a significant change, fresh documentation shall be maintained bringing out the impact of the change on the pricing of the international transaction.

PERIOD OF MAINTENANCE OF DOCUMENTATION

The information and documents should, as far as possible, be contemporaneous and should exist latest by the date of filing the accountant's report which is 30th November.

Further, the specified information and documents are required to be maintained for a period of eight years from the end of the relevant assessment year.

ACCOUNTANT'S REPORT

It is prescribed that every person who has entered into an international transaction shall obtain a report from an independent practising Chartered Accountant. This Report (Form No. 3CEB) should be furnished to the Income Tax department before the due date of filing the return as per Explanation 2 to Section 139(1) which is 30th November. The

Accountant's Report gives particulars of associate enterprises, international transactions, arm's length price and the method used for determining arm's length price.

SAFE HARBOUR

The CBDT has notified the Safe Harbour Rules (10TA to 10TG) for international transactions. The rules contains the procedure for adopting Safe Harbour, the transfer price to be fixed and the compliance procedures to be undertaken. In order to avail the benefit of Safe Harbour provisions, a taxpayer is required to file Form No. 3CEFA with the revenue authorities. A validly exercised Safe Harbour option can continue to remain in force for a period of 5 years or period opted by the taxpayer in Form 3CEFA, whichever is less, provided certain conditions are met.

The rules cover international transactions[4] in following categories/sectors:

Sr. No.	*Nature of Transaction*	*Safe Harbour*
1.	Information Technology (IT)	Operating Profit margin on operating expenses is 17% - 18% or more
2.	IT Enabled Services	Operating Profit margin on operating expenses is 17% - 18% or more
3.	Knowledge Process Outsourcing services	Operating Profit margin on operating expenses is 18% - 24% or more depending on the employee cost to operating expense ratio
4.	Contract Research & Development in the IT sector	Operating Profit margin on operating expenses is 24% or more
5.	Contract Research & Development in the Pharmaceutical Sector	Operating Profit margin on operating expenses is 24% or more
6.	Financial transactions	***For Outbound loans:*** Interest rate = In Indian Currency – one year marginal cost of funds lending rate of State Bank of India as on 1st April of the previous year plus 175 bps - 625 bps (based on credit rating) In Foreign Currency – six month LIBOR as on 30th September of the previous year plus 150 bps – 600 bps (based on credit rating) ***For Corporate Guarantees:*** Commission/Fee = 1% of the amount guaranteed where the borrower is certified by a SEBI registered credit rating agency to be adequate
7.	Auto Ancillary Manufacturing	Operating Profit margin on operating expenses is 8.5% - 12% or more
8.	Receipt of low value-adding intra-group services	Operating Profit mark-up not exceeding 5% and the aggregate value of the transaction including mark-up is less than INR 10 crore

The key directives/clarifications are as follows:

- If the taxpayer has opted for Safe Harbour but has reported rates or margins less than the Safe Harbour rates or margins, then income has to be computed by the tax authorities on the basis of the Safe Harbour rates or margins.
- The Safe Harbour rates or margins are not a benchmark for the cases not covered by the Safe Harbour Rules. Thus, regular transfer pricing audits should be carried out without having regard to the Safe Harbour rates or margins.

The Safe Harbour rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

PENALTIES

The provisions have prescribed levy of penalties for non-compliance with the statutory requirements, as follows:

4. Notification no. 46/2017 dated 07th June 2017.

Sr. No.	Default	Penalty
1	Under-reporting/Misreporting of income (section 270A) Under-reporting of income due to failure to report international transactions/deemed international transactions or any under-reporting is consequence of any misreporting by any person	50%-200% of amount of tax payable on under-reported income
2	Transfer Pricing Documentation (section 271AA, section 271G) Failure to keep and maintain any such information and document as required by section 92D; Failure to report transaction in Form 3CEB; Maintaining or furnishing incorrect information or document. Failure to furnish documentation required by the tax authorities	2% of the value of each international transaction in respect of every such failure
	Form 3CEB (section 271BA) Failure to furnish the prescribed report of the accountant in Form 3CEB under section 92E	INR 100,000
3	Failure to furnish documentation as required under section 92D(4) to the prescribed authority	INR 500,000

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Flow Chart for Transfer Pricing Regulations

Determine whether associated enterprise ('AE')
Section 92A

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Determine whether International Transaction
Section 92B

↓

In case of International transaction with AE, transfer pricing study is needed

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Study Involves:

- Functional, assets and risk analysis of the international transaction.
- Comparability with uncontrolled transaction
- Selecting & applying Most Appropriate Method (MAM)
- Determination of arm's length price — Section 92C

↓

Factors affecting comparability — Rule 10B(2)

- Specific characteristics of property/services
- Functions performed, risk assumed and assets employed
- Contractual terms of the transactions
- Conditions prevailing in the market (including geographical location, size of the market, etc.)

Factors affecting selection of MAM — Rule 10(C)

- The nature and class of international transaction
- Class of AEs and functions performed, assets employed and risk assumed by them
- Availability, coverage and reliability of data
- The degree of comparability existing between International Transactions and Uncontrolled Transactions
- The extent to which reliable and accurate adjustments can be made
- The nature, extent and reliability of assumptions required to made in application of method

↓

To be supported by documentation & Accountant's Report (Rules 10D & 10E & Sections 92D & 92E)

Alternate Mechanisms

- Advanced Pricing Agreement (Rules 10D to 10T)
- Mutual Agreement Procedure (Double Taxation Avoidance Agreement)
- Safe Harbour (Rules 10TA to 10TF)

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Domestic Transfer Pricing

INTRODUCTION

Finance Act, 2001 introduced detailed provisions relating to Transfer Pricing, requiring all 'international transactions' between 'associated enterprises' to be at arm's length. Hitherto, the provisions of transfer pricing were applicable in relation to an international transaction only. However, after the grand success of International Transfer Pricing Hon'ble Finance Minister has cast his net wider and deeper for the next one by including "Specified Domestic Transactions (SDT)" in the purview of Transfer Pricing (TP).

OBJECTIVE

Section 40A of the Act empowers the AO to disallow unreasonable expenditure incurred between related parties. Further under Chapter VI-A and Section 10AA, the AO is empowered to recompute the income of the undertaking for the purposes of the deduction based on fair market value (FMV). However, no specific method is provided to determine the reasonableness of expenditure or FMV to re-compute the income in such related party transactions.

Thus while dealing with the issue that, whether the assessee company and its service provider are related companies in terms of section 40A(2), Hon'ble Supreme Court in *CIT vs. GlaxoSmithKline Asia (P) Ltd. [(2010) 195 Taxmann 35]* had observed "The larger issue is whether Transfer Pricing Regulations should be limited to cross-border transactions or whether the Transfer Pricing Regulations to be extended to domestic transactions?" The application and extension of the scope of TP regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonable expenditure between related domestic parties. Also it will create a legal obligation on assessees to maintain proper documentation.

Keeping in view the observations of the Apex Court, the Finance Act, 2012 made amendments to Chapter X to extend the applicability of transfer pricing provisions to SDTs with effect from Assessment Year 2013-14.

SCOPE OF APPLICATION OF THE PROVISIONS

Specified Domestic Transaction (SDT) means any of the Specified Domestic Transaction (SDT) means any of the following transaction namely:

(1) any transaction referred to in Section 80A;

(2) any transfer of goods or services referred to in Section 80-IA(8);

(3) any business transacted between the assessee and other person as referred to in Section 80-IA(10);

(4) any transaction, referred to in any other section under Chapter VI-A or Section 10AA, to which Section 80-IA(8) or Section 80-IA(10) are applicable; or

(5) any other transaction as may be prescribed,

and where the aggregate of such transactions exceeds a sum of INR 20 crore (Up to assessment year 2015-16, this threshold limit was INR 5 crore).

The provisions of Domestic Transfer Pricing will apply only when the transaction qualifies as a SDT.

Generally, if a transaction is an international transaction, then the same will not be a SDT.

(1) Any transaction referred to in Section 80A

Section 80A(6) refers to transactions in respect of goods or services. Hence it would not cover a transaction which does not involve goods or services. This clause applies to both income as well as expenditure.

(2) Any transfer of goods or services referred to in Section 80-IA(8)

Section 80-IA covers infrastructure developers, telecommunication service providers, developers of industrial parks and producers or distributors of power. Where any goods or services held for the purpose of eligible business are transferred to any other business carried on by the assessee or vice versa, the consideration has to be determined at ALP.

(3) Any business transacted between the assessee and other person as referred to in Section 80-IA(10)

Due to close connection between the assessee carrying on the eligible business and any other person, if the business is arranged in such a manner that produces more than ordinary profits to the assessee, then the transaction has to be determined having regard to ALP. The term "close connection" has not been defined in the Act. The same has to be understood keeping in mind the relationship between the assessee and any other person may be by having reference to Section 40A(2)(b), related party as per AS 18/Ind AS 24 and so on. Substance over form should be considered.

(4) Any transaction, referred to in any other section under Chapter VI-A or Section 10AA, to which Section 80-IA(8) or Section 80-IA(10) are applicable

The provisions of Section 80-IA(8) or Section 80-IA(10) apply to an undertaking referred in the below-mentioned sections:

Sr. No.	Section	Description
1	10AA	Persons with income from SEZ units
2	80-IAB	Developers of SEZ
3	80-IC/IE	Persons with units in specified states/ north eastern States claiming deduction
4	80-ID	Hotels located in districts with World Heritage sites

COMPUTATION OF ALP

In relation to a SDT, the following shall be computed having regard to the ALP:

- Allowance for an expenditure
- Allowance for interest
- An allocation of any cost or expense
- Any income

However, the above shall not be computed having regard to the ALP if it has the effect of reducing the taxable income or increasing the loss of the assessee.

The arm's length price is to be determined using the most appropriate method out of the specified methods as prescribed, having regard to the nature or class of transaction or functions performed or such other relevant factors as may be prescribed. The six specified methods are as mentioned below:

- Comparable Uncontrolled Price Method ('CUP');
- Resale Price Method ('RPM');
- Cost Plus Method ('CPM');
- Profit Split Method ('PSM'); and
- Transactional Net Margin Method ('TNMM')
- Any other method

With effect from Financial Year 2014-15, the concept of multiple year data has been introduced. Further, the 'range concept' has also been made applicable when: (a) the most appropriate method is either CUP Method, RPM, CPM, or TNMM; and (b) there are at least 6 comparables. Where these conditions are not fulfilled, 'arithmetic mean' shall continue to apply, as before, along with the tolerance range benefit.

ACCOUNTANT'S REPORT

Every person who has entered into specified domestic transaction has to obtain a report i.e., Form 3CEB from an independent practicing Chartered Accountant. This report should be furnished to the Income Tax Department before the due date of filing the return as mentioned under section 139(1) (Presently, 30th November of the relevant assessment year). The Report gives particulars of entities with whom SDT has been entered, SDT, arm's length price and the method used for determining arm's length price.

IMPLICATIONS DUE TO APPLICABILITY OF DOMESTIC TRANSFER PRICING PROVISIONS

- The due date for filing the return of income is extended to 30th November of the relevant assessment year for the assessees who are covered by the provisions of SDT.
- Where the assessee has entered into a SDT the Assessing Officer may refer the computation of ALP to the Transfer Pricing Officer (TPO). In such a case if any reference is made to the TPO then the time limit for completion of assessment is extended to 33 months from the end of the assessment year in which the income was first assessable. The Finance Act, 2017 has made an amendment to reduce this time limit for F.Y. 2017-18 and F.Y. 2018-19 onwards to 30 months and 24 months respectively from the end of the assessment year in which the income was first assessable.
- Increased administrative and compliance burden for the assessee.
- Non-conforming with ALP leads to economic double taxation and also penalty for non-compliance.

OTHER PROVISIONS

All other provisions applicable to international transfer pricing transactions like documentation, reference to Transfer Pricing Officer, penalties, etc. are also applicable to specified domestic transactions.

However, the benefit of entering into Advance Pricing Agreement to determine ALP or the manner in which ALP is to be determined and safe harbour rules are not applicable to SDT. Further, the secondary adjustment provision, which is introduced from Assessment Year 2018-19, is also not application to SDT.

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Cash Credit and unexplained Investments Sections 68 & 69

Section 68 on Cash Credits specifies that any sum found credited in the books of the assessee (any assessee) maintained for any previous year and if the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory, then the sum shall be taxed as the income of the assessee for that particular year.

Following two provisos were inserted by Finance Act, 2012 w.e.f. 1-4-2013:

First Proviso–

- Where the assessee is a company in which public are not substantially interested,
- and the sums so credited are in the nature of share application money, share premium, share capital or any such amount by whatever name called,
- then explanation offered by such company shall be deemed to be not satisfactory, unless
  - (a) any resident person in whose name such credit is recorded in the books of the company offers an explanation about the nature and source of such sum and
  - (b) such explanation as given by any resident person is satisfactory in the opinion of Assessing Officer.

Second Proviso –

- Second proviso states that the first proviso shall not be applicable if the person in whose name credit appears in the books of the company is a venture capital fund or a venture capital company as referred to in section 10(23FB).

Section 69 – Unexplained Investments

Where the assessee makes any investments which are not recorded in the books of account and the assessee offers no explanation about the nature and source of such investment or the explanation offered by the assessee is not satisfactory in the opinion of assessing officer, then the value of investment shall be deemed to be his income and chargeable to tax in that financial year.

Section 115BBE

The income tax payable on income referred to in Section 68 and Section 69, Section 69A, Section 69B, Section 69C or Section 69D should be calculated at the rate of 60% of such income as is reflected in return filed by the assessee or as determined by the Assessing Officer.

While computing income under 'Section 68 to Section 69D', deduction in respect of any expenditure or allowance or set off of any loss will not be allowed if such income is:

a) included by the Assessee himself or

b) determined by Assessing Officer (with retrospective effect from 1-4-2017 as inserted by Finance Act, 2018).

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Taxation of Non-Residents

1. INCOME EXEMPT IN HANDS OF NON-RESIDENTS (SECTION 10)

Section	Particulars	Remarks
10(4)	Interest on bonds or securities as notified by the Government, premium on redemption and Interest income on NRE Account paid or credited	Exempt
10(4C)	Income by way of interest payable in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond referred to in section 194LC(2)(ia), during the period 17-09-2018 to 31-03-2019.	Exempt This provision has been introduced by the Finance (No. 2) Act, 2019 w.e.f. 1-4-2019.
10(4D)	Any income accrued, arisen to, or received by a specified fund i.e. a Sebi registered Category III Alternative Investment Fund located in any International Financial Services Centre [IFSC] as a result of transfer of capital assets referred in section 47(viiab), on a recognised stock exchange in any IFSC, where the consideration for such transaction is paid or payable in convertible foreign exchange, in respect of units held by non-residents.	Exempt This provision has been introduced by the Finance (No. 2) Act, 2019 w.e.f. 1-4-2020.
10(15)(i)	Income by way of interest, premium on redemption or other payment on securities, bonds, annuity certificates, savings certificates, other certificates issued by Government and deposits notified by Government	Exempt
10(15)(iv)(fa)	Interest on FCNR and RFC Deposits paid by a scheduled bank to a NR or NOR	Exempt
10(15)(ix)	Any income by way of interest payable to a non-resident by a unit located in an IFSC in respect of monies borrowed by it on or after 01-09-2019	Exempt This provision has been introduced by the Finance (No. 2) Act, 2019 w.e.f. 1-4-2020.
10(34)	Income by way of dividends from domestic companies	Exempt. However, the Finance Act, 2016 has amended section 10(34) w.e.f. A.Y. 2017-18 to provide that any income by way of dividend in excess of ` 10 lakh shall not be exempt for tax in the case of a Resident Individual/HUF or a Partnership Firm. Recipient of Dividend in such a case is chargeable to tax @ 10% u/s 115BBDA. However, this amendment does not apply to a Non-Resident assessee.
10(35)	Income received in respect of (a) units of Mutual Fund specified u/s 10(23D) or (b) units from Administrator of the specified undertaking; or (c) units from the specified company	Exempt
10(38)	Income by way of Long-term Capital Gains	The exemption u/s 10(38) will not be available in respect of any income arising from the transfer of 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, made on or after the 1-4-2018. A new section 112A has been inserted for rate of tax, determination of aggregate tax and other related matters in respect of the capital gains arising from the transfer of

Section	Particulars	Remarks
		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, made on or after the 1-4-2018.
10(50)	Any income arising from any specified service provided on or after 01-06-16 and chargeable to equalisation levy under Chapter VIII of Finance Act, 2016.	Presently specified services are: Online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement.

2. BUSINESS INCOME OF NON-RESIDENTS (SPECIAL PROVISIONS)

Section	Particulars	Remarks
44B	Profits derived from shipping business	Profits and gains of non-resident from the business of operation of ships shall be computed at the rate of 7.5% of the aggregate of the amount paid or payable on account of carriage of passengers, livestock, mail or goods shipped at any port in India and amount received or deemed to be received in India on account of carriage of passengers, livestock, mail or goods shipped at any port outside India. ***Note***: Amount received on account of Demurrage charges/Handling charges or any other amount of similar nature shall also be included for the purpose of calculating business profits @ 7.5%.
44BB	Income from business of exploration, etc. of mineral oils	In case of NR engaged in the business of providing services and facilities in connection with, or supplying plant and machinery on hire, used or to be used in prospecting for, or extraction or production of, mineral oils, the profits and gains shall be computed @ 10% of amount paid or payable for such purpose. ***Note 1*** : An assessee can claim profits lower than prescribed above, for which he would be required to maintain books of account as required by section 44AA and the accounts shall have to be audited under section 44AB. The AO shall make an assessment u/s 143(3) and determine the tax payable or refundable as the case may be. ***Note 2*** : Provisions of section 44BB shall not apply in a case where the provisions of section 42 or Section 44D or section 44DA or section 115A or section 293A apply.
44BBA	Operation of Aircraft	Income of NR from such business shall be computed at 5% of the amount paid or payable on account of carriage of passenger, livestock, mail, or goods from any place in India and amount received or deemed to be received in India by or on behalf of the assessee on account of such services from any place outside India.
44BBB	Foreign Companies engaged in business of civil construction etc., in certain turnkey power projects.	Income of a foreign company engaged in the business of civil construction or the business of erection of plant and machinery or testing or commissioning thereof in respect of a turnkey power project approved by the Central Government in this behalf, shall be computed @ 10% of the amount paid or payable for such purpose. ***Note***: An assessee can claim profits lower than prescribed above, for which he would be required to maintain books of account as required by section 44AA and the accounts shall have to be audited under section 44AB. The AO shall make an assessment u/s 143(3) and determine the tax payable or refundable as the case may be.
44C	Deduction of head office expenditure	In case of NR, allowance for head office expenses shall be restricted to lower of the amount equal to 5% of adjusted total income or so much of expenditure as is attributable to business or profession in India.

Section	Particulars	Remarks
44DA	Royalty or Fees for technical services received from government or Indian concern by a non-resident (not being a Company) or a foreign company in pursuance of an agreement entered into after 31-3-2003	Where royalty or fees for technical services paid is effectively connected with a permanent establishment in India or a fixed place of profession in India, then it shall be computed under the head "Profit and Gains of Business or Profession" in accordance with provisions of this Act. However, no deduction shall be allowed: i) in respect of expenditure not incurred wholly and exclusively for the business of such PE or fixed place of profession in India, or ii) in respect of any amount paid to head office or its other office except reimbursement of actual expenses. ***Note***: It shall have to keep and maintain books of account as per section 44AA and get his accounts audited by an accountant as per explanation in sub-section (2) of section 288 and furnish the audit report in Form 3CE duly signed & verified by such accountant.
115JB	Minimum Alternative Tax [MAT] applicable in case of Foreign Companies	MAT provisions apply uniformly to all foreign companies except those who are residents of countries with whom India has entered into a Double Tax Avoidance Agreement (DTAA) and who do not have any permanent establishment in India or those who are residents of countries with whom India does not have a DTAA and the assessee is not required to seek registration under any law for the time being in force relating to such companies. Explanation 4A is inserted by the Finance Act, 2018 with retrospective effect from 1-4-2001 clarify that the MAT provisions will not apply to foreign companies opting for presumptive scheme of taxation under sections 44B, 44BB, 44BBA or 44BBB, where the total income of the non-resident comprises solely of income from business referred to in any of these sections is the only income of the foreign company and it has been taxed at the specified tax rates.

3. SPECIAL RATES OF TAX FOR NON-RESIDENTS

Sections 112, 112A, 115A to 115AD and 115BBA covers the tax rates for capital gains/investment income/royalty & fees for technical services and income of non-resident sportsmen income of different non-resident entities.

Section	Particulars of Income	Tax rates/TDS
112(1)(c)(iii)	Tax on long-term capital gains arising from transfer of unlisted securities or shares of a company not being a company in which the public are substantially interested without giving effect to the first and second proviso to section 48.	10%
112A	A new section 112A has been inserted for rate of tax, determination of aggregate tax and other related matters in respect of the capital gains arising 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, made on or after the 1-4-2018, subject to fulfillment of certain conditions mentioned therein. The tax payable shall be the amount of income-tax calculated on such long term capital gains exceeding Rs. 1 lakh @ 10%. The method of computation of cost of acquisition of such equity shares and units referred in section 112A and meaning of fair market value is inserted in section 55(2)(ac). The newly inserted 3rd proviso to section 48 provides that the long term capital gains shall be computed without giving effect to the first proviso (asset acquired in foreign currency) and second proviso (indexation benefit) of section 48.	10%
115A(1)(a)	(i) Income by way of Dividend (other than S.115–O)	20%
	(ii) Interest received from Government or any Indian concern for money borrowed in foreign currency [other than Interest on infrastructure debt fund notified u/s 10(47) and Interest of the nature and extent referred to in sec 194LC]	20%
	(iii) Income on units of Mutual Fund specified u/s 10(23D) or of UTI, purchased in foreign currency	20%

Section	Particulars of Income	Tax rates/TDS
115A(1)(a)	(iia) Interest from infrastructure debt fund notified u/s 10(47)	5%
	(iiaa) Interest of the nature and extent referred to in Section 194LC	5%
	(iiab) Interest of the nature and extent referred to in Section 194LD	5%
	(iiac) Distributed Income being Interest of the nature and extent referred to in Section 194LBA(2)	5%
115A(1)(b)	Income by way of Royalty or Fees for Technical Services received **[other than income specified u/s 44DA(1)]** received by a non-resident (not being a company) or a foreign company from Government or Indian Concern under agreement entered after 31st May, 1976 and where it is entered into with Indian Concern, it is approved by Government or it relates to matter included in Industrial policy. • for Royalty/Fees for Technical Services payment under agreement entered on or after 31st March, 1976.	10%
115AB	Income from units of Mutual Funds specified u/s 10(23D)/UTI purchased in foreign exchange by Overseas Financial Organisations registered with SEBI or Long-term Capital Gains arising on sale/repurchase of such units	10%
115AC	(1) Interest on notified bonds of Indian Companies or bonds of public sector companies, purchased in foreign currency	10%
	(2) Dividend on Global Depository Receipts (GDR) **(other than S. 115–O)**	10%
	(3) Long-term Capital Gains on transfer of such bonds or GDR	10%
	Notes: 1) Where the gross total income of the non-resident consists only of income by way of interest or dividend referred to in sec 115AC(1)(a) & (b), then no deduction shall be allowed to the Non-resident assessee under sections 28 to 44C or clause (i) or clause (iii) of Section 57 or under Chapter VI-A. 2) Nothing contained in the First and Second Provisos to Section 48 shall apply for computation of such Long-term Capital Gains u/s 115AC(1)(c). 3) The non-resident assessee is not obliged to furnish a Return of Income u/s 139(1) if his total income during the previous year consisted only of income referred to in section 115AC(1)(a) & (b) i.e. interest and dividend and appropriate TDS has been deducted from such Interest and dividend Income.	
115AD	Income of Foreign Institutional Investors (FIIs)/Foreign Portfolio Investors (FPIs)	
	(1) Income (other than dividend u/s 115-O) in respect of securities (other than units referred u/s 115AB)	20%
	(2) Short-term Capital Gains on transfer of Securities	30%/15%*
	(3) Long-term Capital Gains on transfer of Securities	10%**
	(*) Where securities transaction tax (STT) has been paid, tax would be charged at 15% (**) In case of income arising from the transfer of a long-term capital asset referred to in section 112A, income-tax @10% shall be calculated on such income exceeding ₹ 1 lakh. In case where the gross total income consists of only income referred under sections 115A(1), 115AB(1)(b), 115AC(1)(a) & (b), 115AD(1)(a), no deduction shall be allowed under Chapter VIA or under sections 28 to 44C and 57 in computing the taxable income. Further, no return is required to be furnished u/s 139(1) where the total income of the assessee includes only the income covered u/s 115A(1)(a) or 115AC(1)(a) & (b) and the TDS under provision of Chapter XVII B has been deducted therefrom.	
115BBA	a) Income of a Sportsman (including an Athlete) who is not a Citizen of India and who is a Non-resident, received or receivable from i) Participation in India in any game (other than income taxable u/s 115 BB) or ii) Advertisement or iii) Contribution of Articles relating to any game or sport in India in newspapers, magazines or journals in India.	20%
	b) Income of a non-resident Sports Association or Institution (including guarantee amounts) from or in relation to any game (other than a game taxable u/s 115BB) or sport played in India	20%

Section	Particulars of Income	Tax rates/TDS
	c) Income of an Entertainer who is not a citizen of India and who is a Non-resident, from his performance in India (only w.e.f. A.Y. 2013-14)	20%
	Notes: 1) No deduction in respect of any expenditure or allowance shall be allowed under any provision of the Act in computing the income taxable u/s 115BBA. 2) The Non-resident assessee is not obliged to furnish a Return of Income u/s 139(1) if he has no other income and appropriate TDS has been deducted from such Income taxable u/s 115BBA.	

4. SPECIAL PROVISION FOR NRI — CHAPTER XIIA (SECTIONS 115C TO 115-I)

Chapter XII-A covers the taxability of any income earned by a Non-resident Indian (NRI) from a foreign exchange asset. However, a NRI may elect not to be governed by the provision of this Chapter and to be assessed under the normal provisions of the Act by giving a declaration to that effect along with his return of income. Accordingly, the chapter shall not apply to him for the said assessment year (Section 115-I).

1. Definitions (Section 115C)

NRI — An individual being a citizen of India or a PIO, who is not a 'resident'.

PIO — A person is deemed to be a Person of Indian Origin if he or either of his parents or any of the grandparents was born in undivided India.

Investment income — Income earned from 'foreign exchange asset' other than dividend referred to in section 115-O.

Foreign Exchange Asset — "Specified asset' acquired by NRI out of convertible foreign exchange.

Specified asset means any of the following assets, namely:

(i) Shares in an Indian company (whether a public or private company);

(ii) Debentures issued by an Indian company, which is not a private company;

(iii) Deposits with an Indian company, which is not a private company;

(iv) Any security of the Central Government (NSC VI/VIII issue);

(v) Any other assets as may be specified by the Central Government (no asset notified till date).

2. The taxability of investment income is as follows (Sections 115D and 115E)

(a) Any income from investment or income from long-term capital gains from assets other than specified assets — 20%

(b) Income by way of long-term capital gains i.e. relating to capital asset being a foreign exchange asset — 10%

(c) No deduction permissible under Chapter VIA

(d) No deduction for any expenditure in computing investment income

(e) No indexation benefit

It is not necessary for a Non-resident Indian to furnish a Return of Income (Section 115G) where the total income includes only the above two types of income whereon tax has been duly deducted. However where a NRI has other income i.e., income other than income from a foreign exchange asset, he is required to furnish his Return of Income and it shall be assessed under the normal provision of the Act.

3. Exemption from Long-term Capital Gains Tax u/s 115F

Capital gains arising on transfer of foreign exchange asset shall be exempt in case the

- net consideration is reinvested
- within a period of six months
- in any other specified asset (as mentioned above) or in specified saving certificates

However, where the new asset is transferred or converted to money within a period of three years from the date of its acquisition, the capital gains claimed exempt u/s 115F shall be taxable under the head "Capital Gains" along with the Gains arising on transfer of the new asset purchased.

4. Applicability of Chapter XIIA after becoming resident — (Section 115H)

NRI can continue to be assessed under Chapter XIIA in respect of income from specified assets. He may furnish a declaration along with his return of income filed u/s 139 to the Assessing Officer that the provision of this Chapter may continue to apply to him with respect to the said investment income. Accordingly, he shall be assessed under the said provision for specified income till the conversion of such asset into money or other asset.

5. SPECIAL PROVISION FOR CALCULATION OF CAPITAL GAINS OF SHARES & DEBENTURES

Proviso 1 to Section 48 explains the method of calculation of capital gains on transfer of shares/debentures of Indian company (private or public) in case of non-residents. The same shall be computed by conversion of sales consideration, cost of acquisition and transfer expenses into the same foreign currency which was utilised for purchase of such shares/ debentures. The capital gains so arrived are reconverted into Indian rupees as per the rates specified below:

Particulars	Exchange rate to be applied
Sales consideration	Average exchange rate on date of transfer
Cost of acquisition	Average exchange rate on date of purchase
Expenditure on sale	Average exchange rate on date of transfer
Capital Gains	Buying rate on date of transfer

The exchange rates to be considered above shall be the telegraphic transfer buying/selling rates as adopted by State Bank of India for purchasing or selling such currency.

Since the non-residents can avail of the benefit of exchange rate fluctuation, no indexation benefit is available in this case.

6. TAXABILITY OF VARIOUS INVESTMENT OPTIONS IN INDIA

Investment Scheme	*Taxability of Income*	*Principal/Redemption proceeds*
Public Provident Fund	Tax Free	Tax free
Mutual Funds	Dividend from equity oriented MF is tax free	Maturity/redemption proceed minus cost of investment is taxed as short-term capital gain where units of an equity oriented fund is held for less than 12 months.
	Dividend income from Debt Oriented Mutual Fund is also tax free	Long-term Capital Gains in case of units of equity oriented mutual funds: The tax payable shall be the amount of income-tax calculated on such long term capital gains exceeding ₹ 1 lakh @ 10%.**
Equity shares	Dividend Income is tax free	Sales consideration minus cost of Investment is taxed as Short-term Capital Gains where held for less than 12 months. Long-term Gains Exempt [subject to provisions of sections 10(36), and 10(38)].
Bank Deposits	Interest on deposit is taxable*	Principal amount is not taxable.
Immovable property	Rent Income taxable subject to section 24	Sales consideration less cost of acquisition taxable @ 30% as short-term capital gains where the property is held for not more than 24 months. Sales consideration less indexed cost of acquisition taxable @ 20% as long-term capital gain (subject to Sections 54-54F) where the property is held for more than 24 months.

* Interest received by an Individual on his Non-resident (External) Bank Account is exempt from tax u/s 10(4)(ii).

** The Finance (No. 2) Act, 2014 has increased the holding period of Debt Oriented Mutual Funds (i.e. units other than units of equity oriented mutual funds) to 36 months instead of previous holding period of 12 months.

7. APPLICABILITY OF DTAA

Where the non-resident is covered under any DTAA, the rates of tax applicable for specified income shall be lower of the rates prescribed under the Act or the DTAA provided that the Non-Resident furnishes PAN Number (refer Section 206AA), the Tax Residency Certificate u/s 90(4) and Form 10F u/s 90(5), provisions of DTAA with the country where such non-resident is a tax resident, will be applicable.

8. PLACE OF EFFECTIVE MANAGEMENT

Section 6 has been amended to provide that a company is said to be a resident in India in any previous year, if it is an Indian company, or its place of effective management, in that year, is in India.

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

Based on such amended definitions, it is possible even for foreign companies to become residents in India.

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TDS Chart for A.Y. 2020-21

A. No Tax is to be deducted from any sums payable to:—

1] The Government

2] Reserve Bank of India

3] The Corporation established by or under a Central Act which is exempt from Income-tax by virtue of any law

4] A mutual fund specified under section 10(23D)

B. Tax is to be deducted in the following cases at the time of payment:—

Section	*Relevant Rules*	*Nature of Payment*	*Payer*	*Payee*	*Rates of Deduction*	*Time Limit for Depositing Tax (Rule 30)*	*TDS Certificate Form No./Due Date (Rule 31)*	*Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1*	*Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)*
192	21A, 21AA, 26A, 26B	Salary Tax is payable on Salary income after deducting a) Specified exemption u/s.10 b) Loss under "Income from house property" c) Deduction u/ss. 80C, 80CCD, 80CCC, 80D, 80DD, 80DDB, 80E, 80G (specified), 80GG, 80U and 80TTA [[As per section 192(1A), the employer has an option not to deduct tax at source on non-monetary perquisites provided to employees and pay the said tax himself) [Salary includes advance of salary, arrears of salary, pension, gratuity fees, commission, perquisites, profits in lieu or in addition of salary] (Tax deduction from contribution paid by trustees of an approved superannuation fund)	Any Person	Any Person	1/12th of tax payable calculated in the manner specified in column 3 and at following rates given below: **Where the total income for an Individual** — **Rate** < ₹ 2,50,000 — NIL > ₹ 2,50,000 < ₹ 5,00,000 — 5% of the amount > ₹ 2,50,000 > ₹ 5,00,000 < ₹ 10,00,000 — ₹ 12,500 + 20% of the amount > ₹ 5,00,000 > ₹ 10,00,000 — ₹ 1,12,500+ 30% of the amount > ₹ 10,00,000. **Where the total income in case of senior citizen (> 60 years & < 80 years)** — **Rate** < ₹ 3,00,000 — Nil > ₹ 3,00,000 < ₹ 5,00,000 — 5% of the amount > ₹ 3,00,000. > ₹ 5,00,000 < ₹ 10,00,000 — ₹ 20,000 + 20% of the amount > ₹ 5,00,000 > ₹ 10,00,000 — ₹ 1,20,000 + 30% of the amount > ₹ 10,00,000	Within 7 days from last day of month in which deduction is made	Form No. 16/ 15th June of next financial year	Form Nos. 24Q/ 27A (returns in electronic media)	Application Form 13

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
		[Taxable Salary from previous employer to be aggregated by the next employer for calculating tax to be deducted for balance months of that previous year]			**Where the total income in case of super senior citizen (> 80 years)** — **Rate** < ₹ 5,00,000 — Nil > ₹ 5,00,000 < ₹ 10,00,000 — 20% of the amount > ₹ 5,00,000 > ₹ 10,00,000 — ₹ 1,00,000 + 30% of the amount > ₹ 10,00,000 **Individual having Gross Total Income up to ₹ 5,00,000/- is entitled for rebate u/s. 87A ₹ 12,500/- or tax amount whichever is less.** **Surcharge @ 10% leviable if total Income is more than ₹ 50,00,000/- to ₹ 1,00,00,000,** **Surcharge @ 15% is leviable if total income is more than ₹ 1,00,00,000/- but less than ₹ 2,00,00,000/-,** **Surcharge @ 25% is leviable if total income is more than ₹ 2,00,00,000/- but less than ₹ 5,00,00,000** **Surcharge @ 37% leviable if total income is more than ₹ 5,00,00,000/-** **4% Heath and Education Cess is leviable on tax and surcharge**				
192A		Payment of accumulated balance due of Employees' Provident Fund Scheme, 1952, to Employees No Tax is to be deducted if amount of withdrawals is less than ` 50,000/-. If the employee fails to furnish his PAN to the Trustees of the Employee Provident Fund Scheme (EPFS), tax shall be deducted at the maximum marginal rate	Trustees of Recognised Provident Fund	Employee	For Resident — 10% If recipient is Non-Resident & payment is less than ₹ 50 lakhs — 10.40% If recipient is Non-Resident & payment is > 50 lakhs but < 1 crore — 11.44% If recipient is Non-Resident & payment is > ₹ 1 crore But < 2 crore — 11.96% If recipient is Non-Resident & payment is > 2 crore But < 5 crore — 13% If recipient is Non-Resident & payment is > ₹ 5 crore — 14.248% If PAN of recipient is not available — 42.744% At the time of payment of the accumulated balance due to employee	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/ 27A (returns in electronic media)	Declaration Form 15G, Form 15H

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
193		Interest on Securities To deduct in cases other than where amount of interest is payable a) by widely held company on debentures to individual does not exceed ₹ 5,000/- b) to LIC/GIC and other insurance companies c) Interest on Central/State Government Security does not exceed ₹ 10,000/- on 8% saving bonds, 2003 d) on specified securities and some specified bonds e) on listed security in dematerialised form f) Interest on new 7.75% Government of India (Taxable) Bonds, 2018 does not exceed ₹ 10,000/-	Any Person	Any Resident person	For All Domestic Company and Firm 10% For Individuals/HUF/BOI Soc./Local authority 10% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 26Q/ 27A (returns in electronic media)	Application Form 13 Declaration Form 15G/ Form 15H
194		Dividend (other than u/s.115-O) to a resident other than the dividend payable to following: a) if dividend is paid by account payee cheques & if dividend is less than ₹ 2,500/- to an Individual shareholder b) if dividend paid to LIC/GIC and other insurer	Any Indian Company	Any Resident	For All Company and Firm 10% For Individuals/ HUF/BOI Soc./Local authority 10% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 26Q/ 27A (returns in electronic media	Application Form 13 Declaration Form 15G/ Form 15H

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194A		Interest (other than interest on Securities). To deduct in cases other than where i) if interest does not exceed (a) ₹ 40,000/- where the payer is a banking company to which the Banking Regulation Act, 1949 applies. (b) ₹ 40,000/- where the payer is a co-operative society engaged in carrying on the business of banking. (c) ₹ 40,000/- where on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and (d) ₹ 5,000/- in any other cases [i[limit of ₹ 40,000/- in above cases is increased to ₹ 50,000 if the recipient of interest is a senior citizen (i.e an Indian citizen who is of age of 60 years or more at any time during the previous year)] ii) paid to banking co./financial corp./LIC/Central Government iii) by firm to a partners iv) by co-operative society to its member and any other co-operative society v) paid in respect of deposit (by non-members) with A primary agricultural credit society or co-operative land mortgage bank or co-operative land vi) paid by Central Government under different provision of the direct taxes vii) income is payable in relation to zero coupon bonds	Any person other than individuals and HUF who are not subject to tax audit in the preceding financial year	Any Resident	For All Company and Firm 10% For Individuals/HUF/BOI Soc./Local authority 10% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/ 27A (returns in electronic media)	Application Form 13 Declaration Form 15G/ Form 15H

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
		viii) interest in relation to zero coupon bonds ix) in section 10(23FC) x) by an Offshore Banking Unit on deposits or borrowing made after March 31, 2005 to a resident but not ordinarily resident xi) Interest paid after 31-5-2015 on compensation awarded by the Motor Accident Claims Tribunal if the amount of payment or the aggregate amount of such payment does not exceed ₹ 50,000/-							
194B		Winnings from lottery and crossword puzzles including card game or other games Deduct if amount paid exceeds ₹ 10,000/- whether paid in cash or kind	Any Person	Any Person	For all Resident Person, Individual/HUF/ BOI, Company and Firms 30.00% If recipient is Non-Resident% Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 31.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 34.32% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 35.88% But < 2 crore If recipient is Non-Resident & payment is > 2 crore 39% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 42.744% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 31.2% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 34.944%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A for Resident Payments Form Nos. 27Q/27A for Non Resident Payments. (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					If recipient is Non-Domestic company & Payment is < ₹ 1 crore 31.2% If payment is > ₹ 1 crore but less than ₹ 10 crore 31.824% Payment is more than ₹ 10 crore 32.76%				
194BB		Winnings from horse races. Deduct if amount paid exceeds > 10,000/- .	Any Person	Any Person	For all resident Individual/ Person/HUF/BOI Company and Firms Local Authority/BOI. 30.00% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 31.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is > ₹ 50 lakhs < ₹ 1 crore 34.32% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 35.88% But < 2 Crore If recipient is Non-Resident & payment is > 2 crore 39% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 42.744% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 31.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 34.944% If recipient is Non-Domestic company & payment is < ₹ 1 crore 31.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 31.824% Payment is more than ₹ 10 crore 32.76%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194C		Payment to Resident Contractors/ Sub-Contractor or Advertisement Contractor exceeds ₹ 30,000/- per contract or aggregate amount for the financial year exceeds ₹ 1,00,000/- Recipient is Transport Operator and owns 10 or more goods carriage at any time during the previous year	1) Central or State Govt. or Local Authority or Corporation or Company or Co-op. Society. Any Authority for housing accommodation, etc. Any Society or Trust or University firm, and 2) HUF and Individual subject to tax audit	Any Resident	If recipient is Individual/HUF 1% If recipient is Company/Firms 2% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	Application Form 13
194D		Insurance Commission to Resident if amount paid exceeds ₹ 15,000/- No tax is to be deducted if amount payable does not exceeds maximum amount not chargeable to tax.	Any Person	Any Resident Person	If recipient is other than Company 5% If recipient is Domestic Company 10% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/ 27A (returns in electronic media)	Application Form 13 Declaration Form 15G/ Form 15H

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194DA		Payment of Life Insurance policy Sum payable by way of redemption of a life insurance policy, including the sum allocated by way of bonus on such life insurance which carries Income component [excluding sum not chargeable U/s 10 (10D)] if amount exceeds ₹ 1,00,000/-. This amendment shall be effective from 1st September, 2019.	Any Person	Any Resident Person	Individual 5% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/ 27A (returns in electronic media)	N.A. Declaration Form 15G/ Form 15H
194E		Payments to Non-resident sportsmen/sports association	Any Person	Non-Resident	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 20.80% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is > ₹ 50 lakhs but < ₹ 1 crore 22.88% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 23.92% But < 2 crore If recipient is Non-Resident & payment is > ₹ 2 crore 26% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 28.496% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 20.80% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 23.296% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 20.80% If payment is > ₹ 1 crore but less than ₹ 10 crore 21.216% Payment is more than ₹ 10 crore 21.84%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form 27Q (Statement in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194EE		Payments of deposits under NSS covered u/s. 80CCA(2)(a) Deduct if amount paid exceeds ₹ 2,500/-. Not to deduct tax if payment made to heirs of deceased	Any Person	Any Person	For all resident Individual/ Person/HUF/BOI Company and Firms Local Authority/BOI 10.00% If PAN of recipient is not available 20% If recipient is Non-corporate Non-Resident & payment is less than ₹ 50 lakhs 10.40% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs But < ₹ 1 crore 11.44% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 11.96% But < 2 crore If recipient is Non-Resident & payment is > ₹ 2 crore 13% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 14.248% If PAN of recipient is not available 28.496%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Forms 26Q/27A (returns in electronic media)	N.A. Form 15G/ Form 15H
194F		Payments on account of repurchase of unit by mutual fund or Unit Trust of India of amount referred in Section 80CCB.	Any Person	Any Person	For all resident Individual/ Person/HUF/BOI Company and Firms Local Authority/BOI 20.00% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 20.80% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 22.88% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 23.92% But < 2 crore If recipient is Non-Resident & payment is > ₹ 2 crore 26%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 26Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 28.496% If PAN of recipient is not available 28.496%				
194G		Commission/Remuneration on sale of lottery tickets to any person Deduct if amount paid exceeds ₹ 15,000/- (one time payment)	Any Person	Any Person	For all Individuals/ HUF/BOI Co-op. Soc. Resident Co./Firm HUF/BOI 5% If PAN of recipient is not available 20% If recipient is Non-corporate Non-Resident & payment is less than ₹ 50 lakhs 5.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 5.72% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 5.98% But < 2 Crore If recipient is Non-Resident & payment is > 2 crore 6.5% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 7.124% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 5.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 5.824% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 5.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 5.304% Payment is more than ₹ 10 crore 5.46% If PAN of recipient is not available 28.496%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	Application Form 13

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194H		Commission or Brokerage. Deduct if amount paid exceeds ₹ 15,000/-	Same as in Section 194A above	Any Resident Person	Individual/HUF/BOI Company/Firms, etc. 5% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	Application Form 13
194-I		Rent paid to any person resident for land, building or building along with furniture and fittings. Deduct if amount paid exceeds ₹ 2,40,000/- p.a. for use of any machinery or plant or equipment; (Service Tax shall be excluded while deducting tax) No TDS to be made if Rent is paid or credited to a Business trust referred to Section 10(23FCA)	Same as in Section 194A above	Any Resident Person	**Rent for plant, machinery** Payment to Individual HUF/BOI Company/Firm 2% **Rent for land, Building and Furniture** For Individual /HUF 10% For Company/Firm 10% If PAN of recipient is not available 20%	Within 7 days from end of the month in which income paid or credited, whichever is earlier. If payee's account is credited in last month of accounting year i.e. March, then on or before 30th April	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	Application Form 13 Declaration Form 15G/ Form 15H
194-IA		Transfer of immovable Property other than Agricultural Land consideration of which is in excess of ₹ 50,00,000/- (Consideration for immovable property shall include all charges of the nature of club membership 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) This amendment shall be effective from 01.09.2019	Any person	Any Resident Person	Individuals/ HUF/BOI Co./Firms 1% If PAN of recipient is not available 20%	Within 30 days from the last day of month in which tax is deducted.	Form No.16B Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q (return-cum-challan electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194-IB		Rent paid to any person resident for land, building, or building alone with furniture and fittings. Deduct if amount exceeds ₹ 50,000/- for a month or part of month.	Any person individuals and HUF who are not subject to tax audit in the preceding financial year	Any Resident Person	For Individual /HUF 5% For Company/Firm 5% If PAN of recipient is not available 20%	Within 30 days from the last day of month in which tax is deducted.	Form No.16B Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26QC (return-cum-challan electronic media)	Application Form 13
194-IC		Any monetary consideration (consideration in kind to be ignored) paid to any resident under the joint development agreement.	Any person	Any Resident Person	Individual /HUF/BOI Company/Firm 10% If PAN of recipient is not available 20%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media	Application Form 13
194J		Fees for professional services or technical services/royalty. Deduct if amount paid > ₹ 30,000/- p.a. It is applicable also for services mentioned in Section 28(va)	Same as in 194A	Any Resident Person	For Individuals/ HUF/BOI Co./Firms 10% If Payee is engaged in the business of operation of call centre then 2% If PAN of recipient is not available 20%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27A (returns in electronic media)	Application Form 13
194LA		Payments of Compensation or enhanced compensation on acquisition of certain immovable property (other than agricultural land). Deduct if amount exceeds ₹ 2,50,000/- p.a. Payment made under the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFTLARRA) to be ignored.	Any Person	Any Resident Person	For Individuals/ HUF/BOI Co./Firms 10% If PAN of recipient is not available 20%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/ 27A (returns in electronic media)	Application Form 13
194LB		Payments of Interest to Non-Resident by infrastructure debt fund	Any Person	Any Non-Resident Person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 5.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs But < ₹ 1 crore 5.72% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 5.98%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 27Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 6.5% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 7.124% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 5.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 5.824% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 5.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 5.304% Payment is more than ₹ 10 crore 5.46% If PAN of recipient is not available 28.496%				
194LBA		Income from Units of Business trust TDS Applicable if a business trust distributes any income referred to in section 115UA or to its unit holder.	Business Trust	Any Resident/ Non-Resident Person	For all Individuals/ HUF/BOI Co-op. Sty. Resident Co./Firm HUF/BOI 10%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27Q/27A (returns in electronic media	N.A.
		Payment referred u/s. 10(23FC)(a)			If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 5.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 5.72% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 5.98% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 6.5%				

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 7.124% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 5.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 5.824% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 5.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 5.304% Payment is more than ₹ 10 crore 5.46% If PAN of recipient is not available 28.496%				
		Payment referred u/s. 10(23FCA)			If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 31.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 34.32% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 35.88% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 39% But < 5 crore If recipient is Non-Resident & payment is > 5 crore 42.744% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 31.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 34.944%				

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					If recipient is Non-Domestic company & Payment is < ₹ 1 crore 41.60% If payment is > ₹ 1 crore but less than ₹ 10 crore 42.432% Payment is more than ₹ 10 crore 43.68%				
194LBB		Payment in respect of units of investment fund specified in section 115UB	Business Trust	Any Resident/ Non-Resident Person	For all Individuals/ HUF/BOI Co-op. Sty. Resident Co./Firm HUF/BOI 10% If PAN of recipient is not available 20% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 31.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs But < ₹ 1 crore 34.32% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 35.88% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 39% But < 5 crore If recipient is Non-Resident & payment is > 5 crore 42.744 If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 31.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 34.944% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 41.60%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27Q/27A (returns in electronic media)	Application Form 13

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					If payment is > ₹ 1 crore but less than ₹ 10 crore 42.432% Payment is more than ₹ 10 crore 43.68%				
194LBC		Payment in respect of Securitisation Trust specified in Section 115TCA	Business Trust	Any Resident/ Non-Resident Person	If recipient is Individual / HUF 25% If recipient any other Resident person 30% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 31.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > `₹ 50 lakhs But < ₹ 1 crore 34.32% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 35.88% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 39% But < 5 crore If recipient is Non-Resident & payment is > 5 crore 42.744% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 31.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 34.944% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 41.60% If payment is > ₹ 1 crore but less than ₹ 10 crore 42.432% Payment is more than ₹ 10 crore 43.68%	Within 30 days from the last day of month in which tax is deducted.	Form No.16B Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27Q/27A (returns in electronic media)	Application Form 13

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
194LC		Payments of Interest on (approved by Central Govt.) Amount borrowed in foreign currency during paid during 1-7-2012 to 1-7-2020	Specified Company or Business trust	Any Non-Resident Person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 5.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs But < ₹ 1 crore 5.72% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 5.98% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 6.5% But < 5 crore If recipient is Non-Resident & payment is > 5 crore 7.124% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 5.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 5.824% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 5.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 5.304% Payment is more than ₹ 10 crore 5.46% If PAN of recipient is not available 28.496%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 26Q/27Q/27A (returns in electronic media	Application Form 13
194LD		Payments of Interest to FIIs, Qualified Foreign Investor paid during 1-6-2013 – 1-7-2020	Specified Payees on Interest	Any Non-Resident Person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 5.20% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs But < ₹ 1 crore 5.72% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 5.98%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 27Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 6.5% But < 5 crore If recipient is Non-Resident & payment is > 5 crore 7.124% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 5.20% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹` 1 crore 5.824% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 5.20% If payment is > ₹ 1 crore but less than ₹ 10 crore 5.304% Payment is more than ₹ 10 crore 5.46% If PAN of recipient is not available 28.496%				
194M		Payment to Contractors or Professionals by Individual and Hindu undivided Family (HUF) (other than those liable for tax audit) in excess of ₹ 50,00,000/- in a year This provision shall be applicable from 1st September, 2019	Individual and Hindu undivided Family (HUF) (Other than those liable for tax audit)	Any resident person	For all Individuals/ HUF/BOI Co-op. Sty. Resident Co./Firm HUF/BOI 5% If PAN of Recipient Not available 20%	Yet to be notified	Yet to be notified	Yet to be notified	N.A.
194N		Payment of any sum or as the case may be, aggregate of any sums, in cash, from an account maintained by recipient in excess of ₹ 1,00,00,000/- This provision shall be applicable from 1st September, 2019	Every person, being – 1. A banking company to which the Banking Regulation Act, 1949 applies. 2. A co-operative society engaged in carrying on the business of banking	Any resident person	For all Individuals/ HUF/BOI Co-op. Sty. Resident Co./Firm HUF/BO 2% If PAN of Recipient not Available 20% If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 2.08% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 2.288%	Yet to be notified	Yet to be notified	Yet to be notified	Application in Form 13

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
			3. A post office		If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 2.392% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 2.6% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 2.85% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 2.08% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 2.33% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 2.08% If payment is > ₹ 1 crore but less than ₹ 10 crore 2.12% Payment is more than ₹ 10 crore 2.184% If PAN of recipient is not available 28.496%				
195	Rule 29B	Interest or other sums not being income chargeable under the head "Salaries". Deduct in cases other than Dividend u/s.115-O	Any Person	Non-Resident not being a Company or to a Foreign Company	As per applicable – DTAA or as per Part-II of Schedule I of the Finance Act, whichever is beneficial to the assessee	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns.	Form Nos. 27Q/27A (returns in electronic media)	Application Form 13, Form 15C, Form 15D
196B		Income from units (including long-term capital gain on transfer of such units) to an offshore fund Non-Resident	Any Person	Non – Resident person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 10.40% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 11.44% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 11.96%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 27Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 13% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 14.248% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 10.04% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 11.648% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 10.04% If payment is > ₹ 1 crore but less than ₹ 10 crore 10.608% Payment is more than ₹ 10 crore 10.92% If PAN of recipient is not available 28.496%				
196C		Income from foreign currency bonds or GDR of Indian company	Any person	Non – Resident person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 10.40% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 11.44% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 11.96% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 13% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 14.248% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 10.04%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 27Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 11.648% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 10.04% If payment is > ₹ 1 crore but less than ₹ 10 crore 10.608% Payment is more than ₹ 10 crore 10.92% If PAN of recipient is not available 28.496%				
196D		Income of FII from Securities not being dividend, long-term and short-term capital gain	Any person	Non – Resident person	If recipient is Non-Resident Individual/HUF/AOP/BOI & payment is less than ₹ 50 lakhs 20.80% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 50 lakhs but < ₹ 1 crore 22.88% If recipient is Non-Resident Individual/HUF/AOP/BOI & If payment is > ₹ 1 crore 23.92% But < ₹ 2 crore If recipient is Non-Resident & payment is > 2 crore 26% But < 5 crore If recipient is Non-Resident & payment is > ₹ 5 crore 28.946% If recipient is Non-Resident Co-op. Sty / Firm If payment < ₹ 1 crore 20.80% If recipient is Non-Resident Co-op. Sty / Firm If payment > ₹ 1 crore 23.296% If recipient is Non-Domestic company & Payment is < ₹ 1 crore 20.80% If payment is > ₹ 1 crore but less than ₹ 10 crore 21.012%	Within 30 days from the last day of month in which tax is deducted.	Form No.16A Within 15 days from the due date of furnishing Quarterly TDS Returns	Form Nos. 27Q/27A (returns in electronic media)	N.A.

Section	Relevant Rules	Nature of Payment	Payer	Payee	Rates of Deduction	Time Limit for Depositing Tax (Rule 30)	TDS Certificate Form No./Due Date (Rule 31)	Quarterly Return/ Statement Form No. (Rules 37, 37A, 37B) Please see Note 1	Declaration for NIL deduction/Application for NIL/deduction/ Lower deduction (Rules 28, 28AA)
					Payment is more than ₹ 10 crore 21.63% If PAN of recipient is not available 28.496%				

NOTES

1. Presently person responsible for paying salary has to depend upon evidence/particulars furnished by the employees in respect of deductions, exemption and set-off of loss claimed. Employees are now required to submit evidences/particulars of tax savings to employer in Form No. 12BB. w.e.f. 1-6-2016 evidences pertaining to following claims will have to be submitted by the employee in Form No. 12BB

   House Rent Allowances – i) Name & Address of Landlord
   ii) Amount of Rent paid
   iii) PAN of Landlord (Where Rent paid during Financial Year is more than ₹ 1 lakh)

   Leave Travel Concession – Expenditure & Evidence pertaining to Expenditure

   Deduction of Interest on Housing Loan – Name, Address & PAN of the lender and interest paid

   Other Deductions – Evidences of Amount of Investment / Expenditure.

   The above details shall be submitted by deductor every year in TDS statements pertaining to 4th Quarter.
2. Any person deducting any sum shall furnish quarterly statements in Form No. 24Q and Form No. 26Q for the period ending on June 30, September 30, December 31 and March 31 in each financial year and file electronically by July 31, October 31, January 31 and May 31 respectively. (w.e.f. 1-6--2016 — Notification No. 30/2016 dated 29-4-2016)
3. Person failing to deduct or after deducting failing to deposit is liable to pay simple interest @ 1.5% for every month or part thereof from the date of failing to deduct till the date of deducting till date of depositing the same with the Government.
4. TDS is required to be deducted even if payment is made in kind.
5. An application u/s. 197 can be made by the payee to the A.O. for no deduction of tax or at a lower rate of tax than rate prescribed to be deducted. (Form 13).
6. As per section 206AA persons making the payments which attract the provisions of CHAPTER XVIIB must obtain the PAN from the payee, otherwise:
   - Tax is required to be deducted by the payer at the higher of following rates:
     — at the rate specified in the relevant provision of this Act
     — at the rate(s) in force
     — at the rate of 20%
   - Even persons furnishing Form 15H or 15G for non-deduction of tax at source MUST provide their PAN in such declaration, else it is void.
   - Certificates u/s. 197 issued by the department, for lower or NIL deduction will be issued, only if PAN is provided, else application is void.
   - Incorrect PAN will render submission as null and void hence insist on Copy of PAN or Scanned image of PAN.
7. The payer shall not be deemed to be an assessee in default, if the resident recipient has included such income in the return submitted under section 139 and the recipient has paid tax on such income. The payer will have to submit a certificate to this effect from a Chartered Accountant.
8. To comply with provision of Section 194-IA, Section 194-IB and Section 194M assessee should not apply for TAN.
9. The limit of interest paid/credited shall be made applicable as a whole and not branch wise where the banking company/co-operative bank which has adopted core banking solutions (CBS).
10. In order to bring the big transporters back into TDS net, the exemption from TDS deductibility shall be available to small transporters who owns 10 or less goods carriage any time during the previous year and furnishes declaration to that effect to the payer.

11. Section 203A is amended that notified person shall not apply for TAN. The individuals or HUF who are not liable for Tax Audit or for one time transactions such as single transactions of acquisition of immovable property from non-resident by individual or HUF on which tax is deductible under section 195.

Form No.	*Periodicity*	*Due Date*
16	Annual	On or before 15th June of the Financial Year immediately following the financial year in which tax is deducted.
16A/27D	Quarterly	Within 15 days from the due date of furnishing quarterly TDS/TCS returns.

12. The deductor, being a person other than the person referred to in item (a) above, may, at his option, issue TDS Certificate in Form No.16A generated through TIN central system and which is downloaded from the TIN Website with a unique TDS certificate number in respect of all sums deducted on or after the 1st day of April, 2011 under any provisions of Chapter XVII-B other than section 192.
13. Directorate of income-tax (Systems) vide Notification No. 04/2015 dated 1-12-2015 further specified the procedure, formats and standards facilitating electronic filing of the Forms 15G and 15H.
14. Under section 194-IB the deductor shall be liable to deduct tax only once in a previous year at in the last month.Tax shall be deducted at the time of credit of rent, for the last month of the previous year 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 whichever is earlier.
15. Section 16(2) – Standard Deduction has been increased from ₹ 40,000 to ₹ 50,000 for AY 2020-21.
16. For Section 194N, if an assessee withdraws amount in excess of ₹ 1 crore in a year TDS @ 2% shall be deducted on amount exceeding ₹ 1 crore. Banking companies and Government are outside the purview of this section.
17. Application for determination of appropriate rate of tax while making a payment to non-resident by u/s. 195 can be made by payer also.

❑❑

TDS on Payments to Non-Residents u/s. 195

Under the provisions of section 195 of the Income-tax Act, every person responsible for making a payment to a non-resident, in respect of any income chargeable to tax in India, is required to withhold tax at an appropriate rate at the time of payment or credit, whichever is earlier. In this connection, if the person making payment to non-resident believes that the whole of such payment is not chargeable to tax, he is required to obtain a no objection certificate from the Income Tax authorities to determine whether the tax has been correctly determined on the remittance to a non-resident.

The objective of Section 195 is to ensure, as far as possible, that the tax liability on the income element of the amount paid is deducted at source itself, so that the Department is not put through the hassles of recovering it from a non-resident whose connection with India may be transient or whose assets in India may not be sufficient to meet the tax liability.

In terms of Circular No. 759 dated 18th November, 1997 the remitter has an option to remit the sum to a non-resident either by obtaining a no objection certificate from the Income Tax authorities or by furnishing an undertaking in duplicate accompanied by a certificate from a Chartered Accountant (CA), certifying that in respect of the income sought to be remitted to the non-resident the appropriate amount of tax has been deducted and paid to the Government. That, the procedure of obtaining CA certificate is alternative, is also made clear in the circular. There was a substantial increase in foreign remittance making the manual handling and specially tracking of such payments difficult. To monitor and track transactions in an efficient manner, it was proposed to introduce e-filing of information in the certificates and undertaking. The Finance Act, 2008 introduced the process of e-filing of information relating to payment of any sum to a non-resident [Section 195(6)-Rule 37BB]. The Finance Act, 2015 amended sub-section (6) to Section 195, which provides that the person responsible for paying to the non-resident, any sum, whether or not chargeable to tax in India, should furnish the information as prescribed by the CBDT relating to payment of such sum. As per the Rule 37BB, the information under Section 195(6) of the Act shall be furnished by a person responsible for making payment to a non-resident in Forms 15CA and 15CB. The CBDT has amended Rule 37BB with effect from 1st April, 2016 vide Notification [No. 93/2015, F. No. 133/41/2015-TPL] dated 16th December, 2015 whereby major changes have been made in the requirements of Forms 15CA and 15CB. According to the Notification —

- No Forms 15CA and 15CB will be required to be furnished for remittances which are not chargeable to tax under the provisions of the Income-tax Act, 1961, if these are made by an individual and do not require an approval from the Reserve Bank of India (RBI) as per the provisions of Section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000; or which are of the nature specified below:
  - ✓ Indian investment abroad-in equity capital (shares)
  - ✓ Indian investment abroad-in debt securities
  - ✓ Indian investment abroad-in branches and wholly owned subsidiaries
  - ✓ Indian investment abroad-in subsidiaries and associates
  - ✓ Indian investment abroad-in real estate
  - ✓ Loans extended to Non-Residents
  - ✓ Advance payment against imports
  - ✓ Payment towards imports-settlement of invoice
  - ✓ Imports by diplomatic missions
  - ✓ Intermediary trade
  - ✓ Imports below INR 5,00,000 - (For use by ECD offices)
  - ✓ Payment for operating expenses of Indian shipping companies operating abroad
  - ✓ Operating expenses of Indian Airlines companies operating abroad
  - ✓ Booking of passages abroad - Airlines companies
  - ✓ Remittance towards business travel
  - ✓ Travel under basic travel quota (BTQ)
  - ✓ Travel for pilgrimage
  - ✓ Travel for medical treatment
  - ✓ Travel for education (including fees, hostel expenses etc.)
  - ✓ Postal services
  - ✓ Construction of projects abroad by Indian companies including import of goods at project site
  - ✓ Freight insurance - relating to import and export of goods
  - ✓ Payments for maintenance of offices abroad
  - ✓ Maintenance of Indian embassies abroad
  - ✓ Remittances by foreign embassies in India
  - ✓ Remittance by non-residents towards family maintenance and savings
  - ✓ Remittance towards personal gifts and donations
  - ✓ Remittance towards donations to religious and charitable institutions abroad
  - ✓ Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
  - ✓ Contributions or donations by the Government to international institutions
  - ✓ Remittance towards payment or refund of taxes
  - ✓ Refunds or rebates or reduction in invoice value on account of exports
  - ✓ Payments by residents for international bidding.
- Form 15CA has now been divided into Four parts as under:

"Part" of Form 15CA Required	*Applicable to*
Part A	If the remittance amount, which is chargeable to tax during the Financial year to a particular party, does not exceed INR 5 lakh.

"Part" of Form 15CA Required	Applicable to
Part B	If the remittance amount, which is chargeable to tax during the Financial year to a particular party, is more than INR 5 lakh and a certificate under Sections 197, 195(2) or 195(3) of the Act has been obtained from tax department.
Part C	If the transaction requires obtaining a certificate in Form 15CB from an accountant as defined in the Explanation below sub-section (2) of Section 288.
Part D	If the remittance is not chargeable to tax as per the provisions of the Act [other than the remittances where no RBI approval is required as per Schedule III of the Foreign Exchange (Current Account Transaction) Rules, 2000; and of the nature specified in column (3) of the specified list appended to notification].

- The 'Verification' portion of Form No. 15CA is now required to be digitally signed by the "Person responsible for paying to non-resident". The earlier mandatory requirement of form to be signed by Director/Managing Director has been changed. Therefore, the person responsible for signing TDS Return/Form 16A can now digitally sign Form 15CA.
- Form No. 15CB is also required to be digitally signed by the Chartered Accountant.
- There is also requirement of providing relevant '"Purpose Code" as per RBI in Form 15CA.
- The authorised dealers shall furnish a quarterly statement of each quarter of the financial year in Form 15CC to the prescribed tax authority electronically within 15 days from the end of the quarter of the financial year.

For ensuring submission of accurate information in respect of remittance to a non-resident, the Finance Act, 2015 has incorporated a penal provision in Section 271-I whereby a penalty of INR 1,00,000 would be levied for non-furnishing of information or furnishing of incorrect information under Section 195(6) except in the case where it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of such information. It is not clear whether this penalty is for each instance of non-compliance.

Under sub-section (2) of section 195, if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than salary) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing Officer to determine the appropriate proportion of such sum chargeable. This provision is used by a person making payment to a non-resident to obtain certificate/order from the Assessing Officer for lower or nil withholding-tax. However, the process is currently manual. In order to use technology to streamline the process, which will not only reduce the time for processing of such applications, but shall also help tax administration in monitoring such payments, it is proposed in the Finance Bill (No. 2), 2019 to amend the provisions of this section to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargable to tax by the Assessing Officer.

The tax is required to be withheld at the rates in force. Section 2(37A) defines 'rates in force' as rates as per Finance Act or Treaty whichever is applicable. Reference to rates as per Double Tax Avoidance Agreement (DTAA) was included from 1-6-1992. As per the CBDT Circular No. 728 dated 30-10-1995, rates as per DTAA are to be applied where they are more favourable to the assessee. In order to apply the benefit of DTAA, a non-resident is required to submit a tax residency certificate (TRC) as per Section 90(4) of the Income tax Act. In case the TRC does not provide the information about the non-resident, viz, status, nationality, tax identification or unique number, validity of the TRC and address of the assessee, in that case the same are required to be furnished by the non-resident in Form 10F.

The Finance Act, 2017 has clarified that where any term used in a DTAA is not defined in the DTAA then the term shall be assigned the meaning as defined in the Income Tax Act or in any other explanation issued by the Central Government.

In order to ensure effective compliance of permanent account number (PAN) mechanism, the Finance (No. 2) Act, 2009 has introduced Section 206AA in the Income-tax Act with effect from 1st April, 2010. This section mandatorily requires the deductee to provide his PAN to the deductor at the time of payment, otherwise the said payment will be subject to tax deduction at a higher rate. Section 206AA starts with non-obstante clause i.e. "Notwithstanding anything contained in any other provisions of this Act" which gives this section overriding effect over the entire provisions of the Act. Any person who is entitled to receive any amount, on which tax is to be deducted, should furnish his PAN to the deductor. As per Section 206AA, a deductee is liable to furnish the PAN if he is entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB. Therefore, this section will apply only if the tax is liable to be deducted from income under consideration. Any default in furnishing of PAN will attract the withholding tax rate which is higher of following rates:

i. Rate specified in the relevant provision of the Act

ii. Rate in force i.e., rate as per the Act or as per DTAA

iii. 20%

In order to reduce the compliance burden of furnishing the PAN in the case of a non-resident, the Finance Act, 2016 had made an amendment in Section 206AA whereby it is provided that the provisions of Section 206AA would not apply to a non-resident in respect of any other payment subject to such conditions as may be prescribed. As per Rule 37BC which is notified with effect from 24 June 2016, the higher rate prescribed under Section 206AA would not apply if the non-resident furnishes the alternative documents, such as, name, address, e-mail-ID, contact number, TRC and tax identification or unique number of such non-resident assessee.

Section 195A provides that in a case other than that referred to Section 192(1A), where under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of Chapter XVII is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.

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Rates of Income Tax for Assessment Year 2020-2021

NORMAL TAX RATES APPLICABLE TO AN INDIVIDUAL

1. Normal tax rates applicable to a resident individual below the age of 60 years i.e. born on or after 1-4-1960

Net income range	*Income-tax rates*	*Health and Education Cess @ 4*	*Effective Rate of Tax*
Up to ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 – ₹ 5,00,000	5% of (total income minus ₹ 2,50,000)	4% of income-tax	5.20%
₹ 5,00,001 – ₹ 10,00,000	₹ 12,500 + 20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,12,500 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

2. Normal tax rates applicable to a resident individual of the age of 60 years or above at any time during the year but below the age of 80 years i.e. born during 1-4-1940 to 31-3-1960

Net income range	*Income-tax rates*	*Health and Education Cess @ 4*	*Effective Rate of Tax*
Up to ₹ 3,00,000	Nil	Nil	Nil
₹ 3,00,001 – ₹ 5,00,000	5% of (total income minus ₹ 3,00,000)	4% of income-tax	5.20%
₹ 5,00,001 – ₹ 10,00,000	₹ 10,000 + 20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,10,000 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

3. Normal tax rates applicable to a resident individual of the age of 80 years or above at any time during the year i.e. born before 1-4-1940

Net income range	*Income-tax rates*	*Health and Education Cess @ 4*	*Effective Rate of Tax*
Up to ₹ 5,00,000	Nil	Nil	Nil
₹ 5,00,001 – ₹ 10,00,000	20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,00,000 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

4. Non-resident individual irrespective of age

Net income range	*Income-tax rates*	*Health and Education Cess @ 4*	*Effective Rate of Tax*
Up to ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 – ₹ 5,00,000	5% of (total income minus ₹ 2,00,000)	4% of income-tax	5.20%
₹ 5,00,001 – ₹ 10,00,000	₹ 12,500 + 20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,12,500 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

Following points should also consider regarding above one to four point:-

- Surcharge is levied @ 10% on the amount of income-tax if net income exceeds ₹ 50 lakh but doesn't exceed ₹ 1 crore and @ 15% on the amount of income tax if net income exceeds ₹ 1 crore but doesn't exceed ₹ 2 crore. Surcharge is levied @ 25% on the amount of income tax if net income exceeds ₹ 2 crore but doesn't exceed ₹ 5 crore. Where net income exceeds ₹ 5 crore, surcharge shall be levied at 37%. In a case where surcharge is levied, HEC of 4% will be levied on the amount of income tax plus surcharge.
- However, marginal relief is available from surcharge in such a manner that in the case where net income exceeds ₹ 50 lakh but doesn't exceed ₹ 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of ₹ 50 lakh by more than the amount of income that exceeds ₹ 50 lakh.
- Further, in a case where net income exceeds ₹ 1 crore but doesn't exceed ₹ 2 crore, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.
- Further, in a case where net income exceeds ₹ 2 crore but doesn't exceed ₹ 5 crore, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of ₹ 2 crore by more than the amount of income that exceeds ₹ 2 crore.
- Further, in a case where net income exceeds ₹ 5 crores, marginal relief shall be available from surcharge in such a manner that the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of ₹ 5 crores by more than the amount of income that exceeds ₹ 5 crores.
- In the case of a non-corporate taxpayer to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+HEC) of "adjusted total income" computed as per section 115JC.
- Rebate under section 87A is available only to a resident individual whose net income does not exceed ₹ 5,00,000. The amount of rebate will be the amount of tax payable or ₹ 12,500/-, whichever is lower. Thus, no rebate is available to a non-resident individual.

5. Normal tax rate applicable to Hindu Undivided Family (HUF)

Net income range	*Income-tax rates*	*Education Cess*	*Secondary and Higher Education Cess*
Up to ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 – ₹ 5,00,000	5% of (total income minus ₹ 2,50,000)	4% of income-tax	5.20%
₹ 5,00,001 – ₹ 10,00,000	₹ 12,500 + 20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,12,500 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

- Surcharge: Surcharge is levied @ 10% on the amount of income-tax if net income exceeds ₹ 50 lakh but doesn't exceed ₹ 1 crore and @ 15% on the amount of income tax if net income exceeds ₹ 1 crore but doesn't exceed ₹ 2 crore. Surcharge is levied @ 25% on the amount of income tax if net income exceeds ₹ 2 crore but doesn't exceed ₹ 5 crore. Where net income exceeds ₹ 5 crore, surcharge shall be levied at 37%. In a case where surcharge is levied, HEC of 4% will be levied on the amount of income tax plus surcharge. However, marginal relief is available.
- In the case of a non-corporate taxpayer to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+EC+SHEC) of "adjusted total income" as per section 115JC.

6. Normal tax rates applicable to every AOP/BOI/Artificial juridical person

Net income range	*Income-tax rates*	*Health and Education Cess @ 4*	*Effective Rate of Tax*
Up to ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 – ₹ 5,00,000	5% of (total income minus ₹ 2,50,000)	4% of income-tax	5.20%
₹ 5,00,001 – ₹ 10,00,000	₹ 12,500 + 20% of (total income minus ₹ 5,00,000)	4% of income-tax	20.80%
Above ₹ 10,00,000	₹ 1,12,500 + 30% of (total income minus ₹ 10,00,000)	4% of income-tax	31.20%

- Surcharge: Surcharge is levied @ 10% on the amount of income-tax if net income exceeds ₹ 50 lakh but doesn't exceed ₹ 1 crore and @ 15% on the amount of income tax if net income exceeds ₹ 1 crore but doesn't exceed ₹ 2 crore. Surcharge is levied @ 25% on the amount of income tax if net income exceeds ₹ 2 crore but doesn't exceed ₹ 5 crore. Where net income exceeds ₹ 5 crore, surcharge shall be levied at 37%. In a case where surcharge is levied, HEC of 4% will be levied on the amount of income tax plus surcharge. However, marginal relief is available.

- In the case of non-corporate taxpayers to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+EC+SHEC) of "adjusted total income" computed as per section 115JC.

7. Normal tax rates applicable to a firm

- A firm is taxed at a flat rate of 30%. Apart from tax @ 30%, Health and Education Cess is levied @ 4% of income-tax.
- Surcharge is levied @ 12% on the amount of income-tax where net income exceeds ₹ 1 crore. In a case where surcharge is levied, Health and Education Cess of 4% will be levied on the amount of income-tax plus surcharge. However, marginal relief is available.
- In the case of non-corporate taxpayers to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+EC+SHEC) of "adjusted total income" computed as per section 115JC. For provisions relating to AMT refer tutorial on “MAT/AMT” in tutorial section.

8. Normal Tax rates applicable to a domestic company

- A domestic company is taxed at a flat rate of 30%. However, tax rate is 25% where turnover or the gross receipt of the company in the previous year 2017-18 doesn't exceed ₹ 400 crore. Health and Education Cess is levied @ 4% of income-tax.
- In addition to tax at above rate, surcharge is levied @ 7% on the amount of income-tax if net income exceeds ₹ 1 crore but does not exceed ₹ 10 crore and @ 12% on the amount of income-tax if net income exceeds ₹ 10 crore. In a case where surcharge is levied, Health and Education Cess is levied @ 4% will be levied on the amount of income-tax plus surcharge. However, marginal relief is available.
- In the case of a corporate taxpayer to whom the provisions of Minimum Alternate Tax (MAT) apply, tax payable cannot be less than 18.5% (+SC+HEC) of "Book profit" computed as per section 115JB. However, MAT is levied at the rate of 9% (plus surcharge and cess as applicable) in case of a company, being a unit of an International Financial Services Centre and deriving its income solely in convertible foreign exchange. For provisions relating to MAT refer tutorial on “MAT/AMT” in tutorial section.

9. Normal tax rates applicable to a foreign company

- A foreign company is taxed at a flat rate of 40%. Apart from tax @ 40%, Health and Education Cess is levied @ 4% of income-tax.
- In addition to tax at above rate, surcharge is levied @ 2% on the amount of income-tax if net income exceeds ₹ 1 crore but does not exceed ₹ 10 crore and @ 5% on the amount of income-tax if net income exceeds ₹ 10 crore. In a case where surcharge is levied, HEC of 4% will be levied on the amount of income-tax plus surcharge. However, marginal relief is available
- In case of a foreign company whose net income exceeds ₹ 10 crore, marginal relief is available from surcharge in such a manner that the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.
- In the case of a corporate taxpayer to whom the provisions of Minimum Alternate Tax (MAT) apply, tax payable cannot be less than 18.5% (+SC+HEC) of "Book profit" as per section 115JB. However, as per Explanation 4 to section 115JB as amended by Finance Act, 2016 with retrospective effect from 1-4-2001, it is clarified that the MAT provisions shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if— (i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or [As amended by Finance Act, 2016] (ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) and the assessee is not required to seek registration under any law for the time being in force relating to companies.

10. Normal tax rates applicable to a Co-operative societies

Taxable income	*Tax Rate*
Up to ₹ 10,000	10%
₹ 10,000 to ₹ 20,000	20%
Above ₹ 20,000	30%

- Apart from tax at above rate, Health and Education Cess is levied @ 4% of income-tax.
- Surcharge is levied @ 12% on the amount of income-tax where net income exceeds ₹ 1 crore. In a case where surcharge is levied, Health and Education Cess of 4% will be levied on the amount of income-tax plus surcharge. However, marginal relief is available.
- In the case of a non-corporate taxpayer to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+HEC) of "adjusted total income" computed as per section 115JC. For provisions relating to AMT refer tutorial on “MAT/AMT” in tutorial section.

Normal tax rates applicable to local authorities

- A local authority is taxed at a flat rate of 30%. Apart from tax @ 30%, and Education Cess is levied @ 4% of income-tax.
- Surcharge is levied @ 12% on the amount of income-tax where net income exceeds ₹ 1 crore. In a case where surcharge is levied, HEC of 4% will be levied on the amount of income-tax plus surcharge. However, marginal relief is available.
- In the case of a non-corporate taxpayer to whom the provisions of Alternate Minimum Tax (AMT) apply, tax payable cannot be less than 18.5% (+SC+HEC) of "adjusted total income" computed as per section 115JC.

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E-Returns & E-Payments

e-Returns

Rule 12 prescribes various modes of furnishing of returns. One of the modes is furnishing the return electronically with or without digital signature. For A.Y. 2019-20, the various modes of furnishing of returns as applicable to different types of assessees are as follows:

Sl. No.	*Person*	*Condition*		*Manner of Furnishing Return of Income*	
1	Individual or Hindu undivided family	(a)	Accounts are required to be audited under section 44AB of the Act;	Electronically under digital signature	
		(b)	Where total income assessable under the Act during the previous year of a person,- (i) Being an individual of the age of 80 years or more at any time during the previous year; or (ii) Whose income does not exceed five lakh rupees and no refund is claimed in the return of income, and who furnishes the return in Form No. SAHAJ ITR-1 or Form No. SUGAM (ITR-4)	(A) (B) (C) (D)	Electronically under digital signature; or Transmitting the data in the return electronically under electronic verification code; or Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V. Paper form.
		(c)	In any other case	(A) (B) (C)	Electronically under digital signature; or Transmitting the data in the return electronically under electronic verification code; or Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V; or
2	Company	In all cases		Electronically under digital signature.	
3	A person required to furnish the return in Form ITR-7	(a)	In case of a political party;	Electronically under digital signature;	
		(b)	In any other case	(A) (B) (C)	Electronically under digital signature; or Transmitting the data in the return electronically under electronic verification code; or Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.
4	Firm or limited liability partnership or any person (other than a person mentioned in Sl. 1 to 3 above) who is required to file return in Form ITR-5	(a)	Accounts are required to be audited under section 44AB of the Act	Electronically under digital signature;	
		(b)	In any other case	(A) (B) (C)	Electronically under digital signature; or Transmitting the data in the return electronically under electronic verification code; or Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.

e-Payments

As per Rule 125 the following persons are mandatorily required to pay taxes electronically:

(a) Company

(b) Person (other than a company) to whom the provisions of section 44AB are applicable.

Further, payment of tax electronically has been defined to mean payment of tax by way of —

(i) Internet banking facility of the authorised bank; or

(ii) Credit or debit cards.

An assessee can make electronic payment of taxes also from the account of any other person. Further, it is also clarified that payment of any amount by a deductor by way of tax deducted at source (TDS) or tax collected at source (TCS) shall fall within the meaning of 'tax' for the purpose of the Rule 125 of the Income-tax Rules, 1962.

For making e-payment, taxpayer is required to visit the website https://onlineservices.tin.nsdl.com/etaxnew/tdsnontds.jsp.

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I. Appeals

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
246A CIT(A) Form No. 35	1. As per section 249(2), **within 30** days of a) the date of service of notice of demand if appeal relates to assessment or penalty; or b) date of payment of tax when appeal is u/s. 248 – claiming not liable to TDS provisions c) date of service of order in any other case 2. CIT(A) has power to condone delay u/s. 249(3) on showing sufficient cause. *A subsequent decision of Supreme Court or High Court resulting in change of legal position may be sufficient cause of condonation of delay* ***Sothiya Mining & Mfg. Corp. 186 ITR 182 (Cal.)***	1. Court fee stamps as applicable. – not applicable now as e-filing is mandatory. 2. Appeal fees: a) Where assessed total income is 1 lakh or less - ₹ 250. b) Where appeal is filed on issues such as penalty order, TDS defaults, non-filing of returns, etc. which cannot be linked with the assessed income - ₹ 250. 3. where assessed total income is more than 1 lakh but not more than 2 lakh – ₹ 500. 4. where assessed total income is more than 2 lakh – ₹ 1,000.	1. Form No. 35 in duplicate. ***The CBDT vide press release dated 30.12.2015 has made electronic filing of appeal mandatory for the persons who are required to file the return of income electronically*** 2. Memorandum of Appeal, Grounds of Appeal and Statement of Facts. 3. Copy of Order appealed against along with the Transfer Pricing Order, if applicable. 4. Notice of Demand (original). 5. In the case of appeal against penalty order copy of relevant Penalty order along with a copy of the relevant assessment order. 6. Proof of payment of appeal filing fee (Original). 7. Affidavit narrating circumstances for delay in filing appeal beyond 30 days for late filing. *Form No. 35, grounds of appeal and form of verification appended thereto shall be signed and verified by the person authorised to sign the ROI u/s. 140.* *If the same is unsigned or unverified or is signed or verified by wrong person, an opportunity should be given to the assessee to rectify it.* ***Rajendrakumar Maneklal Sheth (HUF) 213 ITR 715 (Guj.)*** **Condonation of delay: An appeal wrongly filed before the AO and not CIT(A) is an unintentional lapse of the assessee. The AO ought to have returned the appeal to enable the assessee to take**	1. An eligible assessee as defined u/s 144C has the option to either file an objection against the draft assessment order before the Dispute Resolution Panel or file an appeal before the CIT(A) against the final assessment order. 2. Appealable orders are Assessment Orders, Reassessment Orders, Penalty Orders and other orders as listed under section 246A. Appeal does not lie against the order which is not listed as appealable orders in section 246A e.g. order under section 179 against directors for recovery of tax in private companies, orders passed by the DRP u/ s 144C of the Act. 3. No appeal lies under the Act against the following orders: a) Order levying interest u/ss. 234A, 234B, 234C b) Revision order u/s. 264 c) Order of Authority for Advance Ruling. d) Order of Settlement Commission. 4. The assessee must ensure payment of tax due as per income 'returned' by him u/s. 249(4) if not paid at the time of filing of return of income. 5. CIT(A) has to adjudicate the matter in appeal before him. He has no power to set aside order of AO. 6. Courts have consistently held that the CIT(A) has inherent powers to grant stay of demand though not specifically conferred by express provision.

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
			corrective steps. The likelihood of error is inherent in human nature The power of condonation is in view of human fallibility and must be exercised in cases of bona fide lapses. ***Prashanth Projects Ltd vs. DCIT (Bombay High Court)*** Normally, additional evidences are to be accompanied with an application stating the reasons for their admission, after which the Commissioner (Appeals) may admit the same after recording reasons in writing for its admission. Before taking into account the additional evidence filed, Commissioner (Appeals) is to provide reasonable opportunity to the Assessing Officer for examining the additional evidence or the witness as well as to produce evidences to rebut additional evidences filed by the tax payer.	7. CIT(A) can suo motu deal with issues which were not the subject matter of appeal. ***Kashi Nath Chandiwala 280 ITR 318 (All.)*** 8. Appellate Authority can only give direction/finding in respect of year or period which is before the authority. ***Sun Metal Factory (I) (P) Ltd. 124 ITD 14 (Chennai)*** 9. CIT(A) cannot dismiss an appeal on the ground that the appellant does not appear before him on the date of hearing of appeal, rather he is bound to decide the case on merits. 10. ***CIT (Central), Nagpur v. Premkumar Arjundas Luthra (2016) 240 Taxmann 133 (Bom.)*** *11. From the CBDT Circular No. 5/2010, it was crystal clear that it would be the choice of the assessee whether to file an objection against the draft assessment order before the Dispute Resolution Panel (DRP) or to pursue the normal channel of filing an appeal against the assessment order before the CIT(A). Since in the present case assessee did not file any objection before the DRP and filed the appeal before the CIT(A), since as it was his choice; the CIT(A) was not justified in rejecting appeal for lack of jurisdiction and hence appeal was maintainable.* ***Samsung Heavy Industries India (P) Ltd. v. Asstt. CIT 2017 TaxPub(DT) 1990 (Del-Trib)*** *12. Appeal do not lie u/s. 246A, if the additions/disallowances on facts are admitted by the assessee before the AO. (Unless the appellant can demonstrate that facts relied upon were untrue and circumstances for placing such reliance), as the assessee cannot be said to*

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
				be 'aggrieved' by the asst. order containing such agreed additions/disallowances. ***Rameshchandra & Co. 168 ITR 375 (Bom.)*** ***Vamdevan Bhanu 330 ITR 559 (Ker.)*** 13. However, if admission to additions/disallowances was wrongly made or under mistaken belief of fact or law, appeal would lie. ***Gouri Sahai Ghisa Ram 120 ITR 338 (All).***
248 CIT(A) Form No. 35	1. As per section 249(2), **within 30 days** of date of payment of tax. 2. CIT(A) has power to condone delay u/s. 249(3) on showing sufficient cause.	Filing Fee ₹ 250/- Appeal by person denying liability to deduct tax	Same as above to the extent applicable. Appeal to be signed by the person responsible for payment of income from which TDS is deductible u/s. 195/200. Tax has to be paid before filing appeal u/s. 248.	1. Where under an agreement or other arrangement, the tax is deductible on any income [other than interest] under Section 195 is to be borne by the person by whom the income is payable and such person having paid such tax claims that no tax was required to be deducted on such income, he may appeal to the CIT(A) for a declaration that no tax was deductible on such income. 2. Where the tax is borne by the payee, the payer cannot file appeal under Section 248 of the Act. 3. CIT(A) in appeal u/s. 248 holding assessee not liable to deduct tax at source u/s. 195, assessee is entitled to refund of the amount deposited by way of TDS. ***[TELCO vs. DCIT (2004) 83 TTJ 458 (Mum.)]***
253 ITAT Form No. 36	1. Section 253(3) 60 days from the date of service of CIT(A) order 2. Section 253(5) empowers the ITAT to condone the delay on showing sufficient grounds	Appeal fees: 1. ₹ 500 in cases a) Where assessed total income is 1 lakh or less b) Where appeals are filed on issues such as TDS defaults, penalties, non-filing of returns, etc. which cannot be linked with the assessed income.. c) An application for stay of demand.	1. Form No. 36 together with grounds of appeal in triplicate. 2. Order appealed against in duplicate (including one certified copy) 3. Order of AO in duplicate. 4. Grounds of Appeal before CIT(A) in duplicate. 5. Statement of facts filed before CIT(A) in duplicate. 6. In the case of appeal against penalty order, same to be filed in duplicate.	1. Orders of CIT(A)/CIT against which appeal can be filed are listed under the relevant section. 2. *W.e.f. 1-4-2018 appeal can be filed against the order of CIT(A) under section 271J (Penalty for furnishing incorrect information in Reports or Certificates by an Accountant, Merchant Banker or Registered Valuer).* 3. The fee payable for filing appeal before the ITAT in cases of penalty orders would be only ₹ 500 as they

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
		2. ₹ 1,500 if assessed income is above 1 lakh but not more than 2 lakh. 3. 1% of assessed income subject to maximum of ₹ 10,000 where assessed income is more than 2 lakh. However, no such fee shall be payable in case a. the appeal is filed by the Pr. CIT or CIT; or b. where the memorandum of cross objections is filed either by the assessee or the department.	7. In the case of appeal against order u/s. 143(3) read with Section 144A — Two copies of the directions of the Joint Commissioner u/s. 144A. 8. In the case of appeal against order u/s. 143 read with Section 147 — Two copies of original assessment order, if any. 9. Proof of payment of appeal filing fee. 10. Affidavit stating reasons for delay in filing appeal beyond 60 days (If delayed). 11. Person authorised to sign return of income u/s. 140, must sign appeal form. The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal, unless the Tribunal is satisfied with the explanation of the applicant for not producing the same before the lower authorities. (Rule 25 of Income Tax Appellate Tribunal, Rules 2017)	do not have any nexus with assessed income. ***Dr. Ajit Kumar Pandey vs. ITAT (2009) 310 ITR 195 (Pat.)*** ***Dubwali Transport Company 38 DTR 434 (Chd.)*** 4. The fee payable for filing appeal before the ITAT in 3. The fee payable for filing appeal before the ITAT in cases of penalty orders would be only ₹ 500 as they do not have any nexus with assessed income. 4. The fee payable for filing appeal before the ITAT in cases assessed 'losses' is ₹ 500 as the assessed 'income' is less than monetary limit 1 lakh prescribed. ***Gibbs Computer vs. ITAT 317 ITR 159 (Bom.)*** 5. Provision for filing of appeal by the Assessing Officer against the order of DRP done away with [Section 253] (w.e.f. 1st June, 2016) 6. As far as the deficiencies are rectified within the specified time-limit, there should be no reason for rejection of the appeal. ***BDA Ltd. vs. ITO 281 ITR 99 (Bom.)*** 7. The word 'pass such order thereon as it thinks fit' include all the powers except the power of enhancement which are confirmed upon the CIT(A) by section 251. ***Hukumchand Mills Ltd. vs. CIT 63 ITR 232 (SC)*** 8. **Vide Circular No. 17/2019 dated 8th August 2019, the CBDT has enhanced the monetary limits (tax effect) to ₹ 50 lacs for filing appeals before ITAT by the Department.** (The same is subject to certain exceptions, which can be referred to in the circular)

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
253(4) (Cross Objection) ITAT Form No. 36A	30 days of receipt of notice of appeal by other party	NIL	Same as above [except instead of Form 36, Form 36A]	1. The assessee/A.O. (who may or may not have preferred appeal) may file the cross objections against any part of CIT(A) order. No fees payable. 2. The cross objection need not be confined to the points taken by the opposite party in the main appeal. The assessee can challenge the order of the dept. not only in the quantum of tax amount but other points also.
260A High Court Form No.- A Memorandum of appeal precisely stating therein substantial question of law	120 days from the date on which the order appealed against is received	As per code of Civil Procedure	In the form of memorandum of appeal, precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question is involved, it would formulate that question. High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority. **Guidelines for Typing and Preparation of Application u/s. 260A** (i) Typing should be in double space throughout on full-scape paper. One and a half space may be used, but single space typing is forbidden. (ii) A margin of two inches on the left and right side of the paper and at least one inch on the top and bottom of paper should be left. (iii) The pleadings to be filed in the High Court are stitched on the left side and proper space should be left for stitching, so that the typed matter should not get hidden inside the stitches (iv) All the blanks regarding dates, names etc. should be filled in after minutely	1. An appeal shall lie to HC from every order passed by ITAT if the case involves substantial question of law. 2. Appeal shall be heard only on the question of law formed and respondent shall argue that the case does not involve such question. However, HC may after recording the reasons form question of law not formulated by it. 3. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty case on Court ***Maharaja Amrinder Singh (2017) 397 ITR 0752*** 4. As returns, revision, appeals and other proceedings were carried out at Bengaluru and considered by AO, CIT(A), CIT and Tribunal, the shifting of office by assessee of its Registered Office at Gurgaon will not affect the jurisdiction of High Court of Bengaluru. ***CIT vs. Motorola India Ltd. (2008) 168 Taxmann 0001*** 5. An appeal to the High Court or the Supreme Court can be filed only on 'Substantial Questions of Law'. The CCsIT/CsIT must bestow their personal attention on this issue while taking decision to file appeal under section 260A of the Act. The

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
			checking up the matter. No blanks should be left. (v) The signing assessee should write at the end of each Exhibit – "True Copy" and put his signature and name below it. (vi) In all the exhibits, on the first page, the exhibit number should be written in good handwriting on the top right-hand corner. (vii) In the body of the petition when an exhibit is first introduced, a clarification must follow as to what it is - e.g. "... hereto annexed and marked as 'Exhibit-A' being a copy of the order of the Assessing Officer……..". Therefore, the words "Exhibit-A" should be written on the left-hand margin. At the end of each exhibit, the date of passing of the order (of the relevant exhibit) should be written. (viii) The signing assessee should sign both sets of papers which are meant for judges. (ix) The High Court rules require advance service of appeal/Writ petition, reply affidavit, counter affidavit, rejoinder etc. and attachment of proof of service. The proof of service is to be attached with the original set. (x) Certified true copy of the impugned order should be attached with the original set. In case of common order disposing of several appeals, a separate application seeking permission of the court for not filing the original copy of ITAT order should be moved. (xi) Court fees stamps should be affixed on the right top corner and not in the margin.	5. An appeal to the High Court or the Supreme Court can be filed only on 'Substantial Questions of Law'. The CCsIT/CsIT must bestow their personal attention on this issue while taking decision to file appeal under section 260A of the Act. The Substantial Questions of Law arising out of the order of ITAT must be clearly identified and suggested draft question of law should be sent to the Standing Counsels for their consideration. 6. Although the expression 'substantial question of law' has not been defined anywhere in the statute, the Supreme Court in the case of ***Sir Chunilal Mehta & Sons vs. Century Spinning & Mfg. Co. Ltd***. AIR 1962 SC 1314 (applied by the Apex Court in ***M Janardhana Rao vs. JCIT 273 ITR 50)***, has laid down the following tests to determine whether a 'substantial question of law' is involved: a. Whether the issue directly or indirectly affects substantial rights of the parties? b. Whether the question is of general public importance? c. Whether it is an open question in the sense that the issue has not been settled by pronouncement of Supreme Court? d. Whether the issue is not free from difficulty? e. Whether it calls for a discussion for alternative views? 7. Subject to the Instructions for the time being in force on the monetary limits for iling appeals issued by the jurisdictional CCIT shall be the authority to decide whether to contest an order of the ITAT, in the light of

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
				the facts and circumstances of a particular case and the statutory provisions. He shall take a view in the matter after taking into consideration the recommendations of the authorities below. Once the CCIT communicates his decision to contest a particular order of ITAT, it shall be the responsibility of the CIT to ensure timely and proper filing of appeal in the High Court and consequential follow up actions. 8. Time-barred appeals:— (i) If appeals are time barred by limitation, an application for condonation of delay along with the affidavit explaining the delay should be attached. (ii) In cases of extraordinary delay, a detailed affidavit explaining each day of delay should be attached. 9. Vide Circular No. 17/2019 dated 8th August 2019, the CBDT has enhanced the monetary limits (tax effect) to Rs 1 cr for filing appeals before HC by the Department. (The same is subject to certain exceptions, which can be referred to in the circular)
261 Supreme Court	The application before the High Court for certificate of fitness of the case should be filed within 60 days.			1. If the assessee is not satisfied with the decision given by the High Court on a question of law referred to it, he may file an appeal before the Supreme Court against the judgment of the High Court. 2. Appeal can be filed against any judgment of HC which it certifies to be a fit case for appeal to Supreme Court. 3. Where the High Court refuses to grant such a certificate, the assessee can under Article 136 of the constitution file a Special Leave Petition before the Supreme Court. If the Special Leave Petition to appeal is granted, the Supreme Court will hear and decide the appeal on merits.

Section, Appellate Authority and Form No.	Time Limit	Filing fees	Documents to be submitted/attached	Remarks
				4. Supreme Court decisions are binding on non-appellants as well. ***UP Pollution Control Board vs. Kanoria Industries Ltd. (2003) 259 ITR 321 (SC)*** 5. It was not open to the Revenue to accept the earlier decision in the case of one assessee and challenge its correctness without any just cause in case of other assessee. ***Union of India vs. Kaumudini Narayan Dalal (2001) 249 ITR 219 (SC)*** 6. Vide Circular No. 17/2019 dated 8th August 2019, the CBDT has enhanced the monetary limits (tax effect) to ₹ 2 cr for filing appeals by the Department before SC. (The same is subject to certain exceptions, which can be referred to in the circular)

II. Revisions

Section	Subject matter of revision	Who can revise	Time limit	Remarks
263	Any order passed by the Assessing Officer which is erroneous and prejudicial to the interest of the revenue.	Principal CIT or CIT	2 years from the end of the financial year in which order sought to be revised was passed except in situation enumerated u/s. 263(3). a) *However, an order of revision may be passed at any time in the case of an order which has been passed in the consequence of or to give effect to, any finding or directions in an order of ITAT, NTT, the HC or the SC or order of court under any other law.* b) *Where an order prejudicial to the revenue has become the subject matter of appeal on different issue, the time limit u/s. 263 has to be reckoned with reference to the original order and not the later order.*	1. CIT must disclose reasons/ grounds in his notice to assessee for proposed revision. He shall give reasonable opportunity of being heard to assessee before an order u/s. 263 passed. 2. CIT has the power to call for and examine the record of any proceeding under the Act. 3. The Assessment Order must be 'erroneous' as well as 'prejudicial to the interest of revenue' before the action can be taken under this section. 4. The powers of the Pr. CIT/CIT are widened so as to construe the order as 'erroneous" and "prejudicial to the interests of the revenue" by virtue of the insertion of Explanation 2. 5. Law laid down in ***Subhlakshmi Vanijya Pvt. Ltd. vs. CIT 155 ITD 171 (Kol), Rajmandir Estates 386 ITR 162 (Cal)*** etc. that the CIT is entitled to revise the assessment order u/s. 263 on the ground that the AO did not make any proper inquiry while accepting the explanation of the assessee insofar as receipt of share application money is concerned cannot be interfered with. Pronounced by Apex Court on 29th November, 2017 in the case of Daniel Merchants Private Limited vs. ITO. 6. Even if AO applies mind and decides not to assess expenditure as unexplained u/s. 69C because the assessee withdrew the claim for deduction, the CIT is entitled to revise the assessment on the ground that the matter needed further investigation ***CIT vs. Amitabh Bachchan (2016) 384 ITR 0200 (Supreme Court)*** ***7. Lack of inquiry vs. Inadequate inquiry: Revision on the ground that the AO did not conduct a detailed inquiry on account of paucity of time is unfair to the assessee and invalid (Amitabh Bachhan 384 ITR 200 (SC) & Maithan International 375 ITR 123 (Cal.) distinguished***

Income Tax

Section	Subject matter of revision	Who can revise	Time limit	Remarks
				Pr CIT vs. Mera Baba Reality Associates Pvt. Ltd. (Delhi High Court) 8. An assessment order which gives effect to a binding ruling of the Authority of Advance Ruling, cannot be regarded as being erroneous or as being prejudicial to the interest of the revenue. ***Prudential Assurance Co. Ltd. vs. DIT 191 Taxmann 62 (Bom.)*** 9. Where an order passed by the AO has been subject matter of an appeal, it cannot be revised by the Pr. CIT or CIT. However, the CIT has jurisdiction and power to initiate proceedings under section 263 in respect of all issues not touched by the CIT(A) in the appellate order. ***Jaikumar B. Patil 236 ITR 469 (SC)*** 10. Where revision proceedings were taken up on the basis of order of another HC but the said decision was not approved by jurisdictional HC, it was held that such order of revision is liable to set aside. ***Hindustan Lever Ltd. vs. CIT 70 DTR 182 (Cal.)*** 11. Intimation u/s. 143(1) is not assessment order hence cannot be revised. ***Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500 (SC)*** 12. Where an initial/original order of assessment has been rectified, there remains no initial order in existence and as such the CIT cannot exercise his power of revision with reference to the initial/original order. ***Vippy Solvex Products (P) Ltd. 228 ITR 587 (MP)*** 13. Decision of the Assessing Officer not to be held to be erroneous simply because his order did not discuss why Explanation 3 to section 43(1) should not be invoked. ***CIT vs. SRF Ltd. (2015) 63 (I) ITCL 13 (Del)*** 14. Commissioner can pass order under section 263 even on debatable issues. ***Malabar Industries Co. vs. CIT (2000) 243 ITR 83 (SC)*** 15. An appeal against the order of CIT u/s. 263 lies in ITAT u/s. 253

Section	Subject matter of revision	Who can revise	Time limit	Remarks
264	Any order passed by the officer subordinate to Pr. CIT or CIT Exception: 1. Applies to an order other than an order to which Section 263 applies. 2. Where appeal lies before CIT(A)/ITAT or the time limit for filing the appeal has not expired.	Principal CIT or CIT	*a) If CIT revises on his own motion:* *within 1 year from the date of passing the order sought to be revised.* *b) On Application being made by the assessee:* *within 1 year from the end of the F.Y. in which such application is made.* *The assessee has to make an application within 1 year from the date of communication or knowledge of the order to the assessee whichever is earlier* *However, Pr. CIT or CIT has power to condone delay if assessee is prevented by sufficient cause from making the application after the expiry of that period.*	1. No revision is possible where the order has been made the subject of an appeal to the CIT(A). 2. Revision of the order u/s. 264 cannot be made where an appeal lies to CIT(A) but not made and the assessee has not waived his right of such appeal. 3. Commissioner cannot refuse to entertain a revision petition filed by the assessee under Section 264 of the Act if it is maintainable on the ground that a similar issue has arisen for consideration in another year and is pending adjudication in appeal or another forum. ***Paradigm Geophysical Pty. Ltd. vs. DCIT (2018) 400 ITR 0497 (Delhi)*** 4. The provision can be beneficially used by the assessee for seeking appropriate relief from CIT where certain claims, relief could not be claimed before the AO or appeal could not be filed before CIT(A) in time for any reason. 5. While passing order u/s. 264, it is open to the CIT to entertain even a new ground/claim/plea not urged before the lower authority ***Parekh Brothers vs. CIT 150 ITR 105 (Ker.)*** SLP filed by Department on this issue is dismissed by the Supreme Court. 6. An order cannot be said to have been made subject to an (effective) appeal if the appeal has been disposed of by CIT(A) or ITAT without passing an order on merits. 7. If an application made u/s. 197 for obtaining no tax deduction or low tax deduction certificate is rejected by AO, it can be revised by the CIT u/s. 264. ***Larson &Tubro Ltd. vs. CIT 190 Taxmann 373*** *8. Section 264 is enacted for the benefit of the assessee and hence order u/s. 264 cannot be passed prejudicial to assessee.* 9. The order of CIT u/s. 264 is not appealable before ITAT u/s. 253 or High Court u/s. 260A. However, a petition for Writ of Certiorari under Article 226 of the Constitution for quashing the order of CIT will lie in appropriate cases.

Section	Subject matter of revision	Who can revise	Time limit	Remarks
				10. The Hon'ble Bombay High Court in the case of ***Ambuja Cement India Ltd. vs CCIT WP No. 2095 of 2006 (Bom)*** held that even an intimation u/s 143(1) is an order which can be revised u/s 264 of the Act. 11. Application by the assessee to be accompanied by a fee of ₹ 500.

III. Rectification

Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
154	(a) Any order passed by an IT authority under the provisions of IT Act. (b) Any Intimation or deemed intimation u/s. 143(1) (c) Any intimation u/s. 200A(1) (TDS Processing) (d) Any intimation u/s. 206CB(1) (TCS Processing)	IT authority as referred to in section 116 (a) on its own motion; or (b) on intimation being made by assessee, tax deductor or tax collector. *If order is passed by CIT(A), then he can rectify the mistake on intimation being made by AO or Assessee.*	*Within 4 years from the end of the financial year in which order sought to be rectified was passed.* *If an order is revised, set aside, etc., then the period of 4 years will be counted from the date of such fresh order and not from the date of original order.* *In case an application for rectification is made by the taxpayer, the authority shall amend the order or refuse to allow the claim within 6 months from the end of the month in which the application is received by the authority.*	*Any mistake 'apparent' from the record.* *Mistake apparent from record must be an obvious and patent and must not be something which can be drawn by a long-drawn process of reasoning* ***T S Balram, ITO vs. Volkart Brothers 82 ITR 40 (SC)***	1. A decision on a debatable point of law is not a mistake apparent from the record. 2. Rectification order having effect of enhancing liability or reducing refund could be passed only after providing opportunity of hearing to the assessee. 3. Rectification of matter which is subject to an Appeal or Revision cannot be rectified. 4. Even if assessee offers interest income as "Other Sources" and claims set-off of brought forward business loss against it u/s. 72, AO is not permitted to rectify as issue is debatable. ***K.S. Venkatesh vs DCIT (Karnataka High Court)*** 5. Intimation u/s. 143(1)cannot be rectified after issue of notice u/s. 143(2) ***Manjeet Singh Sachdev 310 ITR 357 (Kar.)*** 6. When superior Authority had already passed an order against levy of interest, AO cannot rectify the order suo motu. ***Smt. Brindra Arneja 55 Taxmann.com 478 (All)*** 7. Matter not considered in appeal can be subjected to rectification ***CIT vs. Sakseria Cotton Mills Ltd. (1980) 124 ITR 570 (Bom.)*** 8. Matters finally decided in appeal cannot be rectified. Buildwell Assam (P) Ltd. (1982) 133 ITR 736 (Gau.) 9. Refund to be given in case rectification results into reduction of assessment. 10. Notice of demand to be issued in case rectification results in to enhancing the assessment etc. 11. An appeal lies against rectification orders. 12. An appeal lies against refusal to rectify the mistake.

Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
					13. Higher authorities not empowered to give decision on application for rectification pending before the Assessing Officer. ***Govardhandas Desai (P) Ltd. 129 ITR 495 (Bom.)***
254(2)	Any order passed by ITAT	Income Tax Appellate Tribunal ITAT (a) on its own motion; or (b) mistake is brought to its notice by the Assessee or AO.	***6 months from the end of the month in which the order was passed. (w.e.f. AY 2017-18)***	Any mistake 'apparent' from the record.	1. Application for rectification is to be filed with the fees of ₹ 50/-. 2. Rectification order having effect of enhancing liability or reducing refund could be passed only after providing opportunity of hearing to the assessee. 3. Tribunal orders (in sister concern's case) are binding on the Tribunal unless set-aside or stayed. A rectification application on the ground that the orders in the sister concern's case are not correct is not permissible as it amounts to a review. ***Procter & Gamble Home Products Pvt. Ltd vs. ITAT (2018)TaxPub(DT) 1608 (Bom. HC).*** 4. Limitation period: The amendment to s. 254(2) to curtail the limitation period for filing rectification applications to six months from four years is prospective and applicable to appeal orders passed after 1-6-2016 and not the orders passed prior to 1-6-2016. ***District Central Co-op. Bank Ltd vs. UOI (2017) 398 ITR 0161 (MP)*** 5. For purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing of the order ***Liladhar T. Khushlani vs. Commissioner of Customs (Gujarat High Court)***

Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
					6. Plea that the appeal was mistakenly withdrawn on the advice of Counsel and that the same should be restored should be backed by evidence. If the assessee voluntarily withdraws the appeal, he cannot seek restoration on the ground that the withdrawal was an apparent mistake ***Jayant D. Sanghavi vs. ITAT (2017) 295 CTR 0229 (Bombay)*** 7. Facts recorded by the ITAT have to be accepted as correct and conclusive and cannot be contradicted by affidavit or otherwise. The mere placing of a case law in the paper book does not mean that it was cited before the ITAT and non-consideration thereof is not a mistake apparent from the record. A MA to rectify such alleged mistake of non-consideration of a judgment must be filed as quickly as possible ***Ashish Gandhi Builders & Developers P. Ltd. vs. ITAT (Bombay High Court)*** 8. Once the application is made by assessee within specified time, Tribunal is bound to decide the application on merits and not on the ground of limitation. ***Ayyar Spinning & Waiving Mills Ltd. 171 Taxmann 498 (SC)*** 9. Non-consideration of a judgment of the jurisdictional HC or the Apex Court would always constitute a mistake apparent from record. ***Saurashtra Kutch Stock Exchange Ltd. 173 Taxmann 322 (SC)*** ***10. Once order of Tribunal is dismissed by HC, no rectification is possible in order of Tribunal as order of Tribunal would be merged with that of HC.*** ***Saroj Ceramics Industries 42 taxmann.com 372 (Guj.)***

Section	Subject matter of rectification	Who can rectify	Time limit	What can be rectified	Remarks
					11. Failure to consider material on record or order of ITAT, based on erroneous assumption of facts, non-consideration of grounds, failure to consider alternate grounds, non-consideration of relevant provisions of law/ rule/binding decisions inter alia are some of the grounds for rectification. 12. The ITAT cannot 'review' its order passed on merits in the garb of 'rectification' by resorting to Section 254(2).

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Interest

INTEREST PAYABLE BY ASSESSEE

Section	*Amount on which interest payable*	*Rate of interest*	*Period of interest*
SECTION 115P — Failure to pay the whole or any part of the tax on distributed profits of domestic companies (i.e., dividend) referred u/s. 115-O(1)	Amount of tax not paid on distributed profits	w.e.f. 8-9-2003 Simple interest @ 1% for every month or part thereof	From the day immediately following the last date on which the dividend distribution tax was to be paid to the date of actual payment
SECTION 115S — Failure to pay the whole or any part of the tax on income distributed by Unit Trust of India/Mutual Fund referred u/s. 115R(1) or (2)	Amount of tax not paid on income distributed remaining unpaid	w.e.f. 8-9-2003 Simple interest @ 1% for every month or part thereof	From the day immediately following the last date on which the income distribution tax was to be paid to the date of actual payment
SECTION 158BFA(1) — (a) Delay or failure in furnishing the return of total income including undisclosed income for the block period as required by notice u/s. 158BC(a) OR	Undisclosed income determined u/s. 158BC(c)	w.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	From the expiry of time allowed to furnish the return to the date of furnishing of return or where no return is filed to the date of completion of assessment u/s. 158BC(c)
SECTION 201(1A) — Failure to deduct whole or any part of tax deducted at source or failure to deposit tax deducted at source	(a) Amount of tax not deducted or after deducting fails to pay	W.e.f. 1-7-2010 If tax is not deducted (a) from the date of tax deductible to the date of deduction interest payable will be one per cent per month or part of month If Tax is deducted but not paid (b) from the date of deduction of TDS to the date of deposit/Payment of TDS Interest Payable will be one and half per cent per month or part of month	From the date, on which the tax was to be deductible/ deducted, to the date of actual payment. W.e.f. 1-7-2012 If the deductee : (i) has furnished his return of income u/s 139, (ii) has taken into account the income received by him, (iii) and has paid the tax due on such income and he furnishes a certificate from a Chartered Accountant in such cases assessee will not be treated as "assessee in default" and in such cases interest shall be payable from the date on which such tax was deductible to the date of furnishing of return by aforesaid recipient
SECTION 206C(7) — Failure to collect tax at source or failure to deposit the same after collection at source	(a) Amount of tax not collected or (b) Having collected the tax but fails to pay	W.e.f. 8-9-2003 simple interest @ 1% per month or part thereof	From the date, on which the tax was to be collected, to the date of actual payment

Section	Amount on which interest payable	Rate of interest	Period of interest
SECTION 220(2) — Failure to pay the Amount specified in notice of demand u/s. 156 or delay to pay the demand issued u/s. 156	Amount of tax demanded as per notice u/s. 156.	W.e.f. 8-9-2003 simple interest @ 1% per month or part thereof	From the day next following the day on which period specified in notice expires till the date of actual payment of specified amount
SECTION 234A(1) — Delay or failure to furnish return of income u/s. 139(1)/139(4)/ 142(1)	Tax on total income determined u/s. 143(1) or on regular assessment as reduced by 1) advance tax paid; 2) TDS or TCS; 3) any relief of tax allowed u/s.89, (Inserted w.r.e.f. 1/4/2007) 4) any relief of tax allowed u/s. 90 on account of tax paid in a country outside India; 5) any relief of tax allowed u/s. 90A on account of tax paid in a specified territory outside India referred to in that section; 6) any deduction, from the Indian Income-tax payable, allowed u/s. 91, on account of tax paid in a country outside India; 7) and any tax credit allowed to be set off in accordance with the provisions of Sections 115JAA or (115JD w.e.f. 1-4-2013)	W.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	From the date immediately following the due date to the date on which return is furnished or on the date on which best judgment assessment u/s. 144 is completed
SECTION 234A(3) — Failure to furnish return required by a notice u/s. 148/153A within time allowed or failure to furnish the return	Difference between tax determined on reassessment and tax determined on earlier assessment	W.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	From the expiry of time allowed furnishing the return u/s. 148/153A to the date of furnishing of return or where no return is filed to the date of completion of reassessment
SECTION 234B(1) — Failure to pay advance tax in entirety or (2) where advance tax paid falls short of 90% of assessed tax	(a) Assessed tax [tax on total income determined u/s. 143(1) or on regular assessment as reduced by i) TDS or TCS; ii) any relief of tax allowed u/s. 89, (Inserted w.r.e.f. 1/4/2007) iii) any relief of tax allowed u/s. 90 on account of tax paid in a country outside India;	W.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	From 1st April of the relevant Assessment Year to the date of determination of income u/s. 143(1) or date of regular assessment if such assessment is made

Section	Amount on which interest payable	Rate of interest	Period of interest
	iv) any relief of tax allowed u/s. 90A on account of tax paid in a specified territory outside India referred to in that section; v) any deduction, from the Indian Income-Tax payable, allowed u/s. 91, on account of tax paid in a country outside India; vi) any tax credit allowed to be set off in accordance with the provisions of Section 115JAA or (115JD (b) The amount by which advance tax paid falls short of assessed tax		
SECTION 234B(3) — Where the amount on which interest is payable u/s. 234B(1) is increased as a result of reassessment u/ss. 147/153A	Difference between tax determined on reassessment and tax determined on earlier assessment	W.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	From the date of original assessment to the date of reassessment under Section 147 or Section 153A
SECTION 234C — Shortfall/ failure to pay advance tax or Deferment of advance tax	Amount of tax not paid or shortfall in payment during various installments. [Tax on returned income is considered]. If capital gain arises after any due date of installment, tax on capital gain shall be paid in balance available installments due after the date of gain. Tax due on the returned income means the tax chargeable on the total income, as reduced by i) TDS or TCS; ii) any relief of tax allowed u/s.89, (Inserted w.r.e.f. 1/4/2007) iii) any relief of tax allowed u/s. 90 on account of tax paid in a country outside India; iv) any relief of tax allowed u/s. 90A on account of tax paid in a specified territory outside India referred to in that section; v) any deduction, from the Indian Income-Tax payable, allowed u/s. 91, on account of tax paid in a country outside India;	W.e.f. 8-9-2003 Simple interest @ 1% per month or part thereof	On the shortfall of prescribed amount; 1st Installment due on 15th June prescribed amount is 15%, due on 15th September, prescribed amount is 45%, due on 15th December, prescribed amount is 75% interest to be calculated for 3 months and for the installment due on 15th March, prescribed amount is 100%, straightforward 1% on shortfall amount for 1 month (However it is further provided that for 1st installment paid by such assessee is not less than 12% and for 2nd installment if it is not less than 36% then Interest is not to be charged) However interest under this section shall not be levied in respect of shortfall of advance tax on account of capital gains or winnings from races, lotteries, income from Profits and gains of Business or Profession for first time (w.e.f. 1-4-2017) etc. if assessee has paid the advance tax as a part of remaining installments of advance tax due if any or by 31st March of the Financial Year.

Section	Amount on which interest payable	Rate of interest	Period of interest
	vi) any tax credit allowed to be set off in accordance with the provisions of Section 115JAA or (115JD w.e.f. 1-4-2013)		
SECTION 234D — Where refund granted on assessment u/s. 143(1) is found to be not due on regular assessment or refund granted is in excess of refund determined on regular assessment	Whole of the amount so refunded or excess amount so refunded	Simple interest @ 0.50% per month or part thereof	From the date of grant of refund u/s. 143(1) to the date of regular assessment
SECTION 234E- Where a person fails to deliver or cause to be delivered a statement within the time prescribed in section 200(3) or proviso to section 206(c) (3)	Fees of ₹ 200/- per day	Fees of ₹ 200/- per day	Fees shall not exceed the amount of tax deductible or collectible
SECTION 234F — Where a person fails to furnish a return of income u/s. 139, within time prescribed u/s. 139(1) (Applicable from Assessment year 2019-20)			a) Fees of ₹ 5000/- if return is furnished on or before 31st December of the assessment year. b) ₹ 10,000/- in other case

INTEREST RECEIVABLE BY ASSESSEE

SECTION 244A			
(a) Where refund arises as result of excess payment of advance tax or higher TCS or TDS	Amount of refund due	simple interest @ 0.50% per month or part thereof	I) From 1st April of relevant Assessment Year to the date on which the refund is granted where return is filed u/s 139(1) II) From the date of furnishing of return of income to the date on which refund is granted in case not covered in I above
(aa) Refund is out of any tax paid u/s 140A	Amount of refund due	simple interest @ 0.50% per month or part thereof	From the date of payment of tax or date of furnishing of return whichever is later, to the date on which the refund is granted
(b) In any other case	Amount of refund due	simple interest @ 0.50% per month or part thereof	From the date of payment of tax or penalty, to the date on which the refund is granted

Notes:

1. It is important to note that Rule 119A governs the manner of charging of interest and as per the said rule
   a. Fraction of month is to be ignored when annual rate is prescribed,
   b. Fraction of a month is to be considered as full month where monthly rate is provided and
   c. amount of tax, penalty or any other sum in respect of which interest is calculated is rounded of to the nearest multiple of ₹ 100/- and for this purpose any fraction of ₹ 100/- is ignored.
2. In certain circumstances, the assessee may approach CIT or CCIT for reduction or waiver of interest levied u/ss. 220(2), 234A, 234B and 234C.

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Penalties

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 158BFA(2)	(a) Delay or failure in furnishing the return of total income including undisclosed income for the block period as required by notice u/s. 158BC(a) OR (b) Undisclosed Income determined by the Assessing Officer is in excess of the undisclosed income shown in such return	Assessing Officer or Commissioner (Appeals)	Minimum 100% & maximum 300%; in case (a) of the tax leviable in respect of the undisclosed income determined by the Assessing Officer and in case (b), of the tax leviable on the difference between the undisclosed income as determined by the Assessing Officer and the amount of undisclosed income shown in the return
SECTION 221(1)	Default in making payment of tax within prescribed time; i.e., as required by notice u/s. 156 or wherever assessee is deemed to be in default in payment of tax.	Assessing Officer	Such amount as directed by Assessing Officer but not exceeding the amount of tax in arrears.
SECTION 270A	Penalty for under reporting of income Penalty for misreporting of income **(Applicable from the Assessment Year 2017-18)**	Assessing Officer, CIT(Appeals) or Principal CIT or CIT	50% of tax payable on under reported income 200% of such tax in the case of misreporting of income.
SECTION 271(1)(b)	Failure to comply with the notice u/s. 115WD(2) or 115WE(2) or 143(2) or 142(1) or failure to comply with the direction u/s. 142(2A) to get the accounts audited. **(Applicable up to Assessment Year 2016-17)**	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	₹ 10,000/- for each such failure
SECTION 271(1)(c)	Concealment of particulars of income or furnishing of inaccurate particulars of such income. **(Applicable up to Assessment Year 2016-17)**	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	Minimum 100% & maximum 300% of the tax sought to be evaded
SECTION 271(1)(d)	Concealment of particulars of fringe benefits or inaccurate particulars of such fringe benefits **(Applicable up to Assessment Year 2016-17)**	Assessing Officer or Commissioner or Principal Commissioner or Commissioner (Appeals)	Minimum 100% & Maximum 300% of the tax sought to be evaded
SECTION 271(4)	Distribution of Profit by registered firm otherwise than in accordance with the partnership deed on the basis of which the firm has been registered and as a result of which partner has returned income below the real income (penalty leviable on the partner) **(Applicable up to Assessment Year 2016-17)**	Assessing Officer or Commissioner (Appeals)	A sum not exceeding 150% of the difference between the tax on partner's income assessed and income returned
SECTION 271A	Failure to keep and maintain any such books of account and other documents as required under Section 44AA or rules made thereunder or to retain such books of account and other documents for the period specified under Income-tax Rules	Assessing Officer or Commissioner (Appeals)	A sum of ₹ 25,000/-

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271AA(1)	a. Failure to keep and maintain any information or document in respect of international transactions or (Specified domestic transactions w.e.f. 1-4-2013) as required by Section 92D(1) or 92D(2), or b. Failure to report international transaction or furnishing of incorrect information	Assessing Officer or Commissioner (Appeals)	2% of the value of each international transaction or specified domestic transaction
SECTION 271AA(2)	Failure to furnish information document as required under section 92D(4) **(Applicable from the Assessment Year 2017-18)**	Assessing Officer or Commissioner (Appeals)	₹ 5,00,000
SECTION 271AAA	Undisclosed income found during Search initiated under section 132 on or after 1-6-2007 but before 1-7-2012 (*Explanation* to Section 271AAA)	Assessing Officer	A sum computed @ 10% of the undisclosed income of the specified previous year. Penalty cannot be levied if all the following conditions stipulated in Section 271AAA(2) are fulfilled. i) In the course of the search admits the undisclosed income in a statement recorded u/s.132(4) and specifies the manner in which such income has been derived, ii) Substantiates the manner in which the undisclosed income was derived, and iii) Pays the taxes together with interest, in respect of such undisclosed income. W.e.f. A.Y. 2012-13 Provisions of this section are applicable if search is initiated on or after 1st June, 2007 but before 1st July, 2012.
SECTION 271AAB(1)	Undisclosed income found during search initiated under section 132 on or after 1-7-2012 but before 15-12-2016	Assessing Officer	Penalty at the rate of 10% of undisclosed income if:— (a) Undisclosed income is admitted during the course of the search in a statement under section 132(4); (b) The taxpayer substantiates the manner in which the undisclosed income was derived; (c) The taxpayer pays tax together with interest on undisclosed income on or before specified date; and (d) He furnishes his return of income declaring the undisclosed income; Penalty at the rate of 20% of undisclosed income if:— (a) Undisclosed income is not admitted during the course of the search in a statement under section 132(4);

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
			(b) The taxpayer pays tax together with interest on undisclosed income; (c) He furnishes his return of income declaring the undisclosed income; and In any other case penalty shall be 60% **(Applicable for A.Y. 2017-18)**
SECTION 271AAB(1A)	Undisclosed income found during search initiated under section 132 on or after 15-12-2016	Assessing Officer	Penalty at the rate of 30% of undisclosed income if:— (a) Undisclosed income is admitted during the course of the search in a statement under section 132(4) and specifies the manner in which such income has been derived (b) The taxpayer substantiates the manner in which the undisclosed income was derived; (c) The taxpayer pays tax together with interest on undisclosed income on or before specified date; and (d) He furnishes his return of income declaring the undisclosed income; In any other case penalty shall be 60% **(applicable from A.Y. 2018-19)**
SECTION 271AAC	Where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE **(Applicable from the Assessment Year 2017-18)**	Assessing Officer	A sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE
SECTION 271B	Failure to get the accounts audited as required u/s. 44AB or furnish report of such audit before the specified date mentioned in Explanation (ii) below Section 44AB	Assessing Officer	0.5% of the total sales, turnover or gross receipts Maximum ₹ 1,50,000/-
SECTION 271BA	Failure to furnish a report from an accountant in respect of international transaction as required u/s. 92E	Assessing Officer	A sum of ₹ 1,00,000/-
SECTION 271C	a) Failure to deduct whole or any part of tax at source (TDS) as required under the provisions of Chapter XVIIB or b) failure to pay whole or any part of tax u/s. 115-O or c) Failure to pay whole or any part of tax as per second proviso to section 194B	Joint Commissioner	Amount of tax not deducted or amount of tax not so paid as the case may be
SECTION 271CA	Failure to collect whole or any part of tax at source (w.e.f. 1st April, 2007) under Chapter XVII-BB	Joint Commissioner	A sum equal to the amount of tax failed to collect

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271D 271DA	Failure to comply with the provisions of Section 269SS/269ST; i.e., by taking or accepting any loan or Specified sum, (means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes placed) of ₹ 20,000/- or more or receipt of ₹ 2,00,000 or more from any person in aggregate in a day or in respect of single transaction or in respect of transaction relating to one event or occasion otherwise than by an account payee cheque/Draft or use of electronic clearing system through a bank account or through such mode as may be prescribed	Joint Commissioner	A sum equal to the amount of loan or deposit or specified sum so taken or accepted.
SECTION 271DB	Failure to comply with the provisions of section 269SU i.e. if person fails to provide facility for accepting payment through prescribed electronic modes of payment **(Applicable from 1-11-2019)**	Joint Commissioner	₹ 5,000 for each day
SECTION 271E	Failure to comply with the provisions of Section 269T, i.e., repayment of any loan or deposit or specified advance (means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place) of ₹ 20,000/- or more otherwise than by account payee cheque/draft in the name of the person who has made the loan or deposit or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.	Joint Commissioner	A sum equal to the amount of loan or deposit or specified advance repaid.
SECTION 271F	Failure to furnish return of income before the end of relevant assessment year as required u/s. 139(1) or before the due date u/s 139 or provisos to the said sub-section *Provided that nothing contained in this section shall apply to and in relation to the return of income required to be furnished for any assessment year commencing on or after 1-4-2018*	Assessing Officer	A sum of ₹ 5,000/-
SECTION 271FA	a. Failure to furnish statement of financial transaction or reportable account required u/s. 285BA(1) or b. Failure to furnish such statement within the time prescribed u/s. 285BA(5) **(Applicable from 1st April, 2014)**	Prescribed Income-tax authority	a. ₹ 500/- for every day during which failure continues b. ₹ 1000/- for each day of default commencing from the day immediately following the day on which the time specified in notice for furnishing the return expires
SECTION 271FAA	a. Providing inaccurate information in the statement of financial transaction or reportable account u/s. 285BA b. Fail to rectify the inaccurate information filed Failure to furnish accurate statement of financial transaction or reportable account under section 285BA(1)	Prescribed Income-tax authority	₹ 50,000/-
SECTION 271FAB	Failure to furnish statement of information or document by an eligible investment fund as required by section 9A(5) **(Applicable from Assessment Year 2016-17)**	Prescribed Income-tax authority	₹ 5,00,000/- and above

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
SECTION 271FB	Failure to furnish fringe benefits return required u/s. 115WD(1) or failure to furnish such return within the time prescribed.	Assessing Officer.	₹ 100/- for every day during which failure continues.
SECTION 271G	Failure to furnish any information or document as required by Section 92D(3) in respect of international transaction w.e.f. 1-4-2013 Specified Domestic Transactions are also included.	Assessing Officer or Transfer Pricing Officer u/s 92CA or Commissioner (Appeals)	2% of the value of international transaction or specified domestic transaction for each such failure.
SECTION 271GA	Failure to furnish statement of information or document u/s. 285A (w.e.f. 1-4-2016)	Prescribed Income-tax authority	In case of transferring right of management or control in relation to the Indian Control: 2% of value of transaction. In any other case : ₹ 5,00,000/-
SECTION 271GB(1)	Failure to furnish report under section 286(2) in respect of international group **(Applicable w.e.f. 1-4-2017)**	Prescribed Income-tax authority	₹ 5,000 per day (if period of default does not exceed 1 month) ₹ 15,000 per day (for the period of default beyond 1 month)
SECTION 271GB(2)	Failure to produce information or document to the prescribed authority under section 286(6) **(Applicable w.e.f. 1-4-2017)**	Prescribed Income-tax authority	₹ 5,000 per day (beginning immediately following the day on which the period for furnishing the information expires)
SECTION 271GB(3)	Continuity of failure referred to in section 271GB(1)/(2) after the order directing to pay penalty under section 271GB(1)/(2) has been served **(Applicable w.e.f. 1-4-2017)**	Prescribed Income-tax authority	₹ 50,000 per day from the date of service of penalty order
SECTION 271GB(4)	Furnishing inaccurate report under section 286(2) in respect of international group **(Applicable w.e.f. 1-4-2017)**	Prescribed Income-tax authority	₹ 5,00,000/-
SECTION 271H	Failure to submit (or furnishing incorrect statements in) quarterly TDS/TCS returns *(Applicable from July 1, 2012)*	Assessing Officer	Minimum Penalty – ₹ 10,000/- and Maximum Penalty ₹ 1,00,000/-
SECTION 271I	Failure to furnish information or furnishing inaccurate information under section 195(6) *(Applicable from June 1, 2015)*	Prescribed Income-tax authority	₹ 1,00,000/-
SECTION 271J	Penalty for furnishing incorrect information in reports or certificates by an accountant or a merchant banker or a registered valuer **(Applicable w.e.f. 1-4-2017)**	Assessing Officer or Commissioner Appeals	₹ 10,000/- for each such report or certificate
SECTION 272A(1)(a)/(b)/(c)	Failure to answer questions, sign statements or attend summons u/s. 131(1) to give evidence/ produce books of account or other documents	Income Tax authority not lower in rank than a Joint Commissioner or a Joint Director.	₹ 10,000/- for each such default or failure
SECTION 272A(1)(d)	Failure to comply with a notice under sections 142(1), 143(2) or failure to comply a direction issued under section 142(2A) **(Applicable from Assessment Year 2017-18)**	Income Tax authority not lowers in rank than a Joint Commissioner or a Joint Director	₹ 10,000/- for each default or failure
SECTION 272A(2)	Failure to: (a) comply with a notice u/s. 94(6); (b) give notice of discontinuance of business or profession u/s. 176(3); (c) furnish in due time any of the returns, statements or particulars mentioned in Sections 133, 206 or 206C or 285B;	Income Tax authority not lower in rank than a Joint Commissioner or a Joint Director except for failure under Clause (f) above w.r.t. Section 197A wherein	₹ 100/- per day during which default continues. However, penalty shall not exceed the amount of tax deductible or collectible in case of failure to deliver or pay declaration u/s. 197A, furnish a certificate

Section	Nature of Failure/Default	Authority who can levy penalty	Quantum of Penalty
	(d) allow inspection of any register referred to in section 134 or of any entry therein or to allow copies of the same; (e) furnish return of income u/s. 139(4A)/ 139(4C) or furnish such returns within time allowed; (f) deliver copy of declaration as stated in Section 197A in due time; (g) furnish a certificate as required u/s. 203 or u/s. 206C; (h) deduct and pay tax as required u/s. 226(2); (i) furnish a statement required u/s. 192(2C); (j) to deliver in due time a copy of the declaration u/s. 206C(1A); (k) furnish quarterly statement of TDS as required u/s. 200(3) or TCS under proviso to Section 206C(3). * (Failure to submit quarterly TDS/TCS returns will not be governed by section 272A(2) with effect from July 1, 2012); (l) deliver the quarterly return in respect of payment of interest to residents without deduction of tax u/s. 206A(1) (m) to deliver a statement in section 200(2A) or section 206C(3A).	the authority is with Chief Commissioner or Commissioner	u/s. 203 or annual return of TDS/ TCS u/s. 206 and 206C and for failure in relation to section 200(2A)/ 206C(3A).
SECTION 272AA	Failure to comply with the provisions of Section 133B (a general survey meant for collection of information)	Assessing Officer or Joint Commissioner or Assistant Director or Deputy Director	Maximum Penalty up to ₹ 1,000/-
SECTION 272B	Failure to comply with the provisions of Section 139A (i.e., failure to obtain PAN) or failure to quote PAN or Aadhar Card Number (w.e.f. 1/9/2019). in documents and use of false PAN deliberately, for each such default, (w.e.f. 1/9/2019)	Assessing Officer	A sum of ₹ 10,000/- for each such default
SECTION 272BB	Failure to comply with the provisions of Section 203A (failure to obtain TAN including failure to quote the same) including quoting of false TAN	Assessing Officer	A sum of ₹ 10,000/-

Important Notes

1. No penalty can be levied u/s. 221(1), if the assessee proves that the default in making payment of tax was for good and sufficient reasons.
2. No order levying penalty can be passed for failure u/ss. 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271FAB, 271G, 271GA, 271H, 271-I, 272A(1)(c)/(d), 272A(2), 272AA(1), 272B, 272BB(1)/(1A), 272BBB(1)(b), 273(1)(b), 273(2)(b)/(c). if the person or the assessee proves that there was a reasonable cause by virtue of Section 273B.
3. No penalty shall be imposed on any person unless he is properly heard or has been provided with reasonable opportunity of being heard by virtue of Section 274(1).
4. No order imposing penalty exceeding ₹ 10,000/- can be passed by the Income Tax Officer without previous approval of Joint Commissioner. Further, no order imposing penalty exceeding ₹ 20,000/- can be passed by the ACIT or DCIT without the previous approval of Joint Commissioner by virtue of Section 274(2).
5. Penalty proceedings have to be completed before the end of financial year in which the proceedings, in the course of which action for imposition of penalty is initiated, are complete, or within 6 months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later by virtue of Section 275.

6. While determining the amount of penalty, the law to be applied would be the law operative on the date when default was committed. In case of late filing of return, the default is said to be committed on the date when the return is to be filed and in case of non-compliance of notice, default is taken to be committed on the day when the date given in the notice expires.
7. An application can be made to Commissioner for reducing or waiving any penalty levied under the Income-tax Act, 1961 or for staying or compounding any proceeding for the recovery of any such penalty by virtue of Section 273A(4). In such situations, where the aggregate of such penalties exceed ₹ 1,00,000/-, then the Commissioner can exercise these powers with the previous approval of Chief Commissioner or Director-General as the case may be.
8. Explanation 1 to Section 271(1)(c) specifies that assessee shall offer an explanation, and only on failure to offer any explanation or such explanation is found to be false, or assessee is not in a position to substantiate then it will be deemed that such person has concealed the income.
9. Explanation 4 to Section 271(1)(c) specifies that the amount of tax sought to be evaded also shall include reduction in the loss figure.
10. With effect from A.Y. 2017-18 complete new scheme of Penalty, Section 270A, has been introduced in place of earlier section 271(1)(c).

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Offences & Prosecutions

Section	Nature of Failure/Default	Description of Default	Quantum of Penalty
SECTION 275A	a) Contravention of order made under second proviso to sub-section (1) or sub-section (3) of section 132	In the process of search u/s. 132 the AO may serve a restrain order on the owner or the person who is in immediate possession or control of any books of A/c other documents, money, bullion jewellery - which is not seized- any violation thereof	RI which may extend to two years and shall also be liable to fine
SECTION 275B	Failure to comply with provisions of clause (iib) of sub-section (1) of section 132	If a person fails to afford the AO necessary facility to inspect books of acoount or other documents maintained in the form of electronic records	RI for a term which may extend to two years and shall be liable to fine
SECTION 276	Removal, concealment, transfer or delivery of property to thwart tax recovery	—	RI for a term which may extend to two years and shall be liable to fine
SECTION 276A	a) Failure to comply with the provisions of sub-sections (1) and (3) of section 178	Liquidator – 1. Fails to give the notice in accordance with section 178(1) 2. Fails to set aside the amount as required u/s 178(3) 3. Parts with any of the assets of the company or the properties in his hands in contravention of the provision of the aforesaid sub-section	a) RI for a term which may extend to two years b) In the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months
SECTION 276AB	Failure to comply with the provisions of sections 269UC, 269UE(2) and 269UL(2)	Provisions of Chapter XXC are not applicable w.e.f. 1-7-2002	a) RI for a term which may extend to two years and shall be liable to fine b) In the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months
SECTION 276B	a) Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B b) Failure to pay tax as required or under: (i) Sub-section (2) of the section 115-O; (ii) The second proviso to Section 194B	—	RI for a term which shall not be less than three months and may extend to seven years and with fine
SECTION 276BB	Failure to pay the Tax Collected at Source (TCS) to the Central Government required u/s. 206C	—	RI for a term which shall not be less than three months and may extend to seven years and with fine

Section	Nature of Failure/Default	Description of Default	Quantum of Penalty
SECTION 276C	Sub-section (1) a) If a person willfully attempts to evade tax, penalty or interest chargeable or imposable on him under any other provisions of this Act		a) Where the amount sought to be evaded exceeds ₹ 25,00,000/-, RI for a term not less than six months but which may extend to seven years and with fine b) In other cases, RI for a term which shall not be less than three months but which may extend to two years and with fine
	Sub-section (2) b) Willful attempt to evade payment of any tax, penalty or interest under the Act	—	RI for a term which shall not be less than three months but which may extend to two years and with fine
SECTION 276CC	A person willfully fails to furnish returns of income u/s. 115WD or by Notice given u/s 115WH or return u/s. 139 or notice given u/s. 142 or u/s. 148 or section 153A	—	a) Where the amount of tax which would have been evaded if the failure had not been discovered, exceeds ₹ 25,00,000/-, RI for a term not less than six months but which may extend to seven years and with fine b) In other cases, Imprisonment for a term which shall not be less than three months but which may extend to two years and with fine
SECTION 276CCC	Willfully failure to furnish return of income in search cases by notice given u/s. 158BC(a)	Chapter XIVB is not applicable with respect to. search conducted after 1-06-2003	Imprisonment for a term which shall not be less than three months but which may extend to three years and with fine
SECTION 276D	A person willfully fails to produce the accounts and documents on the date specified in the notice		a) RI for a term which may extend to one year and with fine
SECTION 277	u/s. 142(1). or willfully fails to comply with a direction to get the accounts audited u/s. 142(2A)		a) Where the amount of tax which would have been evaded if the statement or account had been accepted as true, exceeds ₹ 25,00,000/-, RI for a term not less than six months but which may extend to seven years and with fine b) In other cases, RI for a term which shall not be less than three months but which may extend to two years and with fine
SECTION 277A	If any person (first person) willfully and with intent to enable any other person (second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement		In such case the first person shall be punishable with : RI for a term which shall not be less than three months but which may extend to two years and with fine

Section	Nature of Failure/Default	Description of Default	Quantum of Penalty
	which is false and which the first person either knows to be false or does not believe it to be true, in any books of A/c or other documents relevant to or useful in any proceeding against the first person or the second person.		
SECTION 278	If a person abates or induces in any manner another person to make and deliver an account or statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence u/s. 276C(1)		a) Where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds ₹ 25,00,000, with RI for a term which shall not be less than six months but which may extend to seven years and with fine b) In other cases, RI for a term which shall not be less than three months but which may extend to two years and with fine

Income Tax

Important Notes

1. RI - Rigorous Imprisonment, AO – Authorised Officer.
2. Section 278A – Punishment for second and subsequent offences:

   If any person is convicted of an offence u/s 276B, 276C (1), 276CC, 276DD, 276E, 277, 278 is again convicted to an offence under any of the aforesaid provisions he shall be punishable for the second and every subsequent offence with RI for a term which shall not be less than 6 months which may extend to 7 years and with fine.
3. Section 278AA – Punishment not to be imposed in certain cases:

   Notwithstanding anything contained in the provisions of sections 276A, 276AB, 276B no person shall be punishable for any failure referred to in in the said provisions if he proves that there was reasonable cause for such failure.
4. Section 278AB — This section gives power to Principal Commissioner or Commissioner to grant immunity from prosecution.
5. Section 278B — Offences by Companies:

   Where an offence under this Act has been committed by a company every person who at the time of offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to proceeded against and punished accordingly. (However if such person proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence the said provision will not apply).
6. Section 278C – Offences by HUF

   In case of HUF the Karta of the said HUF will be deemed to be guilty of the offence. (However if such person proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence the said provision will not apply).
7. Section 278E – In any prosecution for any offence under this Act, court shall presume the existence of culpable mental state and it shall be the defence for the accused to prove the fact that he had no such culpable mental state.
8. Section 279 – Prosecution shall be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax.
9. Section 279A – Offences punishable u/ss. 276B, 276C, 276CC, 277 & 278 shall be deemed to be non-cognisable within the meaning of Code of Criminal Procedure 1973, (2 of 1974).

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Important Due Dates under Income-tax Act, 1961

DUE DATE CALENDAR — F.Y. 2019-20

Date	*Obligations*
April 7, 2019	• Deposit of Tax deducted/collected by an office of the Government for the month of March, 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Payment of Securities Transaction Tax for the month of March, 2019.
April 14, 2019	• Issue of Form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of February, 2019
April 15, 2019	• Quarterly statement under Rule 37BB(7) in respect of foreign remittances (to be furnished by authorised dealers) in Form No. 15CC for quarter ending March, 2019. • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2019
April 30, 2019	• Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March, 2019 has been paid without the production of a challan • Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of March, 2019 • Deposit Tax deducted by an assessee other than an office of the Government for the month of March, 2019, in respect of sums provided on 31st March 2019, being last day of the financial year • Submission of declarations received in Form 60/61 (other than those received at the time of opening bank account) during half year ended March 2019 to Director/Jt. Director (Intelligence and Criminal Investigation • Uploading declarations received from recipients in Form 15G/15H during the quarter ending March, 2019 • Deposit of TDS for the Quarter ended March, 2019 in case approved by Assessing Officer for quarterly deposit of TDS under Sections 192,194A, 194D or 194H • Due date of deduction of TDS under section 194- IB for assessee's Individual and HUF (except those liable to audit under clause a and b of section 44AB), paying rent for previous year 2018-19 under Form 26QC, shall deduct tax @ 5% from the amount payable.
May 7, 2019	• Deposit of Tax deducted/collected by an office of the Government for the month of April, 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Payment of Securities Transaction Tax for the month of April, 2019.
May 15, 2019	• Issue of Form 16B and Form 16C - Certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of March, 2019 • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2018 has been paid without the production of a challan. • Issue of Statement of tax collected and paid for the quarter ended March 2019 • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of April, 2019
May 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of April, 2019. • Issue of Form 27D - TCS certificates in respect of tax collected during the quarter ending March, 2019 • Submission of statement in Form 49C by non-resident having a liaison office in India for FY 2018-19 as per provisions of Section 285

Date	Obligations
May 31, 2019	• Quarterly statement of TDS deposited for the quarter ending March 31, 2019 • Return of tax deduction from contributions paid by the trustees of an approved superannuation fund. • Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2018-19. • Due date for e-filing of annual statement of reportable accounts as required to be furnished undersection 285BA(1)(k) (in Form No. 61B) for calendar year 2018 by reporting financial institutions. • Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2018-19 and hasn't been allotted any PAN. • Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.
June 7, 2019	• Deposit of Tax deducted/collected by an office of the Government for the month of May, 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Payment of Securities Transaction Tax for the month of May, 2019.
June 14, 2019	• Issue of form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of April, 2019
June 15, 2019	• Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2019 has been paid without the production of a challan. • Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2019 • Advance Tax first installment (not less than 15%) for F.Y. 2020-21 (applicable to assessee other than those assessee whose income is subject to presumptive tax u/s. 44AD or 44ADA) • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2019 • Issue of Form 16 - Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during 2018-19. However, the due date for issuing certificate of tax deducted at source in respect of salary paid and tax deducted has been extended from June 15, 2019 to July 10, 2019. • Issue of Form 16A - certificate of tax deducted at source (other than Sections 192, 194IA, 194IB) for quarter ending March 31, 2019.
June 29, 2019	• Furnishing statement containing information of fulfilment of conditions as specified in Section 9A by an eligible investment fund for FY 2019-20 in Form 3CEK
June 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of May, 2019. • Return of taxable securities transaction entered during financial year 2019-20 in Form 1 and Form 2 by a recognised stock exchange and mutual fund respectively. • Statement to be furnished (in Form no. 64C) by Alternative Investment Fund to its unit holders in respect of income paid /credited to them during the previous year 2018-19. • Banking companies to file return of non-deduction of tax at source from interest on time deposit paid in quarter ended March 2019 in Form No. 26QAA to the Director General of Income Tax (Investigation) as per rule 31ACA • Report by an approved institution/public sector company/ local authority/association under Section 35AC(4)/(5) for the year ending March 31, 2019 in Form 58C/Form 58D • Statement of income distributed by business trust to its unit holders during the financial year 2018-19 to be furnished in Form 64B to the unit holders • Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2019.

Date	Obligations
July 7, 2019	• Deposit of Tax deducted/collected by an office of the Government for the month of June, 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Due date for deposit of TDS for the period April 2019 to June 2019, when assessing officer has permitted quarterly deposit of TDS under Section 192, 194A, 194D & 194H. • Payment of Securities Transaction Tax for the month of June, 2019.
July 10, 2019	• Due date for issuing quarterly TDS certificates in respect of salary paid and tax deducted has been extended from June 15, 2019 to July 10, 2019
July 15, 2019	• Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of June, 2018 has been paid without the production of a challan. • Issue of form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of May, 2019 • Quarterly statement under rule 37BB(7) in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2019 • Statement of tax collected and paid for the quarter 1-4-2019 to 30-6-2019 • Uploading declarations received from recipients in Form 15G/15H during the quarter ending June, 2019 • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of June, 2019 • Due date for issuing quarterly TDS certificates and TDS certificate in respect of salary paid and tax deducted has been extended from June 15, 2019 to July 15, 2019 for the deductors of the State of Odhisha.
July 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of June, 2019 • Issue of Form 27D - TCS certificates in respect of tax collected during the quarter ending June, 2019
July 31, 2019	• Statement of tax deducted and paid for the quarter ended June 2019 • Filing of Income-tax Return by all assessees (other than (a) corporates assessee or (b) non-corporate assessee (whose accounts are subject to audit under Income-tax Act or other laws) or (c) working partner of the firm which is liable for audit under any law or (d) an assessee who is required to furnish a report under Section 92E or for A.Y. 2019-20) (due date extended till 31st August, 2019) • Banking companies to file return of non-deduction of tax at source from interest on time deposit paid in quarter ended June 2019 in Form No. 26QAA to the Director General of Income Tax (Investigation) as per rule 31ACA • Filing of statement of donations received and amount used for research certified by the auditor along with report on audit of books of account, by Scientific Research Association, University, College or Other Association or Indian Scientific Research Company as required by rules 5D, 5E and 5F with the Commissioner/Director of Income Tax (if due date of submission of return of income tax is July 31, 2019) • Application in Form 9A by the assessee who is required to submit return of income on or before July 31, 2019 for exercising the option available under Explanation 1 to Section 11(1) to apply income of previous year in (a) the immediately following previous year or (b) the year of receipt of income or in the immediately following previous year • Belated payment of TDS, if TDS deducted but not paid within due date; payment of sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions (applicable to assessees whose due date of filing return of income is 31-7-2019) • Statement in Form 10 to be furnished by the assessee who is required to submit return of income on or before July 31, 2019 in order to accumulate income u/s. 10(21) or 11(2) for future application • Submit a report under rule 10V(7) in form 3CEJ from a chartered accountant for the purpose of determining the arms length price of the remuneration paid by an eligible investment fund to the fund manager for the activities undertaken by him during the previous year 2018-19 (if the assessee is required to submit return of income tax on July 31, 2019)

Date	Obligations
August 7, 2019	• Deposit of tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of July, 2019 by an assessee other than an office of the Government • Deposit of Tax deducted/collected by an office of the Government for the month of July, 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Payment of Securities Transaction Tax for the month of July, 2019.
August 15, 2019	• Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of July, 2018 has been paid without the production of a challan. • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of July, 2019 • Issue of Form 16A - certificate of tax deducted at source (other than Section 192, 194IA, 194IB) for the quarter ending June 30, 2019 • Issue of form 16B and Form 16C - certificate of tax deducted under Section 194-IA and 194-IB respectively in the month of June, 2019
August 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of July, 2019
August 31, 2019	• Filing of Income-tax Return by all assessees (other than (a) corporates assessee or (b) non-corporate assessee (whose accounts are subject to audit under Income-tax Act or other laws) or (c) working partner of the firm which is liable for audit under any law or (d) an assessee who is required to furnish a report under Section 92E or for A.Y. 2019-20) as extended by notification F. No 225/157/2019/ITA.II dated 23.07.2019
September 7, 2019	• Deposit of Tax deducted/collected by an office of the Government for the month of August 2019, However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax. • Payment of Securities Transaction Tax for the month of August, 2019.
September 14, 2019	• Issue of form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of July, 2019
September 15, 2019	• Advance Tax Second installment (not less than 45%) for F.Y. 2019-20 (applicable to assessee other than those assessees whose income is subject to presumptive tax u/s. 44AD or 44ADA) • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2019 has been paid without the production of a challan • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of August, 2019
September 30, 2019	• Audit report under Section 44AB in the case of an assessee (who is required to submit his/its return of income on September 30, 2019). • Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of August, 2019. • Belated payment of TDS, if Tax deducted but not paid, within due date; payment of any sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions, applicable to assesses whose due date of filing return of income is 30-9-2019 • Filing of Income-tax Return by (a) corporates assessee or (b) non-corporate assessee (whose accounts are subject to audit under Income-tax Act or other laws) or (c) working partner of the firm which is liable for audit under any law other than an assessee who is required to furnish a report under Section 92E for A.Y. 2019-20. • Application in Form 9A by the assessee who is required to submit return of income on or before September 30, 2019 for exercising the option available under Explanation 1 to Section 11(1) to apply income of previous year in (a) the immediately following previous year or (b) the year of receipt of income or in the immediately following previous year. • Statement in Form 10 to be furnished by the assessee who is required to submit return of income on or before September 30, 2019 in order to accumulate income u/s. 10(21) or 11(2) for future application (in case due of furnishing of return of income is 30-9-2019.

Date	Obligations
	• Filing of statement of donations received and amount used for research certified by the auditor along with report on audit of books of accounts, by Scientific Research Association, University, College or Other Association or Indian Scientific Research Company as required by rules 5D, 5E and 5F with the Commissioner/Director of Income Tax (if due date of submission of return of income tax is September 30, 2019). • Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction u/s. 35(2AB) [if company does not have any international/specified domestic transaction] • Claiming foreign tax credit under rule 128 by uploading (a) statement of foreign income offered for tax for the previous year 2019-20 and foreign tax deducted or paid on such income in Form no. 67 and (b) certificate from the tax authority of the foreign country or from the person responsible for deduction of tax or signed by the assessee along with proof of tax payment, specifying the nature of income and amount of tax deducted. (If the assessee is required to submit return of income on or before September 30, 2019) • Due date of intimation under Section 286(1) by a resident constituent entity of an international group whose parent is non-resident. • Submit a report under rule 10V(7) in form 3CEJ from a chartered accountant for the purpose of determining the arms length price of the remuneration paid by an eligible investment fund to the fund manager for the activities undertaken by him during the previous year 2019-20 (if the assessee is required to submit return of income tax on September 30, 2019). • Due date for Linking PAN with Aadhaar Number.
October 7, 2019	• Deposit of tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of September, 2019 by an assessee other than an office of the Government. • Deposit of Tax deducted/collected by an office of the government for the month of September, 2019 where tax is paid accompanied by an income tax challan or tax is due under Section 192(1A) • Deposit of TDS for the Quarter ended September, 2019 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192,194A, 194D or 194H. • Payment of Securities Transaction Tax for the month of August, 2019.
October 15, 2019	• Statement of tax collected and paid for the quarter ended September 2019. • Issue of form 16B and Form 16C - Certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of August, 2019. • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2019 has been paid without the production of a challan • Quarterly statement under rule 37BB(7) in respect of foreign remittances (to be furnished by authorised dealers) in Form No. 15CC for quarter ending September, 2019 • Uploading declarations received from recipients in Form 15G/15H during the quarter ending September, 2019 • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of September, 2019
October 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of September, 2019 • Issue of Form 27D - TCS certificates in respect of tax collected during the quarter ending September, 2019
October 31, 2019	• Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2018-19. • Statement of tax deducted and paid for the quarter ended September 2019 • Filing of annual audited accounts for each approved programmes under Section 35(2AA) • Banking companies to file return of non-deduction of tax at source from interest on time deposit paid in quarter ended September 2019 in Form No. 26QAA to the Director General of Income Tax (Investigation)as per rule 31ACA • Submission of declarations received in Form 60/61 (other than those received at the time of opening bank account) during 1-4-2019 to 30-9-2019 to Director/Jt. Director (Intelligence and Criminal Investigation)

Date	Obligations
November 7, 2019	• Deposit of tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of October, 2019 by an assessee other than an office of the Government • Deposit of tax deducted/collected by an office of the Government for the month of October, 2019 where tax is paid without production of Income Tax Challan. • Payment of Securities Transaction Tax for the month of October, 2019.
November 14,2019	• Issue of Form 16B and Form 16C - Certificate of tax deducted under Section 194-IA and 194-IB respectively in the month of September, 2019
November 15, 2019	• Issue of Form 16A - Certificate of tax deducted at source (other than Sections 192, 194IA, 194IB) for quarter ended 30th September 2019 • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2019 has been paid without the production of a challan • Submission of declarations received in Form 60/61 (other than those received at the time of opening bank account) during 1-4-2019 to 30-9-2019 to Director/Jt. Director (Intelligence and Criminal Investigation)
November 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of October, 2019. • Belated payment of TDS (F.Y. 2018-19), if TDS deducted but not paid, within due date; payment of sums payable u/s. 43B so as to avoid the disallowances of the same under the respective provisions, assesses who are required to submit a report under Section 92E pertaining to international or specified domestic transaction(s). • Filing of Tax Audit Report u/s. 44AB for the Assessment Year 2019-20 in the case of an assessee who is required to submit a report pertaining to international or specified domestic transactions under Section 92E • Filing of Income-tax Return for A.Y. 2019-20 by the assessees who are required to submit a report under Section 92E pertaining to international or specified domestic transaction(s) • Report of accountant to be furnished in Form 3CEB by person entering into international transaction or specified domestic transaction • Statement of Income paid/credited during Financial Year 2018-19 by Venture Capital Company/ Fund in Form 64 to Chief Commissioner/Commissioner of Income-tax • Statement to be furnished (in Form No. 64D) by Investment Fund to Principal CIT or CIT in respect of income paid /credited to its unit holders during the previous year 2018-19. • Statement of income distributed by business trust to its unit holders during the financial year 2018-19 to be furnished in Form 64A to Principal CIT/CIT • Exercising option of safe harbour rules for international transaction and specific domestic transaction by furnishing Forms 3CEFA and 3CEFB respectively after furnishing the return of Income • Application in Form 9A by the assessee who is required to submit return of income on or before November 30, 2019 for exercising the option available under Explanation 1 to Section 11(1) to apply income of previous year in (a) the immediately following previous year or (b) the year of receipt of income or in the immediately following previous year • Statement in Form 10 to be furnished by the assessee who is required to submit return of income on or before November 30, 2019 in order to accumulate income u/s. 10(21) or 11(1) for future application • Submit copy of audit of accounts to Secretary, Department of Scientific & Industrial Research in case company is eligible for weighted deduction u/s. 35(2AB). [if company has any international/ specified domestic transaction] • Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2018-19 • Country-by-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2018-19. • Filing of statement of donations received and amount used for research certified by the auditor along with report on audit of books of accounts, by Scientific Research Association, University, College or Other Association or Indian Scientific Research Company as required by Rules 5D, 5E and 5F with the Commissioner/Director of Income Tax (if due date of submission of return of income tax is November 30, 2019)

Date	Obligations
	• Claiming foreign tax credit under rule 128 by uploading (a) statement of foreign income offered for tax for the previous year 2018-19 and foreign tax deducted or paid on such income in Form No. 67, and (b) certificate from the tax authority of the foreign country or from the person responsible for deduction of tax or signed by the assessee along with proof of tax payment, specifying the nature of income and amount of tax deducted. (If the assessee is required to submit return of income on or before November 30, 2019) • Submit a report under Rule 10V(7) in form 3CEJ from a chartered accountant for the purpose of determining the arms length price of the remuneration paid by an eligible investment fund to the fund manager for the activities undertaken by him during the previous year 2018-19 (if the assessee is required to submit return of income tax on November 30, 2010)
December 7, 2019	• Deposit of Tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of November, 2019 by an assessee other than an office of the Government • Deposit of Tax deducted/collected by an office of the Government for the month of November, 2019 where tax is paid without the production of Income tax Challan. • Payment of Securities Transaction Tax for the month of November, 2019.
December 15, 2019	• Advance Tax Third installment (Not less than 75%) for F.Y. 2019-20 (applicable to assessee other than those assessee whose income is subject to presumptive tax u/s. 44AD or 44ADA) • Issue of Form 16B and Form 16C - Certificate of tax deducted under Section 194-IA and 194-IB respectively in the month of October, 2019 • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2019 has been paid without the production of a challan • Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of November, 2019
December 30, 2019	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of November, 2019 • Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2018 to December 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
January 7, 2020	• Deposit of Tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of December, 2019 by an assessee other than an office of the Government • Deposit of Tax deducted/collected by an office of the Government for the month of December, 2019 where tax is paid accompanied by an income tax challan or tax is due under Section 192(1A) • Deposit of TDS for the Quarter ended December, 2019 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192, 194A, 194D or 194H. • Payment of Securities Transaction Tax for the month of December, 2019.
January 14, 2020	• Issue of Form 16B and Form 16C - Certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of November, 2019
January 15, 2020	• Statement of tax collected and paid for the quarter ended December 2019 • Uploading declarations received from recipients in Form. 15G/15H during the quarter ending December, 2019. • Quarterly statement under Rule 37BB(7) in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2019. • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2019 has been paid without the production of a challan.
January 30, 2020	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of December, 2019 • Issue of Form 27D - TCS certificates in respect of tax collected during the quarter ending December, 2019

Date	Obligations
January 31, 2020	• Statement of tax deducted and paid for the quarter ended December 2019 • Banking companies to file return of non-deduction of tax at source from interest on time deposit paid in quarter ended December 2019 in Form No. 26QAA to the Director General of Income Tax (Investigation) as per rule 31ACA • Intimation under Section 286(1), by a resident constituent entity of an international group whose parent is non-resident
February 7, 2020	• Deposit of tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of January, 2019 by an assessee other than an office of the Government • Deposit of tax deducted/collected by an office of the Government for the month of January, 2019 where tax is paid accompanied by an income tax challan or tax is due under Section 192(1A). • Payment of Securities Transaction Tax for the month of January, 2019.
February 14, 2020	• Issue of Form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of December, 2019
February 15, 2020	• Issue of Form 16A - certificate of tax deducted at source (other than Sections 192, 194IA, 194IB) for quarter ended 31st December, 2019. • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2020 has been paid without the production of a challan.
March 1, 2020	• Intimation by a designated constituent entity, resident in India, of an international group in Form No. 3CEAB for the accounting year 2018-19. • Payment of Securities Transaction Tax for the month of February, 2019.
March 2, 2020	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of January, 2020
March 7, 2020	• Deposit of Tax deducted/collected (other than tax deducted under Sections 194-IA & 194-IB) for the month of February, 2020 by an assessee other than an office of the Government • Deposit of Tax deducted/collected by an office of the government for the month of February, 2020 where tax is paid accompanied by an income tax challan or tax is due under Sections 192(1A)
March 15, 2020	• Advance Tax Final installment for F.Y. 2019-20 for all assessees. • First Installment of Advance Tax for the Assessee covered under section 44AD and 44ADA. • Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2020 has been paid without the production of a challan.
March 17, 2020	• Issue of Form 16B and Form 16C - certificate of tax deducted under Sections 194-IA and 194-IB respectively in the month of January, 2020
March 30, 2020	• Furnishing of challan-cum-statement in respect of tax deducted under Sections 194-IA and 194-IB in the month of February, 2020
March 31, 2020	• Last date for payment of balance advance tax so as to avoid interest u/s. 234B, if the total payment is less than 90% paid up to 15th March, in case of all assessees. • Last date to file belated return u/s. 139(4) for F.Y. 2018-19 • Last date to file revised return u/s. 139(5) for F.Y. 2018-19 • Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2018 to March 31, 2019) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

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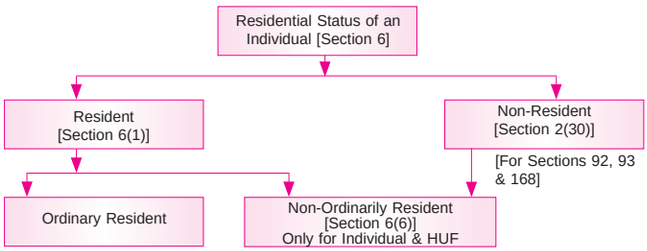
Residential Status under Income-Tax Act, 1961

RESIDENTIAL STATUS

Tax implication for an assessee depends on his residential status as per Indian Income-tax Act, 1961. In the case of Indian citizen, whether an income accrued to such a person outside India, is taxable in India depends upon the residential status of the person in India. Similarly, whether an income earned by a foreign national in India (or outside India) is taxable in India depends on the residential status of the individual, rather than on his citizenship. Therefore, determining correctly the residential status of a person is very significant in order to find out a person's tax liability.

Tests of Residence under the Act



NON-RESIDENT STATUS UNDER THE INCOME TAX ACT

The term non-resident is negatively defined under section 2(30) of the Income-tax Act. An individual who is not a resident under the Income-tax Act is a non-resident (generally, termed NRI).

Test of Residency for Individual

The status of a person as a resident or non-resident depends on his period of stay in India. The period of stay is counted in number of days for each financial year beginning from 1st April to 31st March (known as previous year under the Income-tax Act). The definition is explained in simple terms as under:

If an individual who satisfies any one of the understated conditions of section 6 of the Income-tax Act, then he becomes a Resident.

	Condition	Status
1.	He is in India for 182 days or more during the relevant previous year	➢ If yes, then he is resident (If not, check the next condition)
2.	He is in India for 60 days or more during the previous year and he is in India for 365 days or more during the 4 years prior to the previous year	➢ If yes, then he is resident

The above provisions are applicable to all individuals irrespective of their nationality.

However, as a special concession for Indian citizens and Person of Indian Origin, the period of 60 days referred to in condition 2 above, is extended to 182 days in two cases:

(i) where an Indian citizen leaves India in any year as a member of crew of an Indian ship or for the purpose of employment outside India; and

(ii) where an Indian citizen or a Person of Indian Origin, who is outside India, comes on a visit to India.

Further for an Indian citizen, being a member of a crew of a foreign bound ship leaving India, the period beginning from the date of joining the ship till the date of sign off from the ship, as entered into the continuous discharge certificate, shall not be included while calculating period of stay in India.

If an Individual is not satisfying any of the above conditions to become resident, then he will be non-resident.

RESIDENT BUT NOT ORDINARILY RESIDENT (RNOR)

An Individual, who is resident in a given year and who satisfies one of the following conditions, is given a special status of RESIDENT BUT NOT ORDINARILY RESIDENT (RNOR) else he will be Resident and Ordinarily Resident in India.

	Condition	Status
1.	He is non-resident, as per the above provisions, for at least 9 out of 10 previous years prior to previous year under consideration	➢ If yes, he is RNOR
2.	His stay in India during the 7 previous years prior to the previous year under consideration is less than or equal to 729 days	➢ If yes, he is RNOR

Test of Residency for Others

HUF, Firm and AOP is always considered as resident, except where during the year the control and management of its affairs is situated wholly outside India.

Company is resident if (i) it is an Indian Company or (ii) its place of effective management in that year is in India.

Place of Effective Management (POEM) is the country 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.

Guiding Principles for POEM

- In case of a company engaged in active business outside India, POEM presumed to be outside India if majority of the meetings of the Board of Directors are held outside India. However, if the powers of management are effectively exercised by any person resident in India then POEM shall be considered to be in India.
- The determination of POEM in the case of other company (i.e., the company other than those engaged in active business outside India) is two stage process. First, identify/ ascertain the person(s) who actually makes the key management and commercial decisions for conduct of the company's business as a whole and second determine the place where these decisions are in fact being made.

  CBDT through press release dated 24th January 2017 has clarified that the intention is to target shell companies and companies which are created for retaining income outside India although real control and management of affairs is located in India. Intention is not to cover foreign companies or to tax their global income merely on the ground of presence of PE or business connection in India.

Some of the other relevant points

- Residential status is always determined for the previous year (period of 12 months from 1st April to 31st March)
- If a person is resident in India in a previous year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the Assessment Year in respect of each of his other sources of Income [Section 6(5)].
- To calculate the number of days stay in India, both the day of Arrival into India and the day of departure from India are counted as the days of stay in India.
- Dates stamped on Passport are normally considered as proof of dates of departure from and arrival in India.
- Presence in territorial waters in India would also be regarded as stay in India.
- It is not necessary that the stay should be for a continuous period or at one place.
- A person shall be deemed to be of Indian Origin if he or either of his parents or any of his grandparents was born in undivided India [Section 115C].
- Official tours abroad in connection with employment in India shall not be regarded as employment outside India.
- A person may be resident of more than one country for any previous year. In such a case residential status of the individual shall be decided as per tie breaker rule of article 4 of the relevant double taxation avoidance agreement, entered between the countries which consider such an individual as deemed resident.
- Citizenship of a country and residential status of that country are two separate concepts. A person may be an Indian national/Citizen but may not be a resident in India and vice versa.
- A Company can have more than one place of management, but it can have only one place of effective management. POEM is required to be determined on year to year basis.
- If the key decisions by the Directors are in fact being made at a place other than place where a formal board meetings are held, then such other place would be relevant for POEM.
- The place where the management decisions are taken is more important than the place where such decisions are implemented.
- The day-to-day routine operational decisions undertaken by junior or middle management shall not be relevant for determining POEM.
- For the purpose of determining POEM, a company is considered to be engaged in "active business outside India" if the passive income is not more than 50% of total income and

1. less than 50% of its total assets are situated in India; and
   2. less than 50% of total number of employees are situated in India or are resident in India; and
   3. the payroll expenses incurred on such employees are less than 50% of the total payroll expenditure.

IMPLICATIONS OF RESIDENTIAL STATUS

The incidence of tax depends upon a person's Residential Status and also upon the place and time of accrual and receipt of income.

The charge of income tax with regard to the three categories of taxpayers can be summarised as follows:

Sources of Income	*R & OR*	*R & NOR*	*NR*
Indian Income			
Income received or deemed to be received in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise outside India, but first receipt is in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Foreign Income			
Income accruing or arising or deemed to accrue or arise outside India and received outside India, during the current financial year	Taxable in India	Not Taxable in India	Not Taxable in India
Income accruing or arising outside India from a Business/ profession controlled in/from India during the current financial year	Taxable in India	Taxable in India	Not Taxable in India

In the above context, it may be noted that the 'receipt' of income refers to the first occasion when the recipient gets the money under his own control and it is the first receipt that determines the year and place of receipt for the purposes of taxation. If the income is already received outside India, no tax liability will arise when the whole or any part of such income is remitted to India.

1. Taxpayers in all categories are chargeable on income, from whatever source derived, which is received or is deemed to be received in India by or on behalf of them or which accrues or arises or is deemed to accrue or arise to them in India other than income specified as exempt income.
2. A "resident and ordinarily resident" pays tax in India on his entire world income, wherever accrued or received.
3. A "non-resident" pays tax only on his taxable Indian income and his foreign income (earned and received outside India) is totally exempt from Indian taxes.
4. A "not-ordinarily resident" pays tax on taxable Indian income and on foreign income derived from a business controlled in or a profession set up in India.

TEST OF RESIDENCY UNDER THE TAX TREATY

To avail the benefit of the provisions of tax treaty, a person should be resident of one or both the contracting States. To prove that a non-resident or a foreign company is tax resident of a country with whom India has signed a tax treaty, they need to obtain a tax residency certificate (TRC) from their tax authorities. Finance Act, 2013 specifies that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the tax treaty and along with TRC, other documents and information under self-declaration in the prescribed form, i.e. Form No. 10F is also required to be furnished.

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Base Erosion and Profit Shifting and Multilateral Instrument

The International tax issues were never as high on the political agenda as they are today. All countries in the world are seriously concerned about their residents shifting their income to low/no tax jurisdictions and situations of double non taxation arising out of digital economy. This has placed a stress on the international tax framework, which was designed more than a century ago. To address this issue, in September 2013, G20 leaders endorsed the ambitious and wide-ranging action plan on Base Erosion and Profit Shifting (BEPS).

The BEPS package is developed and agreed because there is a vital need to restore the trust of ordinary people in the fairness of their tax systems, to level the playing fields among businesses and to provide government with more effective tools to ensure the effectiveness of their sovereign tax policies.

The goal of BEPS is to address the root cause of concerns rather than merely the symptoms. To address the concerns, where no action by some countries would have created negative spill overs on other countries, minimum standards have been agreed in particular. Identifying the need to level the playing field, the Organisation for Economic Co-operation and Development (OECD) and G20 countries have committed for consistent implementation in the areas of preventing treaty shopping, country-by-country reporting and improving dispute resolution. The OECD's BEPS initiative seeks to close gaps in international taxation for companies that allegedly avoid taxation or reduce tax burden in their home country by moving operations or by migrating intangibles to lower tax jurisdictions

Implementation of BEPS will lay groundwork of a modern international tax framework under which profits will be taxed where economic activity and value creation follows.

The BEPS plan is structured around the following three pillars:

i) Introducing coherence in the domestic rules that affects cross border activities;

ii) Reinforcing substance requirements in the existing international standards to ensure alignment of taxation with the location of economic activity and value creation; and

iii) Improving transparency as well as certainty for businesses and government.

The Organisation for Economic Co-operation and Development (OECD) released final reports on all 15 focus areas in its Action Plan on BEPS which are as follows:

* Action 1 - Address the Tax Challenges of the Digital Economy.
* Action 2 - Neutralise the Effects of Hybrid Mismatch Agreements.
* Action 3 - Strengthen Controlled Foreign Company (CFC) Rules.
* Action 4 - Limit Base Erosion via Interest Deductions and other Financial Payments.
* Action 5 - Counter Harmful Tax Practices more Effectively, Taking into Account Transparency and Substance.
* Action 6 - Prevent Treaty Abuse.
* Action 7 - Prevent the Artificial Avoidance of PE Status.
* Action 8-10 - Assure that Transfer Pricing Outcomes are in Line with Value Creation.
* Action 11 - Measuring and Monitoring BEPS.
* Action 12 - Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements.
* Action 13 - Re-examine Transfer Pricing Documentation.
* Action 14 - Make Dispute Resolution Mechanisms More Effective.
* Action 15 – Develop a Multilateral Instrument.

MULTILATERAL INSTRUMENT

The Multilateral Instrument (MLI) is designed to swiftly implement the tax treaty related measures arising from the OECD BEPS project. It includes a number of minimum standards that jurisdictions signing up to the MLI are required to implement. The MLI supports all previously agreed BEPS approaches by allowing jurisdictions to select from alternative options by filing reservations. Broadly, the MLI is structured under four categories: hybrid mismatches, treaty abuse, dispute resolution and avoidance of PE status.

Presently 89 countries have signed MLI including Singapore, Netherlands, United Kingdom, UAE, Germany, Japan and France. USA has not signed the MLI. India had signed the MLI in Paris on 7 June 2017, wherein it had published a provisional list of notifications and reservations, and listed 93 tax treaties, which it intended to be covered by the MLI.

On 25 June 2019, India deposited its instrument of ratification with the nominated authority under the MLI, with its final MLI position to implement tax treaty related measures to prevent BEPS. Further, Ministry of Finance vide notification No. 57/2019 dated 9 August 2019 notified the MLI, by exercising the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961. Pursuant to the above, the MLI for India shall enter into force on 1 October 2019, and shall be applicable on various Double Taxation Avoidance Agreements (tax treaties) of India from 1 April 2020 i.e. AY 2021-22.

Generally speaking, a provision of the MLI would get adopted in the Indian tax treaty only when matching action happens i.e. acceptance by both the parties to a MLI provision results in adoption of the same provision in the tax treaty. In absence of such matching, other than in the case of a minimum standard, the existing provisions of the tax treaties may generally continue.

With MLI deposited by India with the nominated authority, a new chapter in the area of International tax has been added. Tax professionals will have to learn BEPS and MLI to advise tax payers.

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Survey, Search and Seizure and their Assessments – A Practical Approach

Search operations are exploratory exercises on the basis of information with the income tax department to find hidden/ Undisclosed income and wealth in cases of tax payers and to take possession of assets accounts/documents, papers which contain details of unaccounted wealth/income not disclosed to the income tax authorities. Thus, search and seizure is a very powerful weapon in the armoury of income tax department to unearth any concealed income or valuables and to check the tendencies of tax evasion thereby mitigating the generation of black money.

Who can authorize and conduct (i.e., issue and execute search warrants) proceedings u/s. 132 of the Income Tax Act, 1961

Sec. 132 empowers as under :

Authorized Officer who can conduct search	*Authorized from*
Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Principal Director General or Director General or Principal Director or Director or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Additional Director or Additional Commissioner or Joint Director or Joint Commissioner (on the basis of authorization from above authority and being empowered by the Board)

Powers of authorized officers

While conducting search, authorized officer has following powers –

1. Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.
2. Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.
3. Search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.
4. Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.
5. Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search excluding stock-in-trade of the business.
6. Place marks of identification on any books of account or other documents or make extracts or copies therefrom.
7. Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.
8. Examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and in respect of all matters relevant for the purposes of any investigation. Any statement made by such person during such examination may thereafter be used as evidence in any proceedings.

Handing over of seized assets etc. to the Assessing Officer having jurisdiction

Any asset or document so seized shall be handed over to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed. Thereafter, such Assessing Officer exercises all other powers.

The reason to suspect, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Deemed or constructive Seizure [Second Proviso to Section 132(1)]

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to reason of its being of a dangerous nature.

The authorised officer may serve an order (i.e. prohibitory Order) on the owner; or the person who is in immediate possession or control of any valuable article or things, that he shall not remove, part with or otherwise deal with such article or thing without the prior permission of such authorised officer. Effect such action of the authorised officer shall be deemed to be seizure of such article or thing.

Provisional Attachment

Where during the course of the search or seizure, or within a period of 60 days from the date on which the last of the authorisations for search was executed, the authorised officer may attach provisionally any property belonging to the assessee and for the said purpose, the provisions of the Second Schedule shall, mutatis mutandis, apply.

Such attachment shall be subject to following conditions:

b) The authorised officer is satisfied that for the purpose of protecting the interest of revenue, it is necessary to do so.

c) The reasons for such provisional attachment should be recorded in writing.

d) Previous approval (in writing) of the Principal Director General or Director General or the Principal Director or Director has taken.

Every provisional attachment shall cease to have effect after the expiry of 6 months from the date of such order. The authorised officer may make a reference to a Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the

property in the manner provided under that section and submit a report of the estimate to the said officer within a period of 60 days from the date of receipt of such reference.

Authorisation and assessment in case of search or requisition [Section 292CC]

It shall not be necessary to issue an authorisation u/s 132 or make a requisition u/s 132A separately in the name of each person. Where an authorisation u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons. The assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.

Time limit for retention [Section132(8)]

The books of account or other documents seized or deemed seized shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment u/s 153A. But the same can be retained for more than 30 days on fulfilment of certain condition like reasons for retention in writing duly approved.

Presumption in case of search [Section 132(4A)]

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are, or is found in the possession or control of any person in the course of search, it may be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person, the contents of such books of account and other documents are true, signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Right to make copies or take extract [Section 132(9)]

The person from whose custody books of account or other documents are seized may make copies thereof or take extracts therefrom. Such right can be exercised in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.

Application of Seized or Requisitioned Assets

The seized assets may be adjusted with existing liability (excluding advance tax payable) under The Income-tax Act, 1961 as under:-

1. The amount of liability determined on completion of the assessment u/s 153A,
2. The amount of liability determined on completion of the assessment of the year relevant to the previous year in which search is initiated or requisition is made; (including any penalty levied or interest payable in connection with such assessment), and the amount in respect of which such person is in default or is deemed to be in default or the amount of liability arising on an application made before the Settlement Commission.

Release of seized Asset [Section 132B]

Where the following conditions are satisfied, the amount of any existing liability may be recovered out of such asset and the remaining portion of the asset may be released to the person from whose custody the assets were seized –

1. The person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized for release of asset.
2. The nature and source of acquisition of such asset is explained to the satisfaction of the Assessing Officer, and the Assessing Officer obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

No seized asset shall be retained by the Department during pendency of appeal filed by Revenue [*Naresh Kumar Kohali vs. CIT (P&H)*]

Interest payable to the assessee

Where the aggregate amount of money (either seized or realized through sale of assets) seized exceeds the aggregate of the amount required to meet the liabilities, Government shall pay simple interest at the rate of ½% p.m. The interest shall be payable from the date immediately following the expiry of the period of 120 days (from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed) to the date of completion of the assessment u/s 153A.

Assessment in case of Search or Requisition [Section 153A]

Where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, the following provision shall be followed for the purpose of assessment proceedings. As otherwise provided in sec. 153A, 153B, 153C and 153D all other provisions shall apply to the assessment made under this section also.

The Assessing Officer shall issue notice u/s 153A to such person requiring him to furnish the return of income:

In respect of each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.

For the relevant assessment year or year relevant assessment year shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond 6 assessment years but not later than 10 assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. No notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless:

a) The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakh or more in the relevant assessment year or in aggregate in the relevant assessment years, Asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

b) The income referred above or part thereof has escaped assessment for such year or years; and the search

u/s 132 is initiated or requisition u/s 132A is made on or after 01-04-2017.

Time limit for furnishing such return

Such return should be furnished in prescribed Form within such time, as may be specified in the notice or within 30 days of receipt of notice if nothing is mentioned in notice.

Treatment of pending assessment

1. Where any assessment or reassessment relating to any assessment year(s) falling in the said period is pending on the date of initiation of the search u/s 132 or requisition u/s 132A, the same shall abate.
2. If any proceeding initiated or any order of assessment or reassessment made has been annulled in appeal or any other legal proceeding, then, the assessment or reassessment relating to any assessment year which has abated, shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner. Such revival shall cease to have effect, if such order of annulment is set aside.

Assessment of Income of any other Person [Section 153C]

Where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to, or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person against whom such search or requisition is made then. The books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person; and such Assessing Officer shall proceed against each such other person and issue notice u/s 153C and assess or reassess income of such other person in accordance with the provisions of sec. 153A.

Time line for Complete the Assessment u/s. 153B

Assessment Year	*Time Limit*
Each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made for relevant assessment year or years.	Within a period of 21 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed.
Assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A.	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during the financial year 2018-19, Within a period of 18 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed.
In the case of search u/s 132	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed on or after 01-04-2019, Within a period of 12 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed.

In case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred above and from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person, whichever is later. [Proviso to sec. 153B]

Wherever reference has been given to Transfer Pricing Officer u/s 92CA, time limit in all cases shall be increased by 12 months.

Prior approval necessary for assessment in cases of search or requisition [Section 153D]

No order of assessment or reassessment (in case of search or requisition) shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the prior approval of the Joint Commissioner. However, assessment or reassessment order may be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner u/s 144BA.

SURVEY PROCEEDINGS

Who can conduct survey

The income-tax authority being Principal Commissioner or Commissioner, a Joint Commissioner, a Principal Director or Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or Inspector (in some circumstances) has right to survey.

However, no action shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner

Jurisdiction of Income-Tax Authority for conducting survey

An income-tax authority may conduct survey at –

1. Any place within the limits of the area assigned to him; or
2. Any place occupied by any person in respect of whom he exercises jurisdiction; or
3. Any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place, – where a business or profession or an activity for charitable purpose is carried on.

Power of Income Tax Authority

While conducting survey, income tax authority may exercise following power –

1. Enter in such place of business.

2. Require any proprietor, trustee, employee or any other person who may at that time and place be attending or helping in, the carrying on of such business or profession or such activity for charitable purpose –
   a) To afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place; Inspector is also considered as income-tax authority for this purpose.
   b) To afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein; and
   c) To furnish such information as he may require as to any matter this may be useful for, or relevant to, any proceeding under this Act.
3. Place marks of identification on the books of account or other documents inspected by him and make extracts or copies therefrom; Inspector is also considered as income-tax authority for this purpose.
4. Impound and retain in his custody any books of account or other documents inspected by him;
5. Make an inventory of any cash, stock or other valuable article or thing checked or verified by him, record the statement of any person, which may be useful for, or relevant to, any proceeding under this Act.

Note : Where the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or activity for charitable purpose are kept, then survey shall also be conducted at that place.

In case where survey is for the purpose of verifying that tax has been deducted or collected at source as per relevant provisions of the Act, in that case the income-tax authority cannot take exercise power mentioned in point 4 and 5 (above).

Restriction on Income-tax Authority

An income-tax authority shall not –

1. Impound any books of account or other documents without recording his reasons for doing so or
2. Retain in his custody any books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director thereof, as the case may be;
3. Remove or cause to be removed any cash, stock or other valuable article or thing.
4. The place of business or profession cannot be sealed under survey – [*Shyam Jewellers vs. CIT (All)*]

Time for survey

An income-tax authority may enter into –

Place where business or profession is carried on	During the business hours
In case of deemed place of business or profession	Only after sunrise and before sunset

Survey of certain expenditure [Section 133A(5)]

The income tax authority (including Inspector), having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, is of the opinion that it is necessary or expedient to do so, he may, at any time after such function, ceremony or event, require –

1. Assessee, who incurred such expenditure; or
2. Any person, who is likely to possess information in respect of such expenditure, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

He may record the statements of the assessee or any other person in this regard and such recorded statement may thereafter be used as evidence in any proceeding under this Act.

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Taxability of Start-Ups

The Income-tax Act provides certain tax incentives for start-ups. In addition, it is important for the start-ups to be aware of certain income-tax provisions which are mainly relevant in the initial years of incorporation or setting up. The important tax provisions as may be relevant to start-ups are discussed below:

Definition of previous year

1. In the case of business or a profession which is either newly set up or a source of income newly coming into existence in any financial year, the previous year commences from the date on which business or profession is set up or from the date on which source of income newly comes into existence in the said financial year and ends on the last date of the said financial year [Section 3].

Provisions relating to computation of taxable income

2. Any assistance in cash or in kind in the form of subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement by the Central Government or a State Government or any authority or body or agency is considered as income. Any assistance granted for meeting the cost of asset is reduced from the cost of asset [Section 2(24)(xviii)].
3. The assessee setting up an undertaking or enterprise on or after 1st April, 2015 for manufacture or production of any article or thing in the notified backward areas in the states of Andhra Pradesh, Bihar, Telangana and West Bengal is eligible for additional depreciation at the rate of 35% of the actual cost if it acquires new asset between 1st April, 2015 and 31st March, 2020. The assets qualifying for additional depreciation are new machinery or plant (other than ships and aircraft). The deduction will not be allowed in respect of the following:
   (i) Machinery and plant which was used within or outside India by any other person before installation by the assessee.
   (ii) Machinery or plant is installed in the office premises or residential accommodation or in the guest house.
   (iii) Office appliances or road transport vehicles.
   (iv) Machinery or plant where whole cost of such machinery or plant was allowed as deduction while computing income chargeable under the head "Profits or gains of business or profession" of any previous year [Section 32(1)(iia)].
4. In addition, the assessees referred to in Sr. No. 3 are also eligible for investment allowance of 15% of the actual cost of new asset in the year in which such new asset is installed subject to a condition that asset so acquired is not sold or otherwise transferred within a period of five years from the date of its installation. Upon sale or transfer, the allowance granted at the time of installation is taxed in the year in which sale or transfer has taken place. Where new asset is transferred or sold in connection with the amalgamation or demerger or reorganisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47 of Income-tax Act within a period of five years form the date of installation, the period of holding and consequence of sale or transfer as discussed above will apply to the amalgamated, resulting or successor company as they would have applied to amalgamating, demerged or the predecessor company [Section 32AD].
5. In respect of assessees engaged in the manufacture or production of any article or thing set up in locations other than those covered in Sr. No. 3 above are eligible for additional depreciation of 20% of the actual cost. The conditions mentioned at Sr. Nos. (3)(i) to (iv) will also apply here [Section 32(1)(iia)].
6. In addition, the assessees referred to in Sr. No. 5 are also eligible for investment allowance of 15% of the actual cost of new assets if actual cost of such new assets acquired in any previous year exceeds ₹ 25 crores and such assets are installed on or before 31st March, 2017. The investment allowance is allowable in the year in which new asset is installed. The condition that new asset is not sold within five years and the consequences if such condition is not met are same as discussed at Sr. No. 4 above. The provisions in relation to transfer in connection with the amalgamation or demerger or reorganisation as discussed at Sr. No. 4 above will also apply here [Section 32AC(1A)].
7. Assessees engaged in business of generation, transmission or distribution of power are also eligible for additional depreciation of 20% of the actual cost. The conditions mentioned at Sr. No. (3)(i) to (iv) will also apply here [Section 32(1)(iia)].
8. The following expenses incurred before the date of set up are considered as preliminary expenses and are amortised over a period of five years. 1/5th of such expenses are allowed each year starting from the year when business is set up.
   (i) Preparation of feasibility or project report;
   (ii) Conduct of market survey or any other survey necessary for the business;
   (iii) Engineering services;
   (iv) Legal charges for drafting any agreement between the assessee and any other person for any purpose relating to setting up or conduct of the business;
   (v) Legal charges for drafting and printing of the Memorandum and Articles of Association of the company;
   (vi) Fees for registration of the company under the Companies Act;
   (vii) Underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus in connection with the issue, for public subscriptions of shares or debentures of the company.

The aggregate amount of preliminary expenses in excess of 5% of the cost of the project or capital employed is ignored [Section 35D].

Tax Holidays

9. A company or a Limited Liability Partnership incorporated between 1st April, 2016 and 31st March, 2021 and holding a certificate of eligible business from the notified Inter-Ministerial Board of Certification will be allowed 100% deduction of profits and gains derived from such business for three consecutive assessment years. The deduction at the option of the assessee can be claimed for any three consecutive assessment years out of seven years beginning from the year in which such company or a limited liability partnership is incorporated. Eligible business means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation. The conditions to be fulfilled for claiming deduction are as under:
   (i) Total turnover does not exceed ` 25 crores in the year in which deduction is claimed.
   (ii) Business is not formed by splitting up, or the reconstruction of a business already in existence. Revival of business discontinued on account of flood, typhoon, hurricane, cyclone, earthquake or otherwise convulsion of nature, riot or civil disturbance, accidental fire or explosion, action by an enemy or action taken in combating an enemy is permissible subject to fulfilment of certain conditions.
   (iii) Business is not formed by the transfer of previously used machinery or plant for any purpose [Section 80-IAC].
10. The loss incurred during the period of seven years beginning from the year in which an eligible start-up (not being a company in which the public are substantially interested) referred to in Sr. No. 9 is incorporated, shall be carried forward and set off against the income of the previous year on fulfilment of either of the following conditions:
   (i) If all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred continue to hold those shares on the last day of such previous year; or
   (ii) The shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred. [Section 79(b)]
11. In case of an individual or HUF having income from transfer of a long-term capital asset, being a residential property, and is utilizing such sum for acquisition of equity shares in an eligible start-up shall be chargeable as income of the previous year in the following manner:
   (ii) if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain in the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or.
   (iii) if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year.

   However, the section contains a few restrictions such as (i) the assets purchased from subscription amount could not be sold for five years (except in case of computer or computer software which may be sold after three years) (ii) eligible assessee should have more than 25% share capital or more than 25% voting rights. The benefit of the section is available if the residential property is transferred before 1 April 2021. [Section 54GB]
12. In case of a company which is not a company in which the public are substantially interested, issuing shares at a consideration that exceeds the face value, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head "Income from other sources". However, exemption is available to venture capital undertakings receiving funds from a Category I and Category II AIF. Further, certain notifications have been issued by the Central Government providing exemptions to certain companies on fulfilment of certain conditions. In case of failure to comply with the conditions specified in the notification, the consideration received for issue of shares which exceeds the fair market of such shares shall be deemed to be the income of the company chargeable to income-tax for the previous year in which such failure has taken place. [Section 56(2)(viib)]
13. Assessee who is subject to tax audit under section 44AB of the Income-tax Act is eligible for deduction at the rate of 30% of additional employee cost incurred in the previous year for three years starting from the year in which employment is provided. The deduction will not be allowed, if:
   (i) Business is formed by splitting up, or the reconstruction of a business already in existence. Revival of business discontinued on account of flood, typhoon, hurricane, cyclone, earthquake or otherwise convulsion of nature, riot or civil disturbance, accidental fire or explosion, action by an enemy or action taken in combating an enemy is permissible subject to fulfilment of certain conditions.
   (ii) Business is acquired by the assessee by way of transfer from any other person or a result of business reorganisation.
   (iii) Failure to submit Accountant's report as may be prescribed.

   The emoluments paid or payable in the first year of a new business is regarded as additional employee cost. The additional employee cost shall not include amount paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be

prescribed. Emoluments means any sum paid or payable to employee in lieu of his employment but excludes employer's contribution to provident or pension fund and lump sum payable at the time of termination of service or superannuation or voluntary retirement such as gratuity, severance pay, leave encashment, voluntary retirement benefits, commutation of pension and like. [Section 80JJAA].

Interest under section 234C

12. The shortfall for the purpose of computing interest under section 234C is ignored to the extent such shortfall is on account of under-estimate or failure to estimate income under the head "Profits or Gains of Business or Profession" in cases where the income accrues or arises under the said head of income for the first time. [Section 234C]

Measures to discourage cash transactions/ promote digital payments

13. The threshold of cash payment to a person has been reduced to ₹ 10,000 in a single day. The cash payment in excess of ₹ 10,000 to a person in a single day will not be allowed as deduction in computing income under the head "Profits and Gains of Business or Profession" [Section 40A(3)].

14. The expenditure incurred in a particular year and paid in any subsequent year in cash in excess of ₹ 10,000 to a person in a single day shall be deemed as profits and gains of business or profession in the year of payment [Section 40A(3A)].

15. The expenditure incurred for acquisition of any asset or part thereof in respect of which a payment or aggregate payments made to a person in a single day in cash in excess of ₹ 10,000 shall be ignored for the purpose of determining actual cost of asset [Section 43(1)].

16. The presumptive tax rate as applicable to individual, Hindu undivided family or partnership engaged in a business other than plying, hiring or leasing goods carriages and having total turnover or gross receipts not exceeding ₹ 2 crore is subject to tax at the rate of 8% of the total turnover or gross receipts. The tax rate is reduced to 6% in respect of the amount of total turnover or gross receipts received by an account payee cheque or an account payee draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return of income [Section 44AD].

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Taxability of Income from Patents

Section 115BBF in the Income-tax Act, 1961 to provide a concessional tax regime for patent income, in order to encourage indigenous R&D and to make India a global R&D hub.

Certain key features are as follows:

- Royalty income of a patentee who is resident in India is to be taxed at a reduced corporate tax rate of 10% (plus applicable surcharge and cess) on gross basis
- The patentee means the person who is the true and first inventor, whose name is entered in the patent register as the patentee
- No deduction for any expenditure or allowance in respect of such royalty income is to be allowed
- The patent to be developed and registered in India
- At least 75% of the expenditure should be incurred in India by patentee resident of India.
- The regime is optional for eligible taxpayer who has to opt for the regime by furnishing a declaration in Form No. 3CFA on or before the due date of furnishing return of income under section 139(1) of the relevant previous year. If an eligible taxpayer opts for concessional tax regime in any tax year but opts out of the regime in any of five tax years succeeding such year, it shall not be eligible to claim benefit of the concessional regime for a period of five consecutive tax years succeeding the year of opting out
- The term 'royalty' has been defined to mean consideration (including lump sum consideration) for any of the following:
  - transfer of rights (including granting of license) in respect of the patent
  - imparting any information concerning the working of, or use of the patent
  - use of the patent
  - rendering of any services in connection with the above activities

  Following are excluded from the definition of royalty:
  - any income that would be chargeable under the head capital gains
  - Sale of product manufactured using a patented process or patented article for commercial use
- Definitions of terms like 'developed', 'invention', 'patent', 'patented article', 'patented process', 'true and first inventor' have been drawn from the Patents Act, 1970
- For computation of MAT, the royalty income and corresponding expenditure incurred by the taxpayer are to be ignored.

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Advanced Pricing Agreement (APA) & Mutual Agreement Procedures (MAP)

I. APA

INTRODUCTION

An Advance Pricing Agreement ('APA') is an agreement between a taxpayer and tax authority, determining the transfer pricing methodology for pricing the taxpayer's international transactions for future years. The methodology is to be applied for a certain period of time based on the fulfilment of certain terms and conditions (called critical assumptions). It is a voluntary process initiated by the taxpayer.

APA provisions were introduced in the Income-tax Act, 1961 ('Act') w.e.f. 1st July, 2012. The rules in respect of the APA scheme have been notified by the Central Board of Direct Taxes ('CBDT') by way of insertion of Rule 10F to Rule 10T and

Rule 44GA in the Income-tax Rules, 1962 ('Rules').

Since its introduction, the APA scheme has been progressing steadily showcasing the Government's intention of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner.

PROVISIONS – SECTIONS 92CC & 92CD

Section 92CC of the Act provides for Advance Pricing Agreement. It empowers the CBDT, with the approval of the Central Government, to enter into an APA with any person for determining the Arm's Length Price ('ALP') or specifying the manner in which ALP is to be determined in relation to an international transaction(s) which is to be entered into by the person.

The agreement entered into is valid for a period, not exceeding 5 consecutive future years, as may be specified in the agreement. With amendment to the provisions of the Act w.e.f. 1st October, 2014, the agreement entered into shall also be valid for a period, not exceeding 4 rollback years.

Once the agreement is entered into, the ALP of the international transaction(s), which is subject matter of the APA, would be determined in accordance with such an APA. The agreement entered into shall be binding on taxpayer and income-tax authorities, unless there is change in law or facts having bearing on the agreement so entered.

CBDT with the prior approval of the Central Government can declare an agreement to be void ab initio if it finds that the agreement has been obtained by the taxpayer by fraud or misrepresentation of facts. Once the agreement has been declared as void ab initio, all the provisions of the Act shall apply to the taxpayer as if the agreement has never been entered into.

Section 92CD of the Act provides for Effect to Advance Pricing Agreement. It states that where taxpayer has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 of Income Tax Act, 1961 ('the Act'), such person shall furnish within a period of 3 months from the end of the month in which the said agreement was entered into, a modified return in accordance with the agreement. In case of assessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return, Assessing Officer shall proceed to assess the total income of the relevant assessment year in accordance with the agreement.

TYPES OF APA ('RULE 10F')

An APA can be unilateral, bilateral, or multilateral.

- **Unilateral APA:** an APA that involves only the taxpayer and the tax authority of the country where the taxpayer is located.
- **Bilateral APA (BAPA)**: an APA that involves the taxpayer, associated enterprise (AE) of the taxpayer in the foreign country, tax authority of the country where the taxpayer is located, and the foreign tax authority.
- **Multilateral APA (MAPA)**: an APA that involves the taxpayer, two or more AEs of the taxpayer in different foreign countries, tax authority of the country where the taxpayer is located, and the tax authorities of AEs.

ELIGIBLE TAXPAYER & PERMISSIBLE TRANSACTIONS ('RULE 10G')

Any taxpayer who has undertaken international transaction(s) or is contemplating to undertake international transaction(s) is eligible to file for an APA.

Eligible taxpayer can file an APA for any type of international transaction(s). The taxpayer have the option covering all or some of the international transaction(s) in an APA.

PROCESS IN APA

The APA process can be broken down in following 5 steps:

1. PRE-FILING CONSULTATION ('RULE 10H')

The APA Rules provide for a preliminary consultation before formally lodging an APA application. In such consultation, the taxpayer and the APA team will discuss and clarify the scope of the APA, the transfer pricing issues involved, suitability of international transactions for the agreement and broad terms of the agreement. There is an option of pre-consulting on a no name basis. However, the discussion during the pre-filing meeting is not binding on either the taxpayer or the tax authorities. The pre-filing consultation was mandatory initially wherein specified information had to be filed as part of the pre-filing application (Form No. 3CEC). This process has been made optional now.

2. FORMAL FILING OF APPLICATION ('RULE 10-I' & 'RULE 10MA')

The APA application is to be filed in Form No. 3CED. The application is to be filed with the Director General of Income-tax - International Taxation ('DGIT') in case of unilateral agreement and with the competent authority of India in case of bilateral or multilateral agreement. Every application shall be accompanied by the proof of payment of fees, which is based on amount of international transaction(s) entered into or proposed to be undertaken as per table below;

Amount of international transaction(s) entered/ proposed during the period of agreement.	Fees
Amount not exceeding INR 100 crore	10 lakhs
Amount not exceeding INR 200 crore	15 lakhs
Amount exceeding INR 200 crore	20 lakhs

The Rollback application can be filed in Form No. 3CEDA. The agreement shall contain rollback provisions subject to following;

- the transaction(s) covered under rollback are same as per the main application (i.e. in Form No. 3CED filed);
- the applicant should have furnished its return of income and Form 3CEB for the relevant years of rollback before the due date; and
- the applicant has requested for applying rollback provisions in all the years having the said international transaction(s).

The Rollback provisions shall not be applicable for a rollback year where;

- the determination of arm's length price of the said international transaction has been subject matter of dispute before the ITAT, and ITAT has passed an order disposing such appeal before signing of agreement; and
- the application of provisions has the effect of reducing the total income or increasing the loss declared by applicant in its return of income.

The fees for filing Rollback application is INR 5 lakhs.

3. PRELIMINARY PROCESSING OF APPLICATION & POST-FILING MEETINGS/ NEGOTIATIONS ('RULE 10K' & 'RULE 10L')

Every application filed shall be complete in all aspects and accompanied by requisite documents. In case any defect is noticed or relevant document is not attached, the DGIT or Competent authority shall serve a deficiency letter before the expiry of one month from the date of receipt of application. The applicant shall remove the deficiency or modify the application within fifteen days from the date of service of deficiency notice or within such further period for which an application is made in this behalf where the total period does not exceed thirty days. Upon non-removal of defect within the prescribed timeline and after providing an opportunity of being heard, DGIT or Competent authority may pass an order for non-processing the application and fees shall be refunded.

The APA team or the Competent Authority in India/his representative shall process the application in consultation and discussion with the applicant. It shall hold meetings, call for additional document or information, visit the applicant's business premises and make such inquiries as it deems fit in the circumstances of the case. The APA team shall have a detailed understanding of entities involved, transaction(s) covered, the most appropriate method and on mark-up percentage.

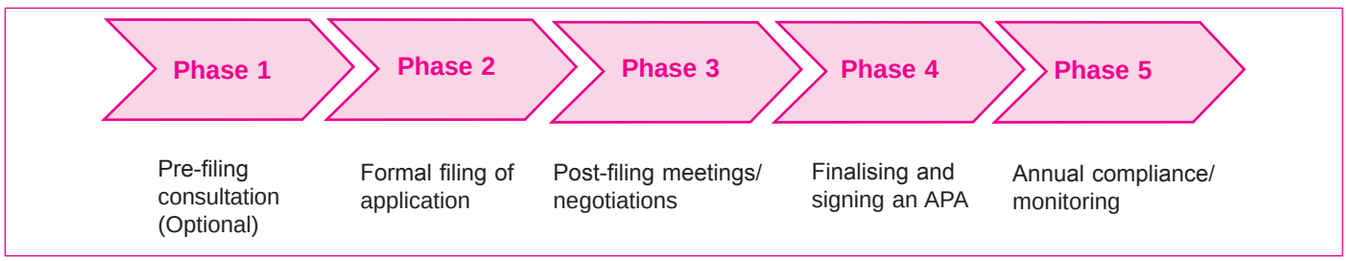
4. FINALISING AND SIGNING AN APA ('RULE 10L')

The APA team, based on the discussions with the taxpayer, finalises the pricing approach including mark-up percentage on the transaction(s). The team shall prepare a draft report which shall be forwarded to the DGIT (for unilateral) or to the competent authority in India (for bilateral & multilateral). The agreement shall be entered into by CBDT with applicant after its approval by Central Government. Once an agreement has been entered into, the DGIT or the competent authority in India, as the case may be, shall send a copy to the Commissioner of Income-tax having jurisdiction over the taxpayer.

5. ANNUAL COMPLIANCE/ MONITORING ('RULE 10O' & 'RULE 10P')

The taxpayer is required to comply with the annual compliances (filing of Form No. 3CEB) during the interim period, until the APA is concluded.

Post signing of agreement, the taxpayer will be required to prepare an annual compliance report ('ACR') in Form No. 3CEF, for each year covered under the APA, containing sufficient information to detail the actual results for the year, and to demonstrate compliance with the terms of the APA. The ACR shall be furnished in quadruplicate within thirty days of the due date of filing the income tax return for that year, or within ninety days of entering into an agreement, whichever is later. Further, the taxpayer is required to declare whether there are any changes in the business model, functional and risk profile, critical assumptions and organisational structure. Following the filing of the ACR, the jurisdictional TPO would carry out a compliance audit for each of the years under the APA term. The TPO would provide a report to the DGIT or the Competent Authority in India.



WITHDRAWAL OF APA ('RULE 10J')

An applicant may withdraw the APA application at any time before the finalisation of the terms of the agreement. The application needs to be filed in Form No. 3CEE. The application fees paid at the time of filing of APA shall not be refunded on withdrawal of the application.

TERMS OF THE AGREEMENT ('RULE 10M')

An APA agreement, among other things, would include:

- International transaction(s) covered;
- Agreed transfer pricing policy;
- Determination of ALP including the transfer pricing methodology to be applied;
- Definition of any relevant term; and
- Critical assumptions and the conditions (assumptions about the nature and functions and risks of the enterprises involved in the transaction(s), about economic conditions, assumptions about the enterprises that operate in each jurisdiction and the form in which they will do so etc.).

The agreement shall not be binding on CBDT or taxpayer if there is a change in any critical assumption or failure to meet conditions subject to which agreement has been entered into.

AMENDMENTS TO APPLICATION ('RULE 10N')

An applicant may request for an amendment to an application at any stage before the finalization of terms of the agreement.

The DGIT or competent authority may allow the amendment if such an amendment does not have any effect of altering the nature of the application originally filed. The amendment shall be given effect only if it is accompanied by additional fees, if any as provided in Rule 10I.

REVISION OF AN AGREEMENT ('RULE 10Q')

An agreement subsequent to it having been entered into, may be revised by the CBDT where;

- there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;
- there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or
- there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

The agreement may be revised suo motu by the CBDT or on request of the taxpayer or DGIT/competent authority. The agreement shall not be revised unless an opportunity of being heard has been provided to the taxpayer and the taxpayer is in agreement with the proposed revision.

CANCELLATION OF AN AGREEMENT ('RULE 10R')

An agreement shall be cancelled by the Board for any of the following reasons:

- the compliance audit referred to in rule 10P has resulted in the finding of failure on the part of the taxpayer to comply with the terms of the agreement;
- the taxpayer has failed to file the annual compliance report in time;
- the annual compliance report furnished by the taxpayer contains material errors; or
- the taxpayer is not in agreement with the proposed revision of agreement.

The CBDT shall give an opportunity of being heard to the taxpayer, before proceeding to cancel an application. The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation along with the effective date of cancellation. The order of cancellation shall be intimated to the Assessing Officer and the Transfer Pricing Officer, having jurisdiction over the taxpayer.

PROCEDURE FOR GIVING EFFECT TO ROLLBACK PROVISION OF AN AGREEMENT ('RULE 10RA')

The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.

If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

Similarly, if any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

RENEWING AN AGREEMENT ('RULE 10S')

The applicant can make a request for renewal of an agreement as a new application for agreement, using the same procedure as outlined in these rules except pre-filing consultation as referred to in Rule 10H.

BENEFITS OF APA

An APA provides the following benefits;

- Certainty with respect to tax outcome of the taxpayer's international transaction(s), by agreeing in advance the arm's length pricing or pricing methodologies to be applied to the taxpayer's international transaction(s) covered by the APA;
- Removal of an audit threat (minimize rigours of audit), and deliverance of a particular tax outcome based on the terms of the agreement;
- Substantial reduction of compliance costs over the term of the APA;
- For tax authorities, an APA reduces cost of administration and also frees scarce resources; and
- Provides flexibility in developing practical approaches for complex transfer pricing issues.

Consequently, APAs provide a win-win situation for all the stakeholders involved.

RECENT UPDATES IN INDIA'S APA PROGRAMME

- India completed its 7th year of the APA program on March 31, 2019;
- A total of 271 APAs – 240 unilateral and 31 bilateral, have been concluded. 52 APAs – 41 unilateral and 11 bilateral were concluded during FY 2018-19;
- Budget 2019 has proposed to rationalization of Secondary adjustment provisions clarifying that the provisions apply to those APA that are signed on or after 1 April 2017. However, if any tax refund arises on giving effect to the proposed retrospective amendment, such refund will not be granted. Also it is proposed from 1 September 2019 the taxpayers have been given an option to pay a one-time additional tax of 18 percent on the excess money or part thereof, in case cash is not repatriated in India within the prescribed time limit for primary adjustment arising out of outcome of APA.
- Budget 2019 has also proposed from 1 September 2019 that in case of years covered under the APA, for which the assessment or reassessment has been completed by the due date of modified return, the powers of the assessing officer shall be restricted to modify the assessment order only to give effect to the terms of the APA.

II. MAP

INTRODUCTION

Mutual Agreement Procedures ('MAP') is an alternative mechanism available to taxpayers for resolving disputes giving rise to double taxation whether juridical or economic in nature. The agreement for avoidance of double taxation between the countries would give authorisation for assistance of Competent Authorities ('CA') in the respective jurisdiction under MAP. In the context of OECD Model Convention for the Avoidance of Double Taxation, Article 25 provides for assistance of Competent Authorities under MAP.

PROVISIONS – RULES 44G & 44H

Rules 44G and 44H of the Rules provide procedural guidance in respect of initiation of MAP.

Rule 44G

The taxpayer resident in India can make an application to the CA in India in Form No. 34F wherein the taxpayer is required to give relevant details in relation to the case along with documentary support.

Rule 44H

The Assessing Officer shall, within 90 days of receipt of the resolution by the Chief Commissioner or DGIT, give effect to the resolution provided:

- The taxpayer gives his acceptance to the resolution arrived at under MAP; and
- Withdraws the appeal, if any pending on the issue which was the subject matter for adjudication under mutual agreement procedure.

ELIGIBLE TAXPAYER & PERMISSIBLE TRANSACTION(S)

The taxpayer of the country having to bear the incidence of double taxation can apply for assistance of Competent Authorities under MAP to resolve the issue of such double taxation.

Generally, the issues giving rise to double taxation are submitted by the taxpayers for resolution under MAP. Some of the instances giving rise to double taxation are:

- Adjustment arising from Transfer Pricing assessment;
- Issues relating to existence of Permanent Establishment;
- Characterisation of income;
- Attribution of profits to Permanent Establishment.

TIME LIMIT FOR FILING MAP APPLICATION AND DISPOSAL

The time limitation for filing an application for MAP is governed by the respective treaty for avoidance of double taxation entered into between the countries. Generally, the time limit ranges between 2-3 years from the date of the notice giving rise to double taxation. The date of order of the original Assessment would be reckoned for computation of time limitation for filing an application for assistance of Competent Authorities under MAP.

Certain Conventions for Avoidance of Double Taxation between the countries provide for three years from the date of receipt of first notice giving rise to double taxation. (E.g., Convention between India-Australia, India-China, India-Germany etc.) In cases where the Convention for Avoidance of Double Taxation does not provide for time limit the domestic tax provision on time limit has to be looked into for filing an application for assistance of Competent Authorities under MAP. E.g., the Convention for Avoidance of Double Taxation between India and UK does not provide time limit for filing for assistance under MAP. However, the UK domestic regulation provides a time limit of six years from the end of the relevant financial year to which adjustment relates.

Under the Indian Tax Conventions (entered into with other countries) there is no timeline for disposal of application for assistance of Competent Authorities under MAP. Generally, the resolution under MAP can be expected within a period of two years from the filing of an application.

STEPS INVOLVED IN MAP

The MAP process involves the following steps;

1. **PREPARATION AND FILING OF MAP : APPLICATION** – Taxpayer makes a request to the home country's CA and filing of bank guarantees with the tax authorities, if any.
2. **POST FILING MEETING & DISCUSSIONS WITH CA** –Taxpayer may be asked to provide further data in case of inadequate information available on record to reach a conclusion. In certain cases, where found necessary, the taxpayer may also be called upon to represent the matter before the Competent Authorities.
3. **NEGOTIATIONS AND RESOLUTION** – Competent Authorities initiate negotiation and attempt to reach an amicable solution. The proposed agreement will be communicated to the taxpayer.

BENEFITS OF MAP

A MAP provides the following benefits;

- The main benefit of pursuing MAP is elimination of double taxation.
- In cases involving certain jurisdictions (US, UK and Denmark), the Indian authorities have entered into an agreement under which the taxpayer can choose to provide a bank guarantee for the outstanding tax demand. In such cases, the tax demand would not be pursued by the tax authorities until disposal of the MAP application
- The MAP resolution, once accepted, eliminates the need for protracted litigation.
- Taxpayers have the option of either accepting or rejecting the resolution arrived at under MAP. However, it will be binding on the Revenue for that international transaction(s) for the particular Assessment Year.
- Domestic appeal option is still open in case of no acceptable MAP resolution.

RECENT UPDATES IN INDIA'S MAP PROGRAMME

- CBDT in the last two years has invigorated the MAP proceedings with different countries, such as with the US, the UK, Japan and Canada.
- India and the US resolved not only cases of framework, but also non-framework TP cases and treaty interpretation cases.

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Equalisation Levy

A new Chapter titled "Equalisation Levy" was inserted in the Finance Act, 2016, which came into effect from 1st June, 2016. Key points are as follows:

- Levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India from:
  - (a) a resident in India who carries out business or profession or
  - (b) a non-resident have permanent establishment in India
- Key definitions
  - o The term 'specified service' is defined to mean online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf
  - o The term 'online' means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network
  - o The term 'permanent establishment' includes a fixed place of business through which the business of the enterprise is wholly or partly carried on
- Exclusions
  - o If the non-resident service provider has a permanent establishment in India and income from such specified services are effectively connected to this permanent establishment
  - o If such consideration is not for the purpose of carrying out business or profession
  - o Aggregate amount of consideration does not exceed one lakh rupees in any previous year
- In order to avoid double taxation, there is exemption under section 10 of Income-tax Act, 1961 for any income arising from providing specified services on which equalisation levy is chargeable
- Compliance
  - o In order to ensure compliance, the expenses incurred by the assessee towards specified services chargeable to such levy shall not be allowed as deduction in case of failure of the asseseee to deduct and deposit the equalisation levy to the credit of Central Government
  - o Such levy to be deducted from the payments to non-resident and to be deposited to the credit of the Central Government by 7th day of the month following the month in which the equalisation levy is collected
  - o Payment of simple interest @ 1% for every month or part of a month where the equalisation levy collected is not credited to the account of the Central Government within the prescribed period
  - o The Central Board of Direct Taxes has notified the Equalisation Levy Rules, 2016, which lay down the procedural framework for implementation, including prescribing forms for filing of annual return and appeals.

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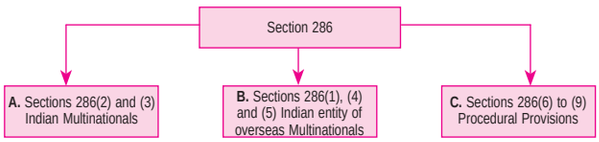
Country-by-Country Reporting

INTRODUCTION

Finance Bill, 2016 introduced additional compliance requirement for Indian Multinationals with the insertion of Section 286. These compliance requirements are introduced based on the three-tiered documentation i.e., Country-by-Country Report (CbCR), Master File and Local File, as introduced in Action Plan 13 of BEPS (Base Erosion and Profit Shifting) initiative of OECD (Organisation for Economic Co-operation and Development). This new documentation regime has been applied for the first time for FY 2016-17.

These amendments require Indian Multinationals crossing a consolidated turnover based threshold of INR 5,500 crore as per the consolidated financial statement for accounting year preceding the previous financial year to file CbCR. The CbCR filed by the companies around the world will be automatically exchanged with the Government for the purpose of tax risk assessment.

Reporting requirement as introduced under Section 286



A. Indian Multinationals

These requirements apply to Indian Multinationals operating as an international group and crossing the threshold limit. International group means any group that includes (i) two or more enterprises which are resident of different countries; or (ii) an enterprise, being a resident of one country, which carries on any business through a permanent establishment in other countries.

Requires the parent company (the entity which prepares consolidated financial statement for all the group entities) of an Indian Multinational to furnish the following details on a Country-by-Country basis for all the entities considered in the consolidated financial statements:

Financial and Employee details

- Revenue and Profit / Loss Before Tax
- Tax (paid and accrued)
- Stated Capital and Accumulated earnings
- Number of employees and Tangible assets (not being cash or cash equivalents)

The above details are to be reported in aggregation for the presence in each country in which the group operates. E.g. there are 3 entities in Netherlands, the abovementioned details for all the three entities are to be clubbed and reported for Netherlands country.

Further following additional information also needs to be provided for each of the entities:

- The country in which such entity operates
- The country of which such entity is tax resident
- The nature and details of the main business activity (such as Manufacturing, Distribution, Providing services etc.)

The above details are to be furnished for every accounting year to the Director General of Income Tax (Risk Assessment) within period of 12 months from end of the said accounting year (which would be 31st March[1] following the relevant fiscal year).

Section 286 of the Act provides that when the parent entity or alternate reporting entity are resident in India, they are required to file the CbCR in India for the accounting year, which was defined to mean the previous year. The CbCR, which is also part of the BEPS Action Plan 13 requirement, includes country-wide details of revenue, profit, employees, etc., for an International Group.

In respect of alternate reporting entity resident in India, a concern was that since the parent entity is not resident in India, the CbCR should not be required to be filed for the previous year. Instead, it should be filed for the accounting year of the parent. Thus, amendment has been made by clarifying that for alternate reporting entity, the CbCR shall be required to be filed for the accounting year of the parent entity. The above amendment takes effect retrospectively from AY 2017-18 and onwards.

Further to the above, with amendment in Section 92D, now the taxpayers are also required to maintain and furnish details of the international group in Masterfile. Additionally, the Tax Officer and Commissioner (Appeals) shall not have the power to request for the Master File, which would only have to be filed with the prescribed authority. The above amendment is effective from AY 2020-21 and onwards.

B. Indian entity of overseas Multinationals

Notify the Indian Government:

The Indian entity of overseas Multinationals also referred to as constituent entity (CE) will have to notify following:

i) whether it is the entity which is appointed to file CbCR of the international group on behalf of the parent entity; or

ii) the details of country of the parent entity/alternate reporting entity

The CbCR notification is to be filed at least two months prior to the due date for furnishing of report as specified above in case of Indian Multinationals (i.e., 10 months from the end of the accounting year - January 31 of each year following the accounting year).

1. Assuming that the Indian Multinational will be following financial year ending 31st March.

Exceptional circumstances to the above:

In the following circumstances, even the Indian entities of overseas Multinationals will have to furnish the CbCR to the Director General of Income-tax (Risk Assessment):

- where the parent is not obliged to file the CbCR in its jurisdiction
- the parent entity of the International Group is resident of a country
  - with which the mechanism of exchange of information fails; or
  - India does not have agreement providing for exchange of the report
- if there is more than one Indian entity, only one entity will have to furnish the CbCR on behalf of all the Indian entities, if the overseas Multinational has identified such entity to do so and has informed the Director General of Income-tax (Risk Assessment) in writing.

C. Other Procedural provisions

Forms to be furnished:

Sr. No.	*Filing entity*	*Forms*
1	CE resident in India, of an international group, whose parent is a non-resident	Form No. 3CEAC
2	Parent entity, or alternate reporting entity, which is: – resident in India; and – part of an international group, the consolidated group revenue of which exceeds INR 5,500 crore	Form No. 3CEAD
3	CE resident in India, of an international group, whose parent is non-resident [and if conditions as explained in 'Exceptional circumstances to the above' in point B above are satisfied]	Form No 3CEAD
4	The designated entity, where there are multiple CEs resident in India of an international group, whose parent is non-resident [and if conditions as explained in 'Exceptional circumstances to the above' in point B above are satisfied]	Form No 3CEAE

Inquiry by Director General of Income-tax (Risk Assessment)

The Director General of Income-tax (Risk Assessment) may require the entity to produce information/ documentation, by issue of notice in writing, as may be required to determine the accuracy of the details furnished by any reporting entity.

The time provided to produce such details would be 30 days of the date of receipt of such notice. This period of 30 days can also be extended by the Director General of Income-tax (Risk Assessment) by period not more than 30 days based on application made by such entity.

Penalty provisions – Section 271AA and Section 271GB

These penalty provisions are inserted for failure of filing CbCR [as referred to in Section 286(2)] and details regarding international group [as referred to in Section 92D(4)]

The Director General of Income-tax (Risk Assessment) (under this section) may direct the entity to pay penalty as follows:

Sr. No.	*Particulars*	*Penalty Amount (₹)*
1	Failure to furnish details regarding international group [as referred to in Section 92D]	5,00,000
2	Failure to furnish CbCR within due date prescribed u/s 286(2)	5,000 per day if the period of failure does not exceed 1 monh, or 15,000 per day if the failure continues beyond 1 month
3	Failure to furnish information and documents within the period allowed u/s 286(6) (i.e. 10 days)	5,000 per day
4	If the failure continues after an order has been served on the entity	50,000 per day
3	Providing inaccurate information in CbCR	5,00,000

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Profits and Gains from Business or Profession

BUSINESS

As per section 2(13) of the Act, "Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

PROFESSION

As per section 2(36) of the Act, "Profession" includes vocation.

PROFIT AND GAINS OF BUSINESS OR PROFESSION:-

Sections 28 to 44DB deals with computation of income under the head "Profits and gains of business or profession.

The sections may be classified into:

(1) Chargeability – Section 28

(2) Computation – Section 29

(3) Specific deductions – Sections 30 to 36, section 38

(4) General deduction not specifically covered – Section 37

(5) Amount not deductible – Section 40

(6) Expenses or payment not deductible in certain circumstances - Section 40A

(7) Deductions only on actual payment – Section 43B

(8) Special cases of profits chargeable to tax – Section 41

(9) Special provisions for computing income/cost of acquisition/deduction – Sections 42, 43A, 43AA, 43C, 43CA, 43CB, 43D, 44A, 44C, 44DB

(10) Special provision for computing income by way of royalty or fees for technical services connected with permanent establishment in case of non-resident – Section 44DA

(11) Insurance business – Section 44

(12) Presumptive taxation – Sections 44AD, 44ADA, 44AE, 44B, 44BB, 44BBA, 44BBB

(13) Definition – Section 43

(14) Maintenance of account – Section 44AA

(15) Audit of accounts – Section 44AB

BASIS OF CHARGE: [SECTION 28]

Section 28 of the Act provides that the following income shall be chargeable under the head "Profit and gains of business of profession":

(1) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;

(2) Compensation or other payment due or received for: (i) modification in, or termination of, management of affairs of Indian company/office for managing the affairs in India of other company/agency, (ii) nationalization of business or property; and (iii) modification in, or termination of, terms and conditions of any contract relating to business

(3) income derived by a trade, professional or similar association from specific services performed for its members ;

(4) profits on sale of Import Entitlement licence granted to exporter;

(5) cash assistance received or receivable by exporter;

(6) any duty of customs or excise re-paid or re-payable as drawback to exporter;

(7) any profit on the transfer of the Duty Entitlement Pass Book Scheme;

(8) any profit on the transfer of the Duty Free Replenishment Certificate;

(9) the value of any benefit or perquisite arising from business or the exercise of a profession;

(10) any interest, salary, bonus, commission or remuneration due to, or received by, a partner of a firm from such firm (Subject to proviso);

(11) any sum, whether received or receivable under an agreement for— (i) not carrying out any activity in relation to any business or profession; or (ii) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services (Subject to proviso);

(12) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy;

(13) fair market value of the inventory (which has been converted into capital asset) as on the date of conversion. The method for determining the fair market value is determined in the manner prescribed in rule 11 UAB.

(14) any sum, whether received or receivable, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.

It is explained that where speculative transactions which constitute a business are carried out by assessee, the business shall be deemed to be distinct and separate from any other business.

COMPUTATION OF INCOME FROM PROFIT AND GAIN OF BUSINESS OR PROFESSION [SECTION 29]

Income shall be computed in accordance with the provisions contained in section 30 to 43D

SECTIONS 30 to 44DB

Purpose	*Section*	*Particulars*
Specific deduction	30	Rent, rates, taxes, repairs and insurance for buildings
	31	Repairs and insurance of machinery, plant and furniture

Purpose	Section	Particulars
	32	Depreciation
	32AD	Investment in new plant and machinery in notified backward areas in certain states
	33AB	Deposit in tea development, coffee development and rubber development accounts
	33ABA	Deposit in site restoration fund
	35	Expenditure on scientific research
	35ABA	Expenditure for obtaining right to use spectrum for telecommunication services
	35ABB	Expenditure on obtaining licence to operate telecommunication services
	35AD	Deduction in respect of expenditure on specified business
	35CCA	Expenditure by way of payment to associations and institutions for carrying out rural development programmes
	35CCC	Expenditure on agricultural extension project
	35CCD	Expenditure on skill development project
	35D	Amortization of certain preliminary expenses
	35DD	Amortization of expenditure in case of amalgamation or demerger
	35DDA	Amortization of expenditure incurred under voluntary retirement scheme
	35E	Deduction for expenditure on certain minerals
	36	Other deductions
	38	Deductions in case of building, etc. partly used for business
General Deduction	37	General – Not covered in specific deductions, not being in the nature of capital expenditure or personal expenses, laid out or expended wholly and exclusively for the purpose of business or profession
Amount not deductible	40	Amounts expressly disallowed under the Act
Expenses not deductible in certain circumstances	40A	Expenses or payments not deductible in certain circumstances
Deduction on actual payment	43B	Deduction of certain expenditure on actual payment basis
Special cases of profits chargeable to tax	41	Profits chargeable to tax (allowance or deduction claimed in relation to which benefit derived subsequently by way of remission or cessation or recovery)
Special provisions for computing income/ cost of acquisition/ deduction	42	Special provision for deductions in case of business of prospecting etc. for mineral oil
	43A	Special provisions consequential to changes in rate of exchange of currency
	43AA	Taxation of foreign exchange fluctuation
	43C	Special provision for computation of cost of acquisition of certain assets
	43CA	Special provision for full value of consideration for transfer of assets other than capital assets in certain cases
	43D	Special provision for income of Public financial institutions, public companies, etc.
	44A	Special provision for deduction in the case of trade, professional or similar association
	44C	Deduction of head office expenditure in the case of non-residents

Purpose	Section	Particulars
	43CB	Computation of income from construction and service contracts
	44DB	Special provision for computing deductions in the case of business reorganization of co-operative banks
Special provision for computing income	44DA	Special provision for computing income by way of royalty or fees for technical services connected with permanent establishment in case of non-resident
Specific business	44	Insurance business
Presumptive taxation	44AD	Special provision for computing profits and gains of business on presumptive basis
	44ADA	Special provision for computing profits and gains of profession on presumptive basis
	44AE	Special provision for computing profits and gains of business o plying, hiring or leasing of goods carriages
	44B	Special provision for computing profits and gains of shipping business in the case of non-residents
	44BB	Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils
	44BBA	Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents
	44BBB	Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects
Definition	43	Definition of certain terms relevant to income from profits and gains of business or profession
ccMaintenance of accounts	44AA	Maintenance of accounts by certain persons carrying on profession or business
Audit of accounts	44AB	Audit of accounts of certain persons carrying on profession or business

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Taxability of Gifts — Section 56

SECTION 56* – TAXABILITY OF GIFTS

Particulars	*Section 56(2)(viib)*	*Section 56(2)(x)*
Recipient	Closely held company (i.e. a company not being a company in which public are substantially interested)	Any Person
Giver	Any Resident Person	Any Person
Period covered	With effect from 1 April 2013	With effect from 1st April, 2017
Amount to be taxed	Any consideration received for issue of shares that exceeds the face value of such shares - ***aggregate consideration received as exceeds the FMV of the shares***	a. Sum of money received without consideration, the aggregate value of which exceeds ₹ 50,000 – ***whole of the aggregate value*** b. Immovable property • received without consideration, the stamp duty value of which exceeds ₹ 50,000 – ***stamp duty value*** • received for a consideration which is less than the stamp duty value by an amount exceeding ₹ 50,000 – ***stamp duty value as exceeds such consideration***. • received for a consideration, where stamp duty value exceeds such consideration by more than i) ₹ 50,000; and ii) an amount equal to 5% of the consideration ***– stamp duty value as exceeds such consideration. (from AY 2019-20 onwards)*** Stamp duty value on date of agreement for transfer of immovable property to be considered, if date of agreement and the date of registration are not the same. This is applicable only if consideration or part thereof, is paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account (or through such other electronic mode as may be prescribed)* on or before the date of agreement for transfer of such immovable property. Provided where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in section 50C(2) of Act, the AO may refer to a Valuation Officer and the provisions of section 50C and section 155(15) shall apply in relation to the stamp duty value of such property.

* Effective from 1 April 2020

Particulars	Section 56(2)(viib)	Section 56(2)(x)
		c. Any property, other than immovable property • Received without consideration, the aggregate fair market value (FMV) of which exceeds ₹ 50,000 – ***the whole of aggregate FMV*** • Received for a consideration less than the aggregate FMV by an amount exceeding ₹ 50,000 – aggregate FMV as exceeds such consideration
Does not apply	Where the consideration for issue of shares is received (i) by a venture capital undertaking from a venture capital company or a venture capital fund or specified fund; or (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf In case of failure to comply with the conditions specified in CBDT Notification, the consideration received for issue of shares which exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure takes place. This shall also be deemed to be under reporting by the company in consequence of the misreporting under section 270A(8) and (9) for the said previous year)*	Any sum of money or any property received I. from any relative I. from any relative II. on the occasion of marriage III. under a will or by inheritance IV. In contemplation of death of payer or donor V. From local authority as defined in section 10(20) VI. from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10 VII. From or by any trust or institution registered under section 12A or section 12AA VIII. by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; IX. By way of transaction not regarded as transfer under section 47(i) or 47(vi) or 47(via) or 47(viaa) or 47(vib) or 47(vic) or 47(vica) 47(vicb) or 47(vid) or 47(vii) (inserted vide Finance Act 2016 w.e.f. 1-4-2017); 47(iv) or 47(v) (inserted vide Finance Act, 2018 w.e.f. 1-4-2018) X. from an individual by a trust created or established solely for the benefit of relative of the individual XI. from such class of persons and subject to such conditions, as may be prescribed*
Relative means		• In case of an Individual — (i) spouse of the individual; (ii) brother or sister of the individual; (iii) brother or sister of the spouse of the individual; (iv) brother or sister of either of the parents of the individual; (v) any lineal ascendant or descendant of the individual; (vi) any lineal ascendant or descendant of the spouse of the individual; (vii) spouse of the person referred to in clauses (ii) to (vi);

* Effective from 1 April 2020

Particulars	Section 56(2)(viib)	Section 56(2)(x)
Property means		• In case of HUF, from any member thereof. (i) Immovable property being land or building or both (ii) shares and securities; (iii) jewellery; (iv) archaeological collections; (v) drawings; (vi) paintings; (vii) sculptures; (viii) any work of art; (ix) bullion.
Fair Market Value means	FMV of shares shall be the higher of: • the value determined in accordance with the prescribed method (Rules 11U and 11UA); or • the value as may be substantiated by the company to the satisfaction of the AO, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.	FMV of a property, other than an immovable property, means the value determined in accordance with the prescribed method (Rules 11U and 11UA). The CBDT vide Notification No. o. 61 /2017/F. No. 149/136/2014-TPL] dated 12-07-2017 has notified final rules for determining the FMV of unquoted equity shares for the purposes of section 56(2)(x) and section 50C of the Act.
Specified Fund means*	Specified fund means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012	
Trust means*	"Trust" means a trust established under the Indian Trusts Act, 1882 or under any other law for the time being in force	

* Effective from 1 April 2020

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Commodities Transaction Tax

- **COMMODITIES TRANSACTION TAX**

  Commodities Transaction Tax (CTT) is a tax levied in India, on transactions done on the domestic commodity derivatives exchanges. Globally, commodity derivatives are considered as financial contracts. Hence CTT can also be considered as a type of financial transaction tax.

  In the Union Budget 2013-14 CTT was reintroduced, however, only for non-agricultural commodity futures at the rate equivalent to the rate of equity futures. The then Finance Minister, in his budget speech said,

  "There is no distinction between derivative trading in the securities market and derivative trading in the commodities market, only the underlying asset is different. It is time to introduce Commodities Transaction Tax (CTT) in a limited way. Hence, I propose to levy CTT on non-agricultural commodities futures contracts at the same rate as on equity futures that is ***at 0.01% of the price of the trade".***

  Vide Finance Act, 2016 it was stipulated that transactions carried out in a recognized commodity exchange located in an International Financial Center, where the payments are carried out in terms of foreign currency, would be exempt from the payment of CTT.

- **IS THIS LEVIED ON ALL COMMODITIES?**

  As per Notification No. 13/2015, F. No. 142/09/2013-TPL dated February 10, 2015 a revised list of 61 agricultural commodities (exempt under clause (7) of section 116) was notified including certain commodities where trading is currently not taking place.

- **WHAT WILL BE THE TAX TREATMENT OF CTT PAID?**

  The Government has allowed deduction of Commodity Transaction Tax (CTT) paid as it forms part of the business income. Transactions in commodity derivatives have been declared to be made non-speculative; and hence for traders in the commodity derivatives segment, any losses arising from such transactions can be set off against income from any other source under Section 71 of the Income-tax Act.

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Section 14A – Expenditure incurred in relation to income not includible in Total Income

Section 14 of the Act provides that the total income (under Chapter IV) is to be computed under the following five heads:

- Salaries
- Income from house property
- Profits and gains of business or profession
- Capital gains
- Income from other sources

Chapter III of the Act contains provisions for incomes which do not form part of total income.

Section 14A of the Act provides that while computing such total income under Chapter IV, no deduction shall be allowed in relation to income which does not form part of total income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. In many cases, the expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. The expenditure/deduction though of the nature specified in sections 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. Section 14A of the Act widens the theory of apportionment of expenses between exempt income and taxable income.

The assessee is required to compute and add back expenses incurred in relation to income which does not form part of total income. The section empowers the Assessing Officer to compute disallowance in respect of expenses incurred in relation to income which does not form part of total income in accordance with method prescribed under rule 8D. However, the application of rule 8D is not automatic. Rule 8D may be invoked by the Assessing Officer, having regard to the accounts of the assessee:

- is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to such exempt income;
- is not satisfied with the claim of the assessee that no expenditure was incurred in relation to such exempt income

The method prescribed as per rule 8D for disallowance of expenditure incurred in relation to exempt income is applicable only from assessment year 2008-09 onwards. For any prior assessment years, the disallowance has to be computed on a reasonable basis. The disallowance as per method prescribed under rule 8D is to be worked out as under:

	Particulars	*Amount*
(1)	Expenditure directly incurred for earning exempt income (e.g. demat charges, bank charges, etc.)	XXX
(2)	Interest expenditure not directly incurred for earning any particular income or receipt in accordance with the following formula (i.e. A * B / C)	XXX
	Interest expenditure (other than the direct interest attributed under 1) above [A]	
	The average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year [B]	
	the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year [C]	
(3)	0.5% of the average value of investments computed in accordance with (2)[B] above	XXX
Total expenditure incurred for earning exempt income [1 + 2 + 3]		**XXX**

Vide Notification No. 43 dated 2nd June 2016, rule 8D has been amended. The disallowance per revised rule is to be worked out as under

	Particulars	*Amount*
1)	Expenditure directly incurred for earning exempt income (e.g. demat charges, bank charges, etc.)	XXX
2)	1% of the annual average of the monthly averages of the opening and closing balances of the value of investments, income from which does not or shall not form part of the total income	XXX
Total expenditure incurred for earning exempt income [1 + 2]		**XXX**

As per the revised rule:

i) disallowance of interest expenditure incurred for general purpose borrowings under old rule 8D(2)(ii) has been done away with

ii) disallowance under new rule would have to be made by a person at the rate of 1% as against 0.5% required to be made as per old rule, whether he has incurred interest expenditure or not

iii) instead of average of opening and closing balance of investments for the entire year, annual average of monthly averages of the opening and closing balance of investments has to be considered.

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Buy-Back of Shares — Taxation on Distributed Income of Domestic Company

BUY BACK TAX — CHAPTER XII-DA OF THE INCOME-TAX ACT 1961 – SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

Particulars	*Rate of tax, Remittance, Interest & Consequence*
• As per section 115QA, domestic companies (including companies listed on a recognized stock exchange with effect from 5 July 2019) are liable to pay additional income-tax on any income distributed on account of buy-back of shares – whether or not such company is liable to pay income-tax on its total income • The term 'buy-back' has been defined to mean 'purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies'. This will effectively cover buyback of shares undertaken either under section 68 of Companies Act, 2013 or under a scheme of arrangement under section 391 read with section 100 to 104 of Companies Act, 1956 • Distributed income = Consideration paid by the company (-) Amount which was received by the company for issue of such shares* *to be determined in the manner as prescribed under rule 40BB • No deduction shall be allowed to the company or shareholder in respect of distributed income taxed under this section or the tax thereon	• Rate of tax - 20% (plus surcharge @ 12% plus Health and education cess @ 4%) of distributed income ~ effective tax rate of 23.3% • Tax shall be remitted within 14 days from the date of payment of consideration • Tax so paid shall be treated as final. No further credit shall be claimed by the company or by any other person for the taxes paid • As per section 115QB, in case principal officer of the company and the company fail to pay the whole or any part of the tax on distributed income within 14 days, then he or it shall be liable to pay simple interest @ 1% per month (or part thereof) for the period starting from the last date on which such tax was payable till the date on which such tax is actually paid • As per section 115QC, in case principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of the Income-tax Act, 1961 for the collection and recovery of income-tax shall apply

NOTE: RULE 40BB – COMPUTATION MECHANISM FOR DETERMINING AMOUNT RECEIVED ON ISSUE OF SHARES UNDER DIFFERENT SCENARIOS

Sub-Rule	*Manner of issue of shares to be bought back*	*Amount to be deemed as amount received on issue of such shares*
2	Shares issued by way of subscription	Amount actually received including share premium
3	Where at any time prior to buy-back, company had returned any sum out of the amount received at the time of issue	Amount actually received including share premium as reduced by the sum so returned. However, if Dividend Distribution Tax was paid on the amount so returned, then that amount shall not be reduced
4	Shares issued under an Employees' Stock Option Plan ('ESOP') or as a part of sweat equity	Fair Market Value ('FMV') as per Rule 3(8) [i.e. FMV as determined by a merchant banker on the date of exercising the option or any other earlier date not being more than 180 days earlier], to the extent credited to the share capital and share premium account Sweat equity shares shall have the meaning assigned to it in clause (b) of the Explanation to section 17(2)(vi) of the Act
5	Shares issued by amalgamated company in lieu of shares of amalgamating company	Amount received by the amalgamating company in respect of its shares determined in accordance with these rules
6	Shares issued by resulting company in a scheme of demerger	Amount received by the demerged company in respect of its shares determined in accordance with these rules, in the proportion of net book value of assets transferred to the net worth of the demerged company immediately before demerger

Sub-Rule	Manner of issue of shares to be bought back	Amount to be deemed as amount received on issue of such shares
7	Original shares in demerged company	Amount received by the demerged company in respect of its shares as reduced by amount determined for shares issued by resulting company in such demerger (sub-rule 6 above)
8	Shares issued as part of consideration for acquisition of any asset or settlement of any liability	A / B, where A = Lower of (i) or (ii) (i) FMV of the asset or the liability as determined by a merchant banker, in the proportion of part of consideration paid by issue of shares to total consideration (ii) Amount credited to the share capital and share premium account on issue of shares (as consideration for such acquisition/settlement) B = Number of shares issued by the company as part of consideration
9	Shares issued on succession or conversion of a firm into the company or succession of sole proprietary concern by the company	(A - B)/C, where A = Book value of assets (ignoring revaluation) shown in the Balance Sheet as reduced by (i) TDS/TCS/Advance tax (net of tax refund claimed); and (ii) Amount which does not represent value of any asset (including the unamortized amount of deferred expenditure) B = Book value of liabilities shown in the Balance Sheet (excluding capital, reserves and surplus, adjusted provision for tax, provisions for unascertained liabilities and contingent liabilities) C = Number of shares issued on conversion or succession
10	Shares issued to existing shareholders without any consideration	NIL
11	Shares issued on conversion of preference shares or bonds or debentures, debenture-stock or deposit certificate, or warrants or any other Security	Amount received by the company in respect of such instrument
12	Shares held in dematerialized form and not distinctly identifiable	To be determined in accordance with these rules, on the basis of the first-in-first-out method
13	Any other case	Face value of the shares

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Taxation of Royalties and Fees for Technical Services under The Income-tax Act, 1961

TAXATION OF ROYALTIES

Section 9 of the Income-tax Act, 1961 ("the Act") provides for certain categories of income which are deemed to accrue or arise in India, which inter alia includes royalties and fees for technical services ("FTS").

Definition

Section 9(i)(vi) of the Act provides for the definition of royalty. Royalty is considered as deemed to accrue or arise in India if the said income is payable:

(a) by the Government; or

(b) by a person who is a resident, except for the purposes of a business or profession or source of income of the resident outside India; or

(c) by a person who is a non-resident, for the purposes of a business or profession or source of income of the non-resident in India.

As per Explanation 2 to section 9(1)(vi), "royalty" means consideration (including any lump sum consideration but excluding any consideration chargeable under the head "Capital gains") for—

- Transfer of all or any rights (including granting of a licence) in respect of:
  - Patent, invention, model, design, secret formula or process or trade mark or similar property
  - Copyright, literary, artistic or scientific work, etc.
- Use of:
  - Patent, invention, model, design, secret formula or process or trade mark or similar property
  - industrial, commercial or scientific equipment excluding amounts referred in section 44BB of the Act
- Imparting of any information concerning:
  - working of or use of patent, invention, model, design, secret formula or process or trade mark or similar property
  - technical, industrial, commercial or scientific knowledge, experience or skill
- Rendering of services in respect of the above
- Excludes consideration for sale, distribution or exhibition of cinematograph films.

The *Explanations* to section 9(i)(vi) further provides for the following:

- *Explanation 4* – Transfer of all or any rights includes right for or to use a computer software (including granting of a licence) irrespective of the medium
- *Explanation 5* – Includes consideration in respect of any right, property or information, whether or not—
  - the possession or control is with the payer;
  - it is used directly by the payer;
  - the location is in India
- *Explanation 6* – "process" includes transmission by satellite, cable, optic fibre or by any other similar technology, whether or not secret

Taxability and tax rate

Residents are taxable on their worldwide income. Royalty income earned by residents are taxable in India. The tax rate for royalty income applicable to residents depend upon the status. The maximum effective tax rate is 25% or 30% plus applicable surcharge and education cess.

Section 115BBF of the Act provides that royalty income earned by a resident in India who is a patentee in respect of a patent developed and registered in India will be taxable at the rate of 10% plus applicable surcharge and cess on gross basis. No deduction for any expenditure or allowance in respect of such royalty income will be allowed. The resident assessee may exercise the option for taxation of income from patents in accordance with the said provisions on or before the due date of furnishing of return. If the resident assessee opts for taxation of income from patents in any previous year and fails to offer tax as per section 115BBF in any of the five (5) succeeding assessment years, then he shall not be eligible to claim benefit of said section for five (5) assessment years subsequent to the assessment year in which such income has not been offered to tax as per section 115BBF. As per section 115JB of the Act, royalty income on patents and corresponding expenses shall be excluded for computing Minimum Alternate Tax ("MAT").

In case of non-residents, the taxability and the tax rate for royalty would depend upon whether the non-resident has a permanent establishment ("PE") in India under the Act or not.

Section 115A of the Act deals with taxability of royalty in case of non-resident including foreign companies other than income referred to in section 44DA of the Act. Section 115A provides for the tax rate in respect of royalty received by a non-resident under an agreement with an Indian concern. In case where the agreement is approved by the Central Government or where it relates to a matter included in the Industrial Policy of the Government of India, the agreement is in accordance with that policy, then the applicable tax rate is 10% plus applicable surcharge and education cess of the gross amount of royalty if the agreement is made after 31st March, 1976.

Section 44DA deals with taxability of royalty in case of non-resident including foreign companies where the agreement is entered with the Government or an Indian concern after 31st March, 2003 and who carries on business in India through a PE. PE as defined under section 92F of the Act includes a fixed place of business through which the business of the enterprise is wholly or partly carried on. In case the provisions of section 44DA are applicable, the tax rate shall be 30% or 40%, as the case may be, depending upon the status of the recipient on net basis i.e., after allowing deduction for expenses. The tax rates needs to be increased by applicable surcharge and education cess.

Income arising to a non-resident from National Technical Research Organisation by way of royalty or FTS for services rendered in or outside India is tax exempt.

Withholding tax rate

Section 194J of the Act provides for deduction of tax at source on payment, to a resident, of any sum which is inter alia in the nature of royalty. The withholding tax rate is 10%. The

withholding tax needs to be deducted if the payment exceeds INR 30,000 during a financial year. No surcharge or education cess needs to be deducted.

The provisions relating to withholding tax on the payments to non-residents is covered by section 195 of the Act. The withholding tax rate for royalty payments is provided in Part II of the First Schedule. The withholding tax rate for royalty payments is 10%. The tax rate needs to be increased by applicable surcharge and education cess. In the absence of a Permanent Account Number ("PAN"), the withholding tax rate will be 20% as per section 206AA of the Act. From 1st June, 2016 onwards the requirement of higher rate of withholding tax in the absence of PAN is not applicable in case of non-residents if the payments are in the nature of royalty or FTS and the non-resident payers furnishes the prescribed documents to the payer.

As per section 195A of the Act, if tax is to be borne by the payee, tax will need to be grossed up. For example, if the royalty payment is INR 100 and the tax rate is 10%, the grossed up tax rate will be 11.1111% (10*10/90).

Minimum Alternate Tax

Section 115JB of the Act deals with MAT. As per section 115JB(1), every company is required to pay a MAT at the rate of 18.5% (plus applicable surcharge and education cess) on the book profit (profit as reported in the financial statement after prescribed adjustments) earned by such company, if the tax payable under the normal provisions is less than 18.5% (plus applicable surcharge and education cess) of the book profits.

MAT provisions shall not be applicable to a foreign company, if the foreign company is a resident of a country with which India has entered into a Tax Treaty and the foreign company does not have a PE in India. Further, MAT exemption has been granted to all foreign companies in respect of income by way of royalty and FTS which are subjected to special tax rate lower than the MAT rate.

Denial of deduction

Royalty can be claimed as deduction by the payer provided the taxes have been withheld. As per section 40(a) of the Act, royalty cannot be claimed as deduction if tax on such income is deductible and such tax has not been deducted or, after deduction, has not been paid on or before the due date of furnishing the return. It also provides that if tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date of furnishing the return, such sum shall be allowed as a deduction in the year in which such tax has been paid.

Treaty benefits

As per section 90(2) of the Act, a taxpayer has an option to be governed by the provisions of the Tax Treaty, if these provisions are beneficial as compared to the provisions contained in the Act.

The tax rates or the withholding tax rates on payments to non-residents may be reduced to lower rate or nil as prescribed under the Tax Treaty.

TAXATION OF FEES FOR TECHNICAL SERVICES

Definition

Section 9(i)(vii) of the Act provides for the definition of FTS. FTS is considered as deemed to accrue or arise in India if the said income is payable:

(a) by the Government; or

(b) by a person who is a resident, except for the purposes of a business or profession or source of income of the resident outside India; or

(c) by a person who is a non-resident, for the purposes of a business or profession or source of income of the non-resident in India.

Explanation 2 to section 9(1)(vii) defines FTS to mean any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project or consideration chargeable under the head "Salaries".

Others

The provisions relating to taxability, tax rate, withholding tax rate, MAT, denial of deduction and treaty benefits as discussed under 'Taxation of Royalties' shall apply in case of FTS. Further, the withholding tax rate shall be 2% under section 194J of the Act for the recipients engaged only in the business of operation of call centre.

Equalisation levy of six (6) per cent is applicable on the amount of consideration for specified services received or receivable by a non-resident not having PE in India, from a resident in India who carries out business or profession, or from a non-resident having PE in India. The specified services are defined to mean online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified. As per section 10(50) of the Act, the income arising from the specified services on which equalisation levy is chargeable will be exempt from income-tax. Further, provisions of section 40(a) of the Act for denial of deduction in computing the taxable income of the payer shall apply in case of failure to deduct and deposit the equalisation levy.

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Taxation of Association of Persons (AOP)/Body of Individuals (BOI)

Any person can be a member in an association of persons whereas only individuals can be members in a body of individuals;

There is common will and desire among the members of an association of persons and they voluntarily join together to carry on the activities. In the case of a body of individuals such common will and desire is lacking and it is formed by operation of law.

The Supreme Court in *CIT vs. Indira Balkrishna (1960) 39 ITR 546*, defines an association of persons to mean two or more persons joining for a common purpose or common action with an object to produce income, profits or gains and not merely to receive income jointly.

It is only when they associate themselves with a common objective of carrying on an income producing activity that they become an AOP. There must be a common design, combined will and meeting of minds on common objective to constitute an association of persons.

Where land belonging to 5 persons was acquired, compensation paid to them is not assessable in their hands as AOP but it is assessable individually – *Sudhir Nagpal vs. Income-tax Officer (2012) 349 ITR 636 (P&H); CIT vs. Memo Devi (1971) 113 ITR 335 (Del.).*

If Mr. A, a Firm and a company join together to carry on any business activity otherwise than as a partnership firm, such an entity will be recognised as an association of persons.

A profit –yielding joint venture has to be taxed as a single unit – *Meera and company vs. CIT (1997) 224 ITR 635 (SC).*

Merely because individual members have been wrongly assessed to tax in respect of profit derived from the joint activity, the AOP does not get absolved from assessment of such income – *CIT vs. Ch. Atchaiah (1995) 218 ITR 239 (SC).*

In the case of an AOP as well as a BOI the provisions relating to computation and taxability of income are the same.

1. In the case of an AOP/BOI any payment of interest, salary, bonus, commission or remuneration paid or payable by such AOP/BOI to any of its member shall be disallowed in the hands of AOP/BOI while computing income under the head P/G/B/P. However, the following points must be noted:
   - Rent paid by AOP/BOI to its members, for use of member's premises for its business, is allowed subject to section 40A(2).
   - If any interest is received from the member to whom any interest is also paid then only the net interest will be disallowed under this section.
   - If the individual is the member in representative capacity and the interest is paid to him in his individual capacity then no disallowance will be made under this section.
   - If the individual is a member in his individual capacity and interest is paid to him in his representative capacity then no disallowance will be made under this section.
   - If an individual is a member in a representative capacity in an AOP/BOI and he receives remuneration from the AOP/BOI in his individual capacity, then the same will be disallowed under section 40(ba).
2. Section 67A deals with method as to how the share is computed in the Income of AOP/BOI
   - Compute taxable income of AOP/BOI, say A
   - salaries and interest u/s. 40[ba] as above said is say B
   - Allocate A-B to the members in their profit sharing ratio
   - Add salary and interest paid to the respective members to the amount
   - The sum total shall be the share of each member in AOP/BOI
   - N.B : Head wise share of income of AOP/BOI shall remain same in the hands of member.
   - Any interest paid by the member on the capital borrowed for the purpose of investment in the AOP/BOI from respective share of income assessable under the head income from P/G/B/P
3. **Every AOP or BOI is chargeable to tax in accordance with Section 167B. According to Section 66 in computing the total income of an assessee, there shall be included share of income of a member of an AOP or BOI subject to Sections 86 and 110.**

   The head of income under which the share of income of the members shall be taxable is the same head of income as taxable in the hands of AOP/BOI.

   Inclusion of share of income and rebate depends upon tax rates applicable to AOP/BOI u/s. 86.

Applicable Rates	*Share of Income to be Included in Total Income of Member*	*Available Rebate*
Normal	Yes	Average rate of tax
Normal but AOP LIABLE TO NIL TAX	Yes	No
Maximum marginal rate	No	Does not arise

4. Tax rates on AOP/BOI are as follows u/s 167B when the shares of members are unknown/indeterminate if such shares unknown at the time of formation or at any time thereafter in respect of full/part of income.

Where none of the members is liable at a rate higher than MMR →	Entire income of AOP/BOI is liable to MMR
Where one OR more members is liable at a rate higher than MMR →	Entire income of AOP/BOI is liable to such higher rate

5. Tax rates on AOP/BOI are as follows u/s. 167B when the shares of members are known and determinate

Where one of the members have total income[**] exceeding maximum amount not chargeable to tax à	Entire income of AOP/BOI is liable to normal rates applicable to an individual.
Where one or more of the members have total income[**] exceeding maximum amount not chargeable to tax à	Entire income of AOP/BOI is liable MMR
Where one OR more members is liable at a rate higher than MMR à	Tax on income of AOP/BOI is total of • Tax at such higher rates on such member's share in total income • Tax at MMR ON BALANCE INCOME
** MEANS in computing total income of member his share of income from AOP/BOI SHALL BE EXCLUDED	

The effect of the provisions of Section 167B, is that only those AOP and BOI where the shares of the members are determinate and where none of the members have taxable income, the income of the AOP will be taxed at normal rates applicable to individuals.

6. Loss of AOP/BOI shall be carried forward by them only and can't be allocated to members.
7. If the adjusted total income exceeds ₹ 20,00,000/- then provisions of Section 115JEE of Alternate Minimum Tax (AMT) shall be applicable to AOP/BOI.
8. If shares of members of AOP are indeterminate only for a part of the income, the whole income of AOP shall be taxed at maximum marginal rate – *Laxmi Fruit Company vs. CIT [2018] 99 taxmann.com 429 (Bom.).*

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Reports under The Income-Tax Act, 1961
(To be furnished along with the Return of Income)

In Form No.	*Section*	*Rule*	*For Whom*
3AC	33AB(2)	5AC	Assessee growing and manufacturing tea or coffee or rubber Claiming deduction in respect of special deposits made u/s. 33AB(1)
3AD	33ABA(2)	5AD	Assessee claiming deduction in respect of deposits under Site Restoration Fund account/scheme
3AE	35D(4)	6AB	Assessee other than Cos. or Co-op. societies claiming amortization of certain preliminary expenses
3AE	35E(6)	-do-	Assessee other than Cos. or Co-op. societies claiming deduction for expenditure on prospecting, etc. of certain minerals
3CA, 3CB, 3CD	44AB	6G	Assessee carrying on business/profession whose Turnover/Gross Receipt exceeds ` 1 crore [` 25 lakhs for profession] or profit and gains are deemed to be u/ss. 44D/44AE/44AF and assessee has claimed lower profits than specified in those sections
3CE	44DA	6GA	Special provision for computing income by way of Royalties, etc. in case of Non-residents
3CEA	50B(3)	6H	In case of Slum sale, for computation of Net Worth of Undertaking/ Division
3CEB	92E	10E	Accountant's Report relating to International Transactions or Specified Domestic Transactions and Particulars thereof
3CEJ	9A	10V(7)	Relating to arm's length price in respect of the remuneration paid by an eligible investment fund to the fund manager
3CLA	35(2AB)	6	Audit report relating to certification of expenditure incurred for inhouse scientific research and development facility
3CT	9(1)(i)	11UC	Income attributable to assets located in India under section 9 of the Income-tax Act, 1961
6B	142(2A)	14A	Special audit at the instance of the Assessing Officers
10B	12A(b)	17B	Audit Report for Public Charitable or religious Trusts or Institutions whose income exceeds ` 180000/- before exemption
10BB	10(23C)	16CC	Audit Report for Fund, Trust, Institutions, University, Educational institutions, Hospitals or medical institutions
10BC	288(2)	17CA(12)	Audit Report for Electoral Trusts
10CCB	80-I(7)/80-IA/ 80-IB/80-IC	18BBB	Assessee having an industrial undertaking or business of hotel or an enterprise for infrastructure Facility, Telecommunication services, Industrial Park or power, etc. and special provision in respect of certain undertakings or enterprises in certain special category status
10CCBA/ 10CCBB	80-IB(7A)& (7B)	18DB/DC	Assessee claiming deduction in respect of business of owning and operating a multiplex theatre or a convention centre
10CCBBA	80-ID(3)(iv)	18DE	Assessee claiming deduction in respect of profit & gains from business of hotels & convention centre in specified areas
10CCBC	80-IB(11B)	18DD	Assessee having an undertaking deriving profits from business of operating and maintaining a hospital in a rural areas
10CCBD	80-IB(11C)	18DDA	Assessee claiming deduction from profits & gains from operating and maintaining a hospital located anywhere in India
10CCC	80-IA(6)	18BBE	Assessee claiming deduction in respect of profits of housing or other activity which is integral part of Highway Project
10CCF	80LA(3)	19AE	Scheduled bank which owns an offshore banking unit in Special Economic Zone

In Form No.	Section	Rule	For Whom
10DA	80JJAA(2)	19AB	Assessee claiming deduction in respect employment of new workman
26A/27BA	201/206	31ACB/37J	For residents who has been failed to deduct/collect tax in accordance with provisions of chapter XVIIB/XVIIBB
29B	115JB	40B	Company assessees to which the provisions of section 115JB applies
29C	201/206C	40BA	For LLP (A.Y. 2012-13) and persons other than a company (from A.Y. 2013-14) to which provisions of S. 115JC applies
56F	10A(5)	16D	Assessee claiming deduction in respect of newly established undertakings in Free Trade Zones, EPZ, SEZ, STP etc.
56G	10B(5)	16F	Assessee claiming deduction in respect of newly established EOUs
56H	10BA(5)	16F	Assessee claiming deduction in respect of profits from exports of eligible articles or things, [handmade articles or things made of wood as the main raw material]
62	72(A)(2)(iii)	9C	Assessee being amalgamated company-regarding compliance with prescribed conditions
66	115VW(ii)	11T	Companies engaged in the business of operating qualifying ships and which have opted for Tonnage Tax Scheme

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Summary of Restrictions on Cash Transaction

1) Acceptance of cash more than ₹ 2 lakhs in aggregate in a year, in a day or for one occasion or for one event or in one transaction.

   Non-compliance : Penalty 100% of the amount (Section 271DA).

2) Payment of any expenditure more than ₹ 10,000/- in a day (payment to transport operator for plying, hiring or leasing of goods carriage limit is ₹ 35,000/-).

   Non-compliance : Expenditure not allowed as deduction from income from Business & Profession Section 40A(3).

3) Acceptance of loan or deposit of more than ₹ 20,000/- in **cash.**

   Non-compliance : Penalty 100% such of loan or deposit Section 269SS.

4) Repayment of loan or deposit in cash Section 269-T.

   Non-compliance : Penalty 100% such of loan or deposit Section 271E.

5) Acceptance of advance more than ₹ 20,000/- in a year for transfer of immovable property Section 269SS.

   Non-compliance : Penalty 100% of such amount.

6) Payment of more than ₹ 10,000/- for purchase of business assets in cash.

   Non-compliance : Such amount will be reduced from the cost of assets and no depreciation will be allowed on such amount Section 43(1).

7) Investment linked deduction for capital expenditure more than ₹ 10,000/- in cash.

   Non-compliance : Deduction will not be allowed of such expenditure Section 35AD.

8) Payment of premium for medical Insurance in cash.

   Non-compliance : Deduction will not be allowed of such payments Section 80D.

9) Acceptance of donation more than ₹ 2,000/- in cash by political parties Section 13A.

10) Payment for donation for more than ₹ 2,000/- in cash to funds or trusts approved Section 80G.

    Non-compliance : Deduction not allowed Section 80G.

11) Payment for donation more than ₹ 2,000/- ₹ 10000 in cash for research and rural development.

    Non-compliance : Deduction not allowed Section 80GGA.

12) Payment for donation more than ₹ 2,000/- cash payment is not allowed in case of payment to political parties

    Non-compliance: Deduction not allowed Sections 80GGB/ 80GGC.

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Goods and Services Tax (GST)

CHAPTER 1.1 — INTRODUCTION AND APPLICABILITY

Introduction

Goods and Services Tax (GST) has been identified as one of most important tax reforms post-independence. It is a tax trigger, which will lead to business transformation for all major industries.

Major step was to have the constitution amended which was done in the form of 101st Constitution Amendment Act, 2016 for GST in the Parliament on 8th August, 2016 and thereafter recently four GST Bills also got clearance from the Lok Sabha on 29th March, 2017 and also from Rajya Sabha on 6th April, 2017. On 12th April, 2017 fours Acts are assented and notified. These are following:

- Central Goods and Services Tax Act, 2017
- Integrated Goods and Services Tax Act, 2017
- Union Territory Goods and Services Tax Act, 2017, and
- Goods and Services Tax (Compensation to States) Act, 2017.

Government as per its schedule and plan implemented the Goods and Services Tax with effect from 1-7-2017.

Later on the above Acts got amended *vide* Central Goods and Services Tax (Amendment) Act and Integrated Goods and Services (Amendment) Act notified on 30th August, 2018 and amendments made effective from 01st February, 2019.

Rules issued till date (Rules were amended number of times since and the latest version of Rule is dated 18.07.2019)

Sr. No.	*Rule Name*	*Number of Rules*
1	Preliminary	Rules 1 to 2
2	Composition	Rules 3 to 7
3	Registration	Rules 8 to 26
4	Determination of Value of Supply	Rules 27 to 35
5	Input Tax Credit	Rules 36 to 45
6	Tax Invoice, Credit and Debit Note	Rules 46 to 55A
7	Accounts and Records	Rules 56 to 58
8	Returns	Rules 59 to 84
9	Payment of Tax	Rules 85 to 88A
10	Refund	Rules 89 to 97A
11	Assessment and Audit	Rules 98 to 102
12	Advance Ruling	Rules 103 to 107A
13	Appeals and Revision	Rules 108 to 116
14	Transitional Provisions	Rules 117 to 121
15	Anti-Profiteering	Rules 122 to 137
16	E-Way Bill Rules	Rules 138 to 138E
17	Inspection, Search and Seizure	Rules 139 to 141
18	Demands and Recovery	Rules 142 to 161
19	Offences and Penalties	Rule 162

GST in India and its coverage

GST is a destination-based tax that will replace the current Central taxes and duties such as Excise Duty, Service Tax, Countervailing Duty (CVD), Special Additional Duty of Customs (SAD), Central charges and cesses and local State taxes, i.e., Value Added Tax (VAT), Central Sales Tax (CST), Octroi, Entry Tax, Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling, State cesses and surcharges and Entertainment tax (other than the tax levied by the local bodies).

It will be a dual levy with State/Union Territory GST and Central GST. Moreover, inter-State supplies would attract an Integrated GST, which would be the sum total of CGST and SGST/UTGST.

Petroleum products, i.e., petroleum crude, high speed diesel, motor spirit, aviation turbine fuel, natural gas will be brought under the ambit of GST from such date as may be notified by the Government on recommendation of the Council. Alcohol for human consumption has been kept outside the purview of GST.

Consensus between Central and State Governments has been reached on four-tier rate structure viz., 5%; 12%; 18% and 28%.

A well-designed GST in India is expected to simplify and rationalise the current indirect tax regime, eliminate tax cascading and put the Indian economy on high-growth. The GST levy has impacted both manufacturing and services sector for the entire value chain of operations, namely procurement, manufacturing, distribution, warehousing, sales, and pricing. It will also stimulate the need to relook at internal organisation and IT systems.

With its implementation from 1st July, 2017, it is critical for companies, which have business operations in India to understand the broad contours and framework of the GST law, impact of the new levy on their business.

Benefits of GST

GST has been envisaged as a more efficient tax system, neutral in its application and attractive in distribution. The advantages of GST are:

- Wider tax base, necessary for lowering the tax rates and eliminating classification disputes
- Elimination of multiplicity of taxes and their cascading effects
- Rationalization of tax structure and simplification of compliance procedures
- Harmonization of Centre and State tax administrations, which would reduce duplication and compliance costs
- Automation of compliance procedures to reduce errors and increase efficiency

Destination principle

The GST structure would follow the destination principle. Accordingly, imports would be subject to GST, while exports would be zero-rated. In the case of inter-State transactions within India, the State tax would apply in the State of destination as opposed to that of origin.

Taxes to be subsumed

GST would replace most indirect taxes currently in place such as:

Central Taxes	*State Taxes*
• Central Excise Duty [including additional excise duties, excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955] • Service tax • Additional Customs Duty (CVD) • Special Additional Duty of Customs (SAD)	• Value Added Tax • Octroi and Entry Tax • Purchase Tax • Luxury Tax • Taxes on lottery, betting & gambling • State cesses and surcharges • Entertainment tax (other than the tax levied by the local bodies)

Central Taxes	*State Taxes*
• Central Sales Tax (levied by the Centre and collected by the States) • Central surcharges and cesses (relating to supply of goods and services)	• Central Sales Tax (levied by the Centre and collected by the States)

Roadmap Ahead

- Lot of glitches are still there in GSTN even after almost 24 months, from the implementation of GST and those needs to be resolved as soon as possible.
- Many clarifications are needed from the Government so as to remove the ambiguities in the law.
- Number of returns from three to be reduced to one consolidated return. We may hope that the new proposed returns forms which are proposed to be implemented w.e.f. October 2019 will resolve the pending issues till now and would be user friendly so as to enable easy compliance on part of all stakeholders.

Applicability

Section 1	
Short title, extent and commencement	
Sub-Section (1)	This Act may be called the Central Goods and Services Tax Act, 2017.
Sub-Section (2)	It extends to the whole of India.
Sub-Section (3)	It shall come into force on such date as the Central or a State Government may, by notification in the *Official Gazette*, appoint in this behalf: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER 1.2 — IMPORTANT DEFINITIONS UNDER CGST

Section 2 of the Central Goods and Services Tax Act, 2017

Sr. No.	Terms	Definitions
1	Actionable Claim	shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);
2	Address of Delivery	means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;
3	Address on Record	means the address of the recipient as available in the records of the supplier;
4	Adjudicating Authority	means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority,the Appellate Tribunal and the authority referred to in sub-section (2) of section 171;
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;
6	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 Central tax, State tax, Union Territory tax, integrated tax and cess;
7	Agriculturist	means an individual or a Hindu Undivided Family who undertakes cultivation of land— (a) by own labour, or (b) by the labour of family, or (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;
8	Appellate Authority	means an authority appointed or authorised to hear appeals as referred to in section 107;
9	Appellate Tribunal	means the Goods and Services Tax Appellate Tribunal constituted under section 109;
10	Appointed Day	means the date on which the provisions of this Act shall come into force;
11	Assessment	means determination of tax liability under this Act and includes self-assessment, reassessment, provisional assessment, summary assessment and best judgment assessment;
12	Associated Enterprise	shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961);
13	Audit	means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder 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 this Act or the rules made thereunder;
14	Authorised Bank	shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;
15	Authorised Representative	means the representative as referred to in section 116;
16	Board	means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
17	Business	includes— (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a); (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

Sr. No.	Terms	Definitions
		(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business; (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members; (f) admission, for a consideration, of persons to any premises; (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation; (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;
18	Business vertical	Omitted by The Central Goods and Services Tax (Amendment) Act, 2018 (w.e.f. 1-2-2019)
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;
20	Casual Taxable Person	means a person who occasionally undertakes transactions involving supply of goods or services or both 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;
21	Central Tax	means the central goods and services tax levied under section 9;
22	Cess	shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;
23	Chartered Accountant	means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949);
24	Commissioner	means the Commissioner of Central tax and includes the Principal Commissioner of Central tax appointed under section 3 and the Commissioner of Integrated tax appointed under the Integrated Goods and Services Tax Act;
25	Commissioner in the Board	means the Commissioner referred to in section 168;
26	Common Portal	means the common goods and services tax electronic portal referred to in section 146;
27	Common Working Days	in respect of a State or Union Territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union Territory Government;
28	Company Secretary	means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);
29	Competent Authority	means such authority as may be notified by the Government;
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; *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;
	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, 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; (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:

Sr. No.	Terms	Definitions
31		**Provided** that 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.
32	Continuous Supply of Goods	means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;
33	Continuous Supply of Services	means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;
34	Conveyance	includes a vessel, an aircraft and a vehicle;
35	Cost Accountant	means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959);
36	Council	means the Goods and Services Tax Council established under Article 279A of the Constitution;
37	Credit Note	means a document issued by a registered person under sub-section (1) of section 34;
38	Debit Note	means a document issued by a registered person under sub-section (3) of section 34;
39	Deemed Exports	means such supplies of goods as may be notified under section 147;
40	Designated Authority	means such authority as may be notified by the Board;
41	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 (21 of 2000);
42	Drawback	in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;
43	Electronic Cash Ledger	means the electronic cash ledger referred to in sub-section (1) of section 49;
44	Electronic Commerce	means the supply of goods or services or both, including digital products over digital or electronic network;
45	Electronic Commerce Operator	means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
46	Electronic Credit Ledger	means the electronic credit ledger referred to in sub-section (2) of section 49;
47	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;
48	Existing Law	means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
49	Family	means,— (i) the spouse and children of the person, and (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;
50	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;
51	Fund	means the Consumer Welfare Fund established under section 57;

Sr. No.	Terms	Definitions
52	Goods	means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
53	Government	means the Central Government;
54	Goods and Services Tax (Compensation to States) Act	means the Goods and Services Tax (Compensation to States) Act, 2017;
55	Goods and Services Tax Practitioner	means any person who has been approved under section 48 to act as such practitioner;
56	India	means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;
57	Integrated Goods and Services Tax Act	means the Integrated Goods and Services Tax Act, 2017;
58	Integrated Tax	means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;
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;
60	Input Service	means any service used or intended to be used by a supplier in the course or furtherance of business;
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 the same Permanent Account Number as that of the said office;
62	Input Tax	in relation to a registered person, means the 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— (a) the integrated goods and services tax charged on import of goods; (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9; (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act; (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or (e) the 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;
63	Input Tax Credit	means the credit of input tax;
64	Intra-State Supply of Goods	shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
65	Intra-State Supply of Services	shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
66	Invoice or Tax Invoice	means the tax invoice referred to in section 31;
67	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;
68	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;

Sr. No.	Terms	Definitions
69	Local Authority	means— (a) a "Panchayat" as defined in clause (d) of Article 243 of the Constitution; (b) a "Municipality" as defined in clause (e) of Article 243P of the Constitution; (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund; (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006); (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution; (f) a Development Board constituted under Article 371 and Article 371J of the Constitution; or (g) a Regional Council constituted under Article 371A of the Constitution;
70	Location of the Recipient of Services	means,— (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) 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 (d) in absence of such places, the location of the usual place of residence of the recipient;
71	Location of the Supplier of Services	means,— (a) where a supply is made from a place of business for which the 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 (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 provisions of the supply; and (d) in absence of such places, the location of the usual place of residence of the supplier;
72	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;
73	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;
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. *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. 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;*
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 recognised 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;
76	Motor Vehicle	shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

Sr. No.	Terms	Definitions
77	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;
78	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;
79	Non-Taxable Territory	means the territory which is outside the taxable territory;
80	Notification	means a notifcation published in the *Official Gazette* and the expressions "notify" and "notified" shall be construed accordingly;
81	Other Territory	includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114);
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;
83	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;
84	Person	includes— (a) an individual; (b) a Hindu Undivided Family; (c) a company; (d) a firm; (e) an Limited Liability Partnership; (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (g) 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, 2013 (18 of 2013); (h) any body corporate incorporated by or under the laws of a country outside India; (i) a co-operative society registered under any law relating to co-operative societies; (j) a local authority; (k) Central Government or a State Government; (l) society as defined under the Societies Registration Act, 1860 (21 of 1860); (m) trust; and (n) every artificial juridical person, not falling within any of the above
85	Place of Business	includes— (a) 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 (b) a place where a taxable person maintains his books of account; or (c) a place where a taxable person is engaged in business through an agent, by whatever name called;
86	Place of Supply	means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;
87	Prescribed	means prescribed by rules made under this Act on the recommendations of the Council;
88	Principal	means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;
89	Principal Place of Business	means the place of business specified as the principal place of business in the certificate of registration;

Sr. No.	Terms	Definitions
90	Principal Supply	means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;
91	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;
92	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;
93	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;
94	Registered Person	means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
95	Regulations	means the regulations made by the Board under this Act on the recommendations of the Council;
96	Removal	in relation to goods, means— (a) despatch 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;
97	Return	means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;
98	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 sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;
99	Revisional Authority	means an authority appointed or authorised for revision of decision or orders as referred to in section 108;
100	Schedule	means a Schedule appended to this Act;
101	Securities	shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
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; *Explanation* – For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;
103	State	includes a Union Territory with Legislature;
104	State tax	means the tax levied under any State Goods and Services Tax Act;

Sr. No.	Terms	Definitions
105	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;
106	Tax Period	means the period for which the return is required to be furnished;
107	Taxable Person	means a person who is registered or liable to be registered under section 22 or section 24;
108	Taxable Supply	means a supply of goods or services or both which is leviable to tax under this Act;
109	Taxable Territory	means the territory to which the provisions of this Act apply;
110	Telecommunication Service	means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;
111	The State Goods and Services Tax Act	means the respective State Goods and Services Tax Act, 2017;
112	Turnover in State or Turnover in Union Territory	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) and exempt supplies made within a State or Union Territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union Territory by the said taxable person but excludes Central tax, State tax, Union Territory tax, Integrated tax and cess;
113	Usual Place of Residence	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;
114	Union Territory	means the territory of— (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli; (d) Daman and Diu; (e) Chandigarh; and (f) Other territory. *Explanation*.— For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union Territory;
115	Union Territory Tax	means the Union Territory goods and services tax levied under the Union Territory Goods and Services Tax Act;
116	Union Territory Goods and Services Tax Act	means the Union Territory Goods and Services Tax Act, 2017;
117	Valid Return	means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;
118	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;
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;

Sr. No.	Terms	Definitions
120	words and expressions used and not defined in this Act but defined in the Integrated 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;	
121	any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.	

CHAPTER 1.3 — THE TERM "SUPPLY", "COMPOSITE SUPPLY", "MIXED SUPPLY"

Supply – Section 7

Under the GST regime, old terms such as manufacture, sale, and provision of services have no value and such terms are of no use. Under GST it's only one term and that is supply. Supply is the taxable event and not the manufacture or sale.

Hence as soon as event/transaction/activity is covered under the definition of supply the taxable event triggers. Only issue in the Goods and Services Tax regime is that, the term supply is defined in an inclusive manner and it is really difficult to digest the definition of the same. Let us see the way it is defined and provided for in Section 7 of the Central Goods and Services Tax Act 2017:

Sub-Section (1) and (1A)

- SUPPLY Includes
  - (a) all form of supply for a consideration by a person in the course or furtherance of business.
  - (b) importation of service, for a consideration and whether or not in the course or furtherance of business
  - (c) activities specified in Schedule I *(reproduced below)*, made or agreed to be made without a consideration
  - (1A) Where certain activities or transactions constitute of supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Sub-Section (2)

- notwithstanding anything contained in sub-section (1),
  - (a) activities or transactions specified in Schedule III *(reproduced below)* ; or
  - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services

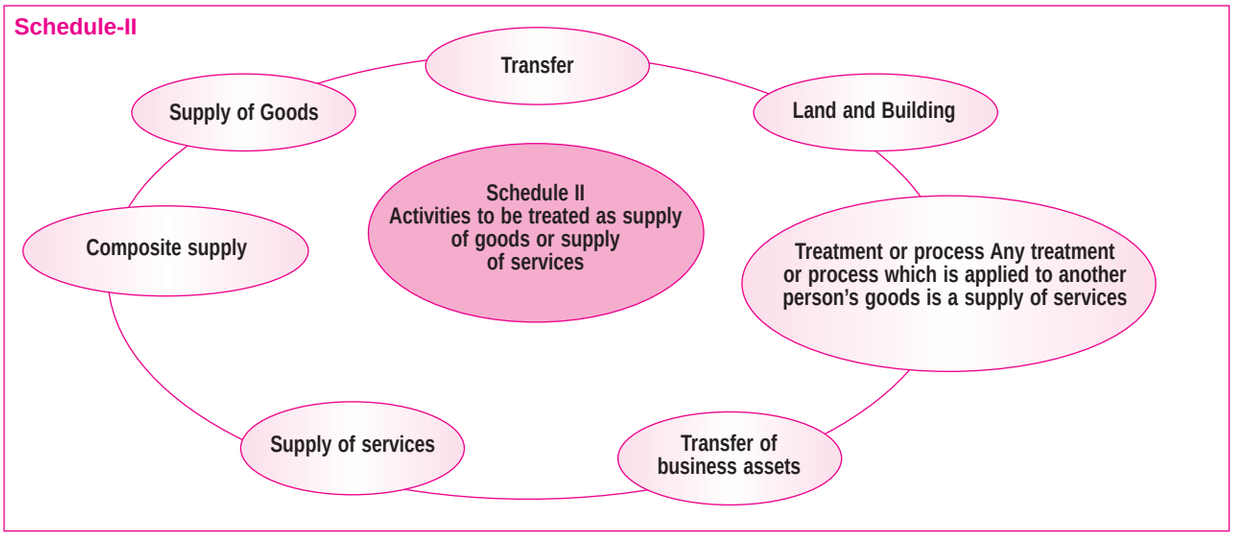
Sub-Section (3)

- subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as a supply of goods and not as a supply of services;
- a supply of services and not as a supply of goods

Schedule-I

MATTERS TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer/ disposal of business assets where input tax credit has been availed on such assets	2. Supply of goods or services between related persons, or between distinct persons as specified in section 25, when made in the course or furtherance of business Provided that gifts not exceeding ₹ 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	3. 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	4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business



1. Transfer

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) 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, is a supply of goods.

2. Land and Building

(a) any lease, tenancy, easement, licence 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

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where 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, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or 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;

(c) 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.

5. Supply of 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.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised 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, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 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;

(2) the expression "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, customisation, adaptation, upgradation, 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 as defined in clause (119) of section 2; and

(b) 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.

7. Supply of Goods

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.

Schedule III — Activities of Transactions which shall be treated neither a supply of goods nor supply services

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.
3. • (a) The functions performed by the Members of Parliament, State Legislature, Panchayats, Municipalities and other local authorities;
   (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
   (c) The duties performed by any person as a Chairperson/Member/Director in a body established by the Central/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. • Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
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.
8. • (a) Supply of warehouse goods to any person before clearance for home consumption;
   (b) 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.

Composite and Mixed Supply – Section 8

Composite Supply 2(30) – 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.

Mixed Supply 2(74) – 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.

Tax liability on composite and mixed supplies shall be determined in the following manner

- In case of Composite Supply – One of which is Principal supply shall be treated as Supply of such principal supply
- In case of Mixed Supply – shall be treated as Supply of that supply which attracts highest rate of tax

Hence if we need to understand with the help of an example let's do that:

Example of Composite Supply

Supply of Televisions with free installation service OR Sale of Vehicle with free service of the same – these are examples of composite contract because here there are more than one supply of goods or services or both. There is a principal supply and the multiple supplies are naturally bundled.

The tax liability in case of <u>composite supply</u> shall be at the rate that is applicable to the principal supply.

Example of Mixed Supply

The best example can be where fruits are supplied with dry fruits. Another example can be tooth brush and tooth paste. Both are independent items and nothing can be said to be a principal supply and hence is a mixed supply.

The tax liability in case of <u>mixed supply</u> shall be at the highest rate applicable to any of the items forming part of the mixed supply.

CHAPTER 1.4 — LEVY, COLLECTION AND EXEMPTION

Levy and Collection – Section 9 of the Central Goods and Services Tax Act, 2017

This is one of the most important sections of the GST law because this gives us the basis on which the tax shall be levied under Goods and Services Tax. It provides for the transactions on which the tax shall be levied under the CGST Act, 2017. As per provisions of Section 9, tax shall be levied in case of intra State supplies. The provision is exactly mentioned hereinbelow. Just read line by line and step by step.

There shall be levied a tax called CGST

On all intra-State supplies except on the supply of alcoholic liquor for human consumption	On the value determined u/s. 15 and at such rates as may be notified not exceeding 20%	And collected in such manner as may be prescribed

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 w.e.f. such date as may be notified by Govt.

The Central Government may notify by notification, categories of supply of goods and/or services the tax on which is payable on reverse charge basis by the recipient and provisions of liabilities of supplier becomes applicable to such recipient

The Government may notify specific class of registered persons who are in receipt of specific categories of goods and/ or services from an unregistered person, shall attract reverse charge and provisions of liabilities of supplier becomes applicable to such recipient

Government may notify such categories of services tax on which shall be paid by the electronic commerce operator if such services are supplied through it.

Where ECO does not have a physical presence in the taxable territory, any person representing shall be liable to pay tax	where ECO does neither have a physical presence in the taxable territory nor a representative, it shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Power to Grant exemption from tax — Section 11 of the CGST Act, 2017

As we are aware that under GST anything that is to be done can be done only when the same is recommended by the GST Council and therefore it could be said that by virtue of newly inserted Article 279A of the Constitution of India by virtue of 101st Constitution Amendment Act, 2016, the most powerful body under GST is the council since nothing can happen or move without its recommendation.

Therefore on this basis it could be said that if some exemptions are to be given it has to be discussed in the Council and in case, the Council approves and recommends, the exemption is possible. The provision is discussed as under only thing that needs to be kept in mind here is, exemption can be general or by way of special order and in case if after the said exemption is notified any explanation is required the same can be done but within one year from the date of issue of notification and such explanation shall be presumed to have been part of such provision/notification from the first day.

Where the Government is satisfied that it is necessary in the public interest so to do, it may, exempt generally, either absolutely or subject to such conditions as may be specified therein

on the recommendations of the Council, by notification	goods or services or both of any specified description from the whole or any part of the tax leviable thereon	with effect from such date as may be specified in such notification

Where the Government is satisfied that it is necessary in the public interest so to do, it may, exempt from payment of tax any goods or services or both on which tax is leviable.

on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order

The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2),

insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification	and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

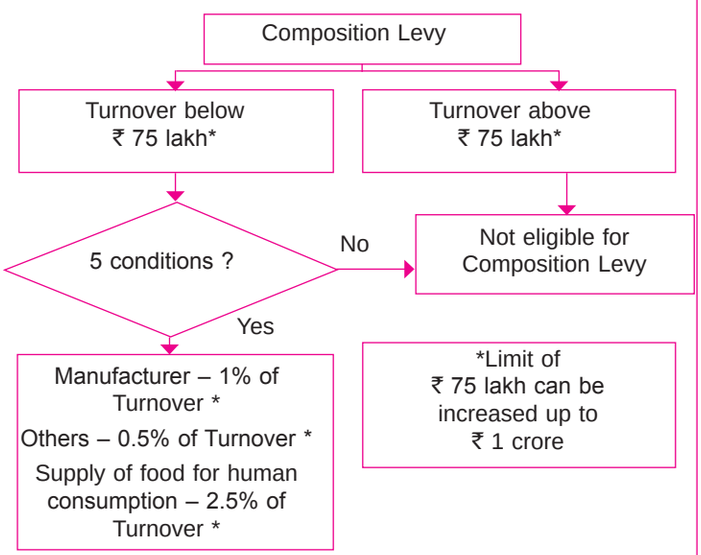
CHAPTER 1.5 — COMPOSITION LEVY

Section 10 - Composition Levy

A registered person, not having aggregate turnover exceeding ₹ 50 lakh in the preceding financial year may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed and shown hereinbelow in flow chart.

* Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.



5 Conditions, if any one satisfied, could not opt for composition levy

Registered person shall not be allowed to opt for composition levy until, it satisfies the following conditions:

(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;

(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 under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Where a person with a PAN has more than one registration, it shall be mandatory for all such persons with same PAN to opt for composition levy else the registered person shall become ineligible for opting for composition levy.

Restrictions:

1. No Tax to be collected from recipient
2. No entitlement of credit on Inputs
3. If PO has reason to believe that person not eligible u/s. 10, In addition to any tax, also penalty and provisions of section 73 or 74 shall apply
4. The day aggregate turnover exceeds the limit specified, the option of composition shall lapse.

Other Relevant Points to be noted

1. A person covered under Composition Levy may become liable under reverse charge on inward supplies as per Section 9(3).
2. Even from 1st April, 2019, the service providers whose turnover is below fifty lakh rupees are allowed to pay tax at the rate of 3% and all provision of section 10 relating to composition levy are made applicable to them.
3. *The rate of composition mentioned above is under CGST Act, same rate will be under SGST Act also. Therefore the rates will be double i.e., 0.5% will be 1%, 1% will be 2%, 2.5% will be 5% and 3% will be 6%.

CHAPTER 1.6 — TIME OF SUPPLY

Section 12 — Time of Supply of Goods

There is always a difference between a taxable event and the point of taxation. In the current tax regime, in case of service tax – the taxable event is provision of service or agreeing to provide a service whereas the point of taxation is determined as per Point of Taxation Rules, 2011 similarly under GST also the taxable event is supply of good or services or both but the point of taxation is known as time of supply of goods and services i.e., the date/time on which, the liability to pay tax arises

Sub-Section (1)

- The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section

Sub-Section (2) – in case or normal supply of goods

- Earliest of the Following :
  - Date of issue of Invoice by the *supplier*; or
  - Last date on which he is required to issue the invoice with respect to supply; or
  - Date of receipt of the payment with respect to supply *where the supplier of taxable goods receives an amount up to one thousand rupees 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.*

Sub-Section (3) – in case of supply of goods under reverse charge

- Earliest of the following :
- Date of Receipt of Goods
- Date of payment as entered in books or Date of debit in bank account, whichever is earlier
- Date immediately following 30 days from the date of issuance of invoice provided if *not determinable as per above, TOS shall be date of entry in books of account of recipient*

Sub-Section (4) – in case of supply of vouchers

- If Supply identifiable at that point – Date of Issue
- In other cases – Date of redemption

Sub-Section (5) – Residuary provision

- *In case time of supply cannot be determined under the provisions of sub-section (2) or sub-section (3) or sub-section (4), it shall be determined as under*
- Where periodical return has to be filed – Date when such return is to be filed
- In any other case – Date on which CGST/SGST paid

Sub-Section (6)

- 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

Section 13 — Time of Supply of Services

Sub-Section (1)

The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

Sub-Section (2) – *in case of supply of service*

- Invoice issued within time limit – Date of issue of Invoice by the supplier; or date of receipt of the payment; whichever is earlier
- Invoice issued after time limit – Date of Provision of service or Date of receipt of the payment; whichever is earlier
- Date on which recipient shows the receipt of service in his books of account
- *If excess received up to ₹ 1,000, Time of supply at the option of supplier shall be the date of issuance of invoice.*

Sub-Section (3) – *in case if covered under reverse charge*

- Date of payment as entered in books or Date of payment in bank account, whichever is earlier
- Date immediately following 60 days from the date of issuance of invoice by the supplier
- If not covered in above 2 conditions then time of supply shall be the date of entry in the books of recipient.

Sub-Section (4) - *in case of supply of vouchers*

- If Supply identifiable at that point – Date of Issue
- In other cases – Date of redemption

Sub-Section (5) - *Residuary Section*

- Where periodical return has to be filed – Date when such return is to be filed
- In any other case – Date on which CGST/SGST paid

Sub-Section (6)

- 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

Section 14 — Time of Supply – Change in rate of tax in respect of supply of goods or services

Supplied	*Issue of Invoice*	*Receipt of Payment*	*Time of Supply*
Before the change in rate	After	After	Date of Invoice or Receipt of Payment, which ever is earlier
Before the change in rate	Before	After	Date of Issue of Invoices
Before the change in rate	After	Before	Date of Receipt of Payment
After the change in rate	Before	Before	Date of Invoice or Receipt of Payment, which ever is earlier
After the change in rate	Before	After	Date of Receipt of Payment
After the change in rate	After	Before	Date of Issue of Invoices

Section 15 — Value of Supply

Tax has to be paid on the basis of value of supply and therefore the valuation becomes very important. Under GST the taxable event is supply of goods or services or both and even if there is no consideration, it becomes supply in certain situations as mentioned in Schedule I of the CGST Act, 2017. Now since it is widely discussed and accepted that in GST even the branch transfers are going to be taxable therefore it becomes important for us to determine the value on which tax has to be paid correctly and reasonably.

Value of Supply of Goods or Service or Both

The Transaction Value	which is the price actually paid or payable for the said supply of goods or services or both	where the supplier and recipient of the supply are not related and	the price is the sole consideration for the supply

Which includes

(a) Any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) 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;

(c) Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and 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;

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) Subsidies [including the value of supply of the supplier who receives the subsidy] directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Not include any discount which is given

(a) 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

(b) after the supply has been effected, if—

(i) 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

(ii) ITC as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

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.

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.

(a) persons shall be deemed to be "related persons" if—
  (a) such persons are officers or directors of one another's businesses;
  (b) such persons are legally recognised partners in business;
  (c) such persons are employer and employee;
  (d) any person directly or indirectly owns, controls or holds twenty-five per cent 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;

(b) the term "person" also includes legal persons;

(c) 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.

CHAPTER 1.8 — INPUT TAX CREDIT AND INPUT TAX CREDIT TRANSFER

Section 16(1) – Manner of availing ITC

Input Tax Credit (ITC) is one of the base on which the building of GST is placed. The reason for saying so is out of many issues in the current Indirect Tax Regime, one of the major issues is cascading effect i.e. Tax on Tax and therefore GST was proposed with the intention of having seamless flow of credit. So it could be said that provisions pertaining to ITC have to be understood and digested completely so as to determine whether the current issues are properly addressed or not in GST.

Every registered person
- subject to such conditions and restrictions as may be prescribed; and
- Within the time and manner specified in section 49

→ Entitled to take ITC admissible to him

→ Said amount to be credited to the electronic credit ledger of such person

Credit of input tax charged on any supply of goods or services or both is only allowed for inputs which are used or intended to be used in the course or furtherance of his business

Section 16(2) – Conditions for availing ITC

Registered person shall not be entitled to take credit of any input tax in respect of any supply of goods and/or services to him unless:

He is in possession of:	• Tax invoice, or • Debit note, or • Such other tax paying document as may be prescribed Issued by supplier registered under the Act
Receipt of goods and/or services	• On receipt of goods and/or services • Deemed receipt of goods when supplied to any other person on direction of registered person as agent or by way of transfer of document of title to goods. • Services to any other person on the direction of such registered person
Payment of tax charged in respect of such supply to credit of government in:	• Cash; or • Utilization of ITC admissible in respect of said supply
Furnished return u/s. 39	• Whether this refers to return filed by : • Vendor; or • Assessee

Where goods against an invoice are received in instalments/lots – ITC will be available only after receipt of last lot/ instalment

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 one hundred and eighty days from the date of issue of invoice by the supplier; and
- 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
- the 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.

Section 16(3) — Conditions for availing ITC

Input tax credit will not be allowed to the registered taxable person on the tax component who has already claimed depreciation on the tax component of the cost of capital goods under the provisions of Income-tax Act, 1961 (43 of 1961).

Section 16(4) – Conditions for availing ITC

A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods and/or services after:

- Filing of the return u/s. 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
- For F. Y. 2017-18 due date for furnishing return u/s 39 have been extended till the date for furnishing return u/s (1) of 37 for the month of March 2019

Section 17(1) – ITC in case goods/services partly used for business and partly for other purposes

Goods/Services/Both

Used for

Business purpose → Input tax attributable to business purpose allowable

Other purpose → Input tax attributable to other purpose NOT allowable

Not Defined

Central Govt. may by notification prescribe the manner for attributing the above credit [Section 17(6)]

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 including zero rated supplies.

Sections 17(2) & (3) – ITC in case of Goods/Services used partly for Taxable and Zero rated supply and partly for exempted supply including RCM

Goods/Services/Both

Used for

For
- Taxable supplies

→ Input tax attributable to: taxable supplies including Zero rated supplies allowable

For Exempt supplies

- It shall include supplies on which recipient is liable to pay tax under Reverse charge, transactions in securities, sale of land and, subject to clause (b) of para 5 of Schedule II, sale of building

- For this purpose the expression "Value of exempt supply" shall not include transactions specified in schedule III

→ ITC is **not** allowed in respect of input tax attributable to exempt supply

Central or State Govt. may by notification prescribe the manner for attributing the above credit [Section 17(6)]

Section 17(4) – ITC in case of Banking company or Financial Institution including NBFC

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
- either comply with the provisions of sub-section (2), or
- avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month.

Option once exercised shall not be withdrawn during the remaining part of the financial year.

the restriction of fifty per cent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number

Section 17(5) – Where ITC not admissible

Motor vehicles and other conveyance [Section 17(5)(a)]	(a) *motor vehicles for transportation of person having approved seating capacity of not more than 13 person (including driver) except when they are used—* (i) for making the following taxable supplies, namely:— (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving, such motor vehicles (ii) *for transportation of goods;* (aa) *Vessel and aircraft except when they are used:* *(A) further supply of such vessel and aircraft or* *(B) transportation of passengers; or* *(C) imparting training on manufacturing such vessel or* *(D) Imparting training on manufacturing such aircrafts.* *(ab) Service of general insurance, servicing, repair & maintenance for (a) or (aa) except* *(i) If motor vehicle & aircraft used for purpose specified above* *(ii) If taxable person engaged* *(1) Manufacturer of motor vehicle, vessel or aircraft* *(2) In the supply of general insurance services*
Specified supply of goods or services or both [Section 17(5)(b)]	(b) *the following supply of goods or services or both—* (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessel and aircraft referred to in clause (a) or (aa) except when used for the purpose specified therein where 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; (ii) membership of a club, health and fitness centre; (iii) travel benefits extended to employees on vacation such as leave or home travel concession; provided ITC is available, where it is obligatory for an employer to provide under any law
Works contract services [Section 17(5)(c)]	(c) *works contract services when supplied for construction of an immovable property* (other than plant and machinery) except where it is an input service for further supply of works contract service
Goods or Services [Section 17(5)(d)]	(d) *goods or services or both received by a taxable person for construction of an immovable property* (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Goods and/or services	• Tax paid under Section 10 [Composition levy] – [Section 17(5)(e)] • Received by a Non-resident Taxable person except on goods imported by him – [Section 17(5)(f)] • Used for personal consumption – [Section 17(5)(g)] • Goods which are lost, stolen, destroyed, written off or disposed of by way of gift or free samples – [Section 17(5)(h)] • Any tax paid in accordance with the provisions of Sections 74, 129 and 130 – [Section 17(5)(i)]

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

ITC – Section 17(6)

[Section 17(6)]	Government may, by notification issued in this behalf, prescribe the manner in which the credit referred above me attributed – [Section 17(6)]

Section 18 – ITC on Input, Input in semi-finished or finished goods in case of person registered u/ss. 25(1) and 25(3)

Section 18(1)(a)	Section 18(1)(b)
• Every registered taxable • Person applied for registration within 30 days from the date he becomes liable • And has been granted registration shall be • Entitled to *take ITC admissible* to him • In respect of inputs, inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable	• Any person registered u/s. 25(3) • shall be • Entitled to **take ITC admissible** to him • In respect of inputs held in stock, inputs contained in semi finished or finished goods held in stock on the day immediately preceding the date of grant of registration

ITC in case of conversion from composition levy to regular dealer

Section 18(1)(c)	Section 18(1)(d)
• Any registered taxable person ceases to pay tax u/s. 10, he shall be • Entitled to take *ITC admissible* to him • In respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax u/s. 9.	• Where an exempt supply of goods or services or both by a registered taxable person becomes a taxable supply, such person shall be, • Entitled to *take ITC admissible* to him • In respect of inputs held in stock, 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 on the day immediately preceding the date from which such supply becomes taxable.

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf

Section 18(2) – ITC admissible up to 1 year

A taxable person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply

Section 18(3) – ITC in case of change in Constitution

Where there is a change in the Constitution of a registered taxable person on account of

- sale, merger, demerger, amalgamation, lease or transfer of the business

with the specific provision for transfer of liabilities,

- the said registered taxable person shall be allowed to transfer the input tax credit that remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

Section 18(4) – ITC in case of switch over of regular dealer to composition levy or exempted supplies

Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 10 or, where the goods or services or both supplied by him become exempt absolutely u/s. 11, he shall pay an amount

by way of debit in the electronic credit or 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 and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption:

PROVIDED that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Section 18(5) & Section 18(6) – Manner of Calculation of ITC

Section 18(5)

The amount of credit under sub-section (1) and payable under sub-section (4) shall be calculated in such manner as may be prescribed

Section 18(6)

In case of supply of capital goods or P&M, on which ITC has been taken the registered taxable person shall pay an amount equal to the ITC taken on the said capital goods or P&M reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or P&M under sub-section (1) of section 15, whichever is higher

PROVIDED FURTHER that where 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 under sub-section (1) of section 15

Section 19 – Taking ITC in respect of inputs and capital goods sent for job-work

(1) The Principal be allowed input tax credit on inputs sent to a job worker for job-work

(2) Entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without their being first brought to his place of business

(3) Where inputs sent for job-work not received within 1 year, it shall be deemed that such inputs has been supplied by the principal on the day when those were sent

In case where sent directly to job-worker, period of 1 year to be counted from the date of receipt by job worker

(4) The Principal be allowed input tax credit on Capital Goods sent to a job-worker for job-work

(5) Entitled to take credit of input tax on Capital Goods even if the capital goods are directly sent to a job worker for job-work without their being first brought to his place of business

(6) Where Capital Goods sent for job work not received within 3 years, it shall be deemed that such Capital Goods has been supplied by the principal on the day when those were sent

In case where sent directly to job worker, period of 3 year to be counted from the date of receipt by job worker

(7) Period mentioned above points 3 and 6 shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work

Section 20 – Manner of distribution of credit by ISD

Sub-Section (1)

- ISD shall distribute-

CGST as CGST/IGST
IGST as IGST/CGST

by issuing a document containing the amount of ITC being distributed in such manner as may be prescribed.

Sub-Section (2) ISD may distribute the credit subject to following conditions

(a) • the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such document shall contain details as may be prescribed

(b) • the amount of the credit distributed shall not exceed the amount of credit available for distribution

(c) • the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient

(d) • the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed only amongst such recipient(s) 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;

(e) • 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

***Explanation A* – For the purposes of this section, the "relevant period" shall be—**

(i) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States 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.

***Explanation B* – For the purposes of this section, 'recipient of credit' means the supplier of goods and/or services having the same PAN as that of ISD.**

***Explanation C* – 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 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.**

Section 21 – Manner of recovery of credit distributed in excess –

Where the ISD 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

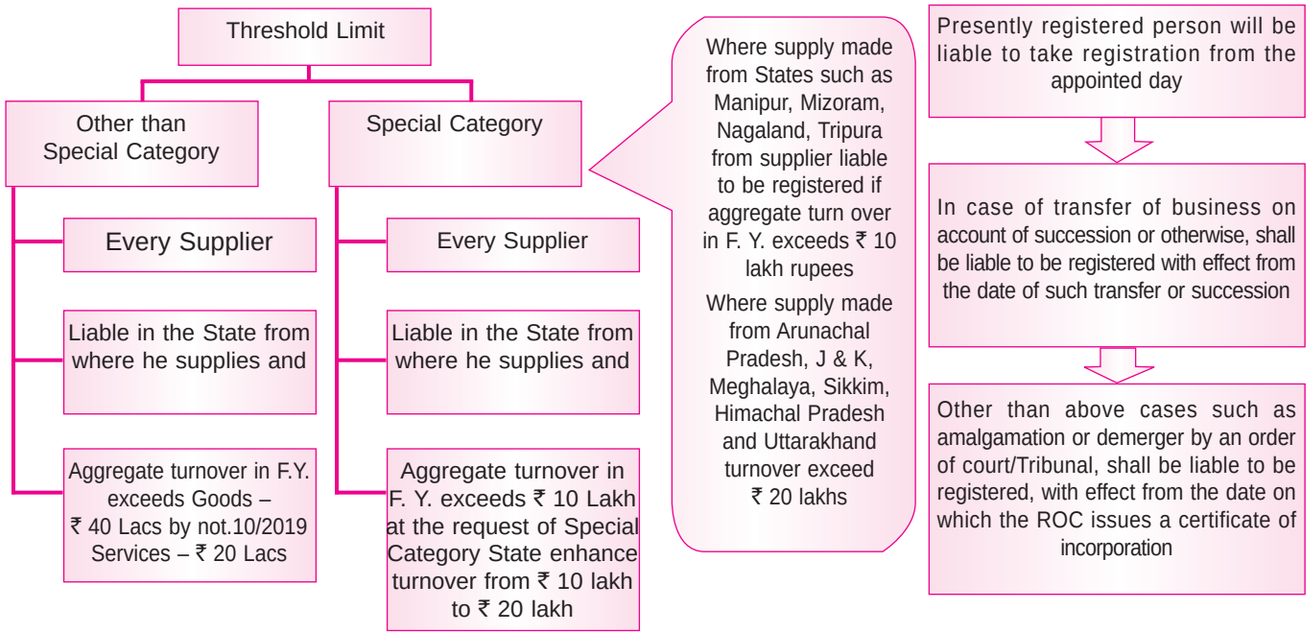
recovered from such recipient(s) along with interest,

and the provisions of section 73 or 74, as the case may be, shall apply *mutatis mutandis* for effecting such recovery.

CHAPTER 1.9 — REGISTRATION UNDER GST

Section 22 — Person liable for Registration

Registration is the first step towards the compliance of any tax law. Under GST, also registration of new person and migration of existing person is going to be very relevant and crucial. In this chapter we will be discussing the provisions pertaining Registration. Amendment therein, Cancellation and revocation of cancellation. Another reason why registration under GST is crucial is that there is no concept of Centralised Registration and hence a person has to take registration in each state from where he makes any supplies



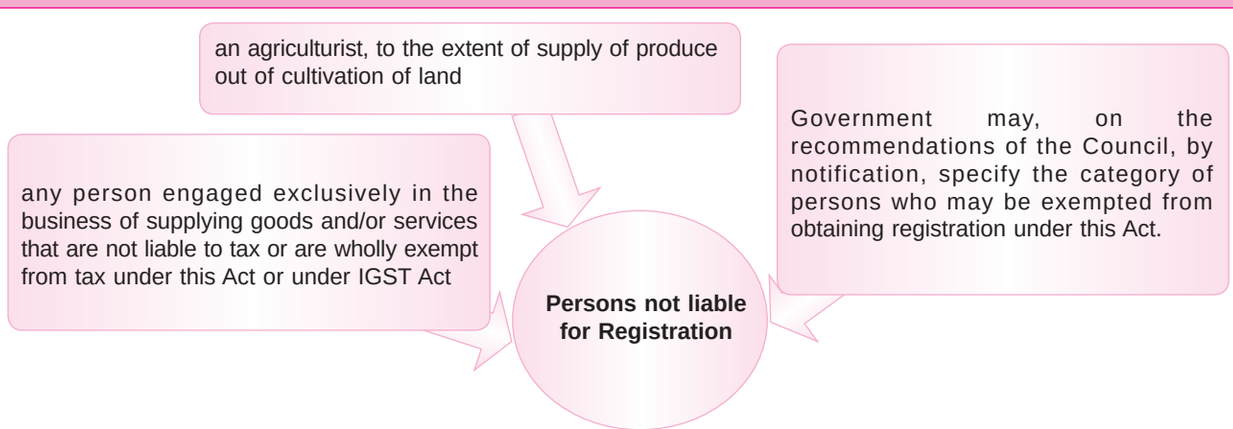
Explanation :—

(i) "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution

Section 23 — Person not liable for Registration



Section 24 — Compulsory Registration

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) persons who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax u/s. 51;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified u/s. 9(5), through such electronic commerce operator who is required to collect tax at source u/s. 52;

(x) every electronic commerce operator; who is required to collect tax at source u/s 52;

(xi) every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Section 25 — Procedure for registration

Every person liable to be registered u/ss. 22 & 24 shall apply in each State or UT where liable

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Within 30 days from the date he becomes liable for registration

↓

In the prescribed manner and subject to specified conditions

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A person who is registered and have place of business other than SEZ has to apply for separate registration for SEZ

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Casual Person or Non-resident Taxable person shall apply at least 5 days prior to commencement of business

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Person seeking registration shall be granted single registration in a State or Union Territory, may be granted separate registration for each place of business

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Option of Voluntary Registration

↓

Shall be treated as Distinct person in case of multiple registration within State and also in two different States

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PAN Compulsory (except for Non-Resident Taxable Person)

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In case liable to deduct TDS u/s. 51, in addition to PAN, he must have TDN and TCN

↓

Non-Resident taxable person shall have to submit any other prescribed documents for Registration

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In case of failure to register, PO may proceed to register such person in prescribed manner

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Granting of Unique Identification Number (UIN) for purposes, including refund of Tax, as may be prescribed

↓

Registration or UIN shall be granted or rejected in the manner and within prescribed period

↓

RC shall be issued in such form and with effect from such date as may be prescribed

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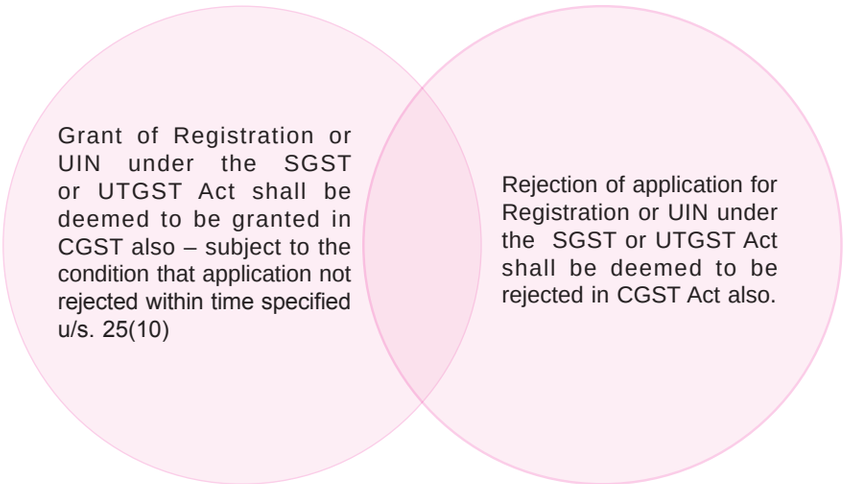
Registration or UIN shall be deemed to be granted after the expiry of period prescribed u/s. 25(10) provided no deficiency is communicated to applicant within such period

Section 26 — Deemed Registration



Section 27 — Casual Taxable Person and Non-resident Taxable Person

Certificate of Casual Taxable Person (CTP) or Non-resident taxable person (NRTP) shall be valid for 90 days from effective date of registration or period specified in application, whichever is earlier

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Taxable supply shall be made only after the issuance of Registration Certificate

↓

Proper officer may extend this period to further 90 days on sufficient reasons being shown

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CTP or NRTP make an advance deposit of tax in an amount equivalent to the estimated tax liability at the time of application u/s. 25(1)

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In case of extension period, amount estimated for extension period should also be deposited in advance

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Amount deposited in advance shall be credited to the electronic cash ledger and shall be utilised in the manner provided u/s. 49

Section 28 — Amendment of Registration

Person shall inform the proper officer of any changes in the information furnished at the time of registration or that furnished subsequently

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In the manner and within such period as may be prescribed

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Proper officer may approve or reject in the registration particulars in the manner and within such period as may be prescribed

↓

Approval of the proper officer shall not be required in respect of such particulars as may be prescribed

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Show Cause Notice and reasonable opportunity of being heard should be given by the Proper officer in case he is willing to reject the amendment application

Approval or rejection in SGST/UTGST Acts shall be deemed to be the approval or rejection in this Act.

Section 29 — Cancellation of registration

Cancellation or Suspension of Registration

Proper Officer on his own motion or on an application filed by the registered person or by his legal heirs

- the business has been discontinued, transferred, amalgamated with other legal entity, demerged or otherwise disposed of; or
- change in the constitution of the business; or
- taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24

During pendency of proceeding relating to cancellation, registration may be suspended.

Proper Officer on his own motion, from such date, including any retrospective date, as he may deem fit

- a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- a person paying tax under section 10 has not furnished returns for 3 consecutive tax periods; or
- any other registered person has not furnished returns for a continuous period of 6 months; or
- any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- registration has been obtained by means of fraud, willful misstatement or suppression of facts:

Cancellation of registration shall not affect

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

Cancellation under SGST or UTGST Act shall be deemed to be a cancellation of registration under CGST Act

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 ITC 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,

To be calculated in prescribed manner

In case of capital goods or plant and machinery, the taxable person shall pay higher of the below amount

an amount equal to the ITC taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or	the tax on the transaction value of such capital goods or plant and machinery u/s. 15

Section 30 — Revocation of Cancellation of Registration

Person may apply for revocation of cancellation of registration to such proper officer in the prescribed manner within 30 days from the date of service of the cancellation order

If notice served and person could not reply to notice and registration cancelled up to 31.07.2019 can apply for revocation up to 22.07.2019

PO may by an order either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons

Show Cause Notice and reasonable opportunity of being heard should be given in case PO is willing to reject the application for revocation of cancellation of registration

Approval in SGST/UTGST Acts shall be deemed to be approval in CGST Act

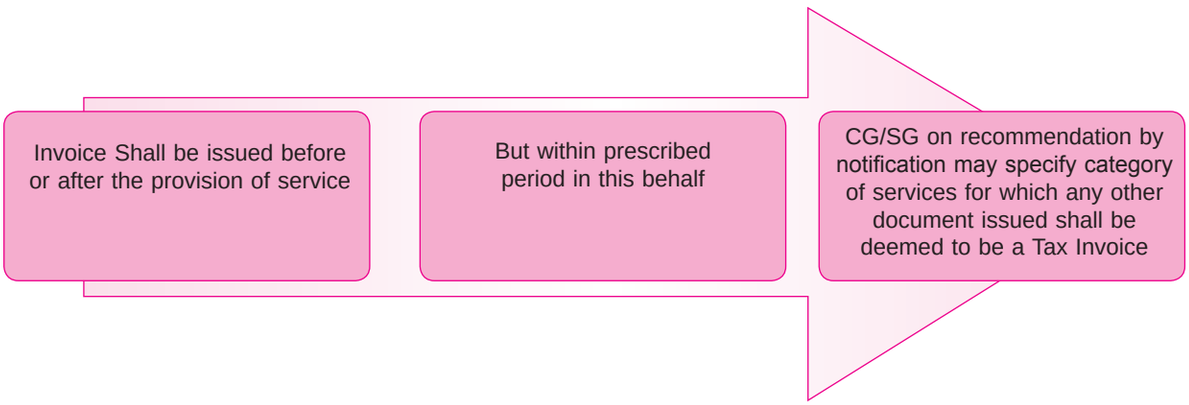
Section 31(1) — Tax Invoice in case of supply of goods

A registered taxable person supplying taxable goods, shall

Type of Goods	***Issuance of Tax Invoice***
• Where the supply involves the movement of goods.	• Tax invoice shall be issued before or at the time removal of goods for the supply to the recipient.
• Where the supply does not involve the movement of goods.	• Tax invoice shall be issued before or at the time of delivery of goods or making the goods available to the recipient.

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.

Section 31(2) — Tax Invoice in case of supply of services



✓ ***A registered person supplying taxable services,*** shall

✓ before or after the provision of service but within a prescribed period, (prescribed time limit as per the Rules is 30 days except for banking company, financial institution including NBFC because it their case the prescribed time limit is 45 days)

✓ issue a tax invoice,

✓ showing the description, value, tax charged thereon and such other particulars as may be prescribed

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.

Section 31(3) — Tax invoice in other situations	
(a) When invoice has already been issued between effective date of registration and the date of issuance of registration certificate	• a registered taxable person may, within one month from the date of issuance of certificate, issue a revised invoice, in the prescribed manner.
(b) If value of supply is below ₹ 200	• then the registered person may not issue Bill of Supply, subject to such conditions and in such manner as may be prescribed.
(c) 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. • he may not issue bill of supply, subject to such conditions and in such manner as may be prescribed.
(d) When a registered taxable person receives advance payment	• He will issue a receipt voucher or any other document, including such particulars as may be prescribed.
(e) 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, registered person may issue to the person who had made the payment, a refund voucher against such payment
(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9	• 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
(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9	• shall issue a payment voucher at the time of making payment to the supplier.

Section 31(4) — Tax invoice in case of Continuous Supply of Goods

In case of ***Continuous supply of goods***

- Where successive statement of accounts or payment are involved, Invoice shall be issued before or at the time of issuance of each such statement or at the time of receipt of each such payment.
- Where successive statement of accounts or payment are not involved***?***

Section 31(5) — Tax invoice in case of Continuous Supply of Services

In case of ***Continuous supply of services***

- where the due date of payment is ascertainable from the contract → the invoice shall be on or before the due date of payment
- 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
- 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.

Section 31(6) — Tax invoice

In a case where the supply of services ceases under a contract before the completion of the supply

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the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply effected before such cessation.

Section 31(7) — Goods sent on approval

In case of Goods sent on approval or sale or return

- Where goods are removed before it is known whether supply will take place.
- Invoice shall be issued at the earliest of the following
  - 6 months from the date of removal
  - Before or at the time when it becomes known that supply has taken place

Explanation.— For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Section 32 – Prohibition on Unauthorized Collection of Tax

A person who is **NOT REGISTERED TAXABLE PERSON** Shall **NOT collect TAX** for supplying Goods/Services

No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

Section 33 — Amount of tax to be indicated in tax invoice and other documents

where any supply is made for a consideration

Every person liable to pay tax for such supply	shall prominently indicate amount of Tax in all documents related 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

Section 34 — Credit and Debit Notes

Taxable Value/Tax charged in the one or more invoices is found less than the taxable value/tax payable

It shall include supplementary Invoice

Taxable Value/Tax charged in the one or more invoices exceeds the taxable value/tax payable

Goods supplied are returned or

Services supplied found to be deficient

One or more Debit Notes shall be issued

One or more Credit Notes shall be issued

- Person shall declare the details of DN in the return for the month in which such DN has been issued.
- Tax Liability shall be adjusted in the manner specified in the Act

Person shall declare the details of CN in the return for the month in which such CN has been issued but not later than—

- September following end of year; or
- Date of filing of relevant Annual Return

Whichever is earlier, and

The tax liability shall be adjusted in the manner prescribed.

Where the incidence of Tax has been passed on to any person – No reduction in Liability of Supplier

CHAPTER 1.11 — RETURN

INTRODUCTION

In India, most of the taxation laws are self-assessment based which means that a person needs to assess his tax liability on his own and pay the tax accordingly and then thereafter inform the tax authorities by way of filing a return. Under GST also the same is going to continue i.e. it is also a self-assessment based tax and the information needs to be submitted by way of periodical returns discussed hereinafter

Section 37 – Furnishing details of outward supplies

Sub-Section (1)

- Every registered person except ISD, NRTP, person liable to pay u/s. 10 or 51 or 52
- Shall furnish return electronically by 10th of the next month
- Such details shall be communicated to the recipient within such time and manner as prescribed
- Not allowed to furnish anything between 11th and 15th of the next month
- Commissioner may extend this period by notification for notified class of persons
- Any extension granted under SGST/ UTGST by Commissioner, CGST will also have same effect

Sub-Section (2)

- Person who has been communicated the details u/s. 38(3) or 38(4) shall
- Either Accept or Reject the details
- Up to 17th day but not before 15th day, of the month succeeding the tax period and
- The details furnished shall stand amended automatically

Sub-Section (3)

- Person who has furnished details as per sub-section (1) and which have remained unmatched u/ss. 42/43 shall
- Rectify the error/omission in the prescribed manner and
- Pay the Tax and Interest
- Such error/omission allowed to be rectified before
- Annual return filing date or
- Return u/s. 39 filing date for September of succeeding year to the relevant tax period

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.

Section 38 — Furnishing details of inward supplies

Sub-Section (1)	• Every registered person except ISD, NRTP, person liable to pay u/s. 10 or 51 or 52 • Shall verify, validate, modify or delete, if required, the details communicated u/s. 37(1) • Outward supply becomes inward supply for recipient, who shall prepare details of his inward supplies and CN/DN and • May include details of inward supplies not declared by the supplier u/s. 37(1)
Sub-Section (2)	• Every registered person except ISD, NRTP, person liable to pay u/s. 10 or 51 or 52 • Shall furnish details of inward supply of goods/services or both and also on which liable under reverse charge and inward supply of goods/services or both taxable under IGST Act and CN/DN • Such details for tax period must be furnished after the 10th day but before 15th day of the month succeeding the tax period in prescribed form and manner • Commissioner may, for reasons to be recorded in writing, extend this period by notification for notified class of persons • Any extension granted under SGST/UTGST by Commissioner, CGST will also have same effect

Sub-Section (3)	• Details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be • Communicated to the supplier in prescribed time and manner
Sub-Section (4)	• Details of supplies modified, deleted or included by the recipient in return under sub-section (2) or (4), shall be • Communicated to the supplier in prescribed time and manner

Sub-Section (5)	• Person who has furnished details as per sub-section (2) and which have remained unmatched u/ss. 42/43 shall
	• Rectify the error/omission in the prescribed manner and
	• Pay the Tax and Interest
	• Such error/omission allowed to be rectified before
	  • Annual return filing date or
	  • Return, u/s. 39, filing date for September of succeeding year to the relevant tax period

Section 39 — Furnishing of returns

Every registered person except ISD, NRTP, person liable to pay u/s. 10 or 51 or 52 shall for every calender month or part thereof

furnish a return, electronically, of inward and outward supplies of goods/ services or both, ITC availed, tax payable/paid or any other prescribed particulars	on or before the 20th day of the month succeeding such calendar month or part thereof

For person covered u/s. 10, shall file return electronically annually

of turnover in the State or Union territory, inward supplies of goods/ services or both, tax payable/paid	within 30 days after the end of previous FY ending March 31

A person liable to deduct tax u/s. 51 shall furnish a return electronically for the month within 10 days of after the end of such month

Every ISD shall furnish a return electronically for every month or part thereof within 13 days after the end of such month

Every Registered NRTP shall furnish a return electronically every month or part thereof within

20 days after the month end/within 7 days after the last day of registration period, whichever is earlier

Commissioner may extend this period by notification for notified class of persons`

Any extension granted under SGST/UTGST by commissioner, CGST will also have same effect

Return to be filed under sub-sections (1), (2), (3) and (5) of Section 39 above, shall be filed only after the payment of tax due as per return

Those registered person who are covered under sub-section (1) or (2) are required to file return irrespective of the fact that there are no supplies of goods/services or both have been made during such tax period.

If after filing returns as per above sub-sections, the registered person discovers any error/omission, other than result of scrutiny, audit, inspection or enforcement activity by the tax department, he shall rectify such error/omission in the return for the period in which such error/omission is noticed along with payment of interest

This mistake shall be allowed to be rectified before Annual return filing date or Return, u/s. 39, filing date for September or 2nd quarter of succeeding year to the relevant tax period

No return filing shall be allowed for a period if the return for any previous period has not been furnished

Section 40 — First Return

Every registered person who has made outward supplies

Declare the same in the first return furnished by him after grant of registration.

In the period between the date on which he became liable to registration till the date on which registration has been granted shall

Every registered person who has made outward supplies in the period between the date 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.

Section 41 — Claim of ITC and provisional acceptance thereof

Every registered person shall be

- entitled to take the credit of eligible input tax as self assessed
- in his return and
- shall be credited on a provisional basis to his ECL
- as per the conditions and restrictions prescribed

The credit referred above shall be utilised **only for payment of self-assessed output tax**

Section 42 — Matching, reversal and reclaim of reduction in ITC

The details of every inward supply furnished by registered person be matched for a tax period

with the corresponding details of outward supply furnished by the corresponding registered person in his valid return for same or preceeding period.	with the IGST paid u/s. 3 of the Customs Tariff Act, 1975 in import of goods.	for duplication of claims of ITC

Claim of ITC in respect of Invoices or Debit notes should match as per above 2 conditions

If matched, shall be accepted as ITC and communicated to recipient

If ITC claimed in inward return is in excess of the amount declared by corresponding person in his outward supply or not shown in outward supplies by supplier

Both persons shall be communicated in the prescribed manner

Duplication of claims of ITC shall be communicated to the recipient in the prescribed manner

If any discrepancy found as per sub-section (3) is not rectified in the monthly return of that month in which communicated,

Output Tax Liability (OTL) of recipient for next month shall get increased

Section 42 — Matching, reversal and reclaim of reduction in OTL

Amount claimed as ITC is found to be in excess on account of duplication of claims

shall be added to the OTL of the recipient in his return for the month in which communicated

The recipient shall be eligible to reduce from his OTL by the amount added u/s. (5),

if the supplier declares the invoice details or debit note in his valid return within specified time u/s. 39(9)

Whose OTL is increased u/ss. (5) or (6)

Shall be liable to pay interest as per Section 50 for the period starting from date of Availment of credit till the date of addition of ITC

If OTL u/s. (7) gets reduced, Interest paid as per above discussion

Shall be refunded in ECL in prescribed manner	Amount of interest shall not exceed amount of interest paid by the supplier

The amount reduced from the OTL in contravention of the provisions of sub-section (7)

shall be added to the OTL	Interest will also be leviable as per Section 50(3)

Section 43 — Matching, reversal and reclaim of reduction in OTL

The details of every credit note furnished by registered person be matched for a tax period

with the corresponding reduction in the claim for ITC by the corresponding registered person in his valid return	for duplication of claim reduction in output tax liability

Claim of reduction in output tax liability should match with the corresponding reduction in claim for ITC by the recipient

If matched, shall be finally accepted and communicated to supplier.

If reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for ITC or the corresponding credit note is not declared by the recipient in his valid returns

Both persons shall be communicated about the discrepancy in the prescribed manner

Duplication of claims reduction in output tax liability shall be communicated to the supplier in the prescribed manner

If any discrepancy found as per sub-section (3) is not rectified by the recipient in that month return in which communicated

Output Tax Liability of supplier for next month shall get increased

Section 43 — Matching, reversal and reclaim of reduction in OTL

Amount in respect of any reduction in OTL on account of duplication of claims

shall be added to the OTL of the supplier for the month in which duplication is communicated

The supplier shall be eligible to reduce his OTL by the amount added u/s. (5),

if the recipient declares the details of the credit note in his valid return within specified time u/s. 39(9)

Whose output tax liability is increased u/s. (5) or (6)

shall be liable to pay interest as per Section 50 for the period starting from date of such claim of reduction in OTL till the date of addition

If OTL u/s. (7) gets reduced, Interest paid as per above provision

shall be refunded in ECL in prescribed manner	Amount of interest shall not exceed amount of interest paid by the recipient

The amount reduced from the OTL in contravention of the provisions of sub-section (7)

shall be added to the OTL	Interest will also be leviable as per Section 50(3)

Section 44 — Annual return

Every registered person shall be —
Required to file annual return for every year
Before 31st December following end of such financial year
List of Excluded persons —
NRTP, CTP, ISD, Person paying Tax u/s. 51 or 52

Person required to be audited u/s. 35(5) shall
furnish Annual Return under sub-section (1)
and copy of the audited annual accounts
and a reconciliation statement and
such other particulars as may be prescribed

Section 45 — Final Return

Every registered person who is required to

- Furnish a return u/s. 39(1) 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

Section 46 — Notice to return defaulters

Where a registered person fails to furnish → a return u/ss. 39/44/45 → Notice shall be issued → requiring him to furnish such return → within fifteen days → in prescribed form and manner

Section 47 — Levy of Late Fee

Any registered person

- who fails to furnish
- details of outward or inward supplies u/ss. 37/38 or
- returns u/ss. 39/45
- by the due date
- shall pay a late fee of ₹ 100 per day subject to a maximum amount of ₹ 5,000

Any registered person

- who fails to furnish
- returns u/s. 44
- by the due date
- shall pay a late fee of ₹ 100 per day subject to 0.25% of his total turnover in the State or Union Territory

Section 48 — Goods and Services Tax Practitioners

Following shall be prescribed in respect of Goods and Services Tax Practitioners

- 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

A registered person may authorise an approved Goods and Services Tax Practitioner

- to furnish the details of supplies u/ss. 37/38 and
- the return u/ss. 39/44/45 and
- to perform such other functions, as may be prescribed

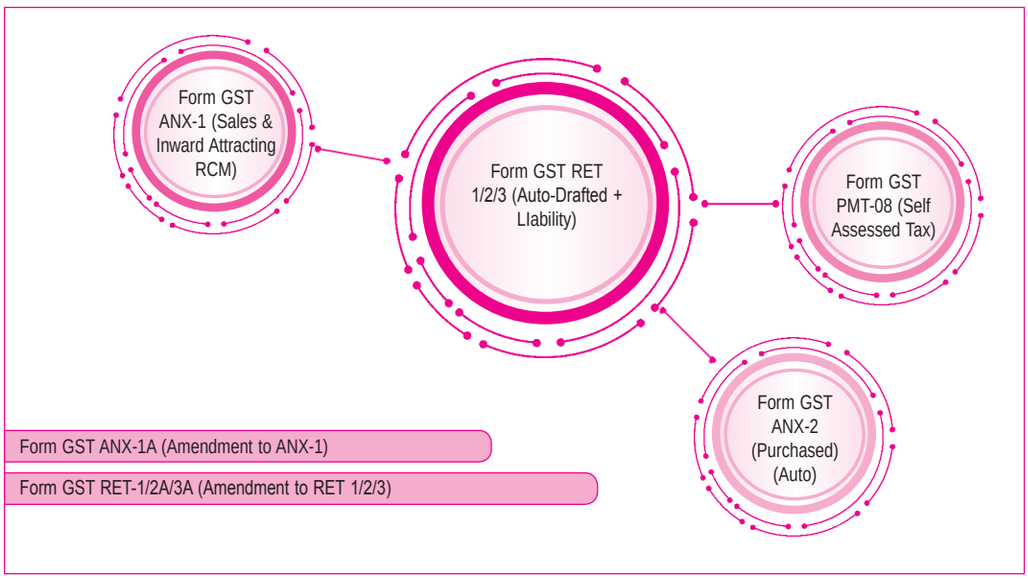
the responsibility for correctness of any particulars furnished in the return or other details

- shall continue to rest with the registered person on whose behalf such return and details are furnished

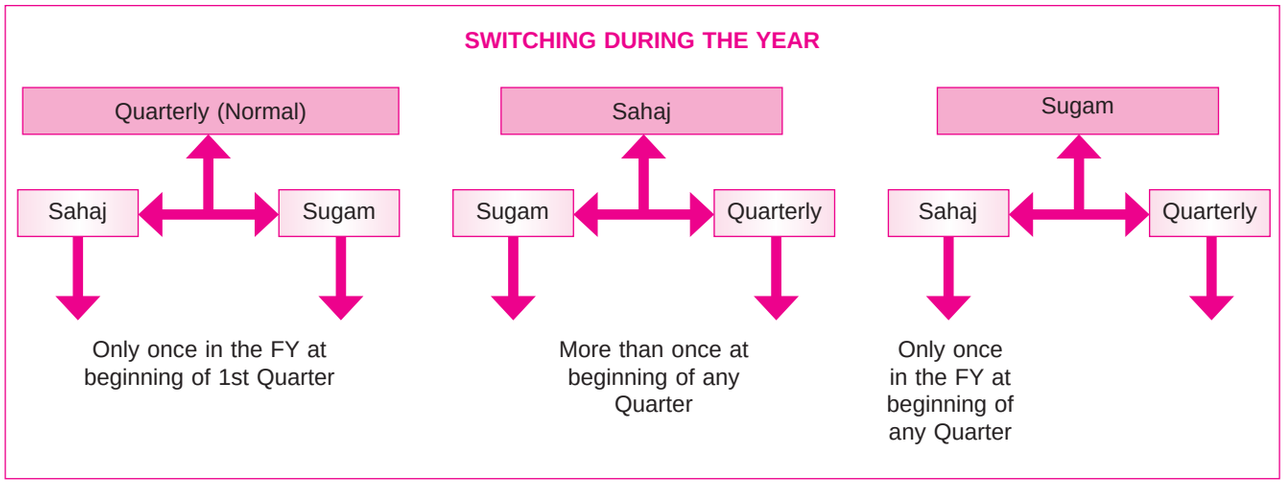
NEW GST RETURNS

- Three new GST forms released by Government to ease the burden of return filing
- Trial basis for the period from July 2019 to September 2019.
- October 2019 onwards implemented on a regular basis. January 2020 onwards mandatory to all
- Certain conditions on the basis of Turnover applicable to new returns

Month	Form to be filed	Turnover Limit
October 2019	GST ANX-1	More than ₹ 5 Crore
January 2020	GST ANX-1	Up to ₹ 5 Crore
January 2020	GSTR 3B	Up to ₹ 5 Crore
October 2019	GSTR 3B	Up to ₹ 5 Crore



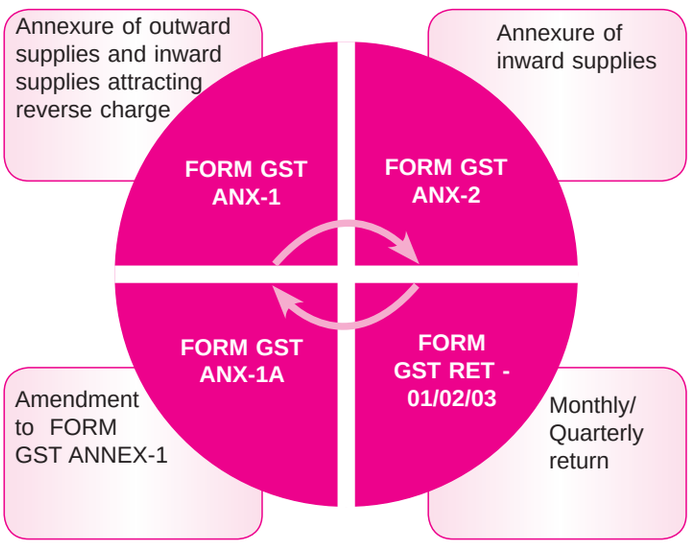
Flow of these 3 GST Returns (Normal, Sahaj & Sugam)



THE SUMMARIZED PRESENTATION OF NEW GST RETURN FORMS

S. No.	Particulars	Normal (GST RET-1)	Sahaj (GST RET-2)	Sugam (GST RET-3)
1.	Periodicity of Return	Quarterly or monthly	Quarterly	Quarterly
2.	Aggregate Turnover	More than ₹ 5 Crore - mandatory, Up to ₹ 5 Crore - optional	Up to ₹ 5 Crore-Optional	Up to ₹ 5 Crore-Optional
3.	Type of Outward Supply			
	- B2B	Yes	No	Yes
	- B2C	Yes	Yes	Yes
	- Exports	Yes	No	No
	- SEZ units/developers	Yes	No	No
	- Deemed Exports	Yes	No	No
	- Supply to E-Commerce Operators	Yes	No	No
	- Nil Rated, Exempted or Non-GST	Yes	Yes (even without declaration)	Yes (even without declaration)
4.	Type of Inward Supply			
	- RCM	Yes	Yes	Yes
	- Import of Services	Yes	No	No
	- Import of Goods	Yes	No	No
	- Import of Goods from SEZ	Yes	No	No
5.	The credit of Missing Invoices Available	Yes	No	No
6.	ISD Credits Received	Yes	No	No
7.	HSN Code (6 Digits) on the basis of Annual Aggregate Turnover	T/o > ₹ 5 crores, in relation to exports, imports and SEZ supplies, mandatory; T/o <₹ 5 crore or equals to ₹ 5 crores then optional.	Optional	Optional
8.	NIL Return by SMS	Yes	Yes	Yes

STRUCTURE OF NEW GST RETURN



Section 49 — Payment of Tax, Interest, Penalty & other Amounts

Every deposit towards interest, tax, penalty, fee, etc.

Subject to such conditions and restrictions as may be prescribed

↓

Shall be credited to Electronic Cash Ledger of such person

Date of credit in Government account shall be deemed to be the date of deposit in the **Electronic Cash Ledger (ECAL)**

↓

Self-assessed ITC from returns to be credited in Electronic Credit Ledger (ECRL), maintained as prescribed

↓

Amount in ECAL to be used for paying tax, interest, penalty, fees, etc.

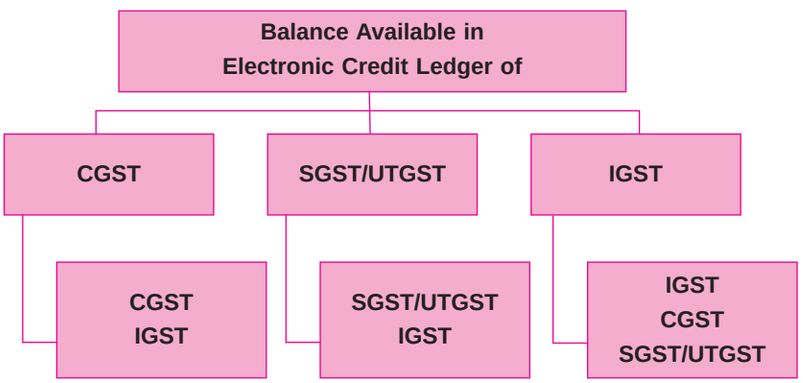
Subject to such conditions and within such time as may be prescribed

↓

Amount in Electronic Credit Ledger (ECRL) to be used for paying Output Tax Liability under this Act or Integrated Goods and Services Tax Act

Subject to such conditions and within such time as may be prescribed

Payment of tax, interest, etc. shall be made 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.



Cross Credit of CGST and SGST is the only restriction

This flowchart depicts that if there is balance in Electronic Credit Ledger then it shall be utilised for payments of GST under different Act as per the given order. Example about how to understand the flowchart is as under:

- *Balance in CGST can be used for CGST payment first and then if balance remains for IGST Payment.*
- *Apply same in case of SGST/UTGST and IGST Credit Balance.*
- *ITC of State/UTGST shall be utilized towards payment of IGST only where ITC of CGST is not available for payment of IGST*

Section 49 — Payment of Tax, Interest, Penalty & other Amounts

Balance in ECAL or ECRL after payment of Taxes and others shall be refunded as per the provisions of Section 54 or this Act and the rules made thereunder

↓

Electronic Liability Ledger (ELL) shall carry all the liabilities under the Act and shall be maintained as may be prescribed

For discharging Tax, Interest, Penalty, Fee, the taxable person shall follow the following order :—

(a) self-assessed tax, and other dues related to returns of previous tax periods;	(b) self-assessed tax, and other dues related to return of current tax period;	(c) any other amount payable under the Act or the rules made thereunder including the demand determined under section 73 or 74

Every Person paying Tax under this Act shall, unless otherwise proved, be deemed to have passed on the incidence of Tax to recipient of such goods or services or both.

The ITC of CGST, SGST or UTGST, shall be utilized towards payment only after the ITC of IGST has first Been fully utilized.

PAYMENT OF TAX UNDER NEW FORMS

1. Payment of self-assessed tax under Form GST PMT-08
2. Payment to be made on monthly basis even though opted for quarterly filing of return
3. Payment to be made for first two month. Credit of the same will be available at the time of filing of return
4. Total tax of the quarter shall be reduced by the amount paid for first two months and balance shall be payable.

Section 50 — Interest on delayed Payment of Tax

Every person liable to pay Tax under the Act or Rules if fails to pay the same or any part thereof within prescribed period, shall

On his account pay interest at such rate notified but not exceeding 18% for the period for which the Tax or any part thereof remains unpaid

Interest to be calculated from the 1st day on which tax was due to be paid

In case where undue or excess ITC is claimed u/s. 42(10) or undue or excess reduction in output tax liability u/s. 43(10) is made by taxable person, he shall be liable to pay interest at such rate, not exceeding 24%, as may be notified.

CHAPTER 1.13 — TAX DEDUCTION AT SOURCE

Section 51 — Tax Deduction at Source (TDS)

Notwithstanding anything contained to the contrary in this Act, the Government may

(a) a department or establishment of the CG/SG, or	(b) Local authority, or	(c) Governmental agencies, or	(d) such persons or category of persons as may be notified, by Government on the recommendations of the Council,

deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods or services or both, where total value of such supply, under a contract, exceeds ₹ 2,50,000

Amount deducted as TDS shall be paid to appropriate Government within 10 days from the end of the month in which deduction is made.

↓

Deductor shall issue a Certificate to the deductee with appropriate details as may be prescribed

↓

In case of failure to furnish the certificate within 5 days of crediting TDS to Govt, deductor shall be liable to pay late fee of ₹ 100/day up to the extent of ₹ 5,000 from the date of expiry of 5 days till failure is rectified

↓

Deductee shall claim credit, in Electronic Cash Ledger, of Tax deducted and shown in return filed under Section 39(3) by the deductor.

↓

In case deductor fails to deposit TDS, he shall be liable to pay interest as per Section 50(1) in addition to amount of Tax deducted.

↓

Any amount of Default under this section to be determined as per Section 73 or 74 as the case may be.

↓

Refund to deductor or deductee because of excess or erroneous deduction shall be as per provisions of Section 54 but NO REFUND in case amount deducted has been credited to Electronic Cash Ledger of the deductee.

Important point

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 as the case may be, Union Territory of registration of the recipient.

CHAPTER 1.14 — REVERSE CHARGE MECHANISM & COMPENSATION CESS

SECTION 9(3) AND SECTION 9(4) – LEVY UNDER REVERSE CHARGE

INTRODUCTION

Reverse charge, where the recipient is liable to pay tax, is common to many countries like Canada where it is applicable on imports of services and intangible properties. Normally, the supplier pays the tax on supply. In certain cases, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed which is why it is called reverse charge.

In India, this is a partly new concept introduced under GST. The purpose of this charge is to increase tax compliance and tax revenues. Earlier, the Government was unable to collect service tax from various unorganized sectors like goods transport. Compliances and tax collections will therefore be increased through reverse charge mechanism.

The concept of reverse charge mechanism was - already present in service tax. In GST regime, reverse charge is - applicable for both services as well as goods.

CURRENT SCENARIO

At present, similar provisions of Reverse Charge are available in GST for the services like—

- Insurance agent
- Services of a director to a company
- Manpower supply
- Goods Transport Agencies
- Non-resident service providers
- Any service involving aggregators

Currently there is no reverse charge in supply of goods.

REVERSE CHARGE UNDER GST

Reverse charge means the liability to pay tax is by the recipient of goods/services instead of the supplier. Reverse charge is applicable for both services as well as goods.

Situations where reverse charge will apply

1. The recipient of specified category of goods or services or both, as notified by the Government ,shall be liable to pay tax on reverse charge basis. The recipient may or may not be a registered person. (Section 9(3) of CGST Act)
2. Specified class of registered persons, as notified by Government, shall be liable to pay tax on reverse charge basis in respect of supply of specified categories of goods or services or both, received from an unregistered supplier. Section 9(4) of CGST Act.
3. **Services through an e-commerce operator**

   If an e-commerce operator supplies services then reverse charge will apply on the e-commerce operator. He will be liable to pay GST.

   For example, Urban Clap provides services of plumbers, electricians, teachers, beauticians etc. Urban Clap is liable to pay GST and collect it from the customers instead of the registered service providers.

   If the e-commerce operator does not have a physical presence in the taxable territory, then a person representing such electronic commerce operator for any purpose will be liable to pay tax. If there is no representative, the operator will appoint a representative who will be held liable to pay GST.
4. **Other categories of supplies applicable for reverse charge will be notified by the Centre or State Government**

   In case a person being a recipient is made liable to pay tax under reverse charge, he shall step into the shoes of a supplier and all the provisions of this Act that applies to a supplier shall be applicable to him also.

VARIOUS OTHER GST RELATED ASPECTS TO BE KEPT IN MIND

A. Registration

All persons who are required to pay tax under reverse charge have to register for GST irrespective of the threshold.

B. Time of Supply of Goods under Reverse Charge

In case of reverse charge, the time of supply shall be the earliest of the following dates—

(a) the date of receipt of goods OR

(b) the date of payment OR

(c) the date immediately after THIRTY days from the date of issue of invoice by the supplier

If it is not possible to determine the time of supply under (a), (b) or (c), the time of supply shall be the date of entry in the books of account of the recipient.

For clause (b) — *the date of payment shall be earlier of* —

1. The date on which the recipient entered the payment in his books

   OR
2. The date on which the payment is debited from his bank account

C. Time of Supply of Services under Reverse Charge

In case of reverse charge, the time of supply shall be the earliest of the following dates—

(a) The date of payment

OR

(b) The date immediately after SIXTY days from the date of issue of invoice by the supplier (30 days for goods)

If it is not possible to determine the time of supply under (a) or (b), the time of supply shall be the date of entry in the books of account of the receiver of service.

For clause (a)— the date of payment shall be earlier of—

1. The date on which the recipient entered the payment in his books

   OR
2. The date on which the payment is debited from his bank account

When supplier is located outside India

In case of 'associated enterprises', where the supplier of service is located outside India, the time of supply shall be—

the date of entry in the books of account of the receiver OR the date of payment

— *whichever is earlier*

D. Input tax credit on reverse charge

Tax paid on reverse charge basis will be available for input tax credit if such goods and/or services are used, or will be used, for business.

The recipient (i.e., who pays reverse tax) can avail input tax credit.

E. Tax Invoice

The supplier must mention in his tax invoice whether the tax is payable on reverse charge.

Where the reverse charge is on the recipient by virtue of Section 9(4), the invoice pertaining to those suppliers needs to be generated and issued by the recipient only.

F. GST Compensation Cess

GST Compensation Cess will also be applicable on reverse charge.

GST Compensation Cess will be levied and collected at the rate as notified. This will apply on all supplies of goods and services, including imports and reverse charge supplies. The purpose is to compensate States for loss of

revenue on implementation of GST. This will be applicable for 5 years from the date GST gets implemented or for such period as prescribed.

GST Compensation Cess shall not be leviable on supplies made by a taxable person who opt for composition scheme.

CHAPTER 1.15 — ANTI-PROFITEERING CLAUSE

Section 171 — Anti-Profiteering Measure

This is one of the most dangerous provisions. This provision was brought in for the first time through revised model GST law that was released on 26th November, 2016. Reason of adding such clause to provide a security and assurance to the consumer that whatever benefit a businessman would get after the implementation of GST, that is not available to him in the present Indirect Tax regime, need not be retained by him over and above his normal margin because this benefit whether because of reduction of tax rates or availability of input tax credit does not belong to him and if he is allowed to retain the same this will be wrong.

He is not entitled to such benefit as this will be an extra benefit or profit for him whereas it will be a loss for the consumer. Therefore it could be said that anti-profiteering measure gives a reason to smile to all the consumers under GST because those benefits will have to be passed to them.

Section 171 — Anti-Profiteering Measure

(1) 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.

(2) The Central Government may, on recommendations of the Council, by notification,

constitute an Authority, or empower an existing Authority constituted under any law for the time being in force,

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.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Conclusion

Everything has a brighter side as well as a dark side. Anti-profiteering clause is certainly going to be boon for the consumers but at the same time there is lot of subjectivity involved in the same which may give rise to dandaraj and corruption and hence it may prove to be a curse to lot of businessman. At times it may become difficult to justify and prove to the departmental officer whether the benefit have been really passed on to the consumer or not.

CHAPTER 1.16 — TRANSITIONAL PROVISION

Introduction

Since we have already entered into a new Indirect Tax Regime known as GST, Transitional Provisions are very crucial and important to understand and implement. Various initial questions such as — What will happen to our stock lying on the appointed day or What will be the treatment of pending adjudication, appeals, refunds, goods sent on job work, etc. once GST gets implemented whether it will be as per new law i.e. GST or the existing law.

Another relevant question was what will happen to my balances in CENVAT or VAT credit account. Whether it will be available in new regime or not. All these questions are addressed properly under the transitional provisions and for smooth implementation of GST, we need to understand the transitional provisions minutely and follow the provisions and procedures specified.

Section 139 — Migration of existing taxpayers

Sub-Sec (1)

- On and from the appointed day,
- every person registered under any of the existing laws and having a valid PAN
- shall be issued a certificate of registration on provisional basis,
- subject to such conditions and in such form and manner as may be prescribed,
- which unless replaced by a final certificate of registration under sub-section (2),
- shall be liable to be cancelled if the conditions so prescribed are not complied with

Sub-Sec (2)

- Final RC shall be granted
- In such form and manner and subject to such conditions as may be prescribed

Sub-Sec (3)

- If Final RC stands cancelled, Provisional Certificate shall also stands cancelled

Section 140(1) — Transitional arrangements for ITC

Amount of CENVAT Credit carried forward in a return to be allowed as ITC

A registered person,

↓

other than a person opting to pay tax under section 10,

↓

shall be entitled to take, in his Electronic Credit Ledger, the amount of CENVAT credit of eligible duties carried forward in the return

↓

relating to the period ending with the day immediately preceding the appointed day,

↓

furnished by him under the existing law in such manner as may be prescribed

↓

No Credit in the following Circumstances

Where the credit not admissible as ITC under this Act	Where not furnished the return for period of 6 months under existing Law immediately preceding the appointed day	Where said credit relates to goods manufactured and cleared under exemption notifications

Section 140(2) — Transitional arrangements for ITC

Unavailed CENVAT Credit on Capital goods not carried forward in a return, to be allowed in certain situations

A registered person,

↓

other than a person opting to pay tax under section 10,

↓

shall be entitled to take, in his Electronic Credit Ledger,

credit of the unavailed CENVAT credit in respect of capital goods,

↓

not carried forward in a return, furnished under the existing law by him,

↓

for the period ending with the day immediately preceding the appointed day

↓

in such manner as may be prescribed

↓

No Credit unless

Where the credit admissible under the existing law and also under this Act

Explanation

Unavailed CENVAT Credit = Amount of CENVAT Credit eligible on Capital Goods − CENVAT already availed

Section 140(3) — Transitional arrangements for ITC

Credit of eligible duties and taxes in respect of Inputs held in a stock to be allowed in certain situations.

Sub-Section (3) – A registered person

- Currently not liable to be registered
- Manufacturer/provider of exempted goods/ service
- works contractor availing abatement under 26/2012-ST
- First/second stage dealer
- Registered importer
- Depot of a manufacturer

Shall be entitled to take in Electronic Credit Ledger, Eligible credits on inputs, inputs in semi-finished and in finished goods held in stock on the appointed day subject to the following conditions, namely -

- Such stock to be used for making taxable supplies
- Such person eligible to take ITC on inputs under this Act
- The said person must be in possession of invoice or prescribed documents
- Such invoices or documents were issued not earlier than 12 months
- Supplier of services is not eligible for any abatement under this Act

where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or other documents then, he shall, pass on the benefit of such credit by way of reduced prices to the recipient, and he shall be allowed to take credit at such rate and in such manner as may be prescribed

Section 140(4) — Transitional arrangements for ITC

Eligibility of credit in case a person is engaged in manufacture of taxable as well as exempted goods in existing law

A registered person

- engaged in the manufacture of taxable/exempted goods under the Central Excise Act, 1944 (1 of 1944)
- provision of taxable/exempted services under Chapter V of the Finance Act, 1994 (32 of 1994)

but which are liable to tax under this Act, shall be entitled to take, in his Electronic Credit Ledger

- the amount of CENVAT credit carried forward in a return as per 140(1); and
- the amount of CENVAT credit of eligible duties, relating to such exempted goods or services, as per 140(3).

Section 140(5) — Transitional arrangements for ITC

Credit of eligible duties in respect of input or input services received on or after appointed day but the duty paid under the existing law

Sub-Section (5)

- A registered person shall get
- credit of eligible duties and taxes
- paid by him under earlier Law
- In his Electronic Credit Ledger
- on inputs or input services
- received on or after appointed day

Provided he has recorded invoice or other duty or tax paid documents in his books of account within 30 days from appointed day

- This period can be further extended to more 30 days on sufficient cause being shown
- He has to furnish a statement in prescribed manner in respect of credits taken under this sub-section

Section 140(6) — Transitional arrangements for ITC

Credit of eligible duties in case tax was paid at fix rate or as a fix amount under existing law

A registered Person

Paying tax at fix rate or paying a fix amount

Shall be entitled to take in Electronic Credit Ledger,

Eligible credits on inputs, inputs in semi-finished and in finished goods held in stock on the appointed day

subject to the following conditions, namely —

- Such stock to be used for making taxable supplies
- Such person eligible to take ITC on inputs under this Act
- The said person must be in possession of invoice or prescribed documents
- Such invoices or documents were issued not earlier than 12 months
- He is not paying tax u/s. 10 i.e. Composition Levy

Section 140(7) — Transitional arrangements for ITC

Distribution of Credit under this Act by Input Service Distributor

Input Service Distributor shall → Be eligible for distribution of Credit → For any Service received prior to appointed day. → Even if invoice received on or after appointed day

Section 140(8) — Transitional arrangements for ITC

Carry forward of credit where person has centralised registration under existing law

A registered person having centralised registration under the existing law and registered under CGST Act

↓

Shall be allowed to take in his Electronic Credit Ledger

↓

Credit of amount of CENVAT credit carried forward in return under existing Law for period ending with the day immediately preceding the appointed day

↓

If he furnishes return for the period ending with the day immediately preceding the appointed day under existing law within 3 months of the appointed day, credit shall be allowed provided

Such return is either original or revise where credit has been reduced from that claimed earlier

↓

He shall not be allowed credit unless the said amount is admissible as ITC under this Act

↓

Credit may be transferred to any of the registered persons having same PAN for which registered centrally under existing law

Section 140(9) — Transitional arrangements for ITC

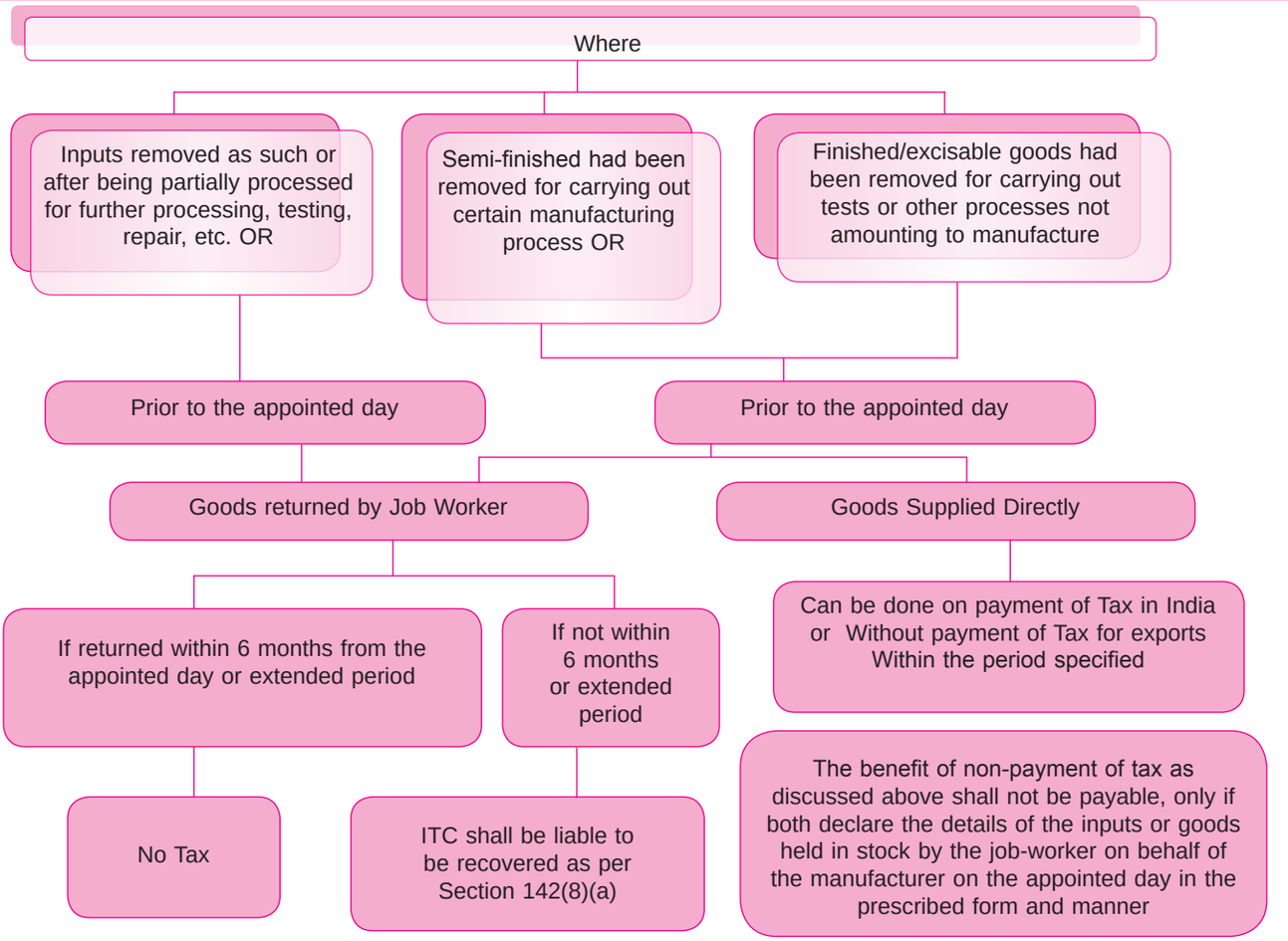
Eligibility of credit under this Act in case CENVAT was reversed under existing law due to non-payment

If CENVAT credit availed for input services provided under the existing law → has been reversed due to non-payment of the consideration within 3 months → Such credit can be reclaimed if → He has made the payment within 3 months from the appointed day

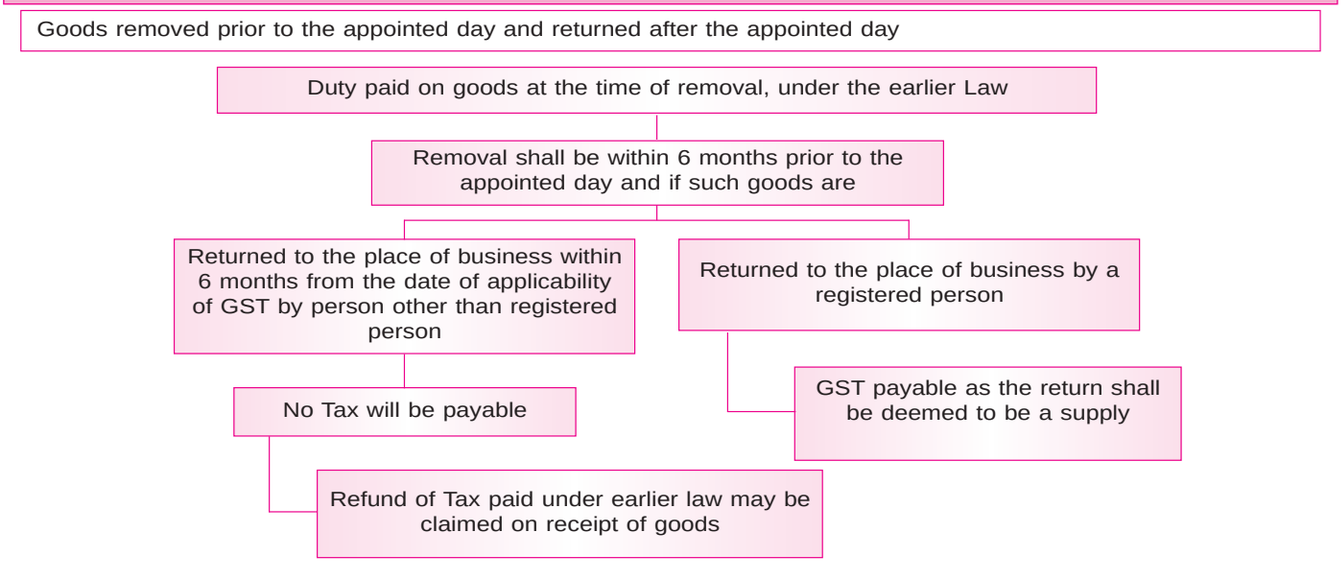
Section 140(10) — Transitional arrangements for ITC

The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Section 141 — Transitional provisions relating to Job Work



Section 142(1) — Misc. Transitional Provisions



Section 142(2) — Misc. Transitional Provisions

Where price is revised either upward or downward on or after the appointed day

Where a contract entered into prior to the appointed day and the price of any goods or services or both is

- Upward Revised on or after appointed day
  - The registered person shall issue a supplementary invoice or Debit Note within 30 days of price revision
- Downward Revised on or after appointed day
  - The registered person shall issue a Credit Note within 30 days of price revision (recipient to reduce his ITC correspondingly)

Such Supplementary Invoice/Debit Note/Credit Note deemed to have been issued in respect of an outward supply under this Act

Section 142(3) — Misc. Transitional Provisions

Claim for refund filed before on or after the appointed day of any amount paid under the existing Law

Any refund claim filed before, on or after the appointed day for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be

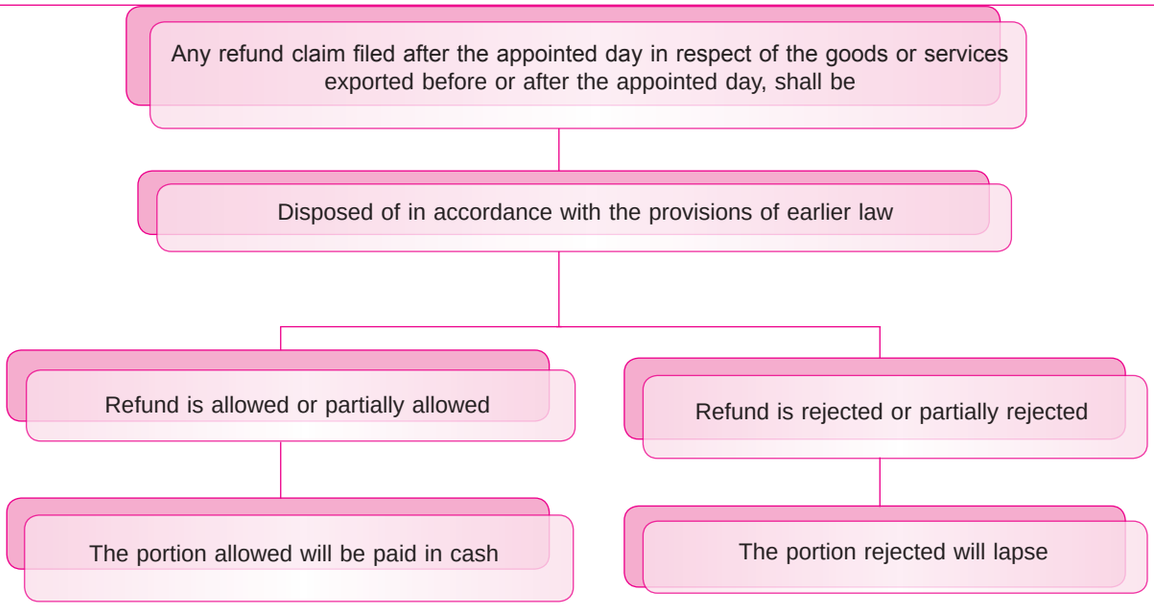
Disposed of in accordance with the provisions of earlier law

- Refund is allowed or partially allowed
  - The portion allowed will be paid in cash subject to doctrine of unjust enrichment
- Refund is rejected or partially rejected
  - The portion rejected will lapse

No refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Section 142(4) — Misc. Transitional Provisions

Claim for refund filed after the appointed day of any amount paid under the existing Law



No refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Section 142(5) — Misc. Transitional Provisions

Claim for refund filed after the appointed day for refund of tax paid under existing law in respect of services not provided

Every claim filed by a person after the appointed day

for refund of tax paid under the existing law

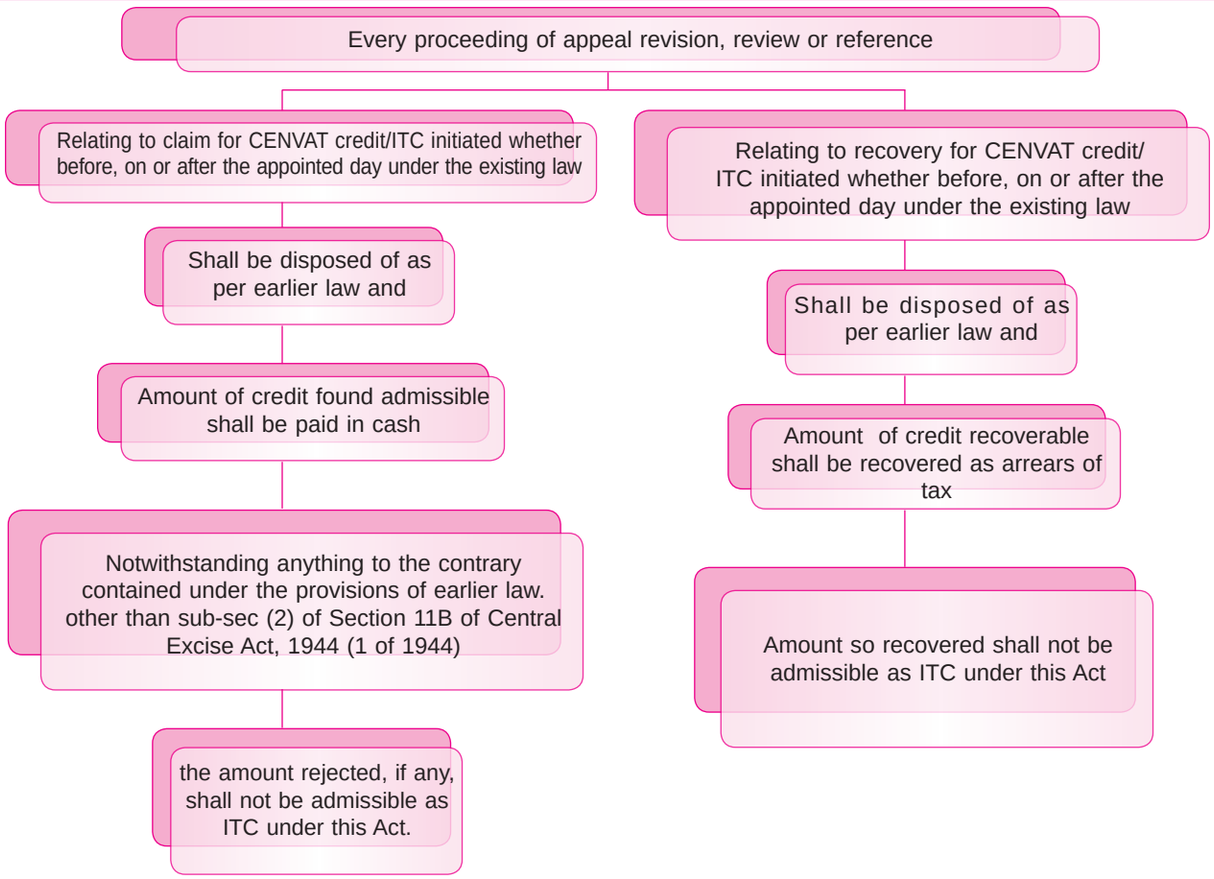
in respect of services not provided shall be

disposed of in accordance with the provisions of existing law and

any amount eventually accruing to him shall be paid in cash

Section 142(6) — Misc. Transitional Provisions

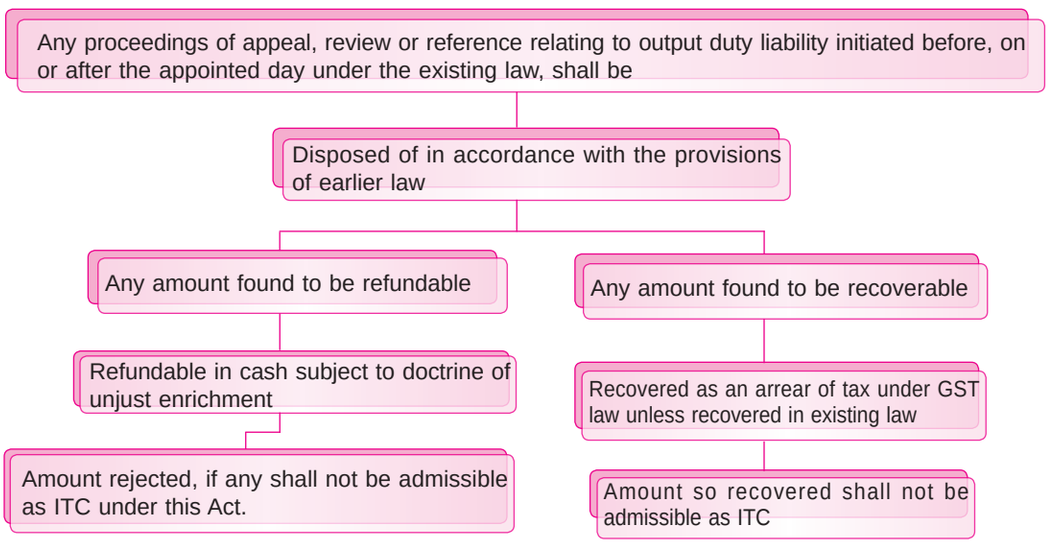
Proceedings of Appeal, review or reference relating to claim of CENVAT credit initiated on or after the appointed day



No refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

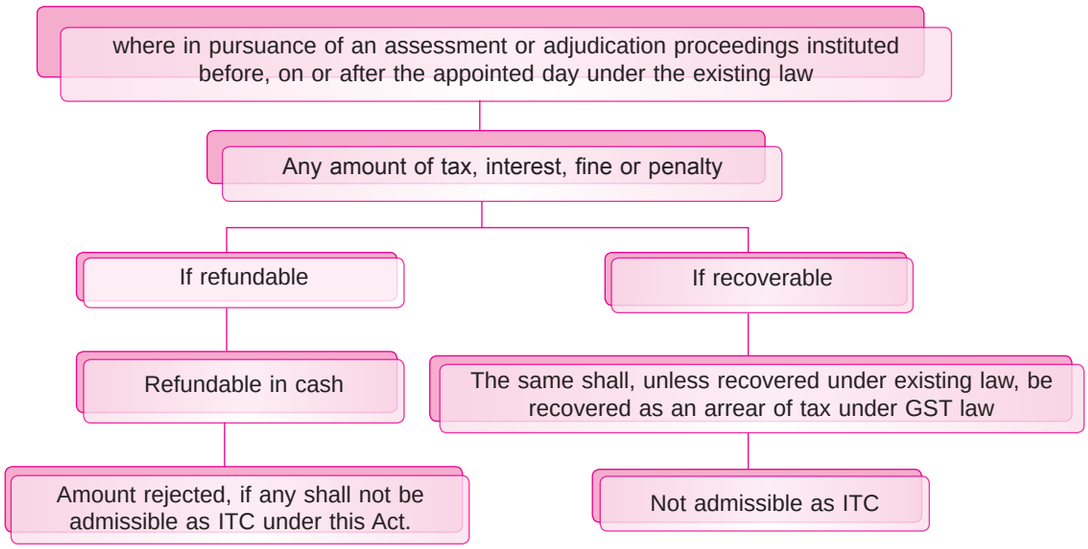
Section 142(7) — Misc. Transitional Provisions

Proceedings of Appeal, review or reference relating to output duty or tax liability initiated before, on or after the appointed day



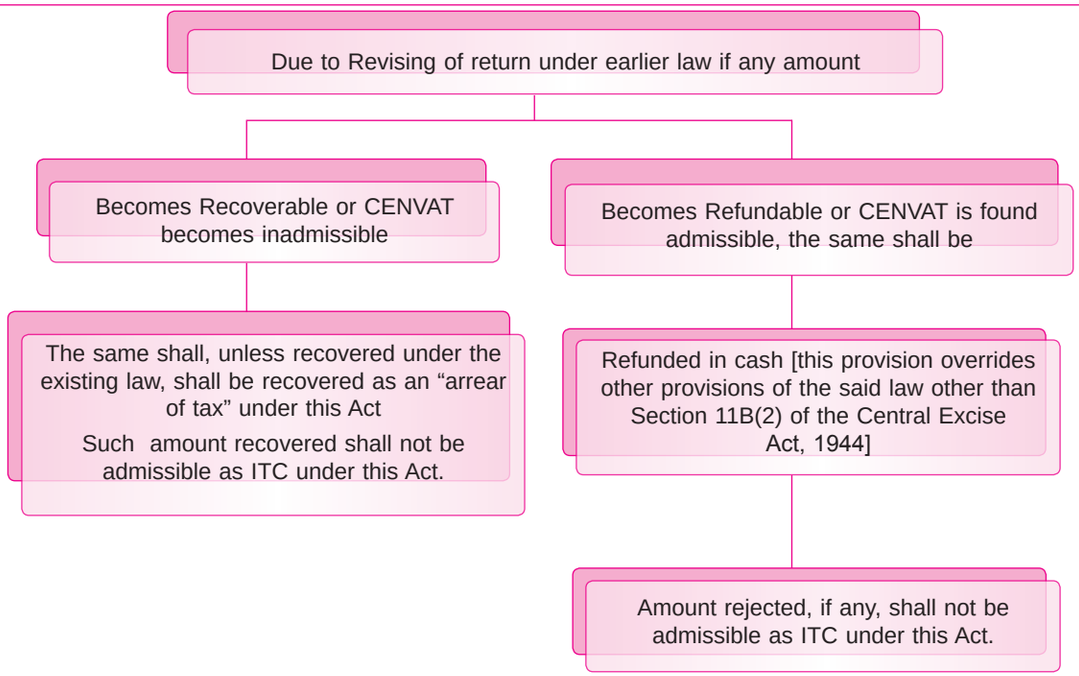
Section 142(8) — Misc. Transitional Provisions

Assessment or Adjudication process imitated before, on or after the appointed day



Section 142(9) — Misc. Transitional Provisions

Return furnished under Old Law, revised after appointed day



Section 142(10) — Misc. Transitional Provisions

Contract entered into prior to appointed day and Goods/Services supplied after the appointed day

Goods/Services or both supplied on or after the appointed day

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in pursuance of a contract entered into prior to the appointed day

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shall be liable to tax under this Act

Section 142(11) — Misc. Transitional Provisions

Tax not to be paid under this Act if paid under existing law

No Tax shall be payable on

- Goods under this Act to the extent
  - the tax was leviable on the said goods under Value Added Tax
- Services under this Act to the extent
  - the tax was leviable on the said Services under Finance Act, 1994

Tax Shall be leviable under this Act and

- The taxable person shall be entitled to take credit of VAT and ST paid under existing Law
- To the extent of supplies made after the appointed day

Section 142(12) — Misc. Transitional Provisions

Goods sent on approval basis prior to appointed day and returned after the appointed day

Goods sent on approval basis, not earlier than 6 months before the appointed day

If rejected or not approved by the buyer and returned on or after the appointed day

- If Returned after 6 months or extended period (2 months) or not returned within allowable time
  - Tax payable – by person returning such goods if goods are liable to tax under this Act
    - Tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.
- If Returned within 6 months or extended period (2 months)
  - No tax on goods returned

Section 142(13) — Misc. Transitional Provisions

Tax deduction require under existing law, No tax to be deducted under this Act

Where a supplier has made any sale of goods

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in respect of which tax was required to be deducted at source under any law of a State or Union Territory relating to VAT and

↓

has also issued an invoice for the same before the appointed day,

↓

No deduction of tax at source u/s. 51 shall be made by the deductor

↓

where payment to the said supplier is made on or after the appointed day

Explanation.— For the purposes of this Chapter, the expressions "capital goods", "Central Value Added Tax (CENVAT) credit", "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder.

CHAPTER 1.17 — REFUND

Refer CD

CHAPTER 1.18 — ACCOUNTS & RECORDS

Section 35 – Accounts and Other Records

This chapter discuss the provisions pertaining to maintenance of accounts and other records under GST, the need for getting the same audited and also the provisions pertaining to retention to this accounts and records

Every registered taxable person shall keep and maintain,

at his principal place of business, as mentioned in the certificate of registration,

a true and correct account

- of production or manufacture of goods,
- of inward or outward supply of goods and/or services,
- of stock of goods,
- of input tax credit availed,
- of output tax payable and paid,
- and such other particulars as may be prescribed

Where more than one place of business specified, the accounts for each place shall be kept at the concerned place

Accounts and other records can be kept in electronic form in such manner as may be prescribed

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 consigner, consignee and other relevant details of the goods as may be prescribed

Commissioner may notify class of persons to maintain additional records and accounts for specified purpose

Where Commissioner feels maintenance of accounts is not possible for a class of person, he may, with reasons recorded in writing, permit such class of person to maintain accounts in the manner prescribed

Registered person having turnover exceeding the prescribed limit during the Financial Year shall have it audited by a CA or CMA and shall submit a copy along with reconciliation statement u/s. 44(2) and other prescribed documents to the PO

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for time being in force

In case taxable person fails to account for goods/services, PO shall determine the tax payable and the provisions of Section 73 or 74 shall apply.

Section 36 — Period of retention of accounts

Every registered taxable person shall keep and maintain records as per section 35(1) and shall retain them for 72 months from the due date of filing of Annual Return for the year to which record pertains

In case where matter in before any appellate/revisional authority or Tribunal or court, books must be retained for 1 year after the final disposal or for period specified above, whichever is later

* Relevant Rule for the subject are Rule 56 of 58 of CGST Rules, 2017
* See also Circular no. 23/23/2017-GST, dated 21-12-2017 for clarification on issues in respect of maintenance of books and accounts relating to additional place of business by a principal or an auctioneer for purpose of auction of tea, coffee, rubber, etc.

CHAPTER 1.19 — JOB WORK UNDER GST

Section 143 – Job Work Procedure

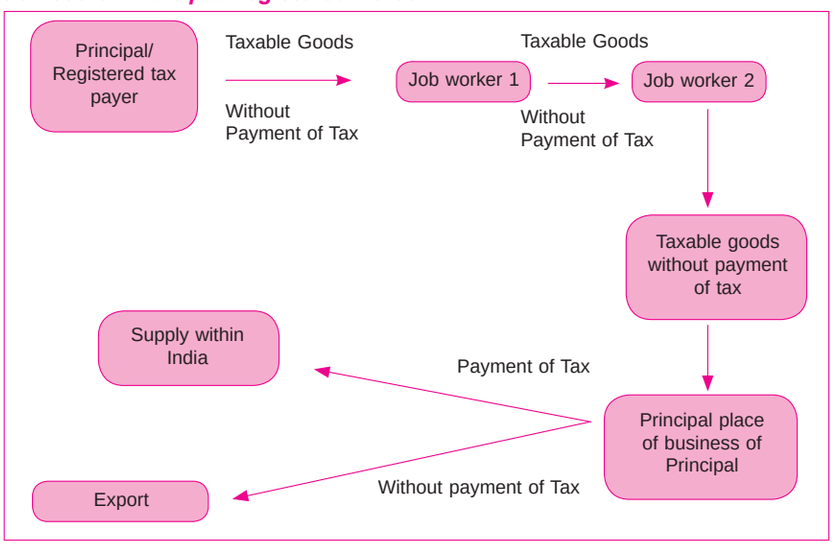
Nowadays most of the corporates are outsourcing certain processes so as to reduce the cost of manufacturing or output. The person who outsources to another person is known as principal and the person to whom the work or process is outsourced is known as job worker. These two terms are defined under the model GST law as under:

"Job work" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job worker" shall be construed accordingly — clause 2(68) of CGST Act, 2017.

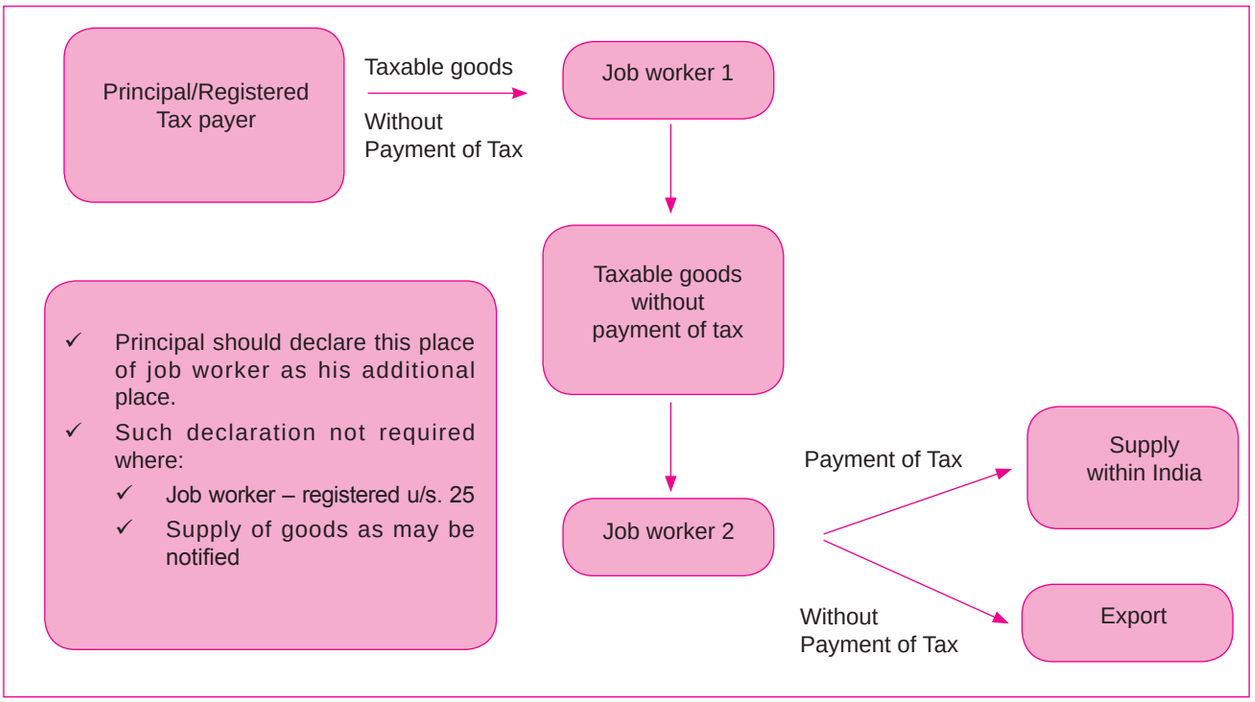
"Principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both. – clause 2(88) of CGST Act, 2017.

Sub-Section (1)	A registered person (*principal*) may under intimation and subject to such conditions as may be prescribed, ✓ send inputs or capital goods for job work, ✓ without payment of tax, ✓ to a job worker This permission will be for transfer of goods from *principal* to the job worker and then from there to another job worker again without payment of tax. Further to this after the completion of job work the goods shall be: • brought back inputs or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax; OR
	• supply such inputs or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three 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 the case may be: Direct supply from the premises of job worker shall be allowed only after fulfilling the following conditions: • *Principal* declares the place of business of the job worker as his additional place of business except in a case where: (i) the job worker is registered under section 25; or (ii) the "principal" is engaged in the supply of such goods as may be notified by the Commissioner. • *Provided further* that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.
Sub-Section (2)	The responsibility for accountability of the goods including payment of tax thereon shall lie with the "principal".
Sub-Section (3)	*Where the inputs sent for job work are not received back* within the time limit mentioned in sub-section (1) above or are not supplied from the place of the job worker within the time limit of one year, *it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.*
Sub-Section (4)	*Where the capital goods,* other than moulds and dies, jigs and fixtures, or tools, *sent for job work are not received back* within the time limit mentioned in sub-section (1) above or are not supplied from the place of the job worker within the time limit of *three years, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.*
Sub-Section (5)	Notwithstanding anything contained in sub-sections (1) and (2), *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. *Explanation*.—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.
	• See Circular No. 38/12/2018, dated 26-3-2018 for clarification on issues related to Job Work. • See rule 45 of the CGST Rules, 2017.
In the below mentioned the entire procedure of job work has been depicted.	

Supply from place of business of Principal/Registered Person



Supply from place of business of job worker



CHAPTER 1.20 — COLLECTION OF TAX AT SOURCE

Refer CD

CHAPTER 1.21 — ASSESSMENTS UNDER GST

Refer CD

CHAPTER 1.22 — AUDIT

INTRODUCTION

Audit by Tax Authorities had been a point of litigation under service tax but now with the introduction of GST Law and the introduction of Audit by Tax Authorities provision settles all such disputes and therefore in GST regime, Tax Authorities will be empowered to conduct the Audit of any registered person.

Further the provision of Special Audit is also incorporated in the GST Law which authorises a Commissioner to appoint a chartered accountant or cost accountant for such purpose of special audit. In this chapter, discussions pertaining to Audit by tax authorities and Special Audit has been discussed.

Section 65 — Audit by Tax Authorities

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 prescribed manner

⇩

Such audit may be conducted at	
the place of business of registered person or	officer's office

⇩

Registered person shall be informed	
by way of a notice	not less than 15 working days prior to the conduct of audit in prescribed manner

Audit shall be completed within a period of 3 months from the date of commencement of the audit

Where commissioner is satisfied that audit cannot be completed in 3 months, he may extend the period further but not beyond 6 months on the basis of recorded and written reasons

During the course of audit, the authorised officer may require the registered person, -

to afford him the necessary facility to verify the books of account or other documents as he may require;	to furnish such information as he may require and render assistance for timely completion of the audit.

On conclusion of audit, the Proper Officer shall, within 30 days, inform the auditee,

about the findings and the reasons thereof and	his rights and obligations

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 u/s. 73 or 74

Section 66 — Special Audit

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

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

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

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Even if 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, the audit conducted under this section shall have the effect

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Opportunity of being heard to registered person should be given in respect of any material gathered which is proposed to be used in any proceedings against him under this Act or the rules made thereunder

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The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant,		
shall be determined and paid	by the Commissioner and	such determination shall be final

↓

Where the special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilised,
Proper Officer may initiate action u/s. 73 or 74

CHAPTER 1.23 — DEMAND & RECOVERY

Refer CD

CHAPTER 1.24 — IMPORTANCE OF GOODS AND SERVICES TAX NETWORK (GSTN) & GST SUVIDHA PROVIDERS (GSP)

Refer CD

CHAPTER 1.25 — LEVY OF COMPENSATION CESS

Refer CD

CHAPTER 2.1 — INTRODUCTION, APPLICABILITY AND DEFINITIONS UNDER IGST ACT

Refer CD

CHAPTER 2.2 — ADMINISTRATION

Refer CD

CHAPTER 2.3 — LEVY AND COLLECTION UNDER IGST ACT

Refer CD

CHAPTER 2.4 — PLACE OF SUPPLY GOODS AND SERVICES

INTRODUCTION

Under the GST regime, determination of place of supply is most crucial factor because the chargeability whether of intra-State or inter-State depends on the place of supply. It shall be noted here that in GST there are 3 important concepts that is to be kept in mind –

(i) Taxable event i.e. supply,

(ii) Time of Supply of Goods/Services,

(iii) Place of Supply of Goods/Services

Therefore, place of supply is very important for proper compliance under GST law. In case the place of supply is wrongly determined, it may have vast implication as per the provisions of Section 77 discussed in the Chapter 1.23 — Demand and Recovery.

Section 10 — Place of Supply of Goods other than Export/Import

Section 10(1)(a)

- Supply involves movement of Goods
- ***Place of supply shall be***
- Location of goods at the time at which movement terminates for delivery to recipient

Section 10(1)(b)

- Goods supplied on direction of the third person
- ***Place of supply shall be***
- Principal Place of Business of the third person (i.e., address in Registration Certificate)

Section 10(1)(c)

- Supply does not involve movement of Goods
- ***Place of supply shall be***
- Location of goods at the time of delivery to the recipient

Section 10(1)(d)

- Goods are assembled or installed at site
- ***Place of supply shall be***
- Place of installation or assembly

Section 10(1)(e)

- Goods supplied on board a conveyance e.g. vessel, aircraft, train, vehicle etc.
- ***Place of supply shall be***
- Location at which such Goods are taken on board

Section 10(2)

- *Where none of the above rules apply, place of supply would be determined in the manner to be prescribed*

Section 11 — Place of Supply of Goods — Imported to/Exported from India

- Export of goods: Means taking goods out of India to a place outside India;
- Import of goods: Means bringing goods into India from a place outside India

Section	*Situation*	*Place of Supply*
11(1)	Goods Imported into India	Location of Importer
11(2)	Goods Export from India	Location Outside India

Section 12 — General Rule for Determination of Place of Supply of Service

Sub-Section (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.

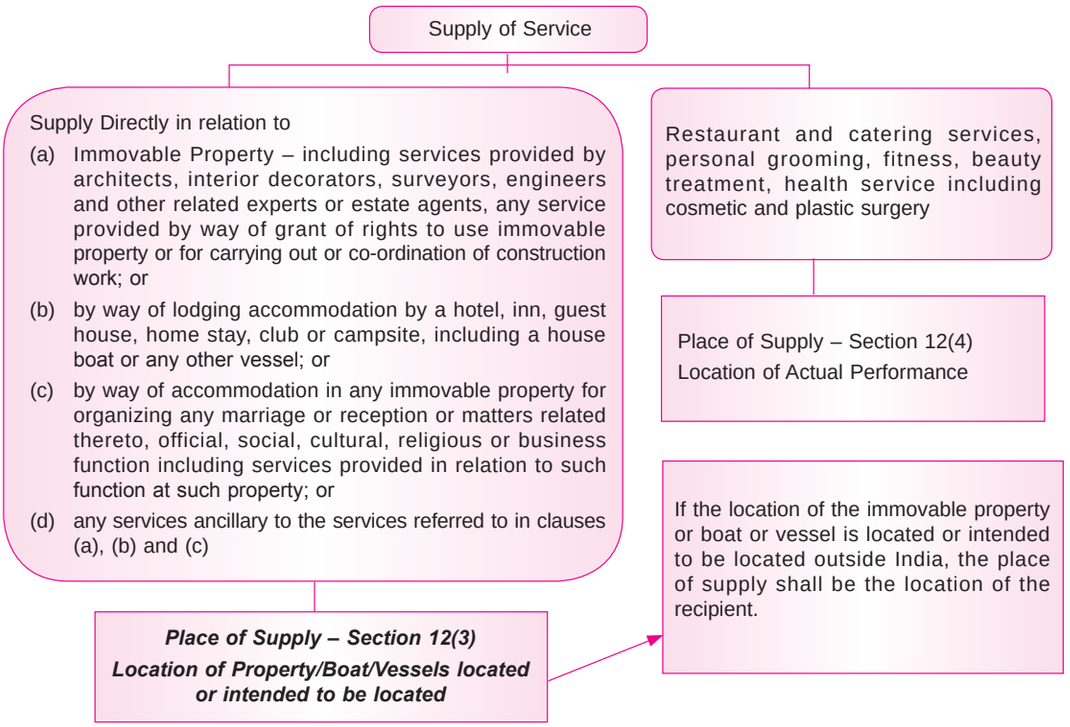
POS of services, except specified in sub-sections (3) & (14)

Section 12(2)(a)
Where supplied to Registered Recipient:
POS is Location of recipient.

Section 12(2)(b)(i)
Where supplied to unregistered Recipient:
POS shall be location of recipient where address is on record.

Section 12(2)(b)(ii)
Where supplied to Unregistered Recipient:
Location of Supplier if Address is not available

Sections 12(3) & 12(4) — Determination of Place of Supply of Service in relation to immovable property and personal grooming, fitness, etc.



Sections 12(5), (6), (7) — Determination of Place of supply of service in relation to training, admission to events and organization of events

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors ofCentral Tax,

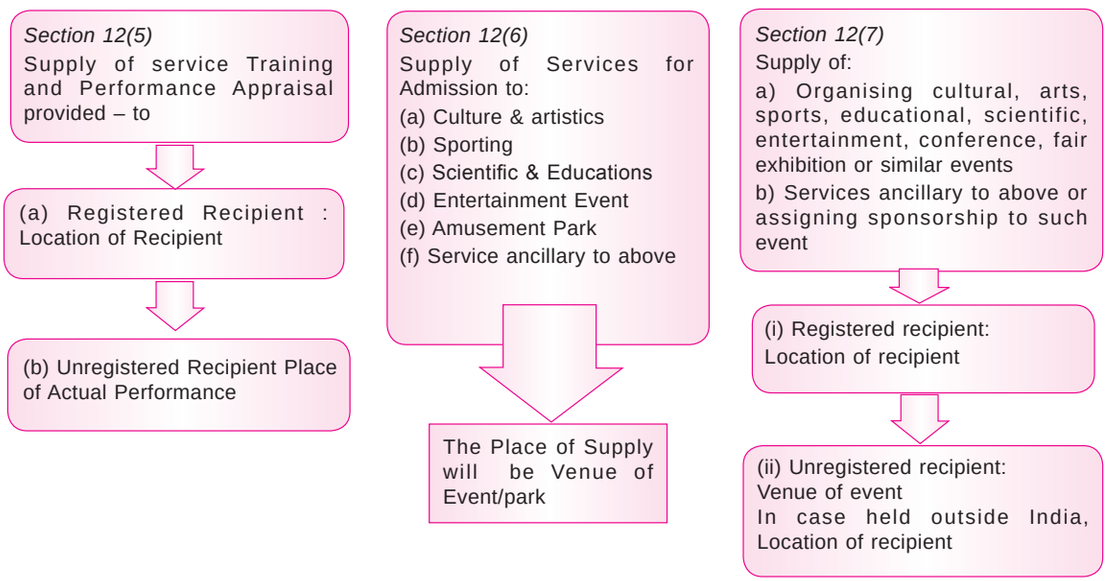
(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.



DETERMINATION OF PLACE OF SUPPLY OF SERVICE IN RELATION TO TRANSPORT OF GOODS, PASSENGERS AND ON BOARD CONVEYANCE – SECTIONS 12(8), (9), (10)

Supply of services of:

- **Section 12(8):** Transportation of goods, including by mail or courier
  - (a) Registered Recipient: Location of Recipient
  - (b) Unregistered Recipient: Location where goods handed over for transportation
- **Section 12(9):** Passenger Transportation Service *(Return journey treated as separate journey)*
  - (a) Registered Recipient: Place of Registered Recipient
  - (b) Unregistered Recipient: Place where passenger embarks on the conveyance for a continuous journey
- **Section 12(10):** Services on board conveyance like vessel, aircraft, train, motor vehicle
  - First scheduled point of departure of that conveyance for that journey

Section 12(11) — Determination of Place of Supply of service in relation to Telecommunication Service

Supply of telecommunication services including data transfer, broadcasting, DTH, cable etc.

- (a) Services of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna
  - Location of *in situ* device
- (b) Post-paid mobile connection for telecommunication and internet services*
  - Location of billing address of the recipient on record
- (c) Pre-paid mobile connection for telecommunication and internet services
  - *Through selling agents:* Location of selling agent on record of supplier
    Though others: Location where pre-payment received
- (d) In other cases
  - Address of recipient if on records, else location of supplier
    Through internet: Location of recipient on record

Sections 12(12), (13), (14) — Determination of Place of supply of service in relation to Banking, Insurance and Advertisement Service

Supply of:

- **Section 12(12)** Banking and Other Financial Services including Stock Broking
  - Location of recipient in suppliers records (If not available, location of supplier)
- **Section 12(13)** Insurance Services
  - Registered recipient: Location of recipient
    Unregistered recipient: Location of recipient in supplier's records
- **Section 12(14)** Advertisement Services to Government, etc.
  - Place is State of dissemination in proportion

Section 13 — Where location of Supplier of Service/recipient is outside India

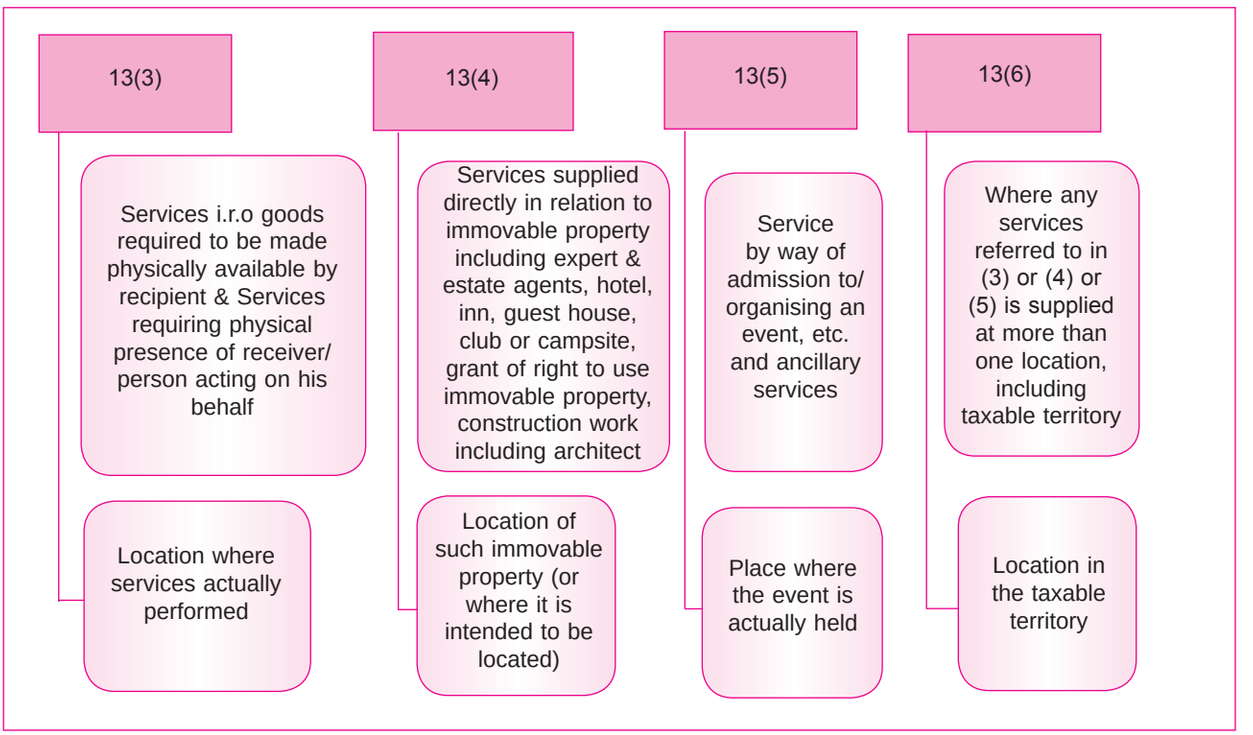
Sub-Section (1)

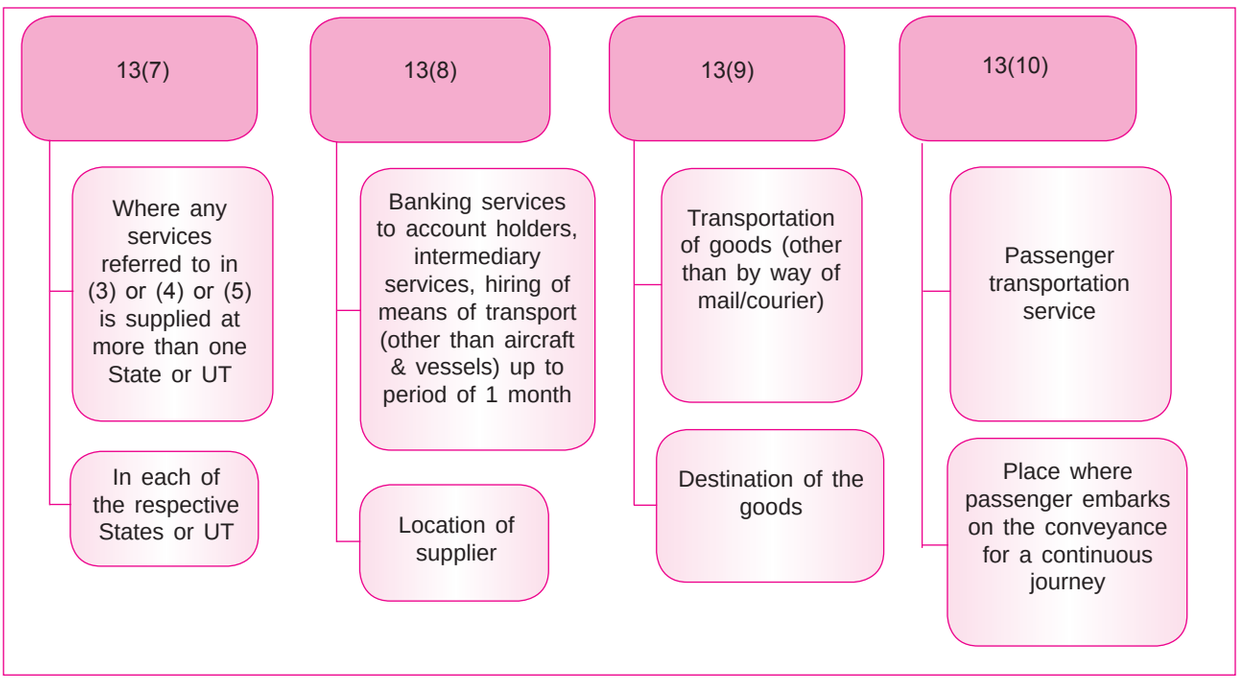
The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

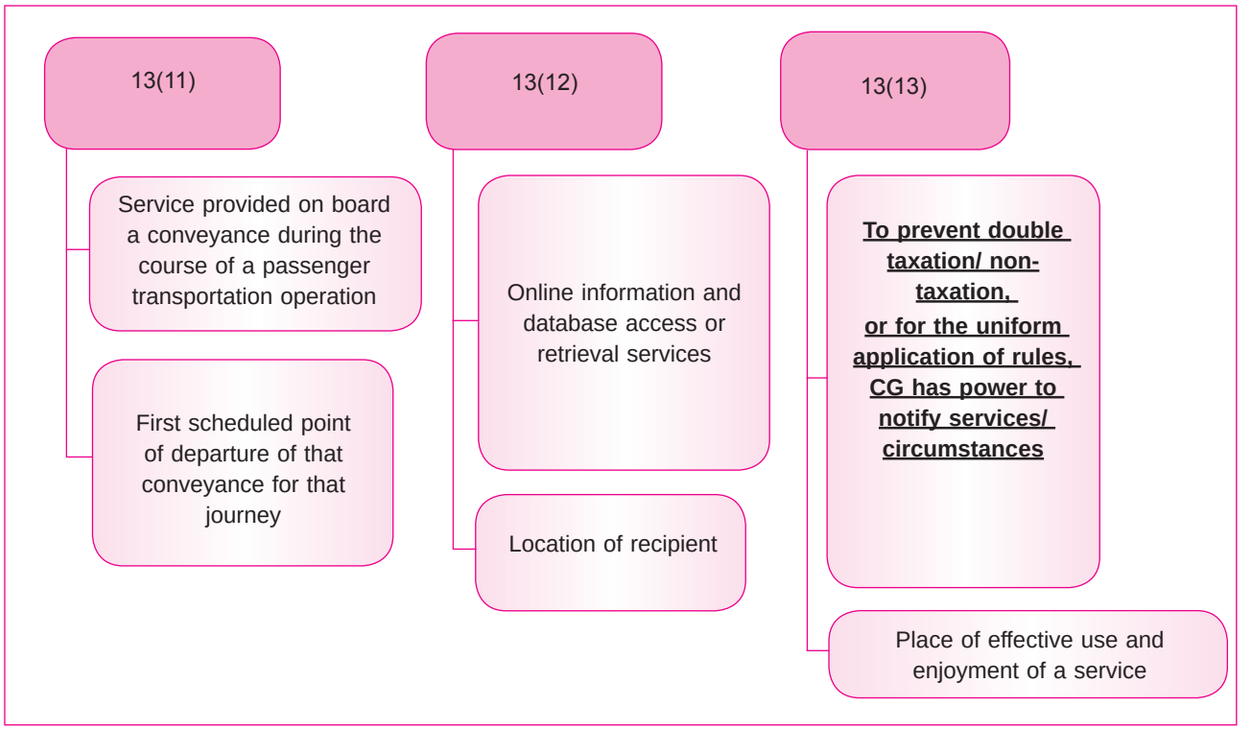
Sub-Section (2)

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.







CHAPTER 2.5 — DETERMINATION OF NATURE OF SUPPLY

Refer CD

CHAPTER 2.6 — REFUND OF INTEGRATED TAX TO FOREIGN TOURIST

Refer CD

CHAPTER 2.7 — ZERO RATED SUPPLY

Refer CD

CHAPTER 2.8 — GST RULES & REGULATIONS

Refer CD

CHAPTER 2.9 — GST RATES

Refer CD

CHAPTER 2.10 — EXEMPTION

Refer CD

CHAPTER 2.11 — GST COUNCIL MEETING UPDATES

Refer CD

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Procedure relating to e-Way Bill – Complete View

WHEN TO ISSUE E-WAY BILL

Requirement of generation of e-Way Bill by registered person

e-Way bill will be generated when there is a movement of goods in a vehicle/conveyance of value more than Rs. 50,000 (in case of movement of goods within Maharashtra state than e-way bill will be generated if value is more than Rs. 100000) –

- In relation to a 'supply:

  This includes simple transactions like sale of goods, branch transfers, any supply to related party, transfer of goods to job worker etc.
- For reasons other than a supply:

  The category includes all such movement of goods which does not constitute supply per se like taking goods for undertaking services (in case of all contractors, caterers etc.), sending of goods on rent, sending goods for repair etc.
- Due to inward 'supply' from an unregistered person:

  Generation of e-Way Bill in all purchases from unregistered person shall be responsibility of registered person.

Thus E-way bill is required to be generated on the basis of movement of goods which should not be linked with term supply only.

There can be movement of goods even without supply.

Consignment Value – Meaning

The consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Movement of goods by registered Service Providers

As already discussed, any movement of goods other than for supply shall require e-Way Bill. As per clause (c) of sub-rule (1) of rule 55 of the CGST Rules, 2017, the supplier is required issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Thus, in such cases, the e-Way Bill shall be based on such delivery challans.

Movement of goods in case of Line Sales/on approval sales

Such transactions have been clarified vide Circular No. 10-10-2017-GST, whereby, it has been clarified that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply.

It has been further clarified vide the same Circular that where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017.

Multiple invoices in same shipment

If multiple invoices are issued by the supplier to recipient, multiple e-Way Bills have to be generated. Hence it could be said that for each invoice, one separate e-Way Bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. But after generating separate e-Way bills, one Consolidated e-Way Bill can be generated for transportation purpose, if goods are going in one vehicle.

In case of Rejection by recipient

In such cases, the Supplier/Buyer can again issue e-Way Bill by indicating supply as 'Sales Return' with relevant documents. Therefore, e-Way Bills must be generated on the common portal for all these types of movements:

- ✓ Sale of goods
- ✓ Goods sent for repair
- ✓ Carrying goods for undertaking any services like catering etc
- ✓ Stock transfer of goods
- ✓ Sales return of goods
- ✓ Goods sent for dry cleaning or any other process
- ✓ Return of goods
- ✓ Goods sent for Job Work
- ✓ Barter etc.

Mandatory e-Way Bill generation

E-way bill needs to be generated mandatorily even if the value of the consignment of goods is less than ₹ 50,000 in the following cases:

- ✓ Inter-State movement of Goods by the Principal to the Job-worker by Principal/registered Job-worker,
- ✓ Inter-State Transport of Handicraft goods by a dealer exempted from GST registration n

e-Way Bill Components

"FORM GST EWB-01
(See rule 138)
E-Way Bill

E-Way Bill No. :
E-Way Bill date :
Generator :
Valid from :
Valid until :

PART-A		
A.1	GSTIN of Supplier	
A.2	Place of Dispatch	
A.3	GSTIN of Recipient	
A.4	Place of Delivery	
A.5	Document Number	
A.6	Document Date	
A.7	Value of Goods	
A.8	HSN Code	
A.9	Reason for Transportation	
PART-B		
B.1	Vehicle Number for Road	
B.2	Transport Document Number/ Defence Vehicle No./Temporary Vehicle Registration No./Nepal or Bhutan Vehicle Registration No.	

From the above structure of form of e-way bill it could be made out that the information for the purpose of generation of e-way bill is to be provided in two parts. Part A and Part B.

Part A requires the information, like GSTIN of Supplier, Place of Dispatch, GSTIN of Recipient, Place of Delivery, Document Number, Document Date, Value of Goods, HSN Code, Reason for Transportation, to be provided on the common portal electronically. These details can be uploaded by any of the following persons as already discussed above:

- ✓ Registered person who is Supplier – person causing movement of goods, or
- ✓ Recipient – in case the supplier is not registered and therefore the recipient would be deemed to be the person causing the movement of goods, or
- ✓ Transporter in case he is authorised by the registered person to furnish the information required.

Once the data is provided in Part A, a unique number will be generated on the common portal. After this the data required for Part B needs to be entered into and the e-Way Bill is generated. Now the question arises who can furnish information in Part B of Form GST EWB-01 and what information is required to be furnished.

As discussed above Part B information can be furnished and e-way Bill can be generated by supplier i.e. consignor or the recipient i.e. consignee, electronically on the common portal.

Part B comprising of transporter details (Vehicle number). Vehicle number has to be filled in any format, as provided below

Format	*RC Numbers*	*Example Entry*
ABC1234	DEF 234	DEF0234
AB123456	UP 1 345	UP010345
AB12A1234	AP 5 P 23	AP05P0023
AB12AB1234	TN 10 DE 45	TN10DE0045
AB12ABC1234	KE 3 PEW 1265	KE03PEW1265
DFXXXXXXXXXXXXX	For Defence Vehicle, start with DF	DF02K123
TRXXXXXXXXXXXXX	For Temp RC Vehicle, start with TR	TRKA01000002
BPXXXXXXXXXXXXX	For Bhutan Vehicle, start with BP	
NPXXXXXXXXXXXXX	For Nepal Vehicle, start with BP	

If the RC book has vehicle number like DL1A123, then you enter as DL01A0123. The vehicle entered in the e-Way Bill system is only for information and GST officer will accept this variation.

No e-Way Bill is valid till Part B is filled and submitted. Please also note that when a valid E-way bill is generated a unique e-Way Bill Number (EBN) is allocated and is available to the supplier, recipient, and the transporter.

Who will generate e-Way Bill

Person causing movement of goods needs to generate e way bill. The following person can generate the e-way bill

Supplier

Recipient, and

Transporter.

Cases where e-Way Bill is not required to be generated

Kindly refer sub-rule (14) of Rule 138 of the CGST Rules, 2017 in Chapter Relevant Statutory Provisions.

Separate Registration on e-Way Bill Portal – Procedure

First step to take registration for generation of e-Way bill:

- Visit the e-Way Bill portal www.ewaygst.gov.in.
- Click on "'e-Way Bill Registration" available on the right-hand side of the webpage.
- Enter the GSTIN of the Registered Taxpayer as the Consignor or the Consignee and then enter the Captcha Code, then Click on "Go" tab, then, Click on Send OTP and verify the same, after checking the auto-filled details.
- Enter the OTP received on the registered mobile number and verify the same by clicking on the "verify OTP' button".
- Create a "New User ID and password" by your own choice. The system validates and pops up a message if there is an error in the details entered by you. Once all the details are correctly filled, User ID and password will be created.

Tips for creating Username & Password

The username should be of at least 8 characters with a combination of alphabets (A-Z/a-z), numerals (0-9) and special characters (@, #, $, %, &, *, ^) and can't exceed more than 15 characters. The password should be of at least 8 characters.

How to generate E-way Bill

The e-way bill can be generated by the registered person in any of the following methods

- ✓ Using Web based system
- ✓ Using SMS based facility
- ✓ Using Android App
- ✓ Bulk generation facility
- ✓ Using Site-to-Site integration
- ✓ Using GSP (Goods and Services Tax Suvidha Provider)

Consolidated e-Way Bill

Consolidated e-Way Bill is a document containing the multiple e-Way Bills for multiple consignments being carried in one conveyance (goods vehicle).

So, the transporter, carrying multiple consignments of various consignors and consignees in one vehicle can generate and carry one consolidated e-Way Bill instead of carrying multiple e-Way Bills for those consignments.

Transporter can generate the consolidated e-Way Bills for movement of multiple consignments in one vehicle.

Further, there is an option available under the 'Consolidated e-Way Bill' menu as 'Regenerate Consolidated e-Way Bill. This option allows you to change the vehicle number without changing the individual EWBs. This generates a new Consolidated Bill, which has to be carried with new vehicle. Old consolidated e-Way Bill will become invalid for use.

Consolidated e-Way Bill, individually does not have any validity. Validity shall be examined on the basis of each individual

e-Way Bill.

Liability of receiver for e-Way Bills generated by other persons

The details of e-Way Bill generated 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.

In case, the recipient 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.

Validity of e-Way Bill

As per sub-rule (10) of Rule 138 of the CGST Rules, 2017, an e-Way or a consolidated e-Way Bill generated on the common portal as per the provisions and procedure of this rule shall remain valid for a period specified and such period is calculated on the basis of distance to be travelled. Such period shall also be fixed on the basis of whether

- Goods to be transported are Over Dimensional Cargo; or
- Goods to be transported are other than Over Dimensional Cargo.

So, let us first understand what is Over Dimensional Cargo. As per Explanation 2 to sub-rule (10) of Rule 138, it shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in Rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

Hence if the goods are transported in Over Dimensional Cargo the validity period for e-Way is prescribed to be 1 day if the distance to be travelled is up to 20 Kms. and then thereafter for each 20 kms. or part thereof, additional one day shall be the period of validity of e-Way Bill.

Means if distance to be travelled is 5 kms, e-way bill shall be valid for 1 day. And if the distance to be travelled is 90 kms, the period of validity shall be 5 days.

Similarly, if the goods are transported through a conveyance other than Over Dimensional Cargo the validity period for e-Way is prescribed to be 1 day if the distance to be travelled is up to 100 kms. and then thereafter for each 100 kms. or part thereof, additional one day shall be the period of validity of e-Way Bill.

Means if distance to be travelled is 95 kms, e-Way Bill shall be valid for 1 days. And if the distance to be travelled is 490 kms., the period of validity shall be 5 days.

Now the another very important thing to understand is how to calculate the time period. For explaining this we need to refer Explanation 1 of sub-rule (10) of Rule 138 of the CGST Rules, 2017. It is provided that the period of validity shall be calculated from the time at which the e-Way Bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-Way Bill. Means if e-way bill is generated on 10th March @ 10 am for 10 kms. It shall be valid up to 12 midnight of 11th March.

Process to be followed for extension of e-Way Bill

There is an option under e-way bill to extend the validity period. This option is available for extension of e-Way Bill before 4 hours and after 4 hours of expiry of the validity.

Here, transporter will enter the e-way bill number and enter the reason for the requesting the extension, from place (current place), approximate distance to travel and Part-B details.

It may be noted that he cannot change the details of Part-A. He will get the extended validity based on the remaining distance to travel.

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 within twenty four hours of generation of the e-Way Bill.

- ✓ An e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of Rule 138B.

It must be noted that if there is a mistake, incorrect or wrong entry in the e-Way bill, then it cannot be edited or corrected. Only option is cancellation of e-Way Bill and generate a new one with correct details.

Transfer of conveyance

If the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part-A** of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-Way Bill on the common portal in **Part-B** of **FORM GST EWB-01**.

The consignor or the recipient, who has furnished the information in **Part-A** of **FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part-B** of **FORM GST EWB-01** for further movement of the consignment.

After the details of the conveyance have been updated by the transporter in **Part-B** of **FORM GST EWB-01**, the consignor or recipient, as the case may be, who has furnished the information in **Part-A** of **FORM GST EWB-01** shall not be allowed to assign the e-Way Bill number to another transporter.

Documents and devices to be carried by a person-in-charge of a conveyance

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 in physical form or the e-Way Bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

Restriction on furnishing of information in Part A of Form GST EWB-01 for return non filers

As per newly inserted Rule 138E of the CGST Rules, 2017 *vide* notification number 74/2018-Central Tax dated 31-12-2018 following persons shall be restricted from furnishing of **Part A** of **Form GST EWB-01** namely:

(a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

The above provision shall were supposed to come into effect from 21/08/2019 vide notification number 25/2019-Central Tax dated 13-06-2019. However as per notification number 36/2019-Central Tax dated 20-08-2019 the above provisions shall come into force from 21/11/2018.

Various forms used under E-Way bill

a) **FORM GST EWB-01**: Actual E-Way bill with divided into Part A and Part B. Both parts need to be filled compulsorily.

b) **FORM GST EWB-02**: Consolidated E-Way bill to be generated by transporter.

c) **FORM GST EWB-03**: Verification Report divided into Part A and Part B

d) **FORM GST EWB-04**: Report of Detention.

e) **FORM GST MOV-01**: Statement of the owner / Driver / Person in charge of goods and conveyance

f) **FORM GST MOV-02**: Order of physical verification / inspection of conveyance. Goods and documents.

g) **FORM GST MOV-03**: Order of extension of time for inspection beyond 3 working days

h) **FORM GST MOV-04**: Report of Physical Verification

i) **FORM GST MOV-05**: Release Order

j) **FORM GST MOV-06**: Order of Detention u/s 129(1) of the CGST Act, 2017

k) **FORM GST MOV-07**: Notice u/s 129(3) of the CGST Act, 2017

l) **FORM GST MOV-08**: Bond for provisional release of goods and conveyance

m) **FORM GST MOV-09**: Order of demand of Tax and Penalty

n) **FORM GST MOV-10**: Notice for confiscation of goods or conveyances and levy of penalty u/s 130 of the CGST Act, 2017.

o) **FORM GST MOV-1**1: Order for Confiscation of goods and conveyance and demand of tax, fine and penalty.

E-Way bill in case of storing of goods in godown of transporter (Refer Circular 61/35/2018-GST dated 04-9-2018)

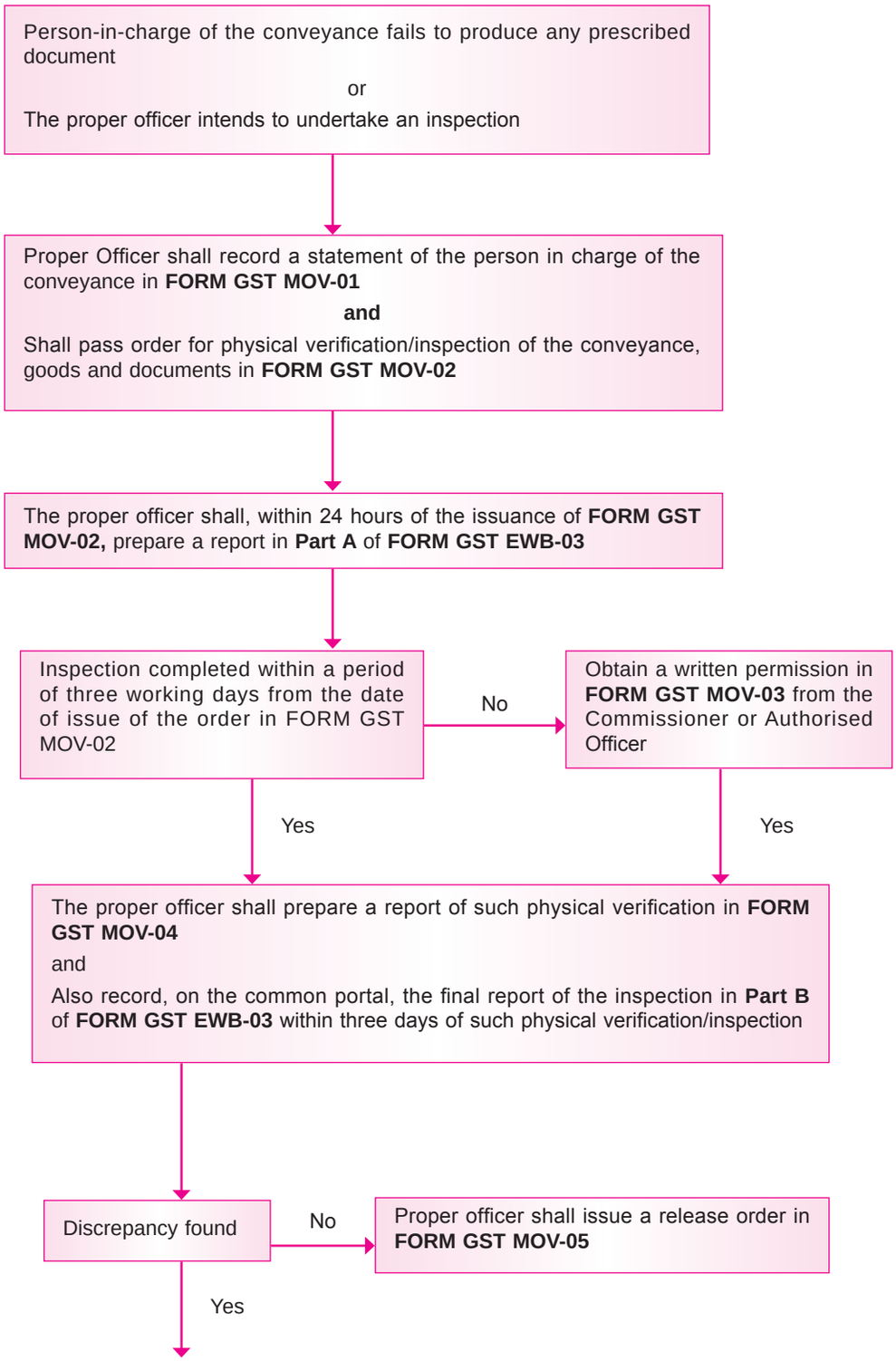
In case the consignee/ recipient taxpayer stores his goods in the godown of thetransporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Also, e-way bill validity in such cases will not be required to be extended

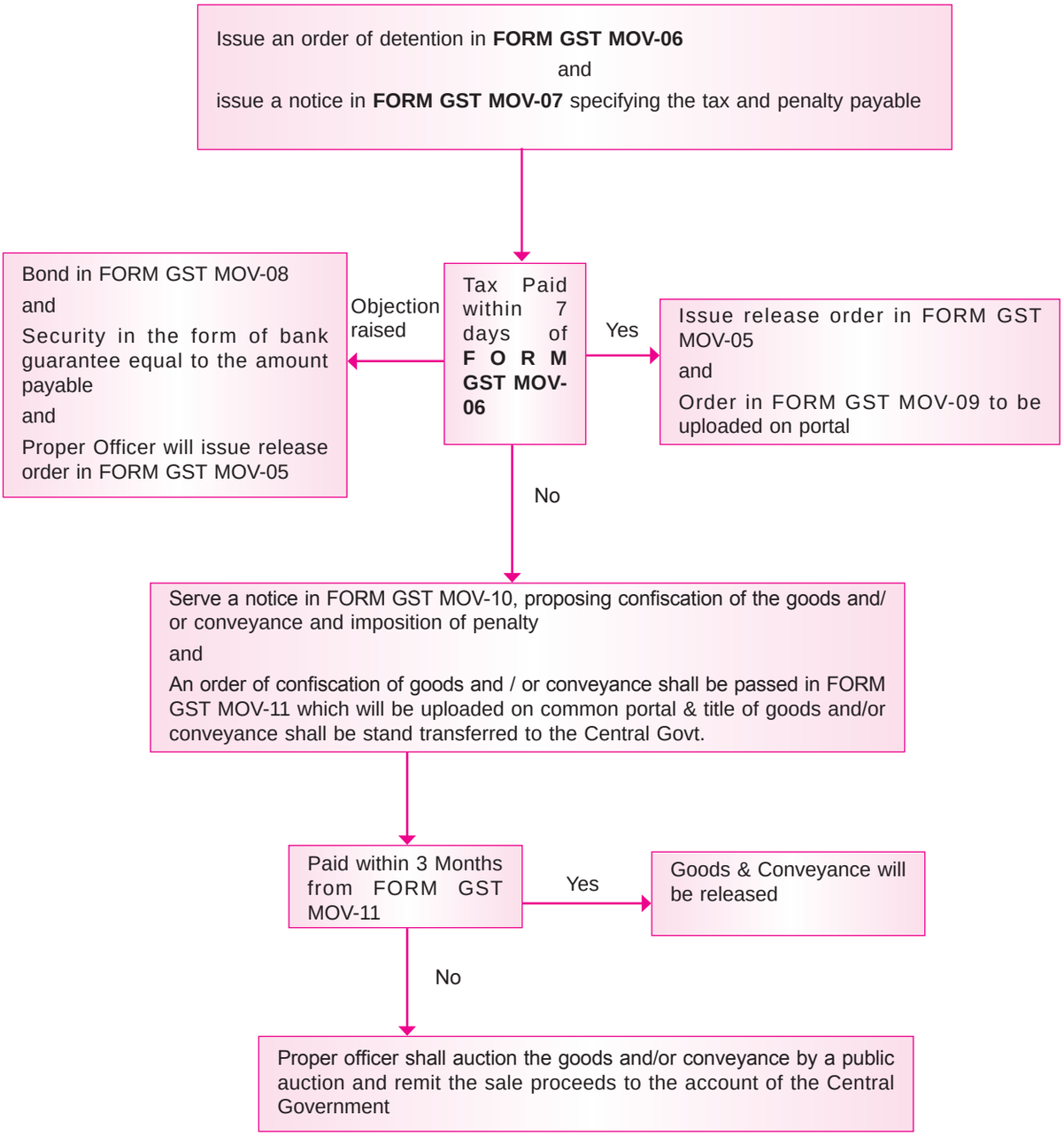
Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances (Also refer flow chart annexed for ease of understanding)

- Sub-section (3) of the section 68 of the CGST Act, 2017 provides that where any conveyance is intercepted by the proper officer at any place, he may require the person in charge of the conveyance to produce the documents for verification, and the said person shall be liable to produce the documents and also allow the inspection of goods.
- Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyances in transit while section 130 of the CGST Act provides for the confiscation of goods or conveyances and imposition of penalty.
- In this regard, Circular No. 41/15/2018-GST dated 13th April, 2018 is issued containing detailed procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances
- The jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order.
- The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, *prima facie*, no discrepancies are found, the conveyance shall be allowed to move further.
- Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV-01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.
- Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.
- On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/ inspection.
- Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.
- Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

- Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.
- Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.
- In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty.
- Where the proper officer is of the opinion that such movement of goods is being effected to evade payment of tax, he may directly invoke section 130 of the CGST Act by issuing a notice proposing to confiscate the goods and conveyance in FORM GST MOV-10. In the said notice, the quantum of tax and penalty leviable under section 130 of the CGST Act read with section 122 of the CGST Act, and the fine in lieu of confiscation leviable under sub-section (2) of section 130 of the CGST Act shall be specified. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.
- No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.
- An order of confiscation of goods shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act. Once an order of confiscation of goods is passed in FORM GST MOV-11, the order in FORM GST MOV-09 passed earlier with respect to the said goods shall be withdrawn.
- An order of confiscation of conveyance shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding three months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released. The order in FORM GST MOV-11 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.
- The order referred to in clauses (n) and (o) above may be passed as a common order in the said FORM GST MOV-11.
- In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV-11, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.
- Suitable modifications in the time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.
- Whenever an order or proceedings under the CGST Act is passed by the proper officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if applicable, under the Goods and Services Tax (Compensations to States) Act, 2017. Further, sub-sections (3) and (4) of section 79 of the CGST Act/respective State GST Acts may be referred to in case of recovery of arrears of central tax/State tax/Union territory tax.
- The procedure narrated above shall be applicable *mutatis mutandis* for an order or proceeding under the IGST Act, 2017.
- Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.
- A summary of every order in FORM GST MOV-09 and FORM GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal.

Flow Chart for Procedure for Interception of Conveyances for Inspection of Goods on Movement & Detention, Release and Confiscation of such Goods and Conveyances




Issue an order of detention in **FORM GST MOV-06**
and
issue a notice in **FORM GST MOV-07** specifying the tax and penalty payable
Tax Paid within 7 days of **FORM GST MOV-06**
Objection raised
Bond in FORM GST MOV-08
and
Security in the form of bank guarantee equal to the amount payable
and
Proper Officer will issue release order in FORM GST MOV-05
Yes
Issue release order in FORM GST MOV-05
and
Order in FORM GST MOV-09 to be uploaded on portal
No
Serve a notice in FORM GST MOV-10, proposing confiscation of the goods and/ or conveyance and imposition of penalty
and
An order of confiscation of goods and / or conveyance shall be passed in FORM GST MOV-11 which will be uploaded on common portal & title of goods and/or conveyance shall be stand transferred to the Central Govt.
Paid within 3 Months from FORM GST MOV-11
Yes
Goods & Conveyance will be released
No
Proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government

Relevant Statutory Provisions

RELEVANT SECTIONS OF CGST ACT & CGST RULES

Section 68	Inspection of Goods in Movement
Section 129	Detention, seizure and release of goods and conveyances in transit.
Section 130	Confiscation of goods or conveyances and levy of penalty
Rule 138	Information to be furnished prior to commencement of movement of goods and generation of e-way bill.
Rule 138A	Documents and devices to be carried by a person in-charge of a conveyance.
Rule 138B	Verification of documents and conveyances.
Rule 138C	Inspection and verification of goods.
Rule 138D	Facility for uploading information regarding detention of vehicle.
Rule 138E	Restriction on furnishing of information in Part A of FORM GST EWB-01.

RELEVANT NOTIFICATIONS

Date of Notification	*Notification No.*	*Summary*
28-6-2017	09/2017-Central Tax	Specifying Date on which Section 68 and Section 129 of the CGST Act 2017, shall come into force
28-6-2017	10/2017-Central Tax	Rule 138 – e way bills - was notified
30-8-2017	27/2017-Central Tax	Rule 138, Rule 138A to Rule 138D - Information to be furnished prior to commencement of movement of goods and generation of e-way bill – substituted
15-9-2017	34/2017-Central Tax	Rule 138 – Proviso inserted to sub rule (1)
29-12-2017	74/2017-Central Tax	Date from which e way bill shall come into force notified
23-1-2018	03/2018-Central Tax	Rule 138, Rule 138A to Rule 138D – Substituted
2-2-2018	11/2018-Central Tax	Postponement of e way bill rules coming into force
7-3-2018	12/2018-Central Tax	Rule 138, Rule 138A to Rule 138D – Substituted
23-3-2018	15/2018-Central Tax	Appointing 1st day of April, 2018 as the date from which notification 12/2018-Central Tax shall come into force
31-12-2018	74/2018-Central Tax	Insertion of Rule 138E restricting on furnishing of information in Part A of FORM GST EWB-01 for person not filing returns for consecutive two tax periods
23-04-2019	22/2019-Central Tax	Appointing 21st day of June, 2019 as a date from which provision of Rule 138E shall come into force
21-06-2019	25/2019-Central Tax	Substituting date from 21stday of June, 2019 to 21stAugust, 2019, from which the provision of Rule 138E shall come into force
20-08-2019	36/2019-Central Tax	Seeks to extend the date from 21st day of August, 2019 to 21st November, 2019, for blocking & unblocking of e-way bill facility, from which the provision of Rule 138E shall come into force

RELEVANT CIRCULARS

13-04-2018	41/15/2018-GST	Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances
04-09-2018	61/35/2018-GST	E-way bill in case of storing of goods in godown of transporter

STATUTORY PROVISIONS

Section 68. Inspection of Goods in Movement

(1) 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.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) 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.

Section 129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released–

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer(Central Government has notified the goods or class of goods, to be disposed of by the proper officer, as soon as seizure u/s 67(2) of CGST Act takes place as per Notification No. 27/2018-Central Tax, dated 13/06/2018)

Section 130. Confiscation of goods or conveyances and levy of penalty

(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in

any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Rule 138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill *(as substituted by Notification No. 12/2018-Central Tax dated 7-3-2018)*

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

(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 as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorisation received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an e- commerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union Territory to a job worker located in any other State or Union Territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union Territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.— For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, Notification No. 32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 2.— For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) 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 a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter 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 FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided 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 FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of up to fifty kilometers 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 recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

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 e-way bill shall not be valid for movement of goods by road unless the information in Part B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) 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.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or

the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of up to fifty kilometers 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 the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) 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 in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 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 in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilise the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) 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 within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.

(10) 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, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:—

Sl. No.	*Distance*	*Validity period*
(1)	*(2)*	*(3)*
1.	Up to 100 km.	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Up to 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

Explanation 1.—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 the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression "Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter,

on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy

two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) 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 customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(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 State or Union territory Goods and Services Tax Rules in that particular State or Union territory;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. 2/2017-Central Tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674 (E) dated the 28th June, 2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;

(h) where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under Notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1181(E) dated the 21st September, 2017 as amended from time to time;

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported up to a distance of twenty kilometres from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

Explanation.— The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be. .

ANNEXURE

[(See rule 138(14)]

Sr. No.	***Description of Goods***
(1)	***(2)***
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601);

Rule 138A. Documents and devices to be carried by a person-in-charge of a conveyance *(as substituted by Notification No. 12/2018-Central Tax dated 7-3-2018)*

(1) 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 in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

(2) 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 FORM GST INV-1 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 thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM

GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) 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.

(5) Notwithstanding anything contained in 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

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.

Rule 138B. Verification of documents and conveyances ***(as substituted by Notification No. 12/2018-Central Tax dated 7-3-2018)***

(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 in physical or electronic form for all inter-State and intra-State 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 e-way 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:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Rule 138C. . Inspection and Verification of goods ***(as substituted by Notification No. 12/2018-Central Tax dated 7-3-2018)***

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.

Rule 138D. Facility for uploading information regarding detention of vehicle ***(as substituted by Notification No. 12/2018-Central Tax dated 7-3-2018)***

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.

Rule 138E. Restriction on furnishing of information in PART A of FORM GST EWB-01 ***(as insertedin by Notification No. 74/2018-Central Tax dated 31-12-2018)(shall come into force from 21-11-2019 as per Notification No. 36/2019-Central Tax dated 20-08-2019)***

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

(a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation:– For the purposes of this rule, the expression — Commissioner shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

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Value Added Tax in UAE

BACKGROUND

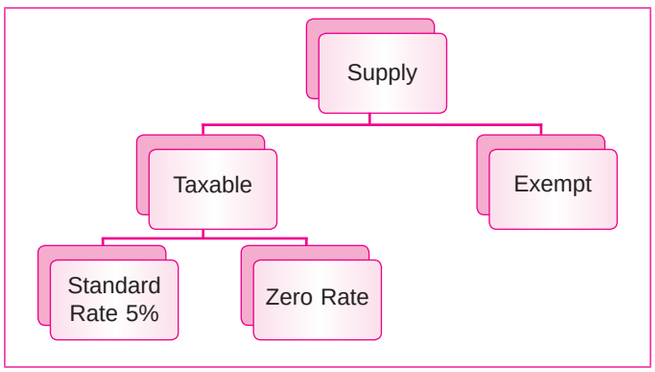
Value Added Tax (VAT) was implemented in UAE with effect from 1st January, 2018. The legislation which introduced VAT in UAE is known as the Federal Decree Law No. 8 of 2017, which was issued by H.H Sheikh Khalifa bin Zayed Al Nahyan. This Decree Law establishes the domestic rules which apply for VAT in UAE. It is an addition to the Unified VAT Agreement for the Gulf Co-operation Council (GCC). It is an indirect tax which applies to majority of transactions in goods & services. However, some exemptions have been granted. The standard rate of VAT in UAE is 5%. It has impacted both individuals & businesses, which has led to an increased cost of living for individuals and higher compliances for business organisations – both registered & unregistered.

VAT MECHANISM & FLOW

Fundamentally, the concept of VAT in UAE is quite similar to the erstwhile concept of VAT in Indian states. It is charged at each step in the supply chain on the difference in the value added. Businesses account and collect VAT on behalf of the government and claim a credit of the input VAT paid. It is the end consumer who bears the ultimate burden of VAT.

Output VAT	
Total VAT Collected on sale of goods & services	
(-)	
Input VAT	
Total VAT paid on purchase of eligible goods & services	
=	
Net VAT (Output - Input)	
Payable to Government	Carry forward/Refund

NATURE OF SUPPLIES



Supply of goods and services are classified as taxable or exempt. Taxable supplies are further bifurcated as those goods and services which are taxed at the standard rate of 5% or which are taxed at 0%. The difference between zero rated supplied and exempt supplies is that businesses which supply zero rated goods or services, must get registered under VAT. Under zero rated supplies, input VAT can be claimed as credit against its output VAT liability. However, in case of supply of exempt goods or services, input VAT cannot be claimed as credit against the output VAT liability.

Industry-wise illustration of different type of supplies

Field	*Standard Rate*	*Zero Rate*	*Exempt*
Transportation	Private Car Rentals	International Transport	Local Government Transport
Insurance	Non-Life Insurance	-	Life Insurance
Real Estate	All other real estate transaction	New Housing	Residential Rental/Bare Land
Health	Cosmetic treatments/other medical services not related to preventive healthcare	Preventive healthcare/ medical & dental treatments/ medicines/ medical equipment	-
Education	School Books/ Uniform/Canteen	Qualifying Schools & Govt. Colleges*	School bus transportation

Calculation of VAT in case of Standard Rate Supplies, Zero Rated Supplies & Exempt Supplies

Particulars	*Case 1*	*Case 2*	*Case 3*	*Case 4*
Standard Rate Sales (VAT 5%)	100,000	-	-	50,000
Zero Rated Sales	-	100,000	-	40,000
Exempt Sales	-	-	100,000	10,000
Total Sales	100,000	100,000	100,000	100,000
VAT on Standard Rate Sales	5,000	-	-	2,500
VAT on Zero Rated Sales	-	-	-	-
VAT on Exempt Sales	-	-	-	-
Total VAT Output (Liability) (A)	5,000	NIL	NIL	2,500
Total inputs	50,000	50,000	50,000	50,000
Calculation of input credit available				
(50,000 x 5%)	2,500		-	
(50,000 x 5%)	-	2,500		
(90,000 x 50% x 5%) + (90,000 x 10% x 5%)		-		2,250 450
Input VAT credit available (B)	2,500	2,500	NIL	2,700
Net Tax Payable/ (Refundable) (A-B)	2,500	(2,500)	NIL	(200)

Place of Supply of Goods

Dispatch	Receipt	Place of Supply	Explanation
UAE	UAE	UAE	Domestic Supply of goods
UAE	India	UAE	Zero rated supply. Export.
India	UAE	UAE	Reverse Charge in UAE.
UAE (Value in excess of AED 375,000) Registered Dealer	Saudi Arabia (GCC Member Nation) Recipient is an Unregistered Dealer	Saudi Arabia	If value of transaction increases the threshold limit of AED 375,000, dealer in UAE will have to register for VAT in Saudi Arabia.
UAE (Value below AED 375,000) Registered Dealer	Saudi Arabia (GCC Member Nation) Recipient is an Unregistered Dealer	UAE	Since the recipient is not registered and the total value of supply is less than AED 375,000 the place of supply shall be the 'originating' state.
UAE – Registered Dealer	Saudi Arabia – Registered Dealer	Saudi Arabia	Reverse Charge in Saudi Arabia.

Place of Supply of Services

Service Provider	Service Recipient	Place of Supply	Explanation
UAE	UAE	UAE	Domestic Supply.
UAE	India	UAE	Zero rated supply. Export of services.
India	UAE	UAE	Reverse Charge in UAE.
UAE	Saudi Arabia	Saudi Arabia	Reverse Charge in Saudi Arabia.
Saudi Arabia	UAE	UAE	Reverse Charge in UAE.

REVERSE CHARGE MECHANISM

In a typical business, the supplier supplies goods/services and collects VAT on behalf of the customers, which is later paid to the government – This is referred to as Forward Charge. Under reverse charge (Article 48 of the Executive Regulations), the buyer or end customer pays the tax directly to the government.

The supplier does not have to pay VAT on import items, so the obligation of reporting a VAT transaction is shifted from the seller to the recipient or buyer. The recipient will have to record the VAT on purchases (input VAT) and the VAT on sales (output VAT) in their VAT return.

Reverse charge is applicable on both goods and services. If a taxable person in one GCC member state receives a supply from a business owner who resides in another GCC member state, then the receiver will have to pay VAT under the reverse charge mechanism. If a taxable person receives a supply from a person outside the GCC, he will have to pay VAT according to the reverse charge mechanism.

The reverse charge mechanism is mainly used for cross-border transactions. It relieves non-resident suppliers of the burden of registering and accounting for VAT in their buyers' territory.

Conditions for Reserve Charge Mechanism

- The receiver of the goods or services must be registered for VAT.
- Every registered business owner must keep proper records of their supplies that incur reverse charge.
- Invoices, receipt vouchers, and refund vouchers should all specify whether the tax payable for that particular transaction is through reverse charge.

Reserve Charge Mechanism for sale of Gold & Diamonds between registered business' in UAE

Cabinet Decision no. (25) of 2018 dated 22nd May, 2018, w.e.f. 1st June, 2018

To reduce the burden on registered entities trading in Gold & Diamonds, the authorities have introduced Reverse Charge Mechanism on supplies between a registered supplied to a registered recipient, where the recipient intends to either resell such Goods or use them to produce or manufacture any of the Goods. (Subject to conditions to be fulfilled)

FREE ZONES

Free Zone, also known as Free Trade Zone, is an area designed to promote the international business in UAE by providing 100% foreign enterprise ownership. Free Zones offer attractive incentives such as, no requirement for a UAE national as a local partner/shareholder, tax exemptions on duties and taxes such as Corporate Tax, Personal Income Tax, all import and export duties etc. The businesses in Free Zones are required to obtain the necessary licenses from the respective Free Zone authorities and comply with their guidelines when operating the business in this region.

Comparative list of Free zones & Designated Zones in UAE

Indicative List of Free Zones in UAE	Whether Designated Zone or not
Abu Dhabi	
Abu Dhabi Airport Free Zone (ADAFZ)	Yes
Abu Dhabi Global Markets (ADGM)	No
Masdar City Free Zone	No
Higher Corporation for Specialized Economic Zones	No
Industrial City of Abu Dhabi	No
Twofour54	No
Khalifa Industrial Zone	Yes
Free Trade Zone of Khalifa Port	Yes
Al Ain International Airport Free Zone	Yes
Al Butain International Airport Free Zone	Yes
Dubai	
Dubai Academic City	No

Indicative List of Free Zones in UAE	*Whether Designated Zone or not*
Dubai Airport Free Zone	Yes
Dubai Aviation City	Yes
Dubai Biotechnology & Research Park (DuBiotech)	No
Dubai Car and Automotive City Free Zone (DUCAMZ)	Yes
Dubai Design District	No
Dubai Gold and Diamond Park	No
Dubai Healthcare City	No
Dubai Industrial City (DIC)	No
Dubai International Academic City	No
Dubai International Financial Centre	No
Dubai Internet City (DIC)	No
Dubai Knowledge Village	No
Dubai Logistics City	No
Dubai Media City	No
Dubai Multi Commodities Centre or Jumeirah Lakes Towers Free Zone	No
Dubai Outsource Zone	No
Dubai Silicon Oasis	No
Dubai Studio City	No
Dubai Techno Park	No
Dubai Technology and Media Free Zone	No
Dubai Textile City	Yes
International Media Production Zone	No
International Humanitarian City – Jebel Ali	Yes
Jebel Ali Free Zone	Yes
Economic Zones World	No
Free Zone in Al Quoz	Yes
Free Zone in Al Qusais	Yes
Sharjah	
Hamriyah Free Zone	Yes
Sharjah Airport International Free Zone	Yes
U.S.A. Regional Trade Center (USARTC) Free Zone	No
Sharjah Publishing City Free Zone	No
Sharjah Media City Free Zone	No

Indicative List of Free Zones in UAE	*Whether Designated Zone or not*
Ras Al Khaima	
RAK Investment Authority Free Zone	No
RAK Maritime City Free Zone	Yes
Ras Al Khaimah Free Trade Zone	Yes
Ras Al Khaimah Media Free Zone	No
Al Hamra Industrial Zone – Free Zone	Yes
Al Ghail Industrial Zone – Free Zone	Yes
Al Hulaila Industrial Zone – Free Zone	Yes
Ajman	
Ajman Free Zone	Yes
Fujairah	
Fujairah Free Zone	Yes
Fujairah Oil Industry Zone	Yes
Creative City Fujairah	No
Umm Al Quwain	
Umm Al Quwain Free Trade Zone (UAQFTZ) in Ahmed Bin Rahid Port	Yes
Umm Al Quwain Free Trade Zone (UAQFTZ) on Sheikh Mohammad bin Zayed Road	Yes

DESIGNATED ZONES

The Ministry of Finance had clarified that only 20 Free Zones in UAE had got the status of being 'Designated Zones'. Subsequently another 5 Free zones were added to the list.

According to the law and Cabinet decisions, a designated free zone is a specific fenced geographic area that has security measures and customs controls in place to monitor entry and exit of individuals and movement of goods to and from the area.

Although designated free zones are part of the UAE territory, for VAT purposes, they are to be treated as being outside the UAE.

VAT is imposed on goods and services supplied or imported into the UAE. This means that if a supply is treated as not taking place in the UAE, then levies should not be charged.

However, in the VAT Executive Regulation certain types of supplies should be treated as if they are taking place in the UAE:

- provision of water services
- All forms of energy goods sold for use or consumption

Goods that arrive into a designated free zone from outside the UAE are not treated as imported into the UAE. Therefore, no VAT is charged on such arrival of the goods. A transfer or sale of goods into a Designated Zone from a place in the UAE which is not a Designated Zone is not an export for VAT purposes, and therefore will not give rise to zero-rated VAT treatment.

Transfer & Movement of Goods

Transfer of goods between designated zones will not be subject to VAT if both of the following conditions are met:

- The goods, or parts of the goods, are not released, used or altered during the transfer between the Designated Zones; and
- The transfer is undertaken in accordance with the rules for customs suspension according to GCC Common Customs Law

Where goods are moved between Designated Zones, the Federal Tax Authority may request the owner of the goods to provide a guarantee in respect of the VAT in case the conditions for the movement of goods are not met.

The sale of goods between designated free zones will be treated as outside the scope of the UAE VAT, if the goods are not for consumption.

EXECUTIVE REGULATIONS (ER) OF UAE VAT LAW

The main features and principles of the VAT system are provided in the VAT Law (i.e Federal Decree Law No. 8 of 2017 on Value Added Tax), while the specific details of application are provided in the VAT Regulations. Given below are those points which have not been covered in the earlier section of the Reference Manual.

Annual Adjustment

At the end of a Tax year, the Taxable Person is required to compute the final amount of recoverable input VAT based on its overall final input VAT recovery position for that Tax year. Where an adjustment is required (additional amount of input VAT to recover or amount of input VAT to be paid back to FTA), this must be reported in the first VAT return due in the subsequent Tax year.

Recovery of Excess Tax

The VAT Law foresees that a Taxable Person shall carry forward any Excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against Payable tax or Administrative Penalties. If there remains any excess after being carried forward for a period of time, the Taxable Person may apply to the FTA to reclaim the remaining excess. The VAT Regulations refer to the Federal Law No. (7) of 2017 on Tax Procedures ("Federal Tax Procedures Law (7)") with regards to the mechanism applicable in order for a Taxable Person to claim its excess recoverable VAT to FTA.

Tax Invoice

It is mandatory to issue a tax invoice for taxable supplies made by a Taxable Person – there is no specific mention that the invoice must be in Arabic. The words 'Tax Invoice' should be clearly written on the invoice. The name, address, and Tax Registration Number of the supplier & the receiver must be mentioned. Tax Invoice must be dated & sequentially numbered or uniquely numbered. Discounts, if offered, must be stated separately.

Simplified Tax Invoice

The registrant can issue a simplified tax invoice where the value of the taxable supply does not exceed AED 10,000, or where the taxable supply is made to a non-registered recipient.

Relief to issue a Tax invoice

This applies where the supply is fully zero-rated and sufficient records to evidence the nature of the supply are kept.

Display of prices

The Executive Regulations have mandated that prices displayed of goods and services shall be inclusive of VAT, with an exception of certain supplies mentioned in Article 27 of VAT Regulations.

Tax Group

Related parties shall be registered as a Tax Group under Article 10 of the Executive Regulations. Related parties have been defined under the Executive Regulations as:

A) One Person or more acting in a partnership and having any of the following:
   1) Voting interests in each of those legal Persons of 50% or more;
   2) Market value interest in each of those legal Persons of 50% or more;
   3) Control of each of those legal Persons by any other means.

B) Each of Persons is a Related Party with a third Person.

Two or more Persons shall be considered Related Parties if they are associated in economic, financial and regulatory aspects.

Government entities and Charities are not allowed to be part of a VAT group. Government entities are defined as Federal and Local Ministries, Government departments, Government agencies, authorities and public institutions in the UAE. Charities are defined as societies and associations of public welfare not aiming to make a profit that are listed within a decision from the Cabinet upon recommendation of the Minister.

Disallowance of Input VAT and VAT on Entertainment Expenses

Recovery of VAT on purchase, lease and rent of motor vehicles used in the business and made available for personal use as well as VAT on entertainment expenses for persons other than employees is disallowed.

Recovery of VAT on entertainment expenses for employees and on goods and services used for free by employees for their personal benefit is also disallowed.

Entertainment expenses cover notably accommodation, food, drinks or any other kind of hospitality, when not provided in the normal course of a meeting. VAT on expenses of the business which have a personal benefit element attached to them is not disallowed if it is part of the business's legal obligation to provide for these expenses or where they are incurred in the normal practice of the business and are necessary for the employees to be in a position to perform their work.

VAT on Director Services

The general rule is that directors provide a service for VAT purposes to their company. As such, if the fees for services (in addition to any other supplies that might be made by the person) exceed the VAT mandatory registration threshold, namely AED 375,000, then directors are liable to register for VAT and charge VAT on the director fees. Specifically, services provided by a director should be taxable if:

- the director undertakes services on a regular, ongoing and independent basis (such as an individual who acts as an executive or non-executive director on a board or a number of different boards); and
- the total value of taxable supplies and imports made by the director, including supplies of director services, exceed the mandatory registration threshold.

Use of Exchange Rates for VAT return filing

Article 69 of Federal Decree-Law No. (8) of 2017 ("VAT Decree-Law") requires that where a supply was made in a currency other than UAE Dirham that the amount stated on the issued tax invoice should be converted into the UAE Dirham according to the exchange rate approved by the UAE Central Bank at the date of supply. Businesses are required by the VAT Decree-Law to use this exchange rate on any tax invoice issued in a currency other than the UAE Dirham from this date onwards.

Public Clarification on Disbursements & Reimbursements

The term "reimbursement" refers to the recovery of expenses that you incur as a principal. The term disbursement, on the other hand, refers to the recovery of payments made on behalf of another person.

While a disbursement of expenses is out of scope of VAT, reimbursement of expenses falls within the scope of VAT.

Public Clarification on Transfer of Business as a Going Concern

A company can be bought and sold by transferring shares of that company. The company itself is not involved in the transaction and therefore such a transfer of shares does not give rise to any changes in the business operations of the company – it still retains all its assets, liabilities, licences, employees and relationships.

In contrast, a transfer of assets (including a transfer of goodwill or trading licences) involves a transfer of title in the assets from one person to another person. In this kind of asset sale transaction, there is no change in the ownership of the entities involved in the transaction, and the purchaser does not take on liabilities that are not expressly part of the transaction or that are attached to the purchased asset.

Normally*, a sale of assets by a taxable person is treated as a taxable supply subject to VAT at the appropriate rate. In contrast, where assets are sold as part of a transfer of a business as a going concern, the transfer is not a supply at all and therefore no VAT is charged.

* Subject to conditions mentioned in the clarification

Refunds under VAT**

There are various scenarios under which refund of VAT can be claimed by registered as well as un-registered entities.

a. Refund of excess Input VAT by a registered entity – A registered entity having excess input (after set-off of output liability) for a tax period, may apply for refund of the said excess Input by ticking the option in the VAT return being filed for the concerned period. The application is then assessed by the tax authorities who may / may not ask for further details to substantiate their claim.

b. VAT refund for Tourists – In cases of tourists making purchases of AED 250 or more from the same taxable person, they shall be eligible for applying for refund of VAT paid on such purchases. The refund can be claimed at various exit points like Abu Dhabi International Airport, Dubai International Airport, Sharjah International Airport, etc. However, for the tourism to claim refund of the VAT amount, the supplier would have to be registered with the tax authorities under the refund scheme for tourists and fulfull the conditions mentioned in the said scheme.

c. VAT refund for exhibitions and conference services - Suppliers of certain services are able to claim a refund of the amount of VAT which they charge on supplies of these services to their international customers. There are a number of conditions which have to be met for the ability to reclaim the VAT to arise, including that the supplier should not collect the VAT component from the relevant international customers. The effect of these rules is that the international customers will not bear the cost of VAT when acquiring qualifying exhibition and conference services.

d. VAT refund on Goods and services connected with Expo 2020 Dubai - In accordance with the Cabinet Decision No. 1 of 2019 on the 'Refund of Value Added Tax Paid on Goods and Services Connected with Expo 2020 Dubai', Official Participants of the Expo 2020 are able to claim a refund of VAT incurred by them on the import or supply of certain Goods and Services.

*****There are detailed user guides and conditions for each of the above categories of refunds.***

VAT RETURN FILING

Checklist of details required to file a UAE VAT return

1	Value of supply of goods and services made within the period subject to the standard rate of VAT, these supplies and VAT have to be segregated Emirate-wise. Eg. Supplies to Dubai, to Abu Dhabi, to Sharjah etc.
2	Supplies subject to the reverse charge provisions (If applicable) (other than goods imported and for which VAT has been declared).
3	Zero rated supplies
4	Exempt supplies
5	Goods imported into the UAE (VAT due is populated based on the amounts declared by the tax registrant in the customs import declaration).
6	Adjustments to goods imported into the UAE.
7	All expenses subject to the standard rate of VAT for which the business would like to recover input tax and the tax amounts that are recoverable.
8	All expenses which were subject to the reverse charge for which you would like to recover input tax and the tax amounts that are recoverable.

Procedural Steps to file UAE VAT Returns

1	UAE VAT return can be filed only through the webportal "eservices.tax.gov.ae". There is no provision to file the return manually with the Federal Tax Authority (FTA)

2	Login to the FTA eServices portal and go to the 'VAT' tab whereby you will be able to access your VAT Returns. From this screen you should click on the option to open your VAT Return.
3	Complete the Form by filling in the following details:
	• Sales and all other outputs as well as on expenses and all other inputs as follows: 1. the net amounts excluding VAT. 2. the VAT amount. • The system will then calculate the payable tax or refund.
4	Submit the Form: carefully review all of the information entered on the form after completing all mandatory fields and confirming the declaration. Once you confirm that all of the information included in the VAT Return is correct, click on the 'Submit' button.
5	Settle the payable VAT (if applicable) through "My Payments" tab. Ensure payment deadlines are met.

- If the due date to file the VAT return is a public holiday, then the due date is extended to the first business day after the holiday.
- Standard periodicity to file UAE VAT returns is on a 'Quarterly' basis. Large organisations having an annual turnover of AED 150 million (Approx. ₹ 270 crore) or more have to file on a monthly basis.
- Due date to file UAE VAT Returns is the 28th day from the end of the tax period (month/quarter) Eg. For January 2018, it will be 28th February, 2018.
- ***Late Filing Penalty: 1***st offence – AED 1,000 | Repeated offence – AED 2,000.

VAT RECORD KEEPING (BOOK KEEPING & ACCOUNTANCY)

Each registrant is required by law to maintain books of accounts and to preserve them for a minimum of 5 years after the end of the financial year. However in case of capital assets, the time limit increases to 10 years and in case of records related to real estate, the time limit is 15 years.

Given below is an indicative list of books to be maintained:

Purchase & Sales invoices	Import & Export of Goods
Debit & Credit Notes	Import & Export of Services
Utilization of input credit available	Corrections made to tax invoices
Record of goods issued for free	Zero rated/exempt supplies & purchases

If the registrant fails to maintain/preserve the books of accounts and other related records, a penalty of AED 10,000 shall be imposed, and each repeated violation would attract a penalty of AED 50,000 (Approximately ₹ 180,000 & ₹ 900,000 respectively)

OPPORTUNITY FOR INDIAN CHARTERED ACCOUNTANTS

In any economy where Tax is introduced for the first time, there is immense scope for Chartered Accountants to interpret the law and help business' implement the law correctly. The introduction of VAT in UAE has brought with it new opportunities for Indian Chartered Accountants (both in Practice & Industry) to handle compliance and advisory assignments. Further, since it is a relatively new law, there are regular updates, guides & public clarifications introduced by the tax authorities, which open an avenue for advisory for Indian Chartered Accountants. Once the tax authorities start the assessments of VAT returns, the expertise possessed by Chartered Accountants in representation before authorities is going to be of immense value.

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Types of Companies

Types of companies that can be formed under the Companies Act, 2013 – (hereinafter referred to as Act has remained same as in the Companies Act, 1956 Act except one more class of company has been added. The new class of company is "One Person Company" (OPC). This section deals with some of the significant changes with respect to types of companies.

1. "**Private Company"** is defined in **Section 2(68)** of the Act and it means a company having a minimum paid-up share capital of * as may be prescribed, and by its articles,
   (i) restricts the right to transfer its shares;
   (ii) except in case of One Person Company, limits the number of its member to two hundred.

   Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

   Provided further that
   (A) Persons who are in the employment of the company; and
   (B) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

   Shall not be included in the number of Members; and
   (iii) Prohibits any invitation to the public to subscribe for any securities of the company.

Note: *The requirement of minimum paid-up share capital of one lakh rupees or such higher paid-up for Private Company has been removed by the Companies (Amendments) Act, 2015 vide Notification F. No. 1/6/2015-CL.V, dated 29th May, 2015 w.e.f. 29th May, 2015.

2. **"Public Company"** is defined in **Section 2(71)** of the Act and it means a company which —
   (a) is not a private company;
   (b) has a minimum paid-up capital* as may be prescribed;

   Provided that a Company which is a subsidiary of a Company, not being a Private Company, shall be deemed to be Public Company for the purposes of this Act even where such subsidiary Company continues to be Private Company in its articles.

Note: *The requirement of minimum paid-up share capital of five lakhs rupees or such higher paid-up for Public Company has been removed by the Companies (Amendments) Act, 2015 vide Notification F. No. 1/6/2015-CL.V, dated 29th May, 2015 w.e.f. 29th May, 2015.

3. **"One Person Company"** is defined in **Section 2(62)** of the Act it means a Company which has only one person as a member, where
   (a) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

   Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

   Provided further that such other person may withdraw his consent in such manner as may be prescribed:

   Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

   Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

   Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum
   (b) The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

4. **"Government Company"** is defined in **Section 2(45)** of the Act and it means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of such a Government company as thus defined.

5. **"Foreign Company"** is defined in **Section 2(42)** of the Act and it means a company or Body Corporate which is incorporated outside India and
   (a) Has a place of business in India whether by itself or through any agent, physically or through electronic mode; and
   (b) Conducts any business activity in India in any other manner.

   In case, a Foreign Company has established a place of business within India, the Foreign Company is required to submit documents/details under Section 380(1) with Registrar within 30 days of establishment of such place of business within India. Alterations and changes in these documents/details are required to be delivered to Registrar for registration, a return containing the particulars of alteration in the prescribed form.

   The provision of Section 381(1) (Account of the Foreign Company), Section 382 (Display of name of Foreign Company), Section 383 (Service on Foreign Company),

Section 384 (Debentures, Annual Return, Registration of charges, Books of Account and their inspection), Section 392 (Punishment for Contravention), Section 405(5) (Power of Central Government to direct companies to furnish information or statistics), apply to such foreign company.

6. **"Company Limited by Shares"** is defined in **Section 2(22)** of the Act, and it means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

7. **"Company Limited by Guarantee"** is defined in **Section 2(21)** of the Act and it means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Such company could be a "company limited by guarantee and not having share capital" or a "company limited by guarantee and having a share capital".

8. **"Small Company"** is defined in **Section 2(85)** of the Act, and it means a company other than a Public Company in which—

   (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees;

   Or

   (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

   Provided that nothing in this clause shall apply to—

   (A) a holding company or a subsidiary company;

   (B) a company registered under section 8; or

   (C) a company or body corporate governed by any special Act.

   Hence holding company, Section 8 companies and Companies governed by special act will not fall in small companies.

9. **"Unlimited Company"** is defined in **Section 2(92)** of the Act and it means a company not having any limit on the liability of its members. The liability of a member extends to the whole amount of company's debts and liabilities but the member will be entitled to claim contribution from other members.

10. **"Producer Company"** – As per **Section 465(1)** of the Act, the provisions of Part IXA of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

    Hence related provisions of The Companies Act, 1956 are reproduced below:

    Producer Company is defined in Section 581A of the Companies Act, 1956 and it means a body corporate having objects or activities specified in Section 581B and registered as Producer Company under this Act.

11. **Companies with licence under Section 8(1)**

    (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company:

    (a) has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, and

    (b) intends to apply its profits, if any, or other income in promoting its objects,

    (c) Intends to prohibit the payment of any dividend to its members,

    The Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the word "Private Limited".

    (2) The association may thereupon be registered accordingly and on registration shall enjoy all the privileges and (subject to the provisions of this Section) be subject to all the obligations, of limited companies.

12. **Holding & Subsidiary Company**

    According to **Section 2(46)** "holding company" in relation to one or more other companies, means a company of which such companies are subsidiary companies;

    According to **Section 2(87)** "Subsidiary Company" or "Subsidiary" in relation to any other Company (that is say the Holding Company) means a Company in which the Holding Company—

    (a) That other controls the composition of its Board of Directors; or

    (b) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

    Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

    Explanation - For the purposes of this clause -

    (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

    (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

    (c) The expression "company" includes anybody corporate;

    (d) "Layer" in relation to a holding company means its subsidiary or subsidiaries.

13. **"Dormant Company"** is defined in **Section 455(1)** of the Act, and it means a company.

    Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction,

such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

For the purpose of this section,—

(i) **"inactive company"** means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) **"Significant accounting transaction"** means any transaction other than—

(a) Payment of fees by a company to the Registrar;

(b) Payments made by it to fulfill the requirements of this Act or any other law;

(c) Allotment of shares to fulfil the requirements of this Act; and

(d) Payments for maintenance of its office and records.

Further as per **Section 455(4)** of the Act, in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

As per **Section 455(5)** of the Act, a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed

As per **Section 455(6)** of the Act, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

SUMMARY

1. Private Company – Section 2(68)

- Minimum paid-up share capital of one lakh rupees or such higher amount as authorised by articles.
- Right to transfer shares is restricted.
- Number of members is limited to 200, except in case of One Person Company.
- Two or more persons holding shares jointly will be treated as single member.
- Prohibits any invitation to the public to subscribe for any securities of the company.
- Persons who are or were formerly in employment and were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

2. Public Company – Section 2(71)

- Company which is not a private company.
- Minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.
- Subsidiary company of public company is deemed to be a public company even though it continues to be private company in its articles.

3. One Person Company – Section 2(62)

- A Company which has only one person as a member.
- One person company is a private company.
- The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
- The memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its Memorandum and Articles.
- Such other person may withdraw his consent in such manner as may be prescribed.

4. Government Company – Section 2(45)

- Any company in which not less than fifty-one per cent of the paid-up share capital is held by,—
  - — the Central Government, or
  - — by any State Government or Governments, or
  - — Partly by the Central Government and partly by one or more State Governments and
  - — Includes a company which is a subsidiary of such a Government company as thus defined.

5. Foreign Company – Section 2(42)

- It means a company or Body Corporate which is incorporated outside India and,—
  - — Has a place of business in India whether by itself or through any agent, physically or through electronic mode; and
  - — Conducts any business activity in India in any other manner has established a place of business within India.
- Within 30 days of establishment of such place of business within India, the Foreign Company is required to submit documents/details under Section 380(1) with Registrar.
- The foreign company which has place of business in India, whose 51% share capital is held by Indian Citizen or company incorporated in India such company would be regarded as company incorporated in India.

6. Company Limited by Shares – Section 2(22)

- It means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

7. Company Limited by Guarantee – Section 2(21)

- It means a company having the liability of its members limited by the memorandum to such

amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

- Such company could be a "company limited by guarantee and not having share capital" or a "company limited by guarantee and having a share capital".
- The Model Memorandums are as per Tables B and C of the Schedule I and Model Articles of Association are as per Tables G and H of Schedule I of the Act.

8. Small Company – Section 2(85)

- It means a company other than a Public Company in which,
  - — Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees;

    Or
  - — Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.
- Holding company, Section 8 companies and Companies governed by special Act will not fall in small companies.

9. Unlimited Company – Section 2(92)

- It means a company not having any limit on the liability of its members.
- The liability of a member extends to the whole amount of company's debts and liabilities but the member will be entitled to claim contribution from other members.
- The Memorandum and Articles of such company is as per Tables E & I of Schedule I of the Act.

10. Producer Company – Section 465(1)

- The provisions of Part IXA of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.
- Producer Company is defined in Section 581A of the Companies Act, 1956 and it means a body corporate having objects or activities specified in Section 581B and registered as Producer Company under this Act.
- Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.
- Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this Section.

11. Companies with licence under section 8(1)

- Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company:
  - — has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, and
  - — intends to apply its profits, if any, or other income in promoting its objects,
  - — Intends to prohibit the payment of any dividend to its members,
- The Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the word "Private Limited".
- Such companies are generally associations, clubs or chambers of commerce.
- The Central Government has conferred powers under Section 25(6) to exempt or modify certain provisions of the Act in relations to such companies.

12. Holding Company – Section 2(46) & Subsidiary Company – Section 2(87)

- Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- Subsidiary company in relation to any other company (that is say the Holding company) means a company in which the Holding company—
  - — That other controls the composition of its Board of Directors; or
  - — Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.
- Such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

13. Dormant Company – Section 455(1)

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and;
- Has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- Company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

❑❑

Important Definitions under the Companies Act, 2013

Under Section 2 of the Companies Act, 2013

In this Act, unless the context otherwise requires -

(1) **"abridged prospectus"** means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) **"accounting standards"** means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

Section 133 reads

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Provided that until the National Financial Reporting Authority is constituted under section 132 of the Companies Act, 2013 (18 of 2013), the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the recommendations made by National Advisory Committee on Accounting Standards Constituted under section 210A of the Companies Act, 1956".

(6) **"associate company"** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause,

(a) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement; (amended *vide* Companies (Amendment) Act, 2017, amendment effective from 07-05-2018)

Note : Clarification vide General Circular no. 24/2014 dated 25-06-2014 - shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

(7) **"auditing standards"** means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;

Section 143 sub-section (10) reads

The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(11) **"body corporate"** or **"corporation"** includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

(12) **"book and paper"** and **"book or paper"** include books of accounts, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(13) **"books of account"** includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

(17) **"chartered accountant"** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

(18) **"Chief Executive Officer"** means an officer of a company, who has been designated as such by it;

(19) **"Chief Financial Officer"** means a person appointed as the Chief Financial Officer of a company;

(20) **"company"** means a company incorporated under this Act or under any previous company law;

(24) **"company secretary"** or **"secretary"** means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;

(25) **"company secretary in practice"** means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);

(26) **"contributory"** means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) **"control"** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(30) **"debenture"** includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;

(Proviso inserted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)

(31) **"deposit"** includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) **"depository"** means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

(34) **"director"** means a director appointed to the Board of a company;

(35) **"dividend"** includes any interim dividend;

(36) **"document"** includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(37) **"employees' stock option"** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

(38) **"expert"** includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(40) **"financial statement"** in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company, dormant company and private company (if such private company is a start-up), may not include the cash flow statement;

Proviso substituted vide Notification dated 13-06-2017

Explanation.— For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry".

(41) **"financial year"** in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement

(First proviso substituted vide Companies (Amendment) Act, 2019, effective from 02-11-2018),

Provided also that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(Second proviso amended vide Companies (Amendment) Act, 2019, effective from 02-11-2018)

[following Proviso inserted vide notification G.S.R. 08(E) dated 4th Jan. 2017 :

Provided also that in case of a Specified IFSC public company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required.]

[following Proviso inserted vide notification G.S.R. 09(E) dated 4th Jan. 2017 :

Provided also that in case of a Specified IFSC Private company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the

financial year of its holding company and approval of the Tribunal shall not be required.]

(42) **"foreign company"** means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

(43) **"free reserves"** means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

(44) **"Global Depository Receipt"** means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

(45) **"Government company"** means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is subsidiary company of such a Government company;

(46) **"holding company"** in relation to one or more other companies, means a company of which such companies are subsidiary companies;

[*Explanation*.—For the purposes of this clause, the expression "company" includes any body corporate.]

(Explanation inserted vide Companies (Amendment) Act, 2017, notified on 09-02-2018)

(47) **"independent director"** means an independent director referred to in sub-section (5) of section 149;

Note : The above should be read as sub-section (6) of Section 149 and Under Section 149(6)

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (amended vide Companies (Amendment) Act, 2017, effective from 07-05-2018)

(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(substituted vide Companies (Amendment) Act, 2017, effective from 07-05-2018)

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years. (Proviso inserted vide Companies (Amendment) Act, 2017, effective from 07-05-2018)

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(48) **"Indian Depository Receipt"** means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

(49) *(Omitted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)*

(51) **"key managerial personnel"**, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; (omitted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)

(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and;

(vi) such other officer as may be prescribed

(substituted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)

(52) **"listed company"** means a company which has any of its securities listed on any recognised stock exchange;

(53) **"manager"** means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) **"managing director"** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) **"member"** in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(57) **"net worth"** means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account (substituted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018), after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(59) **"officer"** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) **"officer who is in default"**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

(62) **"One Person Company"** means a company which has only one person as a member;

(65) **"postal ballot"** means voting by post or through any electronic mode;

(68) **"private company"** means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

The Requirements of having minimum paid-up share capital shall not apply to Section 8 Company, vide Notification F.No. 1/2/2014-CL.I dated 5th June, 2015.

Omitted words "of one lakh rupees or such higher paid-up," by the Companies (Amendments) Act, 2015 vide Notification F.No. 1/6/2015-CL.V. dated 29th May, 2015 w.e.f. 29th May, 2015.

(69) **"promoter"** means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) **"prospectus"** means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) **"public company"** means a company which—

(a) is not a private company; and

(inserted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)

(b) has a minimum paid-up share capital , as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

The Requirements of having minimum paid-up share capital shall not apply to Section 8 Company, vide Notification F.No. 1/2/2014-CL.I dated 5th June, 2015.

Omitted words "of five lakhs rupees or such higher paid-***up," by the Companies (Amendments) Act, 2015 vide*** Notification F.No. 1/6/2015-CL.V. dated 29th May, 2015 w.e.f. 29th May, 2015.

(76) **"related party"**, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager [or his relative] is a member or director;

(v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venture of the company:

Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(Substituted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018)

(ix) such other person as may be prescribed;

Note : Sub-clause (viii) of clause (76) of Section 2 shall not apply with respect to Section 188, to a Private

Company - vide Notification F. No. 1/2/2014-CL.I dated 5th June, 2015.

Under Companies (Specification of definitions details) Rules, 2014, Sub-Rule 3, Related party - For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than an independent director, or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

(77) **"relative"**, with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

Under Companies (Specification of definitions details) Rules, 2014, Sub Rule 4

List of relatives in terms of clause (77) of section 2

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:—

(1) Father: Provided that the term "Father" includes step-father.

(2) Mother: Provided that the term "Mother" includes the step-mother.

(3) Son: Provided that the term "Son" includes the step-son.

(4) Son's wife.

(5) Daughter.

(6) Daughter's husband.

(7) Brother: Provided that the term "Brother" includes the step-brother;

(8) Sister: Provided that the term "Sister" includes the step-sister.

(78) **"remuneration"** means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-Tax Act, 1961 (43 of 1961);

(81) **"securities"** means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Section 2(h) of Securities Contracts (Regulation) Act defines "securities" as follows:

"Securities"include —

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

(ia) derivatives

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes.

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(id) units or any other such instrument issued to the investors under any mutual fund scheme.

Explanation.— For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.

(ie) any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.

(ii) Government securities.

(iia) such other instruments as may be declared by Central Government to be securities; and

(iii) rights or interest in securities.

(85) **"small company"** means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees ; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

The above substitutions has been made vide Companies (Amendment) Act, 2017 and notified on 09-02-2018

(87) **"subsidiary company"** or **"subsidiary"** in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital total voting power (Substituted vide Companies (Amendment) Act, 2017, yet to be notified) either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. (Proviso notified on 20-09-2017)

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled

by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

Note : Clarification vide General Circular No. 20 /2013 dated 27-12-2013 - shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

(88) **"sweat equity shares"** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) **"total voting power"** in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

(91) **"turnover"** means the gross amount of revenue recognised in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

Substituted vide Companies (Amendment) Act, 2017 and notified on 09-02-2018

(94) **"whole-time director"** includes a director in the whole-time employment of the company;

Under Companies (Specification of definitions details) Rules, 2014, Sub Rule 2(k) –

"Executive Director" means a whole time director as defined in clause (94) of section 2 of the Act.

(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

Under Other Sections of the Companies Act, 2013

Section 31 – *Explanation*- For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Section 32 – *Explanation* - For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 42(2) – *Explanation I* - "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

(**Section 42** has been completely substituted vide Companies (Amendment) Act, 2017 and the above definition of private placement is as per the substituted section, amendment effective from 07-08-2018)

Section 43 – *Explanation*— For the purposes of this section,—

(i) ''equity share capital'', with reference to any company limited by shares, means all share capital which is not preference share capital;

(ii) ''preference share capital'', with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to —

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

(iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely :—

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Section 96(2) – *Explanation*– for the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

Section 134(5)(e) – *Explanation* – For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

Section 151 – *Explanation* - For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Section 185(2) – *Explanation* - For the purposes of this section, the expression "any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;

[*vide* notification G.S.R. 08(E) dated 4th Jan. 2017: in case of a Specified IFSC Public company, for

clause (c), the following clause shall be substituted, namely "(c) any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect "]

[*vide* notification G.S.R. 09(E) dated 4th Jan. 2017: in case of a Specified IFSC Private company, for clause (c), the following clause shall be substituted, namely "(c) any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect "]

Section 185 has been completely substituted but there is no further notification w.r.t. the above exemptions to IFSC public company and IFSC private company

(b) any body corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(Section 185 has been completely substituted vide Companies (Amendment) Act, 2017 and the above explanation of persons in whom the director is interested is as per the substituted section, amendment effective from 07-05-2018)

Section 188 – *Explanation* – In this sub-section -

(a) the expression "office or place of profit" means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Section 205 – *Explanation*– For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by the Central Government.

Section 455 – *Explanation* – For the purposes of this section,—

(i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) "significant accounting transaction" means any transaction other than—

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfill the requirements of this Act or any other law;

(c) allotment of shares to fulfill the requirements of this Act; and

(d) payments for maintenance of its office and records.

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Privileges of a Private Company/OPC/Small Company

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
1	2(68)	3(1)(iii)	Minimum Paid-up Capital ₹ 1 lakh (w.e.f. 29-5-2015, minimum paid capital requirement has been removed in all the cases)
2	3(1)	12	Need only 2 persons to form a Private Company
3	58	111(11) & (13)	Restricted right of appeal to CLB/NCLT against refusal to transfer shares
4	67(2)	77(2) & (3)	No prohibition on a Private Company to provide financial assistance to any one for purchasing or subscribing for shares of the Company or its holding Company
5	103	174	Minimum Quorum for Company meetings – 2 members in person (as against 5 members for Public Company)
6	149(1)	252	Minimum number of Directors is Two
7	149(1) Second Proviso		Rule 3 of the Companies (Appointment and Qualification) Rules, 2014 exempts Private Company from having a Woman Director unless it is subsidiary of Public Company
8	149(4)		Not mandatory to have independent directors for Private Company unless it is subsidiary of Public Company
9	152(6)	255	Retirement of Directors by rotation not mandatory for Private Company unless it is subsidiary of Public Company and the articles provide for the retirement of directors at every Annual General Meeting.
10	160(1)	257	Provisions relating to election of new candidates in place of Retiring Directors shall not apply to a Private Company unless it is subsidiary of Public Company
11	164(3)	274(1)	Private Company can provide special disqualifications for appointment of Director
12	167(4)	283	Private Company can provide additional grounds for vacating office of Director
13	190	302	Provisions regarding keeping the Contract of employment or memorandum of terms of employment of Managing Director/Whole-time Directors to be kept – not applicable to a Private Company
14	197	198, 309-311	Ceiling on overall managerial remuneration, Restriction on payment of remuneration to Directors or increase their remuneration unless it is subsidiary of Public Company
15	197-198	349-350	Determination of net profits and depreciation for Managerial Remuneration shall not apply to Private Company unless it is subsidiary of Public Company
New Exemptions notified : (*vide* Notification No. GSR 464(E) dated 5-6-2015)			
16	2(76)(viii)		Shall not apply to Private Company unless it is subsidiary of Public Company with respect to section 188
17	43 & 47	85-90	Only 2 kinds of share capital & voting rights of shareholders – shall not apply where Memorandum or Articles so provide

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
18	62(1)(a)(i) & 62(2)	81	If consent from 90% of members of a Private Company received in writing or electronic mode, shorter period for acceptance of offer and dispatch of notice of offer, is allowed. i.e. offer can be closed before 15 days
19	62(1)(b)	81	Only Ordinary resolution required as against special resolution, for approval of ESOP
20	67	77	Restriction on Loan for buying its own shares not applicable to Private Companies, not having investment by body corporate in its share capital and borrowing from Banks/FIs less than 2 times paid capital but not more than ₹ 50 crores and no default in repayment of borrowings from banks/FIs.
21	73(2) (a) to (e)	58A	Private Company can accept deposits from members, not exceeding one hundred percent of aggregate of paid-up share capital and free reserves. However prescribed details are required to be filed with ROC. (Also refer further exemptions allowed vide notification dt. 15-9-2015, detailed herein below).
22	101 to 107 & 109	171-178 & 181-183	Provisions related to Notices of meetings and related matters shall not apply if articles so provide
23	117(3)(g)		For Private Company, No need to file Form MGT 14, for Board Resolutions passed u/s. 179(3)
24	141(3)(g)	226	The ceiling of 20 Companies, on number of audit of Companies, exclude audit of Pvt. Cos. having paid-up capital less than ₹ 100 crores unless it is subsidiary of Public Company.
25	160	257	Provisions relating to appointment of a person other than retiring director (i.e. written notice of candidature along with deposit of ₹ 1 Lakh) shall not apply to a Private Company unless it is subsidiary of Public Company.
26	162	263	Individual resolution not required for appointment of more than 1 director in case of a Private Company
27	180	293	Restrictions on the powers of the board for the matters specified in section 180, not applicable to Private Companies unless it is subsidiary of Public Company.
28	184(2)		In case of Private Companies, interested director is allowed to participate in the Board meeting, after disclosing interest in the matter to be discussed by the Board meeting. ***Note***: Such director not to be counted in Quorum [Section 174(3) Explanation]
29	Second Proviso to Section 188(1)		A related party member of a private Company is allowed to vote on special resolution to approve contracts or arrangement.
30	196(4) & (5)		Provisions of sections 196(4) & (5) re. appointment and remuneration of Managing Director/Whole Time Director/Manager shall not apply to a Private Company
The Private Companies, while complying with above exceptions (16-30), shall ensure that the interests of their shareholders are protected (as per clause 2 of the aforesaid notification dated 5-6-2015)			

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
New Exemptions notified : (*vide* Notification No. G.S.R. 695 (E) dated 15-9-2015)			
1	73(2)	58A	Private Company can accept deposits from relative of director. However, a declaration to be given in writing by the person that the amount given is not from funds borrowed by him and disclosure to be made in Board's report
New Exemptions notified : (*vide* Notification No. GSR(E) dated 13-06-2017)			
1	2(40)		Financial statement of a private company (if such private company is a start-up) may not include the cash flow statement *Explanation*.— For the purposes of this Act, "start-up" or "start-up company" means a private company incorporated under CA, 2013/1956 and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry."
2	73(2)(a) to (e)	58A	Section 73(2) clause (a) to (e) shall not apply to a Private company : 1. which accepts deposits from members, not exceeding one hundred percent of aggregate of the paid-up share capital, free reserves and securities premium account; 2. which is a start-up for 5 years from the date of its incorporation or a 3. which fulfills the following conditions namely:- a) which is not an associate or subsidiary of another company; b) borrowings of such company from banks or FI's or any body corporate is less than twice of its paid-up share capital or 50 crore rupees, whichever is lower; and c) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section; However prescribed details are required to be filed with ROC. (Also refer further exemptions allowed vide notification dt. 15-9-2015, detailed herein above).
3	92(1)	159, 160, 161 & 162	Annual return of a private company which is a start-up, to be signed by the company secretary or where there is no company secretary, by the director of the company.
4	143(3)(i)	227 & 228	Auditor's Report – Clause on existence of Internal Finance Controls and their effectiveness- shall not apply to a Private Company: - a. which has turnover less than 50 crores as per latest audited financial statement and; b. which has aggregate borrowings of less than 25 crores from banks or financial institutions or any body corporate at any point of time during the financial year
5	173(5)	285 & 286	Private Company which is a start-up need to conduct only 1 board meeting in each half of a calendar year provided the gap between the two meetings is not less than 90 days
6	174(3)	287 & 288	Interested director may also be counted for quorum if the director discloses his or her interest pursuant to section 184
The exceptions, modifications and adaptations shall be applicable to a Private Company which has not committed a default in filing its financial statements u/s. 137 and annual return u/s. 92 of the Act with the Registrar (as per clause 7 of the aforesaid notification dated 13-6-2017).			

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
Note 1	**In addition to the above, a Small Company will have following additional privileges:**		
1	2(40)	—	Financial statement of a Small Company may not include Cash Flow Statement
2	92(1)	—	Annual return to be signed by the Company Secretary or where there is no Company Secretary by the director of the Company
3	92(1)(g)	—	Small Companies need to disclose aggregate amount of remuneration drawn by directors as against remuneration of directors and key managerial personnel. (exemption effective from 13-06-2017)
4	141(3)(g)	—	The ceiling of 20 Companies, on number of audit of Companies, exclude audit of Small Companies having paid-up capital less than ₹ 100 crores unless it is subsidiary of Public Company. (exemption effective from 05-06-2015)
5	143(3)(i)	—	Auditor's Report – Clause on existence of Internal Finance Controls and their effectiveness- shall not apply to a Private Company which is a Small Company
6	173(5)		Small Company need to hold only one Board Meeting in each half of a calendar year provided the gap between the two meetings is not less than 90 days.
Note 2	**In addition to the above privileges 1-30, an OPC will have following additional privileges :**		
1	2(40)	—	Financial statement of a One Person Company (OPC) may not include Cash Flow Statement
2	3(1)		Need only 1 person to form an OPC
3	4(1)(f)	—	Facility to name a nominee in the Memorandum of Association, who shall become the member of the Company, on death of the subscriber or his being incapacitated to contract. Facility to change the nominee. Nominee can also resign
4	92(1)	—	Annual return to be signed by the Company Secretary or where there is no Company Secretary by the director of the Company
5	96(1)	—	OPC not required to hold Annual General Meeting
6	122	—	Exempted from section 98 and sections 100 to 111 (both inclusive), containing provisions relating to General Meetings.
7	134	—	The Financial statements to be signed by only one director and the report of the Board of Directors to be attached to the financial statements shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor.
8	137(1)	—	The OPC shall file a copy of the financial statements duly adopted by its member, along with all the documents, which are required to be attached thereto, within 180 days from the closure of the financial year.
9	141(3)(g)	—	The ceiling of 20 Companies, on number of audit of Companies, exclude audit of One Person Companies having paid-up capital less than ₹ 100 crores unless it is subsidiary of Public Company. (exemption effective from 05-06-2015)
10	143(3)(i)	—	Auditor's Report – Clause on existence of Internal Finance Controls and their effectiveness- shall not apply to a Private Company which is a One Person Company

Sr. No.	Section No. 2013 Act	Section No. 1956 Act	Description
11	149(1)(a)	—	OPC shall have minimum One Director Only
12	152(1)	—	Subscriber to the Memorandum of Association shall be the First Director of the Company until the Directors are appointed
13	173(5)	—	One Person Company having more than 1 director on its Board need to hold only one board meeting in each half of a calendar year provided the gap between the two meetings is not less than 90 days
14	174(3)	—	In case of a One Person Company having more than 1 director on its Board, the interested director may also be counted for quorum if the director discloses his or her interest pursuant to section 184

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Compliances under the Companies Act, 2013 — Annual and Other Obligations under the Companies Act, 2013

OBLIGATIONS UNDER THE COMPANIES ACT, 2013 WITH RESPECT TO E-FILING OF FORMS, RETURNS AND DOCUMENTS WITH REGISTRAR OF COMPANIES

The Companies Act, 2013 ("the Act") provides for and casts an obligation on Companies incorporated under the Act to file various forms, returns and documents under various provisions with the Registrar of Companies (ROC)/Regional Director (RD)/ Central Government (CG) in an electronic mode within the prescribed time along with the prescribed fees or with payment of additional fees in the event of delayed filing.

Ministry of Corporate Affairs (MCA) has introduced e-governance Project MCA-21 which is designed to fully automate all processes related to proactive enforcement and compliance of legal requirements under the Act. The major component of this project are front office and back office. The front office is administered through the portal www.mca.gov.in since September 30, 2006. As the Companies Act, 2013 has become operative, new forms have been prescribed. In case the facility is not available to upload the form, you may use the manual form and attach the same to General E-form e.g. GNL 2 or such other prescribed form as specified in Circular No. 17 dated June 11, 2014 read with Circular No. 6/2014 dated March 28, 2014.

Various documents, returns, etc. that are required to be filed with the ROC could be categorized as under:

- Forms required to be filed once in a year – Annual Filing Obligations; and
- Forms required to be filed from time-to-time with ROC/CG, etc as provided under the Act based on specific event — Event based Filing Obligations.

ANNUAL FILING OBLIGATIONS

A. Annual Return under Section 92

i. The Annual Return, as on the financial year end, has to be filed with the ROC in an electronic mode within 60 days of the holding of the Annual General Meeting (AGM).

ii. Where AGM has not been held, the return is required to be filed within 60 days from the date on which the (AGM) should have been held together with the statement specifying the reasons for not holding the annual general meeting with such fees or additional fees as may be prescribed.

iii. The return is to be duly signed by a Director and the Company Secretary or where there is no Company Secretary, by a Company Secretary in Practice. The Annual Return in the format prescribed is to be attached as per Section 92.

iv. Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report in lieu of the extract in form MGT 9 forming part of the Annual Report.

v. The Annual Return filed by a listed Company or by a Company having paid-up Capital of ₹ 10 crore or more or turnover of ₹ 50 crore or more shall be certified by Company Secretary in Practice in Form MGT-8.

vi. Copies of all annual returns and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.

For OPC & Small Companies

In relation to One Person Company and Small Company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the Company.

Note: In case of an adjourned (AGM), the Annual Return incorporates the date of the original meeting.

Description	*e-Form*
Annual return	MGT-7
Practicing CS certificate	MGT-8

Annual Filing Forms (for before Financial Year 2014-15)

Description	*e-Form*
Annual return (company with share capital)	Form-20B
Annual return (company without share capital)	Form-21A

B. Filing of Financial Statements with Registrar, under Section 137 [e-form No. AOC-4]

a) For Companies other than OPC

i. Financial Statement to be adopted at the AGM.

ii. Copy of **Financial statements including Balance Sheet, Profit & Loss Account, Cash Flow Statement, Statement of changes in equity, Directors Report and Auditor's Report along with Form No. AOC-4, to be e-filed with the ROC within 30 days of the date of the AGM.

iii. Where an AGM is not held, copy of financial statements to be e-filed within 30 days from the last day on or before which the meeting ought to have been held and a statement of the fact and of the reasons thereof to be filed along with the Balance Sheet.

iv. Where Balance Sheet, etc., is laid, but not adopted at the AGM or the AGM was adjourned without adopting the financial statement, a statement of the fact and reasons thereof was filed along with Balance Sheet, etc. to be filed within 30 days of the date of AGM. However, the Registrar shall take the unaudited Balance Sheet filed as 'Provisional' till the audited financial statements are filed.

v. Company shall, along with its financial statements to be filed with Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial

statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

b) For OPC

A One Person Company shall file a copy of the financial statements duly adopted by its member within 180 days from the closure of the financial year.

**Note*: Company cannot file any other forms with ROC nor can CA/CS/Cost Accountant sign forms (except specified forms) unless the Company has filed Balance Sheet, Profit & Loss Account, and Annual Return up-to-date.

Accounts of the subsidiary (ies) need to be attached where applicable.

** As per Circular No. 6/2014 dated March 28, 2014, all forms specified in Table A of the said Circular will have to be filed for Financial Year 2013-14. No new notification issued in this respect till May 31, 2015.

Description	*e-Form*
**Form for filing Balance Sheet and other documents with the Registrar	Form 23AC
**Form for filing Profit and Loss account and other documents with the Registrar	Form 23ACA
Form for filing XBRL document in respect of Balance Sheet and other documents with the Registrar	Form 23AC-XBRL
Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar	Form 23ACA-XBRL

Annual Filing Forms (From Financial Year 2014-15)

Description	*e-Form*
Form for filing annual return by a company	Form MGT-7
Form for filing financial statement and other documents with the Registrar	Form AOC-4
Form for filing consolidated financial statements and other documents with the Registrar	Form AOC-4(CFS)
Form for filing XBRL document in respect of financial statement and other documents with the Registrar	Form AOC-4 XBRL
Addendum for rectification of defects or incompleteness	Form GNL-4

*Following class of Companies are required to file their accounts in XBRL format. MCA has prescribed separate forms for the same.

- All Companies listed in India and their subsidiaries.
- All Companies having a paid-up capital of ` 5 crore and above.
- All Companies having a Turnover of ` 100 crore or above.
- All Companies who were required to file their financial statements for F.Y. 2013-14 using XBRL mode.
- However, banking Companies, Insurance Companies, Power Companies, Non-Banking Financial Companies (NBFC) are exempted from XBRL filing till further instructions from MCA.

** As per Circular No. 6/2014 dated March 28, 2014, all forms specified in Table A of the said Circular will have to be filed for Financial Years up to F.Y. 2013-14.

C. Compliance Certificate Under Section 383A (only for Financial Years up to 2013-14)

i. The Company to which proviso to sub-section (1) of Section 383A is applicable, has to digitally file with the ROC a Certificate from a Company Secretary in whole time practice in Form appended to the Companies (Compliance Certificate) Rules, 2001 within 30 days from the date of AGM.

ii. In case the AGM of the Company is not held for the year, the aforesaid Compliance Certificate to be digitally filed with the ROC within 30 days from the latest day on or before which that meeting should have been held.

Description	*e-Form*
Form for submission of Compliance Certificate with the Registrar	Form 66

* Form No. 66 being Secretarial Compliance Certificate will be operative and needs to be filed for the financial year(s) up to 2013-14. No new notification issued till May 31, 2015.

EVENT BASED FILING OBLIGATIONS

Company Registration

Description	*e-Form*
Simplified Proforma for Incorporating Company Electronically (SPICe) - with mandatory PAN & TAN application included	SPICe
eMemorandum of Association (SPICe MoA)	SPICe MoA
eArticles of Association (SPICe AoA)	SPICe AoA
Application for Goods and services tax Identification number, employees state Insurance corporation registration plus Employees provident fund organisation registration (AGILE)	AGILE
Nominee Consent Form	Form INC-3
One Person Company - Change in Member/ Nominee	Form INC-4
One Person Company - Intimation of exceeding threshold	Form INC-5
Application for grant of License under section 8	Form INC-12
Application by a company for registration under section 366	Form URC-1
Declaration for commencement of business	Form INC-20A
Intimation to Registrar of revocation/surrender of license issued under section 8	Form INC-20

Description	*e-Form*
Notice of situation or change of situation of registered office	Form INC-22
Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	Form INC-23
Application for approval of Central Government for change of name	Form INC-24
Active Company Tagging Identities and Verification (ACTIVE)	Form INC-22A

Private Placement

Description	*e-Form*
Return of allotment	Form PAS-3

Share capital & Debenture

Description	*e-Form*
Notice to Registrar of any alteration of share capital	Form SH-7
Letter of offer	Form SH-8
Declaration of Solvency	Form SH-9
Return in respect of buy-back of securities	Form SH-11
Return to the Registrar in respect of declaration under section 90	Form BEN-2
Persons not holding beneficial interest in shares	Form MGT-6

Acceptance of deposits

Description	*e-Form*
Return of deposits	Form DPT-3
Statement regarding deposits existing on the commencement of the Act	Form DPT-4

Charge Management

Description	*e-Form*
Particulars for creation or modification of charges (other than those related to debentures)	Form CHG-1
Particulars for satisfaction of charges	Form CHG- 4
Appointment or cessation of receiver or Manager	Form CHG-6
Application to Central Government for extension of time for filing particulars of registration of creation/modification/ satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/modification/satisfaction of charge	Form CHG-8
Particulars for registration of charges for Debentures	Form CHG-9
Details of persons/directors/charged/specified	Form GNL-3

Management and Administration Services

Description	**e-Form**
Form for filing Report on Annual General Meeting	Form MGT-15

Audit & Auditors

Description	*e-Form*
Information to the Registrar by Company for appointment of Auditor	Form ADT-1
Application for removal of auditor(s) from his/ their office before expiry of term	Form ADT-2
Notice of Resignation by the Auditor	Form ADT-3
Form of intimation of appointment of cost auditor by the company to Central Government.	Form CRA-2
Form for filing Cost Audit Report with the Central Government.	Form CRA-4
Notice of address at which books of account are maintained	Form AOC-5
Reply To Call for Information on CSR	Form CFI (CSR)

DIN Forms

Description	*e-Form*
Application for allotment of Director Identification Number before appointment in an existing company	Form DIR-3
Application for surrender of Director Identification Number	Form DIR-5
Intimation of change in particulars of Director to be given to the Central Government	Form DIR-6
Application for KYC of Directors	Form DIR-3 KYC
Notice of resignation of a director to the Registrar	Form DIR-11
Intimation of Director Identification Number by the company to the Registrar DIN services	Form DIR-3C
Particulars of appointment of Directors and the key managerial personnel and the changes among them	Form DIR-12

Please be aware that the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019

have been notified w.e.f 25th July 2019. As per the said notification:

i) e Form DIR-3 KYC is to be filed by an individual who holds DIN and is filing his KYC details for the first time or by the DIN holder who has already filed his KYC once in eform DIR-3 KYC but wants to update his details.

ii) Web service DIR-3-KYC-WEB is to be used by the DIN holder who has submitted DIR-3 KYC eform in the previous financial year and no update is required in his details.

Provisions related to Managerial personnel

Description	*e-Form*
Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors	Form MR-2
Return of appointment of MD/WTD/Manager	Form MR-1

Strike off related Services (Registrar of Companies)

Description	*e-Form*
Application by company to ROC for removing its name from Register of Companies	Form STK-2
Form for filing an application with Registrar of Companies	Form GNL-1
Application to Registrar for obtaining the status of dormant company	Form MSC-1
Application for seeking status of active company	Form MSC-4
Application for striking off the name of company under the Fast Track Exit (FTE) Mode	Form FTE

Conversion related services

Description	*e-Form*
Application to Regional director for conversion of section 8 company into company of any other kind	Form INC-18
One Person Company - Application for Conversion	Form INC-6
Conversion of public company into private company or private company into public company	Form INC-27

Compliance related Filing

Description	*e-Form*
Form for furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprise.	Form MSME
Filing of Resolutions and agreements to the Registrar	Form MGT-14
Form for submission of documents with the Registrar.	Form GNL-2
Return of dormant companies	Form MSC-3

Informational Services

Description	*e-Form*
Notice of situation or change of situation or discontinuation of situation of place where foreign register shall be kept	Form MGT-3
Notice of Order of the Court or any other competent authority	Form INC-28

Foreign company Services

Description	*e-Form*
Information to be filed by foreign company	Form FC-1
Return of alteration in the charter, statute or Memorandum and Articles of Association, address of the registered or principal office and directors and Secretary of a Foreign Company	Form FC-2
Annual Accounts along with the list of all principal places of business in India established by Foreign Company	Form FC-3
Annual Return of a Foreign company	Form FC-4

Approval Services

Description	*e-Form*
Form for filing application or documents with Central Government	Form CG-1

Approval Services (Regional Director)

Description	*e-Form*
Memorandum of Appeal	Form ADJ
Form for filing application to Regional Director	Form RD-1

Investor Services

Description	*e-Form*
Investor Complaint Form	Form ICP
Serious Complaint Form	Form SCP

Refund Form

Description	*e-Form*
Application for requesting refund of fees paid.	Form Refund

Attachments

Description	*e-Form*
A Report by a company to ROC for intimating the disqualification of the director	Form DIR-9
Form of application for removal of disqualification of directors	Form DIR-10
Circular or circular in the form of advertisement inviting deposits	Form DPT-1
Return of Statutory Compliances	Form NDH-1
Application for extension of Time	Form NDH-2
Half Yearly Return	Form NDH-3
Information Memorandum	Form PAS-2
Private Placement Offer Letter	Form PAS-4

Report by a Listed Company after AGM shall contain the following (see Rule 31 of Companies (Management & Administration) Rules, 2014):

The report shall contain the details in respect of the following namely:—

(i) The day, date, hour and venue of the AGM;

(ii) Confirmation with respect to appointment of Chairman of the meeting;

(iii) Number of member, attending the meeting;

(iv) Confirmation with respect to compliance of the Act and the Rules, secretarial standards made thereunder with respect to calling, convening and conducting the meeting;

(v) Business transacted at the meeting and result thereof;

(vi) Particulars with respect to any adjournment, postponement of meeting, change in venue; and

(vii) Any other points relevant for inclusion in the report.

Compliance Related to NIDHI Rules, 2014

Description	*e-Form*
Return of Statutory Compliances	Form NDH-1
Application for extension of Time	Form NDH-2
Half Yearly Return	Form NDH-3

Informational Services

Description	*e-Form*
Annual Report on Corporate Social Responsibility (CSR) Activities to be included In the Board's Report	Annexure – Companies (Corporate Social Responsibility Policy) Rules, 2014 Section 135 of the Companies Act, 2013, Schedule VII **Eligibility:**

ANNEXURE
FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

1. A brief outline of the company's CSR policy, including overview of projects or programmes proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programmes.
2. The Composition of the CSR Committee.
3. Average net profit of the company for the last three financial years.
4. Prescribed CSR Expenditure (two per cent of the amount as in item 3 above)
5. Details of CSR spent during the financial year:
   (a) Total amount to be spent for the financial year;
   (b) Amount unspent, if any;
   (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sr. No.	CSR Project or Activity identified	Sector in which the Project is covered	Projects or programmes (1) Local area or other (2) Specify the State and district where projects or programmes was undertaken	Amount outlay (budget) project or/ programmes wise	Amount spent on the projects or programmes Subheads: (1) Direct expenditure on projects or programmes. (2) Overheads:	Cumulative expenditure up to the reporting period	Amount spent: Direct or through implementing agency
1.							
2.							
3.							

*Give details of implementing agency:

Company Law

Description	e-Form
	6. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report. 7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the Company. Sd/- (Chief Executive Officer or Managing Director or Director) Sd/- (Chairman CSR Committee) Sd/- (Person Specified under clause (d) of sub-section (1) of section 380 of the Act) (wherever applicable)

Conversion into Limited Liability Partnership (LLP) Forms

Description	e-Form
Form for intimating to Registrar of Firms about conversion of the firm into limited liability partnership (LLP). (To be filled in physical form and submitted to Registrar of Firms)	Form 14

REGISTRATION OF DIGITAL SIGNATURE

The verification of credentials of Authorized Signatories and Professionals is carried out during e-filing. MCA-21 system has sophisticated electronic 'pre-scrutiny' facilities that can verify the credentials of the signatory prior to acceptance of electronic documents. Therefore, documents that are digitally signed by the Authorized Signatories/Professionals will be accepted by the system only once registered with MCA.

Step-by-step process for registration of signature of director/secretary/professional

(i) Step 1: Go to the website of MCA-21 services http://www.mca.gov.in/MCA21/

(ii) Step 2: Go to the tab of Register your Digital Signature

(iii) Step 3: Select Director/Secretary/Professional under quick links, specify details as requested, connect the DSC to computer and register the DSC.

PAN is mandatory for Manager, Secretary and practicing professionals for DSC registration purpose.

The information submitted by the Professionals at the time of registering the Digital Signature Certificate (DSC) is verified by information in database and that submitted by the respective Professional Institute.

ONLINE PAYMENT FACILITY

Presently the online payment facility for payment of Registration Fees and Stamp Duty with the Registrar of Companies (ROC), is available for all the forms. Refer 'Table of Fees' as prescribed by Companies (Registration of Offices and Fees) Rules, 2014. Ministry of Corporate Affairs (MCA) has made online payment of fees compulsory.

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Statutory Registers

LIST OF STATUTORY REGISTERS, BOOKS AND RECORDS REQUIRED TO BE MAINTAINED BY A COMPANY UNDER COMPANIES ACT, 2013

Sr. No.	*Relevant Sections*	*Register/Books/Returns*	*Inspection*	*Fees/Charges for Inspection, if any*
1	187(3) & Rule 12	Register of Investments not held in its own name by the Company (Form MBP-3)	Members and Debenture holder	Without any fees
2	73 and 74 read with rule 14 of the Companies (Acceptance of Deposits) Rules, 2014) & RBI Directions	Registers of Deposits	Not open for Inspection Entry shall be made within 7 days from the date of issuance of the receipt	N.A
3	68(9) read with Rule 17(12) of Companies (Share Capital & Debentures) Rules, 2014	Register of Securities Bought Back (Form SH-10)	Section & rule is silent regarding the inspection.	N.A
4	85 read with Rule 10 of Company (Registration of Charges) Rules, 2014	Register of Charges (Form CHG-7)	(a) Member or a creditor (b) Any other person	(a) Without any fees (b) On payment of fees
5	88(1) read with Rule 3 of the Companies (Management and Administration) Rules, 2014	(a) (i) Register of Members (Form MGT-1)	(a) Member, Debenture holder, other security holder or beneficial owner (b) Any other person	(a) Without any fees (b) On payment of requisite fees
6	88(2) and Rule 6 of the Companies (Management and Administration Rules, 2014)	(a) (ii) Index of Members & Debenture-Holders & other security holders	(a) Member, Debenture holder, other security holder or beneficial owner (b) Any other person	(a) Without any fees (b) On payment of fees
7	88(1) and Rule 4 of the Companies (Management and Administration Rules, 2014)	(b) (i) Register of Debenture holders (Form MGT-2)	(a) Member, Debenture holder, other security holder or beneficial owner (b) Any other person	(a) Without any fees (b) On payment of requisite fees
8	Section 88(4) & Rule 7	Foreign Register of members or Debenture holders outside India. (Form MGT-3)	(a) Member, Debenture holder, other security holder or beneficial owner (b) Any other person	(a) Without any fees (b) On payment of requisite fees
9	Section 88(3)	Register and Index of beneficial owner	(a) Member/Debenture Holder, security holder or beneficial owner (b) Any other person	(a) Without any fees (b) On payment of requisite fees
10	Section 118/119	Minutes books of General Meetings	Any Member	(a) Without any fees if asked soft copy of minutes of general meeting of preceding 3 Financial Years (b) Max. ₹ 10 per page for photocopies
11	Section 128 Books of Account, etc., to be kept by Company	Proper books of account and cost records and other relevant Books and papers and financial statements for every year	Directors of the Company	N.A

Sr. No.	Relevant Sections	Register/Books/Returns	Inspection	Fees/Charges for Inspection, if any
12	189 and rule 16 (1) of the Companies (Meetings of Board and its Powers) Rules, 2014	Register of Contracts with related party and contracts and Bodies etc. in which Directors are interested (Form MBP-4)	Member	Payment of Requisite Fees
13	170 and Rule 17 of the Companies (Appointment and Qualifications of Directors) Rules, 2014	Register of Director/ Managing Director/Manager/ Whole Time Director/ Secretary and their shareholding	Member	Without any fees
14	186 and Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014	Register of Loans made, provided or Investment made and Acquisition made by the Company (Form MBP-2)	Member	Copies of Guarantees given/ Securities, on payment of requisite fees not exceeding ten rupees for each page
15	Section 46(3) and Rule 6(3) (a) of the Companies (Share Cap & Deb) Rules, 2014	Register of Renewed and Duplicate Share certificates (Form SH-2)	Section & rule is silent regarding the inspection.	N.A
16	581-ZL(7) Read with Section 465 of Companies Act, 2013	Register of particulars of Investments of Producer Companies	Member	N.A
17	54 read with Rule 8(14) of Companies (Share Capital and Debentures) Rules, 2014	Register of Sweat Equity Shares Options (Form SH-3)	Section & rule is silent regarding the inspection	N.A
18	62 read with Rule 12(10) of Companies (Share Capital and Debentures) Rules, 2014	Register of Employee Stock Options (Form SH-6)	Section & rule is silent regarding the inspection	N.A
19	Section 90(2) of the Companies Act, 2013 and rule 5(1)	Register of beneficial owners holding significant beneficial interest (Form BEN-3)	Member	Payment of Requisite Fees

Other records to be maintained by the Companies

Sr. No.	Relevant Sections	Register/Books/Returns	Inspection	Fees/Charges for Inspection, if any
1	184(1) Disclosures by a Director of his Interest	Notice of Disclosure of Interest (Form MBP-1)	Directors of the Company	Without any fees
2	Section 190 Contract of Employment with Managing or Whole-Time Directors	Copy of contract of employment with managing director or whole time directors	Member	Without any fees
3	42(7) read with Rule 14(4) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Record of a Pvt. Placement offer (Form PAS-5)	Directors of the Company	Without any fees
4	Rule 20 of Companies (Acceptance of Deposits) Rules, 2014	Statement regarding deposits existing on the commencement of the Act Options (Form DPT-4)	Depositors	Without any fees

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Annual Accounts and Balance Sheet

- Sections 209-223 of the old Act of 1956 concerning Accounts have been replaced by new Chapter IX – Accounts of Companies along with the Companies (Accounts) Rules, 2014. The Rules are to be read along with Chapter IX of the new 2013 Act.
- "Books of Account" are defined for the first time in Section 2(13) of Companies Act, 2013 ("the new Act") and is in line with that prescribed in section 209(1) of the Companies Act, 1956 ("the old Act").
- Section 2(13) defines "books of account" to include records maintained in respect of—
  - i. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
  - ii. all sales and purchases of goods and services by the company;
  - iii. the assets and liabilities of the company; and
  - iv. the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.
- There is a new definition of "Financial Statement" in Section 2(40) of the New Act in place of Profit & Loss & Balance Sheet described in Section 211 of the old Act. "Financial Statements" are required to give true and fair view and are to be in accordance with "Accounting Standards". These financial statements are required to be prepared, audited and adopted by the shareholders.
- "Financial Statements" include (i) the Balance Sheet (ii) the Statement of Profit and Loss (iii) the Cash Flow Statement (iv) the Statement of Changes in Equity and (v) Notes to Accounts.
- Therefore, now it is mandatory for all companies to also prepare the Cash Flow Statement and the Statement of Changes in Equity and have the same audited.
- The guidance for preparation of Statement of changes in equity is available in Ind AS 1.
- The Cash Flow Statement may not be prepared for OPC (One Person Company) and small company and dormant company. It is important to note the word "may". It implies that OPC, small companies and dormant companies have an option at their discretion to prepare the "Cash Flow Statement."
- [Briefly as per the new Act and the Rules thereunder, OPC are private companies and those which have only one shareholder and have net worth not exceeding ₹ 50 lakh and Average Annual Income (3 years average) of not exceeding ₹ 2 crore. A small company is defined in Section 2(85) of the New Act, as one which is not a public company, presently not having a paid-up capital exceeding ₹ 50 lakh and turnover as per profit and loss account for the immediately preceding financial year not exceeding ` 2 crore. Holding & Subsidiary Companies, Section 8 (old section 25) Companies and those governed by Special Acts are not to be treated as small companies. Section 455 of the new Act defines a dormant company as one which is having no significant accounting transactions.]
- The Financial Statements shall be for every Financial Year. "Financial Year" has been defined u/s. 2(41) of the new Act to mean the period ending 31st March every year. In case of a new company incorporated after 1st January of the year, it shall be 31st March next in the following year. Existing companies are required to align to the new financial period within 2 years of commencement of the new Act. There is an exception which may be granted by the tribunal where the Indian Company is a holding or a subsidiary company or associate of a company incorporated outside India and is required to follow different financial year for consolidation of accounts outside India.
- A new feature of Chapter IX is Consolidation of Accounts. All provisions relating to preparation & audit of accounts as applicable to the standalone Financial Statements are applicable to the Consolidated Financial Statements. All Companies (including step-down subsidiaries) irrespective of whether they are listed or not, private or public are required to prepare Consolidated Financial Statements.
- Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

  Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

  Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.".
- Consolidation shall be done of all subsidiaries, associate companies and joint venture companies as per sub-section (3) of Section 129 of the new Act. Financial Statements shall be in the form provided for in Schedule III to the new Act.
- Schedule III also gives "general introduction for the preparation of Consolidated Financial Statements". This introduction is very broad and it appears that consolidation will have to be done as per AS-21. AS-21 gives detailed guidelines for consolidation. The Ministry of Corporate Affairs vide General Circular No. 39 dated 14-10-2014 has clarified that disclosures made on its standalone Financial Statements need not be repeated in Consolidated Financial Statements. In Consolidated Financial Statements only disclosures relevant to Consolidated Financial Statements should be given.

- Briefly, "Subsidiary Company" is defined in section 2(87) read with section 2(27) defining control of the new Act. Subsidiary company in relation of any other company (holding company) means a company in which the holding company controls the composition of the Board of Directors or controls more than half of the total paid-up capital either on its own or together with one or more of its subsidiary companies. "Associate Company" in relation to another company means a company in which that other company has a "significant influence" and includes a JV Company. "Significant influence" means control of at least 26% of the share capital. It is significant to note that under the old Act, there is reference to control of more than half of the total equity capital; in the new Act, reference is made to more than half of the total paid-up capital (i.e. including, preference share capital.) Further, under the new Act, a company having no subsidiary but having an associate and/or a joint venture company is required to prepare Consolidated Financial Statements. Under the Listing Agreement, listed companies were required to prepare Consolidated Financial Statements ONLY if it had subsidiary(ies).
- Apart from consolidation, Section 129(3) of the new Act also requires that a separate statement containing the salient features of the Financial Statements of the subsidiaries, associates and joint ventures be attached to the holding company's Financial Statements. This statement is required to be in Form AOC-1, which has two parts, PART "A" — Subsidiaries and PART "B" — Associates and Joint Ventures. The details in FORM AOC-1 can be easily extracted from the Financial Statements of the subsidiaries, associates and joint ventures.
- The old Act did not provide for reopening of the Annual Financial Statements and Restating or Revision of the Financial Statements. A circular of the Department of Company Affairs for Restating of Accounts issued by the Ministry provided for Restating of Accounts due to mistake (not arising out of fraud or mismanagement) and for the limited purpose of complying with the technical requirements of the laws viz. Income-tax Act, etc. Under the new Act, there are two independent provisions, Section 130 relating to Reopening of the Financial Statements and Section 131 relating to Voluntary Revision of the Financial Statements or the Board Report.

Reopening of Accounts

- Section 130 of the new Act provides that accounts cannot be reopened and financial statements cannot be recast by a company unless there an application has been made by the Central Government, Income Tax Authority, SEBI and other statutory regulatory body or authority or any other person concerned and an order is made by a court of Competent Jurisdiction or the Tribunal to the effect that:
  - o The relevant earlier accounts were prepared in a fraudulent manner, or
  - o The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of the Financial Statements.
- These provisions have far reaching consequences and an order passed under Section 130 of the new Act could potentially reopen all accounts and Financial Statements for up to 8 previous years [up to 8 years, as Books of Account are required to be maintained u/s. 128(5), unless, there is an order for maintenance of records for longer period].
- Sub-section (2) of Section 130 provides that accounts so revised or recast shall be final. It appears that there is no requirement to revise the Directors' Report, Auditors' Report or adopt the same in a general meeting. The revised or recast accounts which would be final as per sub-section (2) would be submitted to the tribunal and be subject to such further directions or orders of the tribunal.
- New sub-section (3) of Section 130 provides that No order shall be made under sub-section (1) of Section 130 in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year, Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

Voluntary Revision of the Financial Statements or the Board Report

- This is an altogether new provision which did not exist in the old Act. Section 131 of the new Act provides that the Board of Directors may voluntarily revise the Financial Statements or the Board Report where it finds that the Financial Statements do not comply with the provision of Section 129 of the new Act [briefly, Section 129 of the New Act provides that the Statement of Profit and Loss, the Balance Sheet and the Cash Flow Statement give a true and fair view of the affairs of the company and they are prepared as per the notified Accounting Standards] and/or the Board Report does not comply with Section 134 of the new Act. The Revision can be done for 3 preceding financial years. The company is required to obtain approval of the Tribunal before taking up the voluntary revision.
- Before passing any order, it is provided that a notice needs to be given to the Central Government and the Income-tax authorities and their representation considered.
- The Second proviso of section 131 of the New Act restricts the revision to only once in a Financial Year. However, sub-section 2 of section 131 puts a further restriction on the ability of the Board of Directors to revise Financial Statements or the Board Report in a situation where the audited accounts have been sent to members or delivered to the Registrar or laid before the Annual General Meeting. The sub-section provides that the revision in such cases must be confined to

  "(a) corrections in respect of previous Financial Statement or Board Report – they do not comply with the provision of section 129 or section 134 and

  (b) The making of any necessary consequential alteration".
- Sub-section (3) of section 131 of the new Act provides for rules relating to the compliances post the revision of accounts & Directors' Report. The Rules are also required to make provisions with respect to the role and function of the company's Auditors in relation to the revised Financial

Statements or Report. The Companies (Accounts) Rules, 2014 has not prescribed any such rule till date.

Specific rules have been framed for the manner in which books to be kept in electric mode — Rule 3 of The Companies (Accounts) Rule, 2014 manner of books of account to be kept in electronic mode.

- The books of account, other relevant books & papers maintained in electronic mode shall remain accessible in India for subsequent reference, retained completely in the same format in which they were originally generated, sent or received, unaltered, & present accurate information. The information received from branch offices shall not be altered and kept in a manner where it shall depict what was originally received from the branches; documents shall be capable of being displayed in a legible form.
- There shall be proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- The backup of the books of account and other books and papers maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statements, details of Service Provider, IP address of the Service Provider and where the books are maintained on "Cloud," such address as provided by the service provider.

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Schedule III for Ind AS

NOTIFICATION NO. G.S.R. 404(E), DATED 6TH APRIL, 2016

1. In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to Schedule III of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:—
2. In the Companies Act, 2013 (hereinafter referred to as the principal Act) in Schedule III, for the heading "General instructions for preparation of Balance Sheet and Statements of Profit and Loss of a Company" the following shall be substituted, namely:—

"Division I

Financial Statements for a company whose Financial Statements are required to comply with the Companies (Accounting Standards) Rules, 2006.

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY"

3. In the principal Act, in Schedule III, at the end, the following shall be inserted, namely:—

"Division II

Financial Statements for a company whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015.

GENERAL INSTRUCTIONS FOR PREPARATION OF FINANCIAL STATEMENTS OF A COMPANY REQUIRED TO COMPLY WITH IND AS"

1. Every company to which Indian Accounting Standards apply, shall prepare its financial statements in accordance with this Schedule or with such modification as may be required under certain circumstances.
2. Where compliance with the requirements of the Act including Indian Accounting Standards (except the option of presenting assets and liabilities in the order of liquidity as provided by the relevant Ind AS) as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements under this Schedule shall stand modified accordingly.
3. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Indian Accounting Standards. Additional disclosures specified in the Indian Accounting Standards shall be made in the Notes or by way of additional statement or statements unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act, 2013 shall be made in the Notes in addition to the requirements set out in this Schedule.
4. (i) Notes shall contain information in addition to that presented in the Financial Statements and shall provide where required—
   (a) narrative descriptions or disaggregations of items recognised in those statements; and
   (b) information about items that do not qualify for recognition in those statements.

   (ii) Each item on the face of the Balance Sheet, Statement of Changes in Equity and Statement of Profit and Loss shall be cross-referenced to any related information in the Notes. In preparing the Financial Statements including the Notes, a balance shall be maintained between providing excessive detail that may not assist users of Financial Statements and not providing important information as a result of too much aggregation.
5. Depending upon the turnover of the company, the figures appearing in the Financial Statements shall be rounded off as below:

Turnover		***Turnover Rounding off***
(i)	less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(ii)	one hundred crore rupees or more	To the nearest, lakhs, millions or crores, or decimals thereof.

   Once a unit of measurement is used, it should be used uniformly in the Financial Statements.
6. Financial Statements shall contain the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including Notes except in the case of first Financial Statements laid before the company after incorporation.
7. Financial Statements shall disclose all 'material' items, i.e., the items if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size or nature of the item or a combination of both, to be judged in the particular circumstances.

8. For the purpose of this Schedule, the terms used herein shall have the same meanings assigned to them in Indian Accounting Standards.

9. Where any Act or Regulation requires specific disclosures to be made in the standalone financial statements of a company, the said disclosures shall be made in addition to those required under this Schedule.

Note: This Schedule sets out the minimum requirements for disclosure on the face of the Financial Statements, i.e.,Balance Sheet, Statement of Changes in Equity for the period, the Statement of Profit and Loss for the period (The term 'Statement of Profit and Loss' has the same meaning as 'Profit and Loss Account') and Notes. Cash flow statement shall be prepared, where applicable, in accordance with the requirements of the relevant Indian Accounting Standard.

Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry or sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act, 2013 or under the Indian Accounting Standards.

PART I – BALANCE SHEET

Name of the Company……

Balance Sheet as at ……

(Rupees in……)

	Particulars	***Note No.***	***Figures as at the end of current reporting period***	***Figures as at the end of the previous reporting period***
	1	***2***	***3***	***4***
I.	**ASSETS**			
(1)	**Non-current assets** (a) Property, Plant and Equipment (b) Capital work-in-progress (c) Investment Property (d) Goodwill (e) Other Intangible assets (f) Intangible assets under development (g) Biological Assets other than bearer plants (h) Financial Assets (i) Investments (ii) Trade receivables (iii) Loans (iv) Others (to be specified) (i) Deferred tax assets (net) (j) Other non-current assets			
(2)	**Current assets** (a) Inventories (b) Financial Assets (i) Investments (ii) Trade receivables (iii) Cash and cash equivalents (iv) Bank balances other than (iii) above (v) Loans (vi) Others (to be specified) (c) Current Tax Assets (Net) (d) Other current assets			
	Total Assets			

Company Law

	Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
	1	2	3	4
II.	**EQUITY AND LIABILITIES**			
	Equity (a) Equity Share capital (b) Other Equity			
	LIABILITIES			
(1)	**Non-current liabilities** (a) Financial Liabilities (i) Borrowings (ii) Trade Payables (A) total outstanding dues of micro enterprises and small enterprises; and (B) total outstanding dues of creditors other than micro enterprises and small enterprises (iii) Other financial liabilities (other than those specified in item (b), to be specified) (b) Provisions (c) Deferred tax liabilities (Net) (d) Other non-current liabilities			
(2)	**Current liabilities** (a) Financial Liabilities (i) Borrowings (ii) Trade Payables (A) total outstanding dues of micro enterprises and small enterprises; and (B) total outstanding dues of creditors other than micro enterprises and small enterprises (iii) Other financial liabilities (other than those specified in item (c) (b) Other current liabilities (c) Provisions (d) Current Tax Liabilities (Net)			
	Total Equity and Liabilities			
See accompanying notes to the financial statements				

STATEMENT OF CHANGES IN EQUITY

Name of the Company……..

Statement of Changes in Equity for the period ended ……

(Rupees in……)

A. Equity Share Capital

Balance at the beginning of the reporting period	Changes in equity share capital during the year	Balance at the end of the reporting period

Company Law

B. Other Equity

	Share application money pending allotment	Equity component of compound financial instruments	Reserves and Surplus				Debt instruments through Other Comprehensive Income	Equity Instruments through Other Comprehensive Income	Effective portion of Cash Flow Hedges	Revaluation Surplus	Exchange differences on translating the financial statements of a foreign operation	Other items of Other Comprehensive Income (specify nature)	Money received against share warrants	Total
			Capital Reserve	Securities Premium	Other Reserves (specify nature)	Retained Earnings								
Balance at the beginning of the reporting period														
Changes in accounting policy or prior period errors														
Restated balance at the beginning of the reporting period														
Total Comprehensive Income for the Year														
Dividends														
Transfer to retained earnings														
Any other change (to be specified)														
Balance at the end of the reporting period														

Note: (i) Remeasurment of defined benefit plans and fair value changes relating to own credit risk of financial liabilities designated at fair value through profit or loss shall be recognised as a part of retained earnings with separate disclosure of such items along with the relevant amounts in the Notes.

(ii) A description of the purposes of each reserve within equity shall be disclosed in the Notes.

Notes:

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An entity shall classify an asset as current when—
   (a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle;
   (b) it holds the asset primarily for the purpose of trading;
   (c) it expects to realise the asset within twelve months after the reporting period; or
   (d) the asset is cash or a cash equivalent unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period.

   An entity shall classify all other assets as non-current.

2. The operating cycle of an entity is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. When the entity's normal operating cycle is not clearly identifiable, it is assumed to be twelve months.

3. An entity shall classify a liability as current when—
   (a) it expects to settle the liability in its normal operating cycle;
   (b) it holds the liability primarily for the purpose of trading;
   (c) the liability is due to be settled within twelve months after the reporting period; or
   (d) it does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting period. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

   An entity shall classify all other liabilities as non-current.
4. A receivable shall be classified as a 'trade receivable' if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.
5. A payable shall be classified as a 'trade payable' if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.
6. A company shall disclose the following in the Notes:

   A. Non-Current Assets

   I. Property, Plant and Equipment
      (i) Classification shall be given as:
         (a) Land
         (b) Buildings
         (c) Plant and Equipment
         (d) Furniture and Fixtures
         (e) Vehicles
         (f) Office equipment
         (g) Bearer Plants
         (h) Others (specify nature)
      (ii) Assets under lease shall be separately specified under each class of assets.
      (iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses or reversals shall be disclosed separately.

   II. Investment Property

   A reconciliation of the gross and net carrying amounts of each class of property at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses or reversals shall be disclosed separately.

   III Goodwill

   A reconciliation of the gross and net carrying amount of goodwill at the beginning and end of the reporting period showing additions, impairments, disposals and other adjustments.

   IV. Other Intangible assets
      (i) Classification shall be given as:
         (a) Brands or trademarks
         (b) Computer software
         (c) Mastheads and publishing titles
         (d) Mining rights
         (e) Copyrights, patents, other intellectual property rights, services and operating rights
         (f) Recipes, formulae, models, designs and prototypes
         (g) Licences and franchises
         (h) Others (specify nature)
      (ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortisation and impairment losses or reversals shall be disclosed separately.

   V. Biological Assets other than bearer plants

   A reconciliation of the carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments shall be disclosed separately.

   VI. Investments
      (i) Investments shall be classified as:
         (a) Investments in Equity Instruments;
         (b) Investments in Preference Shares;
         (c) Investments in Government or trust securities;
         (d) Investments in debentures or bonds;
         (e) Investments in Mutual Funds;
         (f) Investments in partnership firms; or
         (g) Other investments (specify nature).

         Under each classification, details shall be given of names of the bodies corporate that are—
            (i) subsidiaries,
            (ii) associates,
            (iii) joint ventures, or
            (iv) structured entities,

         in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). Investments in partnership firms along with names of the firms, their partners, total capital and the shares of each partner shall be disclosed separately.

(ii) The following shall also be disclosed:

(a) Aggregate amount of quoted investments and market value thereof;

(b) Aggregate amount of unquoted investments; and

(c) Aggregate amount of impairment in value of investments.

VII. Trade Receivables

(i) Trade Receivables shall be sub-classified as:

(a) Trade Receivables considered good - Secured;

(b) Trade Receivables considered good - Unsecured;

(c) Trade Receivables which have significant increase in Credit Risk; and

(d) Trade Receivables - credit impaired

(ii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(iii) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

VIII. Loans

(i) Loans shall be classified as—

(a) Security Deposits;

(b) Loans to related parties (giving details thereof); and

(c) Other loans (specify nature).

(ii) Loans Receivables shall be sub-classified as:—

(a) Loans Receivables considered good - Secured;

(b) Loans Receivables considered good - Unsecured;

(c) Loans Receivables which have significant increase in Credit Risk; and

(d) Loans Receivables - credit impaired

(iii) Allowance for bad and doubtful loans shall be disclosed under the relevant heads separately.

(iv) Loans due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

IX. Bank deposits with more than 12 months maturity shall be disclosed under 'Other financial assets';

X. Other non-current assets: Other non-current assets shall be classified as—

(i) Capital Advances; and

(ii) Advances other than capital advances;

(1) Advances other than capital advances shall be classified as:

(a) Security Deposits;

(b) Advances to related parties (giving details thereof); and

(c) Other advances (specify nature).

(2) Advances to directors or other officers of the company or any of them either severally or jointly with any other persons or advances to firms or private companies respectively in which any director is a partner or a director or a member should be separately stated. In case advances are of the nature of a financial asset as per relevant Ind AS, these are to be disclosed under 'Other financial assets' separately.

(iii) Others (specify nature).

B. Current Assets

I. Inventories:

(i) Inventories shall be classified as—

(a) Raw materials;

(b) Work-in-progress;

(c) Finished goods;

(d) Stock-in-trade (in respect of goods acquired for trading);

(e) Stores and spares;

(f) Loose tools; and

(g) Others (specify nature).

(ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.

(iii) Mode of valuation shall be stated.

II. Investments:

(i) Investments shall be classified as—

(a) Investments in Equity Instruments;

(b) Investment in Preference Shares;

(c) Investments in Government or trust securities;

(d) Investments in debentures or bonds;

(e) Investments in Mutual Funds;

(f) Investments in partnership firms; and

(g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate that are—

(i) subsidiaries,

(ii) associates,

(iii) joint ventures, or

(iv) structured entities,

in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid).

(ii) The following shall also be disclosed—

(a) Aggregate amount of quoted investments and market value thereof;

(b) Aggregate amount of unquoted investments;

(c) Aggregate amount of impairment in value of investments.

III. Trade Receivables:

(i) Trade Receivables shall be sub-classified as:

(a) Trade Receivables considered good - Secured;

(b) Trade Receivables considered good - Unsecured;

(c) Trade Receivables which have significant increase in Credit Risk; and

(d) Trade Receivables - credit impaired

(ii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(iii) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

IV. Cash and cash equivalents: Cash and cash equivalents shall be classified as

a. Balances with Banks (of the nature of cash and cash equivalents);

b. Cheques, drafts on hand;

c. Cash on hand; and

d. Others (specify nature).

V. Loans:

(i) Loans shall be classified as:

(a) Security deposits;

(b) Loans to related parties (giving details thereof); and

(c) Others (specify nature).

(ii) Loans Receivables shall be sub-classified as:

(a) Loans Receivables considered good - Secured;

(b) Loans Receivables considered good - Unsecured;

(c) Loans Receivables which have significant increase in Credit Risk; and

(d) Loans Receivables - credit impaired

(iii) Allowance for bad and doubtful loans shall be disclosed under the relevant heads separately.

(iv) Loans due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

VI. Other current assets (specify nature): This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories. Other current assets shall be classified as—

(i) Advances other than capital advances

(1) Advances other than capital advances shall be classified as:

(a) Security Deposits;

(b) Advances to related parties (giving details thereof);

(c) Other advances (specify nature).

(2) Advances to directors or other officers of the company or any of them either severally or jointly with any other persons or advances to firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

(ii) Others (specify nature)

C. Cash and Bank balances

The following disclosures with regard to cash and bank balances shall be made:

(a) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.

(b) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.

(c) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.

D. Equity

I. Equity Share Capital: For each class of equity share capital:

(a) the number and amount of shares authorised;

(b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;

(c) par value per share;

(d) a reconciliation of the number of shares outstanding at the beginning and at the end of the period;

(e) the rights, preferences and restrictions attaching to each class of shares including

restrictions on the distribution of dividends and the repayment of capital;

(f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;

(g) shares in the company held by each shareholder holding more than five per cent shares specifying the number of shares held;

(h) shares reserved for issue under options and contracts or commitments for the sale of shares or disinvestment, including the terms and amounts;

(i) for the period of five years immediately preceding the date at which the Balance Sheet is prepared—

— aggregate number and class of shares allotted as fully paid-up pursuant to contract without payment being received in cash;

— aggregate number and class of shares allotted as fully paid-up by way of bonus shares; and

— aggregate number and class of shares bought back;

(j) terms of any securities convertible into equity shares issued along with the earliest date of conversion in descending order starting from the farthest such date;

(k) calls unpaid (showing aggregate value of calls unpaid by directors and officers);

(l) forfeited shares (amount originally paid up).

II. Other Equity:

(i) 'Other Reserves' shall be classified in the notes as—

(a) Capital Redemption Reserve;

(b) Debenture Redemption Reserve;

(c) Share Options Outstanding Account; and

(d) Others – (specify the nature and purpose of each reserve and the amount in respect thereof);

(Additions and deductions since last balance sheet to be shown under each of the specified heads)

(ii) Retained Earnings represents surplus i.e. balance of the relevant column in the Statement of Changes in Equity;

(iii) A reserve specifically represented by earmarked investments shall disclose the fact that it is so represented;

(iv) Debit balance of Statement of Profit and Loss shall be shown as a negative figure under the head 'retained earnings'. Similarly, the balance of 'Other Equity', after adjusting negative balance of retained earnings, if any, shall be shown under the head 'Other Equity' even if the resulting figure is in the negative; and

(v) Under the sub-head 'Other Equity', disclosure shall be made for the nature and amount of each item.

E. Non-Current Liabilities

I. Borrowings:

(i) borrowings shall be classified as—

(a) Bonds or debentures

(b) Term loans

(I) from banks

(II) from other parties

(c) Deferred payment liabilities

(d) Deposits

(e) Loans from related parties

(f) Long-term maturities of finance lease obligations

(g) Liability component of compound financial instruments

(h) Other loans (specify nature);

(ii) borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(iii) where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed;

(iv) bonds or debentures (along with the rate of interest, and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by installments, the date of maturity for this purpose must be reckoned as the date on which the first installment becomes due;

(v) particulars of any redeemed bonds or debentures which the company has power to reissue shall be disclosed;

(vi) terms of repayment of term loans and other loans shall be stated; and

(vii) period and amount of default as on the balance sheet date in repayment of borrowings and interest shall be specified separately in each case.

II. Provisions: The amounts shall be classified as—

(a) Provision for employee benefits; and

(b) Others (specify nature).

III. Other non-current liabilities;

(a) Advances; and

(b) Others (specify nature).

F. Current Liabilities

I. Borrowings:

(i) Borrowings shall be classified as-

(a) Loans repayable on demand

(I) from banks

(II) from other parties

(b) Loans from related parties

(c) Deposits

(d) Other loans (specify nature);

(ii) borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case;

(iii) where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed;

(iv) period and amount of default as on the balance sheet date in repayment of borrowings and interest, shall be specified separately in each case.

II. Other Financial Liabilities: Other Financial liabilities shall be classified as—

(a) Current maturities of long-term debt;

(b) Current maturities of finance lease obligations;

(c) Interest accrued;

(d) Unpaid dividends;

(e) Application money received for allotment of securities to the extent refundable and interest accrued thereon;

(f) Unpaid matured deposits and interest accrued thereon;

(g) Unpaid matured debentures and interest accrued thereon; and

(h) Others (specify nature).

'Long term debt' is a borrowing having a period of more than twelve months at the time of origination

III. Other current liabilities:

The amounts shall be classified as—

(a) revenue received in advance;

(b) other advances (specify nature); and

(c) others (specify nature);

IV. Provisions: The amounts shall be classified as—

(i) provision for employee benefits; and

(ii) others (specify nature).

G. Trade Payables

The following details relating to micro, small and medium enterprises shall be disclosed in the notes:-

(a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid t o any supplier at the end of each accounting year;

(b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(c) the amount of interest due and payable for the period of delay in making payment (which has been paid but beyond the appointed day during the year) but without adding the interest specified under t he Micro, Small and Medium Enterprises Development Act, 2006;

(d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Explanation.-The terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning as assigned to them under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.

The presentation of liabilities associated with group of assets classified as held for sale and non-current assets classified as held for sale shall be in accordance with the relevant Indian Accounting Standards (Ind ASs).

H. The presentation of liabilities associated with group of assets classified as held for sale and non-current assets classified as held for sale shall be in accordance with the relevant Indian Accounting Standards (Ind ASs).

I. Contingent Liabilities and Commitments (to the extent not provided for)

(i) Contingent Liabilities shall be classified as—

(a) claims against the company not acknowledged as debt;

(b) guarantees excluding financial guarantees; and

(c) other money for which the company is contingently liable.

(ii) Commitments shall be classified as—

(a) Estimated amount of contracts remaining to be executed on capital account and not provided for;

(b) uncalled liability on shares and other investments partly paid; and

(c) other commitments (specify nature).

J. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on irredeemable preference shares shall also be disclosed separately.

K. Where in respect of an issue of securities made for a specific purpose the whole or part of amount has not been used for the specific purpose at the Balance Sheet date, there shall be indicated by way of note how such unutilized/amounts have been used or invested.

I. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on irredeemable preference shares shall also be disclosed separately.

J. Where in respect of an issue of securities made for a specific purpose the whole or part of amount has not been used for the specific purpose at the Balance Sheet date, there shall be indicated by way of note how such unutilised\ amounts have been used or invested.

7. When a company applies an accounting policy retrospectively or makes a restatement of items in the financial statements or when it reclassifies items in its financial statements, the company shall attach to the Balance Sheet, a "Balance Sheet" as at the beginning of the earliest comparative period presented.

8. Share application money pending allotment shall be classified into equity or liability in accordance with relevant Indian Accounting Standards. Share application money to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable shall be separately shown under 'Other financial liabilities'.

9. Preference shares including premium received on issue, shall be classified and presented as 'Equity' or 'Liability' in accordance with the requirements of the relevant Indian Accounting Standards. Accordingly, the disclosure and presentation requirements in this regard applicable to the relevant class of equity or liability shall be applicable mutatis mutandis to the preference shares. For instance, plain vanilla redeemable preference shares shall be classified and presented under 'non-current liabilities' as 'borrowings' and the disclosure requirements in this regard applicable to such borrowings shall be applicable mutatis mutandis to redeemable preference shares.

10. Compound financial instruments such as convertible debentures, where split into equity and liability components, as per the requirements of the relevant Indian Accounting Standards, shall be classified and presented under the relevant heads in 'Equity' and 'Liabilities'.

11. Regulatory Deferral Account Balances shall be presented in the Balance Sheet in accordance with the relevant Indian Accounting Standards.

PART II – STATEMENT OF PROFIT AND LOSS

Name of the Company……..

Profit and loss statement for the year ended ……

(Rupees in……)

Sr. No.	*Particulars*	*Note No.*	*Figures as at the end of current reporting period*	*Figures as at the end of the previous reporting period*
	1	*2*	*3*	*4*
I	Revenue from operations		xxx	xxx
II	Other income		xxx	xxx
III	Total Revenue (I + II)		xxx	xxx
IV	Expenses:			
	Cost of materials consumed		xxx	xxx
	Purchases of Stock-in-Trade		xxx	xxx
	Changes in inventories of finished goods work-in-progress and Stock-in-Trade		xxx	xxx
	Employee benefits expense Finance costs			
	Depreciation and amortisation expense			
	Other expenses			
	Total expenses			
V	Profit/(loss) before exceptional items and tax (III - IV)		xxx	xxx
VI	Exceptional items			
VII	Profit/(loss) before tax (V- VI)		xxx	xxx
VIII	Tax expense:			
	(1) Current tax		xxx	xxx
	(2) Deferred tax		xxx	xxx

Sr. No.	Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
	1	2	3	4
IX	Profit (Loss) for the period from continuing operations (VII-VIII)		xxx	xxx
X	Profit/(loss) from discontinued operations		xxx	xxx
XI	Tax expense of discontinuing operations		xxx	xxx
XII	Profit/(loss) from Discontinued operations (after tax) (X-XI)		xxx	xxx
XIII	Profit/(Loss) for the period (IX + XII)		xxx	xxx
XIV	Other Comprehensive Income A (i) Items that will not be reclassified to profit or loss (ii) Income tax relating to items that will not be reclassified to profit or loss B (i) Items that will be reclassified to profit or loss (ii) Income tax relating to items that will be reclassified to profit or loss			
XV	Total Comprehensive Income for the period (XIII+XIV) (Comprising Profit (Loss) and Other Comprehensive Income for the period)			
XVI	Earnings per equity share (for continuing operation): (1) Basic (2) Diluted		 xxx xxx	 xxx xxx
XVII	Earnings per equity share (for discontinued operation): (1) Basic (2) Diluted		 xxx xxx	 xxx xxx
XVIII	Earnings per equity share (for discontinued & continuing operation): (1) Basic (2) Diluted		 xxx xxx	 xxx xxx
See accompanying notes to the financial statements.				

GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS

1. The provisions of this Part shall apply to the income and expenditure account, in like manner as they apply to a Statement of Profit and Loss.
2. The Statement of Profit and Loss shall include:
   (1) Profit or loss for the period;
   (2) Other Comprehensive Income for the period.
   The sum of (1) and (2) above is 'Total Comprehensive Income'.
3. Revenue from operations shall disclose separately in the notes
   (a) sale of products (including Excise Duty);
   (b) sale of services; and
   (c) other operating revenues.
4. Finance Costs: Finance costs shall be classified as-
   (a) interest;
   (b) dividend on redeemable preference shares;
   (c) exchange differences regarded as an adjustment to borrowing costs; and
   (d) other borrowing costs (specify nature).
5. Other income: Other income shall be classified as-
   (a) Interest Income ;
   (b) dividend Income; and
   (c) other non-operating income (net of expenses directly attributable to such income).
6. Other Comprehensive Income shall be classified into-
   (A) Items that will not be reclassified to profit or loss
      (i) Changes in revaluation surplus;
      (ii) Remeasurements of the defined benefit plans;
      (iii) Equity Instruments through Other Comprehensive Income;
      (iv) Fair value changes relating to own credit risk of financial liabilities designated at fair value through profit or loss;
      (v) Share of Other Comprehensive Income in Associates and Joint Ventures, to the extent not to be classified into profit or loss; and
      (vi) Others (specify nature).

(B) Items that will be reclassified to profit or loss;

(i) Exchange differences in translating the financial statements of a foreign operation;

(ii) Debt Instruments through Other Comprehensive Income;

(iii) The effective portion of gains and loss on hedging instruments in a cash flow hedge;

(iv) Share of Other Comprehensive Income in Associates and Joint Ventures, to the extent to be classified into profit or loss; and

(v) Others (specify nature).

7. Additional Information: A Company shall disclose by way of notes, additional information regarding aggregate expenditure and income on the following items:

(a) employee Benefits expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) share based payments to employees, (iv) staff welfare expenses].

(b) depreciation and amortisation expense;

(c) any item of income or expenditure which exceeds one per cent of the revenue from operations or ` 10,00,000, whichever is higher, in addition to the consideration of 'materiality' as specified in clause 7 of the General Instructions for reparation of Financial Statements of a Company;

(d) interest Income;

(e) interest Expense;

(f) dividend income;

(g) net gain or loss on sale of investments;

(h) net gain or loss on foreign currency transaction and translation (other than considered as finance cost);

(i) payments to the auditor as (a) auditor, (b) for taxation matters, (c) for company law matters, (d) for other services, (e) for reimbursement of expenses;

(j) in case of companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities; and

(k) details of items of exceptional nature;

8. Changes in Regulatory Deferral Account Balances shall be presented in the Statement of Profit and Loss in accordance with the relevant Indian Accounting Standards.

PART III — GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet, consolidated statement of changes in equity and consolidated statement of profit and loss, the company shall mutatis mutandis follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet, statement of changes in equity and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Indian Accounting Standards notified under the Companies (Indian Accounting Standards) Rules 2015, including the following, namely:—

(i) Profit or loss attributable to 'non-controlling interest' and to 'owners of the parent' in the statement of profit and loss shall be presented as allocation for the period. Further, 'total comprehensive income' for the period attributable to 'non-controlling interest' and to 'owners of the parent' shall be presented in the statement of profit and loss as allocation for the period. The aforesaid disclosures for 'total comprehensive income' shall also be made in the statement of changes in equity. In addition to the disclosure requirements in the Indian Accounting Standards, the aforesaid disclosures shall also be made in respect of 'other comprehensive income'.

(ii) 'Non-controlling interests' in the Balance Sheet and in the Statement of Changes in Equity, within equity, shall be presented separately from the equity of the 'owners of the parent'.

(iii) Investments accounted for using the equity method.

2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in the	*Net Assets, i.e., total assets minus total liabilities*		*Share in profit or loss*		*Share in other comprehensive income*		*Share in total comprehensive income*	
	As % of consolidated net assets	*Amount ₹*	*As % of consolidated profit or loss*	*Amount ₹*	*As % of consolidated profit or loss*	*Amount ₹*	*As % of consolidated profit or loss*	*Amount ₹*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Parent								
Subsidiaries								
Indian								
1.								
2.								
3.								
.								
.								

Company Law

Name of the entity in the	Net Assets, i.e., total assets minus total liabilities		Share in profit or loss		Share in other comprehensive income		Share in total comprehensive income	
	As % of consolidated net assets	Amount ₹	As % of consolidated profit or loss	Amount ₹	As % of consolidated profit or loss	Amount ₹	As % of consolidated profit or loss	Amount ₹
1	2	3	4	5	6	7	8	9
Foreign 1. 2. 3. . . Non-controlling Interests in all subsidiaries Associates (Investment as per the equity method) Indian 1. 2. 3. . .								
TOTAL								

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.

4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.

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Company Law

Disclosure in Director's Report

BOARD OF DIRECTORS REPORT

OVERVIEW

- Section 134 of Companies Act, 2013 read with applicable rules thereto ("Act") requires company to prepare board of director's report.
- The board's report is a vital document in which the board of directors of the company review the performance of the company.
- The board's reports form a part of the company's annual report and it shall be attached to financial statement of the company in annual report.
- The board's report is to be prepared based on the standalone basis, however it also includes summary report on the performance of subsidiaries, associates and joint venture companies if any, and their contribution to the overall performance of the company during the period under report.

DRAFTER OF BOARD REPORT

- This report is prepared by board of directors of the company.
- The board's report is prepared on annual basis.
- The board's report shall be approved by the board of directors in their meeting only and not through circular resolution or video conferencing.
- The board's report shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

FILING OF BOARD REPORT

- Board's resolution approving board report shall be filed with Registrar of Companies ("ROC") in Form MGT-14, within 30 days of passing resolution but in case of private companies the same shall not apply.

CONTENT OF BOARD REPORT

A. As per Section 134 of the Act provides that inter alia following shall be included in the board of director's report:

1. ***Web link to Annual Report:*** The web address, if any, where annual return referred to in sub-section (3) of section 92 of the Act has been placed;
2. ***Board meeting detail:*** Number of board meeting(s) conducted during the period under review;
3. ***Directors' Responsibility Statement shall state that:***
   - (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
   - (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
   - (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
   - (d) the directors had prepared the annual accounts on a going concern basis; and
   - (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Additional information to be stated in the Board's Report

- The financial summary or highlights;
- The change in the nature of business, if any;
- The details of directors or key managerial personnel who were appointed or have resigned during the year;
- The names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;
- The details relating to
  - (a) deposits accepted during the year,
  - (b) remained unpaid or unclaimed as at the end of the year;
  - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved- (i) at the beginning of the year; (ii) maximum during the year; (iii) at the end of the year;
- The details of deposits which are not in compliance with the requirements of Acceptance of Deposit Rules;
- The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- The details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

- b statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

4. ***Fraud reporting***: Details if any, in respect of frauds reported by auditors under sub-section (12) of section 143 of the Act other than those which are reportable to the Central Government;
5. ***Independent director's declaration:*** A statement on declaration given by independent directors under sub-section (6) of section 149 of the Act;
6. ***Details in respect to remuneration of directors:*** In case of a company covered under sub-section (1) of section 178 of the Act, company's policy on director's appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters;
7. ***Board of director's explanations or comments:*** Details of board's representation on every qualification, reservation or adverse remark or disclaimer made by the auditor in his statutory audit report and secretarial audit report;
8. ***Details of transaction:*** Particulars of loans, guarantees or investments under section 186 of the Act;
9. ***Related parties' disclosure:*** Particulars of contracts or arrangements with related parties under section 188 of the Act shall be disclosed in Form AOC-2;
10. ***Company's performance:*** The state of the company's affairs;
11. ***Company's reserve fund:*** The amounts, if any, which it proposes to carry to any reserves;
12. ***Dividend:*** The amount, if any, which it recommends by board of director to be paid by way of dividend should be stated;
13. ***Details of material event occurred post end of financial year:*** Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and up to the date of the report;
14. ***Energy/Technology/Foreign Exchanges details:*** The conservation of energy, technology absorption, foreign exchange earnings and outgo, in the manner

    (A) Conservation of energy-

    (i) the steps taken or impact on conservation of energy;

    (ii) the steps taken by the company for utilising alternate sources of energy;

    (iii) the capital investment on energy conservation equipments;

    (B) Technology absorption-

    (i) the efforts made towards technology absorption;

    (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;

    (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-

    (a) the details of technology imported;

    (b) the year of import;

    (c) whether the technology been fully absorbed;

    (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and

    (iv) the expenditure incurred on Research and Development.

    (C) Foreign exchange earnings and Outgo-

    The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

    ["Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a government company engaged in producing defence equipment"]

15. ***Risk management details***: A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the board may threaten the existence of the company;
16. ***Corporate Social Responsibility:*** The details about the Corporate Social Responsibility Committee (Constitution), policy developed and implemented by the company on corporate social responsibility, initiatives taken during the year;
17. ***Additional disclosure for listed company:*** In case of a listed company and every other public company having paid-up share capital of twenty five crore rupees or more, calculated at the end of the preceding financial year, a statement indicating the manner in which annual evaluation of the performance of the Board, its Committees and of individual directors has been made.

    [Provided further that where the policy referred to in clause (6) or clause (16) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available]

B. The board of directors' report may also include the below information as required by the relevant provision of the applicable law:

1. **Section 149(10) of the Act** – Disclosure on reappointment of independent director, if any;
2. **Section 177(9) of the Act** – Disclosure on establishment of vigil mechanism if any;
3. **Section 197(12) of the Act** – Disclosure on ratio of the remuneration of each director to the median employees remuneration.

4. **Section 197(14) of the Act** – Disclosure about receipt of any commission by managing director/ whole time director from the company, if any;
5. **Section 204 of the Act** – Secretarial audit report in Form MR-3, if any;
6. **Section 177(8) of the Act** – Disclosure on composition of the audit committee. Further, if the board of directors has not accepted any recommendation of the Audit Committee, then details of same shall also be disclosed along with reasons thereof, if any;
7. **Section 131 of the Act** – Details on voluntary revision of financial statement or board of directors report;
8. **Section 67(3) read with Rule 16 of Companies (Share Capital & Debentures) Rules, 2014** – Disclosure in respect of voting rights not exercised by the employees in respect of shares to which the scheme relates, if any.
9. **Sections 43, 54, 62(1)(b) read with Rules 4(4), 8(13) & 12(9) of Companies (Share Capital & Debentures) Rules, 2014** – Disclosure on Issue of Equity Shares with differential Rights, Sweat Equity, ESOS etc. if any.
10. **Regulation 34 of SEBI (LODR) Regulation 2015 –** Corporate governance disclosure, if applicable;
11. Disclosure under sexual harassment of women at workplace (Prevention, Prohibition & Redressal) Act, 2013, if applicable;
12. **Regulation 32 of SEBI (LODR) Regulations 2015 –** details on statement of deviation or variation disclosure if applicable;
13. **Section 168 of the Act –** Details on resignation of director(s), if any;
14. **Section 135 of the Act –** Details of amount spent on corporate social responsibility activities, if any.

PENALTY FOR NON-COMPLIANCE

- If any provision of section 134 of Act is contravened then it shall be punishable in hands of company as well as every officer in default.
- For Company:
  - Punishable with fine which shall not be less than fifty thousand rupees, but which may extend to twenty-five lakh rupees.
- For every officer in default:
  - Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees, or with both.

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Schedule II — Rate of Depreciation — The Companies Act, 2013

As per Schedule II along with Section 123 of the Companies Act, 2013 useful lives to Compute Depreciation.

As per Part A

(i) In case of such class of companies, as may be prescribed and whose financial statements comply with the Accounting Standards prescribed for such class of companies under section 133, the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.

(ii) In respect of other companies, the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.

(iii) For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

As per Part B

The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

As per Part C

As per Part C, subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets				*Useful Life in years*
I.	**Buildings [NESD]**			
	(a)	Buildings (other than factory buildings) RCC Frame Structure		60
	(b)	Buildings (other than factory buildings) other than RCC Frame Structure		30
	(c)	Factory buildings		30
	(d)	Fences, wells, tube wells		5
	(e)	Others (including temporary structure, etc.)		3
II.	**Bridges, culverts, bunders, etc. [NESD]**			30
III.	**Roads [NESD]**			
	(a)	Carpeted roads		
		(i)	Carpeted Roads — RCC	10
		(ii)	Carpeted Roads — other than RCC	5
	(b)	Non-carpeted roads		3
IV.	**Plant and Machinery**			
	(i)	**General rate applicable to plant and machinery not covered under special plant and machinery**		
		(a)	Plant and Machinery other than continuous process plant not covered under specific industries	15
		(b)	Continuous process plant for which no special rate has been prescribed under (ii) below [NESD]	25

Company Law

Nature of assets				Useful Life in years
	(ii)	Special Plant and Machinery		
		(a)	**Plant and Machinery related to production and exhibition of Motion Picture Films**	
			1. Cinematograph films — Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs	13
			2. Projecting equipment for exhibition of films	13
		(b)	**Plant and Machinery used in glass manufacturing**	
			1. Plant and Machinery except direct fire glass melting furnaces — Recuperative and regenerative glass melting furnaces	13
			2. Plant and Machinery except direct fire glass melting furnaces — Moulds [NESD]	8
			3. Float Glass Melting Furnaces [NESD]	10
		(c)	**Plant and Machinery used in mines and quarries — Portable underground machinery and earth moving machinery used in open cast mining [NESD]**	8
		(d)	**Plant and Machinery used in Telecommunications [NESD]**	
			1. Towers	18
			2. Telecom transceivers, switching centres, transmission and other network equipment	13
			3. Telecom — Ducts, Cables and optical fibre	18
			4. Satellites	18
		(e)	**Plant and Machinery used in exploration, production and refining oil and gas [NESD]**	
			1. Refineries	25
			2. Oil and gas assets (including wells), processing plant and facilities	25
			3. Petrochemical Plant	25
			4. Storage tanks and related equipment	25
			5. Pipelines	30
			6. Drilling Rig	30
			7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc.	8
			8. Loggers	8
		(f)	**Plant and Machinery used in generation, transmission and distribution of power [NESD]**	
			1. Thermal/Gas/Combined Cycle Power Generation Plant	40
			2. Hydro Power Generation Plant	40
			3. Nuclear Power Generation Plant	40
			4. Transmission lines, cables and other network assets	40
			5. Wind Power Generation Plant	22
			6. Electric Distribution Plant	35
			7. Gas Storage and Distribution Plant	30
			8. Water Distribution Plant including pipelines	30

Nature of assets				Useful Life in years
		(g)	**Plant and Machinery used in manufacture of steel**	
			1. Sinter Plant	20
			2. Blast Furnace	20
			3. Coke ovens	20
			4. Rolling mill in steel plant	20
			5. Basic oxygen Furnace Converter	25
		(h)	**Plant and Machinery used in manufacture of non-ferrous metals**	
			1. Metal pot line [NESD]	40
			2. Bauxite crushing and grinding section [NESD]	40
			3. Digester Section [NESD]	40
			4. Turbine [NESD]	40
			5. Equipments for Calcination [NESD]	40
			6. Copper Smelter [NESD]	40
			7. Roll Grinder	40
			8. Soaking Pit	30
			9. Annealing Furnace	30
			10. Rolling Mills	30
			11. Equipments for Scalping, Slitting, etc. [NESD]	30
			12. Surface Miner, Ripper Dozer, etc., used in mines	25
			13. Copper refining plant [NESD]	25
		(i)	**Plant and Machinery used in medical and surgical operations [NESD]**	
			1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc.	13
			2. Other Equipments	15
		(j)	**Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]**	
			1. Reactors	20
			2. Distillation Columns	20
			3. Drying equipments/Centrifuges and Decanters	20
			4. Vessel/storage tanks	20
		(k)	**Plant and Machinery used in civil construction**	
			1. Concreting, Crushing, Piling Equipments and Road Making Equipments	12
			2. Heavy Lift Equipments — Cranes with capacity of more than 100 tons Cranes with capacity of less than 100 tons	 20 15
			3. Transmission line, Tunnelling Equipments [NESD]	10

Company Law

Nature of assets				Useful Life in years
			4. Earth-moving equipments	9
			5. Others including Material Handling /Pipeline/Welding Equipments [NESD]	12
		(l)	**Plant and Machinery used in salt works [NESD]**	15
V.	**Furniture and fittings [NESD]**			
	(i)	General furniture and fittings		10
	(ii)	Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions		8
VI.	**Motor Vehicles [NESD]**			
	1.	Motor cycles, scooters and other mopeds		10
	2.	Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire		6
	3.	Motor buses, motor lorries and motor cars other than those used in a business of running them on hire		8
	4.	Motor tractors, harvesting combines and heavy vehicles		8
	5.	Electrically operated vehicles including battery powered or fuel cell powered vehicles		8
VII.	**Ships [NESD]**			
	1.	**Ocean-going ships**		
		(i)	Bulk Carriers and liner vessels	25
		(ii)	Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings	20
		(iii)	Chemicals and Acid Carriers: (a) With Stainless steel tanks	25
			(b) With other tanks	20
		(iv)	Liquefied gas carriers	30
		(v)	Conventional large passenger vessels which are used for cruise purpose also	30
		(vi)	Coastal service ships of all categories	30
		(vii)	Offshore supply and support vessels	20
		(viii)	Catamarans and other high speed passenger for ships or boats	20
		(ix)	Drill ships	25
		(x)	Hovercrafts	15
		(xi)	Fishing vessels with wooden hull	10
		(xii)	Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	14
	2.	**Vessels ordinarily operating on inland waters —**		
		(i)	Speed boats	13
		(ii)	Other vessels	28

Nature of assets			Useful Life in years
VIII.	**Aircrafts or Helicopters [NESD]**		20
IX.	**Railways sidings, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]**		15
X.	**Ropeway structures [NESD]**		15
XI.	**Office equipment [NESD]**		5
XII.	**Computers and data processing units [NESD]**		
	(i)	Servers and networks	6
	(ii)	End user devices, such as, desktops, laptops, etc.	3
XIII.	**Laboratory equipment [NESD]**		
	(i)	General laboratory equipment	10
	(ii)	Laboratory equipments used in educational institutions	5
XIV.	**Electrical Installations and Equipment [NESD]**		10
XV.	**Hydraulic works, pipelines and sluices [NESD]**		15

Notes

1. "Factory buildings" does not include offices, godowns and staff quarters.
2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
3. The following information shall also be disclosed in the accounts, namely:—
   (i) Depreciation methods used; and
   (ii) The useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.
4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.
5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.
6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.
7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—
   (a) shall be depreciated over the remaining useful life of the asset as per this Schedule;
   (b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.
8. **"Continuous process plant"** means a plant which is required and designed to operate for twenty-four hours a day.

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Corporate Social Responsibility

Introduction

Section 135 of the Companies Act 2013 deals with the provisions of **Corporate Social Responsibility (CSR).**

Corporate Social Responsibility (CSR, also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/Responsible Business) is a form of corporate self-regulation integrated into a business model. CSR policy functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law, ethical standards, and international norms. In some models, a company's implementation of CSR goes beyond compliance and engages in "actions that appear to further some social good, beyond the interests of the company, and that which is required by law."

CSR is a process with the aim to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders, and all other members of the public sphere who may also be considered stakeholders.

The term "corporate social responsibility" became popular in the 1960s and has remained a term used indiscriminately by many to cover legal and moral responsibility more narrowly construed.

Application to the Companies

Section 135 of the Companies Act, 2013 makes it mandatory for following companies having in immediately preceding financial year:

- Every company having net worth of rupees five hundred crore or more, or
- Every company having turnover of rupees one thousand crore or more, or
- Every company having net profit of rupees five crore or more.

to comply with CSR provisions.

Action Points to comply with CSR Provisions

1. Constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee consisting of two or more directors;
2. Disclose the composition of the CSR Committee in the Board's report under sub-section (3) of Section 134;
3. After taking into account recommendations made by the CSR Committee, approve the CSR Policy for the company;
4. Disclose contents of such policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
5. Ensure that the activities as are included in CSR Policy of the company are undertaken by the company;
6. Give preference to the local area and areas around it where the company operates, for spending the amount earmarked for CSR activities;
7. If the company fails to spend the CSR amount, the Board shall, in its report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount;
8. Net Profit not to include profit arising from any overseas branch and dividends from other company;
9. Every foreign Company operating in India fulfilling the criteria to fulfill CSR Regulations;
10. Entities eligible for CSR spending - India only:
    (a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or
    (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

    If, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified herein, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism."
11. A company is allowed to collaborate with other companies for CSR activities;
12. CSR spending on own employees and their family cannot exceed 5% of total CSR expenditure;
13. Political Contribution is not a CSR spending.

Functions of CSR Committee

1. Formulate and recommend to the Board, a CSR Policy indicating activities to be undertaken by the company as specified in Schedule VII to the Companies Act, 2013;
2. Recommend the amount of expenditure to be incurred on the CSR activities;
3. Monitor CSR Policy of the company from time to time.

The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature:

Provided that- if, the Board of a company decides to undertake its CSR activities through a company

established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism.

CSR Spending

The Board shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. **The Companies (Amendment) Act 2019 has provided that, where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.**

Any financial year

"Any financial year" referred under sub-section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rules 2014, implies 'any of the three preceding financial years' (Clarification vide MCA General Circular No. 21/2014).

What does not constitute CSR spending?

Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that the CSR activities that shall be undertaken by the companies for the purpose of Section 135 of the Act shall exclude activities undertaken in pursuance of its 'normal course of business.' The Rules also specify that CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with the requirements of the Act. Such programmes or projects or activities, that are carried out as a pre-condition for setting up a business, or as part of a contractual obligation undertaken by the company or in accordance with any other Act or as a part of the requirement in this regard by the relevant authorities cannot be considered as a CSR activity within the meaning of the Act. Similarly, the requirements under relevant regulations or otherwise prescribed by the concerned regulators as a necessary part of running of the business, would be considered to be the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities.

Calculation of Net Profit

For the purposes of CSR spending, "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198 **(amended by the Companies Amendment Act 2017 with effect from 19/09/2018)**.

Net profit as per Section 198 is to be calculated in following manner:

Net Profit as per Profit and Loss Account	XXX
Add: Bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs **(if not credited to Profit and Loss Account)**.	XXX
Less: Following items **(if credited to Profit and Loss Account)**: (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company; (b) profits on sales by the company of forfeited shares; (c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof; (d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets: Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value; (e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in Profit and Loss Account on measurement of the asset or the liability at fair value.	XXX
Less: Usual working charges and other expenses as stated in sub-section (4) of section 198 **(if not debited to Profit and Loss Account)**	XXX
Add: Following items **(if debited to Profit and Loss Account):** (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4); (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4); (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value; (d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.	XXX

Implications of the Income-tax Act, 1961

The Finance (No. 2) Act, 2014 has amended the provisions of Section 37 of the Income-tax Act 1961 to provide that for the purposes of Section 37(1) any expenditure incurred by

an assessee on the activities relating to corporate social responsibility referred to in Section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under Section 37 of the Income-tax Act, 1961.

However, the CSR expenditure which is of the nature described in Sections 30 to 36 of the Income-tax Act 1961 shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein. This apart, if the CSR spending is made by way of donation to a permitted entity, the same can be allowed as deduction under Section 80G of the Income-tax Act, 1961.

Permitted CSR Activities

	Description of Activities	Benefit available under the Income-tax Act, 1961 (apart from section 80G)
1.	Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation and making available safe drinking water;	35AC (Not available from Assessment Year 2018-19)
2.	Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently able and livelihood enhancement projects;	35AC (Not available from Assessment Year 2018-19)
3.	Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;	35AC (Not available from Assessment Year 2018-19)
4.	Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water;	35AC, (Not available from Assessment Year 2018-19) 35CCB
5.	Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional and handicrafts;	35AC (Not available from Assessment Year 2018-19)
6.	Measures for the benefit of armed forces veterans, war widows, and their dependents;	35AC (Not available from Assessment Year 2018-19)
7.	Training to promote rural sports, nationally recognised sports, para Olympic sports and Olympic sports;	35AC (Not available from Assessment Year 2018-19)
8.	Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;	35AC (Not available from Assessment Year 2018-19)
9.	Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;	35(2AA), 35AC (Not available from Assessment Year 2018-19)
10.	Rural development projects.	35CCA, 80GGA

Essence of CSR

1. Activities undertaken in pursuance of the CSR policy must be relatable to areas or subject as specified in Schedule VII to the Companies Act 2013. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
2. CSR activities should be undertaken by the companies in project/programme mode. One-off events such as marathons/awards/charitable contribution/advertisement/ sponsorships of TV programmes, etc. would not be qualified as part of CSR expenditure.
3. Expenses incurred by companies for the fulfilment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act 2013.
4. Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
5. "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

6. Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per Section 135 of the Act.
7. 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income-tax Act 1961, for those States where registration of Trust is not mandatory.
8. Contribution to Corpus of a Trust/society/section 8 companies, etc. will qualify as CSR expenditure as long as (a) the Trust/society/section 8 companies, etc. is created exclusively for undertaking CSR activities, or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII to the Act.

ICAI's Guidance Note

The ICAI has come out with Guidance Note on CSR effective May 15, 2015. In view of this, FAQs. issued by the ICAI as an interim guidance to the members stand withdrawn.

The objective of the Guidance Note is to provide guidance on recognition, measurement, presentation, and disclosure of expenditure on activities relating to CSR.

The Guidance Note does not deal with identification of activities that constitute CSR activities, but only provides guidance on accounting for expenditure on CSR activities in line with the requirements of the generally accepted accounting principles including the applicable Accounting Standards.

The provisions of the Act clearly lay down that the expenditure on CSR activities is to be disclosed only in the Board's Report in accordance with the Rules made there under. In view of this, no provision for the amount which is not spent, i.e., any shortfall in the amount that was expected to be spent as per the provisions of the Act on CSR activities and the amount actually spent at the end of a reporting period may be made in the financial statements. However, if a company has already undertaken certain CSR activity for which a liability has been incurred by entering into a contractual obligation, then in accordance with the generally accepted principles of accounting, a provision for the amount representing the extent to which the CSR activity was completed during the year, needs to be recognised in the financial statements.

Where a company spends more than that required under law, a question arises as to whether the excess amount 'spent' can be carried forward to be adjusted against amounts to be spent on CSR activities in future period. Since '2% of average net profits of immediately preceding three years' is the minimum amount which is required to be spent under section 135 (5) of the Act the excess amount cannot be carried forward for set off against the CSR expenditure required to be spent in future.

In case the expenditure incurred by the company is of such nature which may give rise to an 'asset', a question may arise as to whether such an 'asset' should be recognised by the company in its balance sheet. In this context, it would be relevant to note the definition of the term 'asset' as per the Framework for Preparation and Presentation of Financial Statements issued by the ICAI. An 'asset' is a "resource controlled by an enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise." Hence, in cases where the control of the 'asset' is transferred by the company, e.g., a school building is transferred to a Gram Panchayat for running and maintaining the school, it should not be recognised as 'asset' in its books and such expenditure would need to be charged to the statement of profit and loss as and when incurred. Where a company retains the control of 'asset', then it would need to be examined whether any future economic benefits accrue to the company. Invariably future economic benefits from a 'CSR asset' would not flow to the company as any surplus from CSR cannot be included by the company in business profits in view of Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods manufactured by it is transferred or the allowable services are rendered. The goods manufactured by the company should be valued in accordance with the principles prescribed in Accounting Standard (AS) 2, Valuation of Inventories. The services rendered should be measured at cost. Indirect taxes (like excise duty, service tax, VAT or other applicable taxes) on the goods and services so contributed will also form part of the CSR expenditure.

Where a company receives a grant from others for carrying out CSR activities, the CSR expenditure should be measured net of the grant.

Any surplus arising out of CSR project or programme or activities shall be recognised in the statement of profit and loss as income and since this surplus cannot be a part of business profits of the company, the same should immediately be recognised as liability for CSR expenditure in the balance sheet and recognised as a charge to the statement of profit and loss. Accordingly, such surplus would not form part of the minimum 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

From the perspective of better financial reporting and in line with the requirements of Schedule III to the Companies Act 2013, it is recommended that all expenditure on CSR activities, that qualify to be recognised as expense should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.

The notes to accounts relating to CSR expenditure should also contain the following:

(a) Gross amount required to be spent by the company during the year.

(b) Amount spent during the year on:

		In cash	*Yet to be paid in cash*	*Total*
(i)	Construction/ acquisition of any asset			
(ii)	On purposes other than (i) above			

The above disclosure, to the extent relevant, may also be made in the notes to the cash flow statement, where applicable.

Details of related party transactions, e.g., contribution to a trust controlled by the company in relation to CSR expenditure as per Accounting Standard (AS) 18, Related Party Disclosures.

Where a provision is made (the company has incurred liability), same should be presented as per the requirements of Schedule III to the Companies Act 2013. Further, movements in the provision during the year should be shown separately.

ICAI FAQs

Corporate Laws & Corporate Governance Committee ICAI has come out with Frequently Asked Questions On the provisions of Corporate Social Responsibility under Section 135 of the Companies Act 2013which are reproduced hereunder.

1. Whether CSR expense is a Capital expenditure or a revenue expenditure Treatment in books of account

In case the expenditure incurred by the company is of such nature which may give rise to an 'asset', it should be recognised by the company in its balance sheet, provided the control over the asset is with the Company and future economic benefits are expected to flow to the company. Where any CSR asset is recognized in its balance sheet, the same may be classified under natural head (e.g. Building, Plant & Machinery, etc.) with specific subhead of 'CSR Asset' if the expenditure satisfies the definition of 'asset.' For example, a building used for CSR activities where the beneficial interest has not been relinquished for Lifetime by a company and from which any economic benefits flow to a company, may be recognised as 'CSR Building' for the purpose of reflecting the same in the balance sheet. If an amount spent on an asset has been shown as CSR spend, then the depreciation on such asset cannot be claimed as CSR spend again. Once cost of the asset is included for CSR spend, then the depreciation on such asset will not be included for CSR spend even if the asset is capitalized in the books of account and depreciation charged thereon. Where an expenditure does not give rise to an 'asset' as explained above, the same may be treated as expenditure of revenue nature and dealt with in accordance with FAQ 4 below.

Disclosure of CSR spend

Item 5 (a) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act 2013, requires that in case of companies covered under Section 135, the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a note to the statement of profit and loss. The note should also disclose the details with regard to the expenditure incurred in construction of a capital asset under a CSR project.

2. Whether CSR spends are to be shown in books of account under a separate CSR head or are they to be included under the normal heads of accounts or are they to be shown in the notes to accounts.

All expenditure on CSR activities that qualifies to be recognized as expense may either be recognized as a separate line item as 'CSR expenditure' or under natural heads of expenses in the statement of profit and loss with disclosure of the break-up and the total amount spent on CSR activities during the year. Some of the items which are charged to the profit & loss account in the normal course, meeting the criteria for CSR expenditure would also be eligible to be considered as CSR expenditure. Disclosure of CSR spend is already covered in answer to question no 1 above.

3. Please give illustrations of certain types of CSR spending apart from CSR spends which are easily identifiable by the company.

The following are examples of expenditure that can be classified as CSR expenditure if it is within the areas or subject covered by Schedule VII and is as per CSR policy approved by the Company's Board of Directors. These are only illustrations and companies are required to apply facts and circumstances in each case for categorization of such spends.

a) Any company supplying its goods or services manufactured/ provided by it free of cost or at a concessional rate to people affected by natural calamities like flood, earthquake, etc.

b) A company decides that for every pack of pencils sold by the company, Rupee 0.50 will go towards education of a girl child. The amount earmarked from such sale will not be automatically considered as CSR and only such of the amounts which are spent will qualify to be considered as CSR spend

c) Spending in Technical and Vocational Training for skill building based on training cum apprenticeship results in enhancing the employability of such trainees. Cost of such expenses such as stipend, faculty, infrastructure costs, etc will be included as CSR activities. It will not deprive the company which is providing such training to hire a trainee from that pool of talent. However, if such training is provided to existing employees then it shall not qualify as CSR.

4. Will CSR spend be an Appropriation or a charge on P&L.

In general, the CSR spend amount needs to be appropriated unless otherwise its incurred by the company as part of its normal business activity which also qualifies for CSR activity, in which case, it will continue to be charged to P&L in the normal course.

5. Are overseas Branch profits / losses included in Net Profit for calculating CSR spend?

Net Profit for the purpose of calculating CSR spend shall not include any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise. In addition any dividend received from other companies in India which are covered under and complying with the provisions of section 135 of the Act as well as any dividend received from a company incorporated outside India shall also be excluded from the Net Profit. This is built on the rationale that CSR spend outside India does not qualify as CSR spend under Section 135 of the Companies Act 2013. As a corollary, income earned outside India shall also not be considered for determining CSR spend in India.

6. How do we treat CSR spending in the ordinary course of business vs. CSR expenses not incurred in the ordinary course. Does it include CSR spending that also includes employees of the Company or their families who are also beneficiaries of such CSR spend?

CSR activities shall exclude activities undertaken in pursuance of its 'normal course of business.' For example, an electricity distribution company connecting the last house in a village cannot classify such expense as CSR. Similarly a tea plantation

company planting trees and shrubs in close proximity to such tea plantations cannot be classified as CSR spending since they are in the ordinary course of business of such businesses. Similarly, Programmes or projects or activities that are carried out as a pre-condition for setting up a business or as part of a contractual obligation undertaken by the company or in accordance with any other law, should not be considered as CSR. Such spending on installation of rain water harvesting or a device to prevent pollution which are mandatorily required to be carried out by law shall not qualify as CSR spend. Such requirements under relevant regulations prescribed as a necessary part of running of the business, would be considered to be the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities. CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR. However, programme or activities that are for the benefit of all, but, which also include some employees or their families will still be considered as CSR as long as such benefits are not exclusively for the benefit of such employees. For example, recreational facilities provided for employees and their families in the employee quarters shall not be considered as CSR. However, if the Company maintains say a stadium for promotion of sports in a city used by residents of that place and not exclusively by its employees, then such spending shall be still considered as CSR.

7. Treatment of shortage in CSR spend and disclosure and possibility of carry forward of excess spending of CSR. Is there any need for creation of a provision in the event of a shortage in spending?

Any shortfall in spending in CSR shall be explained in the financial statements and the Board of Directors shall state the amount unspent and reasons for not spending that amount. Any such shortfall is not required to be provided for in the books of account. However, if a company has already undertaken certain CSR activity for which a contractual liability has been incurred then, a provision for the requisite amount payable to record that liability needs to be recognized as per the applicable Accounting Standards. Any amount excess spent (i.e., more than 2% as specified in Section 135) cannot be carried forward to the subsequent years. However, the company is entitled to disclose in their Annual Reports of subsequent years any such excess spending of previous years while giving reasons for not spending in those later years.

The Companies (Amendment) Act 2019 has provided that unless the unspent amount relates to any ongoing project referred to in sub-section (6), the Company should transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year."

Three new sub-sections are inserted by the Companies (Amendment) Act 2019 as under:

"(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions."

The same is illustrated as follows:

If a company fails to spend CSR amount for FY 2019-20 as on 31st March 2020	Then the company shall transfer on or before 30th September 2020 to the Funds as mentioned in Schedule VII.
If a company is holding the unspent amount for ongoing project for FY 2019-20 as on 31st March 2020	Then open an account Unspent Corporate Social Responsibility A/c and transfer the unspent amount of CSR before 30th April 2020. Such amount shall be spent within 3 years from the date of transfer i,e., on or before 30th April 2023.
If a company fails to spend amount in unspent CSR A/c – for a period of 3 years	Then the company shall transfer on or before 30th April 2023 to the Funds as mentioned in Schedule VII.

8. Is CSR spending required to be done by the Company directly or such amounts can be contributed to charity/ NGO/ section 8 company. Will such contribution qualify as CSR spend?

Yes. Contribution by the Company to such trusts, NGOs, etc also qualify for CSR spend if it meets the track record and other criteria as per Rule 4(2) of Companies (CSR Policy) Rules, 2014.

9. Net Profit calculation methodology- Net Profit as per Section 135 is required to be calculated as per Section 198 of the Companies Act 2013. However, Net profits as defined in the Companies (CSR Policy) Rules, 2014 defines Net Profit as Net Profit as per Financial statements prepared in accordance with the Act.

As per the Companies Amendment Act 2017, "Net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. What will not be included in net profit is not yet prescribed.

Since the Rules specify that the net profits are as per provisions of the Act and the relevant Section 135 of the Act requires such net profits calculation as per Section 198 of the Companies Act the net profit shall be calculated u/s 198 of the Companies Act. This is based on a harmonious interpretation of the specific section in the Act and the relevant Rules framed under that Section.

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2016 — AMENDMENT IN RULE 4

NOTIFICATION NO. GSR 540(E) [F.NO.05/12/2016-CSR-CELL], DATED 23-5-2016

In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:—

1. Short title and commencement

(1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the *Official Gazette*.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature:

Provided that if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism".

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Meetings & Resolutions under the Companies Act, 2013

A. MEETINGS OF BOARD OF DIRECTORS UNDER THE COMPANIES ACT, 2013

Section 173 of the Companies Act, 2013 provides the following provisions in relation to various meetings of Board of Directors of a company including One Person Company.

In the case of One Person Company, the provisions relating to Meeting of Board and Quorum for meetings of Board shall not apply in which there is only one director on its Board.

First Board Meeting

Every company shall hold the first meeting of the board of directors within thirty days from the date of its incorporation and the same may be convened at any time and place, on any day, excluding a National Holiday.

Provided that a Specified IFSC Public Company and Specified IFSC Private Company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold at least one meeting of the Board of Directors in each half of a calendar year.

Subsequent Board Meetings

At least 4 Board meetings should be held every year and there should not be gap of more than 120 days between two consecutive board meetings and may be convened at any time and place, on any day, excluding a National Holiday.

One Person Company, Small Company, Dormant Company and a Private Company (if such private company is a start-up) shall convene a Board meeting at least once in half calendar year and gap between two meetings shall not be less than 90 days. Further, in the case of Section 8 Companies (companies formed with charitable objects), Board of Directors of such companies shall hold at least one meeting within every six calendar months.

Director shall vacate office if he absents himself from all the Board meetings held during a period of twelve months with or without leave approval (Section 167). A Board meeting attended by any director, whether in person or through video conferencing or audio-visual means shall suffice the requirement of Section 167.

Board Meetings through Video Conferencing or AUDIO-VISUAL means

The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio-visual means provided the proceedings of such meetings should be recorded and stored properly along with participation of the directors with date and time. Major responsibility has been cast upon the Chairman of the company & the Company Secretary.

Matters not to be dealt in meeting through Video Conferencing

The following matters shall not be dealt with in any meeting held through video conferencing or other audio-visual means, provided that where there is quorum in a meeting through physical presence of directors then any other director may participate through video conferencing or other audio-visual means in such meeting on any matter.

- the approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;
- the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the Board under sub-section (1) of section 134 of the Act; and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Notice of Meeting

- Notice of the Board meeting shall be given to all directors, whether he is in India or outside India by hand delivery or by post or by electronic means and shall be sent to postal address or e-mail address registered with the Company. At least 7 days' notice in writing shall be required.
- The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means.
- Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year, provided that such declaration shall not debar him from participation in the meeting in person.
- Meeting of the Board may be held at a shorter notice to transact urgent business matters subject to the condition that at least one independent director, if any, shall be present at the meeting.

  Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.
- Every officer of the company whose duty is to give notice and who fails to do so shall be liable to a penalty of ₹ 25,000/-.

Quorum for Meeting

- 1/3rd of total strength or 2, whichever is higher. Directors participating through video conferencing shall also be counted for the purpose of quorum [Section 174(1)]. Further, in the case of Section 8 Companies, quorum for meeting should be either 8 members or 25% of total strength whichever is less, provided that the quorum shall not be less than 2 members.

- Where at any time the number of interested directors[1] exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. (Section 174(3)). In the case of private company, the interested director may also be counted towards quoram in such meeting after disclosure of his interest pursuant to section 184. Further, in case of Specified IFSC Public Company and Specified IFSC Private Company, the interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.
- Where a meeting of the Board could not be held for want of quorum, then, unless the Articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.
- If there is a vacancy in the Board and number of continuing directors reduced below the quorum fixed by the Act, the remaining directors may hold meeting for the following purposes:
  - i. increasing the number of directors to that fixed for the quorum, or
  - ii. summoning a general meeting of the Company.
- For calculation of quorum any fraction of a number shall be rounded off as one and total strength shall not include directors whose places are vacant.

B. VARIOUS COMMITTEES OF THE BOARD

Audit Committee and its provisions: [Section 177]

- Audit Committee shall be mandatory for every listed public company and other public company having paid up share capital of ₹ 10 crore or more or turnover of ₹ 100 crore or more or aggregate outstanding loans, debenture and deposits exceeding of ₹ 50 crore based on last audited financial statements of the Company.
- As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, unlisted public company which is a joint venture, a wholly owned subsidiary or dormant company under section 455 of the Companies Act will be exempted of the above provision.
- As per Companies Act, 2013, the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.
- As per SEBI listing agreement, Chairperson of the Audit Committee should be independent and at least 2/3rd of the members of audit committee shall be independent directors.
- Majority of members including chairperson shall have ability to read and understand the financial statements. As per SEBI listing agreement, all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- Meeting shall be 4 times in a year and gap should not be more than 4 months. Quorum should be 2 members or 1/3rd of strength. Minimum 2 Independent Directors should be present.
- Every audit committee shall act in accordance with the terms of reference specified in writing by the Board which shall include:
  - i. the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
  - ii. review and monitor the auditor's independence and performance, and effectiveness of audit process;
  - iii. examination of the financial statement and the auditors' report thereon;
  - iv. approval or any subsequent modification of transactions of the company with related parties. Audit Committee may make omnibus approval for related party transactions subject to few conditions;
  - v. scrutiny of inter-corporate loans and investments;
  - vi. valuation of undertakings or assets of the company, wherever it is necessary;
  - vii. evaluation of internal financial controls and risk management systems;
  - viii. monitoring the end use of funds raised through public offers and related matters.

  The audit committee shall have authority to investigate into any matter in relation to item mentioned above and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the Company. The above section shall not be applicable to Specified IFSC Public Company.

Nomination and remuneration committee and its provisions: [Section 178(1)]

- Nomination and Remuneration Committee is mandatory for every listed public company and other public company having paid up share capital of ₹ 10 crore or more or turnover of ₹ 100 crore or more or aggregate outstanding loans, debenture and deposits exceeding of ₹ 50 crore based on last audited financial statements of the Company.
- Such committee shall consist of three or more non-executive directors out of which not less than one half shall be independent.
- Chairperson of the company (whether executive or non-executive) may be appointed as a member of such committee but shall not chair such committee.
- Said committee shall identify persons who are qualified to become directors and senior management in accordance with the criteria laid down, recommend to the Board their appointment, removal and shall specify the manner for effective evaluation of

(1) Interested director means a director within the meaning of Section 184(2) of the Companies Act, 2013.

performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

- The committee shall formulate criteria for determining qualifications, positive attributes, and independence of directors and recommend to the Board a policy relating to remuneration for directors, Key Managerial Personnel and other employees. While formulating the policy, the committee shall ensure the level and composition of remuneration is reasonable and sufficient to attract, retain & motivate the directors and relationship of remuneration to performance is clear and meets appropriate performance benchmarks.
- The detailed policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.
- The above section shall not be applicable to Specified IFSC Public Company.

Stakeholders Relationship Committee and its provisions: [Section 178(5)]

- A company has more than 1,000 share holders, debenture holders and any other security holders at any time during a financial year shall constitute such committee consisting of chairperson who must be non-executive director and such other members as may be decided by Board of Directors.
- Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

Corporate Social Responsibility (CSR) committee and its provisions: [Section 135]

- CSR Provisions in Companies Act 2013 applicable to every company including foreign company having a net worth of ₹ 500 Crore or more, turnover of ₹ 1,000 Crore or more or net profit of ₹ 5 Crore or more during the immediately preceding financial year.
- CSR committee shall have at least 3 or more directors and shall have minimum 1 independent director which shall formulate and recommend policy, choose activities out of schedule VII, recommend amount of expenditure to be incurred and monitor such policy.
- In case of unlisted public company and private company where the provision for independent director is not required by law, the CSR committee can be constituted without an independent director. Further, in case of a Private Company having 2 (two) Directors, the committee can be constituted with only 2 directors.

C. MEETINGS OF SHAREHOLDERS

Annual General Meeting (AGM): [Section 96]

- Provisions of Annual General Meeting are applicable to every company other than One Person Company.
- First AGM to be held within 9 months from closure of first Financial Year and in any other case, within a period of six months, from the date of closing of the financial year. Further, the gap between two meetings shall not be more than 15 months. Registrar may, for special reason, give extension up to 3 months for holding AGM except first AGM.
- AGM to be held between business hours i.e. 9 AM to 6 PM on any day except national holiday and shall be held at registered office or other place within the city, town or village in which the registered address of the company is situated. Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
- AGM may be called by giving not less than clear 21 days' notice either in writing or by electronic mode in such manner as may be prescribed in the Rules, provided AGM may be called after giving a shorter notice if consent is given in writing or electronic mode by not less than 95% of total members entitled to vote at such meeting. Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. (Section 101) (in the case of Section 8 company – it should be 14 days in stead of 21 days.
- Statutory Auditor's attendance is mandatory unless otherwise exempted by the company.
- In the case of a private company, 2 members personally present shall constitute quorum. In the case of a public company, quorum for meetings is as under: (Section 103)

Number of Members	*Quorum*
>=1,000	5 members personally present
>1,000 &<=5,000	15 members personally present
>5,000	30 members personally present

- A person cannot act as proxy on behalf of members exceeding 50 members and holding in aggregate not more than 10% of total capital carrying voting rights. However, a member holding more than 10% such share may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.
- Every listed company or a company having not less than 1,000 shareholders shall provide to its members electronic voting facility.
- Every listed company to prepare a report on each AGM, containing confirmation that meeting was convened, held and conducted. Also, listed company is required to file the same with the Registrar of Companies within 30 days from the date of conclusion of AGM. Failure to submit that report attracts fine on company of ₹ 1 lakh minimum which may extend to ₹ 5 lakh and on every defaulting officer of ₹ 25,000 minimum which may extend to ₹ 1 lakh.
- In case of default in holding AGM, Tribunal may call AGM on application of any member of the company.
- If any default is made in holding AGM, the company and every officer of the company who is in default shall be punishable with fine which may extend to

₹ 1 lakh and in the case of continuing default, with a further fine which may extend to ₹ 5,000 for every day during which such default continues.

Extraordinary General Meeting

- The Board may, whenever it deems fit, call an extra-ordinary general meeting of the company.
- The Board shall, at the requisition made by,
  - (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
  - (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company.

D. RESOLUTIONS UNDER THE COMPANIES ACT, 2013

The Companies Act, 2013 does not define the term resolution. A Company being an artificial person, any decision taken by the Company shall be in the form of Resolution. Principally, there are three types of Resolutions:

Ordinary, Special & Unanimous Resolution

The Act generally specifies the matters in respect of which resolutions are required to be passed by the members in general meetings or directors in board meeting and are given below:

Ordinary Resolution: [Section 114(1)]

A resolution shall be an ordinary resolution if the notice required under the Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

Special Resolution: [Section 114(2)]

A resolution shall be a special resolution when—

a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

b) the notice required under the Act has been duly given; and

c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Unanimous Resolution

Other than Ordinary Resolution and Special Resolution, there is also a concept of unanimous resolution which requires the approval of all the members present and voting without a single vote cast against it.

Example: As per Section 162(1) of the Companies Act, 2013 which states that "At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it."

Passing of Resolution by Circulation

As per Section 175(1), a Company may pass resolution through circulation. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/post or through e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution. A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting. If more than 1/3rd of directors require the resolution must be decided at the meeting, the Chairperson shall put the resolution to be decided at a meeting of the Board.

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Limited Liability Partnership Act, 2008 [LLP Act]

With the growth of Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. In this background, a need was felt for a new corporate form that would provide an alternative to the traditional partnership which exposes its partners to unlimited personal liability and a statute-based governance structure of limited liability companies.

Limited Liability Partnership [LLP] is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement. LLP form is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

With this background, Limited Liability Partnership Act, 2008 [LLP Act] was enacted on 12th December 2008 and assented on 7th January 2009.

Subsequently, Government of India [GOI] notified various provisions of LLP Act on 31st March, 2009. GOI has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act. MCA has notified Limited Liability Partnership (Amendment) Rules, 2012 making amendments in process of incorporation and integration of LLP system with MCA with new e-forms.

KEY DEFINITIONS

- "Body Corporate" is defined to mean a company as defined in Section 3 of the Companies Act, 1956 and includes LLP, LLP incorporated outside India, a foreign company but does not include a corporation sole, a registered co-operative society and any other body corporate notified by the Central Government (not being a company defined under the Companies Act, 1956 or LLP defined under LLP Act). [Section 2(1)(d)]. Circular 13/2013 dated 29-7-2013 clarifies that an HUF/ its Karta is not covered under the definition of Body Corporate and cannot be appointed as Designated Partner.
- "Business" includes every trade, profession, service and occupation. [Section 2(1)(e)]
- "Financial Year", in relation to LLP, means the period from 1st April of a year to the 31st March of the following year. However, in case of LLP incorporated after 30th September, financial year may end on 31st March of the year next following that year. [Section 2(1)(l)]
- "Foreign Limited Liability Partnership" means an LLP formed, incorporated or registered outside India which establishes a place of business within India. [Section 2(1)(m)]
- "Limited Liability Partnership" means a partnership formed and registered under LLP Act. [Section 2(1)(n)]
- "Limited liability partnership agreement" means any written agreement between the partners of LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP. [Section 2(1)(o)]
- "Partner" in relation to an LLP means a person who becomes a partner in an LLP in accordance with the LLP agreement. [Section 2(1)(q)]

NATURE OF LLP

- LLP is a –
  - — "body corporate" formed and incorporated under LLP Act;
  - — legal entity separate from its partners and has perpetual succession. The LLP, unlike a partnership firm, has contractual capacity and can enter into contracts, hold property in its name and can sue and be sued in its name. [Sections 3(1) & (2)]
- Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in an LLP.

  In case if individual is a partner, he should not be –
  - — found to be of unsound mind; or
  - — an undischarged insolvent; or
  - — a person who has applied to be adjudicated as insolvent and the application is pending
- If the number of partners of an LLP falls below two and the LLP carries on business for more than six months, the only partner in such case shall be liable personally for the obligations of LLP incurred during that period.

  [Sections 5 and 6]

DESIGNATED PARTNERS [SECTION 7]

- LLP shall have at least two "designated partners" [DP] who are individuals and at least one of them shall be "resident in India". In case all of the Partners are Bodies Corporate or one or more of the partners of an LLP are bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as "designated partners".
  - — "Resident in India" means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.
- Designated partner is responsible for compliance with the provisions of LLP Act.
- Designated Partner is required to obtain Directors Identification Number [DIN] from the Central Government.
- Application for allotment of DIN needs to be submitted online on the MCA website along with the necessary proof duly attested and certified as prescribed.
- Particulars of Individual who have consented to act as DP have to be filed with the Registrar in e-form 4 by the LLP within 30 days of his appointment. In case of incorporation, the individual consenting to act as Partner or DP shall be required to file the consent in e-form 2.
- An LLP may appoint a DP within 30 days of a vacancy arising for any reason and if no DP is appointed, or if at any time there is only 1 DP, each partner shall be deemed to be a DP.

INCORPORATION OF LLP [SECTIONS 11 TO 21]

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 2013. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed within 3 months from the date of issue of letter for approval for reservation of name of the proposed LLP.

- Name of every LLP shall end with the words "Limited Liability Partnership" or "LLP".
- Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or any body corporate or trade mark, is not allowed.
- Any entity (body corporate/registered partnership firm) which has a name similar to the name of LLP which has been incorporated subsequently may seek change of name of such LLP through ROC within 24 months from date of registration of such LLP.
- No person shall carry on business under any name/title which contains the words "Limited Liability Partnership" or "LLP" without duly incorporating it as LLP under the LLP Act.
- LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY [SECTIONS 22 TO 31]

- Mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between the partners, or agreement between the LLP and its partners. In absence of any such agreements, the mutual rights and duties shall be governed by the LLP Act.
- Every partner of an LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners.
- LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP.
- LLP is not bound by anything done by a partner in dealing with a person if –
  - — the partner in fact has no authority to act for the LLP in doing a particular act; and
  - — the person knows that he has no authority or does not know or believe him to be a partner of the LLP
- LLP is liable if the partner of an LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/with its authority.
- Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP. Liabilities of LLP shall be met out of properties of LLP.
- Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.
- No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission.
- The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. Similarly, if the partners/ designated partner/employees of LLP who conduct the affairs of LLP in a fraudulent manner, shall be liable to compensate to any person who has suffered loss or damage by reason of such conduct.
- Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent, etc. will not be effective unless —
  - — the person has notice that the partner has ceased to be so; or
  - — notice of cessation has been delivered to ROC.

  The notice of cessation may be filed by the outgoing partner if he has reasonable cause to believe that LLP has not filed the said notice.

CONTRIBUTION BY PARTNER [SECTIONS 32 AND 33]

- A contribution of a partner to the capital of LLP may consist of any of the –
  - — Tangible, movable or immovable property
  - — Intangible property
  - — Other benefit to the LLP including money, promissory notes, contracts for services performed or to be performed.
- The obligation of a partner for the contribution shall be as per the LLP agreement.
- Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.

AUDIT/FINANCIAL DISCLOSURES [SECTIONS 34 AND 35]

- LLP shall maintain the prescribed books of account relating to its affairs on cash or accrual basis and according to the double entry system of accounting.
- The accounts of every LLP are required to be audited, except in following situations:
  - — Turnover does not exceed ₹ 40,00,000 in any financial year; or
  - — Contribution does not exceed ₹ 25,00,000

  Central Government has powers to exempt certain class of LLP from requirement of compulsory audit.
- LLP are required to file following documents with the ROC
  - — Statement of Account and Solvency (e-Form 8), within 30 days from the end of 6 months of the financial year;
  - — Annual Return (e-Form 11) within 60 days from the end of the financial year.

COMPOUNDING OF OFFENCES [SECTION 39 AND RULE 41]

Rule 41(1) of the LLP Rules, 2009 prescribes that every application for compounding of offences shall be made in

Form 31, which is to be filled and submitted to the Registrar, who shall forward it to the Central Government. Rule 41(4) further provides that when an offence has been compounded u/s. 39 of the LLP Act, 2008, An intimation in Form 22 shall be filed before the Registrar within 7 days from the date of such compounding.

ASSIGNMENT & TRANSFER OF PARTNERSHIP RIGHTS [SECTION 42]

- The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part. However, such transfer of rights does not cause either dissociation of the partner or a dissolution and winding up of the LLP.
- Such transfer of right, shall not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

FOREIGN LLP [SECTION 59 AND RULE 34]

- On establishment of a place of business in India, foreign LLP are required to file prescribed documents for registration with ROC within 30 days of the establishment in India.
- Any alteration in the constitution documents, overseas principal office address and partner of foreign LLP are required to be filed with the ROC in the prescribed form within 60 days of the close of the financial year.
- Any alteration in the certificate of registration of foreign LLP, authorised representative in India and principal place of business in India are required to be filed with the ROC in the prescribed form within 30 days of alteration.
- Foreign LLP ceasing to have a place of business in India, are required to give notice to ROC in the prescribed form within 30 days of its intention to close the place of business and from the date of such notice, the obligation of Foreign LLP to file any document with the ROC shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

CONVERSION OF PARTNERSHIP FIRM/PRIVATE COMPANY/ UNLISTED PUBLIC COMPANY INTO LLP [SECTIONS 55 TO 58, SECOND, THIRD AND FOURTH SCHEDULES]

GOI has, on May 22, 2009, notified provisions relating to conversion of –

- A partnership firm as defined under the Indian Partnership Act, 1932 into LLP;
- A private limited company into LLP;
- An unlisted public company into LLP.

Second, Third and Fourth Schedules to the LLP Act contain provisions relating to conversion of a partnership firm into LLP, a private limited company into LLP and unlisted public company into LLP, respectively.

- Eligibility for conversion:
  - — Firm into LLP: Firm can be converted into LLP if all the partners of firm become the partners of LLP and no one else.
  - — Company into LLP: Private limited company/unlisted public company can be converted if and only if -—
    - (a) there is no security interest in its assets subsisting or in force at the time of application for conversion; and
    - (b) all the share holders of the company become partners of LLP and no one else.
- For conversion of firm/private limited company/unlisted public company into LLP, the partners of the firm/share holders of company are required to file a statement and conversion documents in the prescribed form with the ROC.
- On receiving the documents for conversion, ROC shall register the documents and issue certificate of registration specifying the date of registration as LLP. Upon registration by ROC, LLP shall intimate Registrar of Firm [ROF]/ROC, as the case may be, about conversion within 15 days of registration.
- On and from the date specified in the certificate of registration issued by ROC —
  - — all tangible (movable/immovable) & intangible property, liabilities, interest, obligation, etc. relating to the firm/private limited company/unlisted public company and the whole of the undertaking of the firm/private limited company/unlisted public company, shall be transferred to and shall vest in the LLP without further assurance, act or deed.
  - — firm/private limited company/unlisted public company shall be deemed to be dissolved and removed from the records of ROF/ROC, as the case may be.
- Circular No. 09/2013 dated 30-4-2013 clarifies that the provisions of sections 55 and 58 of the LLP Act, 2008 read with Second Schedule thereto, inter alia, provide for requirements in respect of conversion of a single partnership firm into a single LLP and does not provide for conversion of two or more firms into a single LLP.
- If any property/rights, etc., of the partnership firm/private limited company/unlisted public company is registered with any authority, LLP shall take steps to notify the authority of the conversion.
- Upon conversion, following things/events in favour of or against the firm/private limited company/unlisted public company on the date of registration may be continued, completed and enforced by or against the LLP:
  - — all proceedings, conviction, ruling, order or judgment of any Court, Tribunal or other authority pending in any Court or Tribunal or before any authority on the date of registration
  - — every agreement irrespective of whether or not the rights and liabilities thereunder could be assigned,
  - — deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements
  - — every contract of employment
  - — appointment in any role or capacity
  - — any approval, permit or licence issued under any other Act, etc.
- In case of a firm, every partner of a firm which is converted into an LLP shall continue to be personally liable (jointly and severally with LLP) for the liabilities and obligations of the firm incurred prior to the conversion or which arose from any contract entered into prior to the conversion. In case any such partner discharges any such liability or obligation he shall be entitled (subject to any agreement with the LLP to the contrary) to be fully indemnified by LLP in respect of such liability or obligation.

- For a period of 12 months commencing not later than 14 days after the date of registration, LLP shall ensure that every official correspondence of LLP bears the following:
  - A statement that it was, as from the date of registration, converted from a firm/private limited company/unlisted public company into LLP; and
  - The name and registration number, if applicable, of the firm/a private limited company/an unlisted public company from which it was converted.

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLP'S [SECTIONS 60 TO 62]

- Provisions have been made in the LLP Act for allowing a compromise and arrangement including mergers and amalgamations.
- Compromise and arrangement can be between an LLP and its creditors or between an LLP and its partners.
- If majority representing 3/4th in value of creditors or partners, at the meeting, agree to compromise or arrangement shall, if sanctioned by National Company Law Tribunal [NCLT] be binding on all the creditors, all the partners and LLP. NCLT to pass order subject to disclosure of all material facts/latest financial position and pendency of investigation proceedings.
- NCLT order shall be filed with the ROC within 30 days, in order to be effective.
- In case of scheme of the amalgamation, NCLT shall pass order only on receipt of report from the ROC that the affairs of the LLP (transferor LLP) have not been conducted in the manner prejudicial to the interest of the partner/public.

WINDING-UP OF LLP [SECTIONS 63 TO 65]

LLPs may be wound-up either voluntarily or by National Companies Law Tribunal (NCLT).

Voluntary Winding Up (Part III of LLP Winding Up & Dissolution Rules, 2012)

LLP may be wound up voluntarily if the resolution to wind up is approved by 3/4th of the partners and after following the procedure prescribed under Part III of the LLP Winding Up & Dissolution Rules, 2012.

Winding up by NCLT

- LLP decides to be wound up by NCLT;
- Number of partners is reduced below 2 for a period of more than 6 months;
- LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- LLP has defaulted in filing Statement of Account and Solvency or annual return with the ROC for 5 consecutive financial years; or
- NCLT is of the opinion that it is just and equitable that the LLP be wound up.

  In January 2010, MCA had notified that certain provisions relating to winding-up of a company under the Companies Act, 1956 will also be applicable to an LLP. The notification also provides details of modification in the provisions of the Companies Act relating to winding up for its applicability to winding up of LLP under the LLP Act. Subsequently, on 30th March, 2010, issued Limited Liability Partnership (Winding Up and Dissolution) Rules, 2010.

OTHER PROVISIONS

LLP Agreement

- The LLP agreement regulates the working of an LLP as it contains the main objects, rules and regulations of the functioning the LLP similar to the Partnership Deed in case of a Partnership Firm and MOA and AOA in case of a Company, it has the flexibility to change from time to time after following due procedure laid down in the Act. In case no agreement is entered into, the provisions of the First schedule to the LLP Act will become applicable.
- Features of an LLP Agreement
- The LLP agreement being the sole document which regulates the functioning of the LLP, should be drafted after taking into consideration all the aspects of the purpose of the formation of the LLP. It should ideally include
  - Objects
  - Registered Address
  - Contribution
  - Mode of Contribution
  - Changes in Contribution
  - Sharing of Profit and/or Loss
  - Remuneration
  - Designated Partners and their Rights and Obligations
  - Rights and Obligations of Partners
  - Management of LLP
  - Admission, Retirement, Expulsion or death of Partner
  - Assignment of Financial Interest
  - Meetings and minutes
  - Loans from Partners, if any
  - Non-Compete Clause, if any
  - Banking, Accounts and Audit
  - Restrictions on Partners
  - Amendments to Agreement
  - Indemnity Clause
  - Winding up
  - Resolution of Disputes
- Due care to be taken to include all relevant points, in order to enable the orderly function of the LLP and to ensure transparency in the working of the LLP and to avoid ambiguities amongst the partners.
- First Schedule
- If LLP Agreement is silent on any of the matters covered in the First Schedule, then provision of the First Schedule shall apply in relation to those matters. The First Schedule shall also apply, in the absence of an agreement.
  - All partners entitled to share equally in the Capital and Profits/losses
  - Indemnity Clause
  - All Partners entitled to take part in management
  - No partner entitled to remuneration
  - No new partner can be introduced without consent of all partners
  - All decisions with majority of partners consent

- o Minutes to be recorded within 30 days and all decisions recorded
- o Render True Accounts
- o Non-Compete Clause
- o Partners cannot be expelled by majority unless prior agreed.

Foreign Direct Investment in LLP

- Foreign Direct Investment in LLPs is allowed in those sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI linked performance conditions and excludes the following:
  1. Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects', etc.); or
  2. Sectors eligible to accept less than 100% FDI under automatic route; or
  3. Sectors eligible to accept FDI under Government Approval route; or
  4. Agricultural/plantation activity and print media; or
  5. Sectors ineligible to accept FDI i.e., any sector which is prohibited under extant FDI policy.
- Eligible investors for FDI in LLP

  A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, the following persons shall not be eligible to invest in LLPs:
  - (i) a citizen/entity of Pakistan and Bangladesh or
  - (ii) Foreign Portfolio Investor (FPI) or
  - (iii) Foreign Venture Capital Investor (FVCI) or

Income Tax Provisions relating to LLP

- LLP is included in the definition of the firm in the Income Tax Act, 1961 and accordingly income tax of LLP shall be in line with that of a firm. Accordingly, profit will be taxed in the hands of LLP and not in the hands of partners.
- Partners Shares to be exempt u/s. 10(2A).
- The Income Tax Returns and Wealth Tax Returns shall be signed by the Designated Partner duly authorised by the LLP.
- Conversion of a partnership firm established under Indian Partnership Act, 1932 to LLP shall not attract any capital gain tax liability.
- No Tax on conversion of Firm to LLP if all partners continue to be partners in LLP and all rights and obligations are the same.
- Conversion of Private companies and unlisted Public companies to LLP shall not attract capital gain tax liability in the hands of LLP and shareholder subject to compliance of the provisions of Sec. 47(xiiib) of Income tax Act, 1961.
- Provisions of Section 47(xiiib) of the Income-tax Act,1961, to be applicable in case of Conversion of Private Limited and Unlisted Company to LLP, as under:
  - o All the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP.
  - o All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion.
  - o The shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP.
  - o The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50%, at any time during the period of five years from the date of conversion.
  - o The total sales, turnover or gross receipts in business of the company, in any of the three previous years preceding the previous year in which the conversion takes place does not exceed ` 60 lakh.
  - o The total value of assets of the company as per the books of account, in any of the three previous years preceding the previous year in which the conversion takes place does not exceed ` 5 crore.
  - o No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.
- Conversion of Company within compliance of Section 47(xiiib) of the Income tax Act,1961 shall permit the following:
  - o Carry forward of losses and depreciation allowances.
  - o Opening WDV of resultant LLP for the purpose of depreciation shall be closing WDV of firm or company as the case may be.
- Non-compliance of any of the provisions of Section 47(xiiib) of Income tax Act, 1961 shall attract tax liability in the hand of resultant LLP and/or shareholder in the year of default [Section 47A (4) of Income-tax Act, 1961.

MISCELLANEOUS PROVISIONS

- A partner of an LLP has the same rights and obligations with respect to any money lent or other transactions with LLP as a person who is not a partner. [Section 66]
- The Central Government has been empowered to apply any of the provisions of the Companies Act, 1956 to LLPs with suitable changes or modification. [Section 67]
- ROC may strike off the name of an LLP from the register of LLP if LLP is not carrying on business or its operation, in accordance with the provisions of LLP Act in the manner prescribed. [Section 75]
- Forms/documents required to be filed under the LLP shall be filed in electronic form online on the LLP portal duly authenticated by the partner/designated partner with a digital signature and further attested by the practising chartered accountant/company secretary/cost accountant whenever required. [Section 68]
- Presently all the provisions of the LLP Act, other than those relating to winding-up and dissolution of LLP and appellate provisions to be exercised by NCLT and National Company Law Appellate Tribunal [NCLAT], have been brought into force.

- Where an offence under LLP Act committed by an LLP is proved, then the LLP/partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. [Section 76]
- Till the constitution of NCLT and NCLAT under the Companies Act, 1956, the powers of NCLT and NCLAT will be exercised by the Company Law Board or High Court as is specified in the LLP Act. [Section 81]
- Unless specifically provided, the provisions of the Indian Partnership Act, 1932 are not applicable to LLPs. [Section 4].

CONVERSION OF LLP INTO COMPANY [SECTION 366 OF THE COMPANIES ACT, 2013]

- There is no provision under the LLP Act, 2008 for conversion of LLP into a Company, However, enabling provisions have been included in the Companies Act, 2013 at Section 366 in Part I of Chapter XXI.
- The procedure for conversion of LLP into a company has been stated in the Companies Act, 2013 and The Companies (Authorised to Register) Rules, 2014.
- Eligibility for conversion:
  - — LLP into Company: LLP can be converted if -—
    - (a) LLP can be converted only after 1 year after its incorporation.
    - (b) there are two or more members in the existing LLP to convert to Private Limited Company and seven or more members in the existing LLP for Limited Company.
    - (c) consent of secured creditors have been obtained.
    - (d) a public notice of the conversion be circulated in one English and one vernacular language news paper, seeking objections against the conversion, if any.
    - (e) General meeting of all the partners be held and consent of majority be obtained.
    - (f) all the share holders of the company become partners of LLP and no one else.

GENERAL

LLP Help Desk

The Users can contact MCA-21 help desk at appl.helpdesk@mca.gov.in and Phone no.: 0124-4832500.

Chartered Accountant Firms forming LLP

As per the Circular No. 30A/2011 on 26-5-2011 issued by the Ministry of Corporate Affairs, LLP of Chartered Accountants will not be treated as body corporate for the limited purpose of Section 226(3)(a) of the Companies Act,1956. Accordingly, LLP of Chartered Accountants can be appointed as auditors of a company.

Further Circular No. 09/2013 dated 30-4-2013 clarifies that if a CA audit firm, being an auditor in a Company under the Companies Act, gets converted into an LLP after complying with the relevant provisions of the LLP Act, then such an LLP, in accordance with the provisions of section 58(4)(b) of the LLP Act would be deemed to be the auditor of the said company. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.

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The Insolvency and Bankruptcy Code, 2016

1. PREFACE

1) In India, when it comes to recovery of dues cum rehabilitation and revival of sick business, there are plenty of laws starting from age old civil suit for recoveries to Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), (Now Repealed w.e.f. Dec 2016),The Recovery of Debt Due to Banks and Financial Institutions Act, 1993, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013 dealing with insolvency and bankruptcy of companies and limited liability partnerships. As a result, High Courts, District Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRTs), have jurisdiction at various stages, giving rise to crossing each other and as a result delays and complexities in the process whereas liquidation of companies is handled by the High Courts, individual cases are dealt with under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. Entire maze of legal framework does not aid lenders in effective and timely recovery of defaulted assets and causes undue strain on the Indian credit system.

2) Considering problems of plenty – each one sometimes overlapping others command area. Multiplicity of laws and adjudicating authorities for Insolvency and bankruptcy of various entities were a hindrance towards resolution of recovery problems of creditors and declaration of insolvency, their revival plan and liquidation of corporate entities. The Government in order to overhaul the existing bankruptcy laws and replace them with one that will facilitate easy and time-bound closure of businesses, the Government introduced a new Act which came into force vide notification dated 28th May,2016.

3) The Insolvency and Bankruptcy Code, 2016 ('Code') is now the new framework for insolvency resolution in India. As per the preamble, It provides a mechanism for the insolvency resolution of debtors in a time bound manner to enable maximisation of the value of their assets, with a view to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

4) The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects and empowers and facilitates the stakeholders and Adjudicating Authority to decide matters having commercial prudence. It aims at revival or winding up of borrowers in financial distress and to facilitate time bound closure of borrower's companies/firms in economic distress, in accordance with the prescribed time bound processes under the Code and rules and regulations made thereunder.

5) (a) The Code was enacted in 2016 following a series of committee reports on NPA problems, Restructuring & Revival programming for sick complain and early effort for either Revival or for Liquidator's opinion India's insolvency framework. It was hoped that it would provide a consolidated insolvency framework that would give certainty of process, time and outcome to creditors, borrowers and other market participants.

Till date this code is kept responsive, vibrant&amenable to changes and accordingly subjected to No. of amendments (3 till now- which amended 8 clauses in first bill, 30 clauses in 2nd bill and 8 clauses in the latest amendment bill) to fill up loop-holes/ lacuna based on various court judgements & practical difficulties faced by various stakeholders latest being Insolvency & Bankruptcy Code (Amendment) Act 2019 as notified in the Official Gazette on 16th August 2019.

(b) The Code introduced a creditor-in-control regime (with a focus on empowering financial creditors), a time-bound resolution process and reduced scope for judicial intervention, and established institutions such as the Insolvency and Bankruptcy Board of India, insolvency professionals and information utilities.

6) (a) Since the implementation of this new regime, the constitutional validity of various provisions of the Code has been challenged before various High Courts, and the Supreme Court. Even on the ground of violation of principles of Natural justice, it was challenged since corporate borrower is not getting opportunities of being heard. However, in the case of Swiss Ribbons Pvt. Ltd. Supreme Court upheld validity of the Act.

(b) The National Company Law Tribunals, the National Company Law Appellate Tribunal, the High Courts and the Supreme Court have adjudicated upon matters under the Code with unprecedented speed, and have provided certainty on interpretation of key concepts under it. The Insolvency and Bankruptcy Board of India and the Government of India have also been extremely responsive in making legislative amendments to ensure that the Code is implemented in its right spirit. These developments have enriched the jurisprudence and practice of insolvency in the country.

2. OBJECTIVES OF CODE

1. To create a new institutional framework, consisting of Insolvency and Bankruptcy Board, Insolvency Professional Agencies, Insolvency Professionals, Information Utilities and Adjudicating authorities thus offering a uniform and comprehensive legislation.

   This is an Act to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, Partnership firms and individuals in time bound manner.

   To improve ease of doing business in India and also to set up a better and faster debt recovery mechanism in India.

2. To promote entrepreneurship, availability of credit, and balance the interest of all the stakeholders by consolidating and amending the laws relating to reorganisation and insolvency resolution of the corporate

persons, partnership firms and individuals in a time bound manner and for maximisation of the value of the asset of such persons and matters connected therewith or incidental thereto.

3. The objective of Insolvency and Bankruptcy Code, 2016 is to consolidate multiple laws and adjudicating authorities dealing with insolvency, bankruptcy, revival and/or liquidation of various entities including individual, partnership firms, corporate entities etc. Earlier laws pertaining to DRT and SARFAESI were the exclusive forums for banks/financial institutions while BIFR and Companies Act had limited application for sick companies, their revival and/or liquidation. The Insolvency and Bankruptcy Code, 2016 intends and will hopefully overcome these kind of problems.

4. The provisions of this Act shall apply to—
   - Companies incorporated under Companies Act ,2013 or under any previous company law:
   - Any other company governed by any special act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
   - Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
   - Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification specify in this behalf; and
   - Partnership firms and individuals, to the extent of insolvency, liquidation or bankruptcy, as the case may be.

5. Part II of the Code deals with the matter related to Insolvency and liquidation of Companies & Limited Liability Partnership Firms. Chapters I and VII of Part III contain provisions that are applicable to individuals. These provisions are contained in Sections 78 to 187 of the Code.

6. This code is now applicable to all the financial creditors like the financial services entities such as NBFC ARCs etc.

7. Institutional set up under the Code

(A) Insolvency and Bankruptcy Board (IBB)

Section 3(1) of IBC, 2016: Board means the Insolvency and Bankruptcy Board of India established under sub-section (1) of Section 188.

The Code provides for the establishment of the Board called Insolvency and Bankruptcy Board of India. The Board shall be appointed by the Central Government:

Role of the Board includes:

1. Regulating all matters related to insolvency and bankruptcy process.
2. Setting out eligibility requirements of insolvency intermediaries i.e., Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.
3. Regulating entry, registration and exit of insolvency intermediaries.
4. Making model bye-laws for Insolvency Professional Agencies.
5. Setting out regulatory standards for Insolvency Professionals.
6. Specifying the manners in which Information Utilities can collect and store data.

8. Adjudicatory Authorities

- The National Company Law Tribunal is the adjudicating authority to deal with the insolvency matters of Companies and Limited Liability Partnership Firms. Appeals from NCLT orders lie to the National Company Law Appellate Tribunal and thereafter to the Supreme Court of India.
- NCLAT shall be the appellate authority to hear appeals arising out of the orders passed by the Board in respect of Insolvency Professional Agency or Insolvency Professional or Information Utilities.
- The Debt Recovery Tribunal is the adjudicating authority to deal with the insolvency & bankruptcy matters of Individual & Partnership Firms. Appeals from DRT orders lie to the Debt Recovery Appellate Tribunal and thereafter to the Supreme Court of India. The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days.

  No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Act.

9. Some Important Definitions

a) **"claim"** means –
   1. A right to payment
   2. Right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment

b) **"creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, and unsecured creditor.

c) **"default"** means the state when a debt has become due and is not repaid by the debtor or the corporate debtor as the case may be;

d) **"insolvency commencement date"** means the date of admission of an application by the Adjudicating Authority under sections 7, 9 or 10 as the case may be;

e) **"insolvency resolution process period"** means the period commencing on the insolvency commencement date and ending on one hundred and eighty days from the insolvency commencement date, subject to any extension in accordance with this Act;

f) **"Resolution plan"** means a plan proposed by any person for continuation of the corporate debtor as a going concern in accordance with Part II;

The Code defined Resolution Plan to mean a plan for insolvency resolution of a Corporate Debtor as a 'going concern'.

The amendment bill 2019 makes explicit what was implicit and clarifies that a resolution plan

may provide for restructuring of the corporate debtor, including by way of merger, amalgamation & demerger. This would enable the market to come up with more innovative resolution plans for value maximization.

g) **Insolvency professional agency** means any person registered with the Board under section 201 as an insolvency professional agency

h) **Information Utility**

Section 3(21) of IBC, 2016: information utility means a person who is registered with the Board as an information utility under Section 210.

i) **"Resolution Professional"** means for the purposes of this Part an insolvency professional appointed to conduct the corporate insolvency resolution process.

10. Corporate Insolvency Resolution Process (CIRP)

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

Commencement of CIRP

The Code enables stakeholders to make an application to initiate the corporate insolvency resolution process (CIRP) of the corporate debtor on default of a threshold amount. It requires adjudicating authority (AA) to ascertain the existence of the default within 14 days of receipt of application and initiate CIRP where it is satisfied that the default has occurred. It is however observed that some applications are taking longer than the statutory period of 14 days for disposal, while the AA may dispose off an application after 14 days of its receipt, for reasons to be recorded in writing. The courts have held this timeline to be directory. To avoid delays in admission of application, especially in case of financial debt, where the default is generally undisputed, the bill requires the AA to record its reasons in writing, where an application for admission is not disposed off within the stipulated time.

Persons who may initiate corporate insolvency resolution process.

A **financial creditor** either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred along with

(a) Proof of the default recorded with the information utility or such other proof of default as may be specified;

(b) The proposed resolution professional to act as an interim resolution professional

Initiation of corporate insolvency resolution process by financial creditor.

Where the **Adjudicating Authority** is satisfied that –

(a) a default has occurred, the application is complete and no disciplinary proceeding is pending against the resolution professional, it may by order, admit such application;

Before admitting an application of CIRP the adjusting authority must provide right of hearing to corporate debtor on principles of Natural Justice.

The **corporate insolvency resolution** process shall commence from the date of admission of the application under sub-section (5). The process can be withdrawn at any point of time if entire COC endorses.

The Adjudicating Authority shall communicate the order to the financial creditor and the corporate debtor within 2 days.

Application for initiation of corporate insolvency resolution process by operational creditor

An **operational creditor** shall, on the occurrence of a default, deliver a demand notice or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form as may be prescribed, through an information utility, wherever applicable, or by registered post or courier or by any electronic communication.

The **corporate debtor** shall, within a period of ten days of the receipt of the demand notice, bring to the notice of the operational creditor the existence of a dispute, and record of the pendency of the suit or arbitration proceedings filed at least sixty days prior to the receipt of such invoice.

After the expiry of the period of **ten days** from the date of delivery of the notice demanding payment under section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under section 8, the operational creditor may file an application with the Adjudicating Authority in the prescribed form for initiating a corporate insolvency resolution process.

The **Adjudicating Authority** shall, within two days of the receipt of the application under sub-section (2), admit the application and communicate such decision to the operational creditor and the corporate debtor.

CIRP by Debtor

Where a default has occurred, a corporate debtor also may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

The **corporate applicant** shall, along with the application furnish the information relating to

(a) Its books of account and such other documents and for such period as may be specified; and

(b) The proposed resolution professional to be appointed to act as the interim resolution professional.

The **corporate insolvency resolution** process shall commence from the date of admission of the application under sub-section (4) of this section.

Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process, which can be extended maximum up to 270 days.

including time taken in legal proceedings, is not completed within the said period of three hundred and thirty days, an

order requiring the corporate debtor to be liquidated shall be passed.

11. Impact of Insolvency Process

The Adjudicating Authority, after admission of the application under sections 7, 9 or section 10, shall, by an order –

(a) declare a moratorium for the purposes referred to in section 14; critical & essential supplies will not be stopped during moratorium.

(b) cause a public announcement of the initiation of corporate insolvency resolution process to be made under section 15 and call for the submission of claims in the manner laid down in section 16; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

12. On the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium prohibiting all of the following:

(a) the institution or continuation of suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) the corporate debtor from transferring, encumbering, alienating or disposing of any of its assets or any legal right or beneficial interest therein other than in the ordinary course of business;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor; and

(e) The termination, suspension or interruption of the supply of such essential goods or services to the corporate debtor as may be specified.

The order of moratorium shall continue till the completion of the corporate insolvency resolution process:

13. From the date of appointment of the interim resolution professional

(a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) The powers of the board of directors or the partners or of the corporate debtor (as the case may be) shall be suspended and be exercised by the interim resolution professional;

(c) The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be demanded by the interim resolution professional;

(d) The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the corporate debtor in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

14. Subject to the provisions of Chapter VII of this Part, the interim resolution professional shall have immunity from criminal prosecution and any other liability for anything done or omitted to be done in good faith in the discharge of his duties as an insolvency resolution professional under this Act.

15. It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

16. If the Adjudicating Authority is satisfied that the resolution plan confirms to requirements as referred to in sub-section (1) of section 31 it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, shareholders, creditors and guarantors and other stakeholders involved in the resolution plan.

After the order of approval under sub-section (1) (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect.

17. Liability of both the principal corporate debtor and the guarantor can be proceeded against under the Code. The guarantor can also be proceeded against under different fora, when the corporate debtor is being proceeded against under the Code. In the alternate, the guarantor can be proceeded against under the Code, even when a corporate insolvency resolution process has not been initiated against the principal debtor.

The Code excludes those financial creditors who are related parties of the corporate debtor from participating in the committee of creditors.

Home buyers have now been deemed to be financial creditors by amendment to the Code, and are members of the committee of creditors.

Statutory dues are dues owed to the Government. These dues are operational debts, and the statutory creditors would be operational creditors. In liquidation, these dues would fall within section 53(1)(e), and distributions to be made to them would rank equal to debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.

18. Time-Lines under The Code

One of the aims of an insolvency law is to maximize the value of the assets of the corporate debtor. Value is usually dependent on the time taken to resolve the insolvency, since it erodes over time, and rapidly once formal insolvency proceedings commence. There are concerns that delays may make reorganization impossible, and may induce liquidation, causing value destruction. Further, even in liquidation, delays lower recoveries Where the insolvency regime facilitates a restructuring based on negotiations with creditors, the concern is that delaying tactics will extend the time set for negotiations at the start. Another source of delay could lie in adjudicatory mechanisms, and delay in passing orders relevant for the resolution of insolvency.

Analysis

"(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) *The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.*

(3) *On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once."

After the expiry of 180 days (or 270 days Now extended to 330 days as the case may be), in the event a resolution plan has not been submitted, or if submitted, and rejected under section 31 of the Code or even after the dismissal of an appeal filed under section 61 contesting rejection of a plan, the Code directs that the debtor initiate a liquidation process.

Closure of CIRP

The Code envisages closure of a CIRP in a time bound manner as undue delay is likely to reduce the value of the Corporate debtor making its revival difficult. It mandates completion of a CIRP within 180 days, with a one-time extension of up to 90 days. While holding this timeline to be mandatory, the courts have allowed the AA to exclude certain periods from the CIRP period if the facts & circumstances justify such exclusion, including time spent on litigation. Consequently, many CIRPs are continuing even after expiry of 270 days frustrating time bound resolution. To address the issue the bill requires that CIRP shall mandatorily be completed within 330 days, including any extension of time as well as any exclusion of time on account of legal proceedings. It further provides that an ongoing CIRP, which has not been closed yet within 330 days, shall be completed within next 90 days.

Status of CIRPs as on 30.06.2019:

STATUS OF CIRP	*NO. OF CIRPS*
Admitted	2162
Closed on Appeal/ Review/ Settled	174
Closed by withdrawal u/s 12A	101
Closed by resolution	120
Closed by Liquidation	475
Ongoing CIRP	
> 270 days	445
> 180 days < 270 days	221
> 90 days <180 days	349
< 90 days	277

Grounds for considering exclusion of events from the time limit

The intervening period can be excluded forcounting of the total period of 330 days of resolution process:

(i) If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.

(ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.

(iii) The period between the date of order of admission/ moratorium is passed and the actual date on which the Resolution Professional' takes charge for completing the corporate insolvency resolution process.

(iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.

(v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

(vi) Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 330 days which is the maximum time limit prescribed under the Code."

19. Liquidation Process

If the Adjudicating Authority is of the opinion that the resolution plan does not conform to any of the requirements mentioned in sub-section (1) of section 31, it shall by order reject the resolution plan and such order shall provide for the liquidation of the corporate debtor in the manner laid down in this Chapter, subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(a) to verify all claims of all the creditors;

(b) to take into his custody or control all the property, effects and actionable claims to which the corporate debtor is or appears to be entitled to;

(c) to evaluate and report the assets of such corporate debtor in the manner as may be specified by the Board;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as may be required;

(e) to carry on the business of the corporate debtor for its beneficial liquidation as may be required;

(f) to do all acts and to execute, in the name and on behalf of the corporate debtor, all deeds, receipts and other documents, and for the purpose, to use, when necessary, the corporate seal as applicable;

(g) to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation

by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(h) to draw, accept, make and endorse any negotiable instruments including bill of exchange, *hundi* or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(i) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the corporate debtor, and in all such cases, the money due shall, for the purpose of enabling the company liquidator to take out the letter of administration or recover the money, be deemed to be due to the company liquidator himself;

(j) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(k) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Act;

(l) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name or on behalf of the company;

(m) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(n) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as company liquidator;

(o) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor;

(p) to report the progress of the liquidation process in a manner as may be specified by the Board; and

(q) to perform such other functions as may be specified by the Board.

20. The liquidator shall receive or collect the claims of creditors within a period of twenty-one days from the date of the commencement of the liquidation process.

(a) Require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) Require any property to be so vested if it represents in the hands of any person, the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) Release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) Require any person to pay, in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

Where the corporate debtor has entered into an undervalued transaction and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor -

(a) for putting assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim,

the Adjudicating Authority shall make an order-

(a) Restoring the position to what it would have been if the transaction had not been entered into; and

(b) protecting the interests of persons who are victims of such transactions:

21. Extortionate Credit Transactions

Where the corporate debtor has been part of a transaction involving the receipt of financial or operational debt in the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such credit transaction required exorbitant payments to be made by the corporate debtor.

22. Order of Priority for Distribution of Proceeds During Liquidation

The proceeds from the sale of the liquidation trust assets shall be distributed in the following order of priority.

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:-

(i) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 53; and

(ii) workmen's dues for the period of three months before the liquidation commencement date;

(c) wages and any unpaid dues owed to employees other than workmen for the period of three months before the liquidation commencement date;

(d) the following classes of creditors shall be paid equally between and among the following:

(i) financial debts owed to unsecured creditors;

(ii) workmen due in respect of the period of nine months beginning from twelve months before the liquidation commencement date and ending three months before the liquidation commencement date;

(e) the following dues rank equally between and among the following :—

(i) any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years before the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Further, the Amended Regulation which came into force from 25th July 2019

a) Require completion of liquidation process within one year of its commencement, notwithstanding pendency of applications for avoidance transactions,

b) Provide a model timeline for each task in the liquidation process. It also specifies a maximum time of 90 days from the order of liquidation for c**ompletion of compromise or arrangement**, if any, proposed by the stakeholders under Section 230 of the Companies Act, 2013."

c) Further amendments on regulations pertaining to liquidation call for financial creditors to contribute towards the liquidation cost.

d) The amendments also delve into specifics of process over **sale of corporate debtor as going concern** under liquidation, where the process 'shall be closed without dissolution of the corporate debtor' or **sale of business of the corporate debtor as a going concern.**

23. Fast Track Corporate Insolvency Resolution Process

(1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called a fast track corporate insolvency resolution process.

(2) Subject to sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

(3) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by way of a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent of the voting share.

An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:-

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government.

An application for fast track corporate insolvency resolution process may be initiated by a creditor or corporate debtor as the case may be, by furnishing:

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board;

24. Voluntary Liquidation – For Corporates

A corporate person in respect of whom a default has not occurred and who intends to liquidate itself voluntarily may initiate voluntary liquidation proceedings under the provisions of this Chapter.

Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions:

(a) a declaration from majority of the directors of the company verified by an affidavit stating that —

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration under sub-clause (a) shall be accompanied with the following documents:—

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is lesser;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration under sub-clause (a), there shall be —

(i) a special resolution of the shareholders of the company requiring the corporate debtor to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator;

The company shall notify the Registrar of Companies and the Board about the shareholder resolution to liquidate the company within two days of such resolution or the subsequent approval by the creditors, as the case may be.

25. Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

This Part shall apply to the whole of India except the State of Jammu and Kashmir.

The Adjudicating Authority for the purposes of this Part shall be the Debt Recovery Tribunal constituted under section 1A of the Recovery of Debts and Bankruptcy Act, 1993.

"bankrupt" means –

(a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126; or

(b) where a bankruptcy order under section 126 has been made against a firm, each of the partners of the firm as on the date of the order;

"bankruptcy" means the state of being bankrupt;

"bankruptcy debts" in relation to a bankrupt means –

(a) any debt owed by him as on the bankruptcy commencement date;

(b) any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and

(c) any interest provable under section 171;

"Bankruptcy order" means an order passed by an Adjudicating Authority accepting an application for bankruptcy under section 126;

"qualifying debt" means amount payable, which includes interest or any other sum payable in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time–

"repayment plan" means a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for a restructuring of his debts or affairs;

25A. Fresh Start Process

A debtor, who is unable to pay his debts and satisfies the conditions of this section, shall be entitled to a fresh start by obtaining a discharge from his qualifying debts under this Chapter.

A debtor may apply, either personally or through a resolution professional, for a fresh start under this Chapter in respect of his qualifying debts to the Adjudicating Authority if —

(a) the gross annual income of the debtor does not exceed rupees 60,000/-;

(b) the aggregate value of the assets of the debtor does not exceed rupees 20,000/-;

(c) the aggregate value of the qualifying debts does not exceed rupees 35,000/-;

(d) he is not an undischarged bankrupt;

(e) he does not own a dwelling unit, irrespective of whether it is encumbered or not;

26. When an application is filed under section 80 by a debtor-

(a) a moratorium shall commence on the date of the said application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the moratorium period

(i) any pending legal action or legal proceeding in respect of any of his debts shall be deemed to have been stayed; and

(ii) his creditors shall not be entitled to initiate any legal action or legal proceedings in respect of any debt.

On the date of admission of the application, the moratorium period shall commence in respect of all the debts.

27. During the moratorium period —

(a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and

(b) subject to the provisions of section 86, the creditors shall not initiate any legal action or legal proceedings in respect of any debt.

During the moratorium period, the debtor shall –

(a) not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;

(b) not dispose of or alienate any of his assets;

(c) inform his business partners that he is undergoing a fresh start process;

(d) prior to entering into any financial or commercial transaction of a value notified by the Central Government, either individually or jointly, be required to inform all the parties involved that he is undergoing a fresh start process;

(e) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under section 84;

(f) travel overseas only with the permission of the Adjudicating Authority.

28. The moratorium ceases to have effect at the end of the period of six months beginning with the date of admission unless the order admitting the application is revoked under section 91.

29. The resolution professional shall prepare a final list of qualifying debts and submit that at least five days prior to the end of the moratorium period to the Adjudicating Authority.

The Adjudicating Authority shall pass a discharge order at the end of the moratorium period for discharge of the debtor from the qualifying debts mentioned in the list under sub-section (1).

30. Insolvency Resolution Process

A debtor may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

A creditor may apply either by himself, or jointly with other creditors, to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

31. When an application is filed under section 94 or section 95 —

(a) a moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission such application; and

(b) during the moratorium period —

(i) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not be permitted to initiate any legal action or legal proceedings in respect of any debt.

When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of six months beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

During the moratorium period—

(a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and

(c) the creditors shall not be entitled to initiate any legal action or legal proceedings in respect of any debt.

Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs.

The repayment plan shall —

(a) provide an explanation as to why, in the opinion of the debtor and the resolution professional, a repayment plan is desirable; and

(b) give reasons why the creditors may be expected to agree to the repayment plan;

(c) make provision for payment of fee to the resolution professional;

(d) provide for such other matters as may be specified.

The repayment plan prepared under section 105 shall be submitted to the Adjudicating Authority along with a report of the resolution professional on the repayment plan under sub-section (2).

32. Other Important Points

- **The Code carries a clear focus on quick decision-making, be it turnaround or liquidation. In contrast to an early settlement of all stakeholder issues, and in that way help in speedy release of scarce capital assets locked in a closed unit for productive use.**
- **Also a significant provision in the Code pertains to the waterfall mechanism, whereby liquidation proceeds will be paid in well defined sequential manner where interestingly Government dues have been given least priority and figure after most other dues.**
- **It would be interesting to note that the present laws protect only secured creditors. The Code now seeks to protect the interests of operational creditors.**

33. Challenges in implementation of Insolvency and Bankruptcy Code

(a) The trigger for filing application for corporate insolvency resolution process is default in repayment of financial debt or operational debt. There is no requirement of any notice before filing for insolvency resolution process, by financial creditor.

(b) There are time limits prescribed for each step in the Insolvency Resolution Process and if insolvency resolution plan is not approved within 180 days or 270 days and now 330 days if extended, the corporate debtor shall be ordered to be wound up and put under liquidation. It is clear that trigger for insolvency resolution petition is a single default which will result in taking over/ liquidation. Though basic idea is to revive ailing units it is more and more found inclined for settlement recoveries or liquidation which affects employment.

(c) Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. Though time limits are set for completion of entire process there are instances of tremendous delay at admission stage & due to court intervention S.C. in decision of Arcelor Mittal held that litigation time ought to be omitted from Total Time frame period.

(d) There is a need to ensure that all creditors are treated fairly, without unduly burdening the Adjudicating Authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit.

(e) Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorized representative.

(f) The Code was enacted with a view to consolidate the fragmented laws pertaining to insolvency. The purpose of consolidating various insolvency laws is to reduce the uncertainty that arises from the application of multiple laws administered by different authorities, and the consequent delay and reduction in value.

(g) To enable this consolidation, the Code repeals and modifies provisions of various laws that are directly in conflict with it. However, the scheme of various laws enacted by Parliament as well as by State Legislatures may still be found to be inconsistent with other laws.

(h) However, since with the Code is to be evaluated on a case-by-case basis keeping in mind the provisions of the legislations. Given that the Code is a special law that is intended to be a complete code dealing with insolvency and bankruptcy, and has an overriding provision, it is likely that the provisions of the Code will prevail over previously enacted inconsistent State law.

(i) Other debts

Those debts that are neither operational nor financial are considered other debts. While there were no specific provisions in the Code guaranteeing rights to such creditors to initiate or control the insolvency resolution process, the Insolvency and Bankruptcy Board of India, through an amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has enabled 'other creditors' to file claims in the process.

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT 2019

In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Act, 2019, *inter alia,* provides for the following, namely:–

(1) to amend clause (26) of section 5 of the Code so as to insert an Explanation in the definition of "resolution plan" to clarify that a resolution plan proposing the insolvency resolution of corporate debtor as a going concern may include the provisions for corporate restructuring, including by way of merger, amalgamation and demerger to enable the market to come up with dynamic resolution plans in the interest of value maximisation;

(2) to amend sub-section (4) of section 7 of the Code to provide that if an application has not been admitted or rejected within fourteen days by the Adjudicating Authority, it shall provide the reasons in writing for the same;

(3) to amend sub-section (3) of section 12 of the Code to mandate that the insolvency resolution process of a corporate debtor shall not extend beyond three hundred and thirty days from the insolvency commencement date, which will include the time taken in legal proceedings, in order to prevent undue delays in the completion of the Corporate Insolvency Resolution Process. However, if the process, including time taken in legal proceedings, is not completed within the said period of three hundred and thirty days, an order requiring the corporate debtor to be liquidated under clause (a) of sub-section (1) of section 33 shall be passed. It is clarified that the time taken for the completion of the corporate insolvency resolution process shall include the time taken in legal proceedings;

(4) to insert sub-section (3A) in section 25A of the Code to provide that an authorised representative under sub-section (6A) of section 21 will cast the vote for all financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote, in order to facilitate decision making in the committee of creditors, especially when financial creditors are large and heterogeneous group;

(5) to amend sub-section (2) of section 30 of the Code to provide that–

(i) the operational creditors shall receive an amount that is not less than the liquidation value of their debt or the amount that would have been received if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priorities in section 53 of the Code, whichever is higher;

(ii) the financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt;

(iii) the provisions shall apply to the corporate insolvency resolution process of a corporate debtor–

(A) where a resolution plan has not been approved or rejected by the Adjudicating Authority; or

(B) an appeal is preferred under section 61 or 62 or such appeal is not time barred under any provision of law for the time being in force; or

(C) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(6) to amend sub-section (1) of section 31 of the Code to clarify that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities;

(7) to amend sub-section (2) of section 33 of the Code to clarify that the committee of creditors may take the decision to liquidate the corporate debtor, in accordance with the requirements provided in sub-section (2) of section 33, any time after the constitution of the committee of creditors under sub-section (1) of section 21 until the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

The bill is already approved & cleared by parliament on 01.08.2019.

(j) Very less no. of NCLT to deal with huge pile up of applications now at their doorsteps.

Judiciary Intervention

The law of insolvency as it stands is interpreted by courts and insolvency orders are passed in extreme cases. The proposed Bankruptcy Law is a major change and departure from the existing law, which is interpreted by the Courts in favor of debtors. Courts have held that winding up is a discretionary relief which the Court should grant if existence of the company will cause immense prejudice to all concerned.

There is no exercise of judicial discretion in deciding whether liquidation order needs to be passed on rejection of Resolution Plan. If plan is not approved by Creditors, the company is to be wound up. Adoption of new norms for honoring commitments to pay and implementation of the IBC based on new principles are going to be major challenges. In addition, establishment of new entities such as Insolvency Professionals, Insolvency Professional Agencies, Insolvency and Bankruptcy Board of India, Information Utilities and the National Company Law Tribunals and make them functional is also going to be a major challenge in implementing the Code.

New Professional Opportunities for Chartered Accountants

1) Opportunities for Chartered Accountants as an Insolvency, the Chartered Accountants are best suited to be the Insolvency Professionals. They too carry out the insolvency and bankruptcy process.

Whenever an Insolvency or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, be it a fresh start order process or individual insolvency resolution process or corporate insolvency resolution process Insolvency Professional (IP) to take over the management and operations of the borrower during the CIRP or liquidation of a corporate debtor firm.

The Code does not specify which persons can act as insolvency professionals. However, it does say that the

Board may specify the categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit. Chartered Accountants have experience in the field of law, and management.

Chartered Accountants can act as Insolvency professionals for all types of winding up, insolvency, bankruptcy – be it for corporates, individuals or firms. Further, since the adjudicating authority except for individuals and firms is the NCLT, Chartered Accountants can appear before such authority and represent their clients. This will open new avenues of practice for professionals who would like to work with financial institutions on debt restructuring projects, one-time settlements and the like.

2) The insolvency professionals are to be appointed as liquidators, trustees etc. at various stages of the insolvency proceedings.

INSOLVENCY PROFESSIONAL AGENCY FORMED BY ICAI

The Indian Institute of Insolvency professionals of ICAI (IIIPI) is a Section 8 Company formed by the Institute of Chartered Accountants of India to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code, 2016 and read with regulations.

ICAI IPA has been designated as the first Insolvency Agency in India. It has already started functioning and enrolling Insolvency Professionals.It is very heartening to note that maximum No. of enrolled Insolvency Professionals are with IBBI of ICAI.

Out of Total Insolvency Professionals numbering 2659 as on 30/06/2019, 1654 are Indian Institution of Insolvency Professionals of ICAI.

IMPORTANT COURT DECISIONS – MILESTONE DIRECTIONS FROM JUDICIARY

1. *Innovative Industries Ltd. vs. ICICI Bank (SC dated 31.8.2017)*
2. *Mobilox Innovations P. Ltd. vs. Kirusa Software P. Ltd. (SC dated 21.9.2017)*
3. *Macquarie Bank Ltd. vs. Shilpi Cable Technologies Ltd. (SC dated 15.12.2017)*
4. *Surendra Trading Company vs. JuggilalKamlapat Jute Mills (SC dated 19.9.2017)*
5. *Indian Overseas Bank vs. Kamineni Steel & Power (NCLAT Delhi dated 4.1.2018)*
6. *K.S Rangaswamivs. SBI (NCLAT Chennai dated 06.03.2018)*
7. *Nikhil Mehta & Sons vs. AMR Infrastructure Ltd. (NCLAT Delhi dated 23.1.2017)*
8. *Alchemist ARC vs. Hotel GaudavanPvt Ltd. (SC dated 23.10.2017)*
9. *Phoenix ARC vs. Sanjeev Shriya (Allahabad HC)*
10. JaypeeInfratech&Amrapati group (SC)
11. Synergies Doorayvs. Edelweiss ARC
12. *K. kishan vs. vijayNirmanvs.(21829/825 SC dated 14.8.18)*
13. *VelamurvaradanAnandvs. Union Bank –(NCLAT-161 of 2018 dated 16.5.18)*
14. *Arcelor Mittal vs. Satish Gupta (9402-05 SC dated 4.10.2018)*
15. *SreeMetaliks Ltd. vs. Union of India writ petition 7144, Calcutta High Court dated 7.4.2017*
16. *Swiss Ribbons Pvt. Ltd. vs. Union of India writ petition 99 of 2018 SC dated 25.1.2019*
17. *Canara Bank u. Deccan Chronical holdings Ltd. dated 19.7.17*
18. *Dakshin Gujarat Vij Co. Ltd. vs. ABG shipyard dated 8.2.2018*
19. *M/s Surendra Trading Company vs. M/s JuggilalKamlapat Jute Mills Company limited &Ors. (SC dated 19.09.2017)*
20. K Sashidhar vs. Indian Overseas Bank &Ors. (SC dated 05.02.2019)
21. *Pr. Director General of income tax vs. M/s Synergies DoorayAutomative Ltd &Ors (NCLAT- 20.03.2019)*
22. *Punjab National Bank vs. Siddhi Vinayak Logistic Limited. (NCLT dated 04.05.2018)*
23. *Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors. WRIT PETITION (CIVIL) NO. 43 OF 2019 SC Dated 09.08.2019 .*
24. *Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. (NCLAT 4th July 2019).*

CONCLUSION

Looking at very high level of NPA's and strict stand now taken by Government against all the defaulters initially to start with all large borrowers, there will be tremendous opportunities for CA to venture out in this new area as serious practitioners and in that way help the nation also in recycling assets or helping revivable units.

Impact of Insolvency

Out of total admitted claims of Financial Creditors as on 30.06.2019 amounting to Rs. 2,52,577 crores, the realized by Financial creditors amounts to Rs. 1,08,070 crores which is about 43% & it is 1.88 times of the liquidation value if the same would have been recovered by the liquidation route.

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RERA – Transformation & Balancing

RERDA, 2016 came into force from 1st May, 2016 but in true sense majority sections were made operative from 1st May, 2017 including Registration of Projects and various compliances thereunder.

Once again Maharashtra State has emerged as Pioneer State to implement RERDA, 2016 in true spirit and aggressive mode. MahaRera has launched Web Site for online registration of Projects and Agents, Online Complaint Process including filing Appeal before Tribunal, Quarterly updation of Projects, Correction of status of Projects etc. Maharashtra Real Estate Appellate Tribunal is also now in full force. MahaRERA has moved one step further by forming Conciliation Forum wherein both the parties can settle their disputes amicably through conciliation process without undergoing complaint mechanism.

Maharashtra State has set up example and guidelines for all other State and Union Territories so far as regulating the affairs of Real Estate Industry in transparent and speedy manner.

The following Statistical data shows the aggressive outlook of MahaRERA Authority.

a. Across Country nearly 40,000 projects are registered and around 21500 projects are registered with MahaRERA of which 4700 projects have declared themselves as duly completed upon getting Occupancy Certificate. Many Online Projects which had missed the deadline of 31st July, 2017 for registration have been penalized from ₹ 50,000/- to ₹ 12,00,000/- for delay in registration.

b. There are nearly 8300 Complaints lodged by aggrieved persons and 5200 orders have been passed by MahaRERA Authority till date whereby many benchmark decisions are delivered.

c. There are nearly 1000 Appeals filed before Appellate Tribunal of which Tribunal has delivered around 275 judgments till date.

d. MahaRera Authority has passed 16 *Suo Moto* orders punishing various builders for not observing rules and regulations while advertising their product by levying penalty on developers ranging from ₹ 2 lakhs to ₹ 50 lakhs.

e. Even mischievous Consumers are given directions to pay due amounts to Promoter in the interest of Real Estate Sector.

f. Agents are punished for not mentioning MahaRERA number and web site address.

g. Huge penalties ranging from ₹ 50,000/- to ₹ 50,00,000/- have been levied on the following ground :-

   1. Not Registering On Going Project with in stipulated time.
   2. Not putting MahaRERA Project Number in all modes of advertisements.
   3. Not mentioning MahaRERA web site address in all modes of advertisements.
   4. Non-compliance of directions issued by MahaRERA Authority.
   5. The wrong act of Architect issuing wrong certificate of building completion have been referred to Institute for necessary action for misconduct by Architect.

h. MahaRERA has set up two additional offices in Division Pune and Nagpur for the convenience of various stakeholders of Real Estate Sector.

i. Central Government has entrusted task of regulating RERDA, 2016 for the Union Territories of Daman& Diu, Dadra Nagar Haveli looking at the performance of MahaRera Authority.

j. Gujarat, Goa and other States RERA Authority have followed various circulars, instructions, Forms and orders passed by MahaRERA Authority while drafting their Regulations and Rules.

(MahaRERA Authority has truly acted as a Role Model in implementation of RERDA Laws. It is unfortunate that many other States have not taken up bold stand while implementing new emerging laws for promotion and regulation of Real Estate Sector. The Giant State like West Bengal has not even notified Rules to implement true spirit of law.) Suggest to review para and wordings.

Currently Real Estate is undergoing recessionary trend on account of various factors like :-

a. Huge Unsold Inventories.

b. Reduction in Purchasing Power of People on account of slowdown of economy.

c. Introduction and side effects of Demonetization, GST and (RERDA) since last quarter of 2016.

d. Deficiencies and inefficiency of Approval Systems and lack of Single window approval resulting in delays in completion of Project.

e. Overburdened Courts and slow process of Judicial system resulting in no faith in judicial system including delayed justice.

However, RERDA Laws intend to bridge various gaps and perceptions of consumer from Real Estate Sector. It is the political will of each State and its bureaucrats that will decide the fate of RERDA laws. Maharashtra State has proved that if the laws are implemented in true spirit, it can bring back the lost confidence of consumer of Real Estate Sector. Consumer of Maharashtra are lucky enough as now MahaRera Authority is fully equipped with transparent web site , speedy redressal mechanism , threat of heavy penalties on Promoter etc. which will ensure that no Promoter will indulge in any sort of Mal Practices which were commonly noticed in past. Now customers can relax as there is transparency of documents someone to hear their grievances and ensure safety of their hard earned monies.

Summary of Judgements and Rullings so far

1. Date of Possession is date agreed by Promoter in Allotment Letter, Agreement for Sales and not revised timeline declared while registration of ongoing projects.

2. Allotment Letters, MOU etc are held to be kinds of Agreement. It can be enforced even if there are no registered Agreement between Promoter and Customer.
3. Society is also declared as Promoter being Land Owner. However, the matter is under reconsideration on the subject that there is no privity of contract between Society, Land Owners and customers and whether such promoter can be asked to refund the monies collected by Developer Promoter.
4. Investor are also entitled for various relief under RERA.
5. Promoter is required to execute Agreement for Sales upon collecting more than 10 % of monies from customers.
6. Interest is payable for delay in possession in case where customer do not wish to quit the project. (However, as MOFA does not provide for Non Exit Clause an interest for delayed possession,) Pl check Tribunal recently pronounced that in such cases interest for delayed possession is applicable from 1st May, 2017.
7. Customers who do not wish to continue with the project entitled for Refund of Principal with Interest and Compensation.
8. Appeal by Promoter before RERA Tribunal can not be entertained if minimum requirement of deposit of amount as envisaged u/s 43(5) is not done by the Promoter. Once Promoter commit default here , then later on he can not file Appeal by complying the deposit of amount as required by Section 43(5).
9. Revised Possession date for On going Project should commensurate with stage of construction and it can not be arbitrary.
10. In case of change of Developer, it is obligation of New Developer to look at all the obligation of old Developer towards customers as per section 15 of Act.
11. Even lenders like financial institution can be complainant where refund of monies are involved u/s 18 as they also are aggrieved persons .
12. Multi shopping is not allowed. RERA Complaint can not be entertained if civil or other legal proceedings are pending before courts or consumer forum.
13. Force Majure i.e factors beyond control cannot be commercial factors like future probable increase in FSI, slow down in economy etc
14. Leasehold Premises and rights thereto are also covered under RERA.
15. Termination of Allotment or Agreement prior to RERDA 2016 i.e 1st May , 2017 and cause of action like bouncing of post dated cheques are not eligible for filing complaint.
16. Possession as per Occupancy or Completion Certificate are legal possession and Fit out possession is not legal possession .
17. Change of relief sought is permissible if raised during the course of hearing process provided it does not change the substance of the case.
18. Registration should be qua Project and not *qua* each Promoter.
19. Tenants, Land Owner under area sharing and society members are not allottee but equity holders and are not entitled to claim relief under RERA. However, while considering issue of obtaining consent from allottee for extension of project, even existing members of society are considered as allottee.
20. Non Compliance of orders of RERA Authority or Appellate Tribunal is punishable with fine per day of default.
21. There are many such matters handled by MahaRera Authority and Appellate Tribunal so far.

Challenge to RERDA Laws on the ground of Constitutional Validity of various Sections of RERDA, 2016

Many Writ petitions were filed by Promoters of different States against Union of India mainly challenging the constitutional validity of application of the RERDA, 2016 to the On Going Projects along with other Sections under challenge.

Supreme Court transferred all these Petitions to High Court, Mumbai vide its order dated 4th September, 2017.

The Extract of Apex Court Order dated 4th September, 2017

"For the present we feel that it would be appropriate to direct the High Court of Judicature at Bombay to take up the matters i.e., W.P. (L) Nos. 1967, 2010, 2011, 2023, 1965, 2034, 4419, 4692 and 19157 of 2017 along with other connected matters, if any, pending in the High Court, together.

We request the Chief Justice of the High Court of Bombay to assign the cases to a particular Bench for expeditious decisions of the matters. Let matters be decided within two months."

High Court Mumbai pronounced its detailed 330 page Land mark Judgment on 6th December, 2017 with Division Bench consisting of two judeges Justice Naresh Patil and Justice R G Ketkar. Eminent Senior Counsel put forward their arguments in support of their respective claim.

Mr. Darius Khambata, Senior Counsel was appointed as Amicus Curiae (Friend of Court) with Ms. Naira Jejeebhoy and Pheroze Mehta.

Summary of Matters and Points for consideration before High Court, Mumbai were as under:-

a. It would be illegal, unreasonable, arbitrary and unconstitutional to compel the promoters of the ongoing projects to register their projects under RERA by applying provisions of RERA retrospectively.

   Held : There no harsh provisions enacted in RERDA 2016 and what Promoters are required to ensure that at least 70 % of funds collected from customers are utilized for the Project. Constitutional Validity of RERDA 2016 is upheld and it is held that law can be applied to On Going Projects also.

b. RERA fails to take into account the past agreements entered into between the promoters and the allottees and the rights and liabilities arising and flowing from such agreements entered into during MOFA Regime.

   Held – There are various common cause of action viz delay in possession, defect warranty period , formation of association of allottee and Conveyancing the property etc in past law and current law prescribed by RERDA 2016. RERA is welfare legislation and parliament can enact law retrospectively in larger public interest.

c. Proviso to Section 6 for extension of Project which restrict the period of extension to one year only , be declared as illegal, unreasonable, unconstitutional and contrary to the spirit of the provisions of Articles 14, 19(1)(g) and 20 of the Constitution.

Held – Here Court has held that RERDA 2016 allows one year extension and further extension can be granted upon verification of facts and merits of each case.

d. Provisions of Section 8 i.e Revocation of Project by Authority are unreasonable and adversely affects rights of the Promoters.

Held – RERA Authority shall be facilitator only upon revocation of projects and rights of old Promoter as to his financial investment shall remain and shall be decided by the New Promoter.

e. The Provisions of Section 18(1)(a) with regard to option given to allottee asking for Refund of Money with interest and compensation or interest for delayed period in cases of delay in possession , are highly arbitrary in nature. Their operation is retrospective/retro-active. Its application would seriously prejudice and affect the rights of the promoter in carrying out trade and business. The provisions of Section 18(1)(a) have been given retrospective effect and are arbitrary. The penal provisions are also unreasonable and unconstitutional as a person cannot be punished for the act done by him prior to enacting the penal provision. The provisions are contrary to Article 20 of the Constitution.

Held – RERA being welfare legislation , this has been construed to be valid provision.

f. Section 18(1)(b) which puts obligations on promoter to refund the money of allottees in the event of discontinuance of business or revocation of Project are ultra vires of Article 19(1)(g) of the Constitution and cannot be saved under Article 19(6) of the Constitution.

Held – The Provisions are valid and non ultra vires of Article 19(1)(g) and 19(6).

g. Validity of first Proviso to Section 3(1) putting restriction on Promoter not to indulge in marketing without first getting registration of Project, Section 3(2)(a) covering land area more than 500 square meter or number of apartment more than 8, Explanation to Section 3, Section 4(2)(l)(D) imposing condition of depositing 70% or 100% of amount realized from customers, challenged .

Held – Provisions are constitutionally valid.

h. Validity of the Provisions of Section 22 mentioning qualification of adjudicating member and Section 46(1)(b) specifying qualification of Judicial Member of RERA challenged.

Held – Qualification of adjudication officer and Judicial member of RERA u/s 46(1)(b) should be only Judicial person and others can not be appointed in that place.

i. Section 71 gives power to authority to adjudicate compensation but presence of Judicial Member is necessary while exercising this powers.

Held – Yes Presence of Judicial Member is required for adjudication proceedings.

Retrospective and Retroactive terminologies have been discussed in length. The Court further observed that Legislation i.e Parliament has power to enact law retrospectively or retroactively if it is in the larger public interest. It is held that regulation of Real Estate Sector is in the interest of consumer which is main Preamble and intention while enacting new law "RERDA, 2016 "

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