

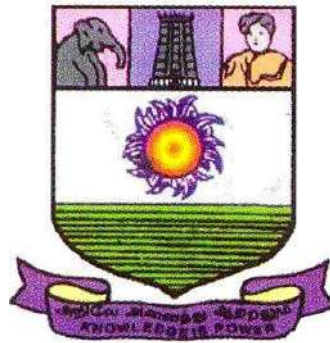


# **PG Programme**

(Two Year Programme)

## **Curriculum, Programme Structure and Course Contents**

(Prepared in conformity with LOCF) (2023-2024  
onwards)



**DEPARTMENT OF COMMERCE**  
**Directorate of Distance and Continuing**  
**Education**  
**Manonmaniam Sundaranar University**  
**Tirunelveli - 627012**

METHODS OF ASSESSMENT	
<b>Remembering (K1)</b>	<ul style="list-style-type: none"> <li>The lowest level of questions require students to recall information from the course content</li> <li>Knowledge questions usually require students to identify information in the textbook.</li> </ul>
<b>Understanding (K2)</b>	<ul style="list-style-type: none"> <li>Understanding of facts and ideas by comprehending organizing, comparing, translating, interpolating and interpreting in their own words.</li> <li>The questions go beyond simple recall and require students to combined at a together</li> </ul>
<b>Application (K3)</b>	<ul style="list-style-type: none"> <li>Students have to solve problems by using/applying a concept learned in the classroom.</li> <li>Students must use their knowledge to determine an exact response.</li> </ul>
<b>Analyze (K4)</b>	<ul style="list-style-type: none"> <li>Analyzing the question is one of the tasks the students to breakdown something in to its component parts.</li> <li>Analyzing requires students to identify reasons causes or motives and reach conclusions or generalizations.</li> </ul>
<b>Evaluate (K5)</b>	<ul style="list-style-type: none"> <li>Evaluation requires an individual to make judgment on something.</li> <li>Questions to be asked to judge the value of an idea, a character, a work of art, or a solution to a problem.</li> <li>Students are engaged in decision- making and problem-solving.</li> <li>Evaluation questions do not have single right answers.</li> </ul>
<b>Create (K6)</b>	<ul style="list-style-type: none"> <li>The questions of this category challenge students to get engaged in creative and original thinking.</li> <li>Developing original ideas and problem solving skills</li> </ul>

### TAXATION

Course Code	Title of the Course	Category	L	T	P	O	Credits	Inst. Hours	Marks		
									CIA	External	Total
	TAXATION		6	-	-	-	5	6	25	75	100

	Learning Objectives
1	To identify deductions from gross total income and computation of income for different classes of assesses
2	To understand the procedure for filing of returns and tax planning
3	To analyse the structure on international business taxation

4	To assess Goods and Services Tax and filing GST returns
5	To compute customs duty as per Customs Act

## **Course Units**

<b>UNIT I</b>	<b>(18 hrs)</b>
<b>Assessment of persons</b>	
Tax Exemptions for Agricultural Income-Deductions to be made in computing total income (80G,80GGB & 80GGC, 80IA, 80IAB, 80IAC, 80IB, 80IBA, 80ID, 80IE, 80JJA, 80JJAA,80LA,80M,80P,80PA)- Assessment of Firms, AOP, BOI, Company and Co-Operative society.	
<b>UNIT II</b>	<b>(18 hrs)</b>
<b>Tax Returns and Tax planning</b>	
Return of income: Statutory obligation, Return Forms, Time for filing of return, Revised return, Modified return-Assessment-Tax Deducted at Source- Advance payment of Tax: Persons liable to pay, Due date, Computation- Payment in pursuance of order of Assessing Officer, Consequences on non- payment.- Tax planning, Tax avoidance and Tax evasion-Tax planning and specific management decisions: Make or buy, Own or lease, Retain or replace, Shutdown or continue.	
<b>UNIT III</b>	<b>(18 hrs)</b>
<b>International business taxation</b>	
International business taxation-Taxation of Non-Resident-Double taxation relief- Transfer pricing and other anti-avoidance measure-Application and interpretation of tax treaties- (Double taxation avoidance agreement-DTAA)-Equalization levy.	

<b>UNIT IV</b>	<b>(18 hrs)</b>
<b>Goods and Services Tax</b>	
Goods and Services Tax: GST Act, 2017- Registration-Procedure for registration under Schedule III- Amendment of registration-Rates of Tax of IGST, CGST, SGST/ UGTST-Assessment of GST-Self-assessment-Provisional assessment-Scrutiny of returns - Assessment of non-filers of returns - Assessment of unregistered persons -Assessment in certain special cases-Tax Invoice-Credit and Debit Notes-Payment of Tax-Input Tax Credit-Anti profiteering--Filing of Returns-Penalties-Prosecution - Appeal and Revision.	
<b>UNIT V</b>	<b>(18 hrs)</b>
<b>Customs Act, 1962</b>	
Customs Act, 1962: Important Definitions - Basics - Importance of Customs Duty -Constitutional authority for levy of Customs Duty-Types of Customs Duty-Prohibition of Importation and Exportation of goods - Valuation of goods for Customs Duty -Transaction Value-Assessable Value-Computation of Assessable Value and Customs Duty.	

### Course Outcomes

Students will be able to:

CO No.	CO Statement	Knowledge level
CO 1	Apply the provisions of income tax to determine taxable income	K3
CO 2	Plan taxes	K3
CO 3	Illustrate the nuances of international business taxation	K2
CO 4	Apply the provisions of GST	K3
CO 5	Summarise the provisions of Customs Act	K2

**Books for study:**

1. Vinod Singhania and Kapil Singhania, Direct Taxes Law & Practice Professional Edition, Taxmann Publications, New Delhi
2. Mehrotra H.C. and Goyal S.P, Income Tax including Tax Planning & Management, Sahitya Bhawan Publications, Agra
3. SekarG, "Direct Taxes"-A Ready Refresher, Sitaraman C.&Co Pvt. Ltd., Chennai.
4. Balachandran V, (2021) Text book of GST and Customs Law, Sultan Chand and Sons, New Delhi
5. Vandana Bangar and Yogendra Bangar, "Comprehensive Guide to Taxation" (Vol. I and II), Aadhya Prakashan, Prayagraj (UP).

**Books for reference:**

1. Sha R.G. and Usha Devi N., (2022) "Income Tax" (Direct and Indirect Tax), Himalaya Publishing House, Mumbai.
2. Girish Ahuja and Ravi Gupta, "Practical Approach to Direct and Indirect Taxes: Containing Income Tax and GST", Wolters Kluwer India Private Limited
3. Swetha Jain, GST Law & Practice, Taxmann Publishers Pvt. Ltd, Chennai.
4. Daty V.S., "GST-Input Tax Credit", Taxmann Publishers, Chennai.
5. Anurag Pandey, "Law & Practices of GST and Service Tax"-Sumedha Publication House, New Delhi.

**Web references:**

1. [https://www.icsi.edu/media/webmodules/16112021\\_Advance\\_Tax\\_Laws.pdf](https://www.icsi.edu/media/webmodules/16112021_Advance_Tax_Laws.pdf)
2. [https://www.icsi.edu/media/webmodules/Final\\_Direct\\_Tax\\_Law\\_17\\_12\\_2020.pdf](https://www.icsi.edu/media/webmodules/Final_Direct_Tax_Law_17_12_2020.pdf)
3. [https://www.icsi.edu/media/webmodules/TL\\_Final\\_pdf\\_25102021.pdf](https://www.icsi.edu/media/webmodules/TL_Final_pdf_25102021.pdf)

Note: Latest edition of the books may be used

## Mapping of course outcomes with POs and PSOs

	POs						PSOs		
	1	2	3	4	5	6	1	2	3
CO1	3	3	3	3	3	3	3	2	3
CO2	3	3	3	3	3	3	2	2	3
CO3	3	3	3	3	3	3	3	2	3
CO4	3	3	3	3	3	3	3	2	3
CO5	3	3	3	3	3	3	3	3	3

High- 3

Medium- 2

Low-1

# **DIRECT TAXATION**

## **UNIT - I**

### **Unit I: Assessment of Persons**

**Tax Exemptions for Agricultural Income – Deductions to be made in computing total income (80G, 80GGC, 80IA, 80IB, 80IBA, 80ID, 80JJA, 80IJJAA, 80LA, 80M, 80P, 80PA) – Assessment of Firms, Assessment of Persons, Assessment of Body of Individual, Assessment of Company and Co-operative Society.**

## 1.1. INTRODUCTION

The word tax is based on the latin word *taxo* which means to estimate. To tax means to impose a financial charge or other levy upon a taxpayer, an individual or legal entity, by a state or the functional equivalent of a state such that failure to pay is punishable by law.

Taxation has existed since the birth of early civilization. In ancient times taxes were either material or money like goods or services in the primitive society. The subjects used to pay a share of their income to the Head of a tribe or to the King who in return provided them with the administration security from foreign aggression and other civic amenities.

In the medieval centuries feudalism was founded, so the origin of modern tax system also was founded. Feudal market dues, tolls for protection and use of road, bridges, ferries, land rent, and other payment in goods and services were gradually transferred into money payment with the rise of money economy, Kings liked to receive money and the people preferred to pay money instead of goods and services. Step by step the old feudal revenue system changed into taxation.

Then with the development of economic sciences and with the passage of time, the functions of modern state appeared and taxation gradually became a tool of usage with more than one goal and became important source of revenue. During 19th and 20th centuries, there has been both qualitative and quantitative change in the public expenditures. Taxation has passed through the stages with passage of time, and tax's functions and objectives also have changed from the ancient communities to medieval societies to modern societies also, so the tax system has evolved with the evolution of the functions of the modern state.

***Taxation is a payment from natural persons or legal entity and it is levied by government ,for which no goods or services is received directly in return, so taxes is that amount of money, the people pay which is not related directly to the benefit of people obtained from the provision of a particular goods or services.***

Until the early 1930s, it was universally accepted in principle that governments should balance their budgets. Thus, the principle reason for taxation was to pay for government expenditures. Of course, governments had from time to time resorted to borrowing in order to pay for their expenditures and government borrowing was relatively quite large during some war periods. Government borrowing may be from the private sector or from abroad. Alternatively, governments may borrow from the central bank of the Country. A portion of taxes also goes to pay off the state's debt and the interest accumulates.

The taxes collected have been used by the government to carry out many functions.

Some of these include:

- Expenditures on war,
- The enforcement of law and public order,
- Protection of property,
- Economic infrastructure (roads, legal tender, enforcement of contracts, etc.),
- Public works, • social engineering, and
- The operation of government itself.

***Governments also use taxes to fund welfare and public services. These services can include***

- Education systems,
- Health care systems,
- Pensions for the elderly,
- Unemployment benefits, and
- Public transportation, energy, water and waste management systems, common public utilities, etc.

Governments have also financed expenditures in recent years through the sale of publicly owned assets. Although asset sales were an important source of funds to the government, however, they are necessarily limited since assets can only be sold once. Thus, governments still have to raise most of the revenue needed to finance their expenditures through taxation or by charging directly for government services (user charges). Governments uses different kinds of taxes and vary the tax rates, this is done to distribute the tax burden among individuals or classes of the population involved in taxable activities, such as business, or to redistribute resources between individuals or classes in the population.

Modern social security systems are intended to support the poor, the disabled, or the retired person by taxes on those who are still working. In addition, taxes are applied to fund foreign aid and military ventures, to influence the macroeconomic performance of the economy or to modify patterns of consumption or employment within an economy, by making some classes of transaction more or less attractive. Thus, there is no doubt that most government expenditures must be paid through the taxation system and it is reasonable to see this as the principle function of taxation. Yet there have always been a variety of subsidiary objectives of taxation.

In the present time, taxation is not just a means of transferring money to the government to spend it for meeting the public expenditures or raise revenue to the government, but taxes have become beside that, as a tool for reduce demand in the private sector, redistribution of

income and wealth in the societies in the countries. It is also a means for economic development and for playing very important role in the case of stabilization of income, protection industrial home from foreign industrials. Taxation helps to find out solution for some economic problems that face the state, like unemployment, inflation, and depression.

Taxation finds out solution for some economic problems, but not alone, but there are also a lot of another fiscal instruments. They are working together for solution of those economic problems. Countries practice sovereignty authority upon its citizens, through levying of Taxes

## **Definitions**

There is no precise and accurate definition for the tax and the concept of tax has been defined differently by different economists. Some definitions are as follows.

**According to Prof Seligman** – A tax is compulsory contribution from the person to the government to defray the expense incurred in the common interest of all without reference to special benefits conferred.

**According to Bastable** - A tax as a compulsory contribution of the wealth of a person, or body of persons for the service of public powers.

**Deviti. De Marco defines** – A tax as a share of the income of citizens which the state appropriate in order to procure for itself the means necessary for the production of general public services.

**Hugh Dalton** – A tax is a compulsory charges imposed by a public authority irrespective of the exact amount of service rendered to the tax payer in return and not imposed as a penalty for legal offence. **Jom Bouvier** defined a tax as “A pecuniary burden imposed for support of the government, the enforced proportional contribution of persons and property of the government and for all public needs” **According to Trussing**, “The essence of Tax as distinguished from other charges by government is the absence direct quid pro quo- tit for tat between the tax payers and the public authority”.

From the above definitions we may conclude that *a tax is compulsory contribution, levied by government from owner of income without direct benefit but for public benefit, and taxes should be arranged by the law.*

## **1.2. CHARACTERSTICS OF TAXES**

**1. Tax is compulsory** – A tax is imposed by law. So tax is compulsory payment to the governments from its citizens. *Tax is duty from every citizen to bear his share for supporting the government. The tax is compulsory payment, refusal or objection for paying tax due leads to*

*punishment or is an offence of the court of law. Government imposes tax when somebody buys commodities, or when uses services or earns income or any other condition for compulsion is found. The government practices its sovereign when levying the tax from its citizens.*

**2. Tax is contribution** – *Contribution means in order to help or provide something. Tax is contribution from members of community to the Government. A tax is the duty of every citizen to bear their due share for support to government to help it to face its expenditures. Some wants are common to everybody in the society like defence and security, so these wants cannot be satisfied by individuals. These social wants are satisfied by governments, hence the people support government for these social wants. Contribution involves loss or sacrifice from the side of contributor.*

**3. Tax is for public benefit** – *Tax is levied for the common good of society without regard to benefit to special individual. Government proceeds are spent to extend common benefits to all the people such as natural disaster - like floods, famine - defence of the country, maintenance of law and establish infrastructure and order. Such benefits are given to all people.*

**4. No direct benefit** – *Government is compulsorily collecting all types of taxes and does not give any direct benefits to the tax payer for taxes paid. The essence of tax as distinguished from other charges by governments is the absence of a direct quid-pro-que between the taxpayer and the public authority. Tax is different from another government charges which may give direct benefits to payers such as prices, fees, fines etc where the direct benefits are available. Taxes are for common benefits to all the members of the society.*

**5. Tax is paid out of income of the tax payer** – *Income means money received, especially on regular basis, for work or through investment. Tax is paid out of income as long as the income becomes realized, here the tax is imposed. Income owner has profit from any business, so he should pay his share for support to the government.*

**6. Government has the power to levy tax** – *Governments are practicing sovereign authority upon its citizens through levying of taxes. Only Govt. can collect tax from the people. Tax is transferring resources from the private sector to the public sector. Government is levying the tax to cover its expenditures. The government use these taxes for increasing social welfare & economy development.*

**7. Tax is not the cost of the benefit** – *Tax is not the cost of benefit conferred by the government on the public. Benefit and taxpayer are independent of each other, and payment of taxation is of course designed for conferring of benefits on general public.*

**8. Tax is for the economic growth and public welfare** - *Major objective of the government is to maximize economic growth and social welfare. Developmental activities of the nations*

*generally involve two operations, the raising of revenue and the spending of revenue, so the government spent taxes for economic benefit, for entire community and for aggregate welfare of the society*

### **1.3. OBJECTIVES OF TAXATION**

The basic objective of taxation is to raise resources for the state. Taxation is for revenue only and a so called tax which looks to anything besides the securing of revenue is not a tax, but an unconstitutional exercise of the taxing power. However, all the modern states in the post second world war era have realized that taxation is a powerful instrument with multiple applications. It can be used to reduce inequalities, to accelerate economic development, as a tool to regulate consumption, imports and exports, in addition to its basic objective raising revenues.

**The Objectives of taxation in brief are as under:**

#### **1. Objectives of Raising Revenue.**

#### **2. Regulatory Objectives.**

- (a). Regulating Consumption.
- (b). Regulating Production.
- (c). Regulating Imports and Exports.
- (d). Regulating the effects of inflation, depression etc.

#### **3. Developmental Objectives.**

- (a). Objective of Economic Development.
- (b). Objective of Capital Formation.
- (c). Objectives of increasing employment opportunities.

#### **4. Objectives of Reducing Inequalities.**

- (a). Reduction in Economic Disparities.
- (b). Reduction in Regional Imbalances.

#### **1. Objectives of Raising Revenue.**

The basic and primary objective of taxation is raising revenue. Enormous amounts needed by modern governments for National Defence, Creation of Infrastructure and Social upliftment schemes make regular and systematic resource mobilization compulsory. *Taxes are imposed so as to produce the necessary amount of revenue to meet the requirement of the government, as the public expenditures is increasing in scope and size day by day. Therefore, the main objective of taxes is to raise revenue to meet the Govt. expenditures adequately*

## **2. Regulatory Objectives.**

Taxation performs an important regulatory role in different socio economic aspects.

### **(a). Regulating Consumption.**

State can discourage consumption of harmful and undesirable goods by levying prohibitive rates of tax. *For example, high rates of tax on Tobacco products, Liquors etc., are intended to minimize their usage by the public.*

### **(b).Regulating production.**

Production may be encouraged by exempting new industries from tax for some time, reducing tax on capital goods, increasing tax on imported goods to encourage local production, etc.

### **(c). Regulating imports and exports.**

Imports of undesirable products can be curbed by imposing prohibitively high import duties. Exports can be encouraged by cutting duties and taxes on exports. Duties can be minimised on materials etc., for manufacturing goods for export.

### **(e). Regulating effects of Inflation, depression etc.**

*Raising tax rates can reduce consumption of goods and the demand in general. High levels of taxation can reduce the purchasing power of people and the funds collected can be used by the state for productive purposes to increase supply of goods, thus stabilizing supply and demand equation. Inflation is automatically in check when demand and supply are in equilibrium. In periods of economic depression, the state can reduce tax rates to augment the purchasing power of people. It in turn, creates additional demand, thus reviving production and industries resulting in higher levels of economic activity and employment.*

## **3. Developmental Objectives.**

Taxation can be used as an effective tool to achieve higher levels of economic development and employment.

### **(a). Economic development.**

*Economic Development is measured in terms of GNP (Gross National Product) i.e., the output achieved in all the major sectors of the economy i.e., Agriculture, Industry and Services. Taxation can be used as a stimulant to any one or all the three sectors by judicious changes in the tax rates. For example, capital gains on sale of long term assets are exempted if they are reinvested in approved securities. Agricultural incomes are fully exempted from Income tax. Tax policies can growth encourages higher investments.*

### **(b). Capital formation**

Indian household savings rate is around 26%, one of the highest in the world. Savings

can be channeled into investment avenues through appropriate policy measures. *Taxation plays a major role in high level of savings by providing different kinds of exemptions from tax on contributions to provident funds, Insurance premiums, National savings certificates, etc. Capital formation through people's savings can be encouraged by Tax incentives.*

**(c). Increasing employment opportunities.**

Small and medium enterprises usually have maximum potential for employment. Industrial estates, special economic zones, export oriented parks, etc., have high employment potential. *Tax concessions to start small scale and medium scale units result in creation of jobs on large scale. Similarly, tax incentives and exemptions to export oriented units and industrial units in SEZs (Special economic zones) also increase employment opportunities.*

**4. Objectives of Reducing Inequalities.**

Inequalities are common in several aspects. Inequalities in Income, inequalities in regional development etc., can be reduced with the help of taxation.

**(a). Reduction in economic disparities.**

Income levels of individuals vary wildly in India. It is claimed that rich are becoming richer and the poor are becoming poorer year by year. *Taxation can be a powerful weapon in tackling income disparities. High levels of taxation on the rich which cannot be evaded and diversion of the resulting funds for the benefit of poor is the best way of reducing income disparities.*

**(b). Reduction in Regional Imbalances.**

Some regions may become well developed compared to others in a country. *Tax incentives and exemptions to start industries in the backward regions can be a good method of dealing with the problem. Urban areas are usually well developed whereas rural areas are backward. Tax incentives of different kinds to start small scale and cottage industries in rural areas, tax incentives for infrastructural undertakings in rural areas etc., can be helpful in developing rural areas.*

**1.4. CANONS OF TAXATION**

Dictionary meaning of 'Canon' is "general law, rule, principle or criterion". A 'Canon' in the context of taxation can be taken as a general rule or principle. While devising a tax system, canons of taxation *act as guidelines. They can make a tax system effective.*

**1. Canon of Equality**

The first canon of Adam Smith is the canon of equality. This is also the starting point for "*Ability to pay*" principle in taxation. Adam Smith says "*The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion of their*

*respective abilities, that is in proportion to the revenue which they respectively enjoy under the protection of the state. In the observation or neglect of the maxim consists what is called the equality or inequality of taxation”.*

## **2. Canon of Certainty**

The second canon of Adam Smith is the Canon of certainty”. Adam Smith says “*The tax which each individual is bound to pay, ought to be ‘certain’ and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person.*” This canon aims at elimination of uncertainty and arbitrariness in taxation. The tax payer should know exactly when to pay the tax, to whom to pay the tax and also the exact amount to be paid by him. Nothing is left to the discretion of the tax officials which can lead to corruption and harassment of the assesses. Usually this canon is ensured through the publicity of the annual Budget of the Government, the discussions in Parliament or assembly on every detail of taxation. Everyone comes to know certainly about the new taxes imposed, the rates of tax etc.

## **3. Canon of Convenience**

The third canon of Adam Smith is that of “convenience”. Smith says “*Every tax ought to be so levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it.*” *The object of this canon is to reduce the “psychic burden” and inconvenience of paying tax.* The canon urges that the timing and the manner of collection should both be convenient to the tax payer to ensure maximum compliance.

This canon is widely practiced in every country due to its practical utility. For example, Import duty is collected at the time of handing over the goods to the importer; Income Tax is usually deducted from salaries of employees; Land revenue in rural areas is collected after the harvesting of crops. Sales tax and excise duty are paid by consumers whenever they buy goods to consume in small quantities.

## **4. Canon of Economy**

The fourth canon of Adam Smith is that of economy. According to Adam Smith “*Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.*” *This canon signifies that the administrative cost of tax collection should be minimized.* It means that the difference between the money which comes out of the pockets of people and that which is deposited in the public treasury should be as small as possible.

## **5. Canon of Productivity**

The canon of productivity was proposed by Bastable who said “In the first place taxation should have productivity”.

Productivity of a Tax may be observed in two ways. In the first place, a tax should yield a satisfactory amount for the requirements of a government. *As bastable expressed it, “the very object, for which the revenue system exists is to provide for the maintenance of the state and therefore, the minister in charge of finance naturally estimate the merits of a tax by the amount of its yield”*

## **6. Canon of Elasticity**

*The structure of taxation should be elastic in character and capable of expansion and contraction in times of change. The State should be able to increase its revenue by way taxation when the situation demands. During periods of war, national calamities like floods, earthquakes and famine, the State needs more funds immediately. Govt. can raise funds quickly only when the tax system is flexible and elastic.* There should be scope for contraction of taxes also when the citizens are over burdened with tax.

For example, taxes on property and commodities are not so, elastic as Income Tax.

## **7. Canon of Diversity**

Tax system should not rely upon a single tax or a chosen few for raising entire resources needed to run the State. The tax burden should be widely distributed on the entire economy without causing much harm to anyone. *Modern economists emphasize upon a Multiple Taxation policy with diverse character. There should be a combination of Direct and Indirect taxes so that all the citizens of the country are involved and contribute for the development of the country.* Of course, diversity does not mean that there should be too many taxes. The emphasis is on judicious mix of different taxes which can produce required amount of revenue without sacrificing the character of productivity and economy.

## **8. Canon of Simplicity**

*This canon means that taxes and tax system should be such that they are easily understood by the tax payer. The nature, aim, time of payment, method and basis of estimation of each tax should be followed by each tax payer. The taxation rules and regulations should be simple, intelligible, and easily understandable.* The process of tax administration should also be simple. Complex tax system and confusing tax laws may make people avoid paying taxes. Simplicity invariably improves the efficiency of tax systems.

## **9. Canon of Expediency**

*“Expediency” means convenience. A tax may be desirable and it may have most of the*

*characteristics of a good tax but the Govt. may not find it expedient or convenient to impose it, may be for political reasons or "Vote Bank Politics".* For example, Tax on Agricultural Income in India. While considering the possibility of imposing a tax, it should be examined from different angles, including the reaction of the tax payers. Imposition of every tax is required to be justified from the point of view of social, political and economic ground realities.

#### **10. Canon of Co-ordination**

In democratic countries taxes are imposed by Central, State and local Governments. It is very much desirable that there must be coordination between different taxes imposed by the tax authorities. *The coordination is needed in the interests of tax payer and the government. Otherwise, overlapping of taxes, double taxation etc., can lead to hardship to tax payers and encourage them to avoid, or evade taxes.*

### **1.5 TAX SYSTEM IN INDIA**

Indian tax system had been unorganized, unregulated and unplanned due to historical reasons. India's alien rulers taxed the people to the benefit of their coffers and also for Royal luxuries of the state. Land revenue was the major part of income for the royal treasury. Other taxes used to be levied on adhoc basis.

During the British rule, no effort was made for uniformity in the tax system. Vast differences were there between the tax policies of the native kings and the British provinces. Social justice, social welfare and economic development were not linked to tax system in anyway.

After independence, each and every, aspect of the Indian Tax system was studied thoroughly and all possible attempts were made to make the system equitable, just and economic, besides yielding adequate revenue to finance the administration and also cater to the needs of economic development.

The Constitution of India is the supreme law of India. It consists of a Preamble, 22 parts containing 444 articles and 12 schedules. Any tax law, which is not in conformity with the Constitution, is called ultra vires the Constitution and held as illegal and void. Some of the provisions of the Constitution are given below:

**Article 265 of the Constitution** lays down that no tax shall be levied or collected except by the authority of law. It means tax proposed to be levied must be within the legislative competence of the legislature imposing the tax.

**Article 246 read with Schedule VII** divides subject matter of law made by legislature into three categories:

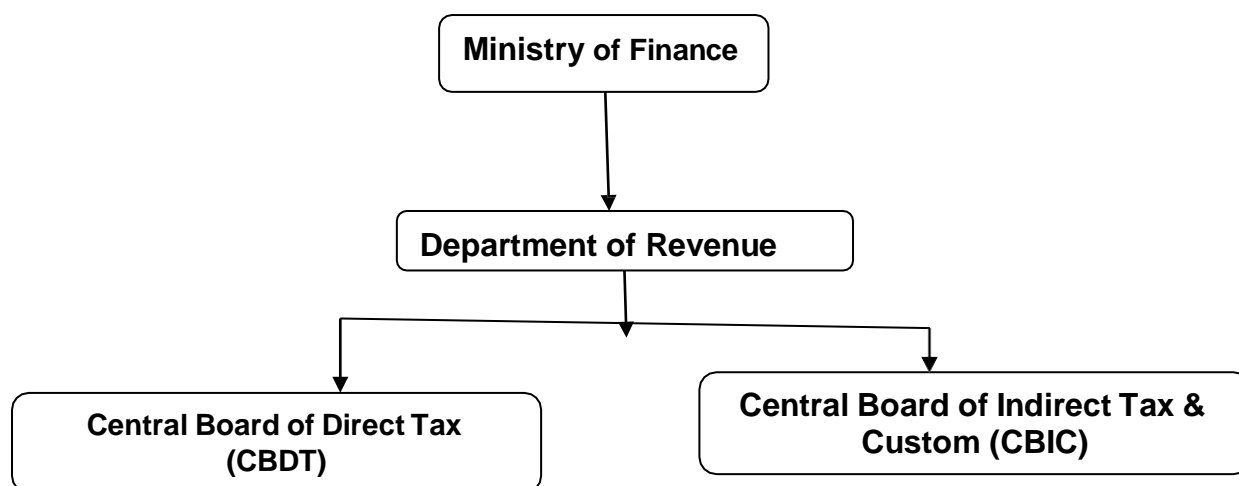
- Union list (only Central Government has power of legislation on subject matters covered in the list)
- State list (only State Government has power of legislation on subject matters covered in the list)
- Concurrent list (both Central & State Government can pass legislation on subject matters).

If a state law relating to an entry in List III is repugnant to a Union law relating to that entry, the Union law will prevail, and the state law shall, to the extent of such repugnancy, be void. **(Article 254)**. Following major entries in the respective list enable the legislature to make law on the matter:

Union List (List I)	Entry 82 - Taxes on income other than agricultural income i.e. <b>Income-tax</b>
State List (List II)	Entry 46 - Taxes on agricultural income.

## 1.6 ADMINISTRATION OF TAX LAWS

The administrative hierarchy of tax law is as follows:



## 1.7 CLASSIFICATION OF TAXES

Modern Tax systems comprise of many types of taxes. Proper classification of the sundry taxes is essential to understand the nature and significance of different taxes.

1. Direct Tax
2. Indirect Tax.

## **(1). Direct Tax**

Based on 'Shifting of Tax', Dalton says "A direct tax is one which is really paid by a person on whom it is legally imposed or If tax is levied directly on the income or wealth of a person, then, it is a direct tax. The person who pays the tax to the Government cannot recover it from somebody else i.e. the burden of a direct tax cannot be shifted. e.g. Income- tax.

### **TYPES OF DIRECT TAXES.**

Several kinds of Direct Taxes are levied in India by Central Government, State Governments and Local Governments. The following are the most important of them.

#### **(I). Direct taxes levied by Central Government:**

##### **(1). Income Tax.**

Income tax in India is levied and collected on the basis of Finance Act passed every year under Central budget and the Income Tax Act 1961, aided by the Income Tax rules, 1962. Income Tax is payable by individuals, HUF, AOP, BOI, AJP, Cooperative societies, partnership firms, companies etc. Income tax is a major source of income to the Central government.

##### **(2). Corporation Tax or Corporate Tax or Company Tax.**

*Income Tax paid by Limited companies is called Corporation Tax or Corporate Tax or Company Tax. It is levied on the profits made by companies as per the rates given in the Finance Act passed by Parliament annually. All profitable companies are required to make advance payment of Income Tax every year. Corporation Tax forms the major chunk of Income Tax in India.*

##### **(3). Dividend tax.**

Limited companies in India are required to pay dividend tax at 10% on the dividend paid by them to their shareholders. This tax is in addition to the Corporation Income Tax.

##### **(4). Capital gains tax.**

For the first time in India, Capital gains tax was introduced in 1947 by the then finance minister Liqueate Ali Khan. It was abolished in 1950 and reintroduced again in 1956. This tax is applicable to individuals as well as companies. It is payable on gain realized from capital assets. Income Tax Act 1961 contains all the provisions relating to the capital gains. In the year 2004, Finance minister Chidambaram has made major concessions relating to capital gains tax.

##### **(5). Wealth tax.**

Wealth tax is imposed on the wealth or assets held by individuals. It is levied every year on the total value of a person's property or wealth or capital. It was introduced in 1957 in India on the recommendation of Prof.Kaldor. Since wealth increases an individual's tax paying ability,

wealth tax is progressive in nature. It is payable at 1% on the net wealth exceeding rupees 15 lakhs. Wealth tax no longer leviable from AY. 2016 – 2017.

#### **(6). Gift Tax**

It was introduced to complement estate duty and also to prevent large scale avoidance of estate duty through gifts of property before death and also the wealth tax by gifting away wealth. It was originally introduced in 1956. However with effect from 1<sup>st</sup> November 1998 gift tax was abolished due to its low yield to the union government

#### **(7). Estate duty or Inheritance tax or death duty**

Death taxes assume two major forms. One is called Estate Duty which is levied upon the entire estate left by a deceased person. The other form is Inheritance tax which is levied on the separate shares of the estate transferred to the beneficiaries. It was imposed and collected by the Central government but the proceeds were transferred to the state governments Estate duty was introduced in India from Oct. 1953. It was abolished from 16<sup>th</sup> March 1985 because of its low yield and higher cost of collection.

### **(II). Direct Taxes at State level.**

#### **(1). Land Revenue**

Before independence, Land revenue was the most important source of revenue to the government. In fact even in the historical times, land revenue was the most important tax in most of the countries in the world.

Land Revenue is purported to be the state's share in the output from land. In India, land revenue is abolished in some states and in others the rate varies from state to state. However, Land revenue has lost its prominence as a revenue raising tax because of its lack of elasticity and strong bias against taxing the agricultural sector in India

#### **(2). Agricultural Income Tax**

Agricultural income tax is defined as a tax on income earned from agriculture or other related activities. Indian constitution specifically provides for levy of agricultural income tax by the State governments. However, no State government has actually passed legislation to tax agricultural incomes.

#### **(3). Professional tax**

This is a tax on professionals, payable annually. State government fixes a specified amount to be paid by each category of professionals. Irrespective of actual income, each professional pays the professional tax as a lumpsum, one time payment per year. It may be paid in two installments. In case of professionals working as salaried employees, the employer

deducts the amount of tax in two installments from the salary of the employees.

### **(III). Direct Taxes at local government level.**

Local governments like Municipalities, Corporations, Panchayats levy some direct taxes like House property tax.

### **(2). Indirect Taxes**

*Indirect tax is imposed on one person, but paid partly or wholly by another. Thus, an indirect tax is one which can be shifted or passed on. So, the tax-payer and the tax-bearer are different persons.* Tax is levied on the price of a good or service, then, it is an indirect tax e.g. Goods and Services Tax (GST) or Custom Duty. In the case of indirect taxes, the person paying the tax passes on the incidence to another person.

Various indirect taxes are levied by Central government, the State governments and local governments. The following are the most important of them. Indirect taxes levied by Central Government:

#### **(1). Central Excise Duty**

An “excise duty” is a tax on goods produced or manufactured within the country either in the process of their manufacture or before their sale to customers. It is levied on commodities like Beverages, Sugar, Petrol, Tobacco, Cloth etc.

An excise duty should be considered as a tax on a commodity than a tax on transaction. The burden of excise duty lies on the consumers in proportion to the consumption of the commodities.

#### **(2). Customs Duty.**

Customs duties are taxes imposed on goods as they cross a national boundary. They are levied on goods imported into India from other countries (Import duties) and also on goods exported from India to other countries (Export duties). Import duties perform the dual functions of protecting domestic industries from foreign competition and also earn foreign exchange. Export duties are levied to earn large amount of revenues.

#### **(3). Goods and Service Tax**

The Goods and Service Tax (GST) is a tax levied on most goods and services sold for consumption. The GST is paid by consumers but it is remitted to the Government by the business selling goods and services. In effect, GST provides revenue for the government, borne by the consumers.

## **1.8 DEFINITION OF IMPORTANT TERMS OR IMPORTANT TERMS USED IN INCOME TAX CALCULATIONS**

### **(1). Assessee [Section 2(7)]**

“Assessee” means a person by whom any tax or any other sum of money is payable under this Act. In addition, it includes –

- (a). Every person in respect of whom any proceeding under this Act has been taken for the assessment of
- his income; or
  - the income of any other person in respect of which he is assessable; or
  - the loss sustained by him or by such other person; or
  - the amount of refund due to him or to such other person
- (b). Every person who is deemed to be an assessee under any provision of this Act;
- (c). Every person who is deemed to be an assessee-in-default under any provision of this Act.

### **(2). Assessment [Section 2(8)]**

This is the procedure by which the income of an assessee is determined. It may be by way of a normal assessment or by way of reassessment of an income previously assessed. Assessment Procedure will be dealt with in detail at the Final level.

### **(3). Assessment Year [Section 2(9)]**

*Assessment year means the period of 12 months commencing on the 1st day of April every year. It is the year (just after the previous year) in which income earned in the previous year is charged to tax. E.g., A.Y. 2022-23 is a year, which commences on April 1, 2022 and ends on March 31, 2023. Income of an assessee earned in the previous year 2021-2022 is assessed in the A.Y. 2022-23.*

#### **Taxpoint:**

- Duration: Period of 12 months starting from 1st April.
- Relation with Previous Year: It falls immediately after the Previous Year.
- Purpose: Income of a previous year is assessed and taxable in the immediately following Assessment Year.

### **(4). Previous Year or Uniform Previous Year [Section 3]**

Previous Year means the financial year immediately preceding the Assessment Year. Income earned in a year is assessed in the next year. The year in which income is earned is

known as Previous Year and the next year in which income is assessed is known as Assessment Year. It is mandatory for all assessee to follow financial year (from 1st April to 31st March) as previous year for Income-Tax purpose.

### **(5). Financial Year**

According to sec. 2(21) of the General Clauses Act, 1897, a Financial Year means the year commencing on the 1st day of April. Hence, it is a period of 12 months starting from 1st April and ending on 31st March of the next year. It plays a dual role i.e. Assessment Year as well as Previous Year.

**Example: Financial year 2023-24 is –**

- Assessment year for the Previous Year 2022- 23; and
- Previous Year for the Assessment Year 2024 - 25.

### **(6). Person [Section 2(31)]**

There are seven categories of persons chargeable to tax under the Act:

- (a). Individual;
- (b). Hindu Undivided Family (HUF);
- (c). Company;
- (d). Firm or Partnership firm
- (e). Association of Persons (AOP) or a Body of Individuals (BOI), whether incorporated or not;
- (f). Local authority; and
- (g) .Every artificial juridical person not falling within any of the preceding categories

#### **(a). Individual.**

The word 'individual' means a natural person, i.e. human being. "Individual" includes male or femae, a minor or a person of unsound mind. However, Deities are assessable as juridical person. Trustee of a discretionary trust shall be assessed as an individual

#### **(b). Hindu Undivided Family (HUF)**

A Hindu Undivided Family (on which Hindu law applies) consists of all persons lineally descended from a common ancestor & includes their wives & unmarried daughters.

**Taxpoint:**

- Only those undivided families are covered here, to which Hindu law applies. It also includes Jain and Sikh families.
- Once a family is assessed as Hindu undivided family, it will continue to be assessed as

such till its partition.

**(c). Company [Sec. 2(17)]**

Company means:

- a. any *Indian company*; or
- b. any body corporate, incorporated under the laws of a foreign country; or
- c. any institution, association or body which is or was assessable or was assessed as a company for any assessment year on or before April 1, 1970; or
- d. any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Central Board of Direct Taxes to be a company.

**(d). Firm or Partnership firm.**

As per sec. 4 of Indian Partnership Act, 1932, partnership means “relationship between persons who have agreed to share profits of the business carried on by all or any one of them acting for all”. Persons, who enter into such business, are individually known as partners and such business is known as a Firm. A firm is, though not having a separate legal entity, but has separate entity in the eyes of Income-tax Act.

**Taxpoint:**

- Partnership firm is a separate taxable entity apart from its partners.
- In Income tax, a Limited liability partnership shall be treated at par with firm.

**(e). Association of Persons (AOP) or Body of Individuals (BOI)**

**Association of Persons (AOP)** : When persons combine together for promotion of joint enterprise they are assessable as an AOP, if they do not in law constitute a partnership. In order to constitute an association, persons must join for a **common purpose or action** and their object must be to produce income; it is not enough that the persons receive the income jointly. Co-heirs, co-legatees or co-donees joining together for a common purpose or action would be chargeable as an AOP. For e.g., Mr. Yash, AB & Co. (Firm) and X (P) Ltd. join together to carry on construction activity otherwise than as a partnership firm, such an association will be recognized as an association of persons.

**Body of Individuals (BOI)**: Whereas, **BOI** means a group of individuals (individual only) who join together for common purpose(s) whether or not to earn income. Co-heirs, co-donees, etc joining together for a common purpose or action would be chargeable as an AOP or BOI. In case of income of AOP, the AOP alone shall be taxed and the members of the AOP cannot be taxed individually in respect of the income of the AOP For e.g., mutual trade

associations, members club, etc.

### **Difference between AOP and BOI**

- In case of BOI, only individuals can be the members, whereas in case of AOP, any person can be its member i.e. entities like Company, Firm etc. can be the member of AOP but not of BOI.
- In case of an AOP, members voluntarily get together with a common will for a common intention or purpose, whereas in case of BOI, such common will may or may not be present.

### **(f). Local Authority**

As per Sec. 3(31) of the General Clause Act, a local authority means a municipal committee, district board, body of Port Commissioners, Panchayat, Cantonment Board, or other authorities legally entitled to or entrusted by the Government with the control and management of a municipal or local fund.

### **(h). Artificial Juridical Person Artificial juridical person are entities –**

Which are not natural person;

- has separate entity in the eyes of law;
- may not be directly sued in a court of law but they can be sued through person(s) managing them for Example: Deities, Idols, University, Bar Council, etc.

### **Example: Determine the status of the following:**

<b>Case Status</b>	<b>Status of Person</b>
a). Tirunelveli Municipal Corporation.	Local authority
b). Corporation Bank Ltd.	Company
c). Mr. Amitabh Bachchan.	Individual
d). Amitabh Bachchan Corporation Ltd.	Company
e). A joint family of Sri Ram, Smt. Ram and their son Lav and Kush.	HUF
f). Calcutta University.	Artificial juridical person
g). X and Y who are legal heirs of Z.	BOI
h). Sole proprietorship business.	Individual
i). Partnership Business.	Firm

## **(7). Income [Section 2(24)]**

Income tax is charged on the income of a person. The term income has not been defined in the Income Tax Act. But Sec.2(24) explains what is included in income. As per Sec.2(24), income included

- Profits and Gains
- Dividend
- Voluntary Contribution received by a trust
- Value of any perquisite or profit in like of salary
- Any allowance, special allowance or benefit.
- Perquisite or benefit to a director.
- Perquisite or benefit to a representative assessee.
- Any amount received as obligation by the company.
- Capital gain.
- Insurance Profit.
- Wining from lottery.
- Amount received under keyman insurance Policy.
- Gift of an amount exceeds Rs.50,000.

## **1.8 DEFINITION OF IMPORTANT TERMS OR IMPORTANT TERMS USED IN INCOME TAX CALCULATIONS**

### **(i). Definite Source.**

Income connotes a periodical monetary return coming in with some sort of regularity from a definite source.

### **(ii). Legal or illegal income.**

The income-tax does not differentiate income arising from a legal source and an illegal source. However, any expenses incurred to earn the illegal source of income are allowed to be deducted out of such income and the net income is taxable.

### **(iii). Income may be received in cash or in kind.**

It is not necessary that income must be received in the form of cash. Income received in kind or service having money equivalent is also considered for tax purposes. Where the income is received in kind, it is valued according to the rules prescribed in the 'Income Tax Rules, 1962'. Where there is no prescribed rule, valuation thereof is made on the basis of its market value.

**(iv). Income being considered on receipt basis or accrual basis.**

The income may accrue to a tax payer without its actual receipt. The income in some cases is deemed to accrue to a tax payer without its actual receipt. The income in some cases is deemed to accrue or arise to a person without its actual accrual or receipt. Income accrues where the right to receive arises.

**(v). Dispute regarding the title.**

Income tax assessment will not be held up or postponed merely because of existence of a dispute regarding the title of income. The recipient is chargeable to tax even though there may be rival claim to the source of income.

**(vi). Mere relief or reimbursement of expenses.**

Mere relief or reimbursement of expenses is not treated as income. The full Bench of Allahabad High Court held that relief from expenditure granted to the auctioneer could not be regarded as income.

**(vii). Income may be permanent or temporary.**

Income tax does not differentiate permanent and temporary income, even temporary income is taxable.

**(viii). Income may be received in lump sum or otherwise.**

Income either received in lump sum or in installments, is liable to tax.

**(ix). Gifts of Personal nature.**

Gifts of personal nature like birthday, marriage gifts etc., are not liable to tax. Gifts from unrelated persons exceeding Rs. 50,000 in aggregate are taxable.

**(x). Income to be earned from outside.**

A person cannot make income from himself. Income cannot arise from transactions between head office and branch. In an association, if the subscription from members exceeds its expenditure on its members, the surplus cannot be treated as taxable income. This is because subscription was received from the members themselves and not from outside. Similarly, excess over expenditure received by a club from facilities provided to members as part of advantages attached to such membership is not taxable income.

**(xi). Diversion of income vs. Application of Income.**

Where the total income is diverted to some other person under legal obligation, it is diversion of income. Where the income is given to someone else after receiving the income, it is application of income. Similarly, if an income is voluntarily diverted to some other person, it is application of income. Where an income is diverted before it reaches the assessee, it is diversion of income and not taxable. But where the income is required to be applied to

discharge an obligation after such income reaches the assessee, it is application of income and taxable.

**(xii).PIN Money.**

Pin money is money received by wife for her personal expenses & small savings made by a woman from money received from her husband for meeting household expenses. Such receipt is not treated as income. Note: Income on investment out of pin money shall be treated as income.

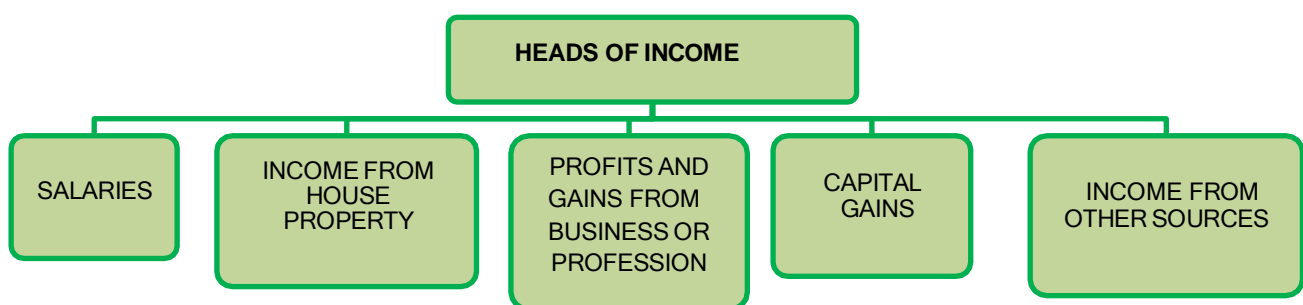
**(xiii). Award received by a sports person.**

Award received by a professional sports person in the nature of a benefit in exercise of his profession is chargeable to tax.

**(8).Heads of Income. [Sec.14]**

A person may earn income from different sources. For example, a salaried person earns income by way of salary. He also gets interest from bank savingsaccount/fixed deposit. Apart from this, if he has invested in shares, he would be getting dividend and when he sells these shares, he may earn profit on such sale. If he owns a residential property which he has let out, he would earn rental income.

Under the Income-tax Act, 1961, for computation of total income, all income of a tax payer are classified into five different heads of income. These are shown below –



There is a charging section under each head of income which defines the scope of income chargeable under that head. These heads of income exhaust all possible types of income that can accrue to or be received by the tax payer. Accordingly, income earned is classified as follows:

1. Salary, pension earned is taxable under the head “**Salaries**”.
2. Rental income is taxable under the head “**Income from house property**”.
3. Income derived from carrying on any business or profession is taxable under the head

**“Profits and gains from business or profession”.**

4. Profit from sale of a capital asset (like land) is taxable under the head **“Capital Gains”**.
5. The fifth head of income is the residuary head. Income which is chargeable to tax but not taxable under the first four heads will be taxed under the head **“Income from other sources”**.

The tax payer has to classify the income earned under the relevant head of income.

**(9). Gross Total Income or Computing Total Income of Individuals**

**(GTI). [Sec.80B(5)]**

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

**Computation of Total Income for the A.Y. \_\_\_\_**

Particulars	Amount
1. Income from Salaries	***
2. Income from House Property	***
3. Income from Business or Profession	***
4. Income from Capital Gains	***
5. Income from Other Sources	***
<b>Gross Total Income</b>	<b>****</b>
<b>Less:</b> Deduction u/s 80C to 80U	<b>***</b>
<b>Total Income Or Taxable Income</b>	<b>****</b>
<b><u>Computation of Tax Liability:</u></b>	
<b>Gross Tax</b> <b>(Apply tax rate of A.Y 2023 -24 on Taxable Income)</b>	<b>***</b>
<b>Add :</b> Health and Education Cess @ 4% on Gross Tax	<b>****</b>
<b>Tax Liability</b>	<b>*****</b>

**(10). Casual Income.**

Any receipt which is of a casual and non-recurring nature is called casual income. Casual income includes the following receipts:

- a. Winning from lotteries,
- b. Winning from crossword puzzles,

- c. Winning from races (including horse races),
- d. Winning from card games and other games of any sort
- e. Winning from gambling or betting of any form or nature.

## **1.9. AGRICULTURE INCOME.**

Agriculture income is exempt under the Indian Income Tax Act, 1961. The reason for exemption of agriculture income from Central Taxation is that the constitution gives exclusive power to make laws with respect to taxes on agricultural income to the State Legislature.

The income tax does not define the term agriculture income. *Instead it gives a list income that can be treated as agricultural income. Section 2(1A) of the Act defines agricultural income as follows:*

1. Any rent or revenue derived from land that is situated in India and is used for agricultural purpose;
2. Any income derived from such land by-
  - a. Agriculture ; or
  - b. Any process ordinarily employed by a cultivator or receiver of rent-in-kind to make the produce fit to be taken to market or
  - c. The sale by a cultivator or receiver of rent in kind of the produce in respect of which no process has been performed other than a process of the nature described in the above paragraph.
3. Any income derived from farmhouse.

### **(A). KINDS OF AGRICULTURAL INCOME**

#### **(1). Rent or revenue derived from land**

When one person grants to another a right to use his land for agricultural purposes, the former receives from the latter rent or revenue (in cash or kind) in consideration of such use. Such rent or revenue is *treated as agricultural income.*

#### **(2). Income from agricultural operations.**

An income is agricultural when some agricultural operations are performed. Agricultural operation means *cultivation of a field, tilling of the land watering it, sowing of the seeds, planting and similar operations on the lands is also agricultural income.*

Products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture. The income derived there from is *not agricultural income.*

### **(3). Income from making the produce fit for market.**

If there is no market of the produce of the field and the cultivator or receiver of rent in kind performs any activity to make the produce fit for market, any income from such activity is also agricultural income. The process employed in curing of coffee, flue curing of tobacco, ginning of cotton, etc., is such process.

### **(4). Income from the sale of produce.**

Income derived by a cultivator or receiver of rent in kind from the sale of produce raised or received by him is treated as agricultural income, even if he keeps a shop for the sale of such produce.

### **(5). Income from a farmhouse.**

The income from a farmhouse is treated as agricultural income, if the following conditions are satisfied:

- (a). The building is owned and occupied by the cultivator or receiver of the rent or revenue of any such land:
- (b). It is situated on or in the immediate vicinity of the agricultural land:
- (c). The building is, by reason of his connection with the land, used as a dwelling house or a store house or an outhouse by the cultivator or receiver rent in kind:
- (d). The land is situated in an urban area and is either assessed to land revenue in India or is subject to a local tax assessed and collected by the officers of the government.

## **(B). Important points or factors to be considered computation of**

### **Agricultural Income**

- (1).** Agricultural income by way of *rent or revenue derived from land which is situated in India and is used for agricultural purpose is computed as if it were income chargeable to income tax under the head 'Income from Other Sources'*.
- (2).** Agricultural Income from *agricultural building is computed as if it were income chargeable to income tax under the head 'Income from House Property'*.
- (3).** Any other Agricultural Income is computed as if it were income chargeable to income tax under the head **'Profits and Gains of Business or Profession'**.
- (4).** Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.
- (5).** Where in respect of any source of agricultural income there is a loss, such loss shall be set-off against any other source of agricultural income.
- (6).** Where the assessee is a member of an Association of Persons or Body of Individuals and

his share in the agricultural income of the Association of Persons or Body of Individuals is a loss, such loss shall not be set-off against any other agricultural income of the assessee.

(7). If there is loss from agriculture, it can be carried forward and set-off against agricultural income in the following eight years provided the return of income has been filed and such loss has been determined by the Assessing Officer.

(8). Where the net result of the computation made in accordance with these rules is a loss, the loss so computed is ignored and the net agricultural income is deemed to be nil.

(9). The net agricultural income is rounded -off to the nearest multiple of Rs.10.

### **(C). NON – AGRICULTURAL INCOME FROM LAND.**

The following incomes are not derived from land used for agricultural purposes, hence they are non – agricultural income.

- **Income from Markets;**
- **Income from stone quarries, mining royalties;**
- **Income from land used for storing agricultural produce;**
- **Income from the supply of water for irrigation purposes (e.g., income from the supply of water for irrigation from a tube - well or well, as it does not involve any agricultural operation);**
- **Income from self-grown grass, trees or bamboos;**
- **Income from fisheries;**
- **Income from the sale of the earth for brick-making;**
- **Remuneration received as manager of an agricultural farm;**
- **Dividend from a company engaged in agriculture;**
- **Income of the buyer of ripe crop;**
- **Income from dairy farming, poultry farming, etc; and**
- **Income from interest on arrears of rent of agricultural land.**

### **Illustration – 01**

State whether the following incomes from land situated in India are agricultural incomes or not:

- (1). Income from interest on arrears of rent payable in respect of land used for agricultural purposes.
- (2). Income from the use of land for grazing of cattle required for agricultural pursuits.
- (3). Income from lease of land for grazing of cattle required for agricultural pursuits.
- (4). Income from the sale of forest trees of spontaneous growth on which some operations for

their preservation and growth were performed.

(5). Income from interest on a simple mortgage of land used for agricultural purposes.

(6). Income from agricultural land situated in Pakistan.

(7). Prize from the Government on account of higher yield.

(8). Amount of compensation received from insurance company on account of the loss of crop due to flood.

### **Solution :**

(1). *It is not an agricultural income* as it is not directly connected with land but with failure to pay the rent on time.

(2). It is an agriculture income as it is an agricultural activity.

(3). It is an agricultural income. It is immaterial whether the assessee used the land for grazing of cattle or gives it on lease for the purpose.

(4). *It is not an agricultural income* as basic operation of cultivation has not been performed.

(5). *It is not an agricultural income* as it is not derived from the land but from the mortgagor.

(6). Agricultural land is not situated in India, hence income is not an agricultural income.

(7). It is not an agricultural income due to the following reasons:

- The income is not from the land or
- The income is not from the use of land for agricultural purposes: or
- The income is not from the sale of agricultural produce.

(8). It is an agricultural income. The compensation is received on account of the loss of agricultural income.

### **(D). PARTLY AGRICULTURAL INCOME AND PARTLY NON-AGRICULTURAL INCOME**

Sometimes there is composite income, which is partially agricultural and partially non-agricultural. For determining the non-agricultural income chargeable to tax, the market value of any agricultural produce which has been raised by the assessee and which has been utilized as a raw material in such business shall be deducted. No further deduction shall be made in respect of the cost of cultivation incurred by the assessee as a cultivator.

#### **Examples :**

##### **(1). Profits from Sugar Factories**

Sugar factories which produce sugar from sugarcane grown on their own farms are treated as partly agricultural income. Sugarcane is generally sold in the market. Hence, in order to separate the agricultural income from the business income, the average market price of

sugarcane during the relevant previous year shall be charged as expenditure and no note will be taken of the expenses of cultivating the sugarcane. The income thus determined will be the business income.

**(2). Income from growing and manufacturing of Tea.**

**Sixty percent** of the income derived from the sale of tea grown and manufactured by the seller in India is deemed to be agricultural income and the remaining **forty per cent** is taken as business income.

**(3). Income from growing and manufacturing of centrifuged latex or cenex.**

**Sixty five percent** of the income derived from the sale of centrifuged latex or cenex manufactured or processed by seller from rubber grown by him in India is deemed to be agricultural income and the remaining **thirty five percent** is taken as business income.

**(4). Income from growing and manufacturing of coffee.**

- **Seventy five per cent** of the income derived from the sale of coffee grown and cured by the seller in India is deemed to be agricultural income and **twenty five per cent** is taken as business income.
- **Sixty per cent** of the income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing of chicory or other flavouring ingredients are deemed to be agricultural income and the remaining **forty per cent** is taken as business income.

**Proforma – Computation of Net Agricultural Income.**

Particulars	Amount
<b>Income</b> – 1. Lease rent	Xxxx
2. Sale of agricultural Produce.	Xxxx
3. Sale of own crop.	Xxxx
4. Other agricultural related incomes etc.	xxxx
<b>Less :</b> Agricultural related expenses.	
1. Tax on agricultural lands.	Xxxx
2. Power, irrigation, cess and farm labour.	Xxxx
3. Seeds expenses.	Xxxx
4. Cost of seeds, fertilizers, electricity charges etc.	xxxx
<b>Net Agricultural Income</b>	<b>xxxx</b>

**Illustration – 02**

From the following information in relating to Mr.Anand, compute net agricultural income

for the Assessment Year 2024 -25.

Lease rent received from lands given to tenants for agricultural operations Rs.48,000.

Sale of agricultural produce (Landlords share) Rs.30,000.

Payment of government tax on agricultural lands Rs.6,000.

Expenses on power, irrigation, cess and farm labour Rs.10,000.

Purchase of Seeds Rs.1,000.

Tractor hires charges for agricultural operations Rs. 2,500.

### **Solution**

#### **Mr.Aanand Computation of Net Agricultural Income – A.Y. – 2024 - 25.**

Particulars		Amount
<b>Income – 1. Lease rent</b>		<b>48,000</b>
<b>2. Sale of agricultural Produce.</b>		<b>30,000</b>
		<b>78,000</b>
<b>Less : Agricultural related expenses.</b>		
<b>1. Tax on agricultural lands.</b>	<b>6,000</b>	
<b>2. Power, irrigation, cess and farm labour.</b>	<b>10,000</b>	
<b>3. Seeds expenses.</b>	<b>1,000</b>	
<b>4. Tractor hire charges</b>	<b>2,500</b>	<b>19,500</b>
<b>Net Agricultural Income</b>		<b>58,500</b>

### **Illustration – 03**

From the following information in relating to Mr.Babu, compute net agricultural income for the Assessment Year 2024 -25.

Sale proceeds of agricultural income Rs.2,00,000 .      Depreciation on equipment Rs.10,000.

Labour Charges Rs.25,000. Cost of Seeds Rs.10,000. Cost of Fertilizers Rs.5,000.

Electricity charges on agriculture Rs.15,000.

**Solution****Mr.Babu****Computation of Net Agricultural Income – A.Y. – 2024 - 25.**

Particulars		Amount
<b>Income – 1. Sale of agricultural Produce.</b>		<b>2,00,000</b>
<b>Less : <u>Agricultural related expenses.</u></b>		<b>2,00,000</b>
1. Deprecation.	10,000	
2. Labour Charges	25,000	
3. Cost of Seeds.	10,000	65,000
4. Cost of Fertilizers	5,000	
5. Electricity Charges	15,000	
<b>Net Agricultural Income</b>		<b>1,35,000</b>

**Illustration – 04**

Mr.Tony had estates in Rubber, tea and coffee. He derives income from them. He has also a nursery wherein he grows plants and sells them. For the Previous Year ending 31.03.2024, he furnishes the following particulars of his sources of income from estates and sale of plants :

Manufacture of Rubber Rs.5,00,000

Manufacture of Coffee grown and cured Rs. 3,50,000

Manufacture of Tea Rs.7,00,000

Sale of Plants from Nursery Rs.1,00,000

You are requested to compute the taxable income for the Assessment Year 2024-25

**Solution****Mr.Tony****Computation of Taxable Income – A.Y. – 2024 - 25.**

Particulars	Amount
<b>1. Manufacture of rubber (35% of income is treated as business income)</b>	<b>1,75,000</b>
<b>2. Manufacture of coffee grown and cured (25% of income is treated as business income)</b>	<b>87,500</b>
<b>3. Manufacture of Tea ( 40% of income is treated as business income)</b>	<b>2,80,000</b>
<b>4. Sale of Plants from nursery is exempt (being agricultural income)</b>	
However, agricultural income will be added in total income for computation of tax	-
<b>Taxable Income</b>	<b>5,42,500</b>

## **1.10. DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME**

### **DEDUCTIONS**

From Gross Total Income (being aggregate of income under five heads), assessee can claim several deductions as specified in chapter VIA on fulfillment of prescribed conditions as laid down in the respective section. After allowing deduction, total income of the assessee is arrived and tax is charged on it at the prescribed rates.

#### **(1). Deduction in respect of donations to certain funds, charitable institutions , etc (Sec.80G)**

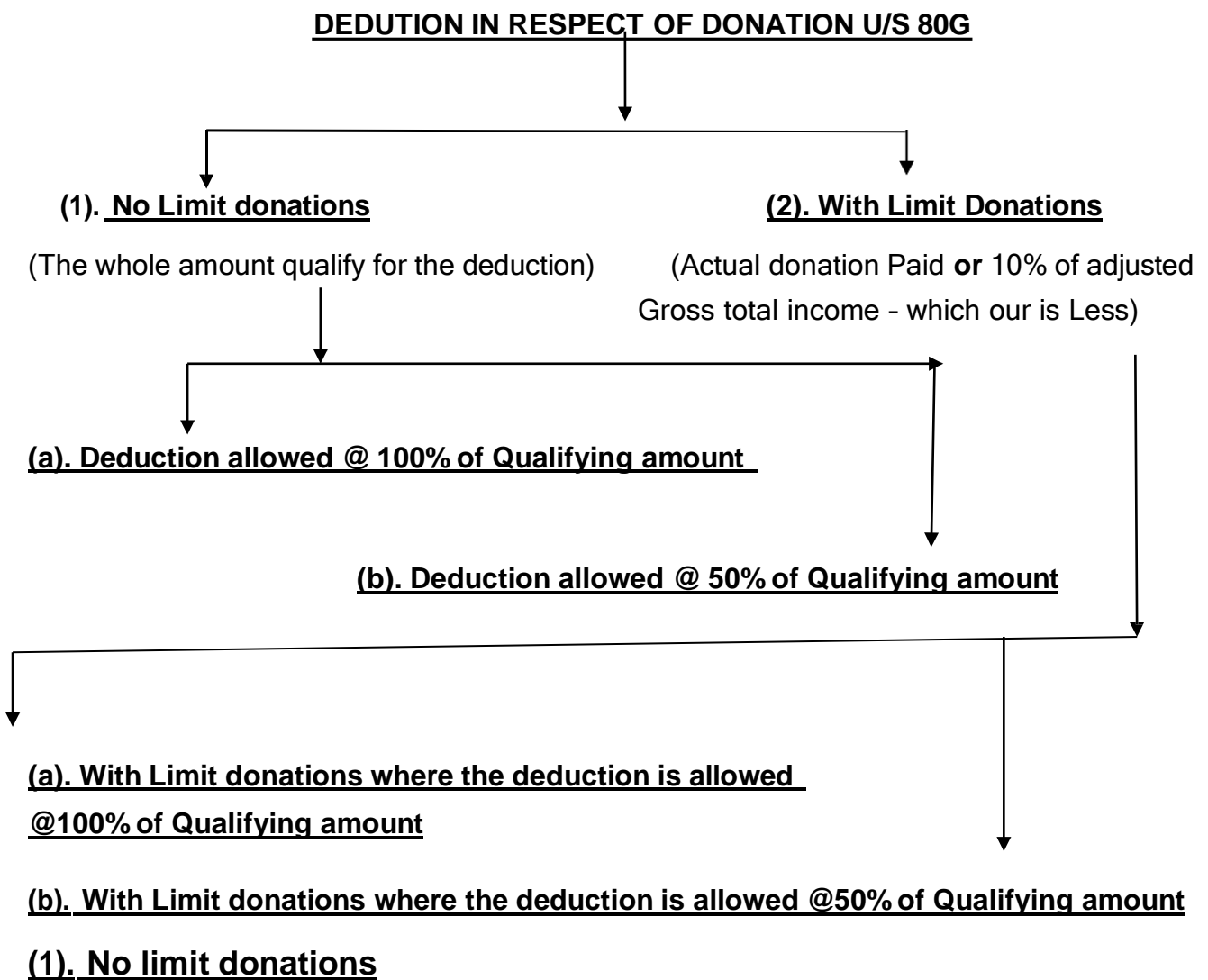
This deduction is allowed to all assessees (Individual, HUF, Company, Firm and Association of Person) for donation made to the specified funds or institutions. It is allowed in respect of amount given to charitable donations and it is allowed to all types of assessees.

No deduction shall be allowed u/s 80G in respect of donation in cash of amount exceeding Rs.2000/-.

Assessee for tax claiming deduction u/s 80G, it is essential on the part of submitted to (Form no.10BD) to produce proof of payment.

**Applicable to or Deduction allowed to : all assessees (Individual, HUF, Company, Firm and Association of Person)**

The donation can be classified as under:



The whole of amount of donations is qualified for the deduction. Such donations can further classified as:

**(a). Deduction allowed @ 100% of Qualifying amount**

**(b). Deduction allowed @ 50% of Qualifying amount**

**(a). Deduction allowed @ 100% of Qualifying amount**

**No limit donation where Deduction is allowed @ 100% are as under:**

- The National Defence Fund set-up by the Central Government.
- The Prime Ministers National Relief Fund.
- The Prime Ministers Armenia Earthquake Relief Fund ; or
- The Prime Ministers citizen Assistance and Relief in Emergency Situations Fund; or

- The Africa (Public Contributions - India) fund; or
- The National Foundation for Communal Harmony ; or
- A University or Educational Institution of national eminence as may be approved the prescribed authority in this behalf; or
- The Maharashtra Chief Ministers Relief Fund or Chief Ministers Earthquake Relief Fund ; or
- Zila Saksharta Samitis constituted under the Chairmanship or Collector of District for the purpose of improvement of primary education and for literary and pos literary efforts in villages and towns with a population not exceeding one lakh according to the latest census ; or
- The National Blood Transfusion Council or any State Blood Transfusion Council; or
- Any fund set up by State Government to provide medical relief to the poor; or
- The Central Welfare Fund of the Army and Air Force and the Indian Naval Benevolent Fund established for the welfare of the past and present members of such forces or their dependents; or
- The Andhra Pradesh Chief Ministers Cyclone Relief Fund; or
- The National Illness Assistance Fund; or
- The Chief Ministers Relief Fund or the Lt.Governors Relief Fund; or
- National Cultural Fund set - up by Central Government; or
- The fund for Technology Development and Application set-up by the Central Government; or
- Any fund for set-up by the State Government of Gujarat exclusively for providing relief to the victims of the earthquake in Gujarat; or
- The National Trust for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.
- National Children's Fund.

- Swachh Bharat Kosh set up by the Central Government.
- Sum Donated by a resident assessee to the Clean Ganga Fund set up by the Central Government However, under (22) or (23) the payment should not be made from Corporate Social Responsibility Fund.
- National Fund for Control of Drug Abuse.

**(b). Deduction allowed @ 50% of Qualifying amount**

- The Prime Ministers Drought Relief Fund.
- The Jawaharlal Nehru Memorial Fund.
- The Indira Gandhi Memorial Trust.
- The Rajiv Gandhi Foundation.

**(2). With Limit Donations**

The qualifying amount for deduction shall not exceed 10% (Maximum 10%) of Adjusted Gross Total Income after deducting the following :

- (a). Short-term capital gains.
- (b). Long – term capital gains.
- (c). Deducitons under sections 80C To 80U except u/s.80G.

<b>With Limit Donations</b>	
<b>1. Actual Donation</b>	<b>XXXXX</b>
<b>Or</b>	
<b>2. 10 % Of Adjusted Gross Total Income</b>	<b>XXXXX</b>

}

**Whichever is Less Amount  
is qualified Donation**

**(a). With Limit donations where the deduction is allowed @100% of Qualifying amount**

- Donations to Local authority, institutions or association for promoting family planning.
- Donations to Indian Olympic Association or any Institutions for development of infrastructure for sports and games or for sponsorship of sports and games in India.

**(b). With Limit donations where the deduction is allowed @50% of Qualifying amount**

- Donations to Local authority for any charitable purpose other than family planning.
- Donations for the purpose of planning development/ approved public charitable institution.

- Donations to promote the interest of the member of a minority community.
- Donations to educational institutions / Municipal committee.
- Donations to the place of worship / Temple.

### **Illustration – 05**

Mr.Rajesh Gross Total Income for the previous year is Rs.6,00,000. He made the following donations. Compute his total income for the previous year 2023 -24.

1. National Defence Fund Rs.20,000 and African Fund Rs.6,000.
2. National Defence Fund Rs.15,000. 3. National Childrens Fund Rs.10,000.
4. Prime Ministers Drought Relief Fund Rs.25,000.
5. National Cultural Fund Rs.12,000. 6. Rajiv Gandhi Foundation Rs.14,000.
7. Prime Ministers Earthquake Relief Fund Rs.10,000.
8. Donations to a Poor farmer Rs.8,000.
9. Donations for Promoting a minority community Rs.60,000.

### **Solution:**

#### **Mr.Rajesh Computation of Taxable Income for A.Y : 2023 -2024.**

Particulars	Amount
<b>Gross Total Income</b>	<b>6,00,000</b>
<b><u>Less: Deductions u/s. 80 G.</u></b>	
<b><u>I. No Limit Donations – Deductions Allowed 100 %</u></b>	
1. National Defence Fund ( No Limit - 100%)	20,000
2. National Sports Fund ( No Limit - 100%)	15,000
3. National Childrens Fund ( No Limit - 100%)	10,000
4. African Fund ( No Limit - 100%)	6,000
5. National Cultural Fund. ( No Limit - 100%)	12,000
<b><u>II. No Limit Donations – Deductions Allowed 50%</u></b>	
5. PMDR Fund ( No Limit - 50% Rs.25,000)	12,500
<b>Taxable Income</b>	<b>5.24,500</b>

**Note :** Prime Ministers Earthquake Relief Fund Rs.10,000, Donations to a Poor farmer Rs.8,000 and . Donations for Promoting a minority community Rs.60,000 is also not ligible for deduction u/s.80G.

**Illustration – 06**

Mr.Raman Gross Total Income for the previous year is Rs.5,00,000. He made the following donations by cheque. Compute his total income for the previous year 2023 -24.

1. Maharastra CM Earthquake Relief Fund Rs.10,000.
2. National Foundations for Communal Harmony Rs.15,000.
3. Rs.10,000 to an Educational Institutions of National Eminence.
4. Rs.5,000 to National Children Fund. 5. To Municipal corporation for promotion of family planning Rs.40,000. 6. To Minority community corporation (Notified) Rs.25,000.
7. Prime Ministers Drought Relief Fund Rs.50, 000.

**Solution:****Mr.Raman****Computation of Taxable Income for A.Y : 2023 -2024.**

Particulars	Amount
<b>Gross Total Income</b>	<b>5,00,000</b>
<b><u>Less: Deductions u/s. 80 G.</u></b>	
<b><u>I. No Limit Donations – Deductions Allowed 100%</u></b>	
1. Maharastra CM Earthquake Relief Fund	10, 000.
2. National Foundations for Communal Harmony.	15, 000.
3. Educational Institutions of National Eminence.	10, 000
4. National Children Fund .	5, 000
<b><u>II. No Limit Donations – Deductions Allowed 50%</u></b>	
1. Prime Ministers Drought Relief Fund (No Limit - 50% Rs.50,000)	25,000
	<b>1,10,000</b>
<b><u>III. with Limit Donations – Deductions Allowed 100%</u></b>	
(a). To municipal corporation for family planning	40,000
(b). Minority community (Notified)	25,000
Or	65,000
Qualifying amount of with limit donation (10% Gross Total Income)	50,000
= 5,00,000 x 10% = Rs.50,000/	50,000
<b>WHL amount Rs.50,000 is eligible deduction</b>	
Qualifying Deduction amount Rs,50,000/	
Less : Deduction for 100% Family Planning	<b>40,000</b>
Deduction for 50% for municipal ( 50000 - 40000 = 10000)	
Deduction 50% on Rs 10,000	<b>5,000</b>
<b>Taxable Income</b>	<b>3,90,000</b>

**(2). Deduction in respect of contributions given by an Indian Company to Political Parties : ( Section 80GGB )**

**Applicable to : An Indian company**

**Condition :** In computing the total income of an Indian company, any sum contributed by it in the previous year to any political party or an electoral trust shall be allowed as a deduction.

However, no deduction shall be allowed in respect of any sum contributed by way of cash

**Quantum of Deduction:** 100% of Such Contribution made in the previous year.

**(3). Deduction in respect of contributions given by any person (other than Indian Company) to political parties (Section 80GGC )**

**Applicable to :** All Assessee except local authority and every Artificial Juridical Person Wholly or Partly funded by the government.

**Conditions :** In computing the total income of an assessee (except local authority and artificial juridical person wholly or partly funded by the Government) any amount contributed by him in the previous year to any political or an electoral trust shall be allowed as a deduction

However, no deduction shall be allowed in respect of any sum contributed by way of cash.

**Quantum of Deduction:** 100% of Such Contribution made in the Previous year.

**(4). Deduction in respect of Profits and Gains by an Undertaking or Enterprise Engaged in Developed of Special Economic Zone (SEZ) ( Section 80 IAB )**

Section 80 IAB of Income Tax Act, 1961 provides a tax deduction for Profits and Gains Derived from the business of developing a SEZ. This Provides aims to encourage the Development of SEZs, which are Designated areas with Economic regulations that differ from the rest of the country to attract Foreign Investment and Promote export Oriented Growth.

**Applicable to : All Assessee.**

**Conditions to be satisfied:**

- it must be engaged in the business of developing a Special Economic Zone (SEZ).
- Such SEZ shall be notified on or after 01.04.2005 under the Special Zones Act,2005.
- Such development has begun before 01.04.2017,

**Quantum of Deduction and period for the deduction : 100% for the profits and gains derived from such business for ten consecutive assessment years.**

**No deduction shall be allowed if a developer begins the development of SEZ on or after 01.04.2017.**

However, at the option of the assessee, the deduction can be claimed for any *ten consecutive assessment years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government.*

*Where the Developer has claimed deduction u/s 80IA, he shall be entitled to deduction only for the unexpired period of ten consecutive assessment years.*

*Where the developer develops Special Economic Zone after 31.3.2005 and transfers the operation and maintenance of it to another Developer, the deduction shall be allowed to the transferee Developer for the remaining period of ten consecutive assessment years.*

**Audit of accounts :** The accounts of the assessee must be audited by a C.A and the assessee must furnish along with the return of the income the report of such audit in the prescribed form electronically.

## **(5).Deduction in respect of Profits and Gains from specified business**

### **(Section 80IAC)**

**A deduction shall be allowed from gross total income to an assessee, being an eligible start-up in respect of profits and gains derived from the eligible business.**

**“Eligible business”** means a business which is *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.*

**“Eligible Start-up”** means a company or a limited liability partnership engaged in eligible business which fulfills the following conditions:

- a) It is incorporated on or after the 1<sup>st</sup> April, 2016 but before the 1<sup>st</sup> April 2025.
- b) The total turnover of its business does not exceed ₹100 Crore in the previous year relevant to the assessment year for which deduction u/s 80IAC (1) is claimed; and
- c) It holds a certificate of eligible business from the Inter- Ministerial Board of Certifications as notified in the Official Gazette by the Central Government.

**Quantum of deductions and period if deduction:** 100% of the profits and gains derived from such business for ten consecutive assessment years.

However, at the option of the assessee, the deduction can be claimed for any three consecutive assessment year out of ten years beginning from the year in which the eligible start-up is incorporated.

**Conditions for deductions:** The deduction shall be allowed if the following conditions are

satisfied:

- a) It is not formed by the splitting up, or the reconstruction, of a business already in existence;
- b) It is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

**(6). Deduction in respect of Profits and Gains other than infrastructure development undertakings: (Section 80-IB)**

**TAX HOLIDAYS U\S 80IB – ARE AS UNDER**

	Nature of activities	Ownership	Location	Date of Commencement	Tax exemption	
					Period	Quantum
1.	Commercial production of mineral oil	Any Assessee	Any part of India	After 31.3.1997 but before 1.4.2017	7 Initial A.Yearss.	100% of profits
2.	Commercial production of natural gas under NELP VIII etc.	Any assessee	-	After 31.3.2009 but before 1.4.2017	7 Initial A.Yearss.	100% of profits
3.	Integrated business of handling, storage and transportation of food grains	Any Assessee	Any where in India	After 31.3.2001	(i).5 initials A.Ys (ii).Next 5 A.Ys	(i). 100% of profits (ii). 30% for companies 25% for others.
4.	Processing , preservation and packaging of fruits or vegetables	Any Assessee	Any where in India	w.e.f Assessment year 2005-06	(i).5 initials A.Ys (ii).Next 5 A.Ys	(i). 100% of profits (ii). 30% for companies 25% for others.
5.	Processing , preservation and packaging of meat, meat products or poultry or marine or dairy products	Any Assessee	Any where in India	After 31.3.2009	(i).5 initials A.Ys (ii).Next 5 A.Ys	(i). 100% of profits (ii). 30% for companies 25% for others.

## **(7). Deduction in respect of Profits and Gains from Housing Projects:**

### **(Section 80- IBA)**

Quantum of deduction: 100% of the profits and gains derived from such business.

#### **Conditions for deduction:**

- (1) The project is approved by the competent authority (authority empowered by the Central Government) **after 1.6.2016 but before 1.4.2022.**
- (2) The project is completed within a **period of five years from the date of approval.**  
**Date of approval:** Where the approval of the project is obtained more than once, the date of approval shall be the date on which the building plan of such housing project was first approved.  
**Date of completion:** The date on which a certificate of completion of the project as a whole is obtained in writing from the competent authority.
- (3) The carpet area of the shops and other commercial establishments in the housing project does not exceed **3%** of the aggregate carpet area.
- (4) **Size of the plot:** a) In cities of Chennai, Delhi, Kolkata or Mumbai – Minimum one thousand square meter. (b). In any other place - Minimum two thousand square meter.
- (5) **Size of the residential unit :** (a) In the case of (4)(a) maximum of thirty square metre. (b) In the case of 4(b) maximum of sixty square metre.
- (6) **Allotment of a residential unit to an individual:** No other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.
- (7) **Utilization of the plot :** (a) In case (4)(a) minimum 90% of the floor area ratio permissible. (b) In case (4)(b) minimum 80% of the Floor area ratio permissible.  
“Floor area ratio” means the quotient obtained by dividing the total covered area plinth area on all the floors by the area of the plot of land.
- (8) **Maintenance of accounts:** The assessee shall maintain separate books of account in respect of the housing project.

Where the project is approved on or after 1.9.2019 out of conditions (1) to (8) the condition (3) and (5) shall not apply. In this case new conditions are as under:

**(1) The carpet area of a residential unit does not exceed:**

- a) Sixty square meters in metropolitan cities;
- b) Ninety square meters in any other place.

**(2) The stamp duty value of a residential unit does not exceed ₹45 lakh.**

**Profits liable to tax:** If the housing project is not completed within the period mentioned in (2), the total amount of deduction allowed in one or more previous years, shall be chargeable under the head “ Profits and Gains of Business or Profession” of the Previous year in which the period for completion expires.

**(8). Deduction in respect of Profits and Gains in respect of certain undertaking in North- Eastern States: (Section: 80IE)**

*The deduction shall be allowed to an undertaking which has, during the period beginning on the 1<sup>st</sup> April, 2007 and ending before the 1<sup>st</sup> April 2017, begun or begins, in any of the North- Eastern States (State of Arunachal Pradesh , Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura):*

- i. To manufacture or produce any eligible article or thing;
- ii. To undertake substantial expansion to manufacture or produce any eligible article or thing;
- iii. To carry on any eligible business.

**Quantum of deductions and period if deduction: 100% of the profits and gains derived from such business for ten consecutive assessment years commencing with the initial assessment years.**

“**Substantial expansion**” means an increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which substantial expansion in undertaken.

“**Eligible business**” means the business of:

- a) Hotel (not below two star category);
- b) Adventure and leisure sports including ropeways;
- c) Providing medical health services in the nature of nursing home with a minimum capacity of twenty-five beds;
- d) Running an old-age home;
- e) Operating vocational training institute for hotel management, catering and food craft entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;
- f) Cuning information technology related training centre;
- g) Manufacturing of information technology hardware; and
- h) Bio- technology.

**(9). Deduction in respect of profit from the business of collecting and processing of bio-degradable waste: (Section : 80JJA)**

*Where the gross total income of an assessee includes any profits derived from the business of collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or producing bio-gas or making pellets or briquettes for fuel or organic manure, he is entitled to deduction in computing total income.*

**Quantum of deduction: 100% of such income for a period of five assessment years beginning with the assessment year relevant to the previous year in which the business commences.**

**(9). Deduction in respect of Employment of New employees: (Section 80JJA)**

**Who is eligible for deduction:** Who derives profits and gains from business and is required to get his accounts audited u/s 44AB.

**Quantum and period of deduction: 30% of additional employee cost incurred in the previous year for three assessment years relevant to the previous year in which such employment is provided.**

**Conditions for deduction:**

- 1) The business is not formed by splitting up or the reconstruction of an existing business.
- 2) The business is not acquired by way of the transfer from any other person or as a result of any business reorganization.
- 3) The assessee furnishes along with the return of income the audit report electronically giving the prescribed particulars.
- 4) Emoluments should be paid by an account payee or cheque or account payee draft or by use of electronic clearing system through a bank account or through such other prescribed electronic modes.

**Additional employee cost:**

**New business:** First year of new business emoluments paid or payable to employees employed during that previous year.

**Existing business:** If there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year, but does not include; employed by the employer as on the last day of the preceding year – Nil

**Additional employee:** It means an employee who has been employed during the previous

year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year but does not include;

- a) An employee whose total emoluments are more than ₹25,000 per month; or
- b) An employee for whom the entire contribution is paid by the government under the Employee's Pension Scheme notified under Employee's Provident Fund Act, 1952; or
- c) An employee employed for a period of less than 240 days during the previous year ;  
**Exception:** If an assessee is engaged in the business of manufacturing of apparel (or footwear or leather products – the period of employment shall be 150 days instead two hundred forty days.
- d) An employee who does not participate in the Recognized Provident Fund.

#### **(10). Deduction in respect of certain incomes of Offshore Banking Units or International Financial Services Centre: ( Section 80LA)**

Where a scheduled bank or any bank incorporated by or under the laws of a country outside India having an offshore banking unit in a Special Economic Zone derives income;

- a. *From an Offshore banking unit in a Special Economic Zone; or*
- b. *From the business referred to in Sec,6(1) of the Banking Regulation Act, 1949, with an undertaking located in a Special Economic Zone or any other undertaking which develops, develops and operates or develops, operate and maintains a Special Economic Zone; or*
- c. *From any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone*
- d. *Arising from the transfer of an asset, being an aircraft, which was leased by a unit referred to in clause (c) to a person, subjects to the condition that the unit has commenced operation on or before the 31<sup>st</sup> march, 2025.*

**It shall be allowed a deduction from its Gross total income.**

Income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the International Financial Services Centre to any person shall also be eligible for deduction under section 80LA(1A) of the said section, subject to the condition that the unit has commenced operation on or before 31.3.2025.

**Quantum of deduction: a).100% of such income for a period of five consecutive**

assessment years beginning with the assessment year relevant to the previous year in which permission u/s 23(1)(a) of the Banking Regulation Act, 1949 or permission or registration under the Securities and Exchange Board of India Act, 1992 or any other relevant law was obtained.

b). Thereafter, 50% of such income for five consecutive assessment years. Deduction under this clause shall be 100% of such income.

**Condition for the deduction:** The assessee must furnish along with the return of income electronically;

- i. A report of the Chartered Accountant in the prescribed form certifying that the deduction has been correctly claimed in accordance with the provisions of this section
- ii. A copy of the permission obtained u/s 23(1)(a) of the Banking Regulation Act, 1949 or copy of permission or registration obtained under the International Financial Services (Centre Authority) Act, 2019.

### **(11). Deduction in respect of certain Inter - Corporate Dividend:**

#### **(Section 80M)**

**Eligible companies:** Where the Gross Total Income of a domestic company in any previous year includes any income by way of dividends from any other domestic company or a foreign company or a business trust.

**Deduction:** Amount of dividend received from the other domestic company or a foreign company or a business trust as does not exceed the amount of dividend distributed by it on or before the due date, shall be allowed as deduction in computing the total income of the domestic company.

**No Double Deduction:** Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed as above u/s 80M(1) in any previous year, no deduction shall be allowed in respect of such amount in any other.

**Notes:** 1. Due date means the date one month prior to the date for furnishing the return of income u/s 1339(1).

2. If a company opts to be taxed under Section 115BAA or its eligible for benefit of section 115BAB the deduction under section 80JJA and Section 80M shall still be allowed although it does not allow any other deduction under chapter VIA.

## **(12). Deduction in respect of Income of Co-Operative societies:**

### **(Section:80P)**

The following deductions are to be made from the Income of a Co-operative society under section 80P:

**a). In the case of a co-operative society engaged in the following business the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted from the gross total income.**

- i. Carrying the business of banking or providing credit facilities to its members; or*
- ii. A Cottage industry; or*
- iii. The marketing of agricultural produce grown by its*
- iv. The Purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture, for the purpose of supplying them to its members; or*
- v. The processing, without the aid of power, of the agricultural produce of its members; or*
- vi. The collective disposal of the labour of its members or*
- vii. Fishing or allied activities ,i.e,catching, culling, processing, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.*

**b). In the case of primary co-operative society engaged in supplying milk, oil-seeds, fruits , vegetables raised by its members to:**

- i. A federal co-operative society engaged in supplying above-mentioned products;or*
- ii. The Government or local authority; or*
- iii. A Government company or a Statutory Corporation engaged in supplying the above – mentioned products to the public;*

The whole of the amount of profits and gains of such business shall be deducted from the gross total income.

**(c). In the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently or in addition to all or any of the activities so specified ) profits and gains attribute to such activities to the extent of ₹50,000 shall be deducted from the gross total income. However, in the case consumer's co-operative society, this deduction shall be ₹1,00,000 in respect of the profits and gains from the other activities.**

**(d) The whole of the income by way of interest or dividends derived by a co-operative**

society from its investments with any other co-operative society shall be deducted from the gross total income.

(e) The whole of the income derived by the society from the letting of godowns or warehouse for storage, processing or facilitating the marketing of commodities shall be deducted from the gross total income.

(f) In the case of a co-operative society, which is not a housing society or an urban consumers' society or a society carrying on the transport business or a society engaged in the performance of any manufacturing operation with the aid of power, where the gross total income does not exceed ₹20,000 the amount of any income by way of interest on securities or any income from the house property shall be deducted from the gross total income.

A co-operative bank shall not be entitled to deduction under this section. However, a primary agricultural credit society or a primary co-operative agricultural credit society or a primary co-operative agricultural and rural development bank shall be entitled to deduction under this section.

### **(13). Deduction in respect of certain Income of Producer companies:(Section 80PA)**

**Who is eligible for deduction:** A producer company having a total turnover of less than ₹100 crore (including the turnover of eligible business) during the previous year.

**Period of Deduction:** From the Assessment year 2019-20 to the Assessment Year 2024-25.

**Quantum of deduction:** 100% profit from eligible business. If an assessee is eligible for deduction under Section 80C TO 80U, First deduction from income of eligible business shall be allowed under Section 80C to 80U (except sec 80PA) and from the balance of income under Section 80PA.

**Explanation: "Eligible Business" means;**

- a) The marketing of agricultural produce grown by the members; or
- b) The purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members ; or
- c) The processing of the agricultural produce of the members

### **1.11 CHARGE OF INCOME TAX**

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

- (i). Tax shall be charged at the rates prescribed for the year by the Annual Finance

Actor the Income-tax Act, 1961 or both.

(ii). The charge is on every person specified under section 2(31);

(iii). Tax is chargeable on the total income earned during the previous year and not the assessment year. (There are certain exceptions provided by sections 172, 174, 174A, 175 and 176);

(iv). Tax shall be levied in accordance with and subject to the various provisions contained in the Act. This section is the back bone of the law of income-tax in so far as it serves as the most operative provision of the Act. The tax liability of a person springs from this section.

### **Rates of Tax**

Income-tax is to be charged at the rates fixed for the year by the Annual Finance Act.

Section 2 of the Finance Act, 2021 read with Part I of the First Schedule to the Finance Act, 2021, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2023-2024.

Part II lays down the rate at which tax is to be deducted at source during the financial year 2023-24 from income subject to such deduction under the Income-tax Act, 1961;

Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2023-24.

Part III of the First Schedule to the Finance Act, 2021 will become Part I of the First Schedule to the Finance Act, 2022 and so on.

**The slab rates or Rates of Income Tax for the A.Y. 2023-24 (Regular Tax Regime – RTR) are as follows:**

**(1). Individual/ Hindu Undivided Family (HUF)/ Association of Persons (AOP)/ Body of Individuals (BOI)/ Artificial Juridical Person**

**(1). For Individuals less than 60 Years /HUF/AOP/BOI**

Net Income	Income Tax Rates	Surcharge	Higher Education Chess (HEC)
Up to Rs.2,50,0000.	Nil	Nil	Nil
Rs.2, 50,000 To Rs.5,00,000.	5% of (Total Income - Rs.2,50,000)	Nil	4% of Income Tax
Rs.5,00,000 To Rs.10,00,000	Rs.12,500 + (20% of Income - Rs.5,00,000)	Nil	4% of Income Tax
Rs.10,00,000 To Rs.50,00,000	Rs.1,12,500 + (30% of Income - Rs. 10,00,000)	Nil	4% of Income Tax
Rs.50,00,000 To Rs.1,00,00,000	Rs.13,12,500 + (30% of Income - Rs.50,00,000)	10% of Income Tax	4% of Income Tax and 10%Surcharge
Rs.1,00,00,000 To Rs.2,00,00,000	Rs.28,12,500 + (30% of Income - Rs.1,00,00,000)	15% of Income Tax	4% of Income Tax and 10%Surcharge
Rs.2,00,00,000 To Rs.5,00,00,000	Rs.58,12,500 + (30% of Income - Rs.2,00,00,000)	25% of Income Tax	4% of Income Tax and 10%Surcharge
Above Rs.5,00,00,000.	Rs.1,48,12,500 + (30% of Income - Rs.5,00,00,000)	37% of Income Tax	4% of Income Tax and 10%Surcharge

**(II). For Individuals between 60 and 80 Years (Senior Citizen) (RTR)**

Net Income	Income Tax Rates	Surcharge	Higher Education Cess (HEC)
Up to Rs.3,00,0000.	Nil	Nil	Nil
Rs.3,00,000 To Rs.5,00,000.	5% of (Total Income - Rs.3,00,000)	Nil	4% of Income Tax
Rs.5,00,000 To Rs.10,00,000	Rs.10,000 + (20% of Income - Rs.5,00,000)	Nil	4% of Income Tax
Rs.10,00,000 To Rs.50,00,000	Rs.1,10,000 + (30% of Income - Rs.10,00,000)	Nil	4% of Income Tax
Rs.50,00,000 To Rs.1,00,00,000	Rs.13,10,000 + (30% of Income - Rs.50,00,000)	10% of Income Tax	4% of Income Tax and 10% Surcharge
Rs.1,00,00,000 To Rs.2,00,00,000	Rs.28,10,000 + (30% of Income - Rs.1,00,00,000)	15% of Income Tax	4% of Income Tax and 10% Surcharge
Rs.2,00,00,000 To Rs.5,00,00,000	Rs.58,10,000 + (30% of Income - Rs.2,00,00,000)	25% of Income Tax	4% of Income Tax and 10% Surcharge
Above Rs.5,00,00,000.	Rs.1,48,10,000 + (30% of Income - Rs.5,00,00,000)	37% of Income Tax	4% of Income Tax and 10% Surcharge

**(II). For Individuals more than 80 Years (Super Senior Citizen) (RTR)**

Net Income	Income Tax Rates	Surcharge	Higher Education Cess (HEC)
Up to Rs.5,00,0000.	Nil	Nil	Nil
Rs.5,00,000 To Rs.10,00,000	20% of (Total Income - Rs.5,00,000)	Nil	4% of Income Tax
Rs.10,00,000 To Rs.50,00,000	Rs.1,00,000 + (30% of Income - Rs.10,00,000)	Nil	4% of Income Tax
Rs.50,00,000 To Rs.1,00,00,000	Rs.13,00,000 + (30% of Income - Rs.50,00,000)	Nil	4% of Income Tax
Rs.1,00,00,000 To Rs.2,00,00,000	Rs.28,00,000 + (30% of Income - Rs.1,00,00,000)	10% of Income Tax	4% of Income Tax
Rs.2,00,00,000 To Rs.5,00,00,000	Rs.58,00,000 + (30% of Income - Rs.2,00,00,000)	15% of Income Tax	4% of Income Tax
Above Rs.5,00,00,000.	Rs.1,48,00,000 + (30% of Income - Rs.5,00,00,000)	25% of Income Tax	4% of Income Tax and 10% Surcharge

**Health & Education Cess**

Applicable on: All assessee

**Rate of cess: 4% of Tax liability after Surcharge**

## **1.12. Assessment of Firms or Partnership Firms**

Partnership is a “relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.” These persons are called partners and collectively they are called ‘firm’. The Income Tax Act, the term ‘partner’ also includes (i) a minor admitted to the benefits of partnership, and (ii) a partner of a limited liability partnership.

### **Procedure regarding firm assessed U/S 184**

The following are the steps to be adopted to compute the tax liability for firms assessed under section 184.

- (i). Compute the book profit.
- (ii). Computation of business income.
- (iii). Computation of Total Income.
- (iv). Computation of Tax Liability.

#### **(i). Compute the Book Profit.**

Book profit means the profit computed in accordance with the provisions of sections 28 to 44D of the Income Tax Act. Firms Profit and Loss account consists of some unrecognized debit and credit items. The following are steps to be adopted to compute book profit (***Non business incomes and their concerned non-business expenses are not included in computation of book profit***)

**Step 1 – Net Profit as per Profit and Loss account should be taken as starting point.**

**Step 2 – Add all payments or remunerations like salary, commission etc., Given to all partners of the firm if already debited to Profit and Loss account.**

**Step 3 – Add interest on Capital given to all partners in excess of 12%.**

**Step 4 – Deduct all other incomes credited to Profit and Loss account but it is to be taxed under other heads of income.**

### **Proforma of Computation of Book Profit of the Firm**

Particulars	Amount	Amount
Net Profit as per Profit and Loss (P & L) Account		xxxx
<b>ADD :</b>		
(i). Inadmissible items (Not covered u/s 28 to 44DB)	Xxx	
(ii). Remuneration to Partners, if debited to P & L Account	Xxx	
(iii). Disallowance of Interest in excess of 12%	Xxx	xxxx
<b>LESS :</b>		
(iv). Admissible items which are disallowed in (i) above	xxx	
(v). Income from all other sources credited to P & L Account	xxx	xxxx
<b>Book Profit</b>		<b>xxxx</b>

### **(ii). Computation of Business income.**

Section 40 B Provides the following limitation for the payment of remuneration to working partners. When this admissible remuneration subtracted from the Book profit, one can compute the firm's Business Income. The following are the admissible remuneration as per section 40 b

1	For the First 3,00,000 for the Book Profit or in case of Loss	<b>Rs.1,50,000</b> <b>or</b> <b>90% of Book Profit - Whichever is Higher</b>
2	Balance of Book Profit	<b>60% of Book Profit</b>

### **(iii). Computation of Business Income.**

When a firm aggregates all its income of various heads relating to the previous year, its Gross Total Income can be computed. No deduction is allowed u/s 54, 54b, 54f for income under the head capital gains. Set off and carry forward is also allowed like individual assessee. Besides following deductions are allowed from Gross Total Income.

01	Sec.80 G - Donations.
02	Sec.80 GGA - Contribution to certain funds.
03	Sec.80 GGC - Donation to political parties by any person.
04	Sec.80 IA - Infrastructure Projects.
05	Sec.80 IAB - Setting up Special Economic Zones.
06	Sec.80 IB - New Industrial Undertaking.
07	Sec.80 IC - Setting up industry in backward states.
08	Sec.80 JJA - Use of Bio-waste.

**(iv). Computation of Tax Liability.**

**The following are the tax rate applicable for the A.Y. 2023 -24.**

01	Short Term Capital Gain u/s. 111A	15%
02	Long Term Capital Gain us. 112.	20%
03	Winnings from lottery, races, etc.	30%
04	Income (not being income which is subject to special tax rate) or Other Income	30%
05	<b>Add</b> : Surcharge @ 12% of the above (if total income exceeds Rs.1 Crores)	
06	Find the total of tax plus surcharge (if any)	
07	<b>Add</b> : Health and education cess @4% of tax plus surcharge.	

**Proforma of Computation of Total Income of the Firm**

Particulars		Amount
<b>Book Profit of the Firm</b>		<b>xxxx</b>
<b>Less :</b>		
<b><u>(i). Remuneration Paid to Working Partners:</u></b>		
(a). Actual Remuneration to Working Partners	xxx	} <b>WEL</b>
OR		
(b). 90% of Book Profit or Rs.1,50,000 – Whichever is Higher	xxxx	<b>XXX</b>
<b>Business Income</b>		<b>xxxx</b>
<b><u>ADD</u> : Income From Capital Gain (Shot Term &amp; Long Term</b>		<b>xxx</b>
<b>Gross Total Income</b>		<b>xxxxx</b>
<b><u>LESS : DEDUCTIONS</u></b>		
1. Sec.80 G - Donations.		
2. Sec.80 GGA - Contribution to certain funds.		
3. Sec.80 GGC - Donation to political parties by any person.		
4. Sec.80 IA - Infrastructure Projects.		
5. Sec.80 IAB - Setting up Special Economic Zones.		
6. Sec.80 IB - New Industrial Undertaking.		
7. Sec.80 IC - Setting up industry in backward states.		<b>XXXX</b>
8. Sec.80 JJA - Use of Bio-waste.		
<b>Total Income</b>		<b>xxxx</b>

### **Proforma of Computation of Tax Liability of the Firm**

<b>S.No</b>	<b>Particulars</b>	<b>Amount</b>
01	Tax on Business Income of the Firm @ 30 %	xxx
02	Short Term Capital Gain u/s. 111A @ 15%	xxx
03	Long Term Capital Gain us. 112.@ 20%	xxx
04	Winnings from lottery, races, etc@ 30%	xxx
<b>Add :</b> (1). Surcharge @ 12% of the above (if total income exceeds Rs.1 Crores)		xxx
<b>Add :</b> (2). Health and education cess @4% of tax plus surcharge.		Xxx
<b>Tax Liability or Tax Payable</b>		xxxxx

## 1.13 Assessment of Association of Persons and Body of Individuals

When two or more persons associate themselves for managing a property for the purpose of producing income or when there is a combination of persons formed for the promotion of a joint enterprise, they are said to have formed an Association of persons provided that it is not a Hindu Undivided Family, Firm, Company or a Local Authority. These association must be one for the purpose of producing income.

Particulars	Amount	Amount
<b>Net Profit of the Association or Body of Individuals of Profit and Loss (P &amp; L) Account</b>		<b>xxxx</b>
<b><u>ADD : Disallowed Expenses</u></b>		
(i). Salary to Members , if debited to P & L Account	Xxx	
(ii). Commission to Members , if debited to P & L Account	Xxx	
(iii). Interest on Capital to Members, if debited to P & L Account	Xxx	xxxx
(iv). Any other non business expenses of the association		
<b><u>LESS :</u></b>		
(iv). Interest on Securities, if credited to P & L Account	xxx	
(v). Income from all other sources, if credited to P & L Account	xxx	xxxx
<b>Business Income</b>		<b>xxxxx</b>
<b><u>ADD : Income From other Sources / Interest on Securities etc</u></b>		<b>xxx</b>
<b>Gross Total Income of the AOP</b>		<b>xxxxxx</b>
<b>COMPUTATION OF TAX LIABILITY OF AOP</b>		
Tax on Gross Total Income of the Association of Persons @ 30 %		*****
<b><u>Add :</u></b> (1). Surcharge @ 12% of the above (if total income exceeds Rs.1 Crores)		*****
<b>Add :</b> (2). Health and education cess @4% of tax plus surcharge.		****
<b>Tax Liability</b>		<b>xxxxx</b>

## Tax Liability or Tax Payable by Members of Association

Net Income	Income Tax Rates	Surcharge	Higher Education Cess (HEC)
Upto ₹2,50,000	Nil	1. TI exceeds ₹50 crore upto Rs.1 crore - 10% 2. TI exceeds ₹1 crore upto Rs 2 crore - 15% 3. TI exceeds ₹2 crore upto Rs .5 crore - 25% 4. TI exceeds Rs 5 crore - 37%	Health & Education Cess : 4% of Income tax Plus Surcharges
₹2,50,000 - ₹5,00,000	5%		
₹5,00,000 - ₹10,00,000	20%		
Above ₹10,00,000	30%		

### 1.14. Assessment of Company

#### Company [Sec. 2(17)]

Company means:

- a. any *Indian company*; or
- b. any institution incorporated by or under the law of a country outside India: or
- c. any institution, association or body which is or was assessable or was assessed as a company for any assessment year on or before April 1, 1970; or
- d. any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Central Board of Direct Taxes to be a company.

***All companies are liable to pay tax on its total income at a flat rate with out any basic exemption as applicable to individual and HUF. For some of its income special rate is also applicable.***

#### (1). TYPES OF COMPANY

##### (a). Company in which Public are Substantially Interested :

Sec.2(18) of the Income tax Act defined the company in which public are substantially interested includes:

- a company owned by Government or RBI.
- a company having Government participation. A company in which not less than 40% shares are held by Government or the RBI or a corporation owned by the RBI.
- Companies registered under Indian Companies Act, 2013. Companies which are promoted with special object such as to promote commerce, art, science, charity or religion or any other useful object.

- a company declared by the CBDT. It is a company without share capital and which having regard to its object, nature and composition of its membership or other relevant consideration is declared by the Board to be a company in which public are substantially interested.

**(b). Widely - help Company.**

This is the popular name of the company in which the public are substantially interested.

**(b). Closely- help Company.**

This is the popular name of the company in which the public are not substantially interested.

**(c). Indian Company [Sec. 2(26)]**

An Indian company means a company formed & registered under the Companies Act, 1956 & includes

- a company formed and registered under any law relating to companies formerly in force in any part of India other than the state of Jammu & Kashmir and the Union territories specified in (c) infra;
- a company formed and registered under any law for the time being in force in the State of Jammu & Kashmir;
- a company formed and registered under any law for the time being in force in the Union territories of Dadar & Nagar Haveli, Goa, Daman & Diu and Pondicherry;
- a corporation established by or under a Central, State or Provincial Act; any institution, association or body which is declared by the Central Board of Direct Taxes (CBDT) to be a company u/s 2(17).

In the aforesaid cases, a company, corporation, institution, association or body will be treated as an Indian company only if its registered office or principal office, as the case may be, is in India.

**(d). Domestic Company [Sec. 2(22A)]**

Domestic company means:

i) an Indian company; or

ii) any other company, which in respect of its income liable to tax under the Act, has made prescribed arrangements for the declaration and payment of dividends (including dividend on preference share), payable out of such income, within India.

**(e). Foreign Company [Sec. 2(23A)]**

Foreign company means a company which is not a domestic company. i.e. a company registered outside India in any other foreign company.

**(f). Mutual Benefit Finance Company.**

Where the principal business of the company is acceptance of deposits from its members and which has been declared by the Central Government to be a Nidhi or a Mutual benefit society.

**(h). A Company Having Co-operative Society Participation.**

It is company in which at least 50% or more equity shares have been held by one or more co-operative societies.

**Computation of GROSS Total Income**

The income of a company is to be computed under the following four heads of income

1. Income under the head "Income from House Property"
2. Income under the head "Profits and Gains or Business or Profession"
3. Income under the head "Capital Gains"
4. Income under the head "Other Sources"

The sum of all heads of income is the Gross Total Income of the company. Deductions can be made u/s 80 to arrive the total income of the company. The set off and carry forward of losses can be made before applying the tax rate applicable for the company assessee.

## Proforma of Computation of Book Profit of the Company

Particulars	Amount	Amount
Net Profit of the Association or Body of Individuals of Profit and Loss (P & L) Account		XXXX
<b><u>ADD : Items for Profit increased</u></b>		
(i). Provision for contingent Liability, Diminution in Assets, Provision for deferred Tax	Xxx	
(ii). Royalty of Patent, Royalty fees for technical service	Xxx	
(iii). Revaluation Reserve, Deferred Tax, Proposed Dividend / Dividend Paid.	Xxx	
(iv). Income Tax Paid or Payable	Xxx	
(v). Depreciation / Depreciation including depreciation of Revaluation of assets	Xxx	
(vi). Expenses relating to Income fro AOP / BOI.	Xxx	
(vii). Substantial loss of subsidiary company / Exemption us 10,11,12 and 10 (AA)	Xxx	Xxx
<b><u>LESS : Items for Profit shall be reduced:</u></b>		XXXX
(i). Brought forward loss or Brought forward unabsorbed depreciation – Whichever is less	xxx	
(ii. Royalty of patent / Royalty of fees for technical service, if any credited in profit and loss account.	xxx	
(iii). Revolution profit / Reserve transferred, if any credited in P & L	xxx	
(iv). Depreciation except the depreciation on revaluation of assets / differed tax , if any credited to P & L account.	xxx	
(v). Exempted income u/s 10,11,12 if any credited in P & L	xxx	
(VI) Share profit from AOP , if any credited	xxx	XXXX
<b>Business Income / BOOK PROFIT</b>		XXXX
<b>Add : Income From House Property, Income from capital gain, Income from other Sources</b>		XXXX
<b>Gross Total Income of the AOP</b>		XXXXX
<b><u>COMPUTATION OF TAX LIABILITY OF CAMPPANY</u></b>		
1. Tax Rate : (GTI)		
• Domestic company less than Rs. 50 crore	25%	
• Domestic company more than Rs.50 crore	30%	
• Foreign company ( Flat rate)	40%	XXXX

<b>2. Add: Surcharge</b>	<b>Domestic Company</b>	<b>Foreign Company</b>	<b>****</b>
If Total Income exceeds 10Cr	12%	5%	
If Total Income does not exceed 10Cr	7%	2%	
If Total Income does not exceed 1Cr	Nil	Nil	
<b>3, Add : Health and education cess @4% of tax plus surcharge.</b>			<b>****</b>
<b>Tax Liability as per Total Income</b>			<b>xxxx</b>

### **1.15. Assessment of Co-operative Societies.**

A Co-operative society means a co-operative society registered under the co-operative Society Act, 1912 or under any other law in force in any state for the registration of co-operative societies.

#### **Proforma of Computation of Total Income of Co-operative Society**

1. Income from House Property	xxxx									
2. Income from Business	xxxx									
3. Income from capital gain	xxxx									
<b>4. Income from other Sources – Co- operative Incomes</b>	<b>xxxx</b>	<b>XXXX</b>								
<b>Gross Total Income</b>		<b>xxxx</b>								
<b>Less : Deduction admissible u/s 80 P</b>		<b>XXX</b>								
<b>Total Income</b>		<b>XXXX</b>								
<b>Computation of Tax Liblity</b>										
<b>Tax Rate</b>										
<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Income</th> <th>Tax Rate</th> </tr> </thead> <tbody> <tr> <td>Upto ₹10,000</td> <td>10%</td> </tr> <tr> <td>From ₹10,001- ₹20,000</td> <td>20%</td> </tr> <tr> <td>Above ₹20,000</td> <td>30%</td> </tr> </tbody> </table>		Income	Tax Rate	Upto ₹10,000	10%	From ₹10,001- ₹20,000	20%	Above ₹20,000	30%	
Income	Tax Rate									
Upto ₹10,000	10%									
From ₹10,001- ₹20,000	20%									
Above ₹20,000	30%									
<b>Add : Surcharge - Income exceeding ₹1 crore – 12%</b>		<b>xxxx</b>								
<b>Add : Education Cess - 4% on tax + Surcharge</b>		<b>xxxx</b>								
<b>Tax liability</b>		<b>xxxx</b>								

## **1.16 REVIEW QUESTIONS**

### **SECTION - A**

1. Define Tax.
2. Define Previous Year.
3. Define Assessment Year.
4. Who is an Assessee?
5. List name of the person under Income Tax Act?
6. What is AOP and BOI?
7. Who is Person?
8. How to compute the total Income?
9. What is Gross Total Income?
10. List out examples of Direct Taxes and Indirect Taxes.
11. Difference between AOP and BOI.
12. What is 80 G?
13. Define Health and Education Chesh.
14. List out any four donations for 50% deductions are allowed.
15. List out any four donations for 100% deductions are allowed.
16. How to calculate Book Profit?

### **SECTION - B**

1. State the Characteritics of Taxes.
2. Outline the Objectives of Taxation.
3. Explain the Canons of Taxation.
4. Describe in detail about Classification of Taxes.
5. Discuss any 5 deductions under section 80 in Income Tax Act.
6. Outline the computation of tax liability of Individual.
7. **How the total income of a Firm is computed?. Give a proforma of such computation.**
8. **How the total income of a AOP/BOI computed?. Give a proforma of such computation.**
9. **How the total income of a Company?. Give a proforma of such computation.**
10. **Discuss how to calculate Tax liability of a Co-operative Societies?**

## **UNIT I: Assessment of Persons**

## **Small Questions**

<b>S. No</b>	<b>Questions</b>	<b>LOCF Mapping</b>
1	What is Agricultural Income?	K1
2	What is deduction under Section 80G?	K1
3	What is AOP?	K1
4	What is BOI?	K1
5	What is deduction under Section 80IA?	K2

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## **Big Questions**

<b>S. No</b>	<b>Questions</b>	<b>LOCF Mapping</b>
1	Explain tax exemptions for agricultural income.	K2
2	Describe deductions under Sections 80G, 80IA, 80IB.	K2
3	Explain assessment of firms and companies.	K2
4	Discuss assessment of AOP and BOI.	K2
5	Explain deductions under various sections (80JJAA, 80LA, 80P).	K2

## **UNIT II - TAX RETURNS AND TAX PLANNING**

**Return of income: Statutory obligation, Return Forms, Time for filing of return, Revised return, Modified return–Assessment -Tax Deducted at Source - Advance payment of Tax: Persons liable to pay, Due date, Computation - Payment in pursuance of order of Assessing Officer, Consequences on non-payment. – Tax planning, Tax avoidance and Tax evasion - Tax planning and specific management decisions: Make or buy, Own or lease, Retain or replace, Shut down or continue.**

## **UNIT - II**

### **Tax Returns and Tax Planning**

#### **2.1. INTRODUCTION**

Ascertaining total Income is one major task of the procedure involved levying tax on an assessee. *The task of assessing the income returned and determination of tax liability is called 'assessment'. The term 'assessment' has been used in the Income-tax Act meaning differently in different contexts.* In certain situations it refers to computation of income, sometimes to the determination of tax payable and in some cases to the whole procedure laid down in the Act of imposing tax liability on assessee.

#### **2.2. STAGES IN ASSESSMENT**

The following are the usual stages in the process of assessment.

- (1). **Filing a return**
- (2). **Computation of Taxable income**
- (3). **Determination of Tax payable and issue of notice of Demand.**

(1). The first stage in the process of assessment consists of (1) *either the assessee on his own filing a return of his total income (ii) or upon h being asked by the assessing officer to do so within a specified period.*

(2). The second stage is concerned with *computation of taxable income of the assessee.*

(3). The Third stage consists of *determination of the sum payable by the assessee on the basis of such computation and finally making the assessment order and issue of notice of demand specifying the same, if any, payable by the assessee or grant of refund to him*

#### **(1). Filing of Return**

##### **(a). Voluntary filing of return [Sec. 139(1)]**

Section 139(1) provides that *every person, if his total income or the total income of any other person in respect of which he is assessable under the income tax Act 1961 during the previous year exceeds the maximum amount which is not chargeable to tax, shall on or before the due date, furnish a return of his income or the income of such other person during the previous year in the prescribed form and provided in the prescribed manner and setting forth such other particulars as may be prescribed.*

##### **1. When a return is to be as statutory obligation Sec. 139(1), 4A, 4B, 4C):**

(i) A company (ii) A person other than a company having income in excess of chargeable to tax (iii) Head of a trust for charitable or religious purpose (iv) Chief executive officer of a political party (v) Scientific research association, New agency, trade union, Educational

institution, Hospital existing solely for News agency, medical purposes.

**In the following cases filing of return of income is a statutory obligation:**

<b>Assessee</b>	<b>Income to attract the provision of filing return of income</b>
1. Sec 139 (1): Company or firm	Any income or loss
2. Sec 139 (1): A person other than a company or a firm.	Income exceeding the exemption limits.
3. Sec 139 (4A): Income from property held under a trust for charitable or religious purposes.	Income exceeding exemption limit .
4. Sec 139 (4B): Chief executive officer of every political party	Income exceeding exemption limit
5. Sec 139 (4C) (e) University/education Institution existing solely for educational purpose and not for the purpose of profit or business trust.	Whether there is income or loss

**2. DIFFERENT FORMS – NEW INCOME TAX RETURNS FORMS (ITR) are:**

1. **ITR- 1 :** *Individuals have salary income, house property income (excluding loss b/f) income from other sources (not being winnings from lottery and from horse race). Total Income does not exceed Rs. 50 lakhs. (i.e SAHAJ)*
2. **ITR- 2 :** *For individuals and HUF not having income from business or profession.*
3. **ITR- 3 :** *For individuals or HUF having income under the head business or profession.*
4. **ITR- 4 (Sugam):** *For individuals and HUF firm (other than LLP) having income and such income computed in accordance with provision section 44 AD, 44 ADA or 44 AE*
5. **ITR – 5 :** *For partnership firms, AOPS and BOIS (Not being Individual HUF or company).*
6. **ITR-6 :** *For companies (other than claiming exemption u/s 11). For persons including companies who are required to furnish return u/s 139(4A), (4B), (4C), (4D).*
7. **ITR-7:** *Where ITR transmitted electronically without digital signature in IRT-1,ITR-2.ITR-3,ITR-4 and ITR-5.*

**3. E-Filing of Income Tax Returns [Section 139(1)]**

According to Section 139 (1) of the Income Tax Act, 1961 of India, *individuals whose total*

income during the previous year is more than the maximum amount not chargeable to tax, should file their ITR or income tax returns. When such individuals file their income tax returns online, the process is known as e – filing. As a taxpayer, one can seek professional help or file returns by simply registering on the income tax department website or other relevant websites. While every year the due date for filing tax returns is July 31st, the government may offer a grace period of 15-30 days to file the returns online or physically.

#### **4. TYPES OF E- FILING OR MODE OF E- FILLING.**

Here are the different ways in which e-filing income tax returns could be done:

**1. DSC to e-file:** Digital Signature Certificate or DSC to e-file tax returns. It has been made mandatory to file IT forms using Digital Signature Certificate (DSC) by a chartered accountant.

**2. Without DSC to e-file:** e-file tax returns without DSC, an ITR - V form is generated which should then be printed, duly signed and submitted to Central Processing Centre (CPC). Bangalore. This document must be sent by ordinary post or speed post within 120 days from the date of e-filing

**3. E-return Intermediary a taxpayer,** can also e-file IT returns through an E-return Intermediary (ERI), with or without DSC

#### **5. Different forms used for e- filing income tax returns**

When filing income tax returns online, one might get confused while deciding which form to submit. Hence, the various categories of Income Tax Return forms and their relevance for parties have been tabulated below:

**ITR 1 :** (Sahaj) Individuals with income from salary and interest

**ITR 2 :** Individuals with Hindu Undivided Families not having income from business or profession

**ITR 3:** Individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship

**ITR 4 :** Individuals and HUFs having income from a proprietary business or profession

**ITR 4S :** (Sugam) Individuals/HUF having income from presumptive business

**ITR 5 :** Firms, AOPs, BOIs and LLP

**ITR 6 :** Companies other than companies claiming exemption under section 11

**ITR 7 :** Individuals including companies required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D)

## **6. Documents required to file income tax**

When filing income tax online or physically, it is always a good idea to be prepared. The below mentioned details serve as a checklist to help to get started with the e-filing of tax returns.

### **(a). Specific details that would be furnished**

1. Bank account details
2. PAN Number

### **(b). Disclosing salary income**

1. Rent receipts for claiming HRA
2. Form 16
3. Pay slips

### **(c). Furnishing House Property income**

1. Address of the house property
2. Details of the co-owners along with their share in the mentioned property and PAN details
3. Certificate for home loan interest
4. The date when construction was completed, in case an under-construction property was purchased
5. Name and the rental income of the tenant, if the property is rented

### **(d). Details of Capital gains**

- 1. Stock Trading Statement:** There is a requirement of a stock trading statement with purchase details, in case there are capital gains from selling the shares.
- 2. Registration details of house property:** If a house or property is sold, you must sought sale price, purchase price, details of registration and capital gain details
- 3. Details of Securities:** Mutual fund statement details, purchase and sale of equity funds, debt funds, SIPs and ELSS

### **(e). Furnishing of Particulars of other income**

1. The income from interest is to be furnished. In case of interest accumulated in savings account, bank account statements are required

2. Tax saving bonds Income Interest income from tax saving bonds and corporate bonds must be reported
3. Post office deposit income The income details earned from post office deposit must be reported

**7. DUE DATES FOR FILING OF RETURN [SEC. 139(1)]**

The due dates for filing returns of income by different kinds of assessee are given below.

Different Assessee's	Due date of Submission of return
1. Where the assessee is a company (Not having International or specific domestic transactions)	October 31 of the assessment year
1.1. Where the company is required to Submit a report regarding foreign transaction and specific domestic transactions u/s 92E	November 30
<b>2. Where the assessee is a person other than a company.</b>	
(a) In case where accounts of the assessee are required to be audited under the law.	October 31 of the assessment year
(b) Where the assessee is a 'working partner', in a firm whose accounts are required to be audited under any law.	October 31 of the assessment year
3. In the case of any other assessee.	31 <sup>st</sup> July of the assessment year.

**(8) Return of Loss Section 119(3)**

The provisions of Section 139(3) require *the assessee to file a return of the loss the same manner as in the case of return of income within the time allowed under Sub Section 139(1)*. As per Section 80 an assessee cannot carry forward or set off his loss against income in the same or subsequent year unless he has filed return of loss in accordance with the provisions of Section 139(3). *A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return. In particular a return of loss must be filed by an assessee who has incurred loss under the heads "Income from business or profession". "Capital gain" and "Income from other sources (Loss from the activity of owning and maintaining race horses)*

### **(9) Belated Return Sec. 139 (4)**

Any assessee who has not furnished a return within the time allowed to him under Sec. 139(1) or within the time allowed under a notice issued under Section 142(1) may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year

### **(10). Revised Return [Sec. 139(5)]**

If any person having furnished a return under Section 139(1) or in pursuance of a notice issued under Section 142(1) discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before completion of assessment whichever is earlier.

### **(11). Defective Return [Section 139(9)]**

Under the Section 139(9) Assessing officer has power to call upon the assessee to rectify a defective return. For the purpose of this subsection, return of income shall be regarded as defective unless all the following conditions are satisfied:

### **(12). Permanent Account Number (PAN) [Sec. 139A]**

Permanent account number is a number allotted by income tax authorities to an income tax assessee which is to be quoted in all documents and correspondence with any income tax authorities. PAN is meant for identification of income tax assessee. Quoting of PAN is made compulsory in transaction relating to sale of movable property for 5,00,000 or more, time deposit with bank or post office exceeding Rs. 50,000 and for other transactions.

## **2.3. STAGES IN ASSESSMENT PROCEDURE**

The following stages to be followed in Assessment Procedure

- 1. Self Assessment**
- 2. Summary Assessment**
- 3. Scrutiny Assessment**
- 4. Best Judgment assessment.**
- 5. Reassessment**
  - (a). Block Assessment**
  - (b). Reassessment by way of Appeal / court order**
  - (c). Reassessment generally U/s 147**

## 1. Self Assessment [Sec. 140A]

Self assessment tax determined is to be deposited by the assessee before submitting the return of income. The proof of deposit shall be submitted by the assessee along with the return of income where the amount paid by the assessee falls short of tax and interest and the amount paid shall be adjusted first towards interest and the balance if any is adjusted towards tax payable.

On completion of a regular assessment under Section 143 or 144 any amount paid under Section 140A shall be deemed to have paid such regular assessment. If the assessee fails to pay tax or interest or both as per the provisions of Section 140A, he is considered as assessee in default in respect of tax or interest or both and he is liable for the following

1. The assessee is liable for payment of self assessment tax (including interest)
2. The assessee is liable for payment of simple interest at the rate of one per cent per month or part there of for the period of default [Section 220(2) This interest is in addition to the interest payable under Sections 234A 234B and 234C
3. The assessee is also liable for penalty under Section 221(1), which should not exceed the amount of tax in arrears

### Calculation of Self Assessment Tax :

Particulars	Amount
Compute Tax, Surcharge and education cess	
<b>Add :</b>	
1. Interest under Section 234A for late submission of return of Income	Xxxxxx
2. Interest under Section 234B for nonpayment of or short Payment of Advance Tax	
3. Interest under Section 234C for nonpayment or short payment of different installments of Advance tax	Xxxxxx Xxxxxx
Total tax and Interest	xxxxx
<b>Less :</b> Advance Tax, tax deducted at source and collected at source	xxxx
Self assessment tax payable under Section 140A	xxxxx

## 2. Summary Assessment (Sec. 143 (1)):

From Assessment year 1989-90 new procedure of regular assessment has been prescribed. An assessing officer can accept the return filed by the assessee as such and complete assessment accordingly. An assessing officer need not investigate or verify the correctness of the particulars in the return of income.

In such case, he shall issue an intimation in the following manner

**(i). Intimation of Demand:** If there is any tax, interest or penalty payable by the assessee issue in intimation of demand for the same. Such an intimation is to be demand as a of demand under section 156; therefore, all provisions applicable to demand notice apply to this also.

**(ii). Intimation of Refund:** If there is any refund due to the assessee, then the assessing officer shall issue a intimation of refund to the Assessee along with the refund.

**Exception :** In case there is no demand from or refund to the assessee is due than there is no need to issue an intimation. The acknowledgment copy of the return of income filed by the assessee is itself demand to be intimation.

**Time limit for intimation under Section:** The intimation to the assessee should be sent within one year from the end of the financial year in which return of income is made.

### **3. Scrutiny assessment under Section 143(3)**

Scrutiny assessment under Section 143(3) falls under the following categories Scheme of scrutiny under Section 143(3): The scheme of scrutiny is applicable as follows:

- (a). A return of income or loss has been made by the assessee
- (b). The assessing officer feels it necessary to ensure that the assessee has not understated the income or over stated the loss or has not under paid tax in any manner
- (c). A notice shall be served on the assessee requiring him to produce any evidence which the assessee may reply in support of the return. The notice shall be sent on or before the expiry of 12 months from the end of the month in which return is furnished.
- (d). On the basis of evidence gathered by the assessing officer from the assessee and other evidence the assessing officer shall pass an assessment order in writing determining
  - (i) The total income or loss of the assessee and
  - (ii) The sum payable by or to the assessee on the basis of such assessment order.

### **(4). Best Judgment Assessment [Sec. 144 and 145(2)]:**

A best judgment assessment is an assessment by the assessment officer to the best of his judgment after taking into account all relevant material which he has gathered. Applying his own (best) intelligence deciding on the question of income tax, if an Assessment officer completes an assessment it is called best judgment Assessment.

#### **Sources of Information**

1. Books of Accounts
2. Information collected by him through inquiry, etc.,

Best judgment assessment may be -

- (1) Compulsory, or
- (2) Discretionary.

## **(A). Compulsory best Judgment Assessment [Sec. 144]**

**(a). When best Judgment assessment is Mandatory:** In the following cases, the assessment officer is required to make a best Judgment assessment:

(i). If any person fails to furnish the return in compliance with Sec. 139(1), or does not furnish a delayed return under Section 139(4) or a revised return u/s 139(5);

(ii). If any person fails to comply with all the terms of a notice under Sec. 142(1) requiring him to produce the books of account and documents:

(iii). If any person fails to comply with direction under Section 142(2A) for audit of his accounts by a nominated auditor, or

(iv). If any person, having furnished the return, fails to comply with a notice under Sec. 143(2), requiring his presence before the assessing officer, or production of evidence in support of the return.

**(b). Opportunity to assessee of being heard :** Best Judgment assessment will only be made after giving the assessee an opportunity of being heard Such opportunity will be given by the assessing officer (AO) by a notice requiring the assessee to show cause, on a specified date and time, why best assessment should not be made in his case.

## **(2) Discretionary best Judgment assessment under Sec. 145(2)**

**(a) When discretionary best Judgment may be made:**

In following cases the A.O may make the assessment on an assessee in the manner provided in Sec. 144:

(i) If he is not satisfied about the correctness or completeness of the accounts of the assessee (or)

(ii) If no method of accounting has been regularly employed by the assessee.

**(b). Assessment of interest on Securities:** If no method of accounting is regularly employed by the assessee, any income by way of interest on securities will be chargeable as income of the previous year in which it became due to the assessee, and if it has not been so charged in any earlier previous year, then in the previous year of receipt.

**(5). Reassessment or Assessment of Escaped Incomes [Sec. 147, 148 and 149]:** When any income is deemed to have escaped assessment.

**In the following cases, chargeable income will be deemed to have escaped assessment:**

(1). If the assessee has not furnished return of income, despite liability to do so under Section 139.

(2). If return of income has been furnished by him but no assessment has been made, and it is

noticed by the AO that the assessee has understated income or claimed excessive loss, deduction, allowance or relief in the return.

(3). If an assessment has been made but -

- (a). Chargeable income has been under-assessed.
- (b). It has been assessed at too low a rate.
- (c). It has been made the subject of excessive relief under the act.
- (d). Excessive loss, depreciation, or any other allowance has been computed [Sec. 147

## **2.4. COLLECTION OF TAX**

Income tax is leviable on Total income of the previous year in the relevant assessment year. However income tax is usually recovered from the assessee in the previous year itself in the following three ways.

**(1). Deduction of tax at source**

**(2). Advance tax**

**(3). Tax on Income assessed in the Previous year itself.**

### **(1). Deduction of tax at source (TDS)**

In certain specified cases of income, tax should be deducted at source by the person responsible for making payment of such income.

The specified cases where Income tax is deductible at source are normally those cases where the income can be calculated in advance, i.e, the assessee can know his income even before the expiry of the 'previous year'.

Sections 192 to 206 deal with deduction of tax at source from such incomes.

The specified cases where tax is deducted at source are as under:

(i). Salaries [Sec. 192]

TDS from withdrawal from employees provident fund [Sec. 192A]

(ii). Interest on securities [Sec. 193]

(iii). Interest other than interest on securities [Sec. 194A]

(iv). Dividends [Sec. 194

TDS from Interest other than Interest on securities u/s 194A

(v). Winnings from lotteries, crossword puzzles, horse races and card games [Sec.56(2)(ib) (1948)]

TDS from winnings from horse races u/s 194 BB.

(vi). Payment to contractors [Sec. 1940]

(vii). Insurance commission [Sec. 194D]

TDS from payment of Life Insurance policy u/s 194DA

- (viii). Other sums chargeable under the Act, which are paid to non-residents [Sec. 194E]
- (ix). Tax deduction at source from payments in respect of Deposit under National Savings Scheme etc. [Sec. 194EE]
- (x). Tax deduction at source from payments on account of repurchase of units by Mutual Fund or unit Trust of India [Sec. 194F]
- (xi). Tax deduction at source on Commission etc. on sale of lottery tickets 194G]
- (xii). Tax deduction at source on Commission and Brokerage [Sec. 194H]
- (xiii). Tax deduction at source on Rent [Sec. 194-1]

TDS from payment on transfer of certain immovable properties u/s 194-1A.

- (xiv). Tax deduction at source on fees for technical or professional services [Sec. 194J]
  - TDS from Rent by certain individuals/HUFs u/s 194-IB
  - TDS from payment under joint-development u/s 194-IC
  - TDS from payment of compensation on acquisition of certain immovable property u/s 194LA
  - TDS from Interest payable on Infrastructure debt fund u/s 194LB.
  - TDS from Income from units of Business Trust u/s 194LBA
  - TDS from Income in respect of units of Investment fund u/s 194LLB
  - TDS from Income in respect of Investment in securitization fund u/s 194LB
  - TDS from Interest to a Non resident / Foreign citizen u/s 194LC
  - TDS from Interest on Bonds / Government Securities u/s 194LD
  - TDS from units or Long term Capital gain u/s 196B
  - TDS from income or LTCG from Foreign currency Bonds / Global depository Receipts u/s 196C.
  - TDS from Income of Foreign institutional Investors from securities u/s 196D.

(xiv). Tax deduction at source on other sums [Sec. 195]

(xv). Tax deduction at source on Interest or dividends etc. payable to Government, RBI or certain corporations [Sec. 196]

The provisions of the Act, relating to tax deduction at source in each case are given below:

**(i). Deduction of tax at source from Salary [Section 192]**

The person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income tax on the estimated income of the employee under the head "Salaries" for the financial year. The 'TDS' is to be made on the basis of the

rates in force for the financial year in which the payment is made. The total tax to be deducted, on the estimated income of the employee for the relevant financial year, is divided by the number of months of employment during that financial year. The amount so computed is the monthly deduction of tax at source. If the recipient does not furnish PAN to the deducted, tax is deducted at the normal rate or at the rate of 20 Percent, whichever is higher.

## **(II). Deduction of Tax at source from interest on Securities [Sec. 193]**

Any person responsible for paying any interest on securities is required to deduct income tax at the rates in force at the time of credit of such income to the account of the payee or interest payable account of suspense account or at the time of payment of interest in cash or by cheque/draft, whichever is earlier:

### **1. Securities, interest on which is not subject to tax deduction:**

No tax is deductible at source from the amount of interest payable on the following:

- (a).  $4\frac{1}{4}\%$  National Defence Bonds, 1972, where the bonds are held by any resident individual.
- (b).  $4\frac{1}{4}\%$  National Defence Loan 1968 or  $4\frac{3}{4}\%$  National Defence loan, 1972 held by an individual,
- (c). National Development Bonds:
- (d). National Saving certificates (First issue) (including National Saving certificates, First issue Banking services).
- (e). 7 year National Savings Certificates (IV Issue)
- (f). Debentures issued by any Co-operative society or any institution or authority notified by the Central Government.
- (g).  $6\frac{1}{2}\%$  Gold Bonds, 1977 or 7 percent Gold Bonds, 1980, held by a resident individual, provided conditions specified under section 193 are fulfilled; and
- (h). any security of the Central / State Governments.
- (i). Securities beneficially owned by the Life Insurance Corporation of India or General Insurance Corporation of India or any other insurer

**2. Debenture interest up to Rs. 5,000:** It is not necessary to deduct tax at source from any interest on debentures paid to an individual who is resident in India if the following conditions are fulfilled:

- (a). the debentures have been issued by a company in which public are substantially interested.
- (b). the debentures are listed in a recognised stock exchange in India.
- (c). the interest is paid by the company by an account payee cheque and

(d). the aggregate amount of interest paid or likely to be paid by the company to the holder of debentures during the financial year does not exceed Rs. 5,000.

### **III .Deduction of Tax at Source from Interest other than interest on Securities [Section 194A]**

The person (other than an individual or a Hindu undivided Family) who is responsible for paying to a resident any income by way of interests other than "interest on securities' is required to deduct tax thereon at the rates in force. Tax is to be deducted either at the time of payment of interest in Cash or by issue of Cheque or draft or by any other mode or credit of it to any account, whichever is earlier.

Where any income by way of interest as aforesaid is credited to any account whether called "Interest payable account" or "Suspense Account" or by any other name in the books of account or the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

#### **Person responsible for TDS**

In the case of crediting or creditor, as the case may be, payment or any other sum chargeable under the provisions of this Act, the payer himself, or if the payer is a company, the company itself including the principal officer thereof.

Rate of tax deduction is 10%.

### **IV. Deduction of Tax at Source from Dividends [Section 194]:**

The Principal Officer of an Indian company has to deduct tax at source before making payment of dividends. **Rate of tax deduction is 10%**. If the amount of dividends does not exceed Rs 5000, there is no TDS.

### **V. Deduction of Tax at source from winnings from lotteries, cross word puzzles, horse races and card games, etc. [Sec. 56(2) (ib)] (Section 194B)**

Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or form gambling or betting of any form or nature whatsoever, is taxable under section 56 under the head "Income from other sources" as casual Income. If the winnings does not exceed Rs. 10,000 (Rs. 10,000 in the case of horse race) no Tax is deducted at source.

A person responsible for, paying to any person any income by way of winnings from lotteries or crossword puzzles or winnings from card games/other games and winnings from horse races, is required at the time of such payment, to deduct income tax thereon at the rates in force, ie, **at the rate of 30 percent**.

### **Prize received partly in Cash and Partly in kind:**

If the prize is given partly in kind and partly in cash, tax will be deducted from cash prize in relation to the aggregate amount and the rate of TDS is 30%.

### **VI. Tax to be deducted at source from payments to contractors [Section 194C]**

Income tax is deductible at source from payments made by the following to any resident contractors for carrying out any work in pursuance of a contract between the contractor and:

*The Central Government or any State Government, or any local authority, or any Statutory Corporation, or any Company, or any Co-operative society, or any statutory authority or housing board engaged in providing housing accommodation; or any registered Society, or any trust, or any University established under an Act or deemed to be a university by the university Grants Commission, or any firm.*

**Consideration in excess of Rs. 30,000 is subject to tax deduction:** No tax is to be deducted at source in respect of a contract, the consideration for which does not exceed Rs. 30,000. Where payments are made under several contracts during a financial year and the consideration for any individual contract does not exceed Rs. 30,000, no deduction is required to be made under this section though the total payments exceed Rs. 30,000 and the aggregate payment does not exceed Rs. 1,00,000 during the Financial year.

**Rate of tax deduction:** The person responsible for making payments to contractors/sub-contractors is required to deduct tax at source at the following rates during the A.Y. 2023-24.

**If recipient is a**

**(i) Individual, HUF, Rate of 1%.**

**(ii) If recipient is any other person 2%.**

### **VII. Tax deduction at source from Insurance Commission [Sec. 194D]**

A person responsible for paying any income to a resident by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business including business relating to the continuance, or renewal of policies of insurance, is required to deduct income-tax thereon at the rates in force. In A. Y. 2024-25, tax is deductible at the rate of 5 per cent and rate is 10 per cent if recipient is a company. If the payment does not exceed Rs. 15,000, the tax is not deducted at source.

### **VIII. Tax deducted at source from sums chargeable under the Act, paid to Non-Residents:**

**Payments to Non-resident sportsmen or sports associations [Sec. 194E]:**

Where any person is responsible to pay any income to any non-resident sportsmen (including an athlete) who are not a citizen of India, he is required to deduct tax at source @

20%. The income must have been earned by the sportsman by way of

- (i). Participation in India in any game (Excluding any card game and other games of gambling or betting) or sports; or
- (ii). Advertisement; or
- (iii). Contribution of articles relating to any game or sport in india in newspapers, magazines or journals.

Any person responsible to pay any income guaranteed to be paid or payable to a non-resident sports association or institution in relation to any game or sport played in India, shall **deduct income-tax thereon 10%**

#### **IX. Payments in respect of deposit under National Savings Scheme, etc. [Section 194EE ]**

The person responsible for paying any persons any amount standing to the credit of such person under National Saving Scheme (to which section BOCCA was applicable) together with interest accrued thereon, shall deduct income-tax 10% on such amount at the time of its payment.

#### **XI. Commission, etc. on sale of lottery tickets [Section 194G]**

Where any income by way of Commission or remuneration or prize (by whatever name called) on lottery tickets is paid to a person who has been stocking, distributing, purchasing or selling lottery tickets, then the person responsible for paying such income, exceeding Rs. 15,000 shall deduct income tax thereon @ 5%. Tax is to be deducted either at the time of its credit to the account of the payee (by whatever name called) or at the time of payment of such income in cash or by issue of a cheque or draft or by any other mode, whichever is earlier,

#### **XII. Commission and Brokerage [Section 194H]**

Any persons (other than an individual or a Hindu undivided family) who is responsible for paying to a resident, any income by way of commission (not insurance commission) or brokerage shall deduct income tax thereon at the rate of **5%** at the time of crediting income to the account of the payee or to any account, whether called suspense account or by any other name or at the time of payment of such income in cash or by the issue of cheque or draft or by any other mode, whichever is earlier:

Individuals and HUF who are covered under Section 44AB(a) (b) are also required to deduct tax at source. However, no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amount of such income credited or paid or likely to be credited or paid during the financial year to the account of or to the payee, does not exceed Rs. 15,000.

#### **Rent Section 194-I]**

Where any person other than an individual or a HUF, is responsible for paying any person, any income by way of Rent' amounting in aggregate to more than Rs. 2,40,000 in a financial year, he shall deduct income-tax thereon at the following rates for A.Y. 2024-25.

- (a). For use of any machinery or plant or equipment @2%.
- (b). For the use of any land or building or furniture or fitting @ 10%.

**Payment by way of Rent to Government:** It is clarified that no tax at source need be deducted from payment by way of rent made to Government entities whose income is exempt from income-tax under clauses (20) and (20A) of Section 10 of the Income-tax Act.

**Share of each Co-Owner:** Where the share of each Co-owner in the property is defined and ascertainable, the limit of Rs. 2,00,000 will be applicable to each Co-owner separately.

#### **Fees for Professional or Technical Services or Royalty [Section 194J]**

Any person, than an individual or a HUF, who is responsible for paying a resident any sum by way of (a) fees for professional or (b) technical services. (c) Royalty shall deduct income tax @ 10% on income comprised therein.

2% If Royalty pertains to sale, distribution or extriution of cinematographic films or recipient is engaged in business of operation of call centre or if payment / credit for technical services (other than professional services) diatos to be deducted either at the time of actual payment such fees or is credit to the account of the payee whichever is earlier.

No Tax deduction: No tax is to be deducted if the amount or the aggregate of such fees does not exceed Rs. 30,000 in a financial year.

Meaning of Professional Service: Professional Service' means services rendered by a person in the course of carrying on legal, medical engineering, or architectural work or profession of accountancy or technical consultancy or interior decoration or advertising or any other notified profession by CBDT.

Meaning of fees for technical services: "Fees for Technical Services" Mean any consideration for the rendering of any managerial or consultancy services but excludes any consideration for such services which is taxable under the head Salaries.

No tax is to be deducted or tax is to be deducted at a lower rate The person receiving fees for professional or technical services can make application in Form ND 13E (Rule 28) to the Assessing Officer concerned and obtain a certificate authorising the person responsible for making such payment to deduct tax at NIL rate or at a lower rate.

#### **XIV. Other Sums [Section 195]**

(a) Payment to a non resident or to a foreign company Any person responsible for paying a non resident not being a company, or to a foreign company, any interest or any sum

chargeable under this Act (other than Salary) shall deduct income tax there on at the rates in force.

#### **X.V. Interest or dividends or other sums payable to Government, Reserve Bank or certain corporations [Section 196]**

No deduction of tax shall be made by any person from any sum payable to:

- (i) The Government or
- (ii) The Reserve Bank of India or
- (iii) a Corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or
- (iv) a Mutual fund specified u/s 10(23D)

Any sum' here means such sum as payable to the above entities by way of interest or dividend in respect of any securities or shares owned by them or in which they have full beneficial interest, or any other income accruing or arising to them.

#### **XVI. Tax deductible from units or Long-term capital gain under section 196B:**

Tax is deducted at source from long term capital gain arising from transfer of units to an off shore fund at the rate of 10%. Tax is deducted at source by the person responsible at the time of credit of income to the account of the payee or at the time of payment, whichever is earlier.

#### **XVII. Tax deduction at source from income or long term capital gain from foreign currency bonds/Global Depository Receipts (sec, 196C):**

Any person responsible for paying income or long term capital gain from GDR or bonds shall deduct tax at source at the rate of 10%. Tax deduction at source is at the time of payment or at the time of credit whichever is earlier. In this case recipient is to be a non resident.

#### **XVIII. Tax deduction at source from income of Foreign institutional investor from securities (Sec 196D):**

Any person responsible for paying income in respect of securities held by a foreign institutional investor shall reduce tax at the rate of 20%. Tax is deducted at the time of payment or at the time of credit whichever is earlier

#### **(2). Advance Payment of Tax**

Advance Payment of tax is another method of collection of tax by the Central Government in the Form of 'Prepaid taxes'. Such advance tax is in addition to deduction of tax at source or collection of tax at source Scheme of advance payment of tax is also known as

'pay as you earn' scheme i.e.. the assessee is required to pay tax during the course of earning of income in the previous year itself, though such income is chargeable to tax during the assessment year Advance tax is payable on current income in installments during the previous year.

**Procedure: Advance Tax payable by an assessee in the financial year on his own accord shall be computed as follows:**

**Step- I**

Estimation of Income Current income of the financial year for which the advance tax is payable should be estimated.

**Step- II**

Computation of Tax The tax payable on estimated income at the rates applicable for the financial year should be computed

**Step- III**

Surcharge on Tax On the net tax computed in Step III, Surcharge as applicable should be added and relief, if any, under section 89 should be allowed.

**Step- IV**

Cess @ 4% of Tax and Surcharge is to be added.

**Step - V**

Deduction of tax at Source: Tax deductible at Source as per relevant provisions should be deducted from the tax payable before payment of net amount of tax.

**Step- VI**

Advance tax payable: The balance amount is the advance tax payable and if it happens to be more than Rs. 10,000, it will be payable in certain installments as provided in. Section 211.

**Current Income**

Current income means estimate of income likely to be earned during the current previous year under the five heads of income. Such income is subject to set-off of brought forward loss and deductions likely to be claimed under sections 80CCC 800.

**Remittance of Advance Tax**

Advance tax may be paid by the assessee on his own accord or in pursuance of an order as discussed below:

**(A). Payment of advance tax by the assessee on his own accord under Section 210(1):**

Every assessee who is liable to pay advance tax under section 208 shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate

percentage, specified in that section, of the advance tax his current income calculated in the manner laid down in Section 209.

**(B) Payment of advance tax in pursuance of an order / revised order of assessing officer u/s 210(3) 210(4):**

Though it is mandatory for the assessee to calculate and pay advance tax, the assessing officer may pass an order /s 210(3) or revised order u/s 210(4) and issue a notice of demand u/s 156 requiring the assessee to pay advance tax. Such order can be passed by Assessing officer on the assessee, subject to satisfying the following conditions:

**(i). Regular assessment:** The assessee has already been assessed by way of regular assessment in respect of the Total Income of any previous year.

**(ii). Non Payment of Advance Tax :** The assessee who had been regularly assessed has not paid advance tax in the current financial year. However, this condition has been omitted by the Finance Act 2002 w.e.f. 1-6-02. Hence notice now can be issued even if the assessee has paid any instalment of advance tax.

**(iii). Liable to pay advance Tax:** The assessing officer is of the opinion that such person is liable to pay advance tax

**(iv). Passing of Order:** Such order can be passed at any time during the financial year, but not later than the last day of February. Such order must be made in writing.

## **2.5 TAX PLANNING**

The rates of income tax are high, in order to reduce the tax liability, it is required to arrange financial affairs in such a streamlined way to attract least tax by means of following three methods.

1. Tax planning
2. Tax evasion
3. Tax avoidance.

### **(1). Tax planning**

Tax planning refers to arrangement of one's tax affairs in a way to reduce t liability by not violating any law but take advantage of all exemptions, deductions. Rebates and reliefs provided by the Income Tax Act.

#### **Purpose of Exemptions:**

The purpose of exemptions, deductions reliefs and rebates is to satisfy social and economic needs. For example, Section 80C provides deduction from gross total income whereby if the assessee saves the income and invest in specified savings it helps in economic

development of the country. Hence, by taking advantage of above savings the assessee reduces the tax liability and also satisfies objective of legislature being lawful, social and ethical.

### **Advantages of Tax Planning:**

Tax planning leads to various advantages to an assessee in the form of Minimisation of tax, avoiding of litigation, good rate of return, cost saving, contribution to growth of economy and increased employment opportunities. These advantages of tax Planning are explained below:

**1. Minimum Tax Liability:** The purpose of tax planning is to reduce the tax liability. The income earned is to be used for personal and other social needs and also save for future needs and Investments. Minimization of tax is possible by availing the exemptions, deductions, rebates and reliefs which are permitted under the Income tax Act. These concessions could be used only with the help of updated knowledge of them and conditions and situations to avail them.

**2. Avoidance of Litigations:** Tax Administration would always like to extract Maximum tax from the assesses, however assesses would always like to pay least tax. This contradictory purpose leads to litigations. The assesses would like to take advantage of concessions allowed under the Act whereas the tax administrators would always try not to agree with the assessee point of view in claiming exemptions. Which leads to litigations which could be avoided by following the law in word and spirit by agreeing with the provisions of taxation laws.

**3. Optimum Investment and ROI:** Through proper tax planning the assessee could channalise his income towards, productive savings which earns him proper rate of return and there by avoid money being paid towards tax, incidentally the money saved enhances the financial capacity of tax payer for wealth accumulation and growth which would ultimately enhance tax revenue of the Government.

**4. Saving in Cost:** Tax liability forms part cost of production. By proper planning the tax saving results in saving and reduction in cost which in turn to enhanced sales, profit and tax.

**5. Growth of economy and employment opportunities:** Growth of citizens of a country leads to growth of economy. Savings through legitimate savings schemes leads to Growth of economy. Whereas tax evasions results in growth in black money and evils attached to it. However, tax planning leads to development of backward areas, states and enhancement of infrastructure and commencement of new undertakings, which would inturn provide new employment opportunities.

### **Disadvantages of Tax Planning:**

Due to legislative complications, tax planning has certain limitations such as delay in

charming exemptions, connected with other laws, a discriminatory, time inducement, change in law fulfillment conditions. Some of the limitations of Tax planning are as follows:

- 1. Time limit:** The deductions, exemptions, reliefs and rebates as to be claimed prior to assessment, if not claimed, it may not be allowed subsequently.
- 2. Connectivity of other legislations:** Since tax planning could not be done in isolation because other related legislations have to be coordinated to result in effective tax planning, which may reduce the scope of tax planning,
- 3. Discrimination among family members:** Some of the tax planning decisions may be advantageous for some of the family members but unfavourable to other which may lead to strained relationship in the family and consequences thereby.
- 4. Time constraint:** With increased income, amount of tax also may increase, which would demand additional time required for tax planning which could have been spent more productively for enhancing the income.
- 5. Frequent Amendments of tax Laws:** Amendments of tax laws creates anxiety in the minds of tax payers and acts as a limitations on long term tax planning.
- 6. Fulfilment of conditions:** The tax concessions are allowed with riders on satisfying conditions, if conditions are not fulfilled the assessee cannot avail concessions.

## **Tax Planning for different Source of Incomes**

### **(1). Tax Planning for Individuals**

#### **(a). Tax planning in respect of Residential Status**

Among three residents, i.e.. Resident, Not Ordinary Resident, and non Resident, the tax liability of a non Resident is the least. Hence an assessee will have to plan in his stay in India to be non resident. Following are the strategies suggested

#### **(b). To be a non-resident:**

1. An individual should stay in India for 59 days or less in India during the previous year. With this he will be Non-resident.

2. **Indian citizen or PIO:** An individual being citizen of India or person of Indian origin who wants to come to India on a visit to India during the previous year will have to stay in India for a period of 181 days to claim the Non-resident status.

3. **Indian citizen leaving India for employment:** An Indian citizen leaving India for employment outside India has to plan to stay in India for a period of 181 days or less in India during the previous year to be non resident.

4. **Foreign Income:** Not ordinary resident and non resident have to plan to receive foreign

income in foreign only. If foreign Income is received in India it will be taxed in India.

## **(2). Tax Planning with reference to Salary Income:**

### **(A). Allowances**

Some of the allowances are either fully exempt or partly exempt and partly taxable. In order to reduce the tax liability, the employee can opt out to receive the under mentioned allowances from the employer:

**(1) Partly exempted allowances:** The following allowances are (Exempted amount is amount spent for official purpose) exempt up to amount spent for official purpose: Helper allowance, uniform allowance, Academic allowance, Conveyance allowance, Travelling allowance, Dially & Transfer allowance)

**(2) Partly exempted allowances:** The following allowances (Exempted up to specified limits)

**(a). Transport allowance for handicapped employees:** Exempt up to Rs. 3,200 p.m.

**(b). Tribal area allowance:** Exempt up to Rs. 200 pm Allowance given to Transport Sector employee: Least Rs. 10,000 p.m. or 70% of allowance is exempt.

**(c). Children education allowance:** Exempt upto Rs. 100 p.m. per child or actual allowance whichever is least upto a maximum of two children.

**(d). Hostel expenditure allowance:** Exempt upto Rs. 300 p.m. per child or actual allowance, which ever is least upto a maximum of Two children.

**(e). Special allowance:** Composite hill compensatory, High altitude, uncongenial allowance, snowbound area allowance, avalanche allowance: Exempt upto 300 p.m. to 7,000 p.m.

**(f). Special Allowance Compensatory allowance in the nature of Border area allowance/ Remote Area allowance / Difficult area allowance / Disturbed area allowance.**

This allowance is exempt upto 200 p.m. to 1300 p.m.

**(g). Compensatory field area allowance, modified field area allowance, Counter insurgency allowance, High active field area allowance, underground allowance, Island Duty allowance given to Armed forces posted in Andaman & Nicobar and Lakshadweep group islands is exempt up to specified amount.**

**(B) House rent allowance:** Out of the amount of house rent allowance received least of the specified three items are exempted. i.e., Actual HRA, 50% of salary in metro cities or 40% of salary in other cities or Excess of rent paid over 10% of salary.

**Fully Taxable allowances:** Dearness pay, city compensatory allowance, lunch allowance, tiffin allowance, marriage allowance, family allowance, Deputation allowance, warden ship allowance, Non practicing allowance project allowance, overtime allowance, Fixed medical

allowance, Entertainment allowance for non Govt employees and other allowances not covered under fully or partially exempted.

### **Tax Planning relating to Perks:**

- (1) Free medical facilities
- (2) Free refreshments, during working hours
- (3) Free recreational facilities,
- (4) Free telephone for office use
- (5) Free education or refresher course for employees
- (6) Leave travel concession given once in a block of four years
- (7) Free transport for going to place of employment and return
- (8) Employees contribution to group insurance, pension or deferred annuity
- (9) Computer or laptop given for official use
- (10) Sale of movable assets in the form of computer, car or electronic item, which is more than 10 years old to the employee without consideration
- (11) Accidental insurance premium paid by employer
- (12) Interest free loan given to employee upto Rs. 20,000 or for medical treatment

Since the above perks are tax free the employee could plan to get these perks provided to him.

House rent allowance versus rent free house: In order to accept either of this, the employee shall calculate tax liability before giving his option.

### **Deductions from Salary**

1. Standard deduction up to Rs. 50,000.
2. Entertainment allowance for govt. employees being least of Rs. 5,000 or 20% of Salary or Actual entertainment allowance
3. Professional or employment tax

### **(3). Tax Planning in respect of Income from House Property**

**1. Self occupied house:** An assessee could have two self occupied houses where the income would be nil

**Interest on loan:** Interest on loan borrowed for construction or purchase of house for self occupied house/two houses is allowed up to Rs 2,00,000, which may be set off against let out house income or other heads of interest. However, against other heads Income only up to Rs 2,00,000 could be set off. Balance may be carried forward and set-off in 8 years against house property income.

## 2. Let-out house property

(a). **Rent collected along with value of benefits:** If the letout house rem includes, the value of benefits provided by the landlord to the tenent such as water, lift electricity etc., the agreement or deed shall the amount towards rent and towards facilities, because the expenses towards these facilities cannot be deducted from gross annual value.

(b). **Unrealized rent:** In case of unrealised rent, the landlord has to satisfy the conditions of Rule 4, to avail the deduction regarding unrealised rent.

(c). **Municipal Taxes:** Municipal taxes could be deducted if paid by the landlord during the previous year. Hence municipal taxes have to be paid before the end of the financial year to claim deduction.

(d). **Interest on loan borrowed for property:** If property is acquired or constructed by borrowing loan, the interest on loan taken for let out house could be allowed without any limit. However, if deductible expenses are more than annual value, the result is loss from house property, which could be set off against other let out houses. If the full loss from house property could not be set off it can be set off against other heads of income up to Rs. 2,00,000. Loss to be carried forward: If house property loss could not be set off against other heads income, it can be carried forward and set-off against house property income for eight assessment years.

### (3). Tax planning in respect of Profits and Gains of business or profession:

To avoid tax or reduce tax liability in relation to income from business of Profession, the following steps are suggested

**1. Place of business:** The assessee should select a location of his business such as free Trade zone or backward district, or specified category states where he will be entitled to tax exemption or deductions.

**2. Nature of business:** The assessee has to pick a business which gets tax benefits, for example, agricultural income is exempt from tax. Infrastructure development business, development of special economic zones, profits and gains from business done in North-eastern states will be eligible for deduction from profits.

**3. Interest on loan used for business:** Interest on loan used for business is deductible from profits, which reduces tax liability

**4. Incur expenses deductible:** Expenses in the form of fine and penalty are not deductible. Any expenditure incurred for business is deductible. Some the expenses are deductible, if paid last date filing of return for example, excise duty sales tax, interest on loan etc. If the payments are made after the due date of filing of return it will be deductible only in the subsequent

assessment year.

**5. Mode of payment of expenses:** Business expenses exceeding Rs. 10,000, are to be paid by account payee cheque, draft or electronic clearing system. If paid in cash, it would not be deductible.

**6. Depreciation:** The assessee should acquire, assets which are eligible for depreciation and also, if suits the business, acquire assets which are eligible for additional depreciation. Similarly acquire and use the assets for more than 180 days during the previous year, to claim the depreciation for the year. Otherwise only half the depreciation is allowed and it will lead to higher tax liability.

#### **(4). Tax Planning in respect of Capital Gains**

**1. Long term Capital assets:** Long term capital assets are eligible for indexing of cost (Other than bonds and debentures) The assessee has to plan to sell the shares (Listed) after 12 months, and (unlisted) after 24 months. Similarly other assets after 24 months (land and building) Diamonds etc.. after 36 months. This way long-term capital gain would be lower and they are taxable at lower rate.

**2. Long term capital gain on sale of listed equity shares or equity oriented mutual funds:** If the assessee sells them by paying security transaction tax, the gains will be taxable at the following rates:

Short term capital gain at the rate of 15%

Long term capital gain (without indexation) exceeding Rs. 1,00,000 is taxable at 10%

**3. Investment of long term capital gain in specified assets:**

**(a). Sec 54:** Sale of Residential house and invest in another residential house within a specified period would exempt the capital gain to the extent of investment.

**(b). Sec 54B:** Select agricultural land and investment in another agricultural land will be eligible for exemption upto amount invested.

**(c). Compulsory acquisition of land & building and capital gain there on (Sec 54D):** If any land & building being part of an industrial undertaking is acquired and the assessee invests in purchase of another land or building or constructs another land & building within a specified period, the amount invested is exempt from tax

**(d) Capital gain on transfer of Long term capital asset being land & building or both (Sec 54EC):** Investment of capital gain on sale being reinvested in specified bonds within 6 months would be eligible for exemption up to the amount invested.

**(e) Capital gain on transfer of long term capital asset other than residential house (Sec 54F):** Investment of Capital gain in residential house within a specified period would be exempted in proportion to sale value and capital gains of the asset.

**4. Sale of depreciable asset:** If any asset is sold in a block of assets which are subject to depreciation would result in short term capital gain. To avoid the capital gain an asset may be acquired in the same block thus reducing the capital gain.

## **(5). Tax Planning in respect of Income from Other sources**

Investment in Tax Free bonds: Investment of money in tax free Govt. bonds will result in income of bonds being not included in income and thereby saving of tax.

### **Tax in respect of Clubbing of Income**

**1. Transfer of assets to Major Children:** To avoid clubbing of children income, the parents are advised to transfer the assets to children, who are majors so that the income from transferred assets will be taxed in the hands of property holders and will not be clubbed with income of parents

**2. Transfer of property to handicapped minor child:** In the case of transfer of assets to a handicapped minor child the income of minor child from such property will not be clubbed with Income of parents.

**3. Transfer of property to parents:** An individual can transfer the property to parents, brother instead of spouse or daughter in law. Such property will be taxed as their income and it will not be clubbed with income of the transferor.

**4. Investment in Tax free bonds:** If the individual transfers property spouse, daughter in law or minor children, the income is to be invested in tax free bonds, so that it remains exempt from tax where by liability of transferor will not enhance.

**5. Not to transfer assets to HUF:** A member of HUF should not transfer his individual assets to HUF in which he is a member, but he could transfer it is to a HUF in which he is not a member i.e, sons HUF, so that income will not be clubbed in the income of transferor.

## **(2). Tax Evasion**

An assessee can resort to reducing tax liability by disclosing least income by false claims, non disclosure of information, withholding information with the aim of reducing tax liability, which is called as tax evasion.

Tax evasion is illegal, anti-social and antinational and in fact it is a crime. Hence the direct tax laws have stringent provisions as heavy penalty, initiating prosecution proceedings against tax evasion.

**Methods adopted by tax evaders to reduce taxable income and tax liability are as below:**

1. Non recording of sales and revenue
2. Disclosing of bogus expenses, bad debts and losses
3. Claiming of personal expenses as business expenses in the form of car expenses, travelling expenses telephone expenses and medical expenses incurred for self and family members are shown as business expenses, to reduce business income.
4. Fraud committed by bogus receipts for donations
5. Withholding of capital gains
6. Benami transactions

### **(3). Tax Avoidance**

Tax avoidance, is skill of reducing tax liability within the precincts of tax laws. In other words tax avoidance is the process of reducing tax liability by availing the concessions made available by the tax legislation. Unlike the evasion, tax avoidance is perfectly legal and legitimate to reduce tax liability.

The Royal commission on taxation for Canada elucidates the tax avoidance as below:

The expression "Tax Avoidance" will be used to describe every attempt by legal means to prevent or reduce tax liability which otherwise be incurred, by taking advantage of some provisions or lack of provisions in the law. It excludes fraud, concealment or other illegal measures.

### **Difference between Tax Evasion and Tax Avoidance.**

1. **Legal Angle:** Tax Avoidance is legal, Tax Evasion is illegal
2. **Compliance with Tax Laws.** Tax Avoidance does not floute the tax laws. In the case of tax evasion the provisions of tax laws are flouted
3. **Penalty Imposition:** In the case of Tax avoidance Fine and Penalty are not imposed. In the case of tax evasion the persons are liable for penalty and prosecution.
4. **Block money generation:** In the case of Tax avoidance, black money is not generated. In the case of tax evasion black money is generated.

## 2.6. Tax planning and Managerial decisions

There are tax implications in respect of managerial decisions, particularly tax planning in respect of:

1. Own or lease
2. Make or Buy decisions
3. Repair, replace, renewal or renovation of an asset
4. Shut down or continue decision.

### 1. Own or lease.

Lease is defined as transfer of right to such property, made for certain time, for a consideration of price, which is payable periodically to the transferor by the transferee. In other words lease is an arrangement which provides a person with the use control of an asset for a specific price payable without ownership of the asset.

Lessor and Lessee: In the case of lease agreement owner of the asset is called as lessor and user of the asset is called as lessee.

### Factors to be considered for own or lease decisions:

In the case of business persons if they need an asset for business purpose, the person has to decide, whether to acquire the asset or take it on lease. While exercising this decision the following factors are to be considered.

**(a). Availability of Cash:** If the business man has sufficient cash, he can buy the asset. However, cost of asset is not deductible from business income but interest on loan is deductible from profits. If cash is not available or cannot borrow due to stringent credit control, then better to take the asset on lease. The lease rent paid is deductible from business income.

**(b). Depreciation:** If the asset is acquired for cash or hire purchase etc., depreciation is allowed in computing profit. If the asset is acquired on lease depreciation is not permitted to the lessee, which enhances his tax liability. In the case of lease depreciation is allowed to the lessor.

**(c). Scrap value:** The owner of the asset has complete right over the value of asset. It is better to purchase the asset with higher residual value, instead of taking it on lease.

**(d). Obsolescence of asset:** If an asset is purchased and it becomes obsolete much earlier than expected it has to be replaced. In case of lease, lessor will replace the asset but in anticipation of obsolescence he might charge high lease rent.

### 2. Make or buy decisions

A manufacturing concern may require a product, any spare part of specific component the new product it is going to make or for its existing product. The new component either could be

made within the company or buy it from outside. There are several factors, which affect the decision to make or buy the component.

**Following are the some of the factors, which affect the make or buy decisions.**

- 1. Availability of Funds:** In order to make the component the company has to have sufficient funds, if not, find different sources at economical rate to have impact on profits.
- 2. Availability of Infrastructural facilities:** Facilities in the form of land, machinery, labour and other facilitating resources have to arrange for making the component.
- 3. Sources of Supply:** In case the component has to acquire from outside source, there shall be assurance of regular supply economical price and on time delivery of the component.
- 4. Tax aspects:** Income tax Act provides various concessions for manufacturing in the form of tax holiday, deductions from income, which are utilized for reducing tax holiday.

**Example:**

A Scooter making company requires 25,000 units of spare part of Scooter. From the following particulars, Suggest, whether the company should mak the part or it from outside. Total cost of making 25,000 units.

Particulars	Rs
Direct Material	45,000
Direct Wages	50,000
Direct Expenses	60,000
Variable overhead	30,000
Fixed overhead	85,000
Total	2,70,000

The cost of purchase from outside is Rs. 6, or 8.

**Solution:**

If purchase price is Rs. 6.00

Variable cost of making Rs. 7.40

It is better to buy from outside, since variable cost of making it is Rs. 7.40.

If purchase price is Rs. 8.00

It is better to make the part because variable cost of making it is Rs. 7.40 only.

### 3. **Repair, Replace, Renewal of an asset**

Income Tax provisions relating to repair, replace or renewal of an asset.

#### **Current repairs of Building:**

An assessee using the building for his business, is entitled to deduct current repairs from business income. If the building is taken on rent and the assessee has undertaken to bear the expenses of repairs of the building, he is entitled to deduct the repairs incurred by him from business income.

Repair expenses relating to plant & machinery or furniture. An assessee is entitled to claim any repair expenses of these assets against business income.

#### **Replacement or Renewal:**

If expenditure is incurred to bring new asset in to existence it is replacement or renewal.

Replacement may be only some parts or whole or substantial part of the assets. If replacement is only parts, the expenses are chargeable on the other hand If it is replacement of entire asset to bring new asset the expenditure is capitalized and depreciation may be claimed.

#### **Tax implications in relation to repair and replacement of an asset**

In order to the tax planning to reduce the tax liability in respect of repair and replacement, do the following provisions are applicable.

- 1. Carry forward & Set off of business losses.** If in a financial year, less income is expected, better to spread over the repairs and renewal over a period of time to long member of years. Similarly if there is high income. repairs and renewal may be incurred in less number of years.
- 2. Better to replace part of the asset.** It is better to replace the part of asset, because it could be reduced from business income. However, if the entire asset is replaced, it would result in capital expenditure and only depreciation can be claimed over a period of years.

### 4. **Shut down or Continue Decision**

Losses do co-exist in any business, Loss arises due to decrease in demand for its products, due to financial constraints, due to obsdscence, on account of mis-management.

If there are continuous losses of business the management has to decide, whether to shutdown or continue the business.

#### **Following are the tax implications for discontinuing a business:**

- 1. Set off and carry forward of business loss and depreciation:** Loss of discontinued business can be set off against business income for 8 year.
- 2. Unabsorbed depreciation of discontinued business** can be set off against any income

other than salary income and casual income for indefinite period.

**3. Assessee Carrying on more than one business.** If any assessee running more than one business, the loss making business should be discontinued and it is to be operated at slow phase and low key for a period to claim expenses against profit making business.

## **2.7. REVIEW QUESTIONS**

### **SECTION - A**

1. What is TDS?.
2. Define Collection of Tax at Source.
3. What is meant by Advance Payment of Tax?
4. What is Current Income?
5. What is meant by Tax Planning?
6. Define Tax Evasion.
7. What do you understand by Tax Avoidance?
8. Define Block Assessment.
9. What is Self Assessment?

### **SECTION - B**

1. State the provisions under Income Tax Act 1961 relating to deduction of Tax at source on 'Income from Salaries'.
2. Outline the provisions relating to payment of Advance tax.
3. Distinguish between Tax avoidance and Tax Evasion.
4. Difference between Tax planning and Tax evasion.
5. Discuss in detail about different stages in Assessment Procedure..
6. Outline the different ways of Collection of Tax.

## **UNIT II: Tax Returns & Tax Planning**

### **Small Questions**

S. No	Questions	LOCF Mapping
1	What is Return of Income?	K1
2	What is TDS?	K1
3	What is Advance Tax?	K2
4	What is Revised Return?	K2
5	What is Tax Planning?	K2

### **Big Questions**

S. No	Questions	LOCF Mapping
1	Explain procedure for filing return of income.	K2

<b>S. No</b>	<b>Questions</b>	<b>LOCF Mapping</b>
2	Describe advance tax provisions.	K2
3	Explain TDS and its importance.	K2
4	Distinguish tax planning, avoidance and evasion.	K2
5	Explain tax planning in managerial decisions.	K2

## **UNIT III - INTERNATIONAL BUSINESS TAXATION**

**International business taxation - Taxation of Non-resident - Double taxation relief - 61 Transfer pricing and other anti-avoidance measure - Application and interpretation of tax treaties - (Double taxation avoidance agreement - DTAA) - Equalization levy.**

## **UNIT - III**

### **INTERNATIONAL BUSINESS TAXATION**

#### **3.1. INTRODUCTION**

The increasing participation of multi-national groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multi-national group. The profits derived by such enterprises carrying on business in India can be controlled by the multi-national group, by manipulating the prices charged and paid in such intra group transactions, thereby, leading to erosion of tax revenues.

With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, chapter of Transfer pricing consisting of section 92 to 92F has been introduced.

In the present age of globalization, diversification and expansion, most of the companies are working under the umbrella of a group engaged in diversified fields/sectors leading to large number of transactions between related parties.

***International taxation is the study or determination of tax on a person or business subject to the tax laws of different countries or the international aspects of an individual country's tax laws. Governments usually limit the scope of their income taxation in some manner territorially or provide for offsets to taxation relating to extraterritorial income. The manner of limitation generally takes the form of a territorial, residency, or exclusionary system.***

Some governments have attempted to mitigate the differing limitations of each of these three broad systems by enacting a hybrid system with characteristics of two or more. Systems of taxation vary widely, and there are no broad general rules.

#### **3.2. TAXATION OF NON RESIDENT INDIANS**

A non-resident Indian is not generally liable to pay tax in India, except for the income earned by him within India. *Any income earned by the non-resident Indian outside India cannot be taxed within India, the tax implications on NRIs and other compliances are as follows:*

##### **(A). MEANING OF NON RESIDENT**

Non resident Indians are those people who are not residing in India, so much, so that their duration of stay outside India is uncertain due to this, the Income Tax laws of India have made certain criteria by which it can be decided as to who is a non-resident Indian and who is a

resident Indian for the purpose of taxation

*It is not necessary that a person living outside India cannot be taxed within the country. This is so because a person can be taxed in India for the income earned by him/her in India during their stay in India. Income earned abroad isn't taxable in India but the income earned in Indian transactions as capital gains, shares and rental income amongst others needs to be taxed within India. Thus, it is important to understand how non-resident Indians are taxed in India*

## **(B).RULES OF NON- RESIDENT INDIAN**

For understanding the definition of a non-resident Indian, we need to refer to Section 6 of the Income Tax Act. In simple words, it can be said that a person not residing in India for the stipulated number of days can be termed as a non- resident.

**As per the section, for a person to qualify as a non-resident, he should satisfy one of the below mentioned conditions, namely -**

- 1. If the person has resided in India for a period less than 182 days in the previous year,**
- or**
- 2. If the person has resided in India for a period less than 60 days during the previous year and for a period less than 365 days in the 4 years immediately preceding the relevant previous year. In respect to an Indian citizen or a person of Indian origin (PIO), ie, a person whose parents or grand parents are Indians who visits India during the year, the period of 60 days mentioned in the second condition shall be substituted with a period of 182 days. It is a concession provided to an Indian citizen and a PIO, and the same has also been extended to those people who lease India in the relevant previous year as crew members of "for the purpose of employment outside India.**

However, as per the amendment brought into effect by the Finance Act 2020, which will take effect for the Assessment year 2021-22, the period of 60 days in the second condition has been substituted with a period of 120 days. The number of 120 days is available if a person of Indian origin or Indian citizen has a total income above Rs. 15 Lakh during the previous year. This amount excludes the foreign income earned by such citizen or person of Indian origin. The regulation of substitution of 60 days for 182 days shall remain in force for visiting non-resident Indians whose total income in India doesn't exceed Rs. 15 Lakh.

The income referred above is total taxable income in India and shall exclude any exemptions availed by the non-resident Indian while computing the tax liability.

It is also worth nothing that a non-resident Indian is deemed to be a resident of India if the taxable income earned by such a person in India exceeds Rs. 15 Lakhs and he is not liable

to pay tax in any other jurisdiction.

### **(C). INCOME OF NRI TAXABLE IN INDIA**

A non-resident Indian is not generally liable to pay tax in India, except for the income earned by him within the territory of India. Any income earned by the non-resident Indian outside India cannot be taxed within India.

To estimate the income earned by the non-resident, person in India, one must look at the mode through which the income was earned. Any income earned by a non-resident shall be treated as Indian income if the same falls in either of the below mentioned cases:

1. If the income is directly or indirectly received in India.
2. If the income accrues or arises in India, or it is the presumption of law that the income has accrued or arisen in India.

The income of a non-resident can be termed as an income accruing or arising in India in the following cases, as per Section 9 of the Income Tax Act.

1. Income from a business running in India.
2. Income from a property, asset on any other source of Income existing in India.
3. Capital gains arising out of a transfer of a capital asset situated in India
4. Income arising out of any services rendered in India, termed as salaried income.
5. Income arising out of any service rendered to the Government of India outside India, when the non-resident Indian was a citizen of India. Such a situation arises for those people who are officers deputed in Indian missions, consulates and embassies abroad.
6. Dividend paid by an Indian company.
7. Interest, technical fees or royalty received from the Central or the State Government or any specified person.

### **(D). TAXABLE INCOME IN INDIA FOR A NON-RESIDENT INDIAN OR TAX SLABS OF NRI**

Once the residential status of an individual is identified by the law, then the person's taxable income is calculated. The tax liability needs to be calculated for non-resident Indian in a somewhat similar manner as it is calculated for a resident Indian under the income tax act. The tax liability of a person is calculated, even if a non-resident Indian, as per the tax slabs prescribed in the finance laws and the Union Budget of the relevant previous year.

**Currently, the tax slabs are as follows:**

<b>Existing tax slabs</b>	<b>New or Alternative Regime</b>
1. Rs. 0-Rs. 2.5 Lakh -Nil tax	1. Rs. 3 Lakh-Rs. 5 Lakh 5% Tax (rebate available under Section 87A of

	the Act)
2. Rs. 2.5 Lakh to Rs. 5 Lakh-5% tax (rebate available under Section 87A of the Act)	2. Rs. 5 Lakh Rs. 9 Lakh-10% tax
3. Rs. 5 Lakh to Rs. 10 Lakh @ 20%	3. Rs. 9 Lakh-Rs. 12 Lakh-15% tax
4. Rs. Above 10 Lakh @ 30%	4. Rs. 12 Lakh Rs. 15 Lakh-20% tax
	5. Above Rs. 15 Lakh-30%

The same tax rates shall be applicable on the income of a non-resident Indian's taxable income to calculate the tax liability of the non-resident Indian.

**The tax liability of a non-resident Indian can arise in the following categories of Income.**

### **(I). Salary Income**

**(a). Employment:** Salary income refers to that income of a person which arises out of a contract of employment and is earned against the rendering of any form of service to the employer. For a salaries income to exist, the person earning the income should be able to establish an employer-employee relationship out of which the income arises. *Salaried income is different from an income earned from professional activities, because though services are being rendered, the same shall be taxable under the head of income from business and profession.*

**(b). Service:** Any service rendered in India which is deriving salaried income shall be taxable in India as per Indian tax laws. *Thus, if a non-resident is receiving a salary for any service rendered by him in India, the same shall be taxable in India. The place where income is received is irrelevant here as the income has accrued in India.*

**(c). Remittance by Govt:** In cases where the Government of India remits any salary or income in favour of any Indian citizen rendering services outside India, *the same shall be considered as Indian income as it is presumed to have arisen in India and shall be chargeable to tax as per Indian laws.*

**(d). Exemption:** Here, exemption is provided to the income of diplomats and ambassadors.

### **(II). Income from house property**

**(a) Residential or Commercial Property:** Income from house property, refers to the income arising out of a residential or commercial property in terms of rental income received by the owner, in whose account the same shall be taxable. *As per laws, non-resident Indians can buy residential and commercial property but cannot buy agricultural property. The same can be held by an NRI only through inheritance.*

**(b) Non Resident:** If the owner of a house property located in India is a non- resident Indian,

then also the rental income accruing from the property shall be taxable in India because the income has arisen in India. *For determining the taxable house property income, the same shall be calculated on the basis of notional rent as per market rate if the property is unoccupied.*

#### **(c) Eligible Deductions:**

- The benefits of standard deduction of 30 per cent.
- Deduction of interest on home loan.
- Deduction of property tax paid against the shall be available to resident and non-resident individuals alike
- Deductions under Section 80C, pursuant to principal repayment, stamp duty and registration charges paid at the time of purchase of the property shall also be deductible from the taxable house property income of a non-resident.
- A tenant paying retail income to a non-resident income should be mindful to deduct Tax Deducted at Source from the payable amount at a rate of 30 per cent, as per Section 195 of the Income Tax Act. The tenant is also required to fill Form 15CA and submit online on the website of the Income Tax department along with Form 15CB, filled by a chartered accountant, which is required on a conditional basis mentioning and certifying the details of the amount of payment, the TDS rate and deductions availed as per Section 195, Rules of Double Tax Avoidance Agreement.

### **(III). Income from Business and Profession**

Income from business and profession is the Income arising out of taxable business activities run by the assessee or from the professional activities undertaken by the assessee Any business or professional income earned by a mandent shall be taxable in India, if such a business is set up or controlled in india.

### **(IV). Income from Capital Gains**

**(a) Sale of a Capital asset:** Capital gains refer to gain from that transaction which involves sale of a capital asset of the assessee, namely house property, shares, securities, gold etc. *Capital gains can be long term capital gains and short term capital gains as per the nature of the property involved and the time period for which the property held by the assessee.*

**(b) TDS:** If any capital asset situated or originating from India is transferred, then any gains accruing from it shall be treated as a capital gain accruing in India and its *tax treatment shall happen as per the tax laws of India.*

**(c) Exemption:** If the house property is held by the NRI for more than 2 years before selling it, then the buyer shall he responsible to deduct *Tax Deducted at Source at a rate of 20 per cent*

from the payment made for the sale. However, if the holding period is less than 2 years, then the TDS amount deducted shall be 30 cent.

Exemption from capital gains tax can be availed by an NRI by investing the amount of capital gains in another housing property or in capital gain bonds, as per Section 54EC. Capital gains arising from sale of listed Indian stocks and securities shall be taxed for non-residents as they are taxed for residents. *If the holding period is more than 12 months for shares, it is termed as long term and is taxable at the rate of 10 per cent exceeding Rs. 1 Lakh gains and if the period is short term, i.e., less than 12 months, then tax is payable at 15 per cent. It must be noted that NRIs cannot adjust their capital gains income against the basic exemption limit, which is currently Rs. 2.5 Lakhs*

#### **(V). Income from other Sources**

**(a). Interest Income:** Income from other sources refers to the income received from any sources which is not fit to be included in any other heads of income. *Income from other sources includes interest income in savings account and interest from fixed deposits.*

**(b). Asset held in India:** If, for a non-resident, the income from other source is out of any asset held in India, then the same is taxable in India. *It must be noted that interest on a NRE and FCNR account isn't taxable in India but interest earned in NRO account is taxable fully, as it is opened in the name of a non-resident to manage the incomes earned by him in India.*

#### **(VI). Tax Deduction Benefits available to Non-Resident Indians**

NRIs face stringent taxation laws and rules as against resident citizens. Fewer deductions are available to them, which are listed as follows:

##### **Deductions for NRIs Under Section 80C**

**1. Principal Payment on Loan for Purchase of House Property:** As mentioned already, the payment of monthly installment for paying off loan taken for purchase of house property along with stamp duty and other registration charges are deductible.

**2. Life Insurance Premium Payment:** It is deductible if premium is less than 10 per cent of the sum assured and the insured person is NRI himself, his spouse or his offspring.

**3. Investment in ULIPs:** Investment in Unit Linked Insurance Plans of Life Insurance Company Mutual Fund or Union Trust of India are deductible.

**4. Deduction from House Property Income:** Deduction of an amount up to Rs. 2,00,000 is allowed for interest paid on home loan of unoccupied house.

##### **5. Deductions for NRIs under Section 80D (Mediclaime):**

1. Premium of health insurance of dependents and immediate family or NRI allowed as deduction.

2. An amount up to Rs. 5,000 is allowed for deduction for preventive health check-ups

#### **6. Deductions for NRIs under Section 80 E (Interest on loan for education):**

Deduction of interest paid on education loan for higher education for the NRI himself, his spouse, his child or any other dependent student, subject to the earlier period of 8 years or till interest is paid, is allowed without any cap on the interest amount.

#### **7. Deductions under Section 80G (Donations):**

Deductions for donations made is available to NRIs under Section 80G

#### **8. Deductions under Section 80TTA (Interest on Savings A/c):**

Deduction of upto Rs. 10,000 is available on the interest earned on savings bank account

### **(VIII). Income Tax Return of a non- resident Indian**

Income tax return is an official record of income and tax liability to be filed by every individual who has a taxable income. The income tax return is filed on the portal of the income tax department for every financial year, also termed as previous year, in the subsequent year, termed as the assessment year.

**Specific cases:** A non-resident Indian shall be required to file an income tax return in the following cases:

1. Taxable income in India is more than the exemption limit
2. When the NRI wants to claim a refund of tax paid
3. If the NRI is facing a loss in any transaction related to an investment or asset in India and wants to carry it forward to the next financial year
4. When the NRI is incurring long term or short term gain on sale of an investment.

#### **Exemption for filing return:**

However, in the following cases, an NRI is not required to file an ITR.

1. If the total income concerning a financial year only consists of investment income and tax deducted at source.
2. If tax has already been deducted at source.
3. If special investment income is the only income of an NRI in the relevant financial year and the TDS has been deducted in respect to it.

The last date to file an income tax return in India for a Non-Resident Indian is July 31st of the relevant assessment year.

### **3.3. AVOIDING DOUBLE TAXATION**

An NRI's Indian income is taxable in India, i.e., when the income is accrued or received in India by the non-resident individual, such an income shall be taxed in India. This is so because

in such transactions, India becomes the source state of the income, thus acquiring the right to level tax on it.

However, the country where the NRI resides also has right over the income as it becomes the source residence. In such situation, there arises the issue of double taxation of income. Double taxation of income is when there are two states or territories within whose jurisdiction the income can be taxed. If the income is taxed in both the jurisdiction, it would levy unfair liability over the non-resident individual

Thus, to curb this issue, the Double Taxation Avoidance Agreement has been formed which has also been signed by India. In this, there are two methods provided to avoid double taxation and seek relief from the income tax department.

**1. Exemption Method:** In this method, the non-resident is taxed only in the one country, as per his wish and is exempted from taxation over the questioned income in the other country.

**2. Tax Credit Method:** If income is simultaneously taxed in two jurisdiction, then tax relief can be claimed in the country of residence of the non-resident India

note of tax laws and keep oneself update with the latest amendments and modifications.

### **3.4. TRANSFER PRICING**

In India, Transfer Pricing Regulations were first introduced in 2001, as a measure against tax avoidance. The Indian Transfer Price Regulations are largely influenced by the said Organization for Economic Cooperation and Development (OECD) TP Guidelines, but they are modified specifically meet the needs of the Indian tax regime.

#### **(1). Indian Transfer Pricing Regulations**

Similar to the OECD Guidelines and TP Regulations of several other countries, Indian TP Regulations prescribe methods to compute 'Arm's Length Price' for an 'International Transaction' or a 'Specified Domestic Transaction' entered into by a taxpayer with its 'Associated Enterprise'.

#### **(2). Provisions of Income Tax Act**

Section 92 of the Income tax Act, 1961 provides for the authority to an assessing officer to determine the profit which may be reasonably be deemed to have been derived from a transaction. This would be applicable where controlled Companies (associated enterprises) arrange the between them in a way that either no profit is earned from such transaction or profit earned is lower than what would be expected in a transaction between uncontrolled Companies (unrelated entities).

### (3). **Mechanism for distributing revenue**

*A transfer price is what one part of a company charges another part of the same company for goods or services. It is a mechanism for distributing revenue between different divisions which jointly develop, manufacture and market products and services. Transfer pricing refers to the setting, analysis, documentation and adjustment of charges made between related parties for goods, services or the use of property (including intangible property).*

Transfer prices among components of an enterprise may be used to reflect allocation of resources among such components, or for other purposes. Transfer prices are significant for both taxpayers and tax administrations because they determine in large part the income and expenses, and therefore taxable profits, of associated enterprises in different tax jurisdictions. Transfer pricing exists to communicate data which will lead to goal-achieving decisions and also to evaluate performance and managers to make goal-achieving decisions. *The objective of international transfer pricing focuses on minimizing taxes, duties and foreign exchange risks, along with enhancing a company's competitive position and improving its relations with foreign governments.*

*Transfer pricing is a recent corporate tax happening in India. Prompted by the growing participation of multinationals in India, the government introduced "transfer pricing" regulations in the Finance Act of 2001 to ensure that Indian companies report "reasonable, fair and equitable" profits and taxes on transactions with "associated enterprises" such as a foreign parent company. When one subsidiary of a corporation in one country sells goods, services or know-how to another subsidiary in another country, the price charged for these goods or services is called the transfer price.*

All kinds of transactions within corporations are subject to transfer pricing including those involving raw material, finished products and payments such as management fees, intellectual property royalties, loans, interest on loans, payments for technical assistance and know-how and other transactions. The rules on transfer pricing Require MNCs to conduct business between their affiliates and subsidiaries on an 'arm's length' basis, which means that any transaction between two entities of the same MNC should be priced as if the transaction was conducted between two unrelated parties.

### (4). **Objectives of Transfer Pricing:**

Transfer pricing systems are made to achieve the following objectives:

**1. Best decisions:** To provide each division with relevant information required to make the best possible decisions for the organization as a whole,

**2. Optimize performance:** To promote goal correspondence that is, actions by divisional managers to optimize divisional performance should automatically optimize the firm's performance;

**3. To facilitate measuring of divisional performances:** It is useful for evaluating the economic performance of divisions and the managerial performance of division managers.

**4. To ensure that divisional autonomy is maintained:** In principle, the top management of the company could simply issue precise instructions to divisions as to what goods to transfer to each other, in quantities and at what prices. However, most of the organizations are unwilling to do this because of the enormous benefits of allowing divisional autonomy.

**5. Manager's Performance:** To evaluate a division manager's performance, based on the profits that he generates,

**6 Goal Consensus:** To help coordinate the divisions' decisions to achieve the organization's goals i.e. to ensure goal consensus

**7. Pricing:** To enable the divisions to take decisions such as the pricing of the final product,

**8 Autonomy:** To preserve the division's autonomy.

(5). **Basis for Transfer Pricing:**

There are three general methods for establishing transfer prices.

**1. Market-based transfer price:** In the presence of competitive and stable external markets for the transferred product, many firms use the external market price as the transfer price.

**2. Cost-based transfer price:** The transfer price is based on the production cost of the upstream division.

**(A). Cost-based transfer price** requires that the following criteria be specified:

a. Actual cost or budgeted (standard) cost.

b. Full cost or variable cost.

c. The amount of mark-up, if any, to allow the upstream division to earn a profit on the transferred product.

**3. Negotiated transfer price:** The senior management does not specify the transfer price. Instead, divisional managers negotiate a mutually- agreeable price.

(6). **Purposes of Transfer-Pricing:**

There are below main reasons for instituting a transfer-pricing scheme:

1. It generates separate profit figures for each division and thereby evaluates the performance of each division separately.

2. It helps coordinate the production, sales and pricing decisions of the different divisions (via an appropriate choice of transfer prices). Transfer prices make managers aware of the

value that goods and services have for other segments of the firm.

3. Transfer pricing allows the company to generate profit (or cost) figures for each division separately.

4. The transfer price will affect not only their reported profit of each centre, but will also affect the all allocation of an organization's resources

**(7). High Price and Low Tax Rate:**

One general advantages that all companies involved in transfer pricing can look out for and try to manage on their own, would be to establish high transfer prices for their goods and services and transfer them to a unit that is located in a Jurisdiction that has low tax rates.

This will result in the company having more revenue in a jurisdiction that is subjected to a lower tax rate and less revenue in a jurisdiction that is subjected to a higher tax rate.

**(8). Buyer Seller Relationship:**

A very important element when working with transfer pricing is to maintain a buyer-seller relationship between the units of a single company. Sometimes companies face the problem of double taxation, as many companies that are involved in transfer-pricing operate under different taxation authorities or in different jurisdictions.

**(9). Taxation Authorities of Two Jurisdictions:**

Double taxation occurs when a company is forced to obey the taxation authorities of two jurisdictions, due to overlapping or conflicting tax laws and regulations. It is advisable for a company which is involved in transfer-pricing to have a knowledgeable understanding of the different ways they can increase their advantages and decrease their disadvantages.

**(10). Shifting Profits:**

Transfer pricing is a mode by which Multinational Enterprises (MNEs) makes huge profits by increasing the price of products or services in low-tax jurisdictions and decreasing the price in high-tax jurisdictions, thereby shifting profits especially in a scenario in which more than 60 percent of the international trade is carried out intra-group. Transfer pricing thus results in a huge loss to the public department which is prevented from taxing a product or service or, on the other hand, is prevented from realizing the actual tax at which a product would have been taxed in a country. The theory of Transfer Pricing is based on the concept of 'functions, risks and assets.

### 3.5. **STATUTORY RULES AND REGULATIONS UNDER THE INCOME TAX ACT – TRANSFER PRICING.**

#### **Sections 92 to 92F of IT Act:**

A separate code on transfer pricing under Sections 92 to 92F of the Indian Income Tax Act, 1961 ("the Act") covers intra-group cross-border transactions and specified domestic transactions. Since the introduction of the code, transfer pricing has become the most important international tax issue affecting multinational enterprises operating in India. The regulations are broadly based on the organization for Economic Co-operation and Development ("OECD") Guidelines and describe the various transfer pricing methods, impose extensive annual transfer pricing documentation requirements and contain harsh penal provisions for non compliance.

#### **(A). ASSOCIATED ENTERPRISES (AE). [SECTION 92A]**

The term 'Associated Enterprises' has been defined in Section 92A of the Act.

It prescribes that "Associated Enterprise", in relation to another enterprise, means an enterprise –

**(a). Which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or**

**(b). In respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.**

Thus, from the above definition we may understand that the basic criterion to determine an AE is the participation in management, control or capital (ownership) of one enterprise by another enterprise whereby the participation may be direct or indirect or through one or more intermediaries, control may be direct or indirect.

#### **(B). DEEMED ASSOCIATED ENTERPRISES. [SECTION 92A(2)]**

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

**(a). one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise; or**

**Example:** A Ltd. holds 33% of voting power in B Ltd. and B Ltd. holds 40% voting power in C Ltd. In above situation, A Ltd. holds 33% of voting power in B Ltd. directly and 40% of voting power in C Ltd. indirectly (i.e. through B Ltd.). Therefore, both B Ltd. & C Ltd. are deemed associated enterprises of A Ltd.

**(b) any person or enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in each of such enterprises; or**

**Example:** Mr. A holds 40% of shareholding in both X Ltd. and Y Ltd. where neither X Ltd. has any holding in Y Ltd. nor Y Ltd. has any holding in X Ltd. In this situation, since Mr. A directly holds 40% of shareholding in both X Ltd. and Y Ltd., X Ltd. & Y Ltd. will be deemed associated enterprises.

**(c). a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise; or**

**Example:** Book value of total assets of Y Ltd. is Rs. 100 crores. X Ltd. advances loan of Rs. 60 crores to Y Ltd. Since, in this case, X Ltd. advances loan of Rs. 60 Crores to Y Ltd. which is 60% of the book value of total assets of Y Ltd. Hence, X Ltd. & Y Ltd. are deemed associated enterprises.

**(d). one enterprise guarantees not less than 10% of the total borrowings of the other enterprise; or**

**Example:** P Inc. has total loan of 1 million dollars from XYZ Bank of America. Out of that, A Ltd., an India company, guarantees 20% of total borrowings in case of any default made by P Inc. In such a scenario, since, A Ltd. guarantees 20% of total borrowings of P Inc., P Inc. and A Ltd. are deemed associated enterprises.

**(e). more than half of the Board of Directors or members of the governing Board, or one or more executive Directors or executive members of the governing Board of one enterprise, are appointed by the other enterprise; or**

**Example:** X Ltd. has 15 Directors on its Board. Out of that, Y Ltd. has appointed 8 Directors. In such case, X Ltd. and Y Ltd. are deemed associated enterprises.

**(f). more than half of the Directors or members of the governing Board, or one or more of the executive Directors or executive members of the governing Board, of each of the two enterprises are appointed by the same person or persons; or**

**Example:** Mr. A appointed 9 Directors out of 15 Directors of X Ltd. and appointed 2 executive Directors on the Board of Y Ltd. In such a case, since a common person, i.e., Mr. A appointed more than half of the Directors in X Ltd. and appointed 2 executive Directors in Y Ltd., both X Ltd. and Y Ltd. are deemed to be associated enterprises.

**(g). the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model,**

design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(h). 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or

(i). the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise and the prices and other conditions relating thereto are influenced by such other enterprise; or

(j). where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

**Example:** Mr. A and Mr. B are relatives. Mr. A has control over X Ltd. and Mr. B has control over Y Ltd. Therefore, both X Ltd. and Y Ltd. will be deemed associated enterprises. X Ltd. & Y Ltd. are deemed to be associated enterprises

(k). Where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative; or

(l). Where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than 10% interest in such firm, association of persons or body of individuals.

### **(C). INTERNATIONAL TRANSACTION. [SECTION 92B]**

*International transaction means:*

(i). a transaction between two or more associated enterprises, either or both of whom are non-residents; and

(ii). Transaction in the nature of:

(a). sale/ purchase/ lease of tangible property; or

(b). sale/ purchase/ lease of intangible property; or

(c). provision of services; or

(d). lending/borrowing money; or

(e). any other transaction having a bearing on profits, income, losses or assets of such enterprises; or

(f). mutual agreement or arrangement between two or more associated enterprise for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any

one or more of such enterprises.

#### **(D). DEEMED INTERNATIONAL TRANSACTION [SECTION 92B(2)]**

Where, in respect of a transaction entered into by an enterprise with a person other than an associated enterprise (hereinafter referred to as “other person”),

- There exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise or,
- Where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise; and
- Either the enterprise or the associated enterprise or both of them are non-residents, then such transaction entered into between the enterprise and the other person shall be deemed to be an International transaction entered into between two associated enterprises, whether or not such other person is a non-resident.

### **3.6. TRANSFER PRICING - METHODS [SECTION 92C]**

Section 92C of Income Tax act defines the methods which are to be used in determination of Arm's Length prices for International transaction and specified domestic transaction. The term 'arm's length price' is defined by Section 92C of the Act to mean a price that is applied or is proposed to be applied to transactions between persons other than AEs in uncontrolled conditions ('**uncontrolled transaction**' means a transaction between enterprises other than associated enterprises, whether resident or non-resident.)

#### **Computation of Arm's Length Price**

The arm's length price in relation to an international transaction/specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :-

#### **1. Traditional Transactions Method.**

(a). Comparable Uncontrolled Price Method (CUP)

(b). Resale Price Method (RPM)

(c). Cost Plus Method (CPM)

#### **2. Transactional Profit Method**

(a). Profit Split Method (PSM)

(b). Transactional Net Margin Method (TNMM)

#### **3. Other Methods.**

(a). Such other method as may be prescribed by the Board.

## 1. Traditional Transactions Method.

### (a). Comparable Uncontrolled Price Method (CUP)

Comparable Uncontrolled Price (“CUP”) method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.

An Uncontrolled price is the price agreed between the unrelated parties for the transfer of goods or services. If this uncontrolled price is comparable with the price charged for transfer of goods or services between the Associated Enterprises, then that price is Comparable Uncontrolled Price (CUP). This is the most direct method for the determination of the Arms’ length price.

#### Applicability of the CUP Method

- Interest payment on a loan
- Royalty payment
- Software development where products are often licensed to a third party.
- Price charged for homogeneous items like traded goods

### (b). Resale Price Method (RPM).

The following steps to be followed Resale Price Method:

**Step- 1** - The price at which the property purchased or services obtained by the enterprise from an associated enterprise are sold to an unrelated enterprise is first determined.

**Step- 2** - Such resale price is reduced by normal gross profit margin accruing to the enterprise from the purchase and resale of similar goods in a comparable uncontrolled transaction, If there is no comparable uncontrolled transaction, then take the Gross profit of an unrelated person from purchase and resale of similar goods.

**Step- 3** - Then reduce the expenses incurred by the enterprise in connection with purchase of property.

**Step - 4** - The price so arrived at in step-3 is adjusted to account for the functional differences in the international transaction & the comparable uncontrolled transaction which could materially affect the Gross Profit margin in the open market.

**Step - 5** - The adjusted price arrived at in step-4 is the arm’s length price.

### (C). Cost Plus Method

The following steps to be followed calculation of Cost plus Method:

**Step 1** - Determine the direct and indirect costs of production in respect of property transferred

or services provided to an associated enterprise.

**Step 2** - Determine the normal gross profit mark up to such costs which will arise from transfer of similar goods or services to an unrelated enterprise or in a comparable uncontrolled transaction.

**Step 3** - The normal gross profit markup determined in Step 2 should be adjusted to account for the functional differences if any between the international transaction and comparable uncontrolled transaction which could materially affect such profit mark up in the open market.

**Step 4** - The cost referred to in Step 1 shall be increased by the adjusted profit markup arrived in Step 3.

**Step 5** - The sum so arrived at is the arm's length price.

## **2. Transactional Profit Method**

### **(a). Profit Split Method (PSM)**

Rule 10B (1) (d) of Income tax Rules, 1962 prescribes Profit Split Method, which may be applicable mainly in international transactions or specified domestic transaction involving transfer of unique intangibles or in multiple international transactions or specified domestic transaction which are so interrelated that they cannot be evaluated separately **for the purpose of determining the arm's length price of any one transaction, by which:**

- (i).** The combined net profit of the associated enterprises arising from the international transaction or specified domestic transaction in which they are engaged, is determined;
- (ii).** The relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;
- (iii).** The combined net profit is then split amongst the enterprises in proportion to their relative contributions, as computed above;
- (iv).** The profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction or specified domestic transaction

### **(b). Transactional Net Margin Method (TNMM)**

Rule 10B (1) (e) of Income Tax Rules, 1962 prescribes, transactional net margin method, by which,

- (i).** The net profit margin realized by the enterprise from an international transaction or specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having

regard to any other relevant base;

(ii). The net profit margin realized by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(iii). The net profit margin referred to in (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction or specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(iv). the net profit margin realized by the enterprise and referred to in (i) is established to be the same as the net profit margin referred to in (iii);

(v). The net profit margin thus established is then taken into account to arrive at an arms length price in relation to the international transaction or specified domestic transaction.

### **3. Other Methods.**

#### **(a). Such other method as may be prescribed by the Board.**

The other method for determination of the arms' length price in relation to an international transaction or a specified domestic transaction shall be 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 the relevant facts.

#### **Illustration 1**

N Ltd., a UK based company has a subsidiary in India which is M Ltd. N Ltd supplies 10,000 computers to its subsidiary for sale in India, at Rs. 65,000. N Ltd also sells computers to "Z" in Company in India at Rs. 60,000 per computer.

The maintenance of Computers is maintained by M Ltd. However, N Ltd is undertaking the maintenance for 6 months on sale to 'Z' company. Maintenance rate is Rs, 1,500 per year. Compute the assessment of M Ltd.

**Solution:**

N Ltd and M Ltd are associated companies N Ltd also sells the product to 'Z' Ltd which is not an associated company, the price charged by N Ltd to 'Z' Ltd is comparable uncontrolled price (CUP) which could be used for determining Arm's length price.

**Assessment of M Ltd**

Particulars	Rs.
Sale price charged to 'Z' Ltd	60,000
<b>Less:</b> Cost of maintenance $1,500 \times \frac{6}{12}$	750
Arms Length price	59,250
Actual price paid by M Ltd.	65,000
Difference per unit of Computer	5,750
Number of units supplied by N Ltd	10,000

Amount to be added in computing income of M Ltd: **10,000 x 5,750: Rs. 5,75,000**

**Illustration 2**

Cool Ltd of Chennai is trading in specific goods which is acquired from its associated firm 4 M Ltd., of France and also from an unassociated firm Statute Ltd. Italy. For the current Financial year the gross profit margin is 20% on sale of goods of 4 M Ltd. However, it was 25% in the case of Statute Ltd. Maintenance provided by 4 M Ltd is for 6 months. However Statute Ltd., gave warranty for 12 months, the cost of maintenance is 1%. The 4 M has universal brand value, which can be valued at 2% of sale price. Cool Ltd sold the following goods:

4 M Ltd goods sold for Rs. 5 crore

Statute Ltd., goods sold for Rs. 3 crore

Determine the ALP of transaction between Cool Ltd and 4 M Ltd by applying Resale price method.

**Solution:**

Transaction between Cool Ltd and 4 M Ltd are, being associated enterprises is a international transaction. As Cool Ltd also Buys goods from Statute Ltd, an unrelated firm, and the transaction is uncontrolled. Hence, gross profit of 25% on sale of such goods could be considered for Arms length price (ALM)

**Computation of Arms Length Price between Cool Ltd and 4 M Ltd.**

Particulars	Amount Rs
Resale value of goods from 4 M Ltd	5,00,00,000
<b>Less:</b> Profit Margin of (UCP) between Cool Ltd and Statute Ltd (5,00,00,000x250)	1,25,00,000
	3,75,00,000
<b>Add:</b> Adjustment for benefit of brand value of 4 M for ALP (2% of Sale)	10,00,000
<b>Less:</b> Warranty@ 1% (5,00,00,000x100)	-2,50,000
<b>Arms Length price</b>	<b>3,82.50,000</b>

**Illustration 3**

Sivam Ltd., of Trichy is dealing in electronic goods. The goods are acquired from its associated company of Netherlands and also from unrelated Dunken company of Germany. For the current financial year, the Gross profit margin is 20% of sales of Netherlands company. However, the Gross profit margin is 30% in the case of Germany company. Following are the sales made during the financial year.

Sale of Netherlands company goods : 18 crore

Sale of Germany company goods : 10 crore

Compute the ALP of the transaction.

**Solution:**

The transaction between the associated companies is international transaction. As the goods are also acquired from unrelated company i.e. Germany company is uncontrolled transaction, the gross profit margin of 30% earned could be taken for Arms length price.

**Computation of Arms Length Price of Sivam Ltd.**

Sale value of goods from Netherlands company	18,00,00,000
<b>Less:</b> Profit Margin of uncontrolled transaction: with Germany company @ 30% of sale	5,40,00,000
<b>Arms Length price</b>	<b>- 12,60,00,000</b>

### **3.7. EQUALISATION LEVY**

Equalization Levy was introduced in India in 2016, with the intention of taxing the digital transactions i.e. the income accruing to foreign e-commerce companies from India. It is aimed at taxing business to business transactions.

#### **(a). Equalisation Levy and Relevance**

Over the last decade, Information Technology has gone through an exponential expansion phase in India and globally. This has led to an increase in the supply and procurement of digital services.

Consequently, this has given rise to various new business models, where there is a heavy reliance on digital and telecommunication networks.

As a result, the new business models have come with a set of new tax challenges in terms of nexus, characterization, and valuation of data and user contribution.

The combination of inadequacy of physical presence based nexus rules in the existing tax treaties and the possibility of taxing such payments as royalty or fee for technical services creates a fertile ground for tax disputes.

***To bring clarity in this regard, the government introduced vide Budget 2016, the equalization levy to give effect to one of the recommendations of the BEPS (Base Erosion and Profit Shifting) Action Plan.***

#### **(c). Applicability of Equalization Levy**

Equalization Levy is a direct tax, which is withheld at the time of payment by the service recipient. The two conditions to be met to be liable to equalisation levy:

1. The payment should be made to a non-resident service provider:
2. The annual payment made to one service provider exceeds Rs. 1,00,000 in one financial year.

#### **(d). Services subject to Equalization Levy**

Currently, not all services are covered under the ambit of equalisation Levy.

The following services covered:

1. Online advertisement
2. Any provision for digital advertising space or facilities/service for the purpose of online advertisement.

As and when any other services are notified will be included with the aforesaid services.

#### **(e). Services excluded in Equalization Levy.**

1. The non-resident service provider has a permanent office in India, and the requested service

is linked to that permanent office/establishment.

2. The total consideration amount to be paid for the specific service payable or received is less than Rs. 1 lakh.
3. The service described is not intended to be used to pursue a profession or work.
4. An exemption under section 10(50) of the Act is provide to avoid double taxation for any income arising from specified services provided on which equalisation levy is chargeable.
5. An income chargeable to tax as fees or royalties for technical services will not be included as income for the equalisation levy purposes.

#### **(f). Rate of Tax under Equalization Levy**

Currently, the applicable rate of tax is 6% of the gross consideration to be paid.

**Example:** Raman has advertised on Facebook to expand his business. He has to pay Rs. 6,00,000 in FY 2023-24 to Facebook for the advertising services availed.

**Solution:** Facebook will bill Raman for an amount of Rs. 6,38,298. Raman will deduct TDS at the rate of 6% of Rs. 6,38,298 Rs 38,298 and pay the balance of Rs. 6,00,000 (Rs. 6.38.298-Rs. 38,298) to Facebook.

#### **(g). Equalisation Levy Due Dates for Compliance**

Due date of furnishing Equalisation Levy Statement (Form-1) is on or before 30th June of Financial Year ended (unless the date is extended). From the above example, let us assume Raman made the payment on 15th February 2024. He will have to deposit the tax with the authorities by 7th March 2024 and file the statement (ie. Form-1) on or before 31st July 2024.

#### **(h). Consequences of Delayed Payments**

**In case there is a delay in Payment:**

Interest is charges at 1% of the outstanding levy for every month or part thereof is delayed.

### **3.8. DOUBLE TAXATION AVOIDANCE AGREEMENT**

Taxing the same income or subject matter more than once for the same reason, over the same time period, and in the same tax jurisdiction is known as Double Taxation, When such income is taxed in two different countries, the total tax obligation will constitute a sizable portion of his overall income.

#### **(a). Taxes in both the countries:**

Every person must work to support themselves. Taxes can be difficult to pay in both the country of residence and the country of employment. The DTAA full form Double Taxation Avoidance Agreement was signed by India and 85 other nations, including DTAA between India and USA, to resolve these problems. It enables NRIs who work abroad to avoid paying

taxes twice on their income from both their home country and their country of residence.

### **(b). Meaning of Double Taxation**

#### **Cross border income flow:**

*Double Taxation agreements merely seek to do away with Double Taxation in instances of cross-border income flow. They are widely pursued by nations to prevent a situation where international economic activities are discouraged.*

**Application of two taxes:** *In short, when two taxes are applied to the same source of income before it is converted to net income, this is known as Double Taxation*

### **(c). Double Taxation Avoidance Agreement (DTAA)**

#### **Agreement signed by two countries:**

*A Double Taxation Avoidance Agreement (DTAA) is a pact signed by two nations that encourages capital investment; trade in goods and services, and other economic activities between the two nations by preventing International Double Taxation.*

### **(d). Taxation of International Income:**

The issue of Double Taxation is connected to the taxation of international income. Depending on the types of business/holdings that citizens of one country have in another, the DIAA may either cover all types of income or any focus on a particular type of income. In accordance with the Double Taxation Avoidance Agreements (DTAA), the following categories are covered:

#### **Income covered under double taxation:**

1. Salary
- 2 Capital Gains
3. Services
4. Property
5. Savings
6. Fixed Deposit Accounts

The disparity in tax collection on personal income worldwide is the root cause of the need for DTAA. If a person wants to run a business in another nation, he or she may have to pay income taxes in both nations the one where the income is earned and the one where the person is a citizen or resides.

For instance, if a person leave income sources in India and move to a different country, such as interest from deposits, both India and the country where a person currently residing will charge interest based on total combined earnings A person might end up paying twice as much tax on the same income in such a situation. The DTAA helps tax payers in this situation.

### **(e). DTAA Duration and Rates**

These agreements usually remain in effect forever unless and until either party formally terminates them.

Furthermore, depending on the specifics that were agreed upon by both parties, the DTAA rates and regulations change from one country to the next. TDS rates on interest earned range from 7.50% to 15%, but are typically 10% or 15% in most nations. Countries having Double Taxation Avoidance Agreement Treaty with India:

DTAA treaties with India currently exist with a total of 85 nations. The following nations and India have a Double Taxation Avoidance Agreement:

S.no	Name of Country	TDS Rates on Interest
1.	Armenia	10%
2.	Australia	15%
3.	Austria	10%
4.	Bangladesh	10%
5.	Belarus	10%
6.	Belgium	15%
7.	Botswana	10%
8.	Brazil	15%
9.	Bulgaria	15%
10.	Canada	15%
11.	China	15%
12.	Cyprus	10%
13.	Czech Republic	10%
14.	Denmark	15%
15.	Egypt	10%
16.	Estonia	10%
17.	Ethiopia	10%
18.	Finland	10%
19.	France	10%
20.	Georgia	10%
21.	Germany	10%
22.	Greece	According to the agreement

23.	Hashemite Kingdom of Jordan	10%
24.	Hungary	10%
25.	Iceland	10%
26.	Indonesia	10%
27.	Ireland	10%
28.	Israel	10%
29.	Italy	10%
30.	Japan	10%
31.	Kazakhstan	10%
32.	Kenya	15%
33.	South Korea	15%
34.	Kuwait	10%
35.	Kyrgyz Republic	10%
36.	Libya	According to the agreement
37.	Lithuania	10%
38.	Luxembourg	10%
39.	Malaysia	10%
40.	Mauritius	10%
41.	Mongolia	7.50 – 10%
42.	Montenegro	15%
43.	Morocco	10%
44.	Mozambique	10%
45.	Myanmar	10%
46.	Malta	10%
47.	Namibia	10%
48.	Nepal	15%
49.	Netherlands	10%
50.	New Zealand	10%
51.	Norway	15%
52.	Oman	10%
53.	Philippines	15%
54.	Poland	15%

55.	Portuguese Republic	10%
56.	Qatar	10%
57.	Romania	15%
58.	Russia	10%
59.	Saudi Arabia	10%
60.	Serbia	10%
61.	Singapore	15%
62.	Slovenia	10%
63.	South Africa	10%
64.	Spain	15%
65.	Sri Lanka	10%
66.	Sudan	10%
67.	Sweden	10%
68.	Swiss Confederation	10%
69.	Syrian Arab Republic	7.50%
70.	Tajikistan	10%
71.	Tanzania	12.50%
72.	Thailand	25%
73.	Trinidad and Tobago	10%
74.	Turkey	15%
75.	Turkmenistan	10%
76.	UAE	12.50%
77.	UAR (Egypt)	10%
78.	Uganda	15%
799.	UK	15%
70.	Ukraine	10%
81.	United Mexican States	10%
82.	USA	15%
83.	Uzbekistan	15%
84.	Vietnam	10%
85.	Zambia	10%

## **(f). Advantages of DTAA**

### **1. Investment:**

Double Taxation relief is one of the goals of a Double Tax Avoidance Agreement, which aims to promote a nation as an appealing investment location.

### **2. Credit for Taxes or Exemption of Income:**

This Double Taxation relief is made possible by offering credit for foreign taxes paid or by exempting income earned abroad from taxation in the country where the tax payer resides.

### **3. Beneficial for business people:**

Many taxpayers find the Double Taxation Avoidance Agreement to be advantageous. The main goal of this agreement is to prevent and avoid implementing double taxation on the same income. This is very beneficial for business people and individuals who live in one country but have set up offices, shipping companies, or other types of businesses in another country.

### **4. Tax Exemptions:**

The DTAA not only avoids Double Taxation but also offers Tax Exemptions The Double Taxation Avoidance Agreement specifies the number of terms and circumstances under which people may apply for a tax exemption.

The capital gains taxes are replaced by this exemption, which is advantageous to taxpayers and business people in terms of trading and business.

### **5. Revenue Generation:**

Additionally, it offers a tax credit in the country where the revenue is generated, or the source country, preventing the payment of the same tax twice.

### **6. Avoiding hassles:**

Based on these advantages and advantages, it is necessary to sign the Double Taxation Avoidance Agreement in order to properly transfer revenue and establish a business abroad without the hassle of having to pay taxes on the same profit twice.

### **7. Legal Guidelines:**

Another benefit is that DIAAs provide legal certainty because they contain specific guidelines for taxing international income. Due to the certainty of the tax situation, this promotes foreign investment in developing nations.

### **8. Legitimate citizens to benefit:**

Anti-abusive clauses are included in DTAA's as well to make sure that only legitimate citizens of the two countries benefit from them.

## **(g). List of Documents Needed to Claim DTAA Advantages**

NRIs must submit the aforementioned paperwork in order to benefit from the DTAA's

provisions and benefits. To be qualified to receive benefits under this DTAA agreement, an individual must provide the Tax Residency Certificate to a deductor in addition to the below-mentioned records.

These documents are listed below:

1. Indemnity/Self-Declaration Form
2. Tax Residency Certificate (In order to apply for a Tax Residency Certificate under sections 90A and 90 of the Income Tax Act, the person must submit Form 10FA. The certificate will be issued under Form 10FB following the application's successful verification and processing).
3. PAN Card Copy
4. Self-Attested Visa
5. Passport Xerox
6. PIO Proof Copy

### 3.9. REVIEW QUESTIONS

#### I. Short Answer Questions:

1. Define International Taxation.
2. What is Transfer Pricing?
3. What is the purpose of Transfer pricing?
4. What is an associate enterprise?
5. What is meant by Arms Length price?
6. What do you mean by Equalization Levy?
7. What are the services covered under Equalization Levy?
8. List out the services excluded in Equalization Levy.
9. Who is a non-resident?
10. List out the deductions u/s 80 for non-resident Indians.
11. What are the methods of double taxation relief?
12. List out documents needed to claim DTAA.
13. What is DTAA?
14. What is Double Taxation?
15. What is Resale Price Method?

#### II. Long Answer Questions:

1. List out a Tax liability of categories of Income under NRI.
2. State the Tax Deduction benefits available to NRI.
3. Explain in detail about different methods of Transfer Pricing.
4. Narrate, the Income tax provisions relating to Transfer pricing
5. Explain the provisions relating to Transfer price in India.
6. Explain the provisions of Equalization Levy
7. Explain the Income Taxable for non-residents.
8. What are the Incomes not taxable in the hands of Non-residents?
9. What is Double taxation avoiding agreements? What are the incomes covered under DTAA?
10. Explain the advantages DTAA.

## UNIT III: International Business Taxation

### Small Questions

S. No

Questions

LOCF Mapping

S. No	Questions	LOCF Mapping
1	What is Non-Resident?	K1
2	What is Double Taxation?	K1
3	What is DTAA?	K2
4	What is Transfer Pricing?	K2
5	What is Equalization Levy?	K2

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## **Big Questions**

S. No	Questions	LOCF Mapping
1	Explain taxation of Non-Residents.	K2
2	Describe double taxation relief methods.	K2
3	Explain DTAA and its application.	K2
4	Discuss transfer pricing provisions.	K2
5	Explain anti-avoidance measures in taxation.	K2

## **UNIT IV GOODS AND SERVICES TAX**

**Goods and Services Tax: GST Act, 2017 - Registration – Procedure for registration under Schedule III – Amendment of registration – Rates of Tax of IGST, CGST, SGST/UGTST- Assessment of GST- Self-assessment – Provisional assessment – Scrutiny of returns – Assessment of non filers of returns – Assessment of unregistered persons – Assessment in certain special cases – Tax Invoice – Credit and Debit Notes – Payment of Tax – Input Tax Credit - Anti profiteering -- Filing of Returns- Penalties – Prosecution – Appeal and Revision**

## **UNIT - IV**

### **GOODS AND SERVICE TAX**

#### **4.1. INTRODUCTION**

Broadly, the previous indirect tax regime consisted of Central and State laws. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. *While for State Government, Value Added Tax (VAT) and Central Sales Tax (CST) were the major taxes along with Octroi, Entertainment Tax etc.* Taxation of goods and services was governed under separate legislatures. In respect of goods, the Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the states had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy a tax (Central Sales Tax) but, the tax was collected and retained entirely by the states. As far as services were concerned, it was the Centre alone that was empowered to levy service tax governed by the Finance Act. Introduction of the Value Added Tax (VAT) was considered to be a major step and an essential breakthrough in the field of indirect taxes.

Although primarily VAT was successful, there were certain shortcomings in the structure of VAT. The reasons for such shortcomings was that there was a mosaic of taxes being levied on goods and services, such as luxury tax, entertainment tax, etc., which were not subsumed in the VAT thereby marginalizing the benefits of comprehensive tax credit mechanism. Further to this, many other taxes were levied by both the Central Government and the State Government on production, manufacture and distributive trade, where no set-off was available in the form of input tax credit. *These taxes added to the cost of goods and services and led to tax on tax i.e., cascading of taxes and the erstwhile indirect tax regime was ineffective to remove this cascading effect of taxes* and introduced new tax regime for all states,

The Constitution of India envisages a federal nature of power bestowed upon both Union and States in the Constitution itself. As a natural corollary of this, any unit of the taxation system required a dual GST, levied and collected both by the Union and the States.

## 4.2. JOURNEY OF GST IN INDIA

The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) in 2005 recommended the introduction of a comprehensive tax on all goods and services replacing the Central-level VAT and State-level VATs

- 1986 - Viswath started India Indirect Tax Regime.
- 2000 - A Committee was organized to design the GST.
- 2002 - A Government formed a task force to recommend to tax reforms.
- 2006 – Government proposed a GST rollout by 1<sup>st</sup> April 2010.
- 2008 – A Election Commission finalize a dual GST Structure.
- 2010 – A Government launched Computerized taxes project and postponed GST.
- 2011 - The head of GST Assiam Dasgupta resigned.
- 2012 – A discussion started GST but objected and it over clause 279B.
- 2014 – A Government introduce GST Bill approved by the Standing Committee.
- 2015 – A Government re proposed GST roll out by April 01, 2015.
- 2016 - GST was live and GST got approval from both houses.
- 2017 – GST got live on the historic midnight 30<sup>th</sup> June and 1<sup>st</sup> July 2017.

## 4.3. HISTORY OF GST

The origin of Goods and Services Tax is traced back to July 17, 2000, when the Government of India set up the Empowered Committee of State Finance Ministers with the Hon'ble State Finance Ministers of West Bengal, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Uttar Pradesh, Gujarat, Delhi and Meghalaya as members with the **following objectives:**

1. **Uniform Sales tax Rates:** To monitor the implementation of uniform rates of sales tax by States and Union Territories,
2. **Phasing out of incentive schemes:** To monitor the phasing out of the sales-tax based incentive schemes
3. **Switch over to VAT:** To decide milestones and methods of States to switch over to VAT, and
4. **Reformation of CST:** To monitor reforms in the Central Sales Tax system existing in the country.

## 4.4. WHAT IS GST?

'G - Goods . 'S' - Services ' T-Tax

***"Goods and Service Tax (GST) is a comprehensive tax levy on manufacture, sale and consumption of goods and service at a national level under which no distinction is made between goods and services for levying of tax".*** It will mostly substitute all indirect taxes levied on goods and services by the Central and State governments in

GST is a tax on goods and services under which every person is liable to pay tax on his output and is entitled to get input tax credit (ITC) on the tax paid on its inputs (therefore, a tax on value addition only) and ultimately the final consumer shall bear the tax"

## 4.5. MEANING OF GOODS AND SERVICES TAX

*The Goods and Services Tax (GST) is a tax levied on most goods and services sold for domestic consumption. The GST is paid by consumers, but it is remitted to the government by the businesses selling the goods and services. In effect, GST revenue for the government, and ultimately borne by the consumers.*

### (1). OBJECTIVES OF GST

One of the main objectives of Goods & Service Tax (GST) would be to eliminate the double taxation i.e, cascading effects of taxes on production and distribution cost of goods and services. The exclusion of cascading effects, be tax on tax till it, reaches final consumers will significantly improve the competitiveness of original goods and services in market which leads to beneficial impact to the GDP growth of the country. *Introduction of a GST to replace the existing multiple tax structures of Centre and State taxes is not only desirable but imperative Integration of taxes into a GST system would make it possible to give full credit for inputs taxes collected GST, being a destination-based consumption tax based on VAT principle.*

1. One Country - One Tax.
2. Consumption based tax instead of Manufacturing.
3. Uniform GST Registration, payment and Input tax Credit.
4. To eliminate the cascading effect of Indirect taxes on single transaction.
5. Subsume all indirect taxes at Centre and State Level.
6. Reduce tax evasion and corruption.
7. Increase productivity.
8. Increase Tax to GDP Ratio and revenue surplus.
9. Increase Compliance.
10. Reducing economic distortions.

### **(3). SALIENT FEATURES OF THE GST MODEL**

- (i). The GST shall have two components. One levied by the Centre (referred to as Central GST), and the other levied by the States (referred to as State GST). Rates for Central GST and State GST would be approved appropriately, reflecting revenue considerations and acceptability.
- (ii). The Central GST and the State GST would be applicable to all transactions of goods and services made for a consideration except the exempted goods and services
- (iii). The Central GST and State GST are to be paid to the accounts of the Centre and the States individually.
- (iv). Since the Central GST and State GST are to be treated individually, taxes paid against the Central GST shall be allowed to be taken as input tax credit (ITC) for the Central GST and could be utilized only against the payment of Central GST
- (v). Cross utilization of ITC between the Central GST and the State GST would not be permitted except in the case of inter-State supply of goods and services.
- (vi). Ideally, the problem related to credit accumulation on account of refund of GST should be avoided by both the Centre and the States except in the cases such as exports, purchase of capital goods, input tax at higher rate than output tax etc
- (vii). To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST
- (viii). The States are also of the view that Composition/Compounding Scheme for the purpose of GST should have an upper ceiling on gross annual turnover and a floor tax rate with respect to gross annual turnover.
- (ix). The taxpayer needs to submit periodical returns, in common format as far as possible, to both the Central GST authority and to the concerned State GST authorities.
- (x). Each taxpayer would be allotted a PAN- linked taxpayer identification number with a total of 14/15 digits. This would bring the GST PAN-linked system in line with the prevailing PAN-based system for Income tax. Facilitating data exchange and taxpayer compliance.
- (xi). **Destination-Based Consumption Tax:** GST will be a destination-based tax. This implies that all SGST collected will ordinarily accrue to the State where the consumer of the goods or services sold resides.
- (xii). **Computation of GST on the basis invoice method:** The liability under the GST will be invoice credit method i.e credit will be allowed on the basis of invoice issued by the suppliers.
- (xiii). **Payment of GST:** The CGST and SGST are to be paid to the accounts of the central and

states respectively.

**(xiv). Goods and Services Tax Network (GSTN):** A not-for-profit, Non- Government Company called Goods and Services Tax Network (GSTN), jointly set up by the Central and State Governments will provide shared IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders

**(xv). Input Tax Credit (ITC) Set Off:** ITC for CGST & SGST will be taken for taxes allowed against central and state respectively.

**(xvi). GST on Imports:** Centre will levy IGST on inter-State supply of goods and services. Import of goods will be subject to basic customs duty and IGST.

**(xvii). Maintenance of Records:** A taxpayer or exporter would have to maintain separate details in books of account for ailment, utilization or refund of Input Tax Credit of CGST, SGST and IGST

**(xviii). Administration of GST:** Administration of GST will be the responsibility of the GST Council, which will be the apex policy making body of the GST. Members of GST Council comprised of the Central and State ministers in charge of the finance portfolio

**(xix). Goods and Service Tax Council:** The GST Council will be a joint forum of the Centre and the States. The Council will make recommendations to the Union and the States on important issues like tax rates, exemption list. Threshold limits, etc. One-half of the total number of Members of the Council will constitute the quorum of GST council.

#### **4.6. TYPES OF GST IN INDIA - CGST, SGST, IGST AND UTGST**

India is currently going through major reforms in its overall economic sectors. The growth trajectory of India is so high that it is poised to become the third- largest economy of the world by 2030. Government is taking significant initiatives to boost the overall economic growth of the country Introduction to GST and its types- *CGST, SGST, IGST AND UTGST are effectively supporting such major economic development programs.*

GST stands for Goods and Services Tax. It is considered as the biggest taxation reform in the history of Indian economy. It will subsume multiple taxes like VAT, Service Tax, CST, excise and additional excise duty, entertainment and luxury tax, etc. It is a single uniform taxation system which will help in eliminating time, cost and effort

GST is introduced in the parliament as The Constitution Amendment Act 2016 and it is regulated by the Union Finance Ministry of India. It is a consumption based tax levied on the supply of goods and services which mean that it will be imposed at each stage of sale or purchase of goods or services based on the input tax credit method.

GST will transform Indian economy, turning it into a common market based on a uniform taxation system. It will enhance the ease of doing business in India Industries will make substantial savings in terms of logistics and supply chain due to GST. Some companies will benefit more as the GST rate will be lower than the current taxation. On the other hand, few sectors will have to pay more tax as GST will replace the old taxes uniformly, which may increase the rate respectively.

The overall impact of GST on India's economy is expected to be positive. As GST will be applicable from July 2017, industries and business organizations have already started to create future strategies. Both the central as well as the state government are focusing on regulating GST and major changes are being made in the organized monetary framework.

Government has joined hands with the National Securities Depository Limited (NSDL) and together they have created Goods and Services Tax Network (GSTN). It's a non-government firm which will provide IT infrastructure services to the central and state governments, stakeholders and taxpayers for proper implementation and regulation of GST

Indian economy is highly diverse due to numerous industries operating in different sectors having the different location, supply chain and target consumers. To understand the detailed impact of GST, let's discuss its three types:

### **1. Central Goods & Service Tax (CGST)**

As per the Central Goods & Services Tax Act 2016, CGST is the centralized part of GST that subsumes the present central taxations and levies - Central Sales Tax, Central Excise Duty, Services Tax, Excise Duty under Medical & Toiletries Preparation Act, Additional Excise Duties Countervailing Duty (CVD), Additional Custom Duty and other centralized taxations.

*CGST is applicable on the supply of goods and services of standard services and commodities which can be amended periodically by a specialized body under the central government. The revenue collected under CGST belongs to the central government.* The input tax is given to the state governments which they can utilize only against the payment of CGST.

### **2. State Goods & Services Tax (SGST)**

*SGST is an important part of GST It stands for State Goods & Services Tax as per the 2016 GST bill. Various taxations and levies under the state authority are subsumed by SGST as one uniform taxation. It includes the amalgamation of Sate Sales Tax, Luxury Tax, Entertainment Tax, Levies on Lottery, Entry Tax, Octroi and other taxations related to the movement of commodities and services under state authority through one uniform taxation-SGST.*

Revenue collected under SGST belongs to the State Government. However, the

mainstream framework of the state governing body will be supervised by the central government. Each state will be having their own State Authority to collect SGST

### **3. Integrated Goods & Services Tax (IGST)**

GST focuses on the concept of one tax, one nation. *IGST stands for Integrated Goods and Services Tax which is charged on the supply of commodities and services from one state to another state. For example, if the supply of goods and services occurs between Gujarat and Maharashtra, IGST will be applicable.*

Under Article 269A of the Indian Constitution, the inter-state trade and commerce activities that involve the movement of commodities and services shall be levied with an integrated tax (IGST) under the GST regime. The Government of India will collect the revenue under IGST. Further changes can be made by the Goods and Services Tax Council of India,

### **4. Union Territory Goods & Services Tax (UTGST)**

As we have already learned about CGST and SGST which are intra-state taxations and IGST which is inter-state, *the union territories in India are accounted under a specialized taxation called Union Territory Goods and Services Tax as per the GST regime 2016. It will subsume the various taxations, levies and duties with one uniform taxation in Union Territories as well.*

Delhi (India's Capital Territory), Chandigarh, Dadra & Nagar Haveli, Andaman & Nicobar Islands, Daman & Diu, Lakshadweep and Puducherry are the union territories in India. UTGST will account for all the taxations under these union territories in India. The parliament is looking forward to implement a separate act to impose and supervise GST in Union Territories under the name of UTGST Act. The bill will be presented in respective union territories for further changes in the implementation of GST.

### **4.7. ADMINISTRATION OF GST**

Keeping in mind the federal structure of India, there will be two components of GST-Central GST (CGST) and State GST (SGST). *Both Centre and States will simultaneously levy GST across the value chain. Tax will be levied on every supply of goods and services. Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State.* The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly, the credit of SGST paid on inputs would be allowed for paying the SGST on output. No cross utilization of credit would be permitted. Imports are taxed under GST:

The Additional Duty of Excise or CVD and the Special Additional Duty or SAD

presently being levied on imports will be subsumed under GST As per explanation to clause (1) of article 269A of the Constitution, IGST will be levied on all imports into the territory of India. Unlike in the present regime, the States where imported goods are consumed will now gain their share from this IGST paid on imported goods.

## **(1). GST COUNCIL**

GST council is a governing body to regulate and direct each and every step for the implementation of goods and service tax in the nation with decisions over tax rates and further implementation measures. GST council assimilates suggestions and regulation into one form and improvise the changes formally through notifications and circulars with its departments and finance ministry.

Goods & Services Tax Council is a constitutional body for making recommendations to the Union and State Government on issues related to Goods and Service Tax. The GST Council is chaired by the Union Finance Minister and other members are the Union State Minister of Revenue or Finance and Ministers in-charge of Finance or Taxation of all the States

Cabinet Ministry has given approval for the establishment of GST Council while the notification regarding the establishment of Council was issued on Saturday the 10<sup>th</sup> day September 2016 and the provisions came into force on Monday the 12<sup>th</sup> day of September 2016. Also, the Article 279A having provisions regarding establishment of GST Council was inserted after Article 279 of THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016. The Union Finance Minister Mr.Arun Jaitley who is the head of GST Council First Meeting of the council was held on 22nd and 23rd September 2016 in New Delhi

## **(2). CONSTITUTION OF GST COUNCIL**

According to the Article 279A, it is on the part of Prime Minister to give the order to constitute the council of GST within the 60 days from the 12th September 2016 which is already notified by the Government Following are the designated personnel, who will form the GST Council

The **Union Finance Minister** who will be the **CHAIRMAN** of the council;

(i).The Union Minister of State in charge of Revenue or Finance, who will be the **MEMBER** of council,

(ii). **ONE MEMBER** from each state who is Minister in charge of Finance of Taxation or any other Minister and anyone of them will be *VICE CHAIRMAN of the GST Council who will be mutually elected by them*

**Note**

1. The Secretary of Revenue Department will work as EX-Officio Secretary to the GST Council,

2. The Chairperson of Central Board of Excise and Customs will be the permanent invitee in all the proceedings of the GST Council who will not have the voting rights.

### **(3). FUNCTIONS OF THE GST COUNCIL**

The GST council will be supposed to make the recommendation to the Union and State on the following matters..

**1. Subsuming:** On subsuming of various taxes, cess, and surcharge in GST.

**2. Exemptions:** Details of services and goods that will be subjected to GST or which will be exempted from GST.

**3. Threshold Limit:** On Threshold limit below which, services and goods will be exempted from GST.

**4. GST rates:** On GST rates including floor rate with bands of GST and any special rate for time being to arrange resources to face any natural calamity.

**5. Special Provisions:** Making special provisions for the following states: Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand

**6. Model Plan:** On model law on GST, Principle of levy of GST and the principles which will govern the place of Supply.

In the GST Council a decision is taken by a three-fourth majority with the Centre having a one-third vote and the states the remaining two-third.

The GSTC has been notified with effect from 12th September, 2016. GSTC is being assisted by a Secretariat.

### **(4). POWER OF GST COUNCIL**

As per Article 279A (4), the Council will make recommendations to the Union and the States on important issues related to GST, like

(a). The goods and services that may be subjected or exempted from GST.

(b). Principles that govern Place of Supply.

(c). Threshold limits.

(d). GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters.

(e). Special provisions for certain States, etc.

(f). Transition Provisions.

## 4.8. GST IMPACT ON CENTRAL GOVERNMENT & STATE GOVERNMENTS:

GST Impact on Central Government & State Governments An Analysis GST Bill is passed in Lok and Rajya Sabha and it rolled out from 1st July 2017. The Government has already provided GST Registration Procedure and now everyone wants to know about Impact of GST on business, it is provided here a complete analysis for GST Impact on Central Government and GST Impact of State Government.

### (1). GST Impact on Central Government:

**(a). Increased collection of CGST and IGST:** The collection of taxes-CGST and IGST would increase when more and more assessee register and pay taxes due to simplified tax laws under GST regime.

**(b). Loss of CST revenues:** The CST which was 2% accruing to the State of collection has been subsumed into GST. This revenue would not be available to the States

**(c). Refunds under GST:** The refunds under Central excise and service tax laws take a longer time. However, in GST Regime, refunds are expected to be processed faster with 90% of the total refund amount being available on submission of proper documents.

**(d). Reduced corruption:** When the laws are simplified, then the chances of multiple interpretations would get reduced, leading to reduction in disputes and consequent litigation. Also, the automation of the payments/returns filing and other compliances could mean that the interaction between the assessee and the department officers would come down to minimum. This would reduce corruption and increase ethics gradually.

**(e). Compensation for loss of revenues to States:** The compensation of loss of tax revenues to the States on account of implementation of GST would be an outgo. In reality, there may be minimal outgo except for the weaker States. All are expected to gain due to increased compliance.

### (2). GST Impact on State Governments:

**(a). Proliferation of computerization leading to fall in transaction costs:** Due to increase in computerization due to GSTN, the tax administration would be easier and cost of collection would be less.

**(b). The Destination Principle:** States which are net consumers would benefit due to the accrual on destination. The producing States may have a comparative disadvantage.

### (3). Other Impacts

(a). A unified common national market to boost Foreign Investment and "Make in India" campaign.

- (b). Boost to export/manufacturing activity, generation of more employment. leading to reduced poverty and increased GDP growth
- (c). Improving the overall investment climate in the country which will benefit the development of states.
- (d). Uniform SGST and IGST rates to reduce the incentive for tax evasion.
- (e). Reduction in compliance costs as no requirement of multiple records keeping

#### 4.9. EXEMPTIONS UNDER GST:

Under GST, the Government has fixed GST rates on 1,211 goods and 500 services in the range of five to 28 per cent. *Certain items such as alcohol, petrol, diesel and natural gas will be exempt under the GST. In addition to these, the GST Council has also classified certain items under the 0 per cent tax rate, implying that GST will not be levied on them. This list includes items of daily use such as wheat, rice, milk, eggs, fresh vegetables, meat, fish, indoor, bindi, stamps. judicial papers, printed books, newspapers, bangles, handloom, bones and horn cores, bone grist, bone meal, kajal, children's picture, drawing or colouring books, human hair.*

#### 4.10. GST RATES

The GST Council, headed by Jaitley and of which all states Finance Ministers are members, have approved four main tax slabs - 5 per cent, 12 per cent, 18 per cent and 28 per cent that aim to lower tax incidence on essential items and to keep the highest rate for luxury goods. *The lowest rate of 5 per cent will be on items of mass consumption which are used particularly by common people. The second and third category of standard rates of 12 and 18 per cent will accommodate most of the goods and services. The fourth slab of 28 per cent is levied mainly on white goods such as refrigerators, washing machines etc.*

<b>GST@0%</b>		
Unpacked Food grains, Unbranded Maida, Milk, Lassi, Salt, Children Drawing and Health Service.	Fresh vegetables Unbranded besan, Eggs Unpacked Paneer, Kajal colour Books	Unbranded Atta Gur, Curd, Palmya jiggery, Phool Bhari Jhadoo, Education Services.

<b>GST @ 5%</b> Roasted Coffee Beans Packed Paneer, PDS Kerosene, Apparels (Up to Rs 1000).	Edible Oils Sugar, Cashew Nuts, Domestic LPG, Agarbatti.	Tea, Skimmed Milked Powder Raisin, Footwear (up to Rs.500) Coir Mats
<b>GST @ 12%</b> Butter, Fruit Juice Preparation of Vegetables, Plants including Pickle, Jam and Jelly.	Ghee, Packed Coconut Water Fruits, Murabba.	Almonds Nuts or other Parts, Chutney.
<b>GST @ 18%</b> Hair oil , Corn Flakes Computers.	Tooth paste, Soups, Printers.	Soap, Ice - cream, Pasta, Toiletries.
<b>GST @ 28%</b> Pan masala, Cigars, Cigarettes Port land cement.	Air conditioning Machines, computer, monitor, TV set Screen exceeding 32 inches	Projectors, road tractors, motor cars, racing cars, motor vehicle air crafts for personal use, Yachts etc.
<b>GST @ 3%</b> Pearls, Silver Gold, Platinum.	Articles of Jewellery, Imitation Jewellery.	Coins, articles of gold smiths, silver smiths of precious metal Semi precious metal.
<b>GST @ 0.25%</b> Diamonds, precious stones	Semi- Precious stones ungraded precious stones	

## 4.11. REGISTRATION, TAX INVOICE, ACCOUNTS, RECORDS AND RETURNS

### (1). Importance of registration

In order to identify the tax payer for tax compliance, registration is mandatory. Registration under GST of any business entity implies in acquiring a unique number i.e., GSTIN from the authorities for collecting GST on behalf of Central Government / State Government / Union territory and also to avail input tax credit inward supplies. Otherwise without registration neither it is possible to collect GST and nor one can claim input tax credit of GST paid.

### (2). Advantage of registration:

Registration under GST leads to the following advantages to a tax payer

- 1. Legal recognition:** GST registered person is legally recognised as supplier of Goods and Services
- 2. Legal Authorisation:** GST registered person is authorised to collect taxes from customers and give credit of the taxes paid the goods or services supplied to the purchaser or recipient.
- 3. Eligibility to claim Input tax credit:** GST registered person is eligible to claim input tax credit in respect of GST paid on Inward supplies and utilize the same for payment of taxes due on outward supply of goods or services.
- 4. Flow of Input tax credit:** GST registration leads to seamless flow of Input tax credit from suppliers to recipients at the national level.

### (3). Persons Liable for Registration

**Section 22 mentions suppliers liable for registration:** As per Section 22, every supplier having an aggregate turnover exceeding Rs. 20 lakhs (10 lakhs in special category states) is liable to be registered under GST Act in the State or Union territory from where the taxable supply of goods and services is done.

### (4). Aggregate Turnover

As per Section 2(6) the aggregate turnover is the aggregate value of :

- All taxable supplies
- Exempt supplies
- export of goods or services or both,
- Inter state supplies

### Exclusions are:

- Central tax
- State tax

- Union territory tax
- Integrated tax and
- Cess

#### **(5). Persons exempt from Registration (Section 23)**

As per Section 23(1) the following persons are not liable for registration under GST Act.

- Persons making supply of non taxable or wholly exempted goods or services or both are not liable for registration.
- Agriculturist.** An individual or Hindu undivided family who undertakes cultivation of land by own labour or by the labour of family or by servants on wages payable or by hired labour under personal supervision are not liable for registration.
- GST payable by the recipient under reverse charge mechanism:** In the case of supplier is engaged in making taxable supply of goods or services and GST paid on reverse charge mechanism by the recipient, registration is not required even if aggregate turnover exceeds the threshold limit of 20 lakhs /10 lakhs.

#### **(6). Notified category of persons:**

On the recommendation of the council, the Government by notification exempt specific category of persons from registration under the GST Act.

#### **(7). Compulsory registration under Section 24:**

The following persons are required to be registered under this Act:

- Persons making inter-state supply
- Casual taxable person making taxable supply
- Persons who are required to pay tax under reverse charge
- E-commerce operator who is required to pay tax on specified services
- Non resident person making taxable supply
- Persons who are required to deduct tax.
- Persons who are agent or otherwise who make taxable supply of goods of services or both on behalf of other taxable persons
- Input service distributor
- Every person supplying online information and database access from outside India to a person in India.
- Such other persons notified by the Government on the recommendations of the council.

## 4.12. PROCEDURE FOR REGISTRATION

Section 25 of GST Act provides procedure for registration as below:

**1. Section 25(1) Application to be made within 30 days:** Every person who is liable to register shall apply for registration in every state or union territory where the person is liable for registration.

**2. Section 25(2):** Grant of single registration: Registration under GST Act is granted single registration in a state or union territory. However persons having multiple business verticals in a state or union territory is granted separate registration for each business vertical.

**Business vertical:** As per section 2(18) Business vertical means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services

**3. Section 25(3) voluntary registration:** In case a person though not liable under the GST Act may Get registered voluntarily and all the provisions are applicable to such person.

**4. Section 25(4) more than one registration.** A person who has obtained more than one registration shall be treated as distinct person in respect of each such registration.

**5. Section 25(5) Establishment in different states:** If a person has obtained in respect of an establishment in a state or a union territory and also has establishment in another state or union territory those establishments are treated as distinct persons.

**6. PAN shall be mandatory for registration:** Section 25(6) Permanent Account number issued under the Income Tax Act is compulsory for registration. However in the case of persons who are to deduct tax may have tax deduction and collection account number (TAN) instead of PAN.

**7. Section 25(7) Registration of taxable person.** Non resident persons may be granted registration as per prescribed documents.

**8. Section 25(8) Mandatory registration:** In case a person fails to obtain registration proper officer may grant registration in a prescribed manner

**9. Section 25(9) Unique identity number (UIN):** Specialised agency of UNO /consulate/Foreign embassy / other notified persons are to be granted unique identify number for all purpose under the GST Act for refund of taxes.

**10. Section 25(10):** Registration certificate and unique identification number to be granted or rejected after verification.

**11. Section 25(11):** Registration certificate to be issued. The registration certificate to be issued in prescribed form.

**12. Section 25(12) Deemed registration:** A registration or unique identity number is deemed to be granted after lapse of a specific period if a communication is received.

#### **4.13. PROCEDURE FOR MAKING APPLICATION FOR REGISTRATION**

Rule 8 of the Act provides rules for applying for Registration under the GST Act.

**(1) Rule 8(1): As per rule 8(1) Every person who is liable for registration is to file in the Form GST REG: 01 and declare the following:**

##### **Permanent Account Number**

- Mobile Number
- E-mail address
- State or Union territory

##### **2. Validation:**

As per rule 8(2) the following are verified:

- (a). PAN number is validated on line by the common portal of Central Board of Direct taxes.
- (b). Mobile number declared is verified through password sent to the mobile number.
- (c). E-mail address declared is verified through password sent to the e-mail address.

##### **3. Granting of Temporary reference number:**

As per Rule 8(3) on successful validation of PAN number and verification of mobile number and E-mail a temporary reference number is granted to the applicant and communicated on the mobile number and e-mail.

##### **4. Submission of application:**

As per Rule 8(4) based on the reference number the applicant shall electronically submit application in part B of Form GST REG- 01 along with specified documents at the common portal or through a facilitation centre.

##### **5. E-acknowledgement:**

As per Rule 8(5) an acknowledgement is issued electronically on receipt of the application in Form Reg-02.

##### **6. Temporary reference number for casual taxable person:**

A casual taxable person is a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business. The casual taxable person who applies for registration is granted a temporary reference number by the common portal for making advance deposit of tax.

#### **4.14. CANCELLATION OF REGISTRATION:**

Section 29 of CGST Act has laid down the provisions for cancellation of registration.

**1. Cancellation of registration:** As per section 29(1) the officer may cancel registration either on his own or on application filed by the registered person or his legal heirs due to the following circumstances:

**(A). (a). Discontinuing of business**

- (b). Transfer of business
- (c). Amalgamation
- (d). Demerger
- (e). Disposal of business

**(B). Change in the constitution of business**

**(C). Taxable person is no longer liable for registration.**

**2. Cancellation of registration by proper officer:**

As per section 29(2) the proper officer may cancel registration due to the following reasons:

- (a). Registered person has contravened any provisions of the act
- (b). A person having composite levy has not furnished return for 3 consecutive tax periods
- (c). A registered person has not furnished return for a continuous period of 6 months.
- (d). A person who has taken voluntary registration has not commenced business within 6 months from the date of registration.
- (e). A person acquired registration by fraud, willful misstatement or suppression of facts.

#### **4.15. DOCUMENTS USED IN RESPECT OF GOODS AND SERVICES.**

**(1). Invoice**

*Invoice is a commercial instrument issued by a seller to a buyer. An invoice provides identification of the buyer and seller, description of the product or supply. It also provides quantities sold, date of supply, method of transport, value of supply and any discount given there on delivery schedule and terms payment.*

*Invoice under, GST regime is titled as "invoice" or "tax invoice" as referred in section 31. As per section 31 it is mandatory to issue an invoice or a bill of supply for every supply of goods or services. The invoice may be issued by the supplier of goods or service, even if it is not necessary that it is to be issue supplier of goods or service. However, it is mandatory that if a registered by the buys goods or services from an unregistered person has to issue a voucher for payment and also a tax invoice. Based on the category of the registered person making the*

supply the type of invoice is issued.

*For example, receipt or supply of goods or services from unregistered person, then the tax invoice is to be issued by registered person. Similarly if registered person deals with only exempted supplies or he is a composition dealer, he has to issue a bill of supply in lieu of invoice. In the case of supply of goods the invoice is required to contain description, quantity and value of goods Similarly in the case of supply of services the invoice is required to contain details in the form of description, Value and other particulars specified; However if the value of supply is less than Rs 200 an invoice or bill of supply need not be issued.*

### **Contents of Tax invoice**

As per Rule 46 the Tax invoice has to contain the following details:

- (a). Name, address and GSTIN of the supplier
- (b). Consecutive serial number not exceeding sixteen characters.
- (c). Date of issue
- (d). Name, address and GSTIN or UIN, if registered, of the recipient.
- (e). If the recipient is unregistered and value of taxable supply is fifty thousand rupees or more, then the following details are shown:
  - Name and address of the recipient
  - Address of delivery
  - Name of the state and its code

Similar details are provided on the request of the recipient even if value of taxable supply is less than fifty thousand rupees,

- (f). HSN code of goods or services
- (g). Description of goods or services
- (h). Quantity of goods and unit or unique quantity code
- (i). Total value of supply of goods or services or both
- (j). Taxable value of supply of goods or services
- (k). Rate of tax
- (l). Tax amount charged
- (m). Place of supply and name the state in the case of Inter-State trade of commerce.
- (n). Address of deliver
- (o). Any tax payable on reverse charge basis
- (p). Signature or digital signature of the supplier or authorized representative supplier.

## (2). **Delivery Challan.**

**Contents of delivery challan are as follows:**

- Date and number of the delivery challan.
- Name, address and GSTIN of the consigner, if registered.
- Name address and GSTIN, or UIN of the consignee, if registered.
- HSN code and description of goods.
- Quantity.
- Taxable value.
- Tax rate and tax amount.
- Place of supply in case of Inter-State movement.
- Signature.

## (3). **Payment Voucher**

A registered person who is required to pay GST under reverse charge mechanism has to issue a payment voucher at the time of making payment to the supplier. The payment voucher contains following details.

- Name, address, and GSTIN of the supplier, if registered,
- A Consecutive serial number (Not exceeding 16 characters in one or numerals / or special multiples or series containing Alphabets/ characters hyper or dash and slash symbolized as " and “ respective and any combination thereof unique for a financial year).
- Date of Issue
- Name, address and GSTIN of the recipient
- Description of goods or services
- Amount paid
- Rate of Tax
- Amount of tax payable
- Place of supply along with the name of state and its code in case of supply in the course of interstate trade or commerce.
- Signature or digital signature of the supplier or his authorized agent

## (4). **Credit note and Debit note**

Millions of purchase and sale transactions happen in day to day life and so does the returns are made by many customers when they find that products are not suitable to their requirements. *Debit note and Credit note are used while the return of goods is made between two business entities. While Debit note issued by the purchaser at the time of returning the*

goods to the vendor and the vendor issues a credit note to inform that he/she has received the returns goods.

When the goods are returned to the seller or supplier, a debit note is issued to him which indicates that his/her account has been debited with the respective amount. On the other hand when a customer returns goods, a credit note issued to him which shows that his account has been credited with the amount indicated in the note

#### **(5). Accounts and Records (Section 35)**

List of Records to be maintained by registered person

As per section 35(1) the following are the true and correct accounts to be maintained at the principal place of business.

- (a). Production or manufacture of goods
- (b). Inward supply of good or services or both
- (c). Outward supply of goods or services or both
- (d). Stock of goods
- (e). Input tax credit availed

### **4.16. FILLING OF RETURNS OR FURNISHING OF RETURNS**

GST has been implemented in India from 1st July 2017. Under the new GST regime, nearly one crore business entities in India's have obtained registration. All entities having GST registration are required to file GST returns. GST return is mandatory for all entities having registration irrespective of business activity or sales or profitability during the return filing period. Hence, even a dormant business entity that obtained GST registration must file GST return. Types of GST Returns and Due Dates

GST return must be filed by all persons having GST registration The following are different types of GST returns and the due dates.

#### **1. GSTR- 1 Return-Due on 10th of Every Month**

**Form GSTR-1 or return of outward supplies** is normally due on the 10th of every month. For the month of July 2018, GSTR 1 is due on the 10th of October The GSTR I due date for all other months will be announced by the GST Council.

In GSTR 1 return, details of Invoices, debit notes, credit notes and revised Invoices issued in relation to outward supplies made during the tax period must be provided. This e-return can be filed online on the GST portal or using LEDGERS GST Software within 10 days from the end of the tax period. The registered person shall not be allowed to furnish any details of outward supplies during the period from the eleventh day to of the month succeeding the tax period.

Content of GSTR-01 (a) GSTIN, Name & Period (b) Aggregate the fifteenth day over in de  
Content of Reconsolidated level details of outward supply (Supply to RD):

In GSTR 1 return, the details of all invoices issued by the taxpayer that are B2B or B2C must be uploaded to the GSTIN.

The details of FORM GSTR-1 Furnished by the supplier will be made available to the recipients in PART-A of FORM GSTR-2A, Form GSTR 4A and in Form GSTR-6A.

## **2. GSTR- 2 Return-Due on 15th of Every Month**

**GSTR 2 or return of inward supplies** must be filed before the 15th of each month. In GSTR 2, the return for outward supplies filed by the supplier and the receiver is required to match his receipts with the details of supplies filed by the supplier. The receiver is required to verify, validate, modify or even delete, if necessary the details furnished by the suppliers.

Any modification, deletion or inclusion of inward supplies by the receiver in his inward return i.e. FORM GSTR-2 will be communicated to the Outward supplier which will be visible to them as GSTR 1

## **3. GSTR- 3 Return-Due on 20th of Every Month**

GSTR 3 or monthly GST return is due on the 20th of every month. Part A of GSTR 3 return will be automatically generated based on information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods. The taxpayer can discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR-3

## **4. GSTR- 4 Return - Quarterly Return for Composition Suppliers Due on 18th**

GSTR 4 or GST quarterly return for composition supplier is due 18 days front the end of quarter Hence, GSTR 4 return will be due on 18th April, 18th July, 18th October and 18th January. Based on details contained in FORM GSTR-4A, and where required, after adding, correcting or deleting the details, the taxpayer can file the quarterly return in FORM GSTR-4.

## **5. GSTR- 5 Return - Monthly Return for Non-Resident Taxable Persons**

GSTR 5 return must be filed by persons registered under GST as a non resident taxable person before the 20th and within 7 days from last day of registration. In GSTR-5, the taxpayer must file information and details of outward supplies and inward supplies.

## **6. GSTR- 6 Return Monthly Return for Input Service Distributors**

GSTR-6 return must be filed by persons registered as an Input Service Distributor on or before the 13th of every month. Based on FORM GSTR-6A. the taxpayer can file the return

after adding, correcting or deleting the details and furnish return, containing the details of tax invoices on which credit has been received and those issued.

#### **7. GSTR- 7 Return-Monthly Return for Tax Deductors**

GSTR-7 return must be filed by persons registered under GST for TDS GSTR 7 return is due on or before the 10th of every month. The details furnished in Form GSTR-8, will be made available in Part C of Form 24 and Form 4A to other taxpayers.

#### **8. GSTR- 8 Return-Monthly Return for E-Commerce Operator**

GSTR-8 return must be filed by E-Commerce Operator on or before the 10th of every month. E-Commerce operators must provide details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it. Details furnished by E-commerce operators will be made available to each of the suppliers in Part C of FORM GSTR-2A.

#### **9. GSTR-9 Return-Annual GST Return**

GSTR-9 return or annual GST return must be filed by taxpayers on or before the 31st of December. GSTR-9 return need not be filed by those registered under composition scheme, non-resident taxable persons, casual taxable persons, TDS deductors, TCS collectors. In case the annual turnover is more than Rs.2 crores the annual return filed by the taxpayer must be audited by a Chartered Accountant or Cost Accountant.

#### **10. GSTR-10 Return-Final GST Return**

GSTR 10 or final GST return must be filed within 3 months from the date of cancellation of GST registration.

#### **11. GSTR-11 Return- GST Return for UIN Holders**

Form GSTR-11 or GST return for UIN holders must be filed by persons having UIN under GST to claim refund of taxes paid on his inward supplies.

#### **Payment of Tax:**

Provisions relating to payment of tax, Interest, penalty and other payments se provided in section 49 of the GST Act as given below:

**1. Credit to electronic cash ledger:** As per section 49(1) every payment made in the form of tax, interest, penalty, fee by a person by internet banking or by using credit card, or by NEFT or by RTGS or by other specified mode is to be credited to the electronic cash ledger of such person.

**2. Input tax credit (ITC) to be credited to electronic cash ledger:** As per section the input tax credit self assessed in the return of registered person is to be credited to his electronic credit ledger.

**3. Usage of amount in Electronic Cash Ledger:** As per section 49(3) the amount in the electronic credit ledger can be utilised for payment towards tax, interest penalty, fees or any other amount payable

**4. Use of amount in Electronic credit ledger :** Payment under section 49(4) towards output tax.

**5. Manner of usage of amount in Electronic credit ledger:** As per section 49(5) the amount of input tax credit available in the electronic credit ledger of the registered person on account of :

(a) Credit of IGST can be used for payment of IGS1, COST, SGST and UTGST sequentially

(b) Credit of CGST is to be used for payment of CGST and IGST sequentially.

(c) Credit of SGST to be used for payment of SGST and IGST sequentially

(d) Credit of UTGST is to be used for payment of SGST and UTGST

(e) Credit of SGST/UTGST cannot be used for payment of CGST

**6. Refund :** as per Section 49(6) the balance in electronic ledger or cash ledger after payment of tax, interest, penalty, fee is to be refunded.

**7. Electronic liability ledger:** As per section 49(7) all liabilities of a taxable person are to be recorded in an electronic liability register.

**8. Order of payment of liabilities:** As per section 49(8) the taxable person is to discharge his liabilities as under:

(a) Self assessed tax, and other dues related to returns of previous periods

(b) Self assessed tax and other dues related to the return of the current tax period.

(c) Any other amount payable under the GST Act.

**9. Incidence of Tax:** As per Section 49(9) every person who has passed tax on goods or services or both be deemed to have passed on full Incidence of tax to the recipient of such goods or services or both.

#### **4.17. INPUT TAX CREDIT**

Exporters and SEZ units or Developer receiving zero rated supply shall be eligible to claim refund of IGST paid by the registered taxable person on such supply subject to the prescribed conditions, safeguards and procedure. As per section 16 of IGST law provides that credit of input tax shall be allowed even when no tax is paid at the time of clearance for export of goods or services and supply of goods or services to SEZ.

Therefore, even if goods are exported under a bond, the input tax credit on input/input services shall be allowed. It may be noted that section 16 further provides that the

credit of input tax shall also be allowed even if such supply is exempt supply. 'Exempt supply' is defined in section 2(47) of GST law.

Exempt supply shall include following -

- (a) Value of non-taxable supply
- (b) Supply attracting nil rate of tax
- (c) Supply exempt from tax (as provided in section 11 of GST law or under section 6 of IGST law)
- (d) Non-taxable supply

While certain conditions are prescribed for a ailment of credit, conditions are that the person should have taxpaying documents and should received goods and/or services and tax charged by the supplier, on which the recipient is entitled to credit should be paid to the appropriate Government, which shall bring onerous compliance requirements upon the recipient to verify whether the supplier has discharged its tax liability.

While the GSTN system could enable fulfilment of this requirement based on the matching principle, inserting this as a condition may require discharge of responsibility on the recipient.

Accordingly, a taxable person may claim refund of any unutilized input tax credit at the end of any tax period. In other words, Exporters and SEZ units or Developer shall be eligible to get refund on eligible inputs including capital goods and input services.

As per section 2(19) of the CGST Act, 2017, definition of 'capital goods' has been defined liberally time which is relief in terms of eligibility of claiming input tax credit in respect of capital goods. Accordingly, 'capital goods' means goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Accordingly, input tax credit will be eligible for capital goods only on those goods, the value of which is capitalized in the books of accounts.

## 4.18. REVIEW QUESTIONS

### I. Short Answer Questions:

1. What is GST?
2. What is CGST and SGST?
3. What is UTGST?
4. What is IGST?
5. Define GST.
6. List out a power of GST Council.
7. List out a Exemption of Goods in GST.
8. What is mean by Invoice and Delivery Chaellan?
9. Define Debit note and Credit note.
10. What is meant by Input Tax Credit?

### II. Long Answer Questions:

1. State the Journey of GST in India.
2. State the Objectives of GST.
3. Describe in detail about types of GST System in India.
4. Elucidate in detail about Administration of GST in India.
5. State the constitution of GST Council.
6. Describe in detail about impact of GST in India.
7. State the GST Rates in India.
8. Describe in detail about procedure for making application for GST Registration.
9. Explain in detail about different types of filling of Returns.

## UNIT IV: Goods and Services Tax (GST)

### Small Questions

S. No	Questions	LOCF Mapping
1	What is GST?	K1
2	What is IGST?	K1
3	What is Input Tax Credit?	K2
4	What is Tax Invoice?	K2
5	What is Self-Assessment?	K2

### Big Questions

<b>S. No</b>	<b>Questions</b>	<b>LOCF Mapping</b>
1	Explain GST registration procedure.	K2
2	Describe types of GST (CGST, SGST, IGST).	K2
3	Explain Input Tax Credit mechanism.	K2
4	Discuss GST assessment procedures.	K2
5	Explain filing of GST returns and penalties.	K2

## **UNIT V - CUSTOMS ACT, 1962**

**Customs Act, 1962 : Important Definitions – Basics – Importance of Customs Duty – Constitutional authority for levy of Customs Duty – Types of Customs Duty – Prohibition of Importation and Exportation of goods – Valuation of goods for Customs Duty – Transaction Value – Assessable Value – Computation of Assessable Value and Customs Duty.**

## **UNIT - V**

### **CUSTOMS ACT, 1962**

#### **5.1. INTRODUCTION**

In the ancient days it was a "custom" that any merchant entering any kingdom with his goods had to present a valuable gift to the king. Over the years, this 'custom was regularized and legalized into 'customs duty'

*The word customary" is derived from "customs" which means a habitual practice. It refers to duty imposed on imports or exports of goods. History reveals that tax on various goods was levied from Veda period. However, origin of customs duty is traced to British rule. In 1786, a Board of revenue was created with its headquarters at Calcutta. Collection of customs duties was entrusted by the British Government to the Board of revenue.*

In 1812, regulations were made for the Madras customs house and two customs houses were established in western India, one at Mahim and the second at Bombay Island under the control of the Surat council of East India company. During the British rule in India they had three residencies, namely, Bombay, Bengal and Madras. Each of these had its own customs rules and regulations. Thus duties charged by these residencies varied from each other. In order to provide uniform rates of duties for all the three provinces, the customs duties Act was passed in 1859. Subsequently number of enactments were made in customs tariff structure, namely Indian customs Act 1867, and 1870, Indian Tariff Act 1871, and 1875, sea customs Act 1878 etc.

Indian Textile Industry used to import cotton fabrics and yarn, from 1894, Import duty on yarn was imposed in 1894 at 5% advalorem. Customs duty received a great impetus during world war 1. The general rate of import duty was raised from 5% to 7 5% advalorem. Subsequent to % 2 world war 1, the financial requirements led to the raising of the tariff rates.

*The Indian Fiscal Commission in 1921 and the Taxation enquiry committee in 1924 made a number of recommendations regarding Tariff policy. Thus land customs Act was passed in 1924. The great depression of late 1920<sup>s</sup> caused a heavy deficit in the central finances, which led to the additional taxation imposed by the Indian Finance Act 1931 and Indian Tariff Act 1934.*

After independence Indian manufacturing industry grew and there was expansion in the trade Customs Tariff Act, 1934 was found to be inadequate to at the expansion of industry and trade. Tariff revision committee was formed, which recommended adoption of Brussels Trade Nomenclature of customs cooperation council. *Accordingly customs Act was passed in 1962*

and Tariff Act 1975 was also passed which came into effect in 1976.

Customs Tariff Act provided explanatory clarificatory, and interpretative rules for proper classification of goods. However, later on customs cooperation council developed a new system of Nomenclature known as "*Harmonised commodity description and coding system*" which takes into account the latest changes in technology and pattern of International trade HSN (Harmonised system of Nomenclature) schedule is expected to derive the following benefits

- (a). Reducing classification disputes
- (b). Common code for goods in international trade
- (c). Facilitating computerization of customs classification and assessment work.

Central excise tariff was also replaced by a new Tariff based on HSN on 28th February, 1986.

**Growth in customs revenue:** Customs duty was initially started with 5% prior to independence. After independence, need arose for reducing imports and save scarce foreign exchange and also to protect Indian industry from foreign competition, customs duty rates were increased. The total duty burden was over 100% and in some cases even more than 200% or 300%. During 1970 - 71, revenue from customs was Rs. 524 corers, and Rs. 3.350 corers during 1980-81. The revenue rose to Rs. 25,500 corers during 1992-93 which is 32.5% of tax revenue of Central Government.

## 5.2. OBJECTIVES OF CUSTOMS ACT

1. Restricting Imports for conserving foreign exchange.
2. Protecting Indian Industry from undue competition.
3. Prohibiting imports and exports of goods for achieving the policy objectives of the Government.
4. Regulating exports.
5. Prevent Smuggling.
6. Facilitate implementation of laws relating to Foreign Trade Act, Foreign Exchange, Conservation of Foreign Exchange, Prevention of Smuggling Act, etc

## 5.3. ORIGIN AND HISTORY OF THE CUSTOMS ACT OR SCOPE OF THE CUSTOMS ACT:

The Customs Act 1962, was passed by Parliament on 13th December 1962 The Act came into force from February 1, 1963. It is a simple, crisp and lucid piece of legislation. Customs Act is primarily treated as a Revenue Act which consists of 17 chapters and 161 sections. Section 156 of the customs Act empowers the Central Government to enact rules

consistent with provisions to implement the purposes of the Act.

The rules under the Customs Act are as under :

- (a). The customs valuation Rules, 1988
- (b). Duty Drawback rules 1995
- (c). Re-export of imported goods Drawback of customs rules, 1995
- (d). The Baggage rules, 1998.

### **(1). Regulations under customs Act, 1962.**

The Central Board of customs and Excise has been empowered by Section 157 of the Customs Act to make regulations to carry out the purpose of the Act The regulations under the Customs Act are

- (a). Project import regulations, 1986.
- (b). Provisional assessment regulations, 1963
- (c). Import manifest (vessels) Regulation, 1976
- (d). Bill of Entry form Regulations, 1976
- (e). Customs House Agents Regulations, 1984
- (f). Bill of Entry (Electronic Declaration) Regulations, 1995

### **(2). Customs Tariff Act, 1975.**

Customs Tariff Act was passed in 1975, which came into effect in 1976. The Act contains two schedules Schedule 1 gives classification and rate of duties for imports, while schedule 2 gives classification and rates of duty for exports. In addition, the customs Tariff Act makes provision for duties like additional duty (CVD), preferential duty, anti dumping duty. protective duties etc

**Notifications under Customs Act 1962:** Various Sections of Customs Act, authorize Central Government to issue notifications. The main sections giving scope for notifications are

- (a). Section 25(1) : To grant partial or full exemption from duty.
- (b). Section 11 : To prohibit import or export of goods.
- (c). Section 11B. : To notify goods
- (d). Section 11(1) : To list out specified goods

### **Board Circulars:**

Section 151A of Customs Act empowers Central Board of Excise and Customs sue for purpose of uniformity in classification of goods or with respect to ty of duty thereon, issue such instructions and directions to officers of customs and they are required to observe and follow such orders, instructions and directions of Board CBE & C issues circulars giving various instructions / prescribing various procedures etc. Normally these instructions should be

followed.

### **(3). Customs Manual 2001.**

Customs manual, 2001 was released by CBE & C in September, 2001. The manual gives an over view of customs law and procedures. It is not stated that the customs manual is issued under any provisions of Customs Act or Rules. However, normally, instructions in customs manual, 2001 should be followed.

### **(4). Functions of Customs Department:**

Indian customs department handles important tasks as given below

1. Collection of customs duties on imports and exports
2. Enforcement of customs act covering imports and exports
3. Discharge of agency functions and enforcing prohibitions and restrictions on imports and exports.
4. Prevention of smuggling
5. International passenger clearance

### **(5). Officers of customs - Appointment, Functions and Powers:**

Following are the different classes of officers of customs:

- (a). Chief commissioners of customs
- (b). Commissioners of customs
- (c). Commissioners of customs (Appeals)
- (d). Joint commissioners of customs
- (e). Deputy commissioners of customs
- (f). Assistant commissioners of customs
- (g). Such other class of officers of customs as may be appointed for the purpose of the customs act.

**(6). Appointment of officers of customs.** The Central Government is empowered to appoint customs officers. The Central Government may authorize Board or Commissioner of customs or Deputy commissioner or Assistant commissioner to appoint officers of customs below the rank of commissioner of customs.

### **(7). Functions of customs officers**

Custom's officers handle various important functions which are as under

- 1. Collection of duty:** Collection of customs duty on imports and exports as per basic customs laws.
- 2. Enforcement of various provisions:** Enforcement of various provisions of customs Act governing imports and exports of cargo, baggage, postal articles and arrival and departure of

vessel, aircraft etc.

**3. Discharge of various agency functions:** Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under customs act and other allied enactments

**4. Prevention of Smuggling:** Prevention of smuggling including interception of Narcotics drug trafficking.

**5. International passenger processing:** Processing of arrival and departure of International passengers.

### **(8). Powers of Customs Authorities**

#### **(I). Appointment of customs ports, airports, etc.**

The Board may appoint the following by notification in the Official Gazette-

**1. Customs ports and customs airports:** The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods.

**2. Inland container depots:** The places which alone shall be inland container depots for unloading of imported goods and loading of export goods or any class of such goods.

**3. Land customs stations:** The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods.

**4. Routes:** The routes by which alone goods or any class of goods specified may pass by land or inland waters into or out of India, or to or from any land customs station from or to any land frontier

**5. Coastal ports:** The ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports of India.

#### **(II). Approval of Landing places and specifying limits of customs area:**

1. The commissioner of customs may approve proper places in any customs port or customs airport or coastal airport for the loading and unloading of goods.

2. He may specify the limits of any customs area.

#### **(III). Powers to declare places to be warehousing stations:**

The customs board may, by notification in the official Gazette, declare places to be warehousing stations at which alone public ware houses may be established and private warehouses may be licensed

#### **(IV). Appointment of boarding stations:**

The commissioner of customs may, by notification in the official Gazette, appoint in or

near any customs port, a loading station for the purpose of boarding of or disembarkation from vessels by officers of customs.

#### **5.4. DEFINITION OF CONCEPTS.**

**1. “Adjudicating authority”** means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

**2. “Appellate Tribunal”** means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129.

**3. “Assessment”** means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a). the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b). the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c). exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d). the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is livable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e). the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f). any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, selfassessment, re-assessment and any assessment in which the duty assessed is nil.

**4. “Baggage”** Baggage includes unaccompanied baggage but does not include motor vehicles. Baggage means

(a). all durable articles, imported by passenger or a member of crew in his baggage

(b). un- accompanied baggage, if dispatched previously or subsequently within prescribed period. Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier. Baggage also does not include articles imported under an import

license for own use or on behalf of others.

**5. “Bill of entry”** means a bill of entry referred to in section 46, i.e. entry of goods for importation [Section 2(4)].

**6. “Bill of export”** means a bill of export referred to in section 50 i.e. entry of goods for exportation [Section 2(5)].

**7. “Coastal goods”** means goods, other than imported goods, transported in a vessel from one port in India to another [Section 2(7)];

**8. “Conveyance”** includes a vessel, an aircraft and a vehicle.

**9. “Customs area”** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; Customs area includes warehouse [Section 2(11)]. Note: Since customs area covers warehouse, no IGST is payable for goods removed from customs station to warehouse.

**10. “Dutiable goods”** means any goods which are chargeable to duty and on which duty has not been paid.

**11. “Entry”** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84.

**12. “Exporter”** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

**13. “Foreign-going vessel or aircraft”** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes - (i) any naval vessel of a foreign Government taking part in any naval exercises; (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India; (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

**14. “Goods” includes** - (a) vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiable instruments and (e) any other kind of movable property.

**15. “Imported goods”** means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

**16. “Foreign-going vessel or aircraft”** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes - (i) any naval vessel of a foreign Government taking part in any naval exercises; (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

**17. "Importer"** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

**18. "India"** - India includes territorial waters of India. The territorial water of India extends to 12 nautical miles into sea from the appropriate base line. [Section 2 (27)] Goods are deemed to have been imported if the vessel enters the imaginary line on the sea i.e. 12th nautical miles. India includes not only surface of the sea into territorial water but also the air space above and the ground at the bottom of the sea.

**19. "Indian Customs Waters"** means the waters extending into the sea up to the limit of contiguous zone of India and includes any bay, gulf, harbour, creek or tidal river.

*"Indian Customs Waters" means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river"*

## 5.5. LEVY OF CUSTOM DUTY

There are three stages of imposition of taxes and duties

### 1. Levy.

Levy is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.

### 2. Assessment.

Assessment is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment

### 3. Collection.

The final stage is where the tax or duty is actually collected

## 5.6. TAXABLE EVENT

The basic condition for levy of customs duty is import/export of goods i.e. *goods become liable to duty when there is import into (bringing into India from a place outside India [Section 2(23)] or export from India (taking out of India to a place outside India [Section 2(18)]. In the words of Supreme Court "the event, the occurrence of which immediately attracts charge. "India" includes the territorial waters of India [Section 2(27)].*

*"Territorial Waters" according to section 3 (2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zones and other Maritime Zones Act, 1976, means the line every point of*

*which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.” Indian customs waters are now extended to the Exclusive Economic Zone.*

Therefore, the ‘taxable event’ under the Customs Act requires the following ingredients essentially:

1. Goods must be in physical form.
2. Must be brought by human beings for specific purpose.
3. Resulting in entry into India but at the customs barrier.

## **5.7. TYPES OF DUTIES UNDER CUSTOMS ACT, 1962**

The tariff rates for customs duties are specified in customs Tariff Act, 1975. The types of duties are as under

1. Basic Customs Duty.
2. National Calamity Contingent Duty.
3. Special Additional Duty of customs
4. Additional Customs Duty
5. Protective Duties
6. Countervailing Duty on Subsidised Goods
- 7 Anti - Dumping duty on dumped articles
8. Safeguard Duty

The above duties are explained below

### **1 Basic customs duty:**

Basic customs duty is levied under Section 12 of customs Act. Normally it is levied as a percentage of value of goods. The rates of Basic customs duty vary for different items. The general basic customs duty rate is 20%. The rates range from 5% to 20% for different commodities. The basic customs duty is reduced to 10% by the Finance Act, 2007.

### **2. National calamity contingent duty:**

This rate is called "NCCD" of customs and it is imposed from 2001 It is imposed on pan masala, chewing tobacco and cigarettes. The rate varies from 10% to 45%. NCCD of 1% was imposed on Motor Cars, multiutility vehicles and Two wheelers and NCCD of Rs. 50 per ton was imposed on domestic crude oil during 2003.

### **3. Special Additional Duty of Customs:**

Special additional duty @ 4% was introduced from 2nd June 1998. This additional duty was introduced to offset the effect of local sales tax payable by Indian manufacturers. This duty was leviable upto 8-1-2004 Special additional customs duty was applicable on all goods

imported except Baggage, Gold and Silver, News print. Crude petroleum etc

#### **4. Additional customs duty (CVD):**

This is called "Counter vailing duty". It is imposed when excisable articles are imported in order to offset the excise duty livable on similar goods manufactured within the state. Additional customs duty is imposed to keep the prices of home products with the imported products. Additional customs duty is livable on alcoholic liquor imported and some other goods like stainless steel manufactured for household use and transformer oil

#### **5. Protective duties:**

Protective duties are recommended by Tariff commission to Central Government when immediate action is necessary to interests of Indian industry. Protective duties are imposed by a notification which should be introduced in parliament. The protective duty is valid till the date prescribed in the notification. The duty can be reduced, rescinded or increased by a notification.

#### **6. Countervailing duty on subsidised goods:**

If other countries pay any subsidy directly or indirectly to their exporters for exporting goods to India, Central Government can impose countervailing duty up to the amount of such subsidy under section 9 of customs Tariff Act. Incase subsidy cannot be ascertained, provisional duty is collected and on subsequent determination, the difference is refunded. Imposition of countervailing duty should be by way of notification

#### **7. Anti dumping duty on dumped articles :**

A large manufacturer from a foreign country may export goods at lower prices compared to prices in his home market. This may be done to cripple Indian domestic market or dispose of their excess stock. This kind of activity is called dumping. The Central Government can avoid this kind of dumping by imposing anti-dumping duty upto margin of dumping on such articles. Margin of dumping means the difference between normal value and export price. Normal value means comparable price in ordinary course in trade for consumption in the exporting country or territory

#### **8. Safeguard Duty:**

As per section 8B of the customs act the central government can impose safeguard duty. Safeguard duty can be imposed on specified imported goods if the central government is satisfied that goods are imported in such increase quantities that they are causing In injury to domestic industry.

#### **9. PROVISIONAL COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES:**

When the amount of subsidy is not determined central government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally

estimated by it. If on determination government finds that it is less than the subsidy provisionally determined it may reduce such duty and also may refund the excess duty collected.

#### **10. ANTI DUMPING DUTY (SECTION 9 OF CUSTOMS TARIFF ACT, 1975)**

**Dumping:** Dumping means exporting goods to India, at prices lower than the price in the domestic market of the exporting country, subject to certain adjustments.

When the export price of a product imported into India is less than the normal value of like articles sold in the domestic market of the exporter the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Anti dumping duty is country specific i.e. it is imposed on imports from a particular country. Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

#### **11. PROVISIONAL ANTI DUMPING DUTY**

The Central Government may impose Anti dumping duty on provisional basis if determination of normal value and margin of dumping of an article is pending in accordance with the provisions of this section and rules made there under and if such anti-dumping duty exceeds the margin as so determined,-

Central Government shall reduce the anti dumping duty and shall also refund the excess duty.

#### **5.8. PROHIBITION ON IMPORTATION AND EXPORTATION OF GOODS**

Section 11 of the Customs Act empowers, the Central Government to prohibit the import or export of specified goods. Prohibition is to be done by notification in the official Gazette. Prohibition may be absolute or subject to such conditions.

#### **Purposes for prohibition of Imports/Exports:**

The reasons for prohibition of imports/Exports are enumerated below

1. Maintenance of security of India
2. Maintenance of public order and standard of decency or morality.
3. Prevention of smuggling.
4. Prevention of shortage of goods of any descriptions.
5. Conservation of foreign exchange and the safeguarding of balance of payments.
6. Prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver
7. Prevention of surplus of any agricultural product or the product of fisheries.

8. Maintenance of standards for the classification, grading or marketing of goods in international trade
9. Establishment of any industry.
10. Prevention of serious injury to domestic production of goods of any description.
11. Protection of human, animal or plant life or health
12. Protection of national treasures of artistic, historic or archaeological value.
13. Conservation of exhaustible natural resources.
14. Protection of patents, trade marks and copy rights.
15. Prevention of deceptive practices.
16. Carrying on of foreign trade in any goods by the state
17. Fulfilment of obligations under the charter of the united nations for the maintenance Of international peace and security.
18. Implementation of any treaty, agreement or convention with any country
19. Compliance of imported goods with any laws which are applicable similar goods produced or manufactured in India.
20. Prevention of the contravention of any law for the time being in force.
21. Any other purpose conducive to the interests of the general public

### **Items of Imports and Exports being prohibited:**

#### **Prohibited Exports:**

Sandalwood oil, Cardamom, obscene books and other publications, Tussar/ mugasilks, Indian made wood and Animal casings, specified fruits, mechanical lighters, books containing maps/diagrams showing borders of India erroneously

#### **Prohibited imports:**

Explosives, Arms and ammunition, Narcotic drugs, Counterfeit coins, Quinine, Saccha rine, matches, Fictitious stamps, Armoured Cars and Antiquities.

#### **Detection and Prevention of Illegal Import and Export:**

According to Section 11B of the Customs Act, if having regard to the magnitude of the illegal import of goods of any class or description, the Central Government is satisfied that in the public interest to take special interest for the purpose of checking the illegal impact, circulation or disposal of such goods, or facilitating the detection of such goods, it may specify the goods by notification.

#### **Goods notified by the Central Government:**

Some of the goods that have been notified by the Government are as follows: Alcoholic liquors, perfumes, cosmetics, synthetic yarn and metalised yarn. photographic cameras, electronic calculators, watches, fabrics, cigars, VCP. VCR.

## **5.9. VALUATION OF GOODS UNDER CUSTOMS ACT**

*Most of the customs duties are advalorem. Goods are to be valued for purposes of customs duty assessment. The customs valuation rules, 1988 follow the GATT provisions for valuation of goods. As per the GATT provisions the value of the goods for duty purpose is transaction value or fully commercial and genuine invoice price. Imported goods are to be valued in accordance with rules for customs valuation made by the Central Government under Section 14(1A).*

### **(1). Customs Value**

*According to Section 14(1) the value of dutiable goods shall be deemed to be the price at which such goods are ordinarily sold at the time and place of importation or exportation in the course of international trade where:*

1. The buyer and seller have no interest in the business of each other.
2. One of them has no interest in the business of the other.
3. The price is the sole consideration for the sale or offer
4. The sale is to be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented or a shipping bill or bill of export is presented.
5. The Board is empowered to fix the Tariff value for any class of goods whether imported or exported.

### **(2). Fundamental Elements to determine Customs value**

The important ingredients as per Section 14(1) to determine the value of goods for customs purpose are as follows:

- 1. Price ordinarily offered:** The price at which such or similar goods are ordinarily sold or offered for sale. Similar goods shall be like kind and quality.
- 2. Price for delivery:** The price for delivery at the time and place of importation and exportation. Time and place do not refer to precise movement of time when goods are unloaded from the ship. All expenses upto the destination port including unloading, handling charges, freight and Transit insurance have to be included.
- 3. Price in the course of International trade :** refers to price during the movement of goods from one country to another and implies not only a period of time during which movement is in progress, but also connected relation.

**4. No interest in each other's business:** The buyer and seller should have no interest in the business of each other.

**5. Price to be the sole consideration:** The price should be the sole consideration for the sale or offer for sale. Either the buyer or seller should have no interest in the business of the other

**6. Rate of exchange :** Price shall be calculated with reference to rate of exchange which is determined by the Central Government.

### **(3). Fixation of Tariff value by Central Government**

For any class of goods imported or to be exported, the tariff value can be determined by the Central Government. The Government fixes the value having regard to the trend of the value of such similar goods. When the tariff values are fixed by the Government, the duty will be chargeable with reference to such values only.

### **(4). GATT Valuation**

According to Article VII, of General Agreement on Tariffs and Trade, Customs value of imported goods shall be based on their actual value or the actual value of similar goods but not based on the value of the goods of national origin or an arbitrary or fictitious value.

### **(5). Methods of valuation for customs:**

Based on GATT valuation code, the new valuation Rules, 1988 were framed. The new valuation Rules consist of many independent methods of valuation to be used in "hierarchical order". The following are the methods of valuation

1. Transaction value of same goods
2. Transaction value of Identical goods
3. Transaction value of similar goods
4. Deductive value method
5. Computed value method
6. Residual method

These methods are explained below. They are used in hierarchical order.

#### **1. Transaction value of same goods**

As per Rule 3 of customs valuation rules, 1988, the value of any imported goods shall be the transaction value. This is the primary method of valuation. Transaction value means the actual price at which the goods are sold. The actual price shall be inclusive of

(a). Specified costs and services such as commission, brokerage, cost of containers and package.

(b). Proportionate value of goods and services supplied by the buyer, free of cost or at concessional rate, for use in production/sale for export of the goods, like tools, materials etc.

- (c). Royalties and licence fees related to the imported goods required to be paid by the buyer.
- (d). Other payments made or to be made by the buyer as a condition of sale. When the transaction value cannot be ascertained, then other alternative methods can be used in hierarchical order. If the first method cannot be used, then the second should be used and so on.

## 2. Transaction value of identical goods

As per rule 5, if the transaction value of goods cannot be ascertained, their value shall be the value of identical goods. Identical goods according to Rule 2(c): "Imported goods according to Rule 2(c) means imported goods which are similar in all respects", in the sense physical characteristics, quality and reputation of the goods valued except for minor differences which do not affect the value of goods. The identical goods should have been produced in the same country in which goods being valued are produced. Sale of identical goods taking place under any of the three conditions may be used:

1. A sale at same commercial level but in different quantities.
2. A sale at a different commercial level but in substantially the same quantities or
3. A sale at a different commercial level and different quantities.

On ascertaining sale under any one of the above conditions, value of goods shall be made by making adjustments for (a) quantity factors only (b) Commercial level factors only (c) quantity and commercial level factors

## 3. Transaction value of similar goods (Rule 6)

If Actual price cannot be ascertained and value of identical goods can not be determined as per Rule 5, then the goods will be valued at transaction value of similar goods.

Features of similar goods Similar goods are defined in Rule 2(e) as under:

**(a) Similarity:** Imported goods which though not identical in all respects. have identical characteristics and components such as, quality, reputation and existence of trademark and are commercially interchangeable with the goods being valued.

**(b) Production in the same country:** The similar goods should have been produced in the same country as in the case of goods to be valued.

**(c) Engineering and art work** Imported goods in respect of which certain services like engineering, art work etc., were undertaken in India free of charge or at concessional rates will be excluded from the preview of similar goods.

## 4. Deductive value method (Rule 7)

When the goods cannot be valued under the above three methods, Deductive value as per Rule 7 is used to value the imported goods. If the imported goods being valued are sold in India

in the same condition as they are imported, and this is at or about the same time when valuation of the goods in question is to be done, then the value of goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the seller in India. From the unit price the following deductions shall be made

- (a). The usual Commission that is paid or the usual additions to profits and general expenses for such class or kind.
- (b). The usual cost of transport, insurance etc.
- (c). Customs duties and taxes payable on account of import or sale of the goods.

If similar goods or identical goods are not sold in India, then the value of goods shall be based on the unit price at which identical or similar goods are sold after further processing. However, due allowance will be made in respect of the value added for processing and the deductions referred above.

#### **5. Computed value method (Rule 7A)**

This method is not incorporated in the customs Rules 1988, thereby it is not a permissible method of valuation. The GATT provides for reversing the sequence of the computed value method with that of deductive value method at the option of the importer. Computed value is the sum of the cost or value of materials, fabrication or other processing, profit and general expenses, cost of transport, loading and unloading and cost of insurance.

#### **6. Residual method (Rule 8)**

This is the last method of valuation and known as the residual method. This method is used when all the above methods of valuation of goods fail to arrive at the valuation goods. Under this method, the basis of valuation is the selling price for export to India. The value of the imported goods under this method should be based on previously determined customs values to the extent possible. While valuing goods the following shall not be taken as base:

- (a). Selling price of the goods produced in India.
- (b). System of accepting highest of the alternative values.
- (c). The price of the goods on the domestic market of the country of exportation.
- (d). The price of the goods for export to a country other than India.
- (e). Minimum customs value.
- (f). Arbitrary or fictitious values.

## 5.10. IMPORT AND EXPORT PROCEDURE

Imports and exports of any country are subject to control for reasons of revenue and to provide protection to home made goods and also regulate the development of economy. Customs duties are levied on goods imported into or exported from India. Import and export of goods takes place by sea, air, rail or road It can also take place through post parcel or as baggage with passengers Procedure for clearance of goods imported by post differs in various aspects from that applicable for imports by sea and air. The differences are essentially in the mode of payment of duty. The Customs Act, 1962 has clearly specified a set of procedures in respect of imports by land, air or sea.

### (1). Import Procedure:

**1. Arrival at customs port/airport only:** Section 29 provides that person-in-charge of vessel of an aircraft entering India shall call or land at customs port or customs airport only. It can land at any other place by accident, stress of weather or other unavoidable cause. In such case he shall report to nearest police station or customs office. While arriving by land route, the vehicle should come by approved route on land customs station' only.

**2. Import Manifest/Report :** Person-in-charge of vessel, air craft or vehicle has to submit Import-Manifest/Report or Import General Manifest (IGM). In case of vessel or aircraft, it is called import manifest, while in case of vehicle, it is called import report. IGM can be submitted electronically through floppy where EDI facility is available. Form of manifest has been prescribed in various regulations issued by CBE & C. The manifest/report provides details of cargo to be unloaded.

**3. Grant of Entry Inward by customs officer (Section 31):** Unloading of cargo can start after customs officer grants 'Entry Inward' which is granted only when berthing accommodation is granted to a vessel.

**4. Unloading of Reported Goods only (Sec. 32, 33 and 34).** According to section 32 only those goods specified in the imported manifest can be unloaded. Unloading can be done only at approved place and under supervision of Customs Officer.

**5. Filing of Import bills of Entry (Sec. 46(1)):** Bill of entry is a very vital and important document which every importer has to submit under section 46. The Bill of entry should be in prescribed form. Bill of entry should be submitted in quadruplicate. Original and duplicate are to be submitted to Customs Triplicate is for the importer and fourth copy is meant for bank making remittances. Bill of entry contains details in the form of (1) Importer's name (2) Address (3)

Vessel's name (4) Line number (5) Port of Shipment (6) Country of origin (7) Nature of quality of packages (8) Customs Tariff heading (9) Exemption notification number (10) Total Duty

**6. Assessment of Goods:** Appraisers of the customs department assess the goods on submission of bill of entry

In the process of assessment the customs department may check the following documents.

*(a) Invoices (b) packing specifications (c) payment particulars (d) catalogues (e) broker's note (f) Insurance policy. These documents will be helpful in proper classification and valuation of the goods. The declaration made in the bill of entry is verified by physical examination of the cargo before the duty is assessed.*

**7. Approval of Assessment:** The assessment has to be approved by Assessment Commissioner, if the value is more than Rs. One lakh. After the approval, duty payable is typed by a 'pin point typewriter so that it cannot be tampered with.

**8. Customs Clearance from view point of Import Policy:** Customs Authorities also check goods from the other acts regulating imports and exports. Import licences and import restrictions are checked. Each importer and exporter has to get Import and export code number (ICENo) from the Director General of Foreign trade. The code is based on the PAN of Income tax.

**9. Payment of Duty:** If goods are to be removed to a ware house, duty payment is not required. Goods can be taken to a warehouse under a bond without payment of duty. However if goods are to be removed for home consumption, payment of customs duty is required. Duty can be paid either in cash or through P.D account. A P.D. account means provisioned duty account. This is a current Account. The importers pay lumpsum amount in the account and get credit on the amount paid. The importer can pay customs duty by debiting the amount in P.D. Account. If the importer does not have an account, he can pay duty by cash using TR-6 Challan. If payment is made by cheque or demand draft, the payment will be deemed to have been received on the data on which the cheque or D.D is cleared. The payment is to be made within 5 working days after the bill of entry is returned to the importer for payment of duty. If the duty is not paid within 5 working days, interest is payable.

**10. Disposal if goods are not cleared in 30 days :** According to section 48 of Customs Act, goods must be cleared within 30 days after unloading however customs officer can grant extension. Otherwise, goods can be sold after giving notice to importer. However, animals, perishable goods and hazardous goods can be sold any time-even before 30 days. Arms and ammunition can be sold only with permission of Central Government.

## **(2). Export procedure:**

### **1. Initial steps to be taken by the Exporter**

- (a) Obtain Business Identification number.
- (b) Open current account with designated bank for credit of duty drawback claim.
- (c) Register licences / advance licences at the customs station if exports are under Export promotion scheme

**2. Shipping Bill to be submitted by Exporter** : Shipping Bill and Bill of Export regulations form shall be submitted along with packing list, invoices, export contract, letter of credit.

**3. Declaration of exporter** : Exporter has to make appropriate declaration in prescribed form in case of export of goods for drawback and other appropriate declarations.

**4. Export duty:** if payable Export duty is levied on very few articles and cess is payable on certain commodities under various acts. The duty and cess is to be paid before export is allowed.

**5. Entry of goods for exportation (Section 50)** : As per section 50 of the customs act, the exporter is required to present a shipping bill to proper officer of Customs. The shipping bill is filed only after an entry outwards has been granted for the particular vessel or aircraft by which the goods are to be exported.

**6. Clearance of goods for exportation [Section 51]** : After the shipping bill being filed, goods are presented for the customs appraisal. Appraisal is done by scrutinising documents and physical check. If the Customs officer is satisfied that goods are not prohibited and the exporter has paid the duty, the order for shipment is made on the duplicate copy of the shipping bill. This is known as "Let Export" orders.

**7. Check in customs** : Documents submitted are processed by customs authorities and the following are checked

- (a). Value and classification of goods under draw back schedule.
- (b). Export duty/Cess if payable
- (c). Advance Licence and shipping bill are checked to ensure that description in invoice and Final product specified in advance licence matches.

**8. Examination of goods before Export** : On passing of the shipping bill, the goods are presented to shed appraiser (exports) in dock for examination. Goods will be examined by examiner. This inspection is necessary to ensure that prohibited goods are not exported and goods tally with description of invoice.

**9. "Let export" order by customs authorities** : Customs officer will verify the contents and

after he is satisfied that goods are not prohibited for exports and that export duty, if applicable is paid, will permit clearance by giving 'Let ship' or 'Let export' order.

**10. Goods not to be loaded on vessel until entry outward granted Section [39 &40):** The master of vessel will load goods on entry outward being granted. by proper officer

**11. Conveyance to leave on written order :** The vessel or aircraft which carries export goods can leave on a written order given by customs officer which is given only after (a) export manifest is submitted (b) Shipping bill or bills of export are submitted (c) duties on stores consumed are paid (d) no penalty is leviable (c) export duty is paid.

**12. Notice of Short Supply :** As per notice of "short export Rules, 1963, if any goods mentioned in shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within 7 days from the date of departure of the conveyance by which the goods are intended to be exported, furnish the particulars to the customs authorities. The notice is known as short- shipment/shut out notice. Any exporter who fails to comply with this provision is liable to pay penalty not exceeding Rs. 100.

## 5.11. REVIEW QUESTIONS

### I. Short Answer Questions:

1. Define 'Customs'.
2. What is meant by Assessment?
3. Define 'Baggage'.
4. Define "Foreign-going vessel or aircraft".
5. What is Indian Customs Waters?
6. What is Dutiable Goods?
7. Define Levy of Customs Duty.
8. What is Taxable Event?
9. Define Protective Duty and Anti Dumping Duty.
10. Define Residual value method.
11. Define Payment of Duty.

### II. LONG ANSWER QUESTIONS

1. State the Objectives of Customs Act.
2. Describe in detail about origin and History of the Customs Act.
3. State the functions of Customs Department.
4. Describe in detail about different types of duties under Customs Act.
5. State the objectives of Prohibition of Imports and Exports of Goods.
6. Explain in detail about different methods of Valuation of Goods under Customs Act.
7. State the procedure for Exports and Imports.

## UNIT V: Customs Act, 1962

### Small Questions

S. No	Questions	LOCF Mapping
1	What is Customs Duty?	K1
2	What is Import?	K1
3	What is Assessable Value?	K2
4	What is Transaction Value?	K2
5	What are types of Customs Duty?	K2

### Big Questions

S. No	Questions	LOCF Mapping
1	Explain basics of Customs Act, 1962.	K2
2	Describe types of customs duties.	K2
3	Explain valuation of goods for customs duty.	K2

<b>S. No</b>	<b>Questions</b>	<b>LOCF Mapping</b>
4	Discuss computation of assessable value.	K2
5	Explain prohibition of import and export.	K2

**Dr.K.Rajamannar**  
**Assistant Professor,**  
**Department of Commerce,**  
**M.S. University, Tirunelveli – 627 012**