

# **Amendment Book**

**CA FINAL**

**DIRECT TAX LAWS  
& INTERNATIONAL TAXATION**



**THE FINANCE ACT, 2020**

**Paper - 7**  
**By CA. Durgesh Singh**  
**(A.Y. 2021 - 22)**

**Relevant for May 21 CA Final Exam**  
**(New and Old Syllabus)**



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# AMENDMENT BOOK

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CA Final – Direct Tax Laws and International Taxation [Paper – 7]



BY CA DURGESH SINGH  
DURGESH SINGH TAX CLASSES

## AUTHOR'S NOTE

Dear Students,

This e-book meticulously covers all the amendments introduced by the Finance Act, 2020, the relevant CBDT circulars and notifications notified till October 2020 applicable for May 2021 attempt.

The key features of this e-book are:

1. Comprehensively covers all the amendments upto 31<sup>st</sup> October 2020 as applicable for May 21 CA Final Attempt.
2. Wherever necessary, Practical Problems and Case studies have been incorporated to understand the practical implications of the amendment.
3. Various Charts, Tables, and similar techniques have been used to simply complicated areas of the amendments.

I strongly recommend students to go through our **amendment class based on these notes in unacademy app for May 2021 exams**, which covers the entire amendment in a most decisive manner.

Follow the profile using this link to get the update of all lecture of CA Durgesh Singh

<https://unacademy.com/@unacademy-user-DSTC>.

I believe this amendment book shall serve as useful guide and shall supplement your exam preparation. I strongly recommend the students to refer our Chart booklet (151Charts) covering the entire syllabus in a most decisive manner. You can book your copy at [www.bharatlaws.com](http://www.bharatlaws.com)

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Heralding you to a bright and brilliant future.

Blessed be

CA Durgesh Singh

15<sup>th</sup> February, 2021

Magha Ganesh Jayanti







| Serial Number | Topics   | Page Numbers |
|---------------|--|--------------|
| 1             | Income Tax Rates Other Than Alternative Tax Scheme | 1            |
| 2             | Income from Salaries                               | 7            |
| 3             | Profits and Gains from Business or Profession      | 10           |
| 4             | Business Deductions                                | 15           |
| 5             | Chapter VI-A Deductions                            | 17           |
| 6             | Capital Gains                                      | 18           |
| 7             | Income from Other Sources                          | 23           |
| 8             | Set-off and Carry Forward of Losses                | 24           |
| 9             | Assessment Procedure                               | 25           |
| 10            | AIR/SFT  | 27           |
| 11            | Faceless Assessment & Procedures                   | 28           |
| 12            | Appeals  | 48           |
| 13            | Penalties and Prosecution                          | 50           |
| 14            | Special Tax Rates of Companies                     | 52           |
| 15            | Alternative Tax Regime                             | 53           |
| 16            | Co-operative Society and Producer Companies        | 65           |
| 17            | Taxation of Dividend                               | 68           |
| 18            | Surrogate Taxation                                 | 74           |
| 19            | Trust Taxation                                     | 75           |
| 20            | Non-Resident Taxation                              | 77           |
| 21            | Double Taxation Relief                             | 86           |
| 22            | Equalization Levy                                  | 89           |
| 23            | Transfer Pricing                                   | 92           |
| 24            | Tax Deducted at Source                             | 96           |
| 25            | Tax Collected at Source                            | 106          |

**Amendment Free E-Class Links:**

- 1) Class 1 - <https://unacademy.com/course/session-1-on-final-dt-amendments-for-may-21-attempt/ZVJFPKW2>
- 2) Class 2 - <https://unacademy.com/course/session-2-on-final-dt-amendments-for-may-21-attempt/5SEAIIZT>
- 3) Class 3 - <https://unacademy.com/course/session-3-on-final-dt-amendment-for-may-21-attempt/55K4RP3V>
- 4) Class 4 - <https://unacademy.com/course/session-4-on-final-dt-amendment-for-may-21-attempt/DZOLWSET>
- 5) Class 4A - <https://unacademy.com/course/session-4a-for-final-dt-on-amendment-for-may-21-attempt/DPEH7JLJ>
- 6) Class 5 - <https://unacademy.com/course/session-5-on-final-dt-amendment-for-may-21-attempt/L7B638LD>

# 1) Income Tax Rates Other Than Alternate Tax Scheme

## 1) Individual

|   |               |   |                 |
|---|---------------|---|-----------------|
|    | <b>Sr.No.</b> | <b>1. Male/HUF/AOP &amp; BOI/Artificial Judicial Person</b> | <b>Tax Rate</b> |
|   | 1.            | Taxable Income up to Rs.2,50,000                            | NIL             |
|   | 2.            | Rs. 2,50,000 to Rs. 5,00,000                                | 5%              |
|   | 3.            | Rs. 5,00,000 to Rs. 10,00,000                               | 20%             |
|   | 4.            | Above Rs. 10,00,000   | 30%             |
|    | <b>Sr.No.</b> | <b>2. Female</b>  | <b>Tax Rate</b> |
|   | 1.            | Taxable Income up to Rs.2,50,000                            | NIL             |
|   | 2.            | Rs. 2,50,000 to Rs. 5,00,000                                | 5%              |
|   | 3.            | Rs. 5,00,000 to Rs. 10,00,000                               | 20%             |
|   | 4.            | Above Rs. 10,00,000   | 30%             |
|   | <b>Sr.No.</b> | <b>3. Resident Senior Citizen</b>                           | <b>Tax Rate</b> |
|   | 1.            | Taxable Income up to Rs.3,00,000                            | NIL             |
|   | 2.            | Rs. 3,00,000 to Rs. 5,00,000                                | 5%              |
|   | 3.            | Rs. 5,00,000 to Rs. 10,00,000                               | 20%             |
|   | 4.            | Above Rs. 10,00,000   | 30%             |
|  | <b>Sr.No.</b> | <b>4. Resident Super Senior Citizen</b>                     | <b>Tax Rate</b> |
|   | 1.            | Taxable Income up to Rs. 5,00,000                           | NIL             |
|   | 2.            | Rs. 5,00,000 to Rs. 10,00,000                               | 20%             |
|   | 3.            | Above Rs. 10,00,000   | 30%             |

Add:

Surcharge:

- If taxable income exceeds Rs. 50 lakhs but less than Rs. 1 crore.
- If taxable income exceeds Rs. 1 crore but less than Rs. 2 crore
- If taxable income exceeds Rs. 2 crore but less than Rs. 5 crores
- If taxable income exceeds Rs. 5 crores

1. There is not any change in slabs of tax rates, but these are changes in surcharge rates for Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person w.e.f AY 2020-21.
2. Thus, the maximum marginal rate is also now increased.

**10% of IT**  
**15% of IT**  
**25% of IT**  
**37% of IT**

The Finance (No. 2) Act, 2019 has levied an enhanced surcharge of 25% and 37%, where the total income of individuals/HUF/AOPs/BOIs exceeds Rs. 2 crores and Rs. 5 crores, respectively. However, the enhanced surcharge has been withdrawn on tax payable at special rates under section 111A and 112A on short-term and long-term capital gains arising from;

- 1) the transfer of equity share in a company or
- 2) unit of an equity-oriented fund/ business trust,
- 3) Which has been subject to securities transaction tax?
- 4) **Dividend Income**

Refer below example containing rates of surcharge for understanding the manner of computation of surcharge on capital gains and other income components of total income.

## Rate of Surcharge applicable to Individuals/HUF/AOPs/BOIs for A.Y.2021-22

| Sr No. | Particulars  | Rate of Surcharge on Income Tax | Example   |   |
|--------|--|---------------------------------|---|---|
|        |  |                                 | Components of total income  | Applicable rate of surcharge  |
| (i)    | Where the total income (including income under section 111A and 112A) Exceed Rs.50 lakhs but does not exceed Rs.1 crore  | 10%                             | <ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 10 lakhs;</li> <li>LTCG u/s 112A Rs. 5 lakhs; and</li> <li>Other income Rs.40 lakhs</li> </ul>   | Surcharge would be levied@10% on income- tax computed on total income of Rs.55 lakhs  |
| (ii)   | Where the total income (including income under section 111A and 112A) Exceed Rs. 1 Crore but does not exceed Rs.2 crores   | 15%                             | <ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 20 lakhs;</li> <li>LTCG u/s 112A Rs. 25 lakhs; and</li> <li>Other income Rs.80 lakhs</li> </ul>  | Surcharge would be levied@15% on income- tax computed on total income of Rs.1.25Crores  |
| (iii)  | Where the total income (Excluding income under section 111A and 112A) Exceed Rs. 2 Crore but does not exceed Rs.5 crores<br>The rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A | 25%<br><br>15%                  | <ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 24 lakhs;</li> <li>LTCG u/s 112A Rs. 25 lakhs; and</li> <li>Other income Rs.3 Crores</li> </ul>  | Surcharge would be levied@15% on income- tax on:<br><ul style="list-style-type: none"> <li>STCG of Rs.24 lakhs chargeable to tax u/s 111A; and</li> <li>LTCG of Rs. 25 lakhs chargeable to tax u/s 112A.</li> </ul> Surcharge@25% would be leviable on income- tax computed on other income of Rs.3 crores included in total income |
| (iv)   | Where the total income (Excluding income under section 111A and 112A) Exceed Rs. 5 Crore<br>The rate of surcharge on the income-tax payable on the portion of income chargeable to tax under section 111A and 112A                                 | 37%<br><br>15%                  | <ul style="list-style-type: none"> <li>STCG u/s 111A Rs. 40 lakhs;</li> <li>LTCG u/s 112A Rs. 55 lakhs; and</li> <li>Other income Rs.6 Crores</li> </ul>  | Surcharge would be levied@15% on income- tax on:<br><ul style="list-style-type: none"> <li>STCG of Rs.40 lakhs chargeable to tax u/s 111A; and</li> <li>LTCG of Rs. 55 lakhs chargeable to tax u/s 112A.</li> </ul> Surcharge@37% would be leviable on income- tax computed on other income of Rs.6 crores included in total income |
| (v)    | Where total income (including income under section 111A and 112A) exceeds Rs. 2 crore in cases not covered under (iii) and (iv) above  | 15%                             | <ul style="list-style-type: none"> <li>STCG u/s 111A Rs.40 lakhs;</li> <li>LTCG u/s 112A Rs. 55 lakhs; and</li> <li>Other income Rs.1.3 Crores</li> </ul> | Surcharge would be levied@15% on income- tax computed on total income of Rs.2.25 crore  |

**Note: Surcharge Capping of Dividend is 15% which is applicable in case of all Assessee.**

**“Health and Education Cess” shall be levied @ 4% of income tax including surcharge (wherever applicable)**

**CBDT Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself in case of senior/very senior citizens whose date of birth falls on 1st April**

The CBDT has clarified the vide Circular that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.


A resident individual whose 60th birthday falls on 1st April, 2020, would be treated as having attained the age of 60 years in the P.Y.2019-20, and would be eligible for higher basic exemption limit of Rs. 3 lakh in computing his tax liability for A.Y. 2020-21. Likewise, a resident individual whose 80th birthday falls on 1st April, 2020, would be treated as having attained the age of 80 years in the P.Y. 2019-20, and would be eligible for higher basic exemption limit of Rs. 5 lakh in computing his tax liability for A.Y. 2020-21.

This is in line with Supreme Court decision in the case of Prabhu Dayal Sesma where it observed that a person attains the specified age on the day preceding, the anniversary of his birthday.

**Rebate**


| Assessment Year                   | Total Income of RESIDENT Individual Should Not Exceed the Amount Given Below | Amount of Rebate u/s 87A                            |
|-----------------------------------|--|---|
| Assessment year 2017-18           | Rs. 5,00,000   | 100% of income-tax or Rs. 5,000, whichever is less  |
| Assessment year 2018-19 & 2019-20 | Rs. 3,50,000   | 100% of income-tax or Rs. 2,500, whichever is less  |
| Assessment year 2020-21 & 2021-22 | Rs.5,00,000  | 100% of income-tax or Rs. 12,500, whichever is less |

**2) Co-operative Society**

|  | Sr. No. | Income Status                                       | Tax Rate   |
|---|---------|---|--|
|   | 1.      | Where the taxable income does not exceed Rs. 10,000 | 10%  |
|   | 2.      | Where the taxable income exceeds Rs.10,000          | Rs. 1,000 + 20% in income in excess of Rs. 10,000                            |
|   | 3.      | Where the taxable income exceeds Rs. 20,000         | Rs. 3000 + 30% of the amount by which the taxable income exceeds Rs. 20,000. |
| <b>Add:</b><br>Surcharge: If taxable income exceeds Rs. 1 crore.                    |         |   | 12% of IT  |

**“Health and Education Cess” shall be levied @ 4% of income tax including surcharge (wherever applicable)**

**3) Firm/Local Authority**

|   |   |                      |
|---|---|----------------------|
|  | <b>Partnership</b>  | <b>Tax rate: 30%</b> |
|   | <b>Add:</b><br>Surcharge: 12% of the Income Tax if taxable income exceeds Rs. 1 crore.<br><b>“Health and Education Cess” shall be levied @ 4% of income tax including surcharge (wherever applicable)</b> |                      |

## 4) Domestic Company



| General Tax Rate                          | Turnover based Normal Tax Rate  |
|---|---|
| 30%                                       | 25% if turnover or gross receipt of the company in the <b>previous year 2018-19 doesn't exceeds Rs. 400 crore</b> |
| <b>Income Tax (IT)</b>                    |   |
| <b>(i) Surcharge:</b>                     |   |
| → If taxable income exceeds Rs.1 crore.   | 7% of IT  |
| → If taxable income exceeds Rs.10 crores. | 12% of IT   |

**"Health and Education Cess" shall be levied @ 4% of income-tax including surcharge (wherever applicable)**



DS Comment

It is pertinent to note that...

- The normal tax rate for Domestic co. is 30%. However, if it satisfies the turnover not exceeding Rs.400 crore criteria for PY 18-19 OR if it forgoes the specified incentives, then the normal tax rate stands reduced to 25%.
- Section 115BA overrides all other provisions of the Act except for Sec.111A/112. Therefore, the special tax rates (eg. u/s 115BF) shall not be available if the option is exercised u/s 115BA. However, FA 2018 has clarified that income taxed at scheduler rate would continue to be taxed at scheduler rate. Therefore, even the income u/s 115BBF would continued to be taxed at beneficial rate of 10%. Therefore, Sec 115BA would not apply to sec 112 and 111A, and every income taxed at scheduler rate.
- Further, once the company has exercised the option to be taxed u/s 115BA @25%, it cannot be withdrawn during the subsequent years. Further, the option has to be exercised in the first year itself before the due date of filing its first ROI.

### Special provisions for Domestic company

Note– The Taxation Laws (Amendment) Ordinance, 2019 was promulgated by the President of India on 20.9.2019 to amend the Income-tax Act, 1961 and the Finance (No.2) Act, 2019 and is in force. This Ordinance has inserted two new sections, section 115BAA and 115BAB, in the Income-tax Act, 1961 to be applicable from A.Y. 2020-21.

Section 115BAA provides for concessional rate of tax@22% (plus surcharge@10% and HEC@4%) for domestic companies, subject to certain conditions, like non-availability of profit-linked deductions and investment-linked tax deduction under the Act, non-availability of deduction (weighted or otherwise) for contribution to research and development, additional depreciation etc.

Section 115BAB provides for concessional rate of tax@15% (plus surcharge@10% plus HEC@4%) to new manufacturing domestic companies set up and registered on or after 1.10.2019, and commences manufacturing on or before 31.3.2023, subject to certain conditions, like non-availability of profit-linked deductions and investment-linked tax deduction under the Act, non-availability of deduction (weighted or otherwise) for contribution to research and development, additional depreciation etc.



Domestic Companies have to exercise the option to be governed by these special provisions of the Act. The option for section 115BAB has to be exercised in the very first year in which the eligible company is set up, failing which it cannot exercise such option in the future years. However, a company eligible to exercise option u/s 115BAA can defer exercise of such option to a future year, if it is availing sizable profit-linked or investment-linked deductions or additional depreciation in the P.Y.2019-20. However, once the company exercises such option under section 115BAA or 115BAB, as the case may be, in a year, it would continue to be governed by the special provisions u/s 115BAA or 115BAB, as the case may be, thereafter and cannot opt for regular provisions in any subsequent year.

It may be noted that companies exercising option under section 115BAA or section 115BAB are not liable to minimum alternate tax under section 115JB.

Detailed discussion will be provided in MAT chapter special rates for companies.

## 5) Foreign Company



**Tax rate: 40%**

Add:

Surcharge:

→ 2% of the Income-tax if taxable income exceeds Rs.1 crore.

→ 5% of the Income-tax if taxable income exceeds Rs.10 crores.

**“Health and Education Cess” shall be levied @ 4% of income tax including surcharge (wherever applicable)**

### Surcharge applicable for Domestic Companies:

| Company Covered by     | Total Income     |   |                     |
|------------------------|------------------|---|---------------------|
|                        | Upto Rs. 1 crore | Exceeds Rs.1 Crore but upto Rs.10 crore | Exceeds Rs.10 crore |
| Section 115BA          | Nil              | 7%                                      | 12%                 |
| Section 115BAA*        | 10%              | 10%                                     | 10%                 |
| Section 115BAB*        | 10%              | 10%                                     | 10%                 |
| Other Domestic company | Nil              | 7%                                      | 12%                 |

\* Surcharge shall be levied at a flat rate of 10% only on income offered to tax under section 115BAA or Section 115BAB. Surcharge on all other incomes which are chargeable to tax at special rate shall be levied as per the existing provisions i.e at the rate of 7% or 12% as the case may be.

## 6) Special Tax Rates Under Income Tax Act

| Section (1) | Income (2)  | Income Tax Rates (3) |
|-------------|---|----------------------|
| 115BB       | Winnings from lotteries, crossword puzzles, or race including horse race(not being income from activity of owning and maintaining race horse) or card game and other game of any sort or for gambling or betting of any form or nature  | 30                   |
| 115BBA      | Income of a non-resident foreign citizen sportsman for participation in any game in India or received by way of advertisement or for contribution of articles relating to any game or sport in India or income of a non-resident sports association by way of guarantee money | 20                   |
| 115BBC      | Anonymous Donation  | 30                   |
| 115BBD      | Income of an Indian company by way of dividend declared, distributed or paid by specified foreign company ( in which the Indian company holds 26 percent or more of equity share capital)   | 15                   |
| 115BBDA     | Aggregate dividend from a domestic companies in excess of Rs.10 Lacs [excluding deemed dividend u/s 2(22)(e)]   | 10                   |

|                               |  |                    |
|-------------------------------|--|--------------------|
| <b>115BBE</b>                 | Income referred to in sections 68, 69, 69A, 69B, 69C and 69D <b>*Plus 25% Flat surcharge+ 4% HEC.</b>  | 60                 |
| <b>115BBF</b>                 | Income by way of royalty in respect of patent developed and registered in India(received by resident assessee who is a patentee)   | 10                 |
| <b>115BBG</b>                 | Income by transfer of carbon credits (applicable from the assessment year 2018-19)   | 10                 |
| <b>115E</b>                   | Income from foreign exchange assets and capital gains of non-resident Indian:<br>1) Income from foreign exchange assets[*not applicable in case of dividends referred to in section 115- O]<br>2) Long term capital gains  | 20*<br>10          |
| <b>115JB</b>                  | Minimum alternate tax<br><b>As per "The Taxation Laws (Amendment) Ordinance, 2019":</b><br><b>AY 2020-21 onwards:</b><br>Book profits of the company<br><b>MAT provisions not applicable to companies who have opted to be taxed u/s 115BAA and 115BAB of the Act</b><br>Book profits of the company in International Financial Service Centre and derives its income solely in convertible foreign exchange | 15<br>9            |
| <b>115JC</b>                  | Alternate minimum tax in the case of non-corporate assessee  | 18.5               |
| <b>115TD</b>                  | Accreted income of certain trusts and institutions   | 34.94              |
| <b>115UB(4)</b>               | Business income of investment funds-<br>1) Where investment fund is a domestic company<br>2) Where investment fund is a foreign company<br>3) Where investment fund is any other person  | 30<br>40<br>42.744 |
| <b>115AB</b>                  | Income of an overseas financial organization on transfer of units purchased in foreign currency being long term capital gains  | 10                 |
| <b>115AC</b>                  | Income from bonds or Global Depository Receipts or bonds or Global Depository Receipts of public sector company sold by the government and purchased in foreign currency or long term capital gains arising from transfer.   | 10                 |
| <b>115BA</b>                  | Income of certain domestic companies   | 25                 |
| <b>115BAA</b>                 | Income of certain domestic companies   | 22                 |
| <b>115BAB</b>                 | Income of certain domestic companies   | 15                 |
| <b>115BAD</b>                 | Income of certain co-operative societies   | 22                 |
| <b>111A</b>                   | Short term capital gains on the transfer of equity shares or equity oriented mutual fund on which STT is paid  | 15                 |
| <b>112</b>                    | Long term capital gains  | 20/10              |
| <b>115A(1)(a)(i)</b>          | Dividend received by a foreign company or a non-resident non-corporate assessee.   | 20*                |
| <b>115A(1)(a)(ii)</b>         | Interest received by a foreign company or a non-resident non-corporate assessee from government of Indian concern on moneys borrowed or debt incurred by Government or Indian concern in foreign currency  | 20                 |
| <b>115A(1)(a)(iia)</b>        | Interest received from a infrastructure debt fund referred in section 10(47)   | 5                  |
| <b>115A(1)(a)(iiaa)</b>       | Interest received by a Indian company specified in section 194LC   | 5                  |
| <b>115A(1)(a)(iiab)(iiac)</b> | Interest of nature and extent referred in section 194LD or section 194LBA  | 5                  |
| <b>115A(1)(b)</b>             | Royalty or fees for technical services (not referred in section 44DA) received by a foreign company or non-resident non corporate assessee from an Indian concern or Government.   | 10                 |
| <b>92CE</b>                   | Option to pay additional income-tax, if the excess money not repatriated <b>*Plus 12% Flat surcharge+ 4% HEC.</b>  | 18                 |

## 2) Income from Salaries

### 1) TREATMENT OF PROVIDENT FUND / APPROVED SUPER ANNUATION FUND:

| Particulars   | Approved Superannuation Fund  |
|---|---|
| Meaning   | It means a superannuation fund which has been and continues to be approved by the Commissioner in accordance with rules contained in Part B of the Fourth Schedule. |
| <b>Tax treatment of various components in Income tax.</b>   |   |
| Employees contribution (Deduction u/s 80C)  | Available   |
| Employer's Contribution   | Exempt up to Rs. 7,50,000/- . [Excess is taxable u/s 17(2)(vii)]<br>(Note-2)  |
| Interest Credited to the Fund   | Note-3  |
| Lumpsum payment on retirement / Resignation.  | Exempt. U/s 10 (13)   |
| Notes:  |   |
| 1) Salary = Basic + D.A. (Recognised) + Turnover Commission   |   |
| 2) A maximum contribution of Rs.7,50,000 an employer can make towards (RPF), (NPS) and Superannuation fund, and in excess of Rs.7,50,000 shall be taxed as perquisite in the hands of the employeee.  |   |
| 3) Annual accretion (Interest, dividend & other similar amount) shall be treated as perquisites to the extent it relates to the contribution referred to above (i.e in excess of Rs.7,50,000).  |   |
| <b>Section 17(2)(vii): Amount of contribution, exceeding Rs. 7,50,000 by the employer to an approved superannuation fund, recognized provident fund , and NPSof the employee. (FA2020)</b>  |   |
| sub-clause (vii) of section 17(2) has been substituted with effect from the assessment year 2021-22. New Sub-clause (vii) provides that the aggregate amount of contribution made by the employer to the following retirement benefit schemes in excess of Rs. 7,50,000 per year is taxable as perquisites; |   |
| a) in a recognised provident fund;  |   |
| b) in the scheme referred to in sub-section (1) of section 80CCD; and   |   |
| c) in an approved superannuation fund.  |   |

#### DS Comment:

Here, it is to be noted that the employer's contribution to PF and NPS are already included in the definition of salary due to Section 17(1). Thus, if employer's contribution to PF and NPS is treated as perquisite (a taxable component of salary) by virtue of a proposed amendment to section 17(2)(vii) then there will be double taxation in the hands of the employee. First, when employer's contribution to these funds is taxed due to specific inclusion under section 17(1) and subsequently when the same amount is taxed as perquisite under section 17(2)(vii) on crossing the threshold.

### 2)Taxability of ESOP

**Section 17(2)(vi):** the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

**Taxable value of = [Number of Shares allotted X (Fair value of shares on the date –Amount recovered from employee)]**

**Perquisites of application**  
Note: Perquisite is taxable in the year of allotment of shares. **Only the payment of tax is deferred to a later date. (FA.2020)**

The Finance Act 2020 has partially addressed the cash flow issue by deferring the timing of payment of tax on ESOPs from allotment of shares to within 14 days from:

- ① 5 years from end of the financial year in which shares are allotted to the employees or
  - ② Date of cessation of employment with the start-up company or
  - ③ Date of sale of shares by the employees,
- whichever is earlier.

#### **Meaning of Fair Market Value of Securities:**

- 1) **Fair Market Value of Listed Securities:** Average of opening and closing price of shares listed on date of exercising of option.

- i) Shares listed on more than one stock exchange consider the price of stock exchange which records the highest volume of trading.
  - ii) No trading in shares on date of exercise of option – Consider the price on the date closest that records the highest volume of trading.
- 2) Fair Market Value of Unlisted Securities:** Value determined by SEBI registered merchant banker
- (i) date of exercise of option,
  - (ii) date earlier than date of exercise of option (not more than 180 days earlier than exercise date).

### RATIONALE OF AMENDMENT:

- 1) Start-ups typically use employees stock option plans (ESOPs) to attract talent from the market due to their inability to pay high cash compensation in their formative years. There is two staged taxation for ESOPs – first, at the time of allotment of shares and second, at the time of sale of shares. The tax on allotment of shares causes cash flow issues for employees since they are required to pay tax without monetization of their gain.
- 2) Given that the global economy is facing the much-feared slowdown owing to the ongoing COVID-19 pandemic, many companies are downsizing operations and cutting down manpower including skilled and managerial staff due to liquidity crunch.
- 3) Amidst all this uncertainty, companies especially start-ups could consider implementing an ESOP to compensate employees. By partially compensating them through ESOPs in lieu of cash compensation they may succeed in retaining key employees.

DS Comment:

**Notes: Analysis of the Important Amendments of the FA 2020**

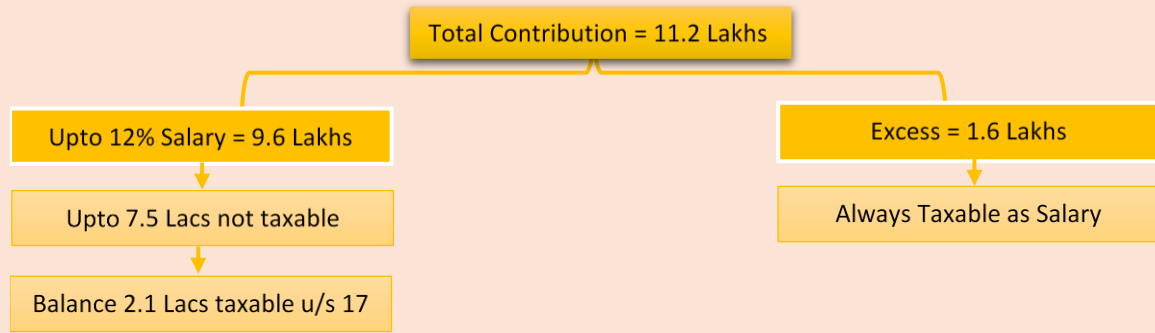
**Rationalization of tax treatment of the Employers' contribution to the Recognised PF, Superannuation on fund and NPS (Sec 17): Existing Provisions**

| Sr. No | Employer's cont.  | Section    | Taxable Amt.                | Deduction to Employee  |
|--------|---|------------|-----------------------------|--|
| 1)     | To Recognised PF  | Section 17 | In excess of 12% Salary     | No   |
| 2)     | NPS under the scheme referred to in Sec 80CCD (1) (NPS) | Section 17 | Entire Contribution Taxable | <b>VI -A 80CCD</b> <ul style="list-style-type: none"> <li>• 14% of salary in case of CG Employee</li> <li>• 10% of salary in case of any other Employee</li> </ul> |
| 3)     | To approved superannuation fund                         | Section 17 | Excess of Rs.5L             | No   |

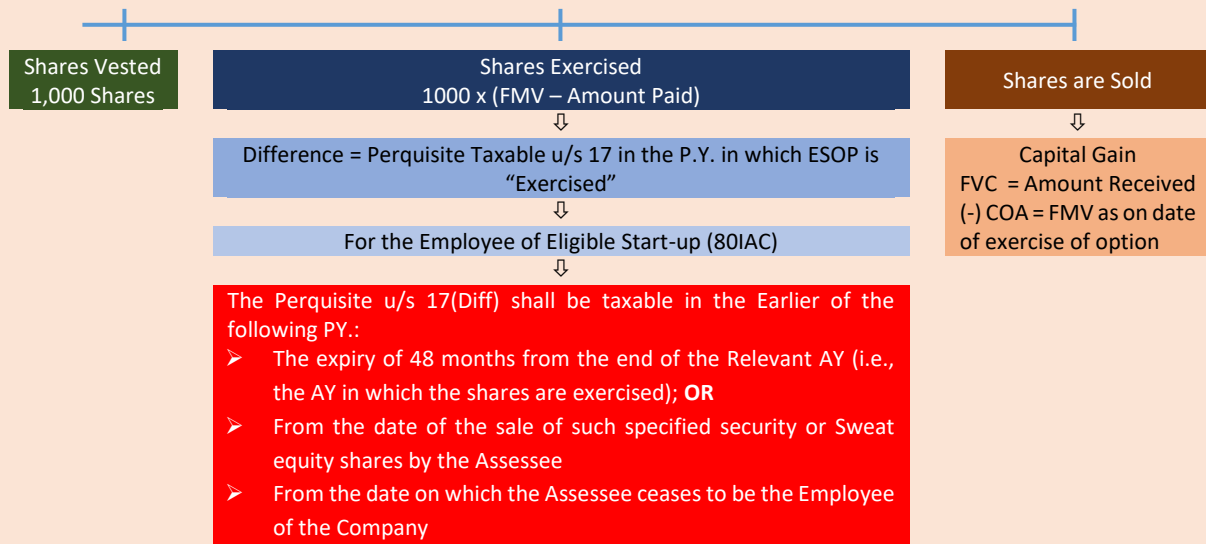
Amendment:

The FA 2020 has put up a composite ceiling of Rs.7.5 lakhs for a previous Year i.r.o. the Employer's contribution to Recognized PF, NPS, Superannuation fund. The Employers Contribution if it goes beyond Rs. 7.5Lakhs AND if it is within the threshold %, the excess amount would be taxable in the hands of the employee under the head Salary.

E.g. The Employer has contributed to a Recognised PF @ 14% of Salary of Rs. 80 Lacs.



**ESOP:**



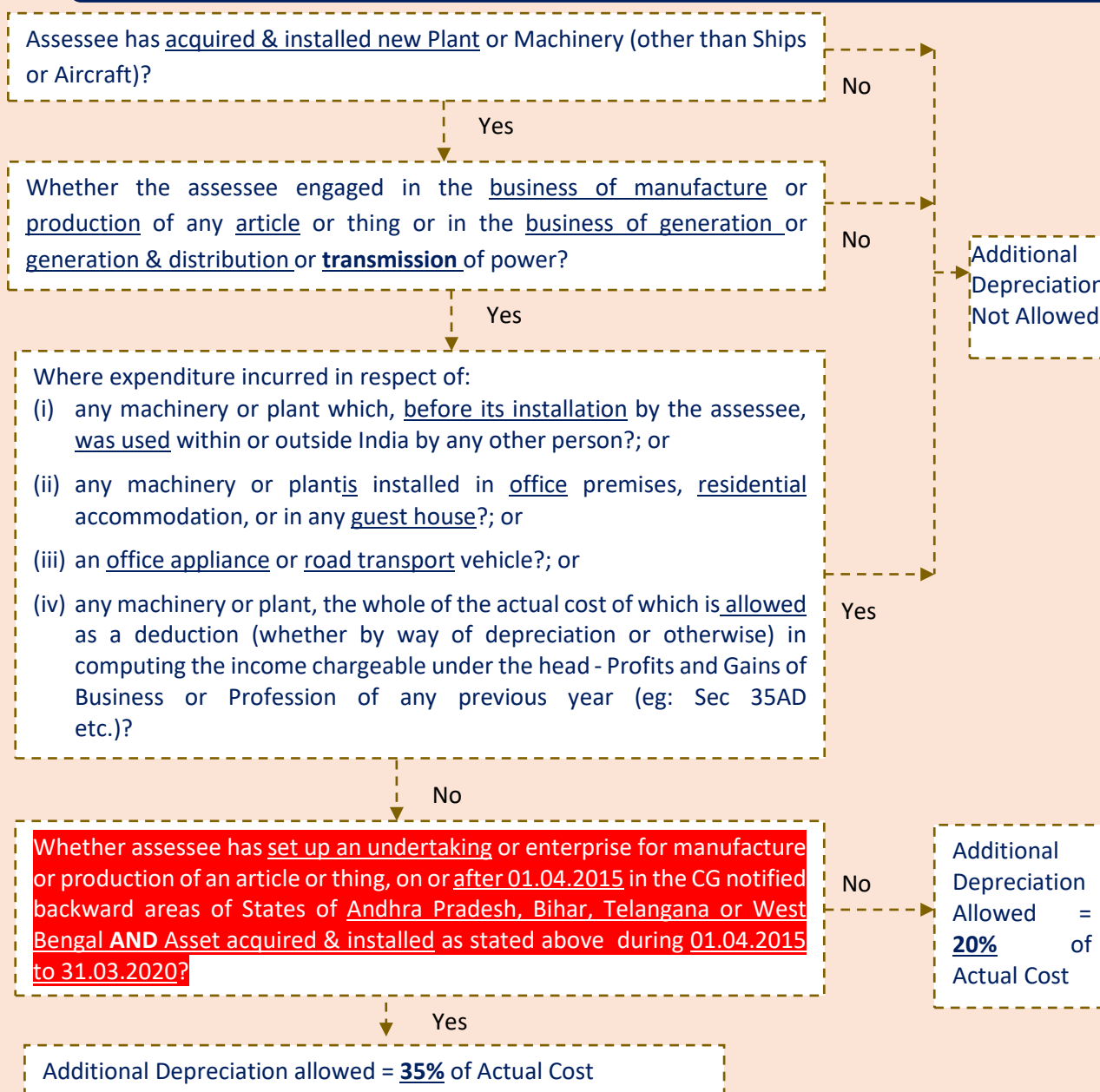
- ❖ **Salient feature of the amendment:**
1. The perquisite income = FMV as on the date of exercise of shares (-) Amt paid by the Employee
  2. The income computed above would be included in the salary income (being the year of allotment of the shares) but the Employer need not deduct the tax thereon in that year.
  3. Even the Employee is not obliged to pay tax i.r.o such income for that year in terms of the provision u/s 191 (2)
  4. Thus, the tax would remain unpaid i.r.o such income. However the ROI would not be treated defective on account of non-payment of Tax.
  5. Even the ROI is processed or Income is assessed and the Notice of Demand is issued u/s 156(1), the tax should be payable within 14 days on occurring of earlier of the 3 events.
  6. Thus, the amendment does not defer the Year of charge of perquisite but defers the payment of tax.

## 3) Profits and Gains from Business or Profession

### 1) For purpose of Computing WDV:-Purchase of assets in cash

Where assessee incurs any expenditure for acquisition of asset for which payment or aggregate of payment is made to a person in a day exceeding Rs.10,000 other than A/c. payee cheque or draft or electronic clearing system or such other electronic mode **as prescribed under Rule 6ABBA such as Credit Card, Debit Card, Net Banking, IMPS, UPI, RTGS, NEFT, BHIM** then, such expenditure shall be ignored while determining actual cost of asset. Consequently, on such expenditure assessee cannot claim depreciation u/s 32 & investment allowance u/s 32AD.

### Section 32(1)(ia): Additional Depreciation

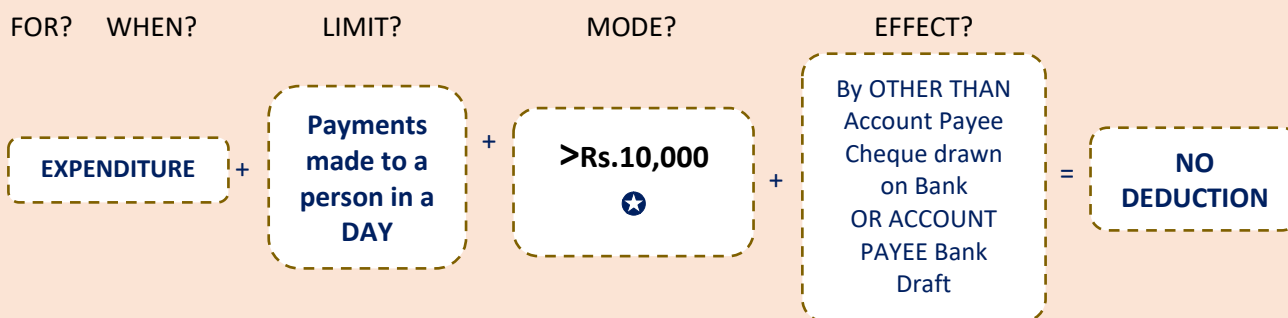


Additional Depreciation under section 32(1)(ia) is not available, if the option is exercised for the alternative tax regime by an individual/HUF[Sec.115BAC], domestic company[sec. 115BA/115BBA/115BAB] or a resident co-operative society[sec.115BAD].

## Section 32AD: Investment Allowance for Manufacturing Concerns

Deduction u/s 32AD is not available w.e.f., A.Y. 2021-22

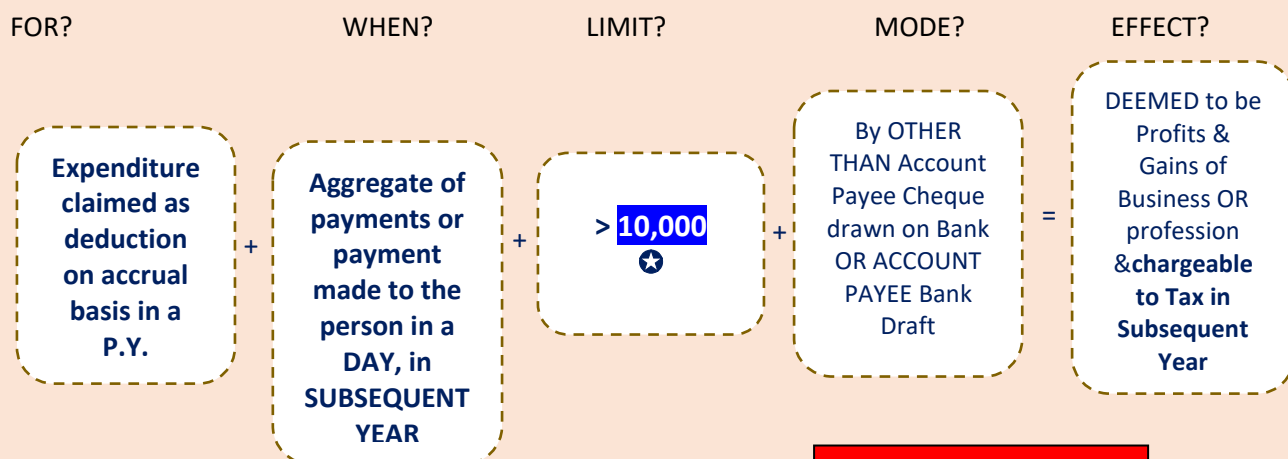
### 2) Section 40A(3): Payments Otherwise than by an Account Payee Cheque or Account Payee Bank Draft or Include Such Other



*\*As per rule 6ABBA, prescribed modes of electronic payment are; a)Credit card, b)Debit card, c)Net banking d)IMPS (Immediate Payment service), e)UPI (united Payment Interface), f)RTGS (Real time Gross Settlement), g)NEFT( National Electronic Funds Transfer), h)BHIM (Bharat Interface for money) Aadhar pay.[FA2020]*

By Other Than such other prescribed electronic modes under Rule 6ABBA\*

### Section 40A(3A)



By Other Than such other prescribed electronic modes under Rule 6ABBA\*

★ Limit in case of payment made for plying, hiring or leasing goods carriages: > Rs. 35,000

**Rule 6DD:**

**Exceptions** - Cases where cash payments exceeding Rs. 10,000/Rs. 35,000 to a person in a day are allowed, otherwise than by way of account payee cheque/ bank draft/ any other prescribed electronic modes may be prescribed as per Rule 6ABBA.

W.e.f. 29.01.2020, if payment made in excess of the prescribed mode on a day on which the bank are closed on account of holiday or strike would attract disallowance u/s 40A(3).

**3) Section 44AB: Audit of Accounts of Certain Persons Carrying on Business or Profession**

- The Turnover limit for Tax Audit would be **Rs. 5 crores** in cases where:-
  - Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the P.Y, in cash does not exceed 5% of the said amount; and
  - Aggregate of all payments made including amount incurred for expenditure, in cash, during the P.Y does not exceed 5% of the said payment. (Amendment w.e.f.A.Y.2020-21).
- The report of audit of the accounts of a person required to be furnished u/s 44AB shall furnished **1 MONTH before the due date for furnishing the return of income u/s 139(1), i.e., before 31st October of the R.A.Y. [FA 2020]**

**DS Comment:**

Similar amendments [i.e., uploading of audit report one month prior to the due date of submission of return of income under section 139(1)] have also been made to the provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44DA, section 50B, section 80-IA, section 80-IB, section 80-IAC, section 80LA, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW.

**Analysis of Amendment**

- In order to reduce compliance burden on small and medium enterprises, the threshold limit has been revised to increase it for a person carrying on business from Rs.1 crore to Rs.5 crore if the following two conditions are satisfied-
  - Condition 1*- His aggregate of all receipts in cash during the previous year does not exceed 5 percent of such receipt.
  - Condition 2*- His aggregate of all payments in cash during the previous year does not exceed 5 percent of such payment.
- Case Study on above provision-  
The following information is noted from the records of XY & Co. (a partnership firm engaged in manufacturing and trading of goods) for the previous year ending March 31, 2020-

|                                | Receipts     |                 |               |                    | Payment   |                 |              |                    |
|--------------------------------|--------------|-----------------|---------------|--------------------|-----------|-----------------|--------------|--------------------|
|                                | Cash         | Other than cash | Total         | Cash as % of total | Cash      | Other than cash | Total        | Cash as % of total |
| Sale/purchase of car           | -            | 2.5             | 2.5           | 0                  | -         | 17.5            | 17.5         | 0.00               |
| Sale/purchase of machine       | 0.65         | 70              | 70.65         | 0.92               | 5         | 41              | 46           | 10.87              |
| Sale/purchase of land          | 2            | 80              | 82            | 2.44               | -         | -               | -            | -                  |
| Purchase of raw material       | -            | -               | -             | -                  | 1         | 50              | 51           | 1.96               |
| Purchase of finished goods     | -            | -               | -             | -                  | -         | 54              | 54           | 0.00               |
| Sale of goods                  | 12.5         | 290             | 302.5         | 4.13               | -         | -               | -            | -                  |
| Income-tax refund              | 0            | 5               | 5             | 0.00               | -         | -               | -            | -                  |
| Other receipts/ other payments | 8            | 20              | 28            | 28.57              | 8         | 76              | 84           | 9.52               |
| <b>Total</b>                   | <b>23.15</b> | <b>467.5</b>    | <b>490.65</b> | <b>4.72</b>        | <b>14</b> | <b>238.5</b>    | <b>252.5</b> | <b>5.54</b>        |

X & Co. wants to know whether it requires audit under section 44AB for the A.Y.2020-21.



**Solution:**

In the case, turnover of XY & Co. is Rs.302.5 lakh. Out of which, sales in cash is less than 5%. Total receipts is Rs. 490.65 lakh. Out of which cash receipts is less than 5%. However, out of the total payment of Rs. 252.5 lakh, cash payment is more than 5%.

Revised turnover limit of Rs.5 crore is applicable if the two conditions given above are satisfied. Receipts in cash is less than 5% of total receipts. However, cash payment is more than 5% of total payment. Consequently, XY & Co. cannot avail the benefit of revised turnover limit. As turnover of XY & Co. is more than Rs.1 crore, tax audit is required under section 44AB for the A.Y. 2020-21.

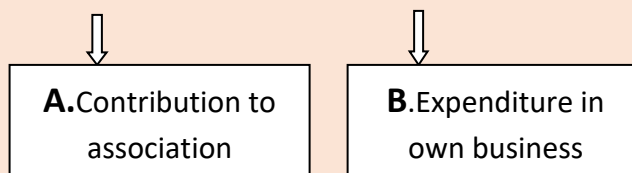
## Section 44DA: Taxability of Sum Received as Royalties & Fees for Technical Services by Non – Resident in India

|                       |  |
|-----------------------|--|
| <b>Applicability:</b> | <ul style="list-style-type: none"> <li>- Royalty or fees for technical services is paid by Govt or Indian concern</li> <li>- to non-resident (not being company) or a foreign company</li> </ul>   |
| <b>Conditions:</b>    | <ul style="list-style-type: none"> <li>- the non-resident carries on business in India through a permanent establishment in India</li> <li>- or performs professional services from a fixed place of profession</li> <li>- Accounts &amp; audit: Maintain books of accounts u/s 44AA and get his accounts audited &amp; submit report in the prescribed form. <b>With effect from the assessment year 2020-21, the audit report under section 44DA(2) in Form No. 3CE shall be uploaded one month prior to the due date of submission of return of income. If the due date of submission of return of income is October 31 of the assessment year, audit report shall be uploaded on or before September 30 of the assessment year. Conversely, if the due date of submission of return of income is November 30 of the assessment year, audit report shall be uploaded on or before October 31 of the assessment year.</b></li> </ul> |

### A. Contribution to Association

| Particulars                                | Section 35CCC   | Section 35CCD  |
|--|---|--|
| 1) Eligible Person                         | Any Assessee  | Only Company   |
| 2) Eligible Expenditure                    | Any expenditure on agricultural extension project notified by the Board   | Any expenditure (not being expenditure in the nature of cost of any land or building) on notified skill development project.                   |
| <b>3) Deduction %</b>                      | <b>100%</b>   | <b>100%</b>  |
| <b>4) Alternate Tax Regime</b>             | Deduction u/s 35CCC is not available, if the option is exercised for the alternate tax regime by an individual or HUF (Sec. 115BAC), domestic company (Sec. 115BA/115BAA/115BAB) or resident co-operative society (Sec. 115BAD) | Deduction u/s 35CCD is not available, if the option is exercised for the alternate tax regime by the domestic company u/s 115BA/115BAA/115BAB. |
| <b>5) Deduction under other provisions</b> | If deduction is allowed under these sections, no deduction will be available for the same expenditure under any other provision of the Act.   |  |

## SECTION 35: EXPENDITURE ON SCIENTIFIC RESEARCH



## A. Contribution to Association

**100 %** of any sum paid to:

1) Section 35(1)(ia):  
A company who will use this sum for SCIENTIFIC RESEARCH FOR THE BUSINESS OF THE ASSESSEE:  
Provided that such company—  
(A) is registered in India,  
(B) has, as its main object, the scientific research & development,  
(C) is approved by the prescribed authority.  
2) Section 35 CCA:  
a) Approved Rural Development & Training Association.  
b) National urban poverty eradication fund.

**100%** of any sum paid to:

Section 35(1)(iii):  
Research Association which has, as its object, undertaking of research in SOCIAL SCIENCE OR STATISTICAL RESEARCH; or University, college, or other institution to be used for research in social science or statistical research:  
Provided that such university/college/institutions is approved by CG u/s 35(1)(iii). [Research may not be related to business of assessee]

Section 35(1)(ii):  
Research Association which has, as its object, the undertaking of SCIENTIFIC RESEARCH; or to a university, college or other institution to be used for scientific research: Provided that such association/university/college/other institution is approved by CG u/s 35(1)(ii). [Research may not be related to

**100%** of sum paid to:

Section 35(2AA):  
NATIONAL LABORATORY, UNIVERSITY, IIT or a specified person approved by prescribed authority, with a specific direction, that it shall be used for scientific research under an approved research programme. [Research may not be related to business of assessee.]

w.e.f A.Y. 2006-07 the deduction u/s 35(i)(iii)(ii)/35(2AA) for the sum paid shall not be denied, if the approval granted to Institution, association, university, college, or research programme is withdrawn subsequent to making of payment by the assessee.

## 4) BUSINESS DEDUCTIONS

### 1) PROFIT LINKED DEDUCTION

#### i. Section 80-IAC

|                        |  |
|------------------------|--|
| <b>Eligible Person</b> | Start-up Company/ LLP having a total turnover of its business not exceeding <b>Rs. 100 crore (FA 2020)</b> in any of the previous year beginning from the year in which it is incorporated.        |
| <b>Eligible period</b> | 3 consecutive years <b>out of 10 years (FA 2020)</b> beginning from the year in which the eligible start up is incorporated (The start up should be incorporated between 01/04/2016 to 31/03/2021) |

#### ii. Section 80-IBA-Deductions in respect of profits and gains from housing projects

1. **Eligible Business:** Developing and building housing projects
2. **Year Of commencement of eligible business:** Project is approved **after 1st June 2016 but on or before 31st March 2021.**
3. **Quantum of Deduction:** 100% of the profits and gains derived from such housing project.
4. **Conditions to be fulfilled for claim of deduction:-**
  - a. the project is approved by the competent authority after 1st June, 2016 but on or **before 31st March, 2021 (FA 2020)**
  - b. the project is completed within a period of five years from the date of approval by the competent authority  
However, in a case where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority and the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.
  - c. the carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area
5. **Additional conditions to be fulfilled if the project is approved by the competent authority before 1st September, 2019**
  - a. where a residential unit in the housing project is allotted 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
  - b. **Conditions relating to size of plot of land, residential units etc**

|      | Location of the housing project                        | Size on plot of land on which the project is Located | Carpet area of the residential unit comprised in the housing project | Percentage of floor area ratio to be utilised by the project  |
|------|--|--|--|---|
| (1)  | (2)  | (3)  | (4)  | (5)   |
| (i)  | Within the cities of Chennai, Delhi, Kolkata or Mumbai | Not less than 1,000 sq. m.                           | Not more than 30 sq. m.  | Not less than 90% of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be. |
| (ii) | In any other place                                     | Not less than 2,000 sq. m.                           | Not more than 60 sq. m.  | not less than 80% of such floor area ratio  |

- c. The project is the only housing project on the plot of land [**referred to in column (3)**].
- d. The assessee maintains separate books of account in respect of the housing project.

6. Additional conditions to be fulfilled if the project is approved by the competent authority on or after 1st September, 2019

- a. where a residential unit in the housing project is allotted 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;
- b. Conditions relating to size of plot of land, residential units etc. [FA 2019]

|      | Location of the housing project   | Size on plot of land on which the project is located | Carpet area of the residential unit comprised in the housing project | Percentage of floor area ratio to be utilised by the project  |
|------|---|--|--|---|
| (1)  | (2)   | (3)  | (4)  | (5)   |
| (i)  | Within the metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region) | Not less than 1,000 sq. m.                           | Not more than 60 sq. m.  | Not less than 90% of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be. |
| (ii) | In any other place  | Not less than 2,000 sq. m.                           | Not more than 90 sq. m.  | not less than 80% of such floor area ratio  |

- c. The project is the only housing project on the plot of land [referred to in column (3) above].
- d. the assessee maintains separate books of account in respect of the housing project.
- e. the stamp duty value of a residential unit in the housing project does not exceed Rs.45 lakhs

7. **No deduction for person executing the housing project as a works contract:** An assessee who merely executes the housing project as a works-contract awarded by any person (including the Central Government or the State Government) would not be eligible for deduction under this section.
8. **Consequence of non-completion of housing project within 5 years:** In a case where the housing project is not completed within the period of five years from the date of approval by the competent authority and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.
9. **No deduction under any other provision of the Act in respect of such profits.**
10. **"Carpet Area" means the net usable floor area of an apartment [Excluding (a) the area covered by the external walls, (b) areas under services shafts/exclusive balcony or verandah area/ exclusive open terrace area, but including the area covered by the internal partitions walls of the apartment].**
11. **Deduction u/s 80-IBA is not available, if the option is exercised for the alternative tax regime by an individual/HUF [Sec. 115BAC], domestic company [sec. 115BA/115BBA/115BAB] or a resident co-operative society [sec. 115BAD]**

iii. **80JJAA – Deduction in Respect of Employment of New Employees**

**Conditions:**

Emoluments are **PAID OTHERWISE THAN BY AN ACCOUNT PAYEE CHEQUE/BANK DRAFT/ECS/ any other electronic mode as may be prescribed under Rule 6ABBA.**

## 5) CHAPTER VI-A DEDUCTIONS

### 1) Section 80C

#### Deduction for contribution:

Deduction in respect of contribution made to employee NPS (Tier-II) account of the pension scheme by a Central Government employee. When such contribution is for a fixed period of not less than 3 years.

**The minimum amount of contribution to activate the specified account shall be one thousand rupees and minimum amount of subsequent contribution shall be two hundred and fifty rupees. (Notification no. 45/2020, dated 07.07.2020)**

### 2) Section 80EEA: Deduction in relation to House Property

|              |  |  |
|--------------|--|--|
| <b>80EEA</b> | Deduction shall be allowed to an individual for the interest paid on loan taken for acquisition of a residential house property, subject to fulfilment of following conditions:<br>a) Stamp duty value of the house property should not exceed Rs. 45 lakhs<br>b) Loan should be sanctioned by the financial institution during the period April 01, 2019 to <b>March 31, 2021 [FA 2020]</b><br>c) The assessee should not own any residential house property on the date of sanction of loan.<br><b>Note:</b> Same interest is not deductible twice if interest is claimed as deduction under section 80EEA, such interest (or such portion of interest) is not again deductible under section 24(b) or under any other provision of the act for the same or any other assessment year. | Amount of Deduction up to Rs. 1,50,000 |
|--------------|--|--|

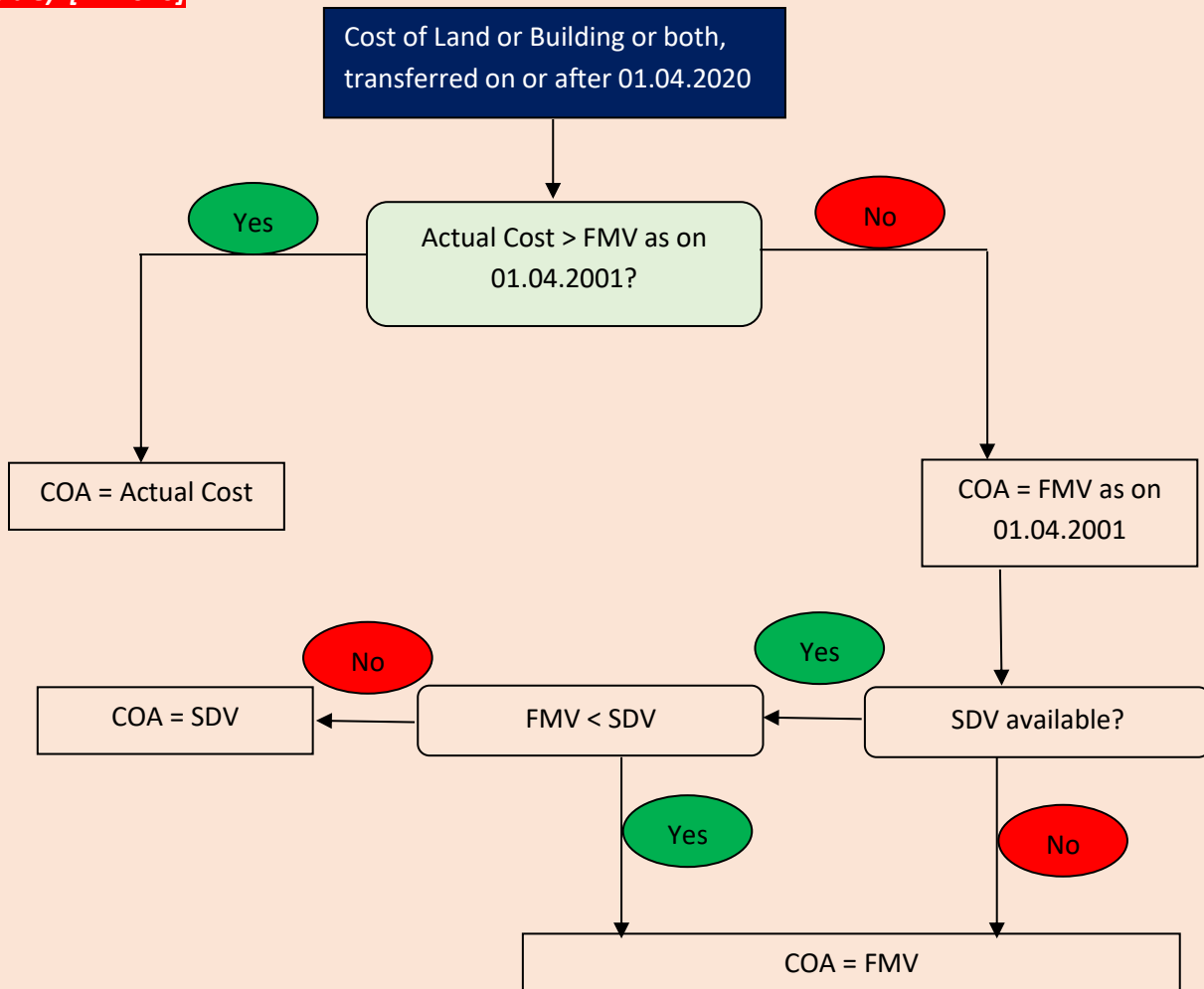
### 3) 80GGA: Donation to Research Institutions:

No deduction shall be allowed in respect of any sum exceeding **Rs. 2,000 [w.e.f 01.06.2020]**, unless such sum is paid by any mode other than cash.

## 6) CAPITAL GAINS

### Section 55: Cost of Acquisition if Asset Purchased before 1<sup>st</sup> April, 2001

Where the capital asset acquired before the 1st April, 2001, cost of acquisition means the cost of acquisition to the assessee or the FMV of the asset on the 1st April, 2001, at the option of the assessee. **However, if Capital Asset is land or building or both, the FMV of such asset on the 1st day of April, 2001; will be Stamp Duty value on that date(if available). [FA 2020]**



### Taxation of Segregated Portfolio [FA 2020]

- Budget 2020 through Finance Bill 2020 has amended the income tax provisions related to **segregated portfolios of mutual funds and provides clarity as to the taxation of Segregated portfolios of Mutual Funds and how the cost of acquisition is considered in case mutual funds are segregated and what is the holding period of segregated portfolios of mutual funds units.**
- Earlier, SEBI in 2018 has allowed mutual funds to segregate the portfolios for downgraded debts from the main portfolio.
- It was a long-standing demand of the mutual fund industry to provide clarity on the **taxation of segregated portfolios of mutual fund units.** Segregation of portfolios is also known as "side pocketing".
- The **concept of a Segregated Portfolio** is promulgated by the Securities and Exchange Board of India (SEBI) in December 2018 by a circular and is a procedure that allows mutual funds to separate a certain number of units against downgraded debts and money market instruments held by them.

- **Create of a segregated portfolio or side-pocketing was introduced by SEBI** to enable debt schemes of a mutual fund to allow investors to exit a debt scheme in distress. It is implemented by debt funds if their holdings are downgraded below investment grade or suffer from a default.
- **Side-pocketing facilitates the separation of units into a distinct portfolio**, in which no fresh subscriptions are allowed. Investors can redeem these units once the money is recovered from the bad debt, while they can redeem other units at any point of time.
- Recently, on 18<sup>th</sup> February 2020, the UTI mutual Fund has announced to create a segregated portfolio for its five of the schemes namely, UTI Credit Risk Fund, UTI Bond Fund, UTI Regular Savings Fund, UTI Dynamic Bond Fund and UTI Medium Term Fund due to the fact that Care Rating has downgraded the debt instruments of Vodafone Idea to 'BB-' (i.e. below investment grade) on February 17 and UTI mutual fund schemes have exposure of Rs 180 crore in debt instruments issued by Vodafone Idea.
- In the context of a '**segregated portfolio**', it is important to know the following three concepts-
  - 1) The term '**segregated portfolio**' shall mean a portfolio, comprising of debt or money market instrument affected by a credit event, that has been segregated in a mutual fund scheme.
  - 2) The term '**main portfolio**' shall mean the scheme portfolio excluding the segregated portfolio.
  - 3) The term '**total portfolio**' shall mean the scheme portfolio including the securities affected by the credit event. The **total portfolio is the portfolio which is the original one** and then is splitted into two portfolios-main portfolios and segregated portfolios.  
The **main portfolio is the portfolio** which is separated from the 'total portfolio' with good debts and can be redeemed by the investor at any point of time.  
The **segregated portfolio is that part of the total portfolio** which contains the bad, downgraded and illiquid debts.
- **Creation of a segregated portfolio (also known as "side-pocketing") is a mechanism wherein the mutual fund isolates or segregates the stressed, illiquid asset from the rest of the holdings** in the scheme's portfolio and the unitholders in the scheme are allotted units of the side-pocket, in the same ratio as the investment in the parent scheme.  
Units of the side-pocket are not redeemable, while the units in the main/original scheme portfolio are redeemable as usual.  
Thus, instead of redemption being suspended in the entire scheme, only the side pocketed portion is frozen until the market conditions improve, and the stressed asset could be sold at a price that better reflects its intrinsic value. This prevents the stressed assets from adversely impacting the returns generated by the rest of the holdings in the scheme's portfolio. The **segregated portfolio shall have different net assets value (NAV)**.
- In the backdrop of the aforesaid circumstances, the Budget 2020 has amended the Income Tax Act, 1961 to provide clarity with regard to the capital gains tax treatment upon the sale of Units in the
  - (a) Main Portfolio (with healthy portfolio); and
  - (b) the segregated portfolio (containing stressed assets)in the hands of the unit holder.

• **The Finance Bill, 2020 has proposed the following amendments related to segregated portfolios of a mutual fund scheme-**

- (a) the holding period with respect to the segregated units shall be reckoned from the original date of acquisition of units in the Main portfolio; and
- (b) the cost of acquisition of Units in the Main Portfolio and the Segregated portfolio will be taken as the proportionate cost as determined on the date of segregation for the Main Portfolio and for the Segregated portfolio.

**Example:**

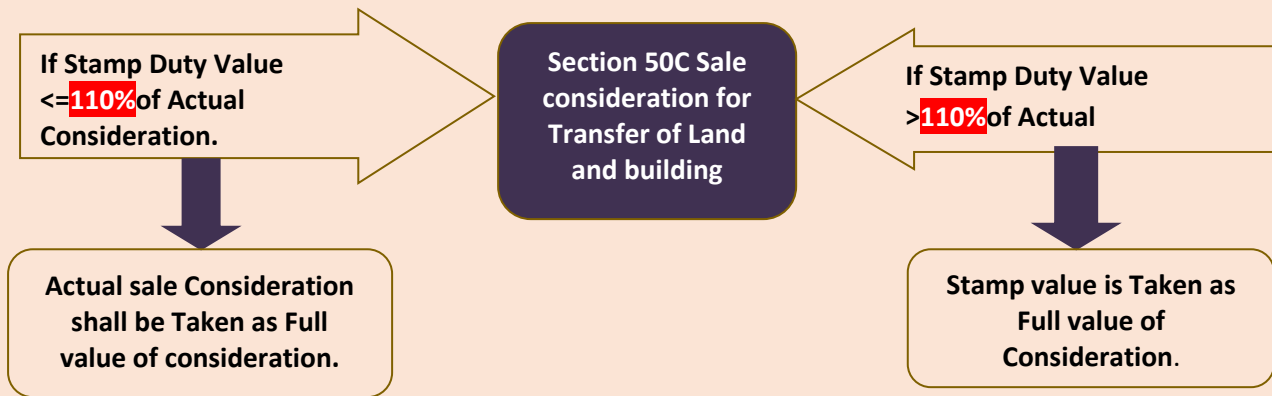
Suppose Mr. Rakesh invested in a scheme of a mutual fund on 01-01-2015 when the NAV was Rs. 10. On May 1, 2019, when NAV of the scheme was Rs. 20, segregation of portfolio was created due to a credit event.

Post creation of the segregated portfolio, the NAV of the main portfolio was Rs. 16 and the segregated portfolio was Rs 4. Hence, the proportion is 80:20 of the total portfolio.

According to the proposed amendment, the cost of acquisition of the main portfolio and the segregated portfolio should be taken as Rs. 8 and Rs. 2 respectively.

Similarly, the period of holding the units of the main portfolio and the segregated portfolio should be reckoned from 1st January 2015.

## Section 50C: Valuation of Consideration in Case of Land or Building or Both



DS Comment

### Section 50C and 43CA

- **Section 43CA** provide that in case of transfer of land and building (as stock in trade), **section 50C** provide that in case of land and building (as capital asset), actual sale consideration shall be higher of stamp duty or sale consideration.
- A proviso has been inserted in **section 43CA(1)** and **section 50C** with effect from assessment year 2019-20 to provide that where stamp duty value does not exceed **110%** of the consideration received the consideration so received shall be deemed to be full value of consideration.
- It is pertinent to clarify that **section 50C and 43CA(1)** will be applicable only in those cases, where stamp duty value is more than **110%** of actual sale consideration. **[FA2020]**
- **Before amendment Section 43CA** also provide that where the date of agreement fixing the value of consideration for transfer and date of registration are not the same, stamp duty value on the date of agreement shall be taken, if the amount of consideration or a part thereof has been received by way of an account-payee cheque/draft or by use of electronic clearing system through a bank account on or before the date of agreement.



DS Comment

### Section 43CA Amendment – (Applicable for November, 2021 Attempt)

- For the Real Estate Developer to whom the land/building constitute the stock in trade, the provision of section 43CA shall apply to determine the value at which it will be chargeable under the head PGBP.



The provision of Section 43CA is similar to the provision of Section 50C in every aspect. Even the consequence on the buyer u/s 56(2)(x) shall be similar when the buyer buys the real estate in the primary market (i.e., from the Real Estate developers) as compared to the buyer buying the real estate in the secondary market (i.e. from the Investor)

### Amendment dated 13/11/2020: Press Release (Important for Nov. 2021 attempt)



Where the RESIDENTIAL UNITS



Up to the value of Rs. 2 Crore



Is sold in primary market



From 12<sup>th</sup> Nov., 2020 to 30<sup>th</sup> June, 2020



Then the safe harbour percentage would be increased from 10% to 20% for both the buyers (Section 56(2)(x) and the sellers. (Section 43CA).



## Transfer of Specified Capital Asset by a Non-resident on a Recognised Stock Exchange in any IFSC u/s 47(viib) shall not be Regarded as Transfer

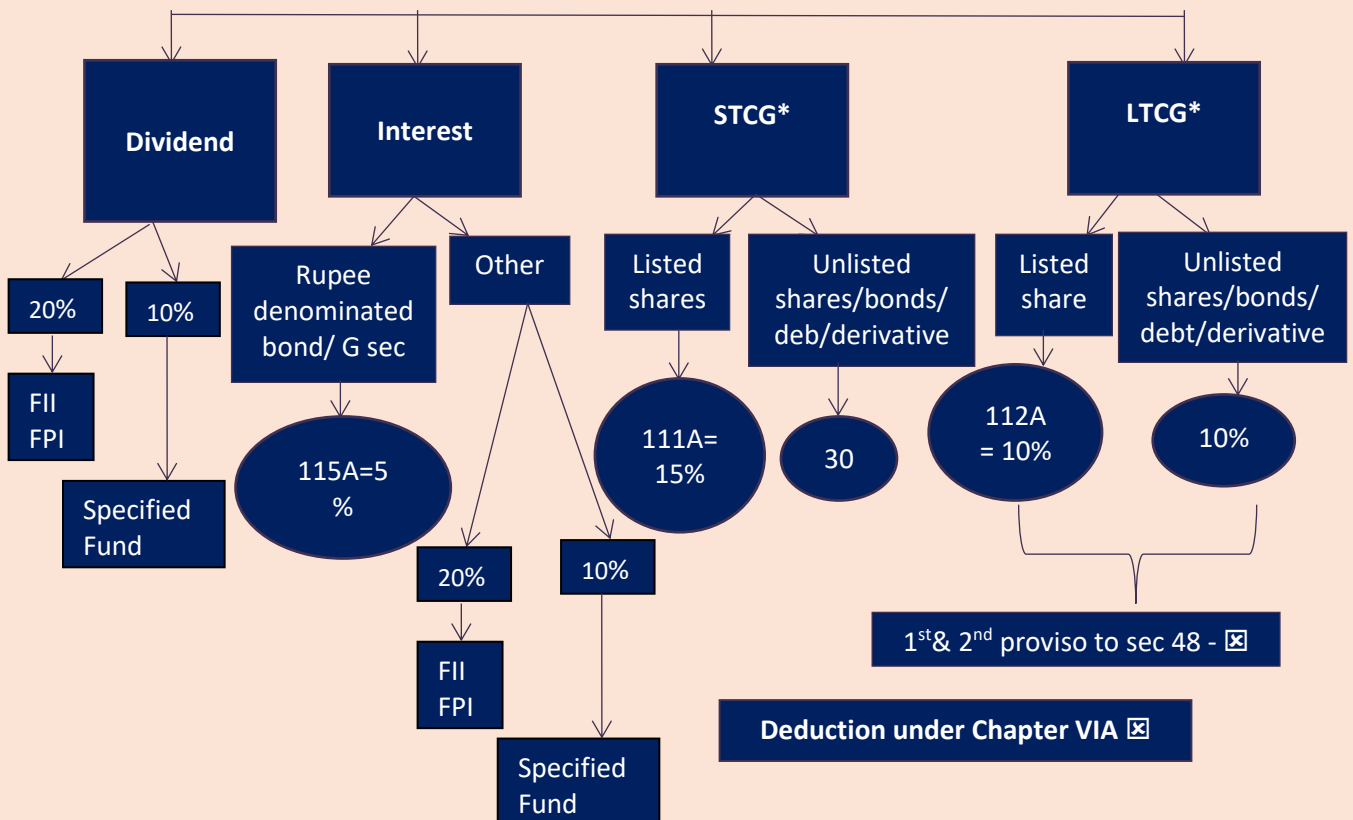
To promote development of world class financial infrastructure in India, transfer of the following capital assets by a non-resident on a recognised stock exchange located in any International Financial Services Centre (IFSC) shall not be regarded as transfer, where the consideration for such transaction is paid or payable in foreign currency:

- Bond or GDR referred to in section 115AC (1); or
- Rupee denominated bond of an Indian company; or
- Derivative or
- Such other securities as may be notified by the CG in this behalf, made by a non-resident on a recognized stock exchange located in any IFSC & where the consideration for such transaction is paid or payable in Foreign Currency.

Some of the securities are notified below [Notification No. 16/2020, dated 05-03-2020]:

- Foreign Currency Denominated bond
- Unit of a Mutual Fund;
- Unit of a business trust;
- Foreign currency denominated equity share of a company;
- Unit of Alternative Investment Fund

### Sec 115AD- Foreign Institutional Investor & Foreign Portfolio Investor/Specified Fund



**Specified Fund:** Qualifying Category-III AIF under section 10(4D) of ITA are the AIFs which are incorporated or located in any IFSC & all the units of such qualifying category-III AIF should be held by Non-Residents, except for units held by sponsor or manager.

The rates u/s. 115AD shall apply to the specified fund only to the extent of Income that is attributable to units held by a Non-Resident (not being a PE of a Non-Resident in India).

**Note:- For Rate of Surcharge applicable on tax on total income of an AOPs/BOIs (having any income under section 115AD) from A.Y.2020-21**

|       | Particulars   | Rate of surcharge on income-tax | Example  |  |
|-------|---|---------------------------------|--|--|
|       |   |                                 | Components of total income   | Applicable rate of surcharge   |
| (i)   | Where the total income >Rs. 50 lakhs but is ≤ Rs. 1 crore   | 10%                             | <ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD Rs.15 lakhs;</li> <li>Dividend Income on securities referred in sec.115AD Rs.15 lakhs and</li> <li>Other income Rs. 60 lakhs;</li> </ul>     | Surcharge would be levied@10% on income-tax computed on total income of Rs. 90 lakhs.  |
| (ii)  | Where total income >Rs. 1 crore but is ≤ Rs.2 crore   | 15%                             | <ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD Rs.35 lakhs;</li> <li>Dividend Income on securities referred in sec.115AD Rs.35 lakhs and</li> <li>Other income Rs. 80 lakhs;</li> </ul>     | Surcharge would be levied@15% on income-tax computed on total income of Rs. 1.50 crore.  |
| (iii) | Where total income [excluding STCG/LTCG on securities referred to in section 115AD(1)(b)] >Rs. 2 crore ≤ Rs.5 crore                           | 25%                             | <ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD Rs.15 lakhs;</li> <li>Dividend Income on securities referred in sec.115AD Rs.15 lakhs and</li> <li>Other income Rs.3 crores;</li> </ul>      | Surcharge would be levied: @15% on income-tax leviable on capital gains & Dividend Income of Rs.30 lakhs referred to in sec 115AD; and @25% on income-tax computed on other income of Rs.3 crores included in total income |
|       | Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)  | 15%                             |  |  |
| (iv)  | Where total income [excluding STCG/LTCG on securities referred to in section 115AD(1)(b)] >Rs.5 crore   | 37%                             | <ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD Rs.35 lakhs;</li> <li>Dividend Income on securities referred in sec. 115AD Rs. 35 lakhs, and</li> <li>Other income Rs.6 crore</li> </ul>     | Surcharge would be levied@15% on income-tax leviable on capital gains & Dividend Income of Rs.70 lakhs referred to in 115AD; and @37% on income-tax computed on other income of Rs.6 crore included in total income        |
|       | Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)  | 15%                             |  |  |
| (v)   | Where total income [including STCG/LTCG on securities referred to in 115AD(1)(b)] >Rs.2 crore in cases not covered under (iii) and (iv) above | 15%                             | <ul style="list-style-type: none"> <li>Capital gains on securities referred to in section 115AD Rs. 90 lakhs;</li> <li>Dividend Income on securities referred in sec. 115AD Rs.45 lakhs and</li> <li>Other income Rs. 1.60 crore;</li> </ul> | Surcharge would be levied@15% on tax on total income of Rs. 2.50 crore.  |

**\*Sec 115AD(1)(b):** Income by way of Short-Term or Long-Term securities.

## 7) INCOME FROM OTHER SOURCES

### **Section 56(2)(x)(b): IMMOVABLE PROPERTY** (Immovable property being land or building or both)

Immovable property received without consideration and **STAMP DUTY VALUE (SDV)** of such property > Rs. 50,000/-  
(The entire stamp duty value is taxable)

OR

Immovable property received for a consideration which is less than **STAMP DUTY VALUE** and **(SDV - Consideration) > Rs. 50,000/- or 10% of consideration) (FA 2020)** Entire difference is taxable)



DS Comment

### **Section 43CA Amendment – (Applicable for November, 2021 Attempt)**

- For the Real Estate Developer to whom the land/building constitute the stock in trade, the provision of section 43CA shall apply to determine the value at which it will be chargeable under the head PGBP.



The provision of Section 43CA is similar to the provision of Section 50C in every aspect. Even the consequence on the buyer u/s 56(2)(x) shall be similar when the buyer buys the real estate in the primary market (i.e., from the Real Estate developers) as compared to the buyer buying the real estate in the secondary market (i.e. from the Investor)

### **Amendment dated 13/11/2020: Press Release (Important for Nov. 2021 attempt)**



Where the RESIDENTIAL UNITS



Up to the value of Rs. 2 Crore



Is sold in primary market



From 12<sup>th</sup> Nov., 2020 to 30<sup>th</sup> June, 2020



Then the safe harbour percentage would be increased from 10% to 20% for both the buyers (Section 56(2)(x)) and the sellers. (Section 43CA).

## Section 57: Permissible Deduction

### **Deduction in the case of dividend income or income from mutual fund: [FA.2020]**

From the assessment year 2021-22 the following amendments have been made pertaining to expenditure deductible under section 57 in respect of dividend income or income from mutual fund-

- No deduction shall be allowed in respect of the above income **other than deduction on account of interest expenditure.**
- Deduction in the case of interest expenditure cannot exceed 20% of dividend income or income from mutual fund including in the total income of the previous year without claiming any deduction.

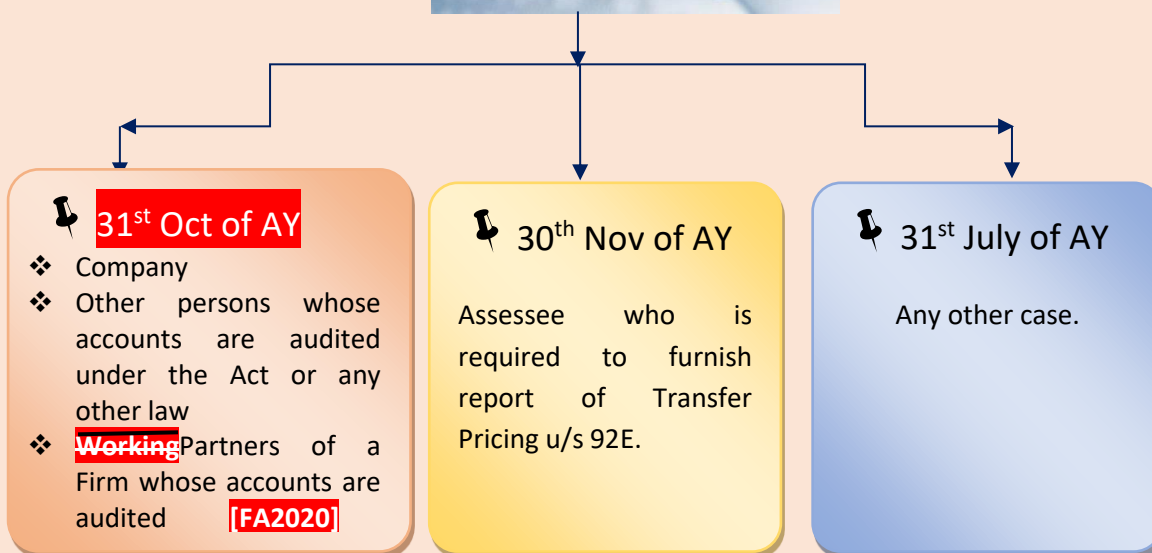
## 8) SET OFF AND CARRY FORWARD OF LOSSES

### Carry Forward and Set-Off of Accumulated Business Losses and Unabsorbed Depreciation in Certain Cases of Amalgamation/Demerger, Etc. [Section 72A/72AA]

- Applicability**
- (i) A company owning an **industrial undertaking or a ship or a hotel** with another company; or
  - (ii) An amalgamation of a **banking company with a specified bank**; or
  - (iii) Public sector companies engaged in the business of **operation of aircrafts**.
  - (iv) **1 or more corresponding new bank or banks with any other corresponding new bank under a scheme of CG.**
  - (v) **1 or more Government Company or companies with any other Govt Company under a scheme of CG.[FA 2020]**

# 9) ASSESSMENT PROCEDURE

## Due Dates U/s 139(1)



## Verification and Filing of Return

| ASSESSEE                | SITUATION   | SIGNATORY  |
|-------------------------|---|--|
| <b>Company</b>          | -Normal scenario<br>-MD not in India or there is no MD<br>-Company not resident in India<br>-Company in Liquidation<br>-Company whose management is taken over by Government<br>-Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. | -Managing Director<br>-Any other Director<br>-Authorized Agent<br>-Liquidator<br>-Principal Officer appointed for the purpose<br>-Insolvency Professional appointed by such Adjudicating Authority.<br><b>-Any other person (as may be prescribed by CBDT) [FA 2020]</b> |
| <b>Partnership Firm</b> | -Normal scenario<br>-Managing Partner not able to sign or there is no Managing Partner  | -Managing/Designated partner for LLPs<br>-Any other Partner not being a minor partner<br><b>-For LLP, Any other person (as may be prescribed by CBDT) [FA 2020]</b>  |

## Section 119: Powers of CBDT

**Sec 119A:- CBDT is empowered to adopt & declare a Taxpayer's Charter (rights & obligations) & issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter. [FA2020]**

## Section 133A: Powers of Survey

### Authority to survey:

✓ **In case where information is received from the prescribed authority, then**

- Commissioner/Director/Principal Commissioner/Principal Director,
- Joint Commissioner/Joint Director,
- Deputy Director,
- Assistant Director,
- Assessing Officer,
- Tax Recovery Officer,
- Inspector of Income Tax

No action u/s 133A(1) shall be taken by them without obtaining the approval of JDIT/JCIT

✓ **In other case, then**

- Commissioner/Director/Principal Commissioner/Principal Director,
- Joint Commissioner/Joint Director,
- Deputy Director,
- Assistant Director,
- Assessing Officer,
- Tax Recovery Officer,
- Inspector of Income Tax

No action u/s 133A(1) shall be taken by them without obtaining the approval of DIT/CIT

FA 2020

### w.e.f. 1<sup>st</sup> November, 2020: The Authority Surveys as under:

[Provided that no action under this section shall be taken by an income-tax authority without the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner.]

Explanation.—In this section,—

[(a) "income-tax authority" means—

- a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer; and
- includes an Inspector of Income-tax, for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5),

who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be;]

## Section 133C: Verification of Information

For the purpose of **verifying** any information in its possession relating to any person, the prescribed income tax authority may **issue a notice** to such person, requiring him to **furnish information or document, on or before** may **process such information or document so obtained & utilise such information and document in accordance with the scheme notified below or the provisions of section 135A** for the outcome thereof available to the A.O., for the necessary action, if any.

**CBDT is empowered to make scheme for centralized issue of notice, process such information & make available outcome to the AO.** CBDT has framed Centralised Communication Scheme, 2018. The notice shall be issued electronically and electronic response shall be filed to it. Therefore, the personal appearance is dispensed with.

**The scheme made shall cease to have effect from the date on which the scheme notified under section 135A in respect of this section come into effect. [Relaxation and Amendment of Certain Provisions) Act, 2020]**

# 10) AIR/SFT

## Section 285BB: Annual Information Statement

- 1) The prescribed income-tax authority or the person authorised by such authority has to upload in the registered account of the assessee, an annual information statement in the prescribed form and manner and within the prescribed time along with the prescribed information in possession of the said authority.
- 2) "Registered account" means the electronic filing account registered by the assessee in designated portal, i.e., web portal designated by the prescribed income-tax authority or the person authorised by such authority.
- 3) Accordingly, Rule 114-I has been inserted w.e.f. 1.6.2020 which requires the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him, under section 285BB, to upload in the registered account of the assessee an annual information statement in Form No. 26AS containing the information specified in column (2) of the table below, which is in his possession within 3 months from the end of the month in which the information is received by him:?

| Sr. No. | Nature of Information                                       |
|---------|---|
| (i)     | Information relating to tax deducted or collected at source |
| (ii)    | Information relating to specified financial transaction     |
| (iii)   | Information relating to payment of taxes                    |
| (iv)    | Information relating to demand and refund                   |
| (v)     | Information relating to pending proceedings                 |
| (vi)    | Information relating to completed proceedings               |

- 4) The CBDT may also authorise the Principal DGIT (Systems) or the DGIT (Systems) or any person authorised by him to upload the information received from any officer, authority or body performing any function under any law or the information received under an agreement referred to in section 90 or section 90A or the information received from any other person to the extent as it may deem fit in the interest of the revenue in the annual information statement.
- 5) The Principal DGIT (Systems) or the DGIT (Systems) has to specify the procedures, formats and standards for the purposes of uploading of annual information statement.

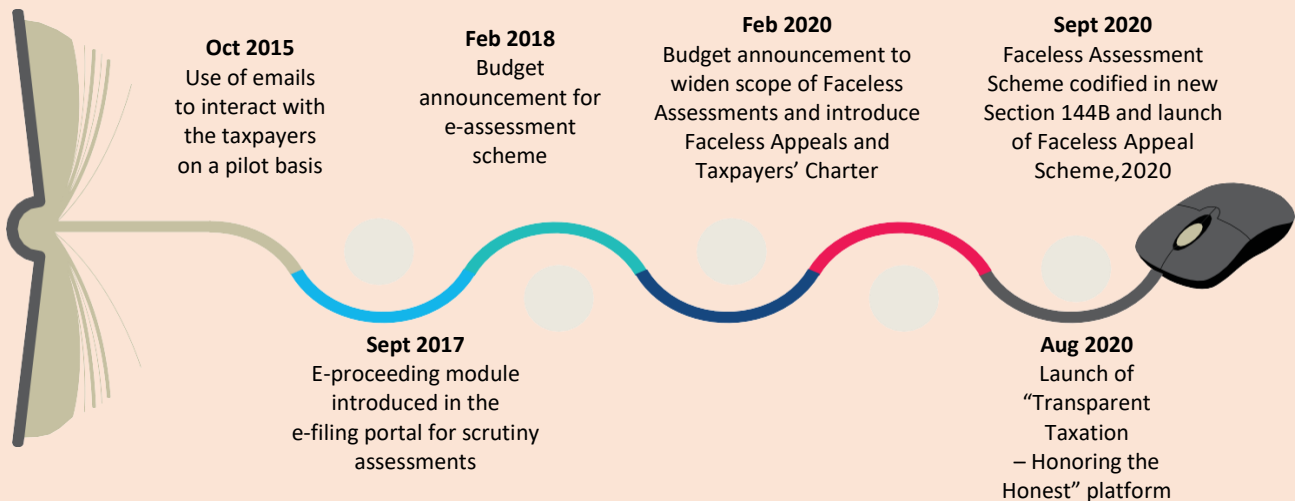
# 11) Faceless Assessment & Procedures



## Introduction

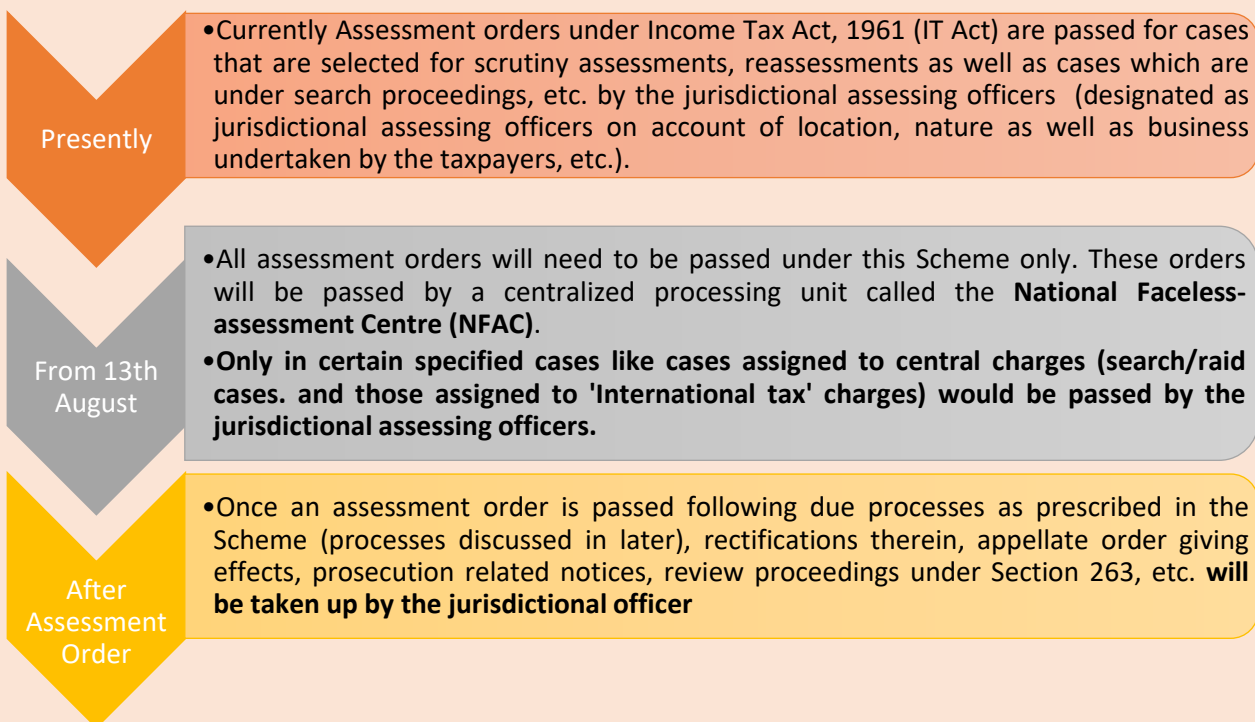
Hon'ble Prime Minister of India launched a **'Transparent Taxation' platform on 13 August 2020 for faceless assessments, faceless appeals and a taxpayer's charter.** The 'Faceless Assessments Scheme, 2019' (Scheme) will go a long way in ensuring a transparent and uniform Direct Tax administration system in India. With intended use of state of the art technology, not only does this Scheme gel well with the motto to provide **'Maximum Governance with Minimum Government'**, it will also result in savings of substantial resources, both for the government as well as the taxpayers.

### 1) Journey from digitization to a faceless interface – key events:





## 2) What is the scope of Scheme? What will change from 13 August 2020?



## 3) Does Scheme apply to ongoing assessments (say wherein part submissions have already been filed) as well or only new cases that are selected for scrutiny?

All cases wherein assessment orders were not passed by 13 August 2020 will be concluded under this Scheme. **Post 13 August 2020**, an assessment order passed by any authority other than the NFAC will be treated as if the same was never passed.

Even in **cases as on 13 August 2020, where part or entire submissions have been filed** and assessments proceedings have been concluded with only the assessment order pending to be passed, the proceedings would need to be completed under this Scheme.

## 4) What are the new terminologies one needs to know and their relevance in the Scheme?

Under the Scheme, assessment of the taxpayer will be carried out by 'assessment centers' set up by the Central Board of Direct Taxes (CBDT). These are namely NFAC, Regional Faceless-Assessment Centre (RFAC), Assessment Units (AU), Verification Units (VU), technical units (TU) and Review Units (RU). Their functions are as under:

| Sr. no. | Units | Functions  |
|---------|-------|--|
| a       | NFAC  | NFAC will facilitate the conduct of e-assessment proceedings in a centralized manner. Broadly, NFAC for assessments will be what Central Processing Centre (Bengaluru) is for processing of electronically filed returns. NFAC will act as the single point of contact for all communication between (i) the taxpayer and the Department, or (ii) the various units of the tax department set up pursuant to the Scheme. |
| b       | RFAC  | Major function would be to facilitate the conduct of e-assessment proceedings in the jurisdictional region of a Principal Chief Commissioner.  |
| c       | AU    | It shall perform the functions of making assessments including identification of points or issues, seeking information or clarification, etc. which will be communicated to various stakeholders through NFAC.   |
| d       | VU    | It shall perform the functions of verifications like enquiry, cross verification, examination of books of accounts, examination of witnesses, etc.   |

|   |    |  |
|---|----|--|
| e | TU | It shall perform the functions of providing technical assistance like any advice on legal, accounting, forensic, information technology, valuation, audit, transfer pricing, data analytics, etc. and would act like a knowledge repository. |
| f | RU | It shall perform the function of review of the draft assessment orders passed under the Scheme.  |

### 5) How will e-assessment proceedings be initiated?

Cases will be selected electronically based on pre-set artificial intelligence criterion drawing analogies from risk management system, tracking major variances in data in possession of Tax Department and filings by taxpayers, etc. NFAC will serve a notice (under Section 143(2) of IT Act) on the taxpayer specifying the issues for selection of a case for scrutiny assessment. It appears that reopening notices and reasons for reopening will be provided by the jurisdictional assessing officer. Post that, assessments will be framed under the Scheme.

### 6) How the cases will be assigned to the AUs under the Scheme?

NFAC will assign cases to a specific AU in any one of the RFAC through an automated allocation system and the taxpayer would not know which AU team is dealing with its assessment. Thus, an AU say based in Orissa will take up the assessment of a taxpayer based in Delhi and all communications will be routed through NFAC.

### 7) If this is so, in case of divergent views of high courts, whether the AU as well as other units will need to follow the rulings pronounced by the High Court of their physical location (Orissa in the above example) or jurisdiction of the taxpayer (Delhi).

While there is no formal clarification in this regard, time and again it has been stated by various authorities (and rightly so) that rulings issued by the taxpayers's jurisdictional high court (based on the taxpayers PAN jurisdiction - Delhi in the present case) would be considered binding and followed.

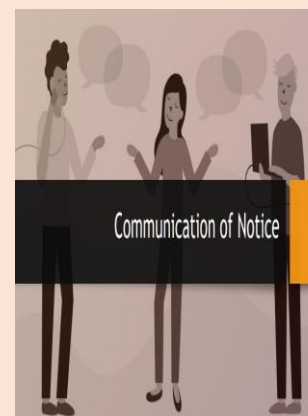
### 8) Whether TDS related proceedings and proceedings under Black Money Act will also be covered under this Scheme?

Proceedings other than Income Tax Assessments like TDS related proceedings, those initiated under the Black Money Act are yet to be covered under this Scheme. **The routine procedures as are presently applicable to these proceedings will continue to apply until the scope of this Scheme is extended.**

### 9) How will notices/orders be communicated to the taxpayers?

Under the Scheme, all communications to the taxpayers would be done electronically through the portal / registered email id of the taxpayers. SMS alerts will be shared on registered mobile numbers. Since, these are initial stages and there have been some delivery issues in the cases selected for faceless assessments in the ongoing pilot project of the Scheme, it has also been conveyed that hard copies of communications are being dispatched in cases wherein there are no responses from taxpayers on account of undelivered / bounced emails, etc.

Thus, it becomes imperative on the part of the taxpayers to regularly check their e-filing portal for communications if any. Taxpayers should also register / update their latest active email ids and mobile numbers so that they do not miss any communications and avoid the rigours of non-compliance which in worst case scenario may also result in passing of ex-parte assessment orders.



### 10) Can taxpayer request for a personal hearing?

While personal interface is not intended, in cases where modifications are proposed in the assessment proceedings an opportunity is provided to the taxpayer to file the response, he may request for personal hearing to make his oral

submissions to present his case. The Chief Commissioner or the Director General, in charge of the RFAC, under which the concerned unit is set up, may approve the taxpayers request for personal hearing (**an electronic hearing through video conferencing**) provided such a request is covered by under the prescribed circumstances (circumstances yet to be notified).

## 11) How will the assessment process run?

Broadly, the **assessment process will run** as under:

| Steps   | Remarks   |
|---|---|
| Initiate  | NFAC will <b>initiate</b> the assessment proceedings  |
| Reply   | Taxpayer will need to <b>reply within 15 days</b> (of this initial notice)  |
| Allocation  | An AU (which will be a team of assessing officers under an ReAC) <b>will be allotted</b> the case electronically  |
| Communication Channel                               | NFAC will then be the <b>communication channel</b> between the taxpayer, VU and TU for technical inputs and assist the AU   |
| Consolidation of Information                        | NFAC will <b>consolidate all information</b> and <b>send it</b> to AU   |
| Examination & Preparation of Draft Assessment Order | After <b>examining</b> all the information, AU will <b>prepare a draft assessment order</b> .   |
| For ensuring quality and consistency of Draft Order | This order will go through various levels of review to ensure quality and consistency. <ul style="list-style-type: none"> <li>❖ NFAC will share a draft order / show cause notice with the taxpayer and</li> <li>❖ Provide the taxpayer an opportunity to explain / defend the positions.</li> <li>❖ After due consideration of filings made by the taxpayer, a reasoned order will be passed.</li> </ul>   |
| General Points                                      | <ul style="list-style-type: none"> <li>❖ One of the salient features introduced is issuance of a draft order for every adjustment proposed to be made in the assessment procedure which affects the taxpayers claims. The taxpayer will have an option either to accept such proposed adjustments or provide appropriate explanations in support of its claim.</li> <li>❖ If the Principal CCIT or Principal DG in-charge of the NFAC are of the view that a case needs to be transferred to the jurisdictional officer, the same can be done with the prior approval of CBDT.</li> </ul> |

## 12) How the Faceless Assessment scheme will impact various procedures under the Act?

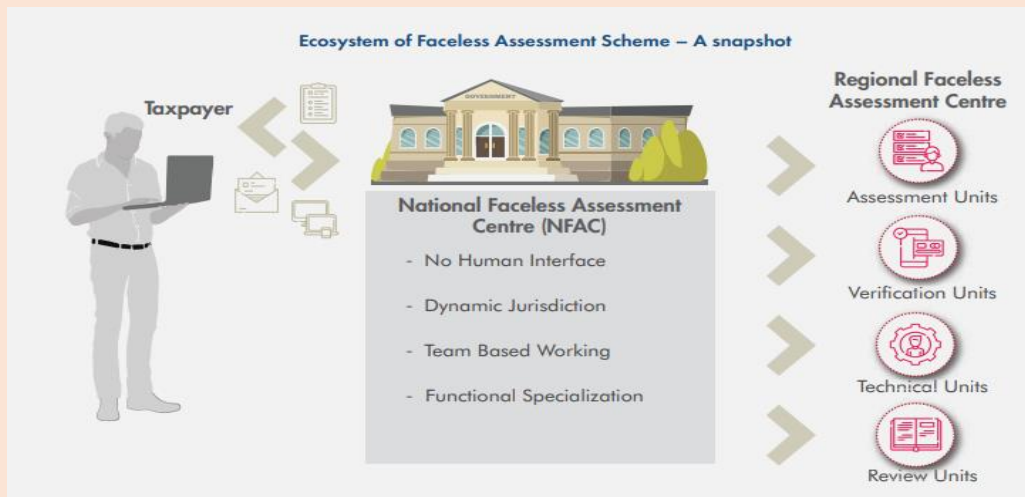
|              |   |
|--------------|---|
| <b>Pros.</b> | <ul style="list-style-type: none"> <li>❖ Intent of the Scheme is to bring transparency and uniformity in the assessment proceedings and bring an end to high-pitched assessments, which is in the overall interest of all stakeholders. The Prime Minister used the term 'Honouring the Honest' in his speech and the Scheme will go a long way in achieving these objectives.</li> <li>❖ Assessments framed by various teams (and not an individual assessing officer) as well as mandatory review by higher authorities will take away a lot of inconsistencies and should ensure fair and objective assessments. This should considerably reduce unnecessary litigation and related hassles by doing away with patently incorrect/arbitrary assessments.</li> <li>❖ Being electronic process, it would result in substantial savings of time and resources for the taxpayer, tax practitioners as well as the department.</li> <li>❖ There would be a complete trail of all communication with the Tax Department, submissions filed, etc. at one place (e-filing portal) in a convenient manner.</li> <li>❖ We could soon see a central repository of all positions accepted by the tax department (cases not contested by them in appeals), positions taken on contentious issues, which will help a long way in ensuring transparency and reducing litigation.</li> </ul> |
|--------------|---|

|              |   |
|--------------|---|
| <b>Cons:</b> | <ul style="list-style-type: none"> <li>❖ Initially there would be some hassles on account of realignment of jurisdictional officers across tax offices affecting pending requests, applications, movement of physical files (especially concerning old assessments).</li> <li>❖ There could also be some communication gaps (atleast in the initial period).All stakeholders are so used to explaining (being explained) the nuances in person that it would take some time to adjust to only written filings. Although, once the Scheme is implemented in the true spirit as it has been proposed, these issues should be ironed out.</li> </ul> |
|--------------|---|

### 13) Other Provisions of Faceless Assessment?

|   |   |           |  |           |   |           |  |           |  |           |  |
|---|---|-----------|--|-----------|---|-----------|--|-----------|--|-----------|--|
| <b>What is a purpose of Making a Faceless Jurisdiction? {Sec-130}</b>   | <p>The Central Government may make a scheme, by notification in the Official Gazette, <b>for the purposes of;</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;"><b>a)</b></td> <td>exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income- tax authorities by or under this Act as referred to in section 120; or</td> </tr> <tr> <td style="text-align: center;"><b>b)</b></td> <td>vesting the jurisdiction with the Assessing Officer as referred to in section 124; or</td> </tr> <tr> <td style="text-align: center;"><b>c)</b></td> <td>exercise of power to transfer cases under section 127; or</td> </tr> <tr> <td style="text-align: center;"><b>d)</b></td> <td>exercise of jurisdiction in case of change of incumbency as referred to in section 129.</td> </tr> </table> | <b>a)</b> | exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income- tax authorities by or under this Act as referred to in section 120; or | <b>b)</b> | vesting the jurisdiction with the Assessing Officer as referred to in section 124; or | <b>c)</b> | exercise of power to transfer cases under section 127; or                                    | <b>d)</b> | exercise of jurisdiction in case of change of incumbency as referred to in section 129.              |           |  |
| <b>a)</b>   | exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income- tax authorities by or under this Act as referred to in section 120; or  |           |  |           |   |           |  |           |  |           |  |
| <b>b)</b>   | vesting the jurisdiction with the Assessing Officer as referred to in section 124; or   |           |  |           |   |           |  |           |  |           |  |
| <b>c)</b>   | exercise of power to transfer cases under section 127; or   |           |  |           |   |           |  |           |  |           |  |
| <b>d)</b>   | exercise of jurisdiction in case of change of incumbency as referred to in section 129.   |           |  |           |   |           |  |           |  |           |  |
| <b>How under the Faceless Assessment, information will be collected? {Sec-135A}</b>   | <p>The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of;</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;"><b>a)</b></td> <td>calling for information under section 133,</td> </tr> <tr> <td style="text-align: center;"><b>b)</b></td> <td>collecting certain information under section 133B, or</td> </tr> <tr> <td style="text-align: center;"><b>c)</b></td> <td>calling for information by prescribed income-tax authority u/s 133C, or</td> </tr> <tr> <td style="text-align: center;"><b>d)</b></td> <td>exercise of power to inspect register of companies under section 134, or</td> </tr> <tr> <td style="text-align: center;"><b>e)</b></td> <td>exercise of power of Assessing Officer under section 135</td> </tr> </table>   | <b>a)</b> | calling for information under section 133,   | <b>b)</b> | collecting certain information under section 133B, or                                 | <b>c)</b> | calling for information by prescribed income-tax authority u/s 133C, or                      | <b>d)</b> | exercise of power to inspect register of companies under section 134, or                             | <b>e)</b> | exercise of power of Assessing Officer under section 135 |
| <b>a)</b>   | calling for information under section 133,  |           |  |           |   |           |  |           |  |           |  |
| <b>b)</b>   | collecting certain information under section 133B, or   |           |  |           |   |           |  |           |  |           |  |
| <b>c)</b>   | calling for information by prescribed income-tax authority u/s 133C, or   |           |  |           |   |           |  |           |  |           |  |
| <b>d)</b>   | exercise of power to inspect register of companies under section 134, or  |           |  |           |   |           |  |           |  |           |  |
| <b>e)</b>   | exercise of power of Assessing Officer under section 135  |           |  |           |   |           |  |           |  |           |  |
| <b>Ways to carry out inquiry or valuation under Faceless Assessment {Sec-142A}</b>  | <p>The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of;</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;"><b>a)</b></td> <td>issuing notice under sub-section (1) or</td> </tr> <tr> <td style="text-align: center;"><b>b)</b></td> <td>making inquiry before assessment under sub-section (2), or</td> </tr> <tr> <td style="text-align: center;"><b>c)</b></td> <td>directing the assessee to get his accounts audited under sub-section (2A) of section 142, or</td> </tr> <tr> <td style="text-align: center;"><b>d)</b></td> <td>estimating the value of any asset, property or investment by a Valuation Officer under section 142A.</td> </tr> </table>  | <b>a)</b> | issuing notice under sub-section (1) or  | <b>b)</b> | making inquiry before assessment under sub-section (2), or                            | <b>c)</b> | directing the assessee to get his accounts audited under sub-section (2A) of section 142, or | <b>d)</b> | estimating the value of any asset, property or investment by a Valuation Officer under section 142A. |           |  |
| <b>a)</b>   | issuing notice under sub-section (1) or   |           |  |           |   |           |  |           |  |           |  |
| <b>b)</b>   | making inquiry before assessment under sub-section (2), or  |           |  |           |   |           |  |           |  |           |  |
| <b>c)</b>   | directing the assessee to get his accounts audited under sub-section (2A) of section 142, or  |           |  |           |   |           |  |           |  |           |  |
| <b>d)</b>   | estimating the value of any asset, property or investment by a Valuation Officer under section 142A.  |           |  |           |   |           |  |           |  |           |  |
| <p><b>For the above measure are taken, so as to impart greater efficiency, transparency and accountability by;</b></p> <ol style="list-style-type: none"> <li>1) eliminating the interface between the income-tax authority or Valuation Officer and the assessee or any person to the extent technologically feasible;</li> <li>2) optimising utilisation of the resources through economies of scale and functional specialisation;</li> <li>3) introducing a team-based issuance of notice or making of enquiries or issuance of directions or valuation with dynamic jurisdiction.</li> </ol> |   |           |  |           |   |           |  |           |  |           |  |

## Hierarchy of Faceless-assessment centers set up by the Board:

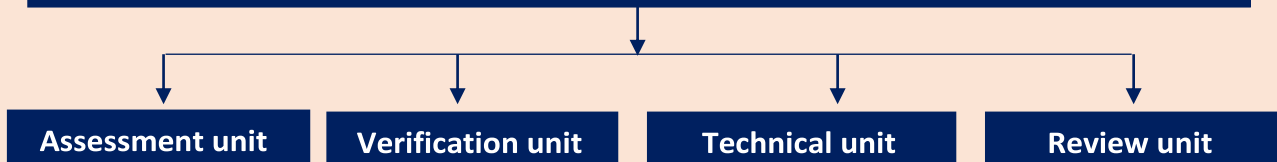


### National Faceless-assessment Centre:

**Scope:** To facilitate the conduct of Faceless-assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make assessment.

### Regional Faceless-assessment Centre:

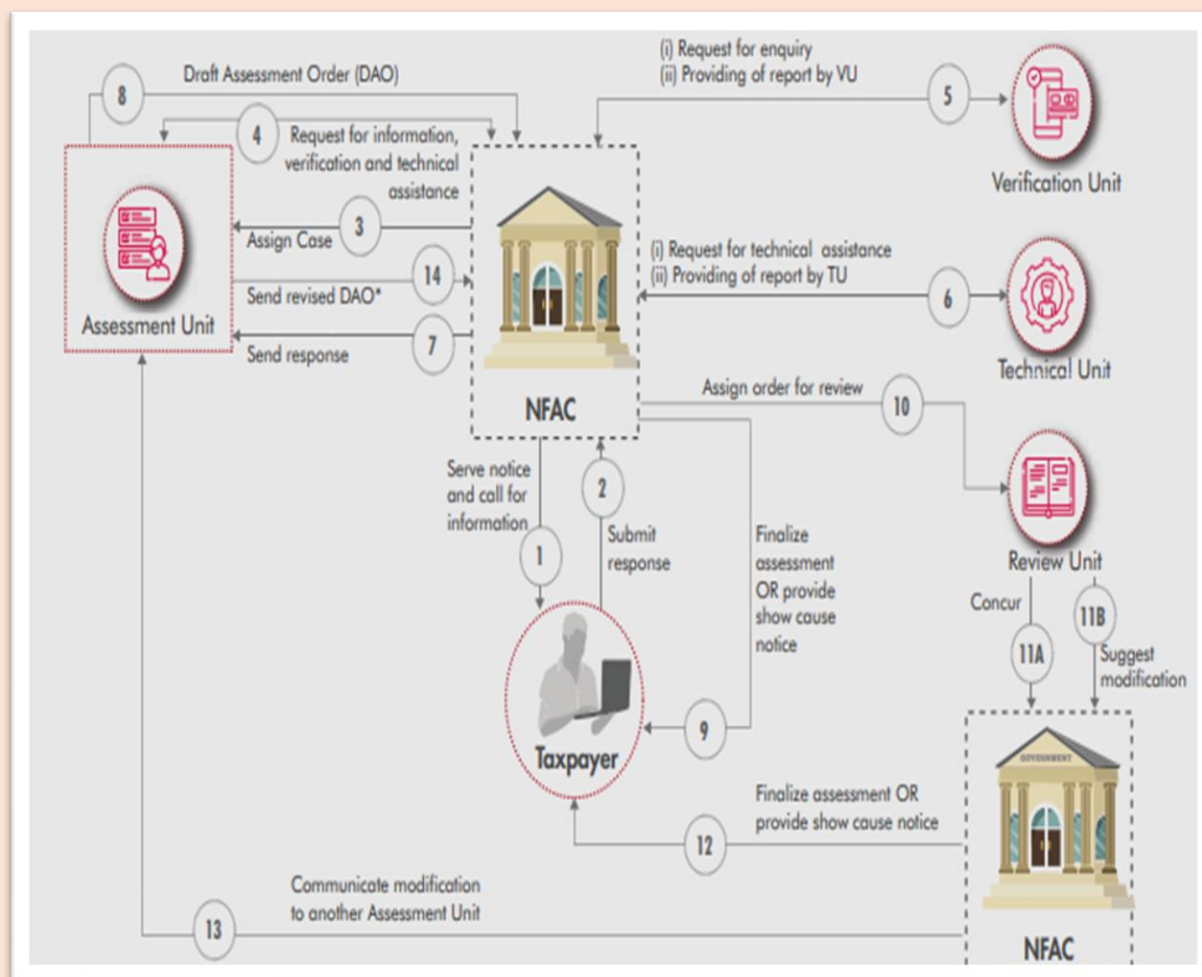
**Scope:** To facilitate the conduct of Faceless-assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make assessment. (eg: Delhi, Mumbai, Chennai etc.)



### Additional points:

1. All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee with respect to the information or documents or any other details, for the purposes of making an assessment shall be through the National Faceless-assessment Centre.
2. All the units shall have authorities of Additional CIT/Additional DIT/JCIT/JDIT as the case may be; DCIT/DDIT/ACIT/ADIT or of such other Income Tax Authority as the Board may consider necessary.

## Faceless Assessment procedure-Flow Chart



**Important Note:** This chart is for illustrative purposes and only provides a simplistic view of the process. There are several situations wherein to and fro interactions are envisaged amongst the units and taxpayer through NFAC. Presently, the same is not captured in this chart for ease of reference.

### General points:

- All the communication of NFAC to assessee or other person and internal communication between NFAC, RFAC and their units shall be exchanged by electronic mode and all electronic record should be authenticated by digital signature of the originator.
- Every notice or order under the scheme delivered to the assessee by:
  - placing an authenticated copy thereof in the assessee's registered account; or
  - sending copy to registered mail id of the assessee or his authorized representative; or
  - uploading it on assessee's mobile app; and followed by real time alert.
 Assessee shall file response to such notice from his registered account.
- No personal appearance in any centre or unit is allowed however, opportunity of being heard given in any steps referred above to the assessee then, he may seek personal hearing and, such hearing shall be conducted by video conferencing including any telecommunication software which support video telephony.
- Any examination or recording of statement of assessee or any other person (other than statement recorded in survey u/s 133A) shall be by video conferencing including any telecommunication software which support video telephony.
- Board shall establish such facilities of video conferencing for the benefit of the assessee or other person if it is necessary to do so.
- The PCCIT or the PDG, in charge of the NEC shall lay down the standards, procedures and processes for

effective functioning of the NEC, REC and their units, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:

- a) service of the notice, order or any other communication;
- b) receipt of any information or documents from the person in response to the notice, order or any other communication;
- c) issue of acknowledgment of the response furnished by the person;
- d) provision of “e-proceeding” facility including login account facility, tracking status of assessment, display of relevant details, and facility of download;
- e) accessing, verification and authentication of information and response including documents submitted during the assessment proceedings;
- f) receipt, storage and retrieval of information or documents in a centralized manner; general administration and grievance redressal mechanism in the respective Centres and units.

### Penalty for non-compliance:

- (1) Any unit may, in the course of assessment proceedings, for non-compliance of any notice, direction or order issued on the part of the assessee or any other person, send recommendation for initiation of any penalty proceedings under Chapter XXI of the Act, against such assessee or any other person, as the case may be, to the NEC, if it considers necessary to do so.
- (2) The NEC shall, on receipt of such recommendation, serve a show cause notice on the assessee or any other person, as the case may be.
- (3) The response to show - cause notice furnished by the assessee or any other person, if any, shall be sent by the NEC to the concerned unit.
- (4) The said unit shall, after taking into consideration the response furnished by the assessee or any other person, as the case may be, -
  - (a) make a draft order of penalty and send a copy of such draft to NEC; or
  - (b) drop the penalty after recording reasons, under intimation to the NEC.
- (5) The NEC shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the assessee or any other person, as the case may be.

### Appellate Proceeding

Appeal against assessment made by NFAC lie with jurisdictional CIT (A).

## Faceless Appeal scheme-2020

### 1) Introduction

Similar to the Faceless Assessment Scheme, on September 25, 2020, the Government has also notified the Faceless Appeal Scheme, 2020 and has made it operative with immediate effect. As the name suggests, the Faceless Appeal Scheme, 2020 is aimed at eliminating physical interface between the taxpayer and the first appellate authority [Commissioner of Income-tax (Appeals) level]. *The architecture and the framework of these Schemes as discussed in detail below.*

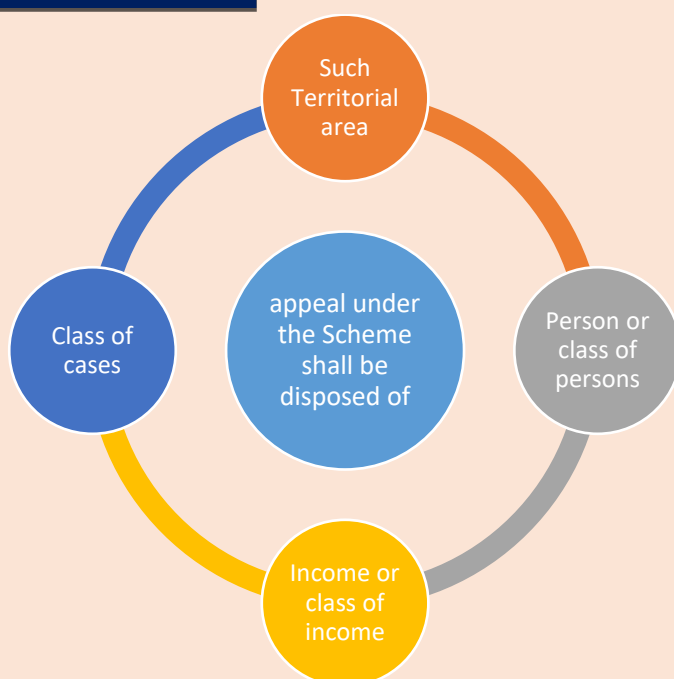


### Relevant Changes in Act

| Section-250 | Procedure in appeal |           |
|-------------|---------------------|-----------|
| Sub-Section | Clause              | Provision |
|             |                     |           |

|           |   |   |
|-----------|---|---|
| <b>6B</b> | The Central Government may make a scheme, <b>by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals)</b> , so as to impart greater efficiency, transparency and accountability by—  |   |
|           | (a)   | eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible; |
|           | (b)   | Optimising utilisation of the resources through economies of scale and functional specialisation;   |
|           | (c)   | introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).                         |
| <b>6C</b> | The Central Government may, for the purposes of giving effect to the scheme made under subsection (6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. |   |

## 2) Scope of the scheme

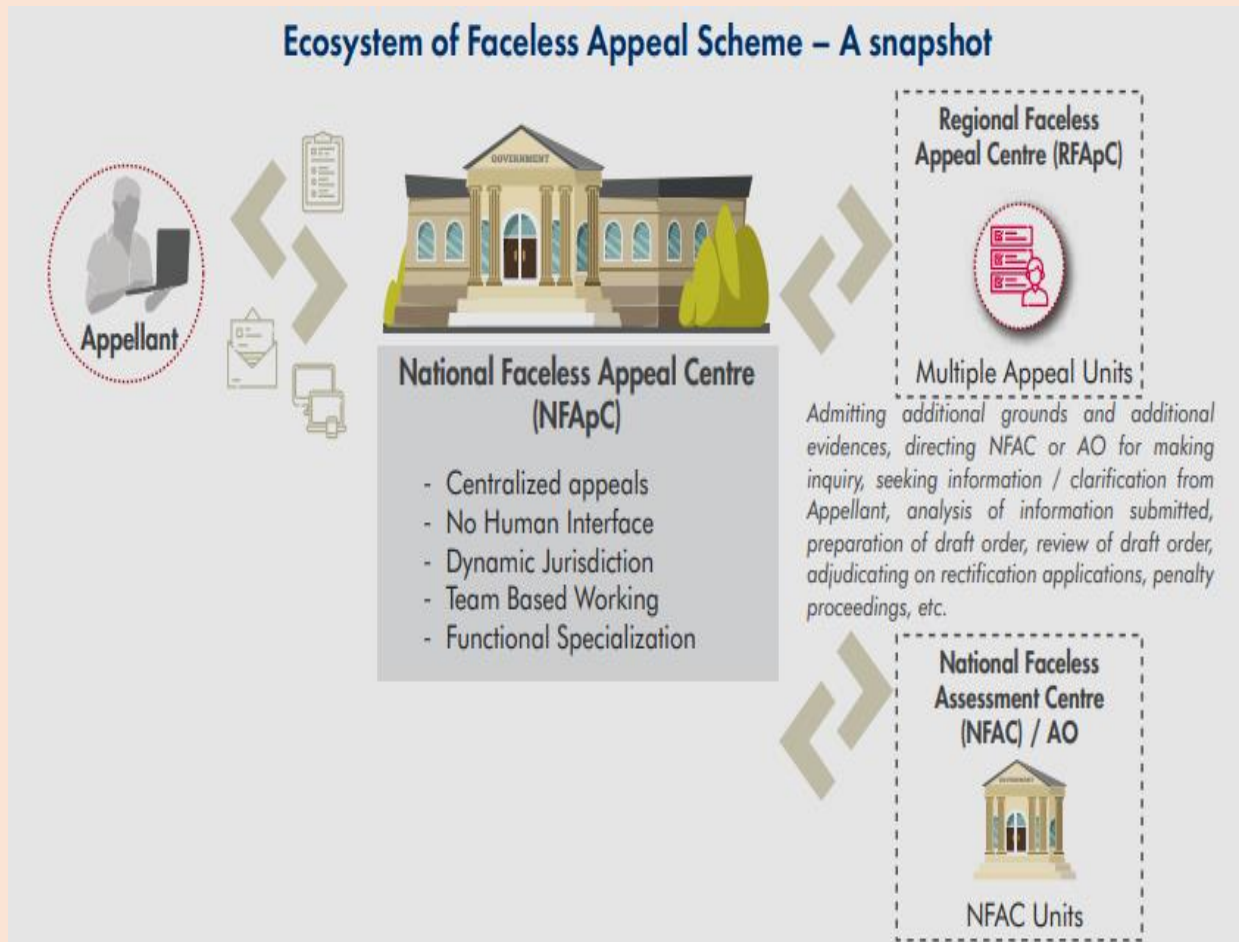


## Outside the purview of the Faceless





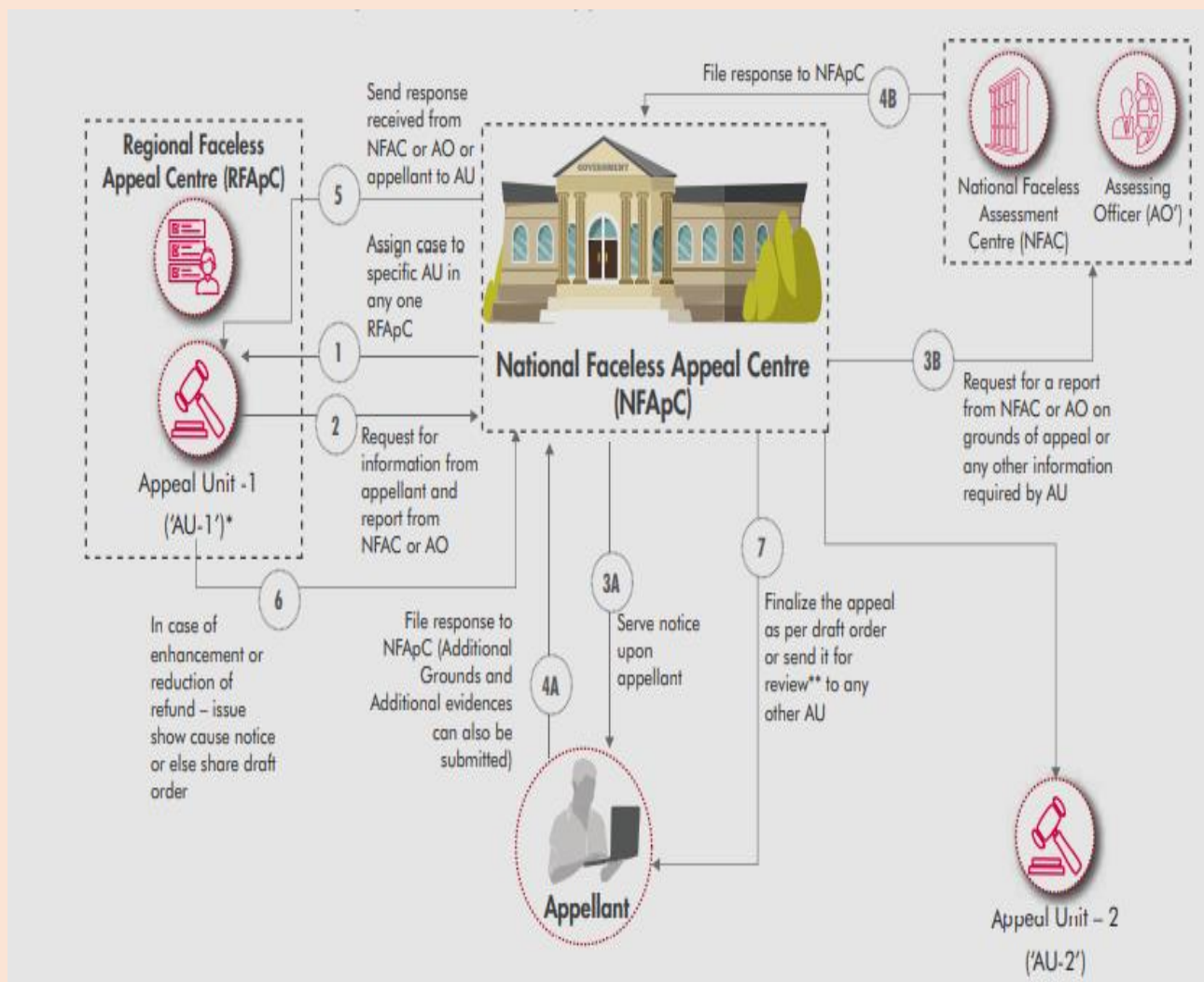
### 3) Hierarchy of Faceless Appeal Scheme 2020 set up by the Board



#### Salient features of Faceless Appeal Scheme:

- ❖ National Faceless Appeal Centre ('NFAPC') to act as a nodal agency and a single point of contact between taxpayer and the Revenue.
- ❖ Appeal proceedings to be carried out by Regional Faceless Appeal Centres ('RFAPC') with support from various Appeal Units comprised therein
- ❖ NFAPC to allocate an appeal filed by tax payer to any RFAPC through an automated allocation system based on data analytics and artificial intelligence
- ❖ Personal appearance for hearing is prohibited. The Revenue will lay down standards, procedures, and processes, with prior CBDT approval, in respect of circumstances in which personal hearing is permitted (yet to be notified). However, the same will be permitted only through video conferencing
- ❖ Any appeal against an order passed by NFAPC shall lie before the Income Tax Appellate Tribunal ('ITAT') having jurisdiction over the jurisdictional AO of the appellant.

#### 4) Bird's eye view of the Faceless Appeal Scheme 2020 Procedures



\*There are various Appeal Units under RFaPc

\*\* Draft order to be compulsorily forwarded for review to AU-2 if aggregate amount payable as per draft appeal order exceeds a specified threshold (yet to be notified). In case where the AU-2 suggests variations (upwards or downwards) in the draft order, then NFApC shall send the order for review to another Appeal Unit (AU-3) which will follow similar steps as outlined above and share a revised draft appeal order to NFApC. This chart is for illustrative purposes and only provides a simplistic view of the process. There are several situations wherein to and fro interactions are envisaged amongst the units, taxpayer, and NFAc through NFApC.

## 5) Roles & Responsibilities of Various Faceless Appeal Centres

| National Faceless Appeal Centre (NFAPC)   | Regional Appeal Centre (RFAPC)   | Appeal Units  |
|---|--|---|
| To facilitate the <b>conduct of e-appeal proceedings</b> in a <b>centralised manner</b> | To facilitate the conduct of e-appeal proceedings having jurisdiction to dispose appeal<br>Four RFAC are established at Delhi, Mumbai ,Chennai and Kolkata | To facilitate the conduct of e-appeal proceedings<br>To perform the function of <b>disposing appeal</b> which includes:-<br><ul style="list-style-type: none"> <li>✓ admission of <b>additional ground and additional evidences</b>,</li> <li>✓ admission of delayed appeal</li> <li>✓ admission of appeal as referred in <b>Section 249(4)</b></li> <li>✓ making such further <b>inquiry as thinks fit</b></li> <li>✓ <b>Directing the NFAPC or the AO, as the case may be, for making further inquiry</b>, seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, review of draft order, or such other functions as may be required</li> </ul> |

### CRITICAL ISSUES RELATING TO WORD “NFAPC /AO” USED AT VARIOUS PLACES:

In entire faceless appeal scheme, **word NFAPC /AO**, are used at various instances. This may be for the reasons that **if existing orders for which appeals are already filed are passed by AO and not by NFAPC**, appeal unit may refer matter to AO as NFAC may not be having assessment records.

**SOP or clarification is further required as to how NFAPC will process further, once it receives reference from Appeal Unit.** Though **NFAPC** has various units including technical units or verification units, whether **Assessment Unit at NFAPC, will take help of such units or not is not clarified in scheme.** (Naturally concerned Assessment Unit at **NFAPC** may take help of such various units of **NFAPC**, if required as such Units are set up for helping assessment unit at various stages)

If 'AO' referred in the scheme, is jurisdictional AO, then effectiveness of proceeding in Faceless Appeal may reduce to some extent.

## 6) Basic Procedural Aspects

### Exchange of communication exclusively by electronic mode

- all communications between the **NFAPC** and the appellant, or his authorized representative or other person shall be exchanged exclusively by electronic mode.

**All internal communication** among NFAPC, RFAC, NFAC, AO and appeal unit, as the case may be, shall be exchanged exclusively **by electronic mode.**

**NFAPC shall assign the appeal to specified appeal unit** in any one regional faceless centre through automated allocation system. Even at subsequent stage allocation would be **at random basis.**

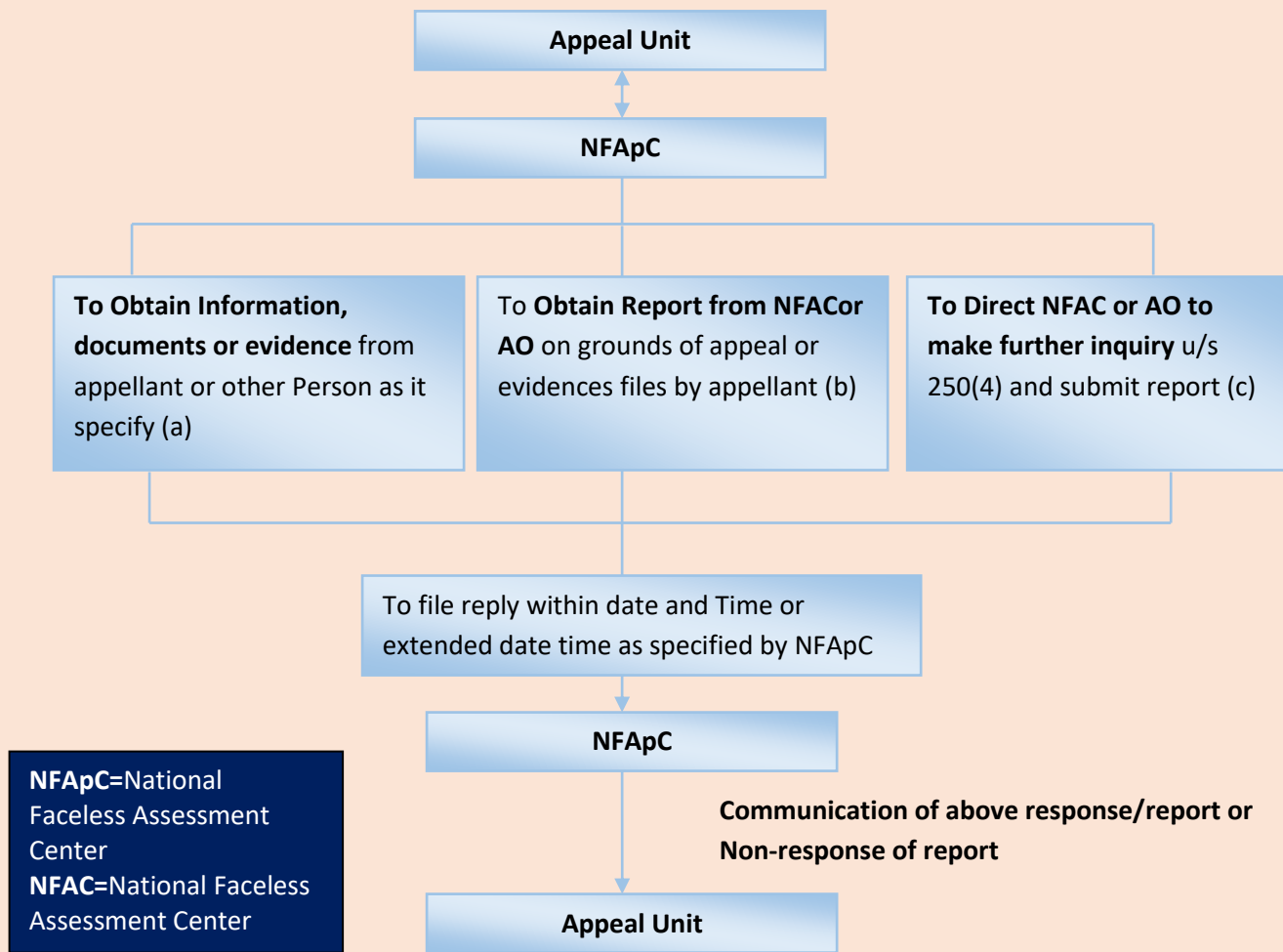
### Admission of belated appeal (Section 249(2) or 249(4))

- Appeal unit, **may admit appeal** if it is **satisfied** that appellant has **sufficient cause for not filling appeal** within time limit or payment of advance taxes as envisaged in section 249(4) when Return of Income is not filed **or**
- may reject the appeal
- **NFAPC** shall intimate admission or rejection of appeal to the appellant

### Important issues:-

It is advisable to file application containing **sufficient cause for delayed appeal** or payment of taxes, relying upon judicial decisions and **affidavit explaining such facts** while filling the appeal **electronically in Form 35.**

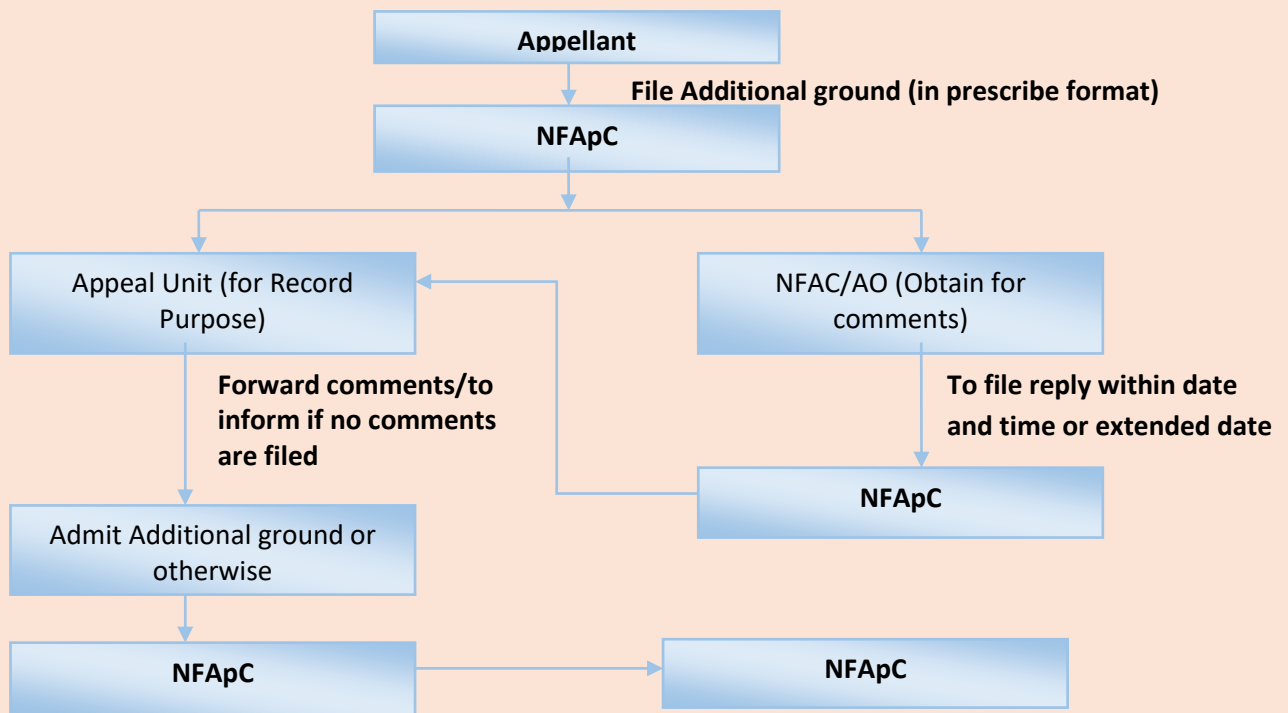
## 7) Procedure after admission of appeal



### Important Issues:

- No specific procedure is provided as to how appellant would get opportunity to file his response against observations of NFAC/AO in report or inquiry conducted or obtained by appeal unit through NFAPC (except in the case of enhancement of assessment or penalty or reduce amount of refund )
- However, it is inherent that appellant will get such opportunity through NFAPC as per settled appellate proceeding like filling rejoinder to AO's report( May be covered by Section 5(3)(a)).

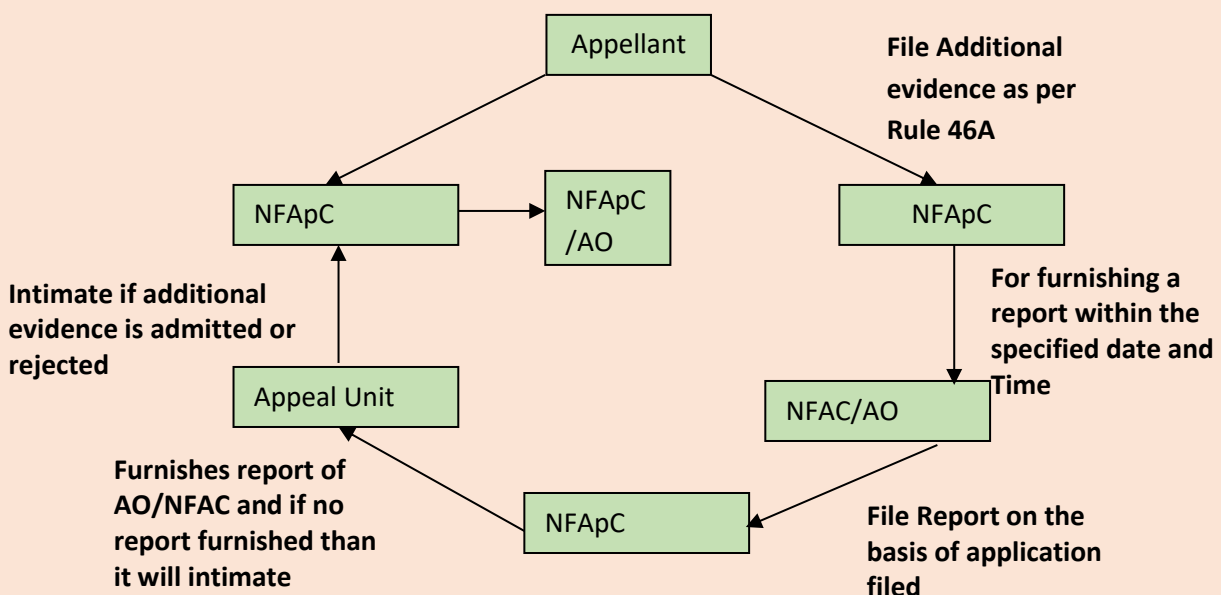
### 8) Procedure for additional ground of appeal



**Important Issues:**

- No specific procedure is provided as to how appellant would get opportunity to file his response against observations of AO in report or inquiry conducted or obtained by appeal unit through National Faceless Assessment Center (NFAPC).
- This would be separately communicated to appellant (seems to be before passing appellate order)

### 9) Procedure for filing additional evidence under Rule 46A

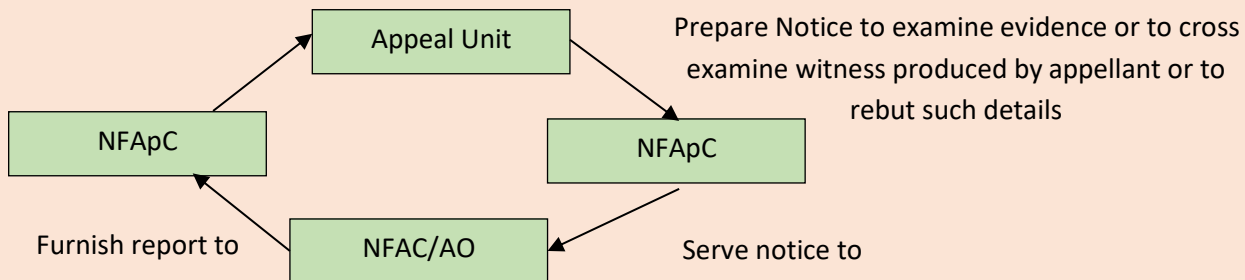


**Important Issues:**

- In above there is no provision for intimating the appellant for any adverse report given by NFAC/AO before adjudication of matter by appeal unit (however, this issue may be addressed as discussed herein above).
- Ultimate authority for admitting additional evidence under Rule 46A would always be with appeal unit.

- Whenever application under Rule 46A is filed, it must contain reasons for not submitting such details before AO at the time of assessment proceedings, how case of appellant is covered by above rule along with relevant judicial pronouncements.
- At this stage AO/NFAC, is required to give report only as to whether additional evidences filed by appellant are admissible under Rule 46A or not, on merits separate procedure is described.

### 10) Procedure when additional evidence under Rule 46A are admitted

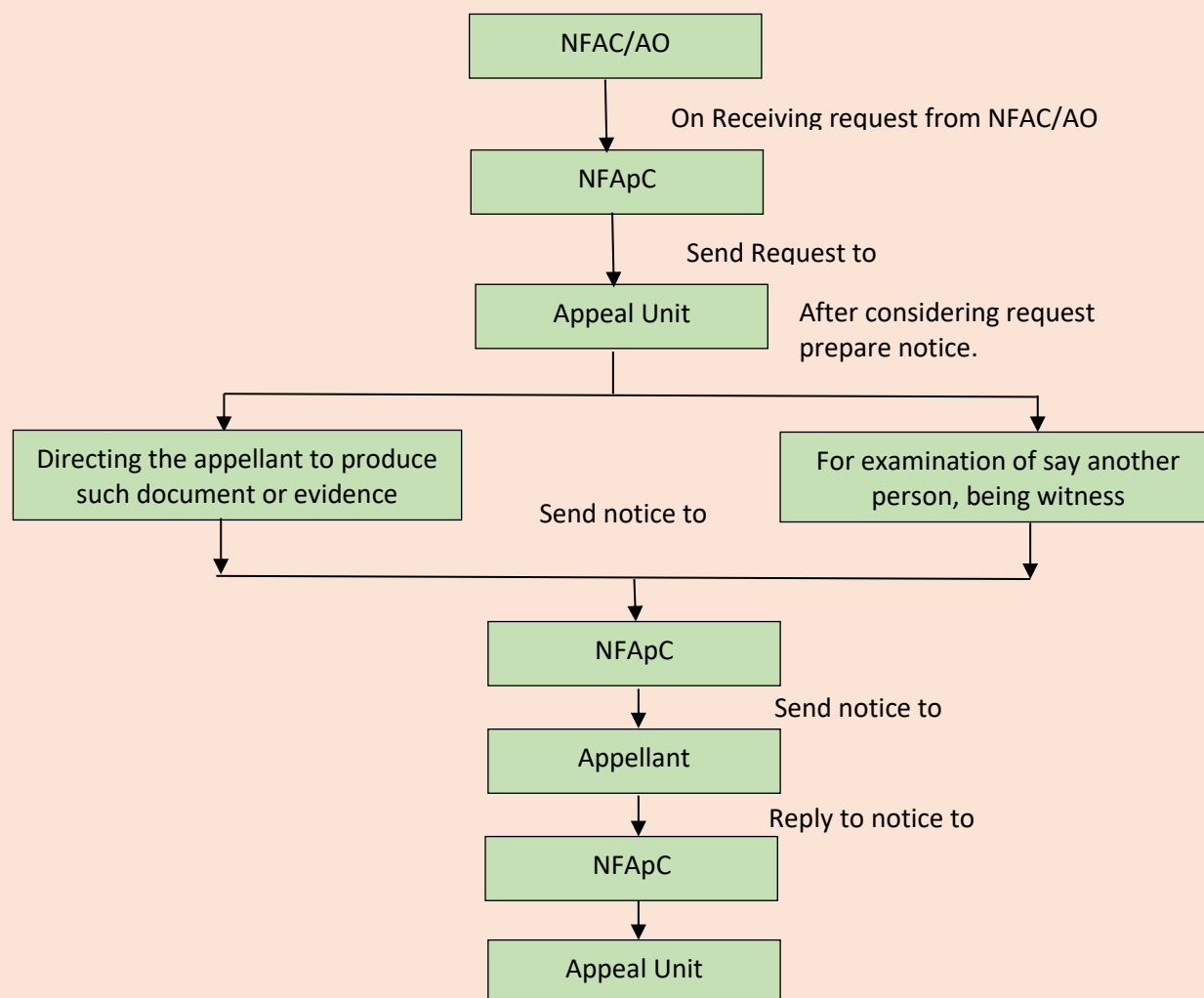


**NFAPC**=National Faceless Assessment Center  
**NFAC**=National Faceless Assessment Center

#### Important Issues:

- In above chart, there is no provision for intimating the appellant for any adverse report given by NFAC/AO before adjudication of matter by appeal unit (however, this issue may be addressed by as discussed above on point 7).
- How NFAC/AO would conduct further inquiries, is not defined therefore, separate SOP is expected to be issued.
- examination or recording of statement of appellant or any other person shall be conducted by Appeal Unit but this does not include video conferencing at the stage of AO/NFAC, in remand proceedings.
- When any witness is produced by appellant, or when AO is also empowered to produce other witness for making rebuttal, necessary clarification for allowing video conferencing at the stage of AO is desirable.
- However, SOP can be issued for access, verification and authentication of information and response including documents submitted during appellate proceedings.

## 11) Request by NFAC/AO for production of any document or evidence or examination of any witness



### Important Issues:

- Details received from appellant would be required to be given to NFAC/AO as mentioned in above point 7
- On receipt of report of AO, opportunity needs to be given to appellant as per point 7
- This implicitly suggest that if NFAC/AO requires any further documents or evidences which they cannot directly asked from appellant but it need to be routed through NFAPC and appeal unit.

## 12) Stages of passing appellate order

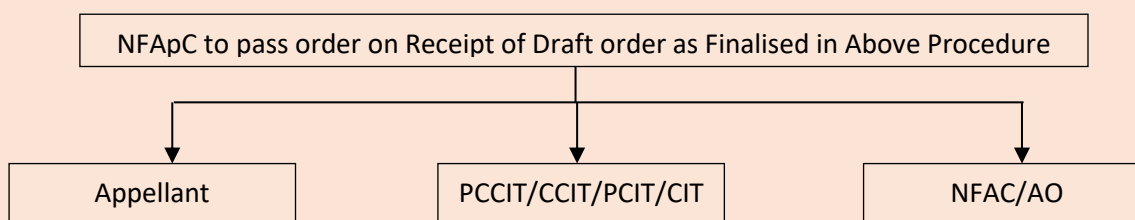
| Stage | Authority   | Particulars   |
|-------|-------------|---|
| 1     | Appeal Unit | After taking into account all the relevant material available on the record, <b>prepare a draft order and send such order to NFAPC</b> along with the details of the penalty proceedings, if any, to be initiated.  |
| 2     | NFAPC       | <b>After receipt of draft order</b> from Appeal Unit: <ol style="list-style-type: none"> <li>a) Where the <b>aggregate amount of tax, penalty, interest, etc.</b> payable is more than a specified amount (to be specified), NFAPC <b>shall send the draft order to an appeal unit, other than the appeal unit which prepared such order for review.</b>[Threshold limit yet to be notified]</li> <li>b) ) In any other case, examine the draft order in accordance with the risk management strategy specified by the Board:                             <ol style="list-style-type: none"> <li>i. <b>finalise the appeal</b> as per the draft order; or</li> <li>ii. <b>send the draft order to an appeal unit, other than the unit which prepared such order, for review.</b></li> </ol> </li> </ol> |

| Stage | Authority  | Particulars   |
|-------|--|---|
| 3.    | Appeal unit Reviewing DO (other than mentioned in Stage 1) | Shall review the draft order whereupon it may decide to:<br>(a) concur with the draft order and intimate the NFAPC or,<br>(b) suggest such variation to the NFAPC.  |
| 4.    | NFAPC  | a) upon receiving concurrence of the appeal unit, finalise the appeal as per the draft order<br>b) upon receiving suggestion for variation, assign the appeal to an appeal unit other than the appeal unit which prepared the draft order.  |
| 5.    | Appeal unit (other than mentioned in Stage 1 & 3)          | a) where suggestion intend to enhance an assessment or reduce the refund, prepare the revised draft order as per the procedure laid down in para 5(xviii)<br>b) in any other case, prepare a revised draft order as per procedure laid down in clause (xviii) and send such order to NFAPC. |

**Important Issues/Aspects:**

- There is **no such system of providing draft order** to Appellant like faceless assessment proceedings.
- Once the appeal unit draft the order there is **no involvement of appellant at any further stage except in the case of enhancement.**
- Variation suggested by appeal unit **who is reviewing the order or unit whom appeal is assigned after such review**, includes change in decision or content in decision
- **Once additional evidences are rejected or admitted under Rule 46A and already intimated to Appellant, whether this decision would be subject to review by appeal unit or not? Further clarification requires on this issue.**

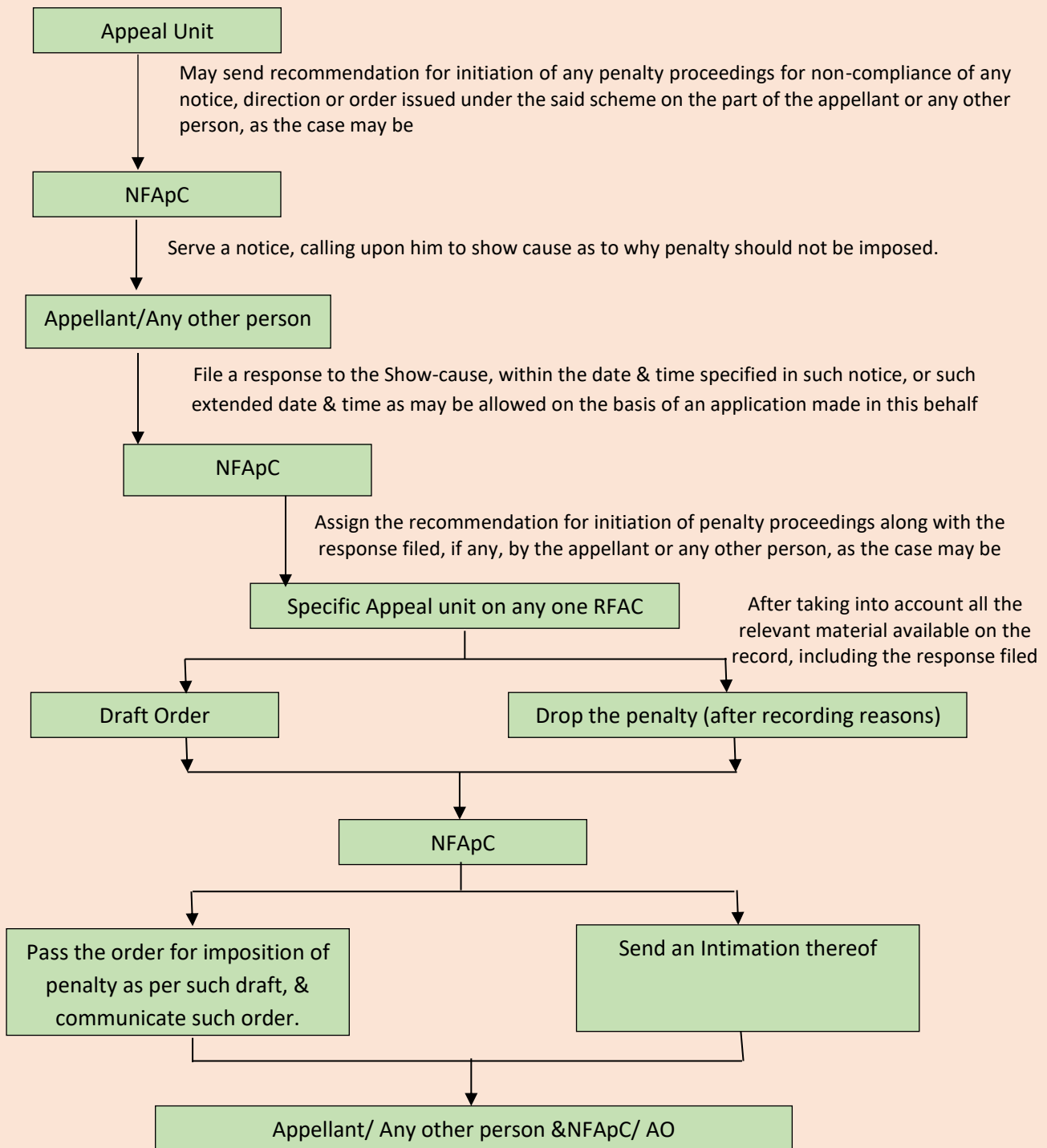
### 13) COMMUNICATION OF APPEAL ORDER



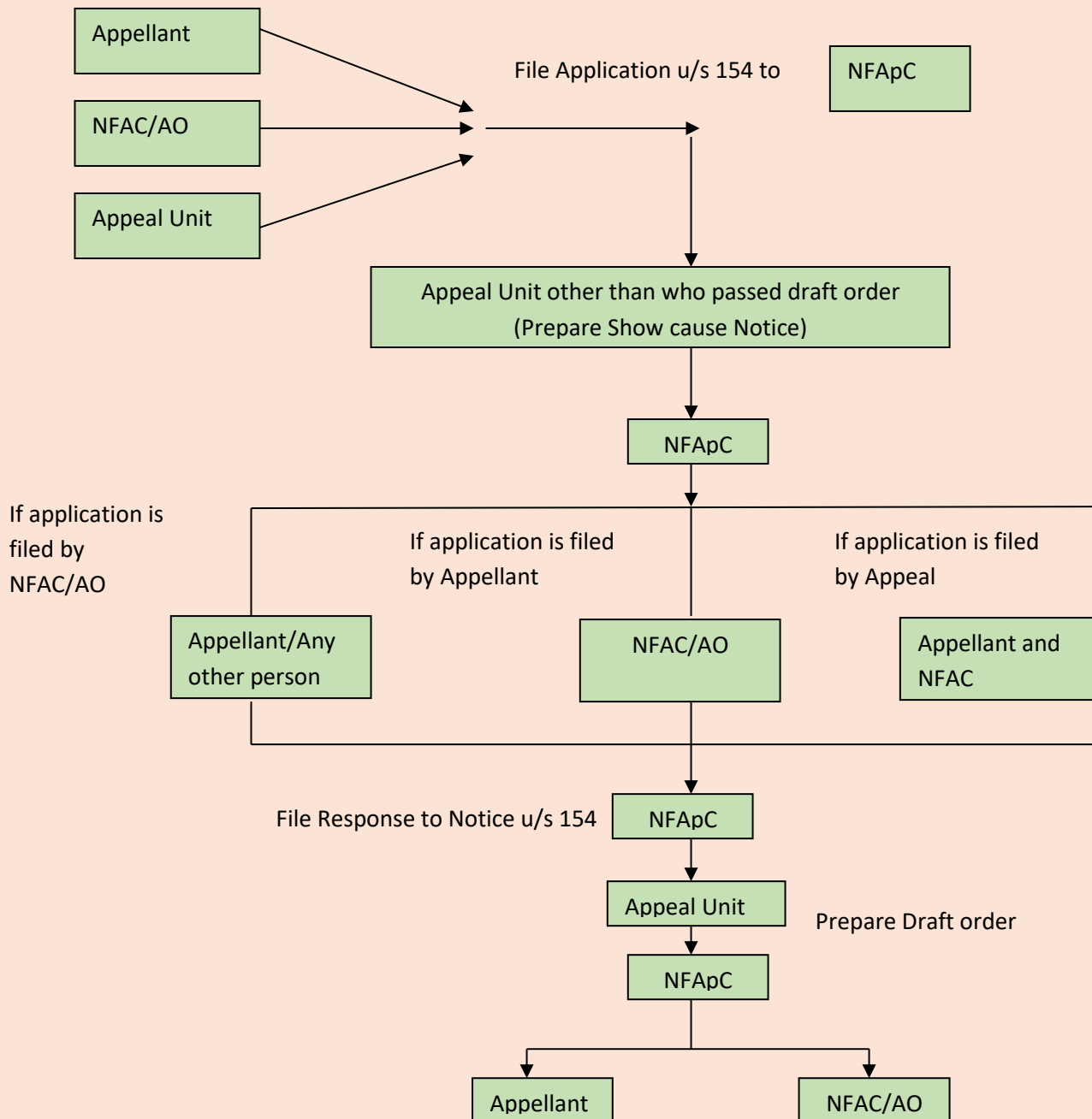
**Note: If there is initiation of penalty in the order, NFAC will serve notice to appellant to show cause as to why penalty should not be imposed.**



**14) Procedure for imposing penalty as per the provisions of Chapter XXI of the Act**



## 15) Procedure for rectification of appellate order passed by NFAPC



Appeal unit means unit who has passed the draft order or reviewed the order or revising the draft order

### Important Issues:

Preferably right to file rectification should not be given to person who has passed draft order or reviewed the order as it may result in conflict of interest.

## 16) APPELLATE PROCEEDING

Appellate order passed by NFAC shall lie before ITAT having jurisdiction over Jurisdictional AO.

Any order passed by NFAC/CIT(A) is set aside and remanded back to NFAC/CIT(A) by ITAT or Higher court, NFAC shall pass the order.

### Important Points

- Once ITAT or Higher court set aside appeal to NFAC, procedure for intimating to NFAC is yet not provided.

- The procedure for reinstating appeal need to be defined or how NFAC will suomoto take care of listing of such appeal need to be clarified.
- There are many instances where matter was already set aside by ITAT to concerned CIT(A) before this scheme and still such appeal are not reflected as pending appeal before erstwhile CIT(A) and how such appeals will be reinstated need to be clarified.

## **17) NO PERSONAL APPERANCE IN THE CENTRES OR UNITS**

- No personal (physical) hearing before any authority or centre or unit.
- The appellant or authorised representative may request for personal hearing so as to make oral submission or present before appeal unit
- Only on approval of request of personal hearing as approved by CCIT OR DG in charge of RFAC, hearing shall be conducted through video conferencing or video telephony. Separate circumstances will be defined
- Any examination or recording of statement of appellant or any other person shall be conducted by any appeal unit under this scheme, exclusively through video conferencing.
- **Appearance through video conferencing is subject to permission and such option may not be allowed in all cases. Accordingly, Appellant can be said to be deprived from representing his case effectively to first appellate authority. In view of this is advisable to liberalise the circumstance in which option of video conferencing under the scheme is allowed.**

## 12) APPEALS

| PARTICULARS                | CIT (A)*/<br>Addl. CIT<br>(A)/DCIT(A)/144C<br>DRP   | ITAT<br>(Income Tax Appellate Tribunal)  | High Court | Supreme<br>Court |
|----------------------------|---|--|------------|------------------|
| Grant of stay<br>on demand | <p><b>Section 220(6):</b></p> <p>-Where the assessee has presented an appeal u/s 246A</p> <p>-the AO may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case,</p> <p>-treat the assessee as <u>not being in default</u> in respect of the amount in dispute in the appeal,</p> <p>- even though the time for payment has expired.</p> <p>- as long as such appeal remains undisposed of.</p> | <p>Allowed, <b>with the condition that at least 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof</b> shall be deposited but 1st stay up to 180 days and if appeal is not disposed of till 1<sup>st</sup> stay and delay in disposal of appeal <u>is not attributable to the assessee</u>, further extension of stay can be granted by the ITAT, as it thinks fit on application of assessee. However, such period of 1<sup>st</sup> stay and subsequent stay in <b>aggregate shall not exceed 365 days.</b></p> | ✓          | ✓                |

### Question:

**A petition for stay of demand was filed before ITAT by XYZ Ltd. in respect of a disputed demand for which appeal was pending before it, on which stay was granted by the ITAT vide order dated 1.6.2020 after the assessee furnished bank guarantee of Rs 5,00,000 as a security (20% of Tax arrears of Rs.25,00,000). The bench could not function thereafter till 15.1.2021 and therefore, the disputed matter could not be disposed off. The AO liquidated the bank guarantee on 31/1/21 and recovered the amount of Rs. 5,00,000. The assessee requested the Assessing Officer to refund back the amount as it holds stay over it. The Assessing Officer rejected the contention of the assessee. Now the assessee seeks your opinion.**

### Solution:

#### Relevant Provision

As per Sec. 254(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253.

**1st Proviso:** The Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding 180 days from the date of such **order [subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof]** and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order.

**2nd Proviso:** **No extension** of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, **unless** the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the **delay in disposing of the appeal is not attributable to the assessee**, so however, that the aggregate of the period of stay

originally allowed and the period of stay so extended **shall not exceed 365 days** and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

**Analysis & Conclusion:**

In the present case, the period of 180 days has already been expired & the Appeal was not disposed off, for which the AO liquidated the Bank guarantee. The action of AO is incorrect because:

1. Delay in disposal was not attributable to Assessee &
2. As per 2nd proviso of Sec. 254(2A), Tribunal has power to extend the stay but such aggregate period of stay should not exceed 365 days.

So here the Assessee is advised to apply to ITAT for extending stay as the delay was not attributable to him.

## 13) PENALTIES & PROSECUTION

### Other Penalty

#### a) Penalty for false entry in books of account (Section 271AAD)

**Section 271AAD has been inserted with effect from April 1, 2020. (FA 2020)**

It provides for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him

- (i) false entry or
- (ii) any entry relevant for computation of total income of such person has been omitted to evade the tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entry or omitted entry.

Further it provides that any other person who causes in any manner a person to make (or cause to make) a false entry or omits (or causes to omit) any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

The false entries include use or intention to use -"

- a) forged or falsified documents such as false invoices; or, in general, a false piece of documentary evidence or;
- b) Invoice in respect of supply or receipt of goods or services issued by the person or any other person without actual supply or receipt of such goods or services or
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

#### b) Penalty for failure to furnish statement/ certificate of donation (section 271K)

**Section 271K has been prescribed with effect from October 1, 2020.(FA 2020)**

It provides that the assessing officer may direct that a sum not less than Rs.10,000 but exceeding up to Rs.1,00,000 shall be paid by way of penalty in the following cases-

1. If the research association, university, college or other entities referred to in section 35(i)(ii)(ia)(iii), fails to deliver (or cause to be delivered) a statement of donation/contribution within the time prescribed given under section 35(1A)(i).
2. If the above entities fails to furnish a certificate of donation/contribution prescribed u/s. 35(1A)(ii)
3. If the charitable institute/fund fails to deliver (or cause to be delivered) a statement of donation within the time prescribed under section 80G(5)(viii).
4. If charitable institute/fund fails to furnish a certificate of donation prescribed u/s. 80G(5)(ix).

### Penalty in Respect of Cash Transactions

#### Section 269SS, 269T, 269ST & 271DA: Mode of Accepting & Repayment of Loan/Advance/Other Amount

| Sr. No. | Section 269SS | Section 269T  |
|---------|---------------|---|
| 1       | No Person     | No Company including banking company & its branches,<br>Co-operative banks & its branches,<br>Co-operative societies,<br>Firm or other person |
|         | Shall accept  | Shall repay   |

| From any person   | To any person   |
|---|---|
| any Loan/any Deposit/any Specified Sum for transfer of immovable property whether or not the transfer take place (eg. Advance for transfer of immovable property)(L/D/S) OTHERWISE than by an Account Payee Cheque/Account Payee Draft or Electronic Clearing System (ECS), or through such other prescribed electronic mode <b>under Rule 6ABBA</b> (w.e.f., 1.9.2019) if: |   |
| a. The amount of such L/D/S or aggregate of such L/D/S; or<br>b. On the date of taking such L/D/S, any L/D/S taken earlier from the depositor is remaining unpaid; or<br>c. The amount or aggregate amount referred to in (a) & (b)   | a. Such L/D/S repaid together with interest; or<br>b. The aggregate amount of Loan/ Deposits together with interest held by Depositor with the Branch of the above persons, or specified advance together with interest received by such person either in his own name or jointly with any other person on the date of such repayment |
| <b>≥ Rs. 20,000</b>   |   |

### **Section 269ST:**

No person shall receive an amount of two lakh rupees or more—

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

Otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account, **or through such other prescribed electronic mode under Rule 6ABBA**

## 14) Special Tax Rates of Companies

### 1) Normal Tax Rate for Domestic Company

#### Domestic Company



- **Tax rate: 30%**
- Tax Rate at concessional rate is 25% if turnover or gross receipt of the company in **the previous year 2018-19 doesn't exceeds `400 crore.**

Plus:

Surcharge:

→ 7% of the Income-tax if taxable income exceeds `1 crore.

→ 12% of the Income-tax if taxable income exceeds `10 crores.

Health & Education Cess: 4% of the total of Income Tax and Surcharge.  
(wherever applicable)



# 15) Alternative Tax Regime



## PART-A: INDIVIDUAL/HUF

### 1) Analysis of Section 115BAC

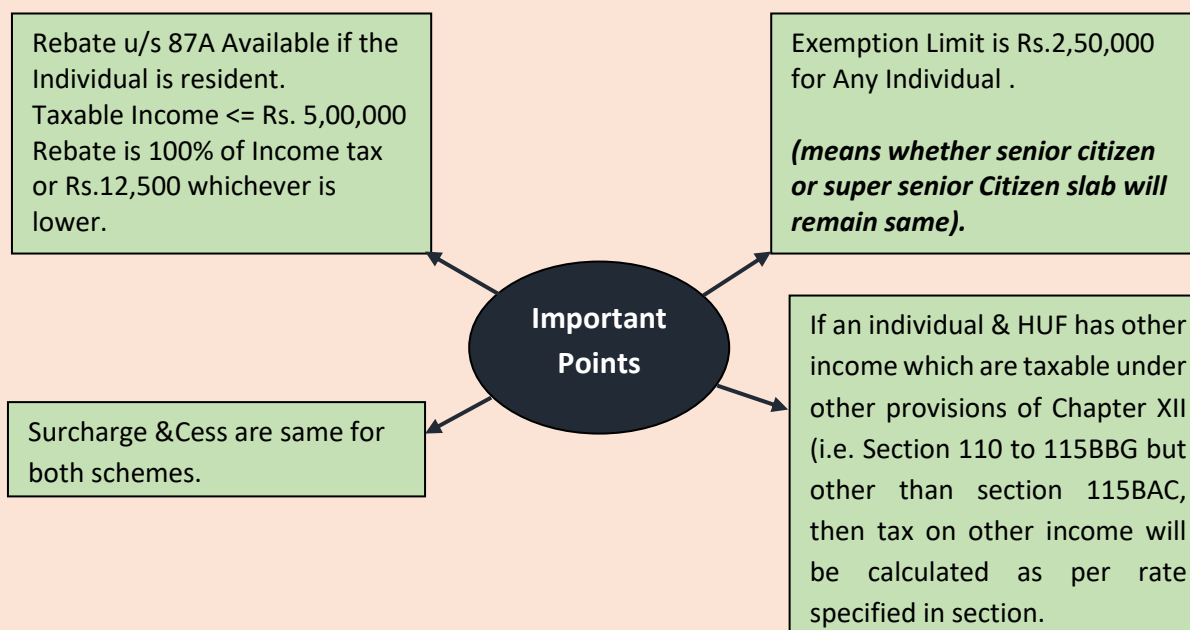
#### Introduction:

The alternative taxation regime u/s 115BAC is available only in case of an individual or HUF from the A.Y. 2021-22 onwards. It is optional. **Individual/HUF may be resident or Non-resident.** Individual may be salaried/retired employee (having salary income) or a self-employed (having business income) or any other person (having any other income).

#### Rate of Income Tax (u/s 115BAC)

| Total Income (Rs.)                | Applicable tax rate |
|-----------------------------------|---------------------|
| Taxable Income up to Rs. 2,50,000 | NIL                 |
| Rs.2,50,001 to Rs.5,00,000        | 5%                  |
| Rs.5,00,001 to Rs.7,50,000        | 10%                 |
| Rs.7,50,001 to Rs.10,00,000       | 15%                 |
| Rs.10,00,001 to Rs.12,50,000      | 20%                 |
| Rs.12,50,001 to Rs.15,00,000      | 25%                 |
| Above Rs.15,00,000                | 30%                 |

#### Important Points need to be remembered under section 115BAC:

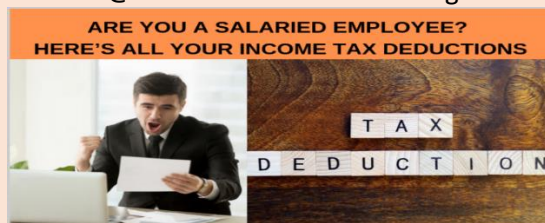


The Finance (No. 2) Act, 2019 has levied an enhanced surcharge of 25% and 37%, where the total income of individuals/HUF/AOPs/BOIs exceeds Rs. 2 crores and Rs. 5 crores, respectively. However, the enhanced surcharge has been withdrawn on tax payable **dividend income** and at special rates under section 111A and 112A on short-term and long-term capital gains arising from;

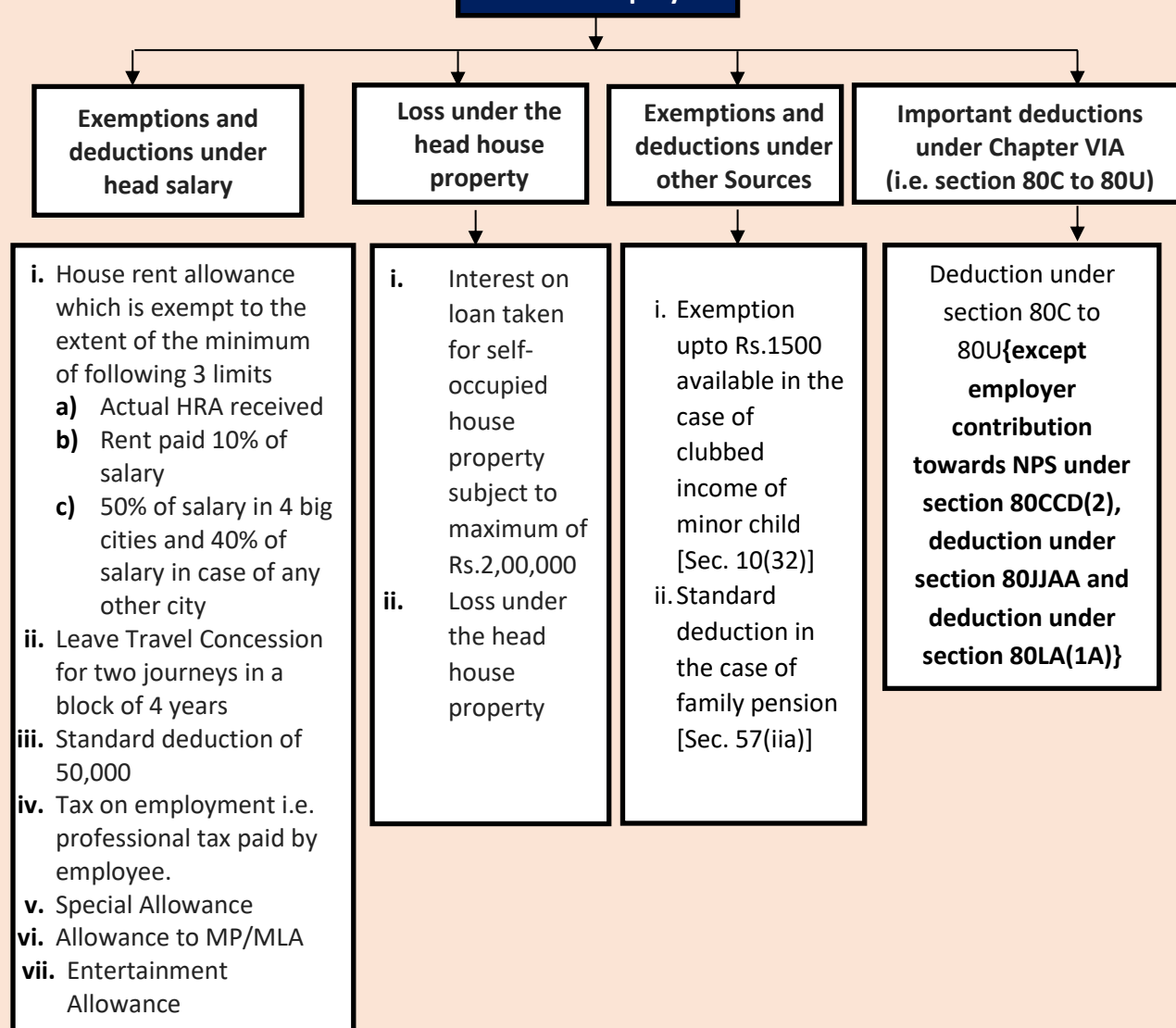
- 1) the transfer of equity share in a company or
- 2) unit of an equity-oriented fund/ business trust,
- 3) Which has been subject to securities transaction tax

### Education Cess:

“Health and Education Cess” shall be levied @ 4% of income tax including surcharge (wherever applicable).



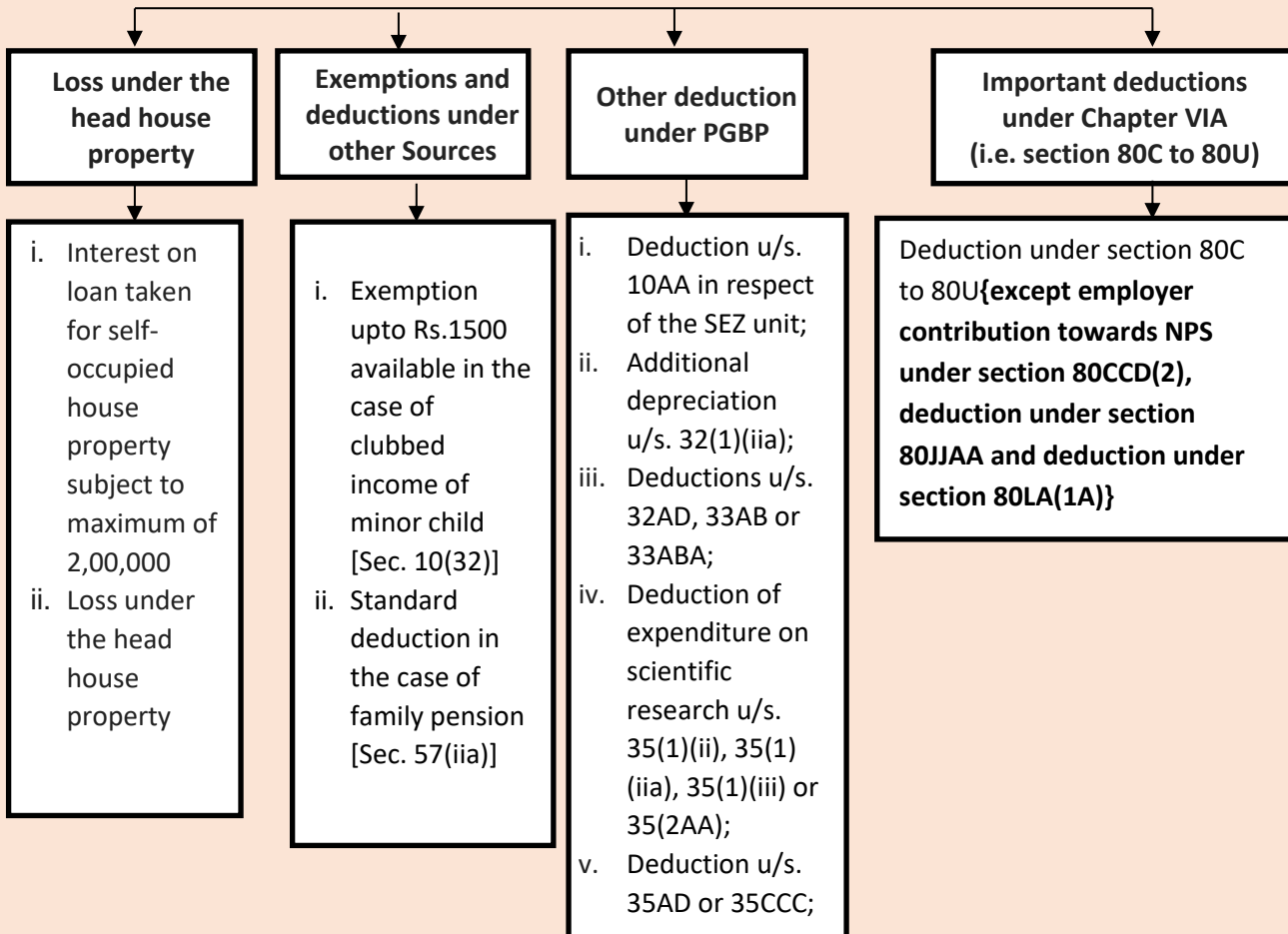


### Salaried employee



**If Individual opts Alternative scheme then above incentive not available.**

**Income Tax Deductions**

Individual or HUF who has opted for  
Section 44 AD, 44 AE & 44 ADA of  
**INCOME TAX ACT** **OR** **Any other Individual Or HUF**  
Presumptive Taxation



**If Individual/HUF opts Alternative scheme then above incentive not available.**

**Exemption or deduction is still available under Alternative Taxation Scheme;**

**For Salaried Person**

- a. **Transport Allowance** granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty (Section 10(14)).
- b. **Conveyance Allowance** granted to meet the expenditure on conveyance in performance of duties of an office (Section 10(14))
- c. **Any Allowance** granted to meet the cost of travel on tour or on transfer (Section 10(14));
- d. **Daily Allowance** to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty (Section 10(14))
- e. **Deduction u/s 80CCD(2)** -employer contribution on account of employee in notified pension scheme.
- f. **Interest on PPF** (as well as final payment at the time of maturity) will remain exempt under section 10(11)
- g. **Interest on Sukanaya Samriddhi** Account (as well as withdrawal or final payment from such account) will remain exempt under section 10(11A).
- h. **Moreover the following exemptions will be available under section 115BAC;**
  - ❶ Exemption under section 10(10) pertaining to gratuity
  - ❷ Exemption under section 10(10A) pertaining to commutation of pension
  - ❸ Exemption under section 10(10AA) pertaining to leave encashment
  - ❹ Exemption under section 10(10C) pertaining to retrenchment compensation
  - ❺ Exemption under section 10(10CC) pertaining to tax on non-monetary perquisites paid by employer
  - ❻ Exemption under section 10(10D) pertaining to sum received under a life insurance policy
  - ❼ Exemption under section 10(12) pertaining to interest & withdrawal from recognized provident fund
  - ❽ Exemption under section 10(12A)/(12B) pertaining to payment (including withdrawal) from NPS
  - ❾ Exemption under section 10(13) pertaining to payment from approved superannuation fund.

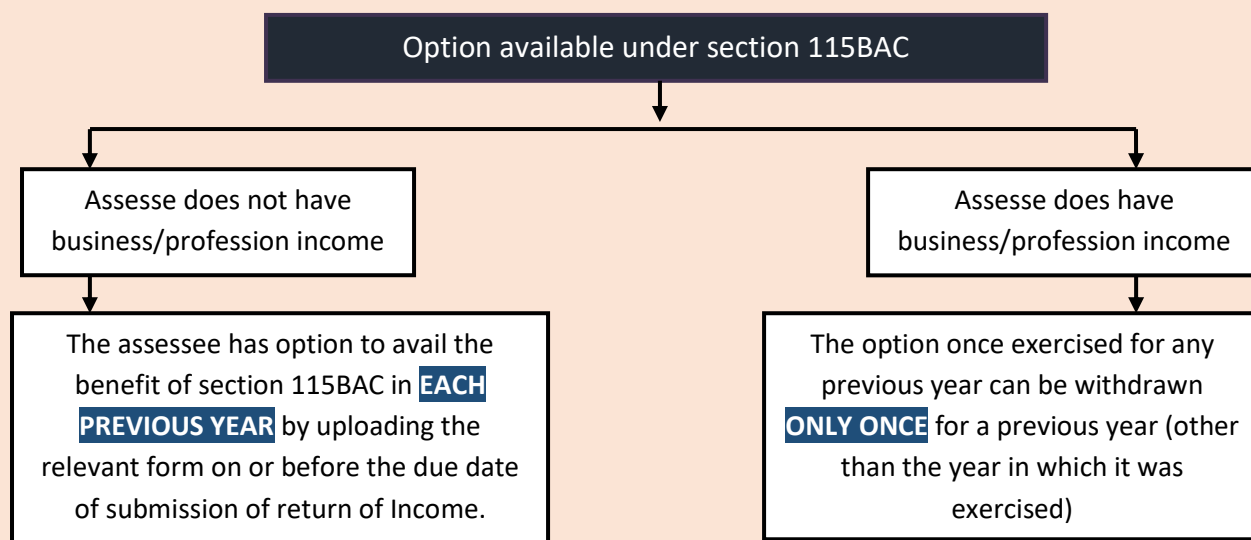
**Other than Salaried Person**

- a. **Depreciation u/s. 32** (except additional depreciation under section 32(1)(iia)) would have to be claimed in such manner as may be prescribed.
- b. Person, having a Unit in the International Financial Services Centre, as referred to in **Sec. 80LA(1)**, such deduction shall be available to that unit.
- c. **Interest on public provident fund** (as well as final payment at the time of maturity) will remain exempt under section 10(11).
- d. **Interest on SukanayaSamriddhi** Account (as well as withdrawal or final payment from such account) will remain exempt under section 10(11A).
- e. Deduction under section 80JJAA – for new employment

**Miscellaneous Provision:**

| Adjustment of Losses  | Adjustment of depreciated value of block of Assets   | Applicability of AMT   |
|---|--|--|
| The total income of individual/HUF is calculated without adjusting brought forward loss (and or additional depreciation) from any earlier year, | Where unadjusted depreciation in respect of a block of Assets has not been given full effect to prior to | AMT will not be apply to such individual/HUF if he opts alternative taxation regime u/s 115BAC and Further AMT tax |

|  |  |   |
|--|--|---|
| If, any loss/additional depreciation pertains to any deduction under the aforesaid sections). Moreover, any loss under the head IFHP cannot be set off with any other income under any other head of income. | the A.Y. 2021-22, corresponding adjustment shall be made to the WDV of such block as on 01.04.2020 in the prescribed manner. | credit of earlier year cannot be adjusted against the tax liability which is computed u/s 115BAC. |
|--|--|---|



#### Consequences of default under section 115BAC:

If an individual/ HUF (after opting for the alternative tax regime of section 115BAC), fails to satisfy the conditions in subsequent year, the option becomes invalid in respect of the year in which default is committed and in a subsequent year. Consequently in such a case, it will be assumed that the assessee has not exercised the option of lower tax regime u/s 115BAC in the year in which default is committed and subsequent years.

**For the purpose of tax deduction at source, the CBDT has, vide Circular No. C1 of 2020, dated 13th April, 2020, clarified that an employee, having income other than income under the head "PGBP" and intending to opt for the concessional rate under section 115BAC, is required**

- **to intimate to the deductor, being his employer, of such intention for each previous year** and
- upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC.
- If such intimation is not made by the employee, the employer shall make TDS without considering the provisions of section 115BAC.

It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and **cannot be modified** during that year. However, the intimation would not amount to exercising option in terms of section 115BAC and the person shall be required to do so alongwith the return to be furnished under section 139(1) for that previous year. Thus, option at the time of filing of return of income under section 139(1) could be different from the intimation made by such employee to the employer for that previous year.

Further, in case of a person who has income under the head "PGBP" also, the option for taxation under section 115BAC once exercised for a previous year at the time of filing of return of income under section 139(1) cannot be changed for subsequent previous years except in certain circumstances.

Accordingly, a person having income under the head "PGBP" also shall also intimate to his employer. However, the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC once exercised in a previous year.

## 2) Table of Section 115BAB, Section 115BAA and Section 115BA (Ordinance Passed by Parliament)

|     | Particulars   | Section 115BAB  | Section 115BAA  | Section 115BA   |
|-----|---|---|---|---|
| (1) | Applicability   | Domestic manufacturing company  | Any domestic company  | Certain domestic companies (Newly Setup)  |
| (2) | Rate of Tax   | 15%   | 22%   | 25%   |
| (3) | Effective rate of Tax (including surcharge & cess)  | 17.16% (Surcharge @ 10% always included)  | 25.168% (Surcharge @ 10% always included)   | 25% +(Surcharge if applicable)  |
| (4) | Applicability of concessional rate of tax on total income of company  | The rate of tax (i.e. 17.16%) is Notwithstanding anything contained in the income tax act,1961 but subject to the provision of chapter XII, other than section 115BA and 115BAA.  | The rate of tax (i.e. 25.168%) is Notwithstan-ding anything contained in the income tax act,1961 but subject to the provision of chapter XII, other than section 115BA and 115BAB   | The rate of tax (i.e. 25%) is Notwithstanding anything contained in the income tax act,1961 but subject to the provision of chapter XII, other than section 115BAA and 115BAB.  |
|     | <b>Rate of tax on income covered under Chapter XII</b> [for example, long-term capital gains chargeable to tax u/s 112 and 112A, short-term capital gains chargeable to tax u/s 111A] | Such income would be subject to tax at the rates mentioned in the said sections in Chapter XII. Surcharge@10% would be levied on tax computed on such income. HEC@4% would be levied on the income-tax plus surcharge.<br><b>Note:</b> While for Sec. 115BA, surcharge <u>in all case</u> will depend upon the Total Income, in the case of sec.115BAB & sec.115BAA it will always be loaded @10% irrespective of the total income.         |   |   |
|     | <b>Rate of tax on other income in respect of which no specific rate of tax is provided in Chapter XII</b>   | The applicable tax rate is 25.168% (i.e., tax@22%, plus surcharge @10% plus HEC@4%), <b>if such income has neither been derived from nor is incidental to manufacturing or production of an article or thing (For example, income from house property and income from other sources).</b> In respect of such income, <b>no deduction or allowance in respect of any expenditure or allowance</b> shall be allowed in computing such income. | <b>The applicable tax rate is 25.168%</b> (i.e.,tax@22% plus surcharge@10% plus HEC@4%).<br><b>There is, however,</b> no restriction regarding claim of any deduction or allowance <b>permissible under the relevant provisions of the Act.</b> | <b>The applicable tax rate is 25% plus surcharge</b> (if applicable) plus HEC@4%<br><b>There is, however,</b> no restriction regarding claim of any deduction or allowance <b>permissible under the relevant provisions of the Act.</b> |

| Particulars   | Section 115BAB   | Section 115BAA  | Section 115BA  |
|---|--|---|--|
|   | Even the Standard Deduction u/s.24(a) will not be available.   |   |  |
| <b>Rate of tax on STCG derived from transfer of a capital asset on which no depreciation is allowable under the Act</b> | The applicable rate of tax is <b>25.168% (i.e., tax@ 22%, plus surcharge @10% plus HEC@4%)</b> .<br><b>There is, however, no restriction regarding claiming of deduction or allowance in this regard.</b>  |   | The applicable rate of tax is 25% plus surcharge (if applicable) plus HEC@4%. However, no restriction regarding claiming of deduction or allowance in this regard.                             |
| <b>(5)</b> Conditions to be fulfilled for availing the concessional rate of tax and exemption from MAT                  | (i) The company should be <b>setup and registered on or after 01.10.2019</b> .   | NO time limit specified. Both existing companies and new companies can avail benefit. | The company should be setup or registered on or after 01.03.2016.  |
|   | (ii) It should commencing <b>manufacturing or production of an article or thing or business of generating electricity on or before 31.03.2023</b> .  | Need not be a manufacturing company   | The company should be engaged in business of Manufacturing or Production.  |
|   | (iii) It should not be formed by splitting up or the reconstruction of a business already in existence (except in case of an undertaking formed by reconstruction or revival of a person of the business of any undertaking referred to in section 33B in the circumstances and within the period specified therein) | No Similar condition has been prescribed.   | No Similar condition has been prescribed.  |
|   | (iv) It does not use any machinery or plant previously used for any purpose <b>[Refer Note at the end]</b>   | No Similar condition has been prescribed.   | No Similar condition has been prescribed.  |
|   | (v) It does <b>not</b> use any building previously used as a hotel or a convention Centre [meanings assigned in section 80-ID(6)]  | No Similar condition has been prescribed.   | No Similar condition has been prescribed.  |
|   | (vi) It should not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produce by it.   | No Similar condition has been prescribed.   | The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing |

| Particulars   | Section 115BAB                        | Section 115BAA   | Section 115BA   |
|---|---------------------------------------|--|---|
|   |                                       |  | manufactured or produced by it.   |
| <b>(6)</b> Common condition for all sections for availing the concessional rate of tax and exemption from MAT | The total income should be computed - |  |   |
|   | (i)                                   | Without providing for deduction under any of the following provisions -  |   |
|   |                                       | Section  | Provision   |
|   |                                       | 10AA   | Deduction of profit and gains derived from export of articles or things or from services by an assessee, being an entrepreneur from his unit in SEZ.  |
|   |                                       | 32(1)(iia)   | Additional depreciation @20% or 35%, as the case may be, of actual cost of new plant and machinery acquired and installed by manufacturing and power sector undertaking. Not applicable only on section 115BA.                              |
|   |                                       | 32AC   | Deduction to invest considerable amount in Acquisition and installation of new plant and machinery. Applicable only on section 115BA.   |
|   |                                       | 32AD   | Deduction @ 15% of actual cost of new plant and machinery acquired and installed by as assessee in a manufacturing enterprise located in the notified backward areas of Andhra Pradesh, Telengana, Bihar and West Bengal.                   |
|   |                                       | 33AB   | Deduction @ 40% of profits and gains of business of growing and manufacturing tea, coffee or rubber in India, to the extent deposited with NABARD in accordance with scheme approved by the Tea/Coffee/Rubber Board.                        |
|   |                                       | 33ABA  | Deduction @20% of the profits of a business of prospecting for, or extraction or production of, petroleum or natural gas or both in India, to the extent deposited with SBI in an approved scheme or deposited in Site Restoration Account. |
|   |                                       | 35(1)(ii)/(iia)/(iii)  | Deduction/weighted deduction for payment any research to association, company, university etc. for undertaking scientific research or social science or statistical research.   |
|   |                                       | 35(2AA)  | Weighted deduction @100% of payment to a National Laboratory or University or IIT or approved specified person for scientific research.   |
|   |                                       | 35(2AB)  | Weighted deduction @100% of in-house scientific research expenditure incurred by a company engaged in the business of biotechnology or in the business of manufacture or production of an article or thing.                                 |
|   |                                       | 35AC   | Deduction @100% of payment to a PSU or a local authority or to an association or institution approved by the National Committee for Carrying-out any eligible project or scheme. Applicable only on section 115BA.                          |
|   |                                       | 35AD   | Investment-linked tax deduction for specified businesses.   |
|   | 35CCC                                 | Weighted deduction @100% of expenditure incurred on notified agricultural extension project.                     |   |
|   | 35CCD                                 | Weighted deduction @100% of expenditure incurred by a company on notified skill development project.             |   |
|   | Deductions under chapter VI-A         | Deductions from gross total income under chapter VI- other than the provisions of section 80JJAA or section 80M. |   |



|     | Particulars                   | Section 115BAB  | Section 115BAA  | Section 115BA |
|-----|-------------------------------|---|---|---------------|
|     |                               | <p>(ii)</p> <p>(iii)</p>  | <p>Note – Therefore only the deduction u/s 80JJAA &amp; 80M shall be available.</p> <p>Without set-off of any loss carried forward from any earlier assessment year, if such loss is attributable to any of the deductions listed in (i) above [Such loss would be deemed to have been already given effect to and no further deduction for such loss shall be allowed for any Subsequent year]</p> <p>By claiming depreciation u/s 32 determined in the prescribed manner. <b>(i.e., in respect of depreciation of any block of assets entitled to more than 40% shall be restricted to 40% on the written down value of such block of assets)</b> However, additional depreciation u/s 32(1)(ia) cannot be claimed.</p> <p>Note – A domestic company exercising option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an assessment year for which the option has been exercised and for any subsequent assessment year.</p> <p>Since there is no time line within which option under section 115BAA can be exercised, a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set of the losses so accumulated.</p> <p><b>Additional points relevant in the context of section 115BAA:</b></p> <p><b>In the case of a person having a Unit in the IFSC, referred to in section 80LA(1A), which has exercised option for section 115BAA, deduction u/s 80LA would be allowed subject to fulfilment of the conditions specified in that section</b></p> <p><b>Where there is a depreciation allowance in respect of a block of asset from an earlier assessment year attributable to additional depreciation u/s 32(1)(ia), which has not been given full effect to prior to A.Y. 2021-22 and which is not allowed to be set-off in the A.Y.2021- 22 due to exercise of option u/s 115BAA from that year, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2020 in the prescribed manner i.e., the WDV as on 1.4.2020 will be increased by the unabsorbed additional depreciation not allowed to be set-off.</b></p> |               |
| (7) | Failure to satisfy conditions | <p>On failure to satisfy the conditions mentioned in <b>point no. (5) and (6)</b> above in any P.Y., the option exercised would be invalid in respect of the assessment year relevant to that previous year and subsequent assessment years;</p> <p>Consequently, the other provisions of the Act would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.</p> <p><b>Note – Where option exercised under section 115BAB is rendered invalid due to violation of conditions stipulated in point no.5 [(iv) to</b></p> | <p>On failure to satisfy the conditions mentioned in point no.(6) above in any P.Y., the option exercised would be <b>invalid</b> in respect of the assessment year relevant to that previous year and subsequent assessment years;</p> <p>Consequently, the other provisions of the Act would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.</p>  |               |

|      | Particulars   | Section 115BAB   | Section 115BAA   | Section 115BA   |
|------|---|--|--|---|
|      |   | (vi)] above, such person may exercise option under section 115BAA  |  |   |
| (8)  | Applicability of MAT  | Not applicable   | Not applicable   | Applicable  |
| (9)  | Availability of set-off of MAT credit brought forward from earlier years. | Since it is a new company, there would be no brought forward MAT credit  | Brought forward MAT credit cannot be set-off against income u/s 115BAA.<br><b>Note -If a company has b/f MAT credit, it can first exhaust the MAT credit, and thereafter opt for section 115BAA in a subsequent previous year.</b> | Brought forward MAT credit can be set-off against income u/s 115BA. |
| (10) | Adjustments for transactions with persons having close connection         | If the assessing officer opines that the course of business between the company and any other person having close connection therewith is so arranged that the business transacted between them produces more than the ordinary profits to the company, he is empowered to take into account the amount of profits as may be reasonably deemed to have been derived there from, while computing profits and gains of such company.<br>In case the arrangement referred to above involves a specified domestic transaction referred to in section 92BA, then, the amount of profits from such transaction would be determined by considering the arm's length price (ALP).<br><b>The amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.</b><br><b>The income-tax on the income so deemed shall be subject to tax@34.32% (i.e., tax@30% + surcharge @10% +HEC@4%)</b><br>Note – The extent of “specified domestic transaction” referred | No such requirement to make any adjustment.  | No such requirement to make any adjustment.                         |

|      | Particulars  | Section 115BAB  | Section 115BAA  | Section 115BA  |
|------|--|---|---|--|
|      |  | to in section 92BA has been expended to include within it's field, any business transacted between such persons with close connection, where one such person is a company claiming u/s 115BAB.  |   |  |
| (11) | Exercise of option by the company within the prescribed time | The provisions of this section would apply if beneficial owner would exercised in the prescribed manner on or before the due date u/s 139(1) for furnishing <u>the first return of income for any previous year relevant to A.Y. 2020-21 or any following A.Y.</u> Once above option exercised, it would apply to subsequent assessment years. Further, once option exercised for any previous year, then it cannot be withdrawn for the same or any other previous year. Note – The option has to be exercised at the time of furnishing <u>the first of the returns of the income</u> for any previous year, if a person fails to so exercise such option, then it cannot exercise the option for any subsequent previous year. | The provisions of this section would apply if beneficial owner would exercised in the prescribed manner on or before the due date u/s139(1) for furnishing the return of income for <u>any</u> previous year relevant to A.Y.2020-21 or any following A.Y. Once above option exercised, it would apply to subsequent assessment years. Further, once option exercised for any previous year, then it cannot be withdrawn for the same or any other previous year. Note – The option can be exercised even in a later year, but once exercised, then it cannot be withdrawn. | The provision of this section would apply if beneficial owner would exercised in the prescribed manner on or before the due date u/s 139(1) for furnishing the return of income for any previous year relevant to A.Y. 2020-21 or any following A.Y. Once above option exercised, it would apply to subsequent assessment years. Further, once exercised for any previous year, then it cannot be withdrawn for the same or any other previous year. Note - The company once exercised the option for any previous year, then it cannot be withdrawn for the same or any other previous year. Further, where the person exercise option under section 115BAA, the option under section 115BA may be withdrawn. |

### Domestic Company

Note – In relation to point no. 5(iv) in column (3) of the above table, any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if **all the following conditions are fulfilled, that is: -**

- Such machinery or plant was not, at any time before the date of installation by the person, used in India;
- Such machinery or plant is imported into India from any other country;
- Deduction not granted on account of depreciation in respect of such machinery or plant has been permitted or is permissible under provisions of the Income-tax Act, 1961 in computing the total income of any person for any period before to the date of installation of the machinery or plant by the person.

*Further, where in the case of a person, any machinery or plant or any part there of previously used for any purpose is put to use by the company and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of machinery or plant used by the company, then, the condition specified that the company does not use any machinery or plant previously used for any purpose would be deemed to have been complied with.*

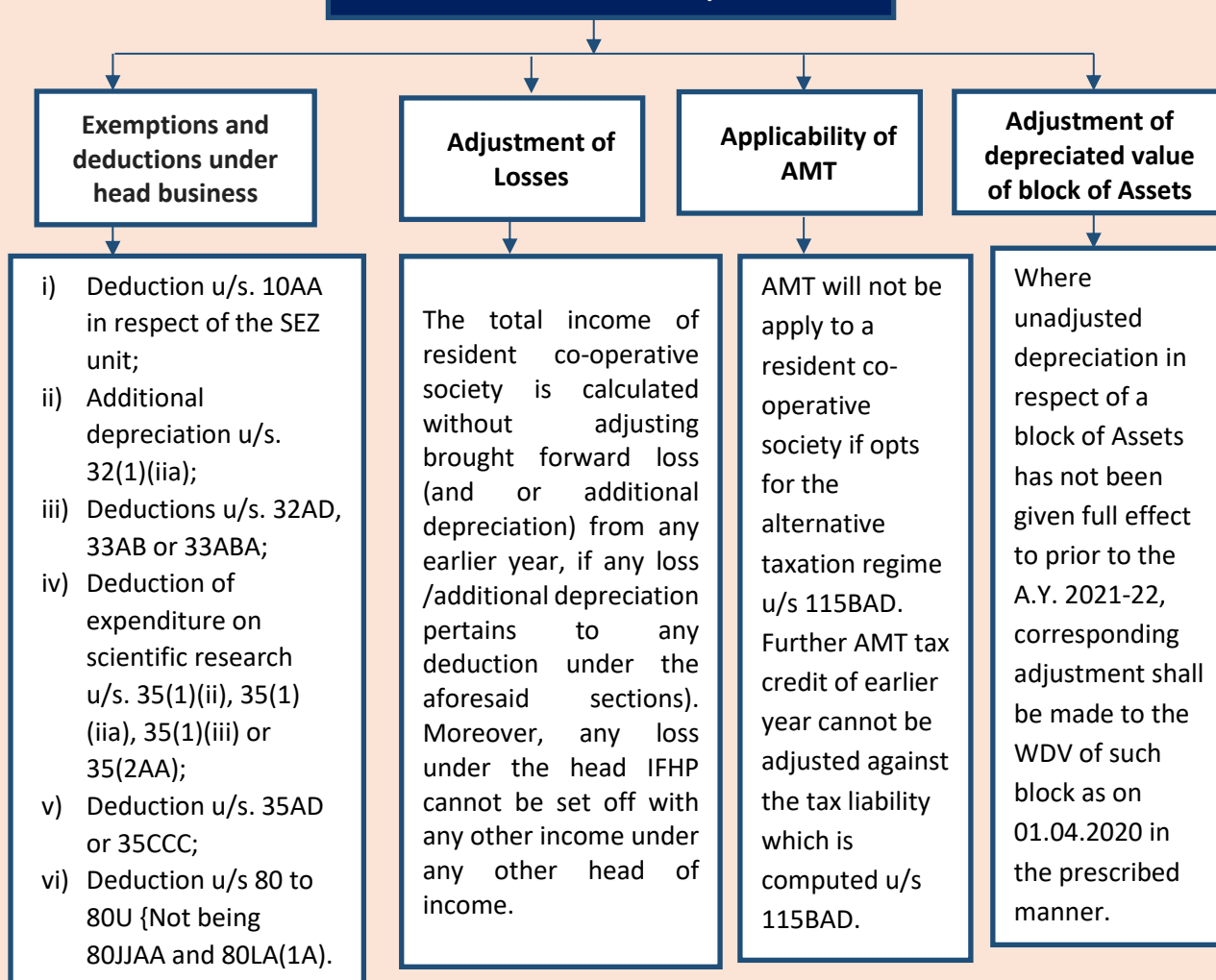
*“The business of manufacture or production of any article or thing shall not include business of development of computer software in any form or media, mining, conversion of marble blocks or similar items into slabs, bottling of gas into cylinder, printing of books or production of cinematograph film, or any other business as may be notified by the Central Government in this behalf”*

## 16) Co-operative Society and Producer Companies

### Alternative Taxation Regime u/s 115BAD (FA. 2020)

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the income tax payable in respect of the total income of a person, **being a co-operative society resident in India**, for any previous year relevant to the assessment year beginning on or after 1.4.2021, shall, **at the option of such person**, be computed at the rate of 22%, if the condition & restrictions contained in section 115BAD(2) are satisfied

#### Conditions & Restrictions u/s 115BAD



#### **Option to be exercised by the co-operative society before the specified time [Section 115BAD(5)]:**

Nothing contained Section shall apply unless option is exercised by the person in such manner as may be prescribed **on or before the due date** specified u/s 139(1) for furnishing the return of income for any previous year relevant to the A.Y. commencing on or after 1.4.2021 and such option once exercised shall apply to subsequent Assessment years.

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

#### **Modification the conditions contained in section 115BAD(2), if a person has a Unit in the international Financial Services Centre and opts to be taxed under section 115BAD [Section 115BAD(4)]**

In case of a person, having a unit in the international financial services centre as referred to in section 80LA(IA), which has exercised option under section 115BAD(5), the conditions contained in section 115BAD(2) shall be modified to the extent that the deduction under section 115BAD shall be available to such Unit subject to fulfilment of the conditions contained in that section.

Explanation. For the purposes of this sub-section, the term "Unit" shall have the meaning assigned to it in clause (2c) of section 2 of the Special Economic Zones Act, 2005.

**Consequences of default under section 115BAD:**

If resident co-operative society (after opting for the alternative tax regime of section 115BAD), fails to satisfy the conditions in subsequent year, the option becomes invalid in respect of the year in which default is committed and in a subsequent year. Consequently, in such a case, it will be assumed that the assessee has not exercised the option of lower tax regime u/s 115BAD in the year in which default is committed and subsequent years.

**Question:**

ABC co-operative housing society provides following details for assessment year 2021-22:

| Sr. No. | Particulars                                | Amount    |
|---------|--|-----------|
| (i)     | Excess contribution from members           | 5,00,000  |
| (ii)    | Income from investments:                   |           |
| (a)     | On term deposit with Bank of India         | 45,00,000 |
| (b)     | On term deposit with ABC Co-operative Bank | 50,00,000 |
| (iii)   | Long-term capital gains (taxable @ 20%)    | 50,00,000 |
| (iv)    | Rent income                                | 35,00,000 |
| (v)     | Interest on Saving Account:                |           |
| (a)     | Bank of India                              | 25,000    |
| (b)     | ABC Co-operative Bank                      | 15,000    |
| (vi)    | Deduction under section 80JJAA             | 60,000    |

**Solution:**

Computation of income and tax payable thereon for assessment year 2021-22:

| Particular                                      | Amount in Rs                   |                            |
|---|--------------------------------|----------------------------|
|   | If the option is not exercised | If the option is exercised |
| Capital gains                                   | 50,00,000                      | 50,00,000                  |
| Income from other sources:                      |                                |                            |
| Interest on term deposits with Bank of India    | 45,00,000                      | 45,00,000                  |
| Interest on term deposits with ABC Co-op. Bank  | 50,00,000                      | 50,00,000                  |
| Interest on saving account with Bank of India   | 25,000                         | 25,000                     |
| Interest on saving account with ABC Co-op. Bank | 15,000                         | 15,000                     |
| Rent Income                                     | 35,00,000                      | 35,00,000                  |
| <b>Gross Total Income</b>                       | <b>1,80,40,000</b>             | <b>1,80,40,000</b>         |
| Deductions under Chapter VI-A                   |                                |                            |
| A. Section 80JJAA                               | 60,000                         | 60,000                     |
| B. Section 80P:                                 |                                |                            |
| i. Interest received from ABC Co-op. Bank       |                                |                            |
| On term deposits Rs.50,00,000                   |                                |                            |
| On Saving Account Rs. 15,000                    |                                |                            |
| ii. Deduction u/s. 80P(2)(c) Rs. 50,000         | 50,65,000                      | Nil                        |
| <b>Total income</b>                             | <b>1,29,15,000</b>             | <b>1,79,80,000</b>         |
| <b>Tax payable on total income:</b>             |                                |                            |
| At normal rates (as per slab rate)              | 23,71,500                      | N.A                        |
| At Special rates:                               |                                |                            |
| Long term capital gains (50,00,000 X 20%)       | 10,00,000                      | 10,00,000                  |
| Under section 115BAD (* 1,29,80,000 X 22%)      |                                | 28,55,600                  |
| Total tax                                       | 33,71,500                      | 38,55,600                  |
| Add: Surcharge @12%/ @10%                       | 4,04,580                       | 3,85,560                   |
| Total   | 37,76,080                      | 42,41,160                  |
| Add: Health & education cess @4%                | 1,51,043                       | 1,69,646                   |

|                    |           |           |
|--------------------|-----------|-----------|
| Total tax payable  | 39,27,120 | 44,10,810 |
| Effective tax rate | 30.41%    | 24.53%    |

**Question:**

XYZ Co-operative Society provides following details:

| Particulars  | Amount   |
|--|----------|
| <b>Assessment year 2018-19</b>                                     |          |
| Cash Loss (other than payment made to IIT) (a)                     | 5,00,000 |
| Payment made to IIT of Rs.1,00,000 [deduction @ 150% u/s 35(2AA)]  | 1,50,000 |
| Business Loss carried forward (c)=[(a)+(b)]                        | 6,50,000 |
| <b>Assessment year 2019-20</b>                                     |          |
| Business Profits (d)   | 1,50,000 |
| Less: Set off of brought forward business loss of A.Y. 2018-19 (e) | 1,50,000 |
| Business Loss carried forward (f)=[(C)-(e)]                        | 5,00,000 |
| <b>Assessment year 2020-21</b>                                     |          |
| Business Profits (g)   | 3,50,000 |
| Less: Set off of brought forward business loss of A.Y. 2018-19 (h) | 3,50,000 |
| Business Loss carried forward (i)=[(f)-(h)]                        | 1,50,000 |

In assessment year 2021-22, if the Society exercises the option to pay tax as per section 115BAD(1), then it will not be permissible to claim set off of loss which is attributable to deduction claimed under section 35(2AA) in assessment year 2018-19; however, a question may arise that how to ascertain the loss attributable to such deduction since business loss of 6.5 lakhs (pertaining to assessment year 2018-19) has been set-off against the profits of assessment years 2019-20 and 2020-21 to the extent of Rs.5 lakhs and now, the remaining brought forward loss of Rs.1.5 lakhs may be attributable to:

- I. Business loss (other than deduction claimed under section 35(2AA)); or
- II. Deduction claimed under section 35(2AA); or
- III. Proportionate of (i) and (ii) above.

**Solution:**

Accordingly, the Society may compute the brought forward of loss in assessment year 2021-22 under the following alternatives:

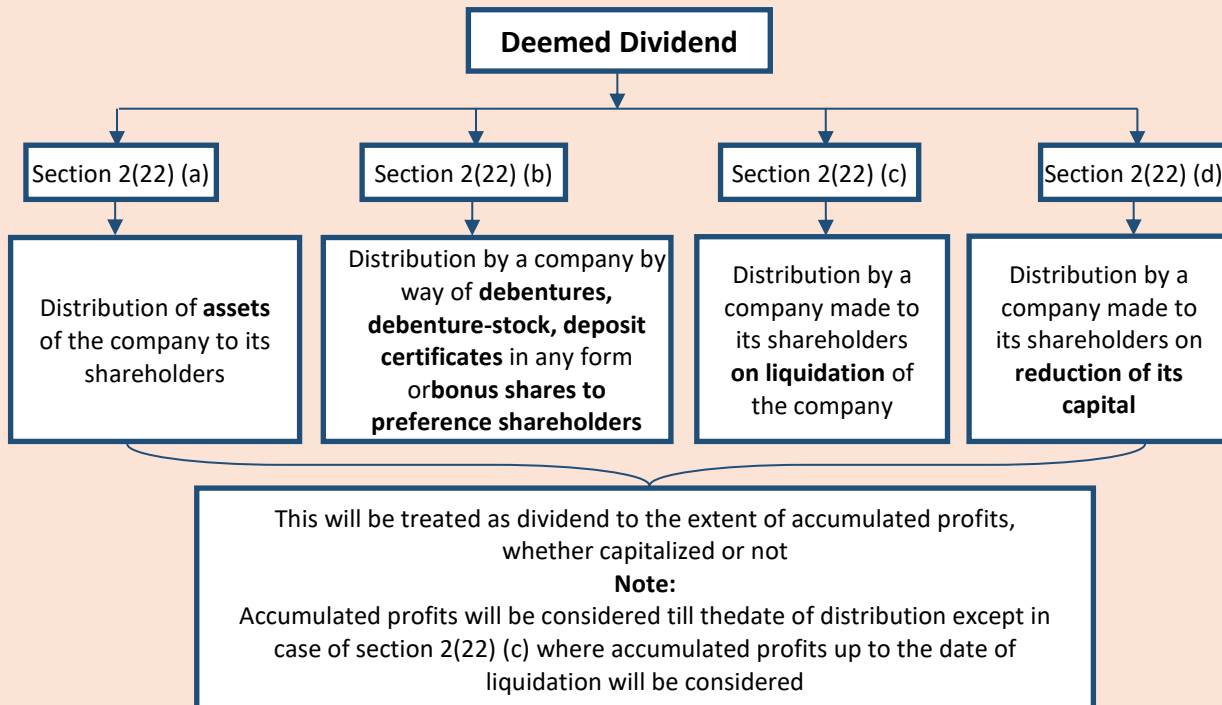
| Alternative  | Loss                  | A.Y.<br>2018-19 | A.Y.<br>2019-20 | A.Y.<br>2020-21 | A.Y.<br>2021-22 | Eligible to brought forward? |
|--|-----------------------|-----------------|-----------------|-----------------|-----------------|------------------------------|
| Priority to set off of business loss (other than deduction u/s 35) | Business loss         | 5,00,000        | 1,50,000        | 3,50,000        | Nil             | NA                           |
|  | Deduction u/s 35(2AA) | 1,50,000        | Nil             | Nil             | 1,50,000        | No                           |
| Priority to set-off of loss pertaining to Deduction u/s 35(2AA)    | Business Loss         | 5,00,000        | Nil             | 3,50,000        | 1,50,000        | Yes                          |
|  | Deduction u/s 35(2AA) | 1,50,000        | 1,50,000        | Nil             | Nil             | NA                           |
| Proportionate set-off  | Business Loss         | 5,00,000        | 1,15,385        | 2,69,231        | 1,15,384        | Yes                          |
|  | Deduction u/s 35(2AA) | 1,50,000        | 34,615          | 80,769          | 34,616          | No                           |

In absence of any express provision, the determination of loss, which may lapse, is at the option of the assessee.

# 17) Taxation of Dividend

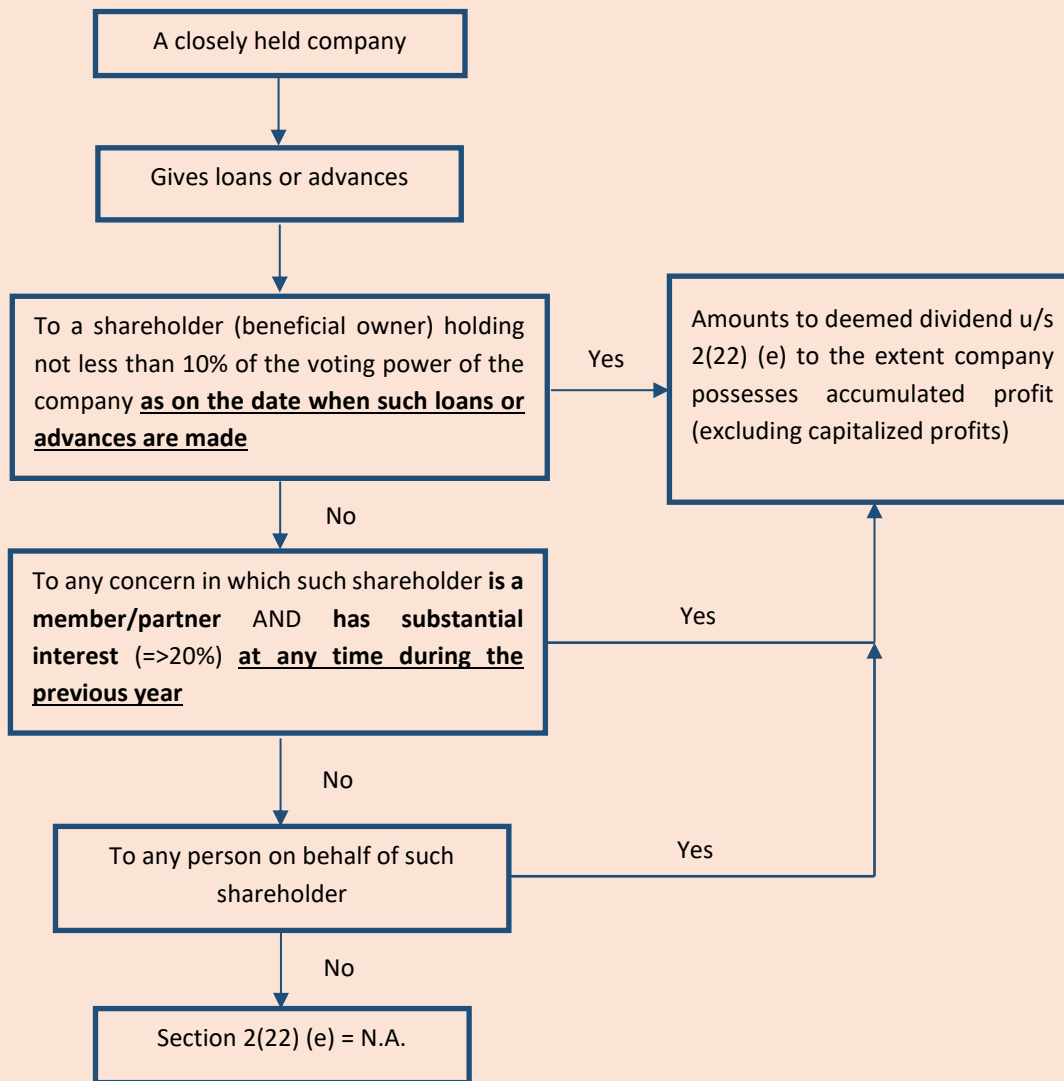
## 1) Meaning of Dividend

### Section 2(22)(a) to Section 2(22)(e) Deemed Dividend





## Section 2(22)(e)



**Note:** Deemed dividend u/s 2(22) (e) is always taxed on receipt basis.

### Dividend shall not include:

- 1) **Distribution** u/s 2(22) (c) and 2(22) (d) **in respect of preference shares** who are not entitled to participate in the surplus assets in the event of liquidation.
- 2) Advances or loan in the **ordinary course of business** where lending is a substantial part of business of the company.
- 3) **Buy back of shares** u/s 68 of the Companies Act, 2013 (However, if buys back shares by domestic companies including Listed co. then it is liable to pay tax u/s 115QA)
- 4) Any distribution of shares pursuant to a **demerger**.
- 5) **Bonus to equity shareholders**.
- 6) **Set off** of deemed dividend u/s 2(22) (e) against dividend paid earlier.

### CBDT Circular

**CBDT has clarified that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. [Circular No. 19/2017]**

Some illustrations/examples of trade advances/commercial transactions held to be not covered under section 2(22) (e) of the Act are as follows:

- i. Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not fall within the definition of deemed dividend under section 2(22) (e) of the Act. (CIT v Creative Dyeing & Printing Pvt. Ltd. Delhi High Court).
- ii. Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22) (e) of the Act. (CIT v Amrik Singh, P&H High Court).

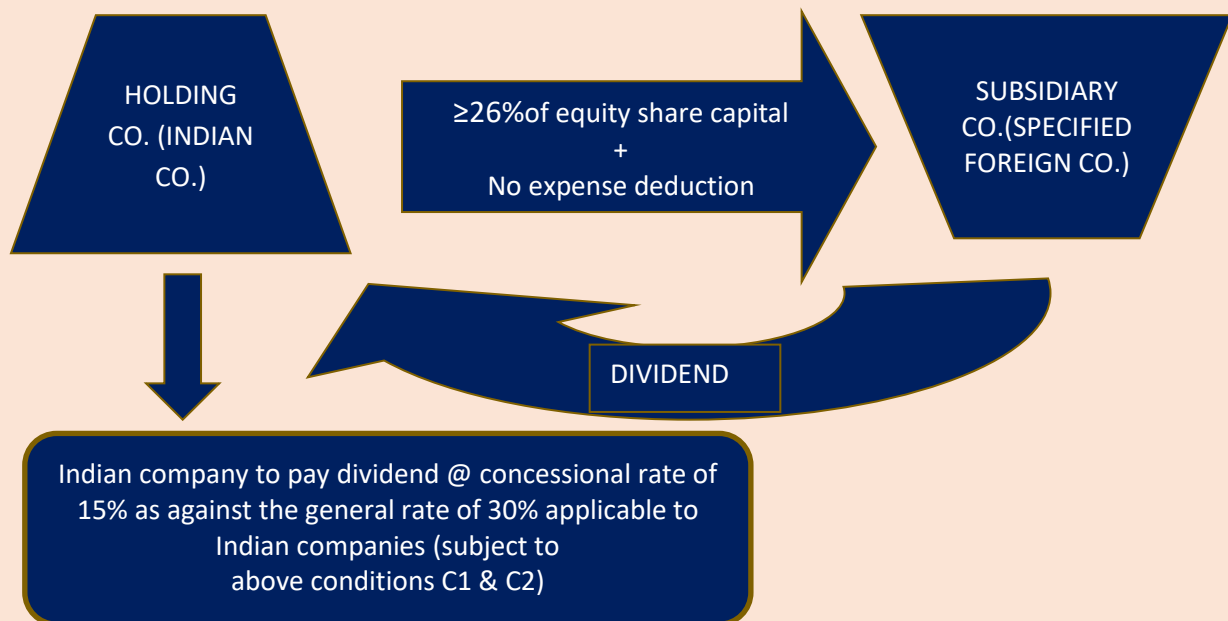
## 2) Special Income Tax Rates on Dividend Income

### Section 115BBD: Concessional Rate of Tax on Dividend Received by Indian Companies from Specified Foreign Companies

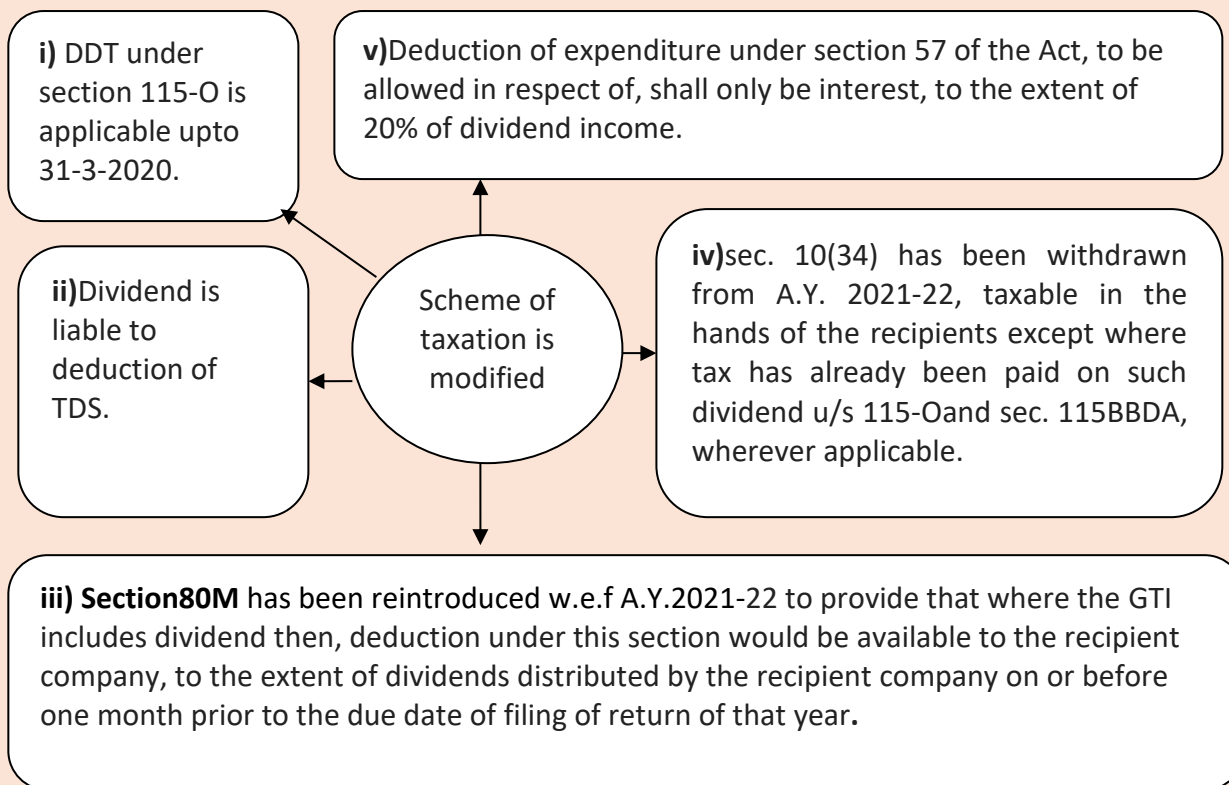
**Dividend received from foreign Co. will be taxable at CONCESSIONAL RATE: 15%**(as against the general rate of 30% applicable to Indian companies),subject to following **CONDITIONS:**

**C1:** % of holding by Indian Co. in Foreign Co.:  $\geq 26\%$

**C2:** No expenditure will be allowed in respect of such dividend. Hence the rate of 15% will be applied on **GROSS DIVIDEND.**



### 3) AMENDMENTS TO SCHEME FOR TAXATION OF DIVIDEND (F.A. 2020)



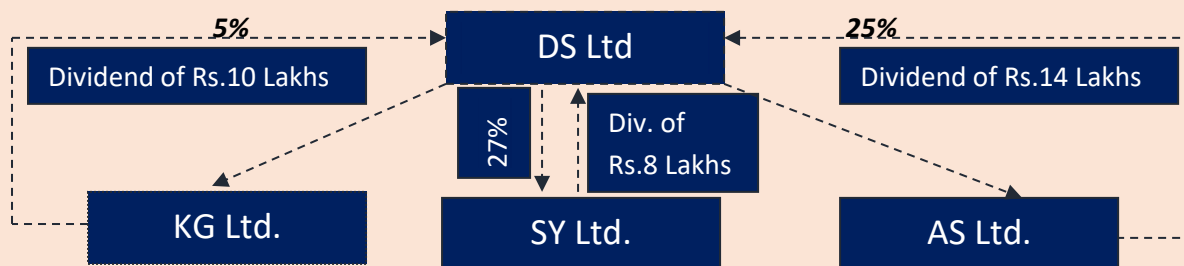
**Analysis:**

|                   |  |
|-------------------|--|
| <b>Section 57</b> | <b>The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—</b><br>No deduction shall be allowed from<br>(i) Dividend income, or<br>(ii) income in respect of units of a Mutual Fund specified u/s 10 (23D) or<br>(iii) income in respect of units from the UTI<br>Other than the deduction on account of interest expense, which shall be restricted to 20% of the dividend income or income in respect of such units, included in the total income before the deduction under this section. |
|-------------------|--|

| <b>Section 80M</b> | <b>Deduction in respect of certain inter-corporate dividends.</b>  |
|--------------------|--|
| <b>Sub-Section</b> | <b>Provision</b>   |
| <b>(1)</b>         | Where the GTI of a domestic company in any previous year included any income by way of dividends from<br>(a) any other domestic company or<br>(b) a foreign company or<br>(c) a business trust<br>there shall be allowed a deduction of an amount :<br>Lower of : (i) Such dividend received by it or<br>(ii) dividend distributed by it on or before the one month prior to the date for furnishing the ROI u/s 139(1). |
| <b>(2)</b>         | Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.  |

**Case Study**

DS Ltd. is a manufacturing company located in Mumbai (since 1980). Business income of the company for the previous year 2020-21 under section 28 is Rs.3.20 crore. Turnover of the company of the preceding years is always less than Rs.400 crore. X Ltd. has opted for the lower tax regime under section 115BAA. It holds shares in a few companies given below;



| Investee company | company incorporation | Interest on amount borrowed for investment in shares of companies |
|------------------|-----------------------|---|
| KG Ltd.          | Indian                | Rs. 1 lakh  |
| SY Ltd.          | Country D             | Rs. 7.5 lakh  |
| AS Ltd.          | Country D             | Rs. 2 lakh  |

Dividend distributed by DS Ltd. during April 1, 2020 to September 30, 2021 to its own shareholders is Rs.27 lakh (due date of submitting return of income for the previous year 2020-21 is October 31, 2021). India has ADT agreement with Country D. As per article 10 of ADT agreement, dividend from country D to a resident of India, is taxable in India. DS Ltd wants to know deduction available under section 80M and total income of the previous year 2020-21.

**Solution:**

Section 115BBD is applicable if income of an Indian company includes dividend from a foreign company in which the Indian company holds 26% (or more) of equity share capital. Under this section, dividend from the foreign company is taxable at the rate of 15% but no deduction is allowed under any provision of the Act (including section 80M). Section 115BBD is not an optional provision. In the given case, dividend from SY Ltd. is taxable under section 115BBD and against the dividend income from SY Ltd., deduction under section 80M is not available.

**Computation of income of DS Ltd.**

| Particulars  | Rs. in lakh |
|--|-------------|
| Business income  | 320         |
| Dividend income -  |             |
| - KG Ltd. (Rs.10 lakh - Rs.1 lakh)   | 9           |
| - SY Ltd.  | 8           |
| -AS Ltd. (Rs. 14 lakh - Rs. 2 lakh)  | 12          |
| Gross total income   | 349         |
| Less: Deduction under section 80M (dividend from KG Ltd. and AS Ltd. : Rs. 21 lakh – dividend distributed by DS Ltd : Rs. 27 lakh, whichever is lower) | 21          |
| Net income   | 328         |
| <b>Tax liability</b>   |             |
| Under section 115BBD (15% of Rs. 8 lakh)   | 1.2         |
| Under section 115BAA [22% of (Rs. 328 lakh -Rs. 8 lakh)]   | 70.4        |
| Income tax   | 71.6        |
| Add: Surcharge [@ 10%]*  | 71.6        |
| Income tax and surcharge   | 78.76       |

|                                    |                |
|------------------------------------|----------------|
| Add: Health and education cess     | 3.1504         |
| <b>Tax liability (rounded off)</b> | <b>81.9104</b> |

\*In respect of 115BBA income, the surcharge and HEC is always included irrespective of the total income.

# 18) Surrogate Taxation

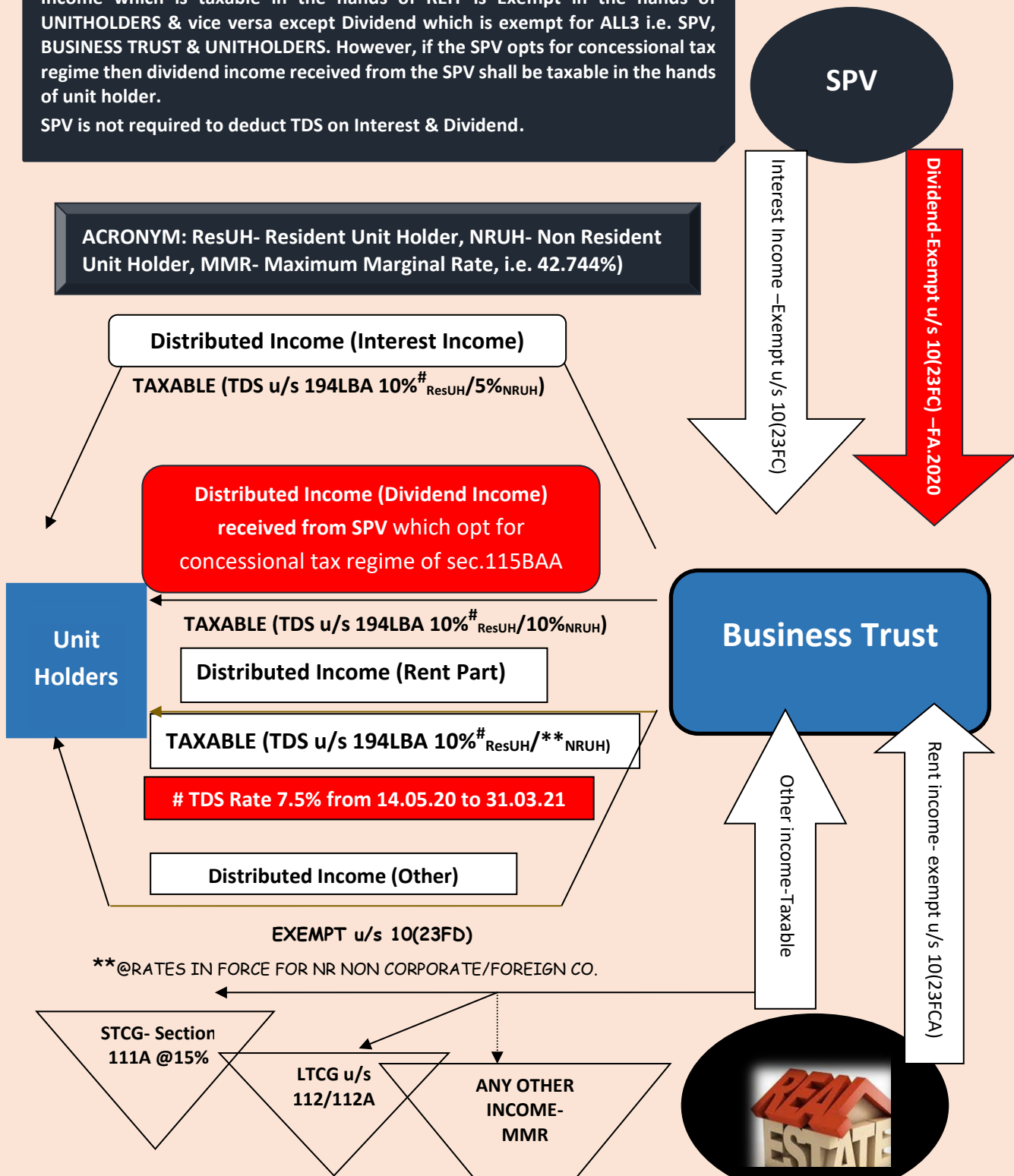
## Chapter XIIFA: Section 115UA: Scheme of Taxation of Real Estate Investment Trust (REIT) & Infrastructure Investment Trust (INVIT)

### Phase II: Taxation in the Hands of Trust & Unit Holders

Income which is taxable in the hands of REIT is Exempt in the hands of UNITHOLDERS & vice versa except Dividend which is exempt for ALL3 i.e. SPV, BUSINESS TRUST & UNITHOLDERS. However, if the SPV opts for concessional tax regime then dividend income received from the SPV shall be taxable in the hands of unit holder.

SPV is not required to deduct TDS on Interest & Dividend.

ACRONYM: ResUH- Resident Unit Holder, NRUH- Non Resident Unit Holder, MMR- Maximum Marginal Rate, i.e. 42.744%



## 19) Trust Taxation

### Corpus donation

Donation in nature of corpus contribution to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution in **sec. 10(23C)(iv)/(v)/(vi)/(via) not considered as application of income.**

### Additional Conditions for exemption u/s 11

Where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then, such trust or institution cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1), exemption available under section 10(23C) **or exemption available under section 10(46)**]. **Thus, with effect from 1.6.2020, exclusion is also available to entities claiming exemption under section 10(46) which are established or constituted under a Central or State Act or by the Central or State Government.**

### Section 12AA: Procedure for Registration

The registration granted for availing exemption under section 11 would become inoperative from the date on which the trust or institution is approved under section 10(23C) **or is notified under section 10(46), as the case may be, or the date on which this proviso has come into force i.e., with effect from 1.6.2020, whichever is later.** The trust or institution, whose registration has become inoperative, may apply to get its registration operative under section 12AA subject to the condition that on doing so, the approval under section 10(23C) or notification under section 10(46), as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under section 10(23C) or under section 10(46).

### Sec. 12A(1)(b)- Audit Report

If the total income of a trust/institution (without excluding income exempt u/s.11 & 12) exceeds the maximum amount not chargeable to tax, the account of the trust/institution is required to be audited.

**W.e.f. AY 2020-21, the Audit Report in Form no.10B shall be uploaded 1 month prior to the due date of submission of return of income (if the due date of submission of return of income is 31<sup>st</sup> October of the AY, audit report should be uploaded on or before 30<sup>th</sup> September of the AY.)**

## Part B - SECTION 10(23C): INCOME OF CERTAIN FUNDS OR INSTITUTIONS

An exemption is available in respect of any income received by any person on behalf of the following entities:

- (i) the Prime Minister's National Relief Fund or **PM CARES FUND**
- (ii) the Prime Minister's Fund (Promotion of Folk Art)
- (iii) the Prime Minister's Aid to Students Fund
- (iiia) the National Foundation for Communal Harmony
- (iiiaa) the Swachh Bharat Kosh, set up by the Central Government
- (iiiaaa) the Clean Ganga Fund, set up by the Central Government
- (iiiaaaa) Chief Minister's Relief Fund & Lieutenant Governor's Relief Fund**
- (iiiab) any university or other educational institution wholly or **substantially financed by the Government** which exists solely for educational purposes and not for profit
- (iiiac) any hospital or other institution wholly or **substantially financed by the Government**, which exists solely for philanthropic purposes and not for profit and which exists for the reception and treatment of persons suffering from illness or mental defectiveness or treatment of convalescing persons or persons requiring medical attention
- (iiiad) any university or other educational institution existing solely for educational purposes and not for profit and its aggregate annual receipts do not exceed `1 crore
- (iiiiae) any hospital or other institution as described in (ix) above if its aggregate annual receipts do not exceed the prescribed limit of `1 crore

- (iv) any other Fund or Institution for charitable purposes approved by the **prescribed authority** having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States
- (v) any trust (including any other legal obligation) or institution wholly for public religious or public religious and charitable purposes approved by the **prescribed authority**
- (vi) any other university or educational institutions approved **by prescribed authority**
- (via) any other hospital, etc. approved **by prescribed authority**.

Notes: In case of the above entities,

1. Principal **Commissioner or Commissioner of Income-tax (Exemptions)** has been authorized to act as "prescribed authority".
2. Exemption of business profits will also be available only if the **Business is incidental to the attainment of its objectives** and separate books of account are maintained in respect of the business.
3. Prescribed authority has been empowered to satisfy himself about the Compliance to requirements of any other law which is material for the purpose of achieving its objects.
4. If total income exceeds basic exemption limit in any PY, then it is necessary to **audit the books of accounts and furnish such audit report on or before specified date i.e. 1 month prior to due date of filing of ROI for Relevant AY.**
5. An application for grant of exemption or continuation thereof under section 10(23C).

If the government grant exceeds **50% of the total receipts** (including any voluntary contributions), then, such university or other educational institution, hospital or other institution shall be considered as being **substantially financed by the Government** for that previous year.

### General Note for all the organisations mentioned in section 10(23C):

Any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv)/ (v)/ (vi)/ (via), **to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv)/(v)/(vi)/(via)** or to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution, **shall not be treated as application of income** to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established.



## 20) Non-Resident Taxation

### Individual Residential Status

#### Section 6:

- (1) An individual is said to be resident in India in any previous year, if he;
- a) is in India in that year for a period or periods amounting in all to **182 days or more; or**
  - c) having within the **4 years** preceding that year been in India for a period or periods amounting in all to **365 days or more**, is in India for a period or periods amounting in all to **60 or more** in that year.

#### **Explanation 1. — In the case of an individual,-**

- (a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "**60 days**", occurring therein, the words "**182 days**" had been substituted ;
- (b) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "**60days**", occurring therein, the words "**182 days**" had been substituted [**and in case of such person having total income, other than the income from foreign sources, exceeding Rs.15 lakh rupees during the previous year, for the words "60 days" occurring therein, the words "120 days" had been substituted**].

#### **Explanation 2,-**

For the purposes of this clause, in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

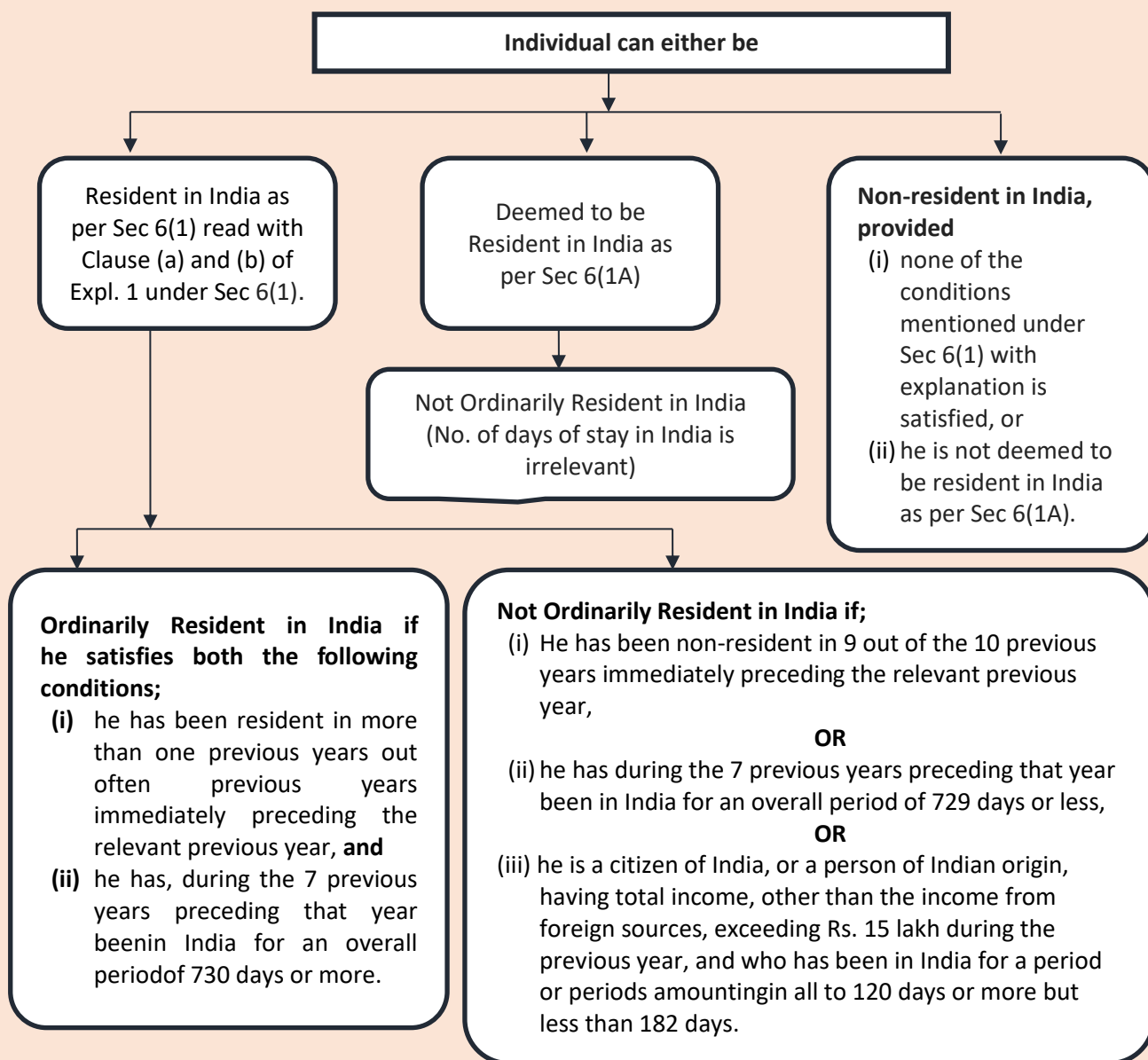
**Following clause (1A) shall be inserted after clause (1) of section 6 by the Finance Act, 2020, w.e.f. 1-4-2021:**

- (1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding Rs.15 lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.**

**Explanation: For removal of doubts, it is hereby declared that this clause shall not apply in case of an Individual who is said to be resident in India in the PY u/s.6(1).**

- (6) A person is said to be "**not ordinarily resident**" in India in any previous year if such person is-
- (a) an individual who has been a non-resident in India in **9** out of the **10** previous years preceding that year, or has during the **7** previous years preceding that year been in India for a period of, or periods amounting in all to, **729 days or less; or**
  - (c) **a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding Rs.15 lakh rupees during the previous year, as referred to in clause (b) of Explanation 1 to clause (1), who has been in India for a period or periods amounting in all to 120 days or more but less than 182 days; or**
  - (d) a citizen of India who is deemed to be resident in India under clause (1A).

**Explanation.-For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.**



**Income from foreign sources:** Means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India

**Person of Indian Origin:** A person is deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, who born in undivided India.

**Example 1:**

X is an Indian citizen. Currently, he is in employment with an overseas company located in Dubai. During different years, he is in India as follows-

| Previous year | Presence in India | Previous year | Presence in India | Previous year | Presence in India |
|---------------|-------------------|---------------|-------------------|---------------|-------------------|
| 2020-21       | 55 days           | 2017-18       | 170 days          | 2014-15       | 70 days           |
| 2019-20       | 190 days          | 2016-17       | 200 days          | 2013-14       | 71 days           |
| 2018-19       | 200 days          | 2015-16       | 250 days          | 2012-13       | 72 days           |

For the previous year 2020-21, X is not taxable in Dubai or in any other country/territory by reason of his domicile or residence. Income of X (other than income from foreign sources) for the previous year 2020-21 is Rs.16,00,000 (Situation 1) or Rs. 14,00,000 (Situation 2). X wants to know his residential status for the previous year 2020-21.

**Solution:**

**Situation 1-** X is in India for 55 days during the previous year 2020-21. He is unable to satisfy any of the basic condition given by section 6(1). However, he satisfies the following 3 conditions given by section 6(1A);

- a. X is an Indian citizen;
- b. his total income (other than the income from foreign sources) exceeds Rs.15,00,000 during the relevant previous year, and
- c. he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

He is deemed to be resident in India as per section 6(1A). However, he is resident but not ordinarily resident in India by virtue of section 6(6)(d). The data given in the table pinpoints that X is resident in India for 5 years out of preceding 10 years and he is in India for 1151 days out of preceding 7 years. He satisfies the two conditions of section 6(6)(a). However, the additional conditions of section 6(6)(a) are not relevant when a person is deemed to be resident in India within the parameters of section 6(1A).

**Situation 2** - X does not satisfy conditions of section 6(1A). Moreover, he does not satisfy conditions of section 6(1). Consequently, he is non-resident in India for the previous year 2020-21.

### 9) Section 9(1)(iv): Dividend

Dividend **paid** by INDIAN Company OUTSIDE India shall be deemed to accrue/arise in India.

### 11) Section 9(1)(vi): Royalties

Transfer of all or any rights of patents/trademark/ or use or right to use any industrial, commercial or scientific knowledge, experience/skill or equipments. The transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting **but not including consideration for the sale, distribution or exhibition of cinematographic films. (FA 2020).** *w.e.f., A.Y.2021-22, Consideration for Sales, Distribution or exhibition of cinematographic films shall not be excluded from the definition of Royalty.*

## 14) Special provisions for computing tax on income by way of Dividend, Interest, royalty, fees for technical service, etc. [Section 115A]

### (i) Tax on dividend and interest in case of non-corporate non-residents and foreign companies:

| Where the total income of a foreign company or a non-corporate non-resident includes any income by way of  | Rate of Tax             |
|--|-------------------------|
| (1) Dividends  | 20%                     |
| (2) Interest received from the Government or an Indian concern on moneys borrowed or debt incurred by the Government / Indian concern in <b>foreign currency</b> , other than 3 and 4 mentioned below  | 20%                     |
| (1) Interest received from an infrastructure debt fund referred to in section 10(47)   | 5%                      |
| (4) Interest referred to in section 194LC received from an Indian company or business trust— <ul style="list-style-type: none"> <li>- in respect of monies borrowed by an Indian company or business trust in <b>foreign currency</b> from sources outside India               <ul style="list-style-type: none"> <li>• Under a loan agreement between 1.7.2012 and <b>30.6.2023</b> or</li> <li>• by way of issue of long-term infrastructure bonds between 1.7.2012 and 30.9.2014 or</li> <li>• by way of issue of long-term bonds including long term infrastructure bond between 1.10.2014 and <b>30.6.2023</b> as approved by the Central Government</li> </ul> </li> <li>- in respect of monies borrowed from sources outside India by way of rupee denominated bond before <b>1.7.2023</b></li> </ul> | 5%                      |
| <i>in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any IFSC.</i>   | <b>4%</b>               |
| (5) Interest to a Foreign Institutional Investor or Qualified Foreign Investor <ul style="list-style-type: none"> <li>- payable <b>between 1.6.2013 and 30.6.2023</b> on investment made in               <ul style="list-style-type: none"> <li>• Rupee denominated bond of an Indian company</li> <li>• Government security</li> </ul> </li> <li>- <b>payable between 1.4.2020 and 30.6.2023</b> on investment made in municipal debt security</li> </ul>  | 5%                      |
| <b>(6) Section 194LBA(2),</b> <ul style="list-style-type: none"> <li>- <i>being interest income of a business trust from a SPV, distributed by business trust to non-resident unit holders of a business trust</i></li> <li>- <i>being Dividend income of a business trust from a SPV, distributed by business trust to non-resident unit holders of a business trust.</i></li> </ul>  | <b>5%</b><br><b>10%</b> |
| <b>For the purposes of section 194LBA(2),</b>  |                         |
| 1. the expression " <b>special purpose vehicle</b> " (SPV) means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration.   |                         |
| (7) Income received in respect of units purchased in <b>foreign currency</b> of a mutual fund specified under section 10(23D) or of the Unit Trust of India  | 20%                     |

### (ii) Tax on royalty or fees for technical services in case of non-residents

| Where the total income of a foreign company or a non-corporate non-resident includes any income by way of royalty or fees for technical services (FTS) other than the income referred to in section 44DA | Applicable Rate of Tax                                    |
|--|---|
| (1) Received from the Government in pursuance of an agreement made by the non-resident/ foreign company with the Government  | 10% of such royalty or FTS. However, if DTAA provides for |

|  |  |
|--|--|
| (2) Received from the Indian concern in pursuance of an agreement made by the non-resident/ foreign company with the Indian concern and the agreement is approved by the Central Government or where it relates to industrial policy of Government of India, the agreement in accordance with that policy. | a rate lower than 10%, then, the provisions of DTAA would apply. |
|--|--|

**Important Points:**

1. Special rate of tax is applicable on the above mentioned incomes. The remaining income of the assessee will be chargeable to tax at normal rates applicable to assessee.
2. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing the above income.
3. Deduction under Chapter VI-A is not available in respect of dividend and interest referred to in (i) above.  
**However, this condition would not be applicable to deduction allowed to a unit of an International Financial Services Centre (IFSC) under section 80LA i.e., a unit of an IFSC can claim deduction under section 80LA against dividend and interest referred to in (i) above.**
4. **Exempting Non-resident from filing of Income Tax Return in certain conditions [Section 115A W.e.f. A.Y. 2020-21]**  
**The current provisions of section 115A(1)(a) of the Act provide relief to non-residents from filing of return of income where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief has not been extended to non-residents whose total income consists only of the income by way of royalty or FTS. Representations have been received to extend this benefit to royalty and FTS income as well.**  
**Therefore the Finance Act 2020 has amended section 115A of the Act in order to provide that a non-resident, shall not be required to file return of income under section 139(1) of the Act if;**
  - 1) his or its total income consists of only dividend or interest income as referred to in section 115A(1)(a) of said section, or royalty or FTS income of the nature specified in section 115A(1)(b) ; and
  - 2) the TDS on such income has been deducted under the provisions of chapter XVII-B of the Act at the rates which are not lower than the prescribed rates under section 115A(1).

**16) Section 9A: Presence of Eligible Fund Manager in India Not to Constitute Business Connection in India**

|                                |  |
|--------------------------------|--|
| <b>BACKGROUND</b>              | <ul style="list-style-type: none"> <li>➤ The presence of fund manager in India may create sufficient nexus of the off shore fund in India and may create <b>BUSINESS CONNECTION</b> in spite of fund manager being an independent person.</li> <li>➤ Further, if the fund manager located in India undertakes fund management activity in respect of investments outside India for an off-shore fund, the <b>PROFITS MADE BY THE FUND FROM SUCH INVESTMENTS MAY BE LIABLE TO TAX IN INDIA.</b></li> <li>➤ Further, presence of fund manager may lead to <b>OFF-SHORE FUND BEING TERMED AS RESIDENT IN INDIA</b> on the basis of control &amp; management in India.</li> </ul>  |
| <b>RATIONALE OF SECTION 9A</b> | <ul style="list-style-type: none"> <li>➤ With a view to facilitate location of fund managers of off shore funds in India, subject to fulfilment of certain conditions by fund and fund manager:</li> <li>➤ <b>The tax liability in respect of income arising to the fund from investment in India would be neutral whether the investment is made directly in India or through fund manager located in India.</b></li> <li>➤ <b>Income of fund outside India would not be taxed in India solely on the basis that the fund management activity in respect of such investments has been taken through fund manager located in India.</b></li> <li>➤ <b>Fund management activity through an eligible fund manager not to constitute business connection.</b></li> <li>➤ <b>Location of fund manager in India not to affect residential status of eligible investment fund</b></li> </ul> |

|   |   |
|---|---|
| <p><b>ELIGIBLE FUND</b></p>   | <ul style="list-style-type: none"> <li>➤ Fund should not be resident in India</li> <li>➤ Fund should be resident of a country or a specified territory with which an agreement referred to section 90(1) or section 90A(1) or is established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf</li> <li>➤ The aggregate participation or investment in the fund, directly or indirectly, by persons being resident in India should not exceed 5% of the corpus of the fund</li> <li style="background-color: #ffcccc;">➤ <b>With effect from A.Y. 2020-21 to provide that for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by an Indian resident, contribution of the eligible fund manager during first 3 years upto Rs.25 crores shall not be accounted for. (FA 2020)</b></li> <li>➤ The fund and its activities should be subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;</li> <li>➤ The fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;</li> <li>➤ Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;</li> <li>➤ The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%;</li> <li>➤ The investment by the fund in any entity shall not exceed 20% of the corpus of the fund;</li> <li>➤ Fund shall not carry on or control and manage, directly or indirectly, any business in India;</li> <li>➤ Fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.</li> <li>➤ No investment shall be made by the fund in its associate entity;</li> <li>➤ The monthly average of the corpus of the fund shall not be less than Rs.100 crore fund has been established or incorporated in the previous year, the corpus of fund should not be less than Rs.100 crore rupees at the end of a <b>period of 12 months from the last day of the month of its establishment or incorporation. (FA 2020)</b></li> <li>➤ However, this condition shall not be applicable to a fund which has been wound up in the previous year.</li> <li>➤ Remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken on its behalf is not less than the arm's length price of such activity.</li> <li style="background-color: #ffcccc;">➤ <b>This condition has been amended that the Government shall provide separate set of rules to determine the amount of remuneration for fund managers.</b></li> </ul> |
| <p><b>Certain conditions not to apply to investment fund set up by the Government or the Central Bank of a foreign State or a Sovereign Fund or other notified fund [Section 9A(3)]</b></p> | <ul style="list-style-type: none"> <li>➤ The fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;</li> <li>➤ Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;</li> <li>➤ The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.</li> </ul>   |
| <p><b>ELIGIBLE FUND MANAGER</b></p>   | <ul style="list-style-type: none"> <li>➤ Person is not an employee of the eligible investment fund or a connected person of the fund</li> <li>➤ Person is registered as a fund manager or investment advisor in accordance with the specified regulations.</li> <li style="background-color: #ffcccc;">➤ <b>The CBDT has, vide Circular No.8/2019 dated 10.5.2019, clarified that a fund manager includes an Asset Management Company (AMC) approved by SEBI under the SEBI (Mutual Funds) Regulations, 1996. This is because AMCs are engaged in the activity of fund management of Mutual Funds and hence are, in substance, Fund Managers.</b></li> <li>➤ Person is acting in the ordinary course of his business as a fund manager</li> </ul>   |

- Person along with these connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through such fund manager.

Section 9A not applicable for FPI.

### III) Incomes which do not form part of the total Income for the Non-resident under the Act-FA 2020

| Section                | Income  | Available to  |
|------------------------|---|---|
| 10(4D)                 | <p><i>Income accrued or arising to or received by specified fund -</i></p> <p>(i) <i>on transfer of a capital asset, being a bond of an Indian Company or a public sector company (sold by the Government and purchased by the specified fund in foreign currency), GDR or rupee denominated bond of an Indian company or derivative or any other notified security, on a recognized stock exchange located in any IFSC and where the consideration is paid or payable in convertible foreign exchange or</i></p> <p>(ii) <i>on transfer of securities (other than shares in a company resident in India) or</i></p> <p>(iii) <i>from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India or</i></p> <p>(iv) <i>from a securitisation trust which is chargeable under the head "profits and gains of business or profession",</i></p> <p><i>to the extent such income accrued or arisen to, or is received is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) computed in the prescribed manner.</i></p> | <p><b>A specified fund</b></p> <p><b>Meaning of specified fund</b></p> <p><i>"specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate,—</i></p> <ol style="list-style-type: none"> <li><i>which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);</i></li> <li><i>which is located in any International Financial Services Centre;</i></li> <li><i>of which all the units are held by non-residents other than unit held by a sponsor or manager;</i></li> </ol> <p><b>Important Points:</b></p> <ol style="list-style-type: none"> <li><i>Income including income by way of dividends received in respect of securities (other than units referred to in section 115AB) and long term capital gains on transfer of such securities is reduced to 10%. This shall apply only to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in the prescribed manner.</i></li> <li><i>The provisions of Chapter XII-BA related to the provisions of Alternate Minimum Tax (AMT) are not applicable to Category-III Alternative Investment Funds located in the IFSC. The Act has suitably amended the provisions of section 115JEE.</i></li> </ol> <p><i>Tax exemption has also been granted to the unit holders of Category-III AIFs in respect of income</i></p> <ol style="list-style-type: none"> <li><i>from units of such Category-III AIFs or</i></li> <li><i>on transfer of such units.</i></li> </ol> |
| 10(23FE)<br>(FA. 2020) | <p><b>Dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit.</b></p>   | <p><b>Specified person (Detailed Explanation cover at the end of the table).</b></p>  |

**Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA) and sovereign Wealth Fund : Section 10(23FE); (FA. 2020)**

| Nature of Investment   | Specified Person  |
|--|---|
| <p><b>1. Investment is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2024;</b></p> <p><b>2. Investment is held for at least three years; and</b></p> <p><b>3. Investment is in-</b></p> <p><b>a) a business trust referred to in sub-clause (i) of clause (13A) of section 2; or</b></p> <p><b>b) a company or enterprise or an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA or such other business as the Central Government may, by notification in the Official Gazette, specify in this behalf; or</b></p> <p><b>c) a Category-I or Category-II Alternative Investment Fund regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), having hundred per cent investment in one or more of the company or enterprise or entity referred to in item (b).</b></p> | <p><b>"specified person" means;</b></p> <p><b>a) a wholly owned subsidiary of the Abu Dhabi Investment Authority which;</b></p> <p>(i) is a resident of the United Arab Emirates; and</p> <p>(ii) makes investment, directly or indirectly, out of the fund owned by the Government of the <b>Abu Dhabi;</b></p> <p><b>b) a sovereign wealth fund which satisfies the following conditions, namely;</b></p> <p>(i) it is wholly owned and controlled, directly or indirectly, by the Government of a foreign country;</p> <p>(ii) it is set up and regulated under the law of such foreign country;</p> <p>(iii) the earnings of the said fund are credited either to the account of the Government of that foreign country or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person;</p> <p>(iv) the asset of the said fund vests in the Government of such foreign country upon dissolution;</p> <p>(v) it does not undertake any commercial activity whether within or outside India; and</p> <p>(vi) it is specified by the Central Government, by notification in the Official Gazette, for this purpose <b>and fulfils conditions specified in such notification;</b></p> <p><b>c) a pension fund, which;</b></p> <p>(i) is created or established under the law of a foreign country including the laws made by any of its political constituents being a province, State or local body, by whatever name called;</p> <p>(ii) is not liable to tax in such foreign country;</p> <p>(iii) satisfies such other conditions as may be prescribed; and</p> <p>(iv) is specified by the Central Government, by notification in the Official Gazette, for this purpose, <b>and fulfils conditions specified in such notification.</b></p> |

**Consequences if the prescribed conditions are violated:**

where any income has not been included in the total income of the specified person due to the provisions of this clause, and subsequently during any previous year the specified person fails to satisfy any of the conditions of this clause so that the said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.

### TDS Provisions

| Section   | Nature of payment  | Rate of TDS |
|---|--|-------------|
| <b>194LBA(2)</b>  | <b>Distribution any interest income, received or receivable by a business trust from a SPV, to its unit holders. [10(23FC)(a)]</b> | <b>5%</b>   |
|   | <b>Distribution of Dividend income, received or receivable by a business trust from a SPV, to its unit holders. [10(23FC)(b)]</b>  | <b>10%</b>  |
| <b>However it shall not apply if the special purpose vehicle referred to in</b> |  |             |



|   | <b><i>the said clause has not exercised the option under section 115BAA.</i></b>  |            |
|---|---|------------|
| 194LC   | Payment of interest by an Indian Company or a business trust to a non-corporate non-resident or foreign company <ul style="list-style-type: none"> <li>- in respect of money borrowed in foreign currency from a source outside India                             <ul style="list-style-type: none"> <li>• under a loan agreement between 1.7.2012 and <b>30.6.2023</b> or</li> <li>• by way of issue of long term bonds (including long term infrastructure bond) between 1.10.2004 and <b>30.6.2023</b> as approved by Central Government or</li> </ul> </li> <li>- in respect of money borrowed from source outside India by way of rupee denominated bond before <b>1.7.2023</b></li> </ul> | 5%         |
|   | <b><i>in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any IFSC.</i></b>   | <b>4%</b>  |
| 194LD   | Payment of interest- <ul style="list-style-type: none"> <li>• between 1.6.2013 and <b>30.6.2023</b> on:                             <ul style="list-style-type: none"> <li>✓ rupee denominated bond of an Indian Company or</li> <li>✓ Government securities or</li> </ul> </li> <li>• <b>between 1.4.2020 and 30.6.2023 on municipal debt securities</b> to a Foreign Institutional Investor or a Qualified Foreign Investor</li> </ul>  | 5%         |
| <b>196A</b>   | <b><i>Income on units of a mutual fund specified under section 10(23D) or from the specified company referred to in section 10(35) payable to non-corporate non-resident or foreign company</i></b>   | <b>20%</b> |
| 196C  | Income by way of interest <b>or dividend</b> on bonds of an Indian company or public sector company sold by the Government and purchased by a non-resident in foreign currency or GDRs referred to in section 115AC (including LTCG on transfer of such bonds or GDRs) payable to a non-resident  | 10%        |
| <b>Note: In all the above cases, where the payee is a Non Resident the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @4%.</b> |   |            |

# 21) Double Taxation Relief

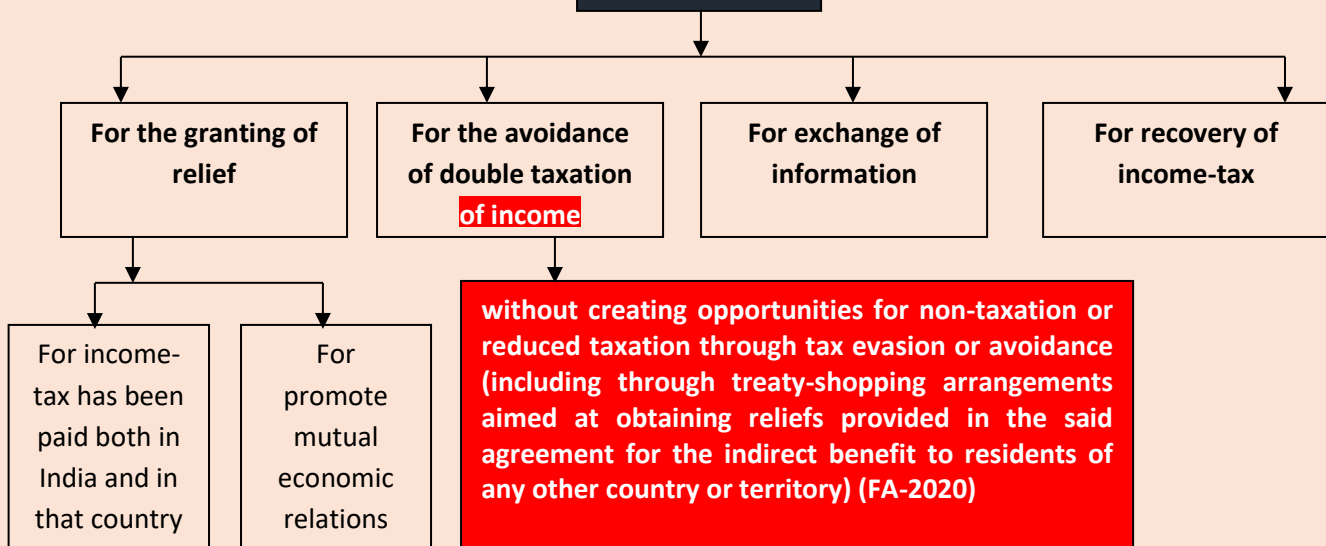
## 1) DOUBLE TAXATION RELIEF PROVISIONS UNDER THE IT ACT, 1961

### Agreement with foreign countries or specified territories - Bilateral relief [Section 90]

#### 1) INTRODUCTION

Central Government may enter into an DTAA agreement with the Government of any country outside India or specified territory outside India for avoidance of double tax.

#### 2) PURPOSE



#### 2) MUTUAL AGREEMENT PROCEDURES (MAP)-FA 2020

##### **Background:**

The MAP mechanism in India has been gaining a lot of attention over recent years, with the Government making a conscious effort to promote MAP.

Until recently, India had a policy of no Bilateral APA and MAP applications being accepted in the absence of Article 9(2) in tax treaties.

Recently, it has been decided that TP MAP and Bilateral APA applications will be accepted regardless of the presence or otherwise of Article 9(2) (or its relevant Equivalent Article) in DTAA. This may provide for their impetus to the APA and MPA program in India.

##### **Procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation [Section 295(2)(h)]**

As per section 295(1), the Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

Further, section 295(2)(h) provides that the Central Government may make rules for the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act.

In this connection the Central Government has made mutual agreement procedure vide Notification No. 31/2003, dated 6.2.2003 consisting of rules 44G and 44H which are as under:

**Application for giving effect to the terms of any agreement under section 295(2)(h) [New Rule 44G notified vide Notification No.23/2020 dated 6.5.2020]**

**Step 1: Application by Assessee**

Where an **Assessee**, being a resident of India,

- is **aggrieved by any action** of the tax authorities of any country or specified territory outside India
- for the reason that, according to him, such **action is not in accordance with the terms of agreement** with such other country or specified territory,
- he may make an **application to the Competent Authority** in India
- seeking to **invoke the MAP**, if provided in such agreement, in Form No. 34F.

**Step 1: Reference by Competent Authority**

Where a reference has been received from the **Competent Authority** of any country or specified territory outside India

- under **any agreement** with that country or specified territory
- with regard to any **action taken by any income-tax authority** in India or by the tax authorities of such country or specified territory,
- the Competent Authority in India shall **convey his acceptance** or
- otherwise for **taking up the reference under MAP** to the competent authority of the other country or specified territory.

**Step 2: Calling for Information**

Competent Authority in India shall, with regard to

- the **issues contained in Form No. 34F** or
- in the **reference from the competent authority** of a country or specified territory outside India,
- **Call for the relevant records and additional document** from the income-tax authorities or the assessee or his authorised representative in India, or
- have a **discussion** with such authorities or assessee or representative,
- to **understand the actions taken by the income-tax authorities** in India or outside **that are not in accordance with the terms of the agreements** between India and the other country or specified territory.

**Step 3: Attempt for Mutual Agreeable Resolution**

Competent Authority in India shall endeavour to arrive at a mutually agreeable resolution of the tax disputes, within an **Average time period of 24 months**.

**Step 4(a): MAP is Invoked**

In case the MAP is invoked on

- **account of action taken** by any income-tax authority in India,
- the resolution arrived at under Step 3 in a previous year
- shall **not result in decreasing the income or increasing the loss**, as the case may be, of the assessee in India,
- **as declared by him** in the return of **income of the said year**.

**Step 4: Communication of Resolution**

If a **resolution is arrived** at under Step 3 between the Competent Authority in India and that of the other country or specified territory, the same shall be **communicated in writing to the assessee**.

**Step 5: Acceptance of Resolution**

- Assessee shall **communicate his acceptance** or non-acceptance of the resolution in writing to the Competent Authority in India **within 30 days** of receipt of the communication.
- Assessee's acceptance of the resolution shall be **accompanied by proof of withdrawal of appeal**, if any, pending on the issues that were the **subject matter of the resolution arrived**.



**Step 6: Forwarding the Acceptance to further Tax Authority**

Competent Authority in India shall communicate-

- the **resolution arrived at under Step 3** and
- the **acceptance by the assessee** along with proof of withdrawal of appeal, if any,
- to the **Principal Chief Commissioner** or the **Chief Commissioner** or the **Principal Director General** or **Director General**, as the case may be,
- who in turn **shall forward it to the Assessing Officer**.



**Step 7: Effect of Resolution by A.O**

On receipt of communication, the A.O shall give effect to the resolution arrived, by an order in writing, **within 1 month from the end of the month in which the communication was received** by him and **intimate the assessee about the tax payable** determined by him, if any.



**Step 8: Payment of Tax liability in Resolution**

- The assessee shall pay the tax as determined within the time allowed by the A.O
- and shall submit the proof of payment of taxes to the A.O
- who shall then proceed to withdraw the pending appeal, if any, pertaining to subject matter of the resolution Step 3, which were filed by the Assessing Officer or the Principal Commissioner or Commissioner or any other income-tax authority.
- Copy of the order (Step 7), shall be sent to the Competent Authority in India & to Assessee.

**Note:** There are some Key Important guidance provided in **Circular no. 500/09/2016-APA-I Dated 07.08.2020** on MAP. Points highlighted in circular are as below:

**1. Basic Information:**

- a. Meaning of MAP
- b. India's Tax Treaties or DTAAs
- c. Making of MAP Application in India
- d. MAP Process
- e. Timeframe for Resolving and Implementing MAP cases

**2. Access and Denial of Access to MAP:**

**3. Technical Issues**

- a. Downward Adjustment
- b. Resolution of Recurring Issues
- c. Interest and Penalties
- d. Secondary Adjustments
- e. Bilateral & Multilateral APAs
- f. Suspension of Collection of Taxes during the Pendency of MAP
- g. Adjustment of taxes paid in pursuance of demand raised by an order under Section 201 of the Income-tax Act

**4. Implementation of MAP Outcomes**

- a. Implementation of MAP
- b. Timelines
- c. Information to CAs of India

## 22) Equalization Levy

### Case II: Equalisation Levy u/s.165A [w.e.f. 01.04.2020]



#### ON WHAT?

##### E-Commerce Supplies or Services-

- (i) online **sale of goods** owned by the e-commerce operator; or
- (ii) online **provision of services** provided by the e-commerce operator; or
- (iii) online sale of goods or provision of services or both, **facilitated by the e-commerce operator**; or
- (iv) **any combination** of activities listed in clause (i), (ii) or clause (iii);

#### Service Provider:

**E-Commerce Operator\*\***

Ex: Flipkart, Amazon etc.

PROVIDES SERVICE

PAYS CONSIDERATION

#### Service Recipient:

- i. Resident in India
- ii. Non-resident in specified circumstances\*
- ii. Person who buys such goods or services or both using internet protocol address located in India

Income exempt u/s 10(50)

Service provider on whom there is obligation & not on recipient.  
@ 2% on consideration

#### Equalization levy not applicable u/s 165A if:

- Aggregate Gross T/O of E-Commerce Operator from E-Commerce supply or services **<Rs.2 Crores in PY**
- Equalisation Levy is leviable u/s.165.
- E-Commerce Operator has PE in India & E-Commerce supply provided through such PE.

#### \*Specified Circumstances mean—

- i. Sale of Advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
- ii. Sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

\*\***E-Commerce Operator**-- means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both

**Note:**

As provided in 40(a)(ib), there is disallowance of an Expenses i.r.o the Specified services mentioned in Sec.165, if EL is not deducted or having deducted has not been deposited within the the due-date of Sec.139(1).

However, no such specific amendment has been provided in FA2020 to incorporate Sec.165A for the disallowance in Sec.40(a)(ib).

## TDS under Section 194-O (w.e.f. 01.10.2020)

| Particulars                 | Provided in Sec.194-O  |
|-----------------------------|--|
| Transaction on which liable | Where sale of goods or provision of services of an E-Commerce participant is facilitated by an E-Commerce operator through its digital or electronic facility or platform (by whatever name called)<br><i>Note: E-Commerce Participant means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce</i>  |
| Responsible to deduct       | E-commerce Operator  |
| Time of deduction           | Time of <b>credit of amount</b> of sale or services or both to the account of an e-commerce participant or at the <b>time of payment</b> thereof to such e-commerce participant by any mode, <b>whichever is earlier</b>   |
| Rate of TDS                 | <b>1%</b> of the "Gross amount of such sales/ services*". "(0.75% from 14.05.2020 till 31.03.2021)"<br>*Any payment made by a-<br>→ <u>Purchaser</u> of goods or <u>recipient</u> of services<br>→ <u>Directly to an e-commerce participant</u> for the sale of goods or provision of services,<br>→ <u>facilitated by an e-commerce operator</u> ,<br>→ shall be <u>deemed to be the amount credited/paid</u> by the e-commerce operator to the e-commerce participant and<br>→ shall be included in the "Gross Amount of such sales/ services"<br>(In case Non-PAN, Rate = 5% as per Sec.206AA)<br><b>Note: GST indicated separately in the Invoice, it shall be excluded for the purpose of TDS</b> |
| No TDS to deduct            | If below conditions satisfy No TDS :-<br>1. E-Commerce Participant is <b>Individual or HUF</b> &<br>2. Gross amount of sale of goods/services does <b>not exceeds Rs. 5 lakhs</b> &<br>3. Such E-Commerce Participant has <b>furnished his PAN &amp; Aadhaar Card</b> to E-commerce Operator   |
| TDS under other Provisions  | If TDS is deducted u/s.194-O(or not deducted due to above conditions), it <b>cannot be deducted</b> under any other provisions of the Act.<br>However, it shall not apply to any amount received by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services given in above(Transaction column)   |
| Lower/ Nil TDS              | On submission of Form.13 within parameters of Sec.197 by E-Commerce Participant Lower or Nil TDS certificate will be obtained  |

### Examples for Better Understanding:

**Example 1:**

**Kalpesh Ltd; Rohan, Sumit & Attivo Ltd.(E-commerce Participants) supply goods in India through FlipKart(a America based website) owned by FlipKart Ltd. It wants to know tax to be deducted u/s. 194-O in the following different situations-**

|                    |  |
|--------------------|--|
| <b>Situation 1</b> | <b>During the F.Y 2020-21, KalpeshLtd sells goods of Rs.44 lakhs through FlipKart. FlipKartLtd transfers Rs.37.4 lakh(i.e gross sales excluding GST: Rs.44 lakh minus commission-15%) through RTGS on 31.03.2021</b>   |
| <b>Situation 2</b> | <b>The above payment is made by FlipKart in 3 installments- Rs.19.55 lakh on 01.01.2021, Rs.7.65 lakh on 01.03.2021 &amp; the balance of Rs.10.2 lakh is transferred to the account of Kalpesh Ltd.(In the Books of FlipKart Ltd.) on 31.03.2021(actual payment is made through RTGS on 18.05.2021).</b> |
| <b>Situation 3</b> | <b>In Situation 2, assume that E-commerce participant is notKalpeshLtd. but Kalpesh, an Individual.</b>  |

|                    |  |
|--------------------|--|
| <b>Situation 4</b> | <b>During the F.Y 2020-21, Rohan(an Individual) supplies services (aggregate value of which is Rs.4.5 lakhs) through FlipKart. Rohan has furnished his PAN to FlipKart Ltd.</b>  |
| <b>Situation 5</b> | <b>During the F.Y 2020-21, Sumit(an Individual) supplies goods (aggregate value of which is Rs.5 lakhs) through FlipKart Ltd. He has furnished his PAN to FlipKart Ltd.</b>  |
| <b>Situation 6</b> | <b>Attivo Ltd supplies goods in India through FlipKart. During the F.Y 2020-21, Attivo Ltd. sells goods of Rs.60 lakh through FlipKart out of which Rs.20 lakh is directly received by Attivo Ltd. &amp;Rs. 40 lakh is received first by FlipKart&amp; later on it is remitted to Attivo Ltd. on 31.03.2021. Commission of Attivo Ltd. in 2 cases is 15%. Attivo Ltd. gets the payment directly from the customers as follows-</b><br><b>A. First payment of Rs.18 lakh- It is received by Attivo Ltd. on 06.10.2020</b><br><b>B. Second payment of Rs.2 lakh- Received by Attivo Ltd. on 10.01.2021.</b><br><b>Amount of Rs.40 lakh is remitted by FlipKart Ltd.(after deducting 15% of Rs.60 lakh as commission) to Attivo Ltd. on 31.03.2021.</b> |

**Solution:**

Gross payment(before deducting commission) is subject to TDS u/s.194-O @1%(in case Non-PAN cases, TDS @5%). However, if there is any GST indicated separately in the Invoice, it shall be excluded for the purpose of TDS- similar to Service tax. Tax is deductible u/s.194-O in different situations as follows-

**Situation 1:**

TDS @1% on Rs.44 lakh(excluding GST) on 31.03.2021 to be paid.

**Situation 2:**

One has to find out gross payment pertaining to Rs.19.55 lakh, Rs.7.65 lakh & Rs.10.2 lakh(after excluding GST). In this situation, TDS as follows-

| Date of payment to E-commerce participant & Date of TDS | Net amount of Payment (Rs.) | Gross amount(i.e; Net Amount/0.85) | TDS (Rs.)     |
|---|-----------------------------|------------------------------------|---------------|
| 01.01.2021  | 19,55,000                   | 23,00,000                          | 23,000        |
| 01.03.2021  | 7,65,000                    | 9,00,000                           | 9,000         |
| 31.03.2021  | 10,20,000                   | 12,00,000                          | 12,000        |
| <b>Total</b>  | <b>37,40,000</b>            | <b>44,00,000</b>                   | <b>44,000</b> |

**Situation 3:**

E-Commerce Participant is Kalpesh, an Individual. However, Gross amount of sales through FlipKart Ltd. during the year exceeds Rs.5 lakhs. Consequently, Tax is deductible by FlipKart Ltd. as discussed in Situation 2.

**Situation 4:**

E-Commerce Participant is Rohan, an Individual. However, Gross amount of sales through FlipKart Ltd. during the year does not exceeds Rs.5 lakhs. Consequently, Tax is not deductible by FlipKart Ltd. u/s.194-O

**Situation 5:**

E-Commerce Participant is Sumit, an Individual. However, Gross amount of sales through FlipKart Ltd. during the year does not exceeds Rs.5 lakhs. Consequently, Tax is not deductible by FlipKart Ltd. u/s.194-O

**Situation 6:**

Even if the payment of Rs.20 lakh is received directly by Attivo Ltd., tax will be deducted by FlipKart Ltd. on the entire Rs.60 lakh (after deducting GST). Schedule for tax deduction u/s.194-O is as follows-

- ✓ Payment of Rs.18 lakh- It is received by Attivo Ltd. on 06.10.2020. Date of tax deduction by FlipKart Ltd. is 06.10.2020(amt of TDS is Rs.18,000, being 1% of Rs.18 lakh).
- ✓ Payment of Rs.2 lakh- It is received by Attivo Ltd. on 10.01.2021. Date of tax deduction by FlipKart Ltd. is 10.01.2020(amt of TDS is Rs.2,000, being 1% of Rs.2 lakh).
- ✓ Payment of Rs.40 lakh- Net amount of payment is Rs.31 lakh(i.e; Rs.40 lakh- commission which is 15% of Rs.60 lakh). Tax is deductible by FlipKart Ltd. on 31.03.2021 is Rs.40,000(being 1% of Rs.40 lakh).

**Example 2:**

**In the Example 2, the E-Commerce Participants are required to pay commission on sales to E-Commerce Operator. E-Commerce Participants want to know whether they have TDS liability u/s.194H or any other Section.**

**Solution:**

If tax is deducted u/s.194-O (or not deducted because E-Commerce participant is an Individual & his gross sales/services through an E-commerce Operator during the F.Y does not exceed Rs.5 lakh), then tax is not deductible under any other provision under the Act (incl. section 194H)

## Circular No. 17/2020

### **4.2 Applicability on payment gateway:**

4.2.1 In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-O twice i.e. once on e-main commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

4.2.2 In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the ecommerce operator under section 194-O of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on one lakh rupees, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

### **4.3 Applicability of on insurance agent or insurance aggregator:**

4.3.1 It has been represented that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. It has been represented that in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

4.3.2 In order to remove difficulty it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

### **4.4 Calculation of threshold for the financial year 2020-21.**

4.4.1. Since both section 194-O, and sub-section (1H) of section 206C, of the Act would come into effect from 1st October, 2020, it was requested to clarify how the various thresholds specified under these sections shall be computed and whether the tax is required to be deducted/collected in respect of amounts received before 1st October, 2020.

4.4.2 it hereby clarified that,-

- (i) Since the threshold of five lakh rupees for an individual/Hindu undivided family (being ecommerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual! Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 15th October, 2020.
- (ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 15th October 2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 15th October 2020 even if the sale was carried out before 15th October 2020.
- (iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 15th April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 15th October 2020, from such buyer.



## 23) Transfer Pricing

### Master File (Section 92D & Rule 10DA)

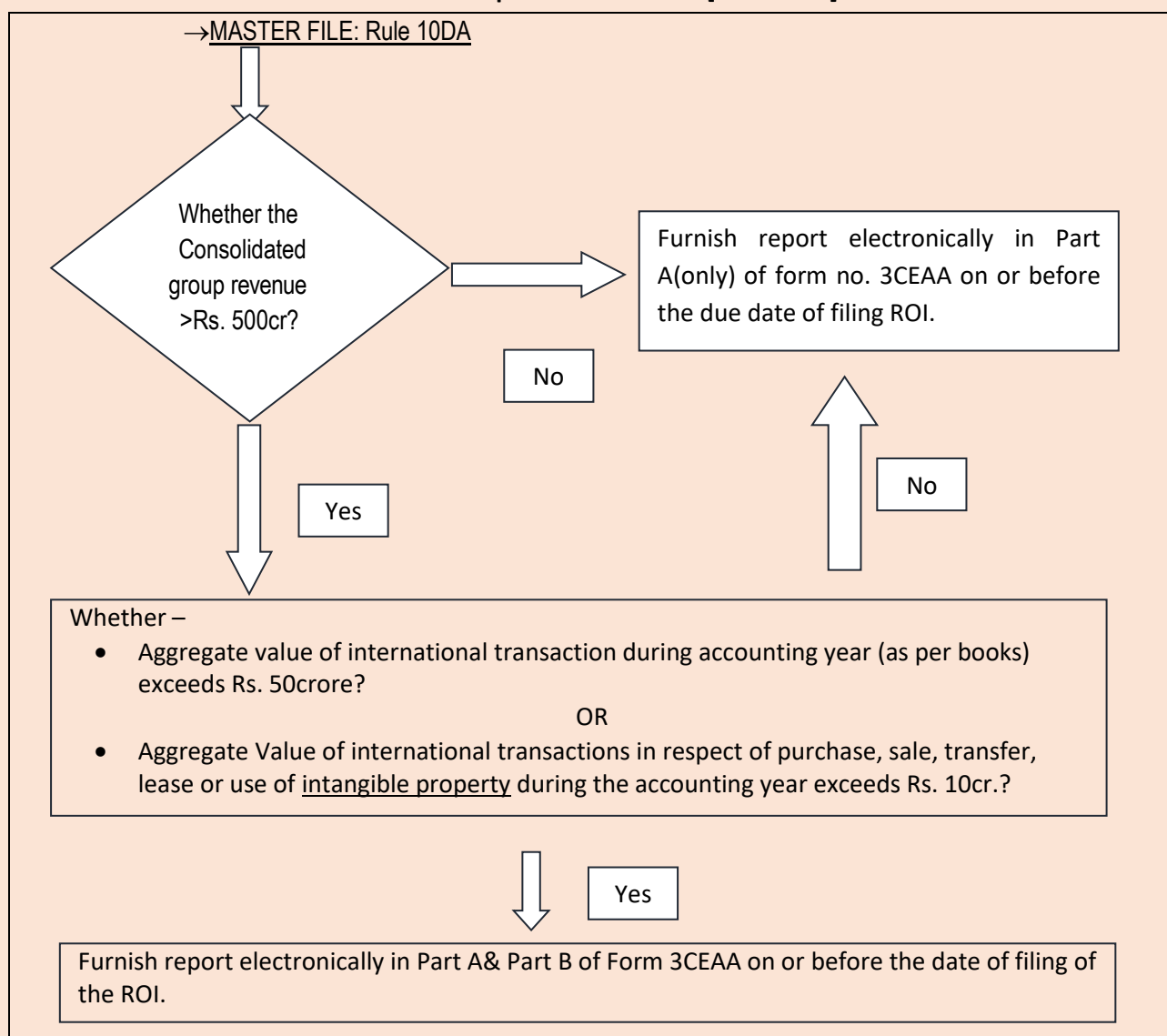
Overview of the MNE group's business, including:

- Nature of its global business operations
- Overall transfer pricing policies
- Global allocation of income and economic activity

In order to assist tax administrations in evaluating the presence of significant transfer pricing risk. The information shall not be restricted with particular country.

The CBDT has, vide notification, prescribed the following rules for maintaining & furnishing CBC Report by a constituent entity of an international group:

#### I. Information and documents to be kept and maintained [Rule 10DA]



#### **Amendment wide Notification no.03/2020-**

**Where there are more than one constituent entities resident in India of an international group, the Form No. 3CEAA may be furnished by any one constituent entity, if, —**

- the international group has designated such entity for this purpose; and**
- the information has been conveyed in Form No. 3CEAB to the Joint Commissioner referred to in sub-rule (1) of rule 10DB, in this behalf thirty days before the due date of furnishing the Form No. 3CEAA**

## Section 92E: Audit Report

Every person who enters into an International Transaction or specified Domestic Transactions during the previous year shall obtain Audit Report in Form 3CEB from Chartered Accountant.

**And the Report must be uploaded for A.Y .2021-22= 1 month prior to the due date of Submission of ROI i.e 31<sup>st</sup> October.**

## Section 94B: Thin Capitalisation

### Non-Applicability of Disallowances u/s 94B:

**If debt issued by a lender which is a PE in India of a non-resident, being a person engaged in the business of banking. [FA 2020]**



DS Comment

### Logic behind the Amendment of FA 2020

Representations have been received to carve out interest paid or payable in respect of debt issued by a PE of a non-resident in India, being a person engaged in the business of banking for the reason that as per the existing provisions a branch of the foreign company in India is a non-resident in India. Further, the definition of the AE in section 92A, inter alia, deems two enterprises to be AE, if during the previous year a loan advanced by one enterprise to the other enterprise is at 50% or more of the book value of the total assets of the other enterprise. Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.

## FUNDAMENTALS OF BEPS

### BEPS Action Plan 1 : Addressing the challenges of the digital economy

| OECD Recommendation | Provision incorporated in Indian Tax Laws   |
|---------------------|---|
| i                   | <p><b>Modifying existing Permanent Establishment (PE) rule to provide whether an enterprise engaged in fully de-materialized digital activities would constitute a PE if it maintained significant digital presence in another country's economy</b></p> <p><b>Equalisation Levy</b><br/>Chapter VIII of the Finance Act, 2016 provides for Equalisation levy@6% of the amount of consideration for specified services received or receivable by a Non-resident not having PE in India or providing services not effectively connected with PE in India, from:</p> <ul style="list-style-type: none"> <li>a resident in India who carries on business or profession or</li> <li>from a Non-resident having PE in India.</li> </ul>  |
| ii                  | <p><b>A virtual fixed place of business PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction &amp; carries on business through that website.</b></p> <p>The Resident or Non-resident having PE in India has to deduct Equalisation Levy@6% from consideration for specified services paid to Non-resident and remit the same to the Central Government within the prescribed time.</p> <p><i>The FA. 2020 has expanded the scope of equalisation levy by inserting new section 165A in the Finance Act, 2016 to include within the ambit of Chapter VIII thereto, consideration received or receivable for e-commerce supply or services made or provided or facilitated on or after 1.4.2020. Accordingly, on and from 1st April, 2020, equalisation levy@2% would be chargeable on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—</i></p> |
| iii                 | <p><b>Imposition of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider</b></p>   |
| iv                  | <p><b>Imposition of a Equalisation Levy on consideration for certain digital transactions received by a Non-</b></p> <p><i>(i) to a person resident in India; or</i><br/><i>(ii) to a non-resident in the following specified circumstances-</i></p>  |

|  |  |
|--|--|
| <p>resident from a resident or Non-resident having PE in the other contracting state</p> | <p>(a) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and<br/>                 (b) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India; or<br/>                 (iii) to a person who buys such goods or services or both using internet protocol address located in India</p> <p>Further, section 194-O, inserted by the Finance Act, 2020 w.e.f., 1.10.2020, provides that where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source @1% of the gross amount of such sales or services or both.</p> <p>In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rate of TDS u/s 194-O for the period upto 31.3.2021 has been reduced from 1% to 0.75% [Section 197B].</p> |
|--|--|

**BEPS Action Plan 3: Strengthen CFC rules**

| OECD Recommendation   | Provisions incorporated in the Income-tax Act, 1961  |
|---|--|
| <p>CFCs are foreign subsidiaries in tax havens in which the taxpayer has controlling interest. Since tax is generally levied on distributed dividend, tax in parent country could be avoided until the tax haven country actually paid dividend to the shareholders. The OECD regards CFC Rules as important in tackling BEPS and has made a series of best practice recommendations in relation to the building blocks of an effective CFC regime.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Definition of a CFC &amp; Control</p> <p>Rule to prevent or eliminate double taxation</p> <p>Rules for attributing CFC Income</p> </div> <div style="width: 45%;"> <p>CFC Exemptions &amp; Threshold requirement</p> <p>Building Blocks</p> <p>Definition of CFC Income</p> <p>Rules for computing CFC Income</p> </div> </div> | <p>There are no CFC Rules in the IT Act, 1961. However, Sec 115BBD has been inserted in IT Act, 1961 to encourage repatriation of profits by Indian Cos which have significant voting power in foreign Cos.</p> <div style="text-align: center;"> <p><b>Tax on dividend received by an Indian Co. from a Foreign Co.</b></p> <p>↓</p> <p><b>Does the Indian Co hold 26% or more in the nominal value of Equity share capital of the Foreign Co.?</b></p> <p>Yes   No</p> <div style="display: flex; justify-content: space-around;"> <div style="width: 45%;"> <p><b>Dividend is taxable @15% u/s 115BBD</b></p> <p>↓</p> <p><b>No deduction is allowable in computing dividend.</b></p> </div> <div style="width: 45%;"> <p><b>Dividend is taxable @25% or 30%, as the case may be, applicable to Indian Co.</b></p> <p>↓</p> <p><b>Interest exp. is allowed subject to a maximum of 20% of dividend income included in total Income.</b></p> </div> </div> <p>↓</p> <p><b>Deduction is allowed in respect of dividend received from foreign Co. subject to maximum of dividend distributed by Ind Co., on or before the due date i.e., the date one month prior to the date for furnishing the return of income</b></p> </div> |

## 24) Tax Deducted at Source

| Section   | Payer & Payee   | Time of Deduction                       | Rate   | Threshold  | Remarks  |
|---|---|---|--|--|--|
| PROFESSIONAL PAYMENTS   |   |   |  |  |  |
| 192: Salary   | <b>Payer=</b> Resident/NR Employer/ Any Person<br><b>Payee=</b> Employee  | On Payment                              | As per average rates applicable to individual  | Slab Rates   | <ul style="list-style-type: none"> <li>Employer needs to consider income from any other head and should not consider loss under any head other than House Property.</li> <li>If tax on non-monetary perquisites is borne by employer then tax shall not be deducted from salary to that extent. Such tax so borne by the employer will be exempt in the hands of the employee and will be deemed to be tax deducted at source</li> <li>TDS to be deducted = Tax payable on above income – TDS deducted on other income</li> <li style="background-color: red; color: black;">Tax burden on the employees getting ESOP has been reduced by deferring the tax payment by way of TDS by 5 years or till they leave the company or when they sell their shares whichever is earliest.</li> </ul>   |
| 194C: Payment to contractor/ sub-contractor   | <b>Payer=</b> All assessee, except Individuals / HUF/AOP/BOI whose Total Sales/ Turnover/ Gross Receipts doesn't exceeds Rs. 1 Crores (Business) or Rs. 50 Lakhs (Profession) during preceding F.Y.<br><br><b>Payee=</b> Resident | Credit or Payment, whichever is earlier | Existing Rate- Individual/HUF- 1%<br>Others- 2%<br>From 14/05/20 to 31/03/21 Individual/HUF- 0.75%<br>Others- 1.5% | Rs.30,000 for single contract & Rs. 1,00,000 for aggregate in a F.Y. (w.e.f. 01/06/16) | <ul style="list-style-type: none"> <li>➤ No TDS u/s 194C in the following cases:                             <ul style="list-style-type: none"> <li>Personal expenditure of Individual/HUF</li> <li>Contractor engaged in business of Plying, Hiring or Leasing goods carriages, where he owns 10 or less goods carriages at any time during the P.Y. &amp; furnishes a declaration to that effect along with PAN to the payer.</li> </ul> </li> <li>➤ Broadcaster pays production house for content as per their specification is liable to TDS u/s 194C.</li> <li>➤ Cold storage charges mainly for preserving the goods ∴, liable for TDS u/s 194C.</li> <li>➤ Seller of gas transport it to buyer &amp; ownership transfers on delivery is not a contract.</li> <li>➤ Definition of work includes catering services &amp; manufacturing activity as per specification of customer on material supplied by customer or its Associates.</li> </ul> |
| 194J: Payment of Fees for Professional, Technical services, Royalty, Non-compete fees.<br><span style="background-color: red; color: white; font-weight: bold;">Refer DS</span> |   | Credit or Payment, whichever is earlier | Existing Rate- 10%/2%**  | Rs. 30,000 p.a. separately for each item mentioned                                     | No TDS u/s 194J-<br>If sum is paid by Individual/ HUF towards professional Services exclusive for their personal purpose.<br>** TDS Rates u/s.194J are as under:   |
|   |   | Sr. No.                                 | Nature of Payments   | Rate (01.4.20-13/05/20)  | Rate (14.5.20-31/03/21)  |
|   |   | 1.                                      | Fees for Professional Services   | 10%  | 7.5%   |

| Comment at End of TDS Topic   |   |   |   |                                 | <table border="1"> <tr> <td>2.</td> <td>Fees for Technical Services (Being Professional Services)</td> <td>10%</td> <td>7.5%</td> </tr> <tr> <td>3.</td> <td>Fees for Technical Services (Not being Professional Services)</td> <td>2%</td> <td>1.5%</td> </tr> <tr> <td>4.</td> <td>Remuneration or fees or Commission payable to Directors of the Co.</td> <td>10%</td> <td>7.5%</td> </tr> <tr> <td>5.</td> <td>Royalty in the nature of consideration for Sale, Distribution or exhibition of Cinematographic films</td> <td>2%</td> <td>1.5%</td> </tr> <tr> <td>6.</td> <td>Royalty other than (5.)</td> <td>10%</td> <td>7.5%</td> </tr> <tr> <td>7.</td> <td>Non-Compete Fees</td> <td>10%</td> <td>7.5%</td> </tr> <tr> <td>8.</td> <td>Business of operation of call centre</td> <td>2%</td> <td>1.5%</td> </tr> </table> | 2. | Fees for Technical Services (Being Professional Services) | 10% | 7.5% | 3. | Fees for Technical Services (Not being Professional Services) | 2% | 1.5% | 4. | Remuneration or fees or Commission payable to Directors of the Co. | 10% | 7.5% | 5. | Royalty in the nature of consideration for Sale, Distribution or exhibition of Cinematographic films | 2% | 1.5% | 6. | Royalty other than (5.) | 10% | 7.5% | 7. | Non-Compete Fees | 10% | 7.5% | 8. | Business of operation of call centre | 2% | 1.5% |
|---|---|---|---|---------------------------------|---|----|---|-----|------|----|---|----|------|----|--|-----|------|----|--|----|------|----|-------------------------|-----|------|----|------------------|-----|------|----|--------------------------------------|----|------|
| 2.  | Fees for Technical Services (Being Professional Services)   | 10%                                     | 7.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 3.  | Fees for Technical Services (Not being Professional Services)   | 2%                                      | 1.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 4.  | Remuneration or fees or Commission payable to Directors of the Co.  | 10%                                     | 7.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 5.  | Royalty in the nature of consideration for Sale, Distribution or exhibition of Cinematographic films  | 2%                                      | 1.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 6.  | Royalty other than (5.)   | 10%                                     | 7.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 7.  | Non-Compete Fees  | 10%                                     | 7.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 8.  | Business of operation of call centre  | 2%                                      | 1.5%  |                                 |   |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 194H: Brokerage & Commission  |   | Credit or Payment, whichever is earlier | Existing Rate- 5%<br>From 14/05/20 to 31/03/21<br>Rate-3.75%  | Rs. 15,000 (w.e.f. 01/06/ 2016) | Transaction related to buying and selling of securities: No TDS on brokerage and commission on securities.  |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |
| 194M: Payment/ credit to a resident contractor or resident professional or payment/ credit by way of commission /brokerage. | <p><b>Payer=Individual or HUF-</b></p> <p>1) whose BOA are not required to be audited u/s 44AB(a)/(b) during preceding F.Y.] or Making Payment for services received for personal use.</p> <p>2) It may be noted that only individuals and HUFs (other than those who are required to deduct income-tax as per the provisions of section 194C or 194H or 194J) are required to deduct tax in respect of the above sums payable during the financial year to a</p> | Credit or Payment, whichever is earlier | Existing Rate= 5%.<br>From 14/05/20 to 31/03/21<br>Rate-3.75% | >Rs.50 Lakhs during year        | <p><b>W.e.f.01.09.2019:</b> As per inserted Section 194M, Tax is required to be deducted by an individual or HUF from payment made to contractor or professional in the following cases:</p> <p>a) Payment made for services received for personal use</p> <p>b) Payment made for services received for business or profession if payer is not subjected to tax audit.</p>  |    |   |     |      |    |   |    |      |    |  |     |      |    |  |    |      |    |                         |     |      |    |                  |     |      |    |                                      |    |      |

| resident.<br><b>Payee= Resident</b> |  |   |  |                                     |   |
|-------------------------------------|--|---|--|-------------------------------------|---|
| RENT                                |  |   |  |                                     |   |
| 194-I: Rent (Lease or Sub-lease)    | <b>Payer=</b> All assessee, except Individuals/HUF/AOP/BOI whose Total Sales/ Turnover/ Gross Receipts doesn't exceeds Rs. 1 Crores (Business) or Rs. 50 Lakhs (Profession) during preceding F.Y<br><b>Payee= Resident</b> | Credit or Payment, whichever is earlier   | 2% for Plant, machinery & Equipment<br>From 14/05/20 to 31/03/21<br>Rate-1.5%<br><br>10% for Land, Building, Furniture or fittings<br>From 14/05/20 to 31/03/21<br>Rate-7.5% | Rs. 2,40,000 p.a.                   | If: ❶ Rent paid to REIT, ❷ Declaration u/s 197A that no TDS to be deducted, ❸ Upfront one time charges or premium for lease not meant for adjusting annual rent paid, ❹ Landing & parking charges to airport authority by airline co. are not per se for use of land. ∴ charges are for service in connection with aircraft operation such as air traffic, ground safety services etc thus cannot be treated as rent to attract TDS u/s 194-I – [Japan Airlines Co./Singapore Airlines Ltd. (2015) (SC)/Jet Airways (Bom. HC)]. ❺ Rent paid to govt. is exempt u/s 196.<br>Eg. of S.194 I. <b>Applicability:</b> ❶ Space taken on rent to place advt. hoarding, however, rent paid for advt. hoarding is taxable u/s 194C, ❷ Amount paid to use passive infrastructure facility   |
| 194-IB: Rent on land or building    | <b>Payer=</b> Individual or HUF whose Total Sales/ Turnover/ Gross Receipts doesn't exceed Rs. 1 Crores (Business) or Rs. 50 Lakhs (Profession) during preceding F.Y<br><b>Payee= Resident</b>                             | Credit** or Payment, whichever is earlier | Existing Rate= 5%<br>From 14/05/20 to 31/03/21<br>Rate-3.75%   | >Rs. 50,000 p.m. (or part of month) | ➤ Tenant does not require to obtain TAN.<br>➤ If landlord does not furnish PAN then, section 206AA applies and tax would be deductible @ 20%. However, amount of TDS cannot exceed rent payable for the last month of PY or last month of tenancy<br>➤ Payment to govt. within 30 days from the end of the month in which tax is deducted.<br><b>**for the last month of the P.Y. or last month of the tenancy if the property is vacated during the year</b>   |
| INCOME ON SECURITIES                |  |   |  |                                     |   |
| 193: Interest on Securities         | <b>Payer=</b> Any person responsible to pay such interest<br><b>Payee= Resident</b>  | Credit or Payment, whichever is earlier   | Existing Rate- 10%<br>From 14/05/20 to 31/03/21<br>Rate-7.5%   | –                                   | <b>No TDS on interest payable on:</b><br>National Defence Bonds (1972) held by resident Individual – 4.25%; 4.25%/4.75% National Defence Loan payable to Individual (including non-resident); National Development Bonds; 7 years NSC (IVth issue); Certain notified debentures issued by any institution/authority/public sector co./co-op society; Gold bonds - 1977/1980; Securities of CG/SG [However, if interest payable on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018 exceed Rs. 10,000, then TDS applicable]; Debenture (of a Company in which Public substantially interested) interest payable to resident Individual/HUF, if it does not exceed Rs. 5,000 and is paid by Account payee cheque/draft/ECS; Interest payable to LIC/GIC/any other insurer; Interest on securities of a |

|   |  |  |   |   |  |
|---|--|--|---|---|--|
| <p>194A: Interest other than Interest on Securities</p> | <p><b>Payer=</b> All assessees, except Individuals/ HUF/AOP/BOI whose Total Sales/ Turnover/ Gross Receipts doesn't exceeds Rs. 1 Crores (Business) or Rs. 50 Lakhs (Profession) during preceding F.Y<br/><b>Payee=</b> Resident</p> | <p>Credit or Payment, whichever is earlier</p> | <p>Existing Rate- 10%<br/>From 14/05/20 to 31/03/21<br/>Rate-7.5%</p> | <p>Rs.40,000 [if payment made by Banking Co/ Co-op Society/ engaged in business of banking/ Post Office]<br/><br/>Rs. 50,000 [if payment made by Banking Co/ Co-op Society/ engaged in business of banking/ Post Office in case of resident senior citizen]<br/><br/>Rs.5,000 [if payment made by any other person]</p> | <p>company, if securities are: held in DEMAT form &amp; listed.<br/><b>No TDS, if:</b> ❶ Paid/credited to Banking Co./ Financial corporation established under Central, State, Provincial Act/LIC/UTI/Co-op society engaged in business of banking/such other institution, association, which CG may notify. ❷ Paid/credited by firm to its partner, ❸ Paid/credited by co-op society (other than Co-op Bank) to 'its members' or to other co-op society, ❹ Paid/credited in respect of deposits notified by CG, ❺ Payment of (and not by way of credit to account) interest on the compensation awarded by the Motor Accidents Claims Tribunal, where the amount does not exceed Rs. 50,000, ❻ Interest on deposits (other than Time Deposits*) with Bank, ❼ Paid in respect of-a) deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank &amp; b) deposit (other than time deposits made on or after 1.7.1995) with a co-operative society [other than cooperative society or bank referred to in (a)] engaged in carrying on the business of banking, ❽ Income on Zero Coupon Bonds, ❾ Interest paid/payable by SPV to Business trust [since exempt u/s 10(23FC)], ❿ CBDT has clarified that tax is not required to be deducted on interest paid by IFSC Banking Units (IBUs), on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons, ⓫ TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and after that against the PAN of legal heir.<br/>However, in respect of above point ❸ or ❼ following conditions is satisfied TDS will be liable-<br/>1) Total sales, gross receipts or turnover of the co-operative society &gt; Rs.50 crores during the FY immediately preceding the FY in which the int is credited or paid;<br/>AND<br/>2) the amount of interest, or the aggregate of the amounts of such interest, credited or paid, or is likely to be credited or paid, during the FY &gt; Rs.50,000 in case of payee being a senior citizen and Rs.40,000 in any other case.<br/><b>* Time deposits include Recurring Deposits (thus TDS applicable on interest from RD)</b></p> |
| <p>194: Dividend</p>                                    | <p><b>Payer=</b> Principal Officer of-<br/>(a) an Indian Co.; or<br/>(b) Co. which prescribed</p>  | <p>Before making any payment in Cash/</p>      | <p>Existing Rate- 10%</p>   | <p>-</p>  | <p><b>No TDS if</b><br/>1. Paid/credited to resident individual shareholder- Paid by mode other than Cash or Amount doesn't exceeds Rs.5,000 and</p>   |

|                                     |  |  |  |              |   |
|-------------------------------------|--|--|--|--------------|---|
|                                     | arrangement for declaration & payment of dividend u/s 2(22) within India | cheque/ Warrant, or before any distribution or payment to shareholder. | From 14/05/20 to 31/03/21<br>Rate-7.5%                           |              | 2. Paid/credited to LIC/GIC/any other insurer<br>3. Dividend referred to in section 115-O (i.e. on which DDT is paid).<br>Even TDS on 'deemed dividend' u/s 2(22)(e) will not be attracted.   |
| 194K<br>Income from Units [FA 2020] | <u>Payer=</u> Any person<br><u>Payee=</u> Resident                       | Credit or Payment, whichever is earlier                                | Existing Rate= 10%<br><br>From 14/05/20 to 31/03/21<br>Rate-7.5% | Rs.5,000 p.a | <u>Any income in respect of—</u><br>(a) units of a Mutual Fund specified u/s 10(23D); or<br>(b) units from the Administrator of the specified undertaking; or<br>(c) units from the specified company<br>N.A.- Income is credited or paid before 01/04/2020 of the nature of Capital Gains. |

CASUAL INCOME

|  |   |         |  |                             |  |
|--|---|---------|--|-----------------------------|--|
| 194B: Winnings from Lottery/ Crossword Puzzles | <u>Payer=</u> Any Person<br><u>Payee=</u> Any Person  | Payment | Resident- 30%<br>Non-resident- 30%(+)SC (+)HEC (u/s 115BB) | Rs.10,000 (per payment)     | ❶ If winnings are wholly in kind, or partly in cash and partly in kind, but the cash is not sufficient to meet the TDS liability in respect of the whole winnings, then, the payer shall release the prize only if either- a) He has collected the amount equivalent to TDS amount from the payee OR<br>b) He insists the payee to make the TDS payment on his own and submit the proof to him.;<br>Otherwise, payer himself will be liable to pay TDS from his own pocket. ❷ Amount accruing on lotteries lying unsold with lottery agent shall be considered as winnings from lottery and Section 194B shall be applicable, irrespective of the head under which the income is taxable. [Manjoo & Co. (2011) Ker.HC] |
| 194BB: Winnings from Horse Races               | <u>Payer=</u> Licensed Book Maker/ Person holding a license for betting/ wagering/ horse racing in a race course granted by Govt.<br><u>Payee=</u> Any Person | Payment | Resident-30%<br>Non-resident- 30%(+)SC (+)EC (u/s.115BB)   | Rs. 10,000 (w.e.f. 01/6/16) | —  |

REAL ESTATE TRANSACTIONS

|   |  |   |  |              |   |
|---|--|---|--|--------------|---|
| 194-IA: Transfer of Immovable Property other than Agricultural Rural Land | <u>Payer=</u> Any Person<br><u>Payee=</u> Resident | Credit or Payment, whichever is earlier | Existing Rate= 1%<br><br>From 14/05/20 to 31/03/21<br>Rate-0.75% | <Rs.50 Lakhs | <ul style="list-style-type: none"> <li>TDS u/s 194-IA is attracted when amount of sale consideration including all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property (wef. 01.09.2019) (not FMV or stamp duty value of the property) per property is Rs. 50,00,000 or more.</li> <li><b>No TDS</b>, if the immovable property is owned by 2 or more individuals, the value of whose individual share is below Rs. 50 Lakhs each.</li> </ul> <b>No requirement to obtain TAN</b> to the person required to deduct tax in accordance with the |
|---|--|---|--|--------------|---|



|   |  |   |   |                    |   |
|---|--|---|---|--------------------|---|
| <b>SECURITIES/ LIC SALE OR MATURITY PROCEEDS</b>  |  |   |   |                    |   |
| 194-IC: Cash consideration on transfer of immovable property under JDA referred to u/s 45(5A) | <b>Payer=</b> Any Person<br><b>Payee=</b> Resident Individual or HUF | Credit or Payment, whichever is earlier | Existing Rate= 10%<br><b>From 14/05/20 to 31/03/21 Rate-7.5%</b>  | ---                | provision of section 194-IA.<br>➤ It does not include consideration in kind.<br>➤ Transfer of immovable property being land or building or both.<br>➤ Although tax would be deducted in the year of receipt of cash consideration. However, credit of TDS will be given in the year in which such capital gain is offered to tax u/s 45(5A) i.e. in the year of receipt of completion certificate.<br>If the recipient does not have PAN, higher rate of tax @ 20% u/s 206AA shall apply. |
| 194LA: Compensation/ Enhanced Compensation on compulsory acquisition of immovable property    | <b>Payer=</b> Any Person<br><b>Payee=</b> Resident                   | Payment                                 | Existing Rate= 10%<br><b>From 14/05/20 to 31/03/21 Rate-7.5%</b>  | Rs.2.5 Lakhs p.a.  | ➤ No TDS u/s 194LA, if the impugned immovable property is an 'agricultural land' as capital gains arising on compulsory acquisition of an 'agricultural land in urban area' is exempt u/s 10(37).<br>➤ No TDS if such award is exempt from income tax as per Right to fair compensation Act.<br>➤ Liability to deduct <b>TDS on compensation as well as interest</b> arises only on the date of payment, irrespective of the date of acquisition.   |
| 194DA: Any Sum under Life Insurance Policy  | <b>Payer=</b> Insurance Companies<br><b>Payee=</b> Resident          | Payment                                 | 5% on the amount of income comprised therein i.e., after deducting the amount of insurance premium paid by the resident assessee from the total sum received.<br>(w.e.f. 01/09/19)<br><b>From 14/05/20 to 31/03/21 Rate-3.75%</b> | <Rs. 1,00,000 p.a. | <ul style="list-style-type: none"> <li>• <b>NO TDS</b>, if maturity proceeds of a LIC including bonus is exempt u/s 10(10D).</li> <li>• <b>No TDS</b>, if declaration is given u/s 197A.</li> <li>• As Sec 194DA, Right to receive sum from insurance policy is a capital asset within the meaning of section 2(14) and any income or losses arising on its transfer shall be chargeable to tax under the head "Capital Gains".</li> </ul>  |
| 194EE: Payments under NSS   | <b>Payer=</b> Any Person<br><b>Payee=</b> Any person                 | Payment                                 | Existing Rate- 10%<br><b>From 14/05/20 to 31/03/21 Rate-7.5%</b>  | Rs. 2,500 p.a.     | NO TDS, if payment is made to the legal heirs/representative of deceased assessee.  |

|   |   |  |  |   |   |
|---|---|--|--|---|---|
| 194F:<br>Repurchase<br>of 80CCB<br>Units  | <b>Payer=</b> Mutual<br>Fund or UTI<br><b>Payee=</b> Any person   | Payment  | Existing Rate- 20%<br>From 14/05/20 to<br>31/03/21 Rate-<br>15%  | -   | --  |
| <b>OTHER COMMISSION</b>   |   |  |  |   |   |
| 194D:<br>Insurance<br>Commission  | <b>Payer=</b> Any Person<br><b>Payee=</b> Resident  | Credit or<br>Payment,<br>whichever is<br>earlier | Existing Rate- 5%<br>From 14/05/20 to<br>31/03/21<br>Rate-3.75%  | Rs. 15,000<br>p.a.<br>(w.e.f.<br>01/6/16) | <b>No TDS</b> , if declaration is given u/s 197A in Form 15G/ 15H.  |
| 194G:<br>Commis-<br>sion, etc. on<br>Sale of<br>Lottery<br>Tickets                    | <b>Payer=</b> Any person<br>being Stockist,<br>Distributor, etc. of<br>Lottery Ticket<br><b>Payee=</b> Any person   | Credit or<br>Payment,<br>whichever is<br>earlier | Existing Rate- 5%<br>From 14/05/20 to<br>31/03/21<br>Rate-3.75%  | Rs. 15,000<br>(w.e.f.<br>01/06/16)        | Discount given on purchase of lottery is NOT considered as commission.  |
| <b>SURROGATE TAXATION</b>   |   |  |  |   |   |
| 194LBA:<br>Distributed<br>Income<br>referred u/s<br>115UA<br>[10(23FC)/10<br>(23FCA)] | <b>Payer=</b> Business<br>Trust including<br>Real Estate<br>Investment Trust<br>(REIT)<br><b>Payee=</b> Unit holder | Credit or<br>Payment,<br>whichever is<br>earlier | Resident – 10%<br>From 14/05/20 to<br>31/03/21<br>Rate-7.5%<br>Non-resident* –<br>Dividend Inc**-<br>10% Interest Inc-<br>5% | ---                                       | *If the rental income of REIT is distributed to a NR unit holder (other than a company) or foreign company, tax shall be deducted at the rates in force.<br><b>**No TDS liability, If the SPV from whom dividend is received has not exercised the option u/s 115BAA.</b>                                     |
| 194LBB:<br>Distributed<br>Income<br>referred u/s<br>115UB                             | <b>Payer=</b> Alternate<br>Investment Fund<br>(AIF)<br><b>Payee=</b> Unit holder                                    | Credit or<br>Payment,<br>whichever is<br>earlier | RNR- 10%<br>From 14/05/20 to<br>31/03/21<br>Rate-7.5%<br>Non-Corp NR or<br>Foreign Co.: Rates<br>in force                    | ---                                       | 1) Tax u/s 194LBB is deductible on income referred to in expl. 1 to s.115UB, other than that proportion of the income of a nature referred to in sec 10(23FBB)<br>2) Where the payee is a non-corporate NR or a foreign company, no TDS in respect of any income that is not chargeable to tax under the Act. |
| 194LBC:<br>Investor<br>(resident)   | <b>Payer=</b> Person<br>responsible for<br>making payment   | Credit or<br>payment<br>whichever is             | 1. Individual/ HUF<br>– 25%.<br>From 14/05/20 to   | ---                                       | ---   |

|   |   |   |   |     |   |
|---|---|---|---|-----|---|
| income in respect of investment from securitization trust specified u/s 115TCA              | <b>Payee=</b> Unit holder   | earlier                                 | 31/03/21<br>Rate-18.75%<br>2. Other persons – 30%.<br>From 14/05/20 to 31/03/21<br>Rate-22.5%<br>3. Non-resident – rates in force |     |   |
| <b>INTEREST INCOME OF NON RESIDENT IN SPECIAL CASES</b>                                     |   |   |   |     |   |
| 194LB: Income by way of Interest payable by Infrastructure Debt fund                        | <b>Payer=</b> Infrastructure Debt Fund referred u/s 10(47) of the Act.<br><b>Payee=</b> 1. Non-resident (not being Company)<br>2. Foreign Company | Credit or Payment, whichever is earlier | 5% (+) SC (+) EC  | --- | TDS deduction would be subject to the provisions of DTAA.   |
| 194LC   | <b>Payer=</b> Indian Company or Business trust<br><b>Payee=</b> NR (not being Company)<br>OR Foreign Company                                      | Credit or Payment, whichever is earlier | 5%*/4%** (+) SC (+) EC  | --- | * In respect of money borrowed in foreign currency from a source outside India- under a loan agreement between 1.7.2012 and 30.6.2023 or by way of issue of long term bonds (including long term infrastructure bond) between 1.10.2004 and 30.6.2023 as approved by CG. And In respect of monies borrowed from sources outside India by way of rupee denominated bond before 1.7.2023.<br>** In respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any IFSC. |
| <b>NON RESIDENT SPORTSPERSON</b>  |   |   |   |     |   |
| 194E: Payments made to NON-RESIDENT Sports-man/ Entertainer/ Sports Association u/s 115BBA* | <b>Payer=</b> Any Person<br><b>Payee=</b> NON-RESIDENT Sportsman or Entertainer or Sports Association   | Credit or Payment, whichever is earlier | 20%(+)SC (+)HEC   | --- | *Incomes Covered:<br><b>(A) Sportsmen (Including Athlete)</b> <ul style="list-style-type: none"> <li>Participation in any game in India, except card game of gambling etc.</li> <li>Contribution of articles in Newspapers, Magazines or Journals</li> <li>Advertisement</li> </ul> (income shall be subject to provision TDS u/s 195)<br><b>(B) Entertainer</b> <ul style="list-style-type: none"> <li>Performance in India</li> </ul><br><b>(C) Sports Association</b> <ul style="list-style-type: none"> <li>Amount guaranteed to such association in relation to any game/sport played in India</li> </ul>  |

**OTHER INCOME OF NON-RESIDENT**

|  |   |   |  |            |  |
|--|---|---|--|------------|--|
| <p><b>195:</b><br/>Payments (other than interest referred to in Sections 194LB/LC/LD and other than Salary) to Non-residents</p> | <p><b>Payer=</b> Any Person<br/><b>Payee=</b> NR (not being Company) OR Foreign Company</p> | <p>Credit or Payment, whichever is earlier<br/>[In case interest paid by Govt./ Public sector Bank/Public Financial Inst. At the time of Payment]</p> | <p>As per rates in force i.e. Either<br/>a. The rate prescribed in the relevant Finance Act (+) SC(+)/HEC OR<br/>b. At the rate prescribed in the relevant DTAA u/s 90/90A which-ever is more beneficial to the non-resident payee</p> | <p>---</p> | <ul style="list-style-type: none"> <li>Where the “Person responsible for making payment to a foreign company/ NR” (i.e., the payer himself or if the payer is the company then, company including its principal officer) to NR considers that whole of such sum not taxable in case of the recipient he may make an application to A.O. to determine the appropriate proportion of amount taxable to recipient. Applicable from 01st Nov, 2019: CBDT shall prescribe the form and manner (electronic process) through which the payer can file an application to obtain the certificate for lower or nil rate of TDS and upon such determination, TDS only on that proportion of amount so chargeable.</li> <li>NR payee may make application to A.O. to grant him certificate authorizing him to receive payment without TDS.<br/>[If such certificate is granted, NR payee will be entitled to receive payment without TDS]</li> <li>The payer shall furnish form 15CA/15CB for payment made u/s 195, irrespective whether or not such payment is chargeable to tax in India.</li> </ul> |
|--|---|---|--|------------|--|

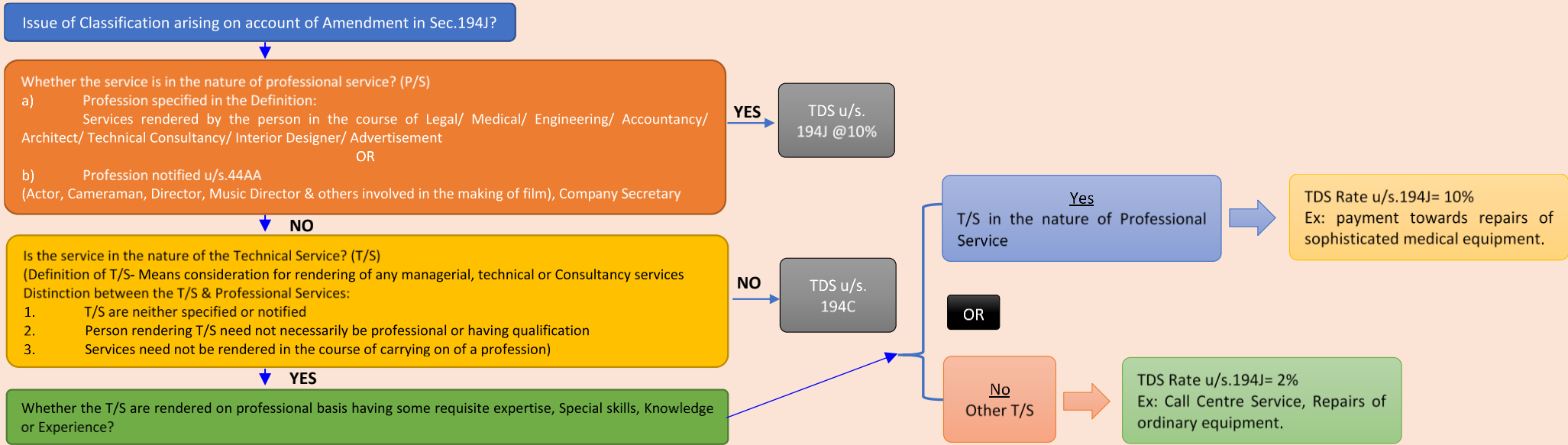
**SECTION 194N**

| <p><b>194N:</b><br/>Payment from one or more accounts to an account holder in cash by Deductor</p> | <p><b>Obligation on -</b><br/>Banking Company or Co-op. Bank or Post office.<br/><br/><b>Recipient -</b>Any Person</p> | <p>This deduction is to be made at the time of payment of such sum.</p> | <p>2% of Amount withdrawn*</p> | <p>&gt;Rs.1 Crore*<br/>From Single Bank<br/>{When the payment in cash exceeds the threshold of Rs. 1 crore, TDS on ENTIRE amount}</p> | <p>*w.e.f. 01.07.2020 In case the recipient has not filed ROI for ALL of 3 PY preceding the PY in which payment is made, modification as below-</p> <table border="1" data-bbox="1187 726 2139 829"> <thead> <tr> <th>Threshold</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>&gt;Rs.20 lakhs- Rs.1 Crore</td> <td>2%</td> </tr> <tr> <td>&gt;Rs.1 Crore</td> <td>5%</td> </tr> </tbody> </table> <p>N.A- Tax shall be deducted if amount is withdrawn from the bank or post office by following recipients:<br/>a) Central or State Government; b) Banks; c) Co-op. Banks; d) Post Office; e) Banking correspondents; f) Other persons notified by the Govt. in consultation with the RBI.<br/><i>The tax deducted under Sec 194N shall not be deemed to be income received for computing income of recipient (Amendment of Sec 198).</i></p> | Threshold | Rate | >Rs.20 lakhs- Rs.1 Crore | 2% | >Rs.1 Crore | 5% |
|--|--|---|--------------------------------|---|---|-----------|------|--------------------------|----|-------------|----|
| Threshold  | Rate   |   |                                |   |   |           |      |                          |    |             |    |
| >Rs.20 lakhs- Rs.1 Crore   | 2%   |   |                                |   |   |           |      |                          |    |             |    |
| >Rs.1 Crore  | 5%   |   |                                |   |   |           |      |                          |    |             |    |

**OTHER MISCELLANEOUS PROVISIONS**

**Exemption if:** ① Payee is Central/ state govt./ statutory corporation/ RBI/ Mutual fund (section 196); ② On application of payee to AO for lower/ no TDS (section 197), ③ U/s 194 or 194EE Resident payee furnishes Form 15G/H to payer, ④ U/s 192A/ 193/ 194A/ 194DA/ 194 I payee (≠ Co./ firm) furnishes Form 15G/H to payer, ⑤ GST paid to resident (No TDS on 'GST' on services if indicated separately). TDS to be deposited within 7 days from the end of the month in which tax is deductible (30 days in case of u/s 194 IA/IB/M).  
U/s 206AA if payee doesn't furnish PAN then, TDS rate is higher of: ① rate in force, ② rate as per Act or ③ 20% (N.A. if: TDS is u/s 194 LC & 194 LD); In case of non-furnishing of PAN u/s 192A then TDS rate at MMR.  
N.A. to NR or foreign co. for paying interest or royalty or fees for technical service or for transfer of capital asset if: Name, email ID, contact no., address, Tax residency certificate, Tax identification no. in country of residence.  
Sec 244A(1B): Interest on Refund to deductor-0.5% per month. From the date (a) claim of refund made (b) refund arises on account of order of CIT(A), ITAT, HC, SC. To the date of refund is granted.

**DS Comment: Analysis of Amendment w.r.t Sec.194J**



## 25) Tax Collected at Source

| SECTION  | BUYER & SELLER   | TIME OF DEDUCTION                        | RATE  | THRESHOLD        | REMARKS   |                           |                           |
|--|--|--|---|------------------|---|---------------------------|---------------------------|
| 206C(1):<br>Specific goods such as; Alcoholic liquor, forest produce, scrap                            | Seller= Includes: <input checked="" type="checkbox"/> Central and state govt., <input checked="" type="checkbox"/> Statutory corporation, <input checked="" type="checkbox"/> Company, <input checked="" type="checkbox"/> Firm, <input checked="" type="checkbox"/> Cooperative society, <input checked="" type="checkbox"/> Individuals/HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business or Rs.50 lakh in case of profession during the FY immediately<br>Buyer= A person obtains goods or right to receive such goods by way of any sale, auction, tender or otherwise but it excludes: <input checked="" type="checkbox"/> Public sector company, <input checked="" type="checkbox"/> Central or state govt., <input checked="" type="checkbox"/> Embassy/ high commission etc. or trade representation of foreign state, <input checked="" type="checkbox"/> Club, <input checked="" type="checkbox"/> Buyer purchasing goods for personal consumption from retail seller | Debit or Receipt<br>Whichever is Earlier | --  | --               | Nature of Goods   | From 01/04/20 to 13/05/20 | From 14/05/20 to 31/03/21 |
|  |  |  |   |                  | Alcoholic Liquor for Human consumption  | 1.0                       | 1.0                       |
|  |  |  |   |                  | Tendu Leaves(Tobacco Leaves)  | 5.0                       | 3.75                      |
|  |  |  |   |                  | Timber obtained under a forest lease  | 2.5                       | 1.875                     |
|  |  |  |   |                  | Timber obtained by any other mode   | 2.5                       | 1.875                     |
|  |  |  |   |                  | Any other forest produce not being timber or tendu leaves   | 2.5                       | 1.875                     |
|  |  |  |   |                  | Scrap   | 1.0                       | 0.75                      |
|  |  |  |   |                  | Minerals being coal or Lignite or iron ore  | 1.0                       | 0.75                      |
| 206C(1C):<br>Specific services such as; Parking Lot, Toll Plaza, Mining & Quarrying                    | Embassy/ high commission etc. or trade representation of foreign state, <input checked="" type="checkbox"/> Club, <input checked="" type="checkbox"/> Buyer purchasing goods for personal consumption from retail seller   | Time of Receipt                          | --  | --               | Nature of Services  | From 01/04/20 to 13/05/20 | From 14/05/20 to 31/03/21 |
|  |  |  |   |                  | Parking Lot, Toll Plaza, Mining & Quarrying (does not include mineral oil, petroleum and natural gas)   | 2.0                       | 1.5                       |
| 206C(1F):<br>Sale of Motor Vehicle   | Buyer purchasing goods for personal consumption from retail seller   | Time of Receipt                          | Existing Rate- 1%<br>From 14/05/20 to 31/03/21<br>Rate-0.75%  | >Rs.10 lakhs     |   |                           |                           |
| 206C(1G)(a)<br>1) Receipt for remittance under LRS out of India for a buyer in respect of tour program | <b>Obligation on -</b><br>An Authorised Dealer,<br>• who receives an amount,<br>• for remittance out of India from a buyer, being a person remitting   | Credit or Payment, whichever is earlier  | TPP Remittance= 5%(10% in Non- PAN cases)<br>{In respect of remittance in TPP arises from Re.1}<br>Other Remittance = | > Rs.7 lakhs p.a | For other than TPP remittance if the buyer arranges for Foreign Currency from more than AD and with each AD the threshold doesn't exceed Rs. 7lakhs then no TCS.<br><br>** Above provisions of Sec. 206C(1G) shall not apply if the buyer is,—<br>i) liable to deduct tax at source under any other provision of this Act and has deducted such amount; |                           |                           |

package (TPP Remittance)  
 2) Receipt for remittance under LRS out of India for a buyer in respect of a purpose other than tour program package (other remittance) if the remittance is Rs. 7 lakhs or more (w.e.f. 01/10/20)

such amount out of India under the Liberalised Remittance Scheme of the RBI Banking Company or Co-op. Bank or Post office.  
**Recipient** -Any Person\*\*

5%(10% in Non- PAN cases) of the amt more than Rs.7 lakhs {The obligation of TCS will arise if amount paid exceeds Rs.7 lakhs} Remittance out of loan obtained from any Financial Institution defined in sec.80E for pursuing education, if the remittance is Rs.7 lakhs or more = 0.5%(5% in Non- PAN cases) {The obligation of TCS will arise if amount paid exceeds Rs.7 lakhs}

ii) the CG, a SG, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation of section 10(20) or any other person as the CG may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

- Example:**  
**Vipro Ltd. and Happy Ltd want to know their TCS obligation under section 206C(1G) in the cases given below-**
- Mr. Sumeet takes an education loan from Citi Bank for his son's MBA course in Haward University. Out of the sanctioned loan, Rs 48 lakh is remitted by Mr. Sumeet through Vipro Ltd. (an authorised agent) on December 20, 2020**
  - Mr. Prashant's son wants to complete his PhD from the London School of Economics. Total cost of education including boarding and lodging) is Rs. 1.25 crore. Y takes a loan of Rs. 75 lakhs from Bank of Baroda and the balance amount is financed out of his past savings. On March 1, 2021, he remits Rs.1 crore through Happy Ltd. (an authorised agent) as follows -**
    - Rs. 45 lakhs is remitted out of loan sanctioned by Bank of Baroda; and**
    - Rs. 35 lakhs is remitted out of past savings of Mr. Prashant.**

- Solution:**
- Vipro Construction Ltd will collect tax at source at the rate of 0.5% of Rs 41 lakhs(48-7) within the parameters of section 206C(1G)
  - Happy Ltd. will collect tax at source under section 206C(1G) as follows –

| Particular  | Rs.             |
|---|-----------------|
| Remittance of Rs. 45 lakhs out of education loan (0.5%* of Rs. 38,00,000)                 | 19,000          |
| Remittance of Rs. 35 lakhs out of sources other than education loan (5% of Rs. 28,00,000) | 1,40,000        |
| <b>Total</b>  | <b>1,59,000</b> |

\* If the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education.

**206C(1G)(b)**

**Obligation on -**

Credit or

5% of such amount

\*\* Above provisions of Sec. 206C(1G) shall not apply if the buyer is,—

**Sale of overseas tour program package (Sale of OTPP)**

Seller of an overseas tour program package\*,

- who receives any amount from a buyer,
- being the person who purchases such package.

\*any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.  
**Recipient** - Any Person\*\*

Payment, whichever is earlier

{TCS is collectible from Re.1}

- i) liable to deduct tax at source under any other provision of this Act and has deducted such amount;
- ii) the CG, a SG, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation of section 10(20) or any other person as the CG may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

**Note:**

- 1) Seller need not be engaged in selling only OTPP.
- 2) If seller provides certain services like travel, and/or hotel booking not as a tour package, it cannot be construed as OTPP.
- 3) Purpose of the tour could be business or non-business.

**Example:-**

*Tripps Ltd. offers overseas tour programme packages to residents of Goa. Value of such package depends upon whether the buyer wants only accommodation or accommodation and air travelling/local travelling outside India. All the packages offered by Tripps Ltd. can be grouped under different categories (ranging from Rs. 2 lakh to Rs. 7.5 lakh per person). Tripps Ltd. wants to know TCS provisions on this point under section 206C(1G)(b). Is there any threshold limit? What happens if the buyer is a company and it deducts TDS under section 194C/194J?*

**Solution:**

There is no threshold limit under section 206C(1G)(b), Consequently, tax is collected by Tripps Ltd. on each and every transaction at the rate of 5% at the time of receipt of money from buyers of the packages. In non-PAN Aadhaar cases the rate shall be 10%. If, however, tax is deductible (and actually deducted) by the buyer of an overseas package (or by the remitter under LSR Scheme of RBI) under any provision of the Act, TCS provisions of section 206C(1G) are not applicable in the case of such buyer/remitter.

**206C(1H) Sale of any goods other than the goods being exported out of India or goods covered in Section**

**Obligation on - Seller\***  
 \*Person-

- whose total sales, gross receipts or turnover from the business carried on by

Receipt of such amount

0.1% of the sale consideration exceeding Rs.50 lakhs  
 [0.075%

Rs.50 lakhs {Unlike the other provisions, the collection is to be made at the

**Not Applicable:**

If the buyer is liable to deduct TDS under any other provisions.  
 \*\*\*"Buyer" means a person who purchases any goods, but does not include,—

- i) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the



**206C(1)/(1F)/(1G)  
(w.e.f. 01/10/20)**

him exceed Rs.10 crores during the FY immediately preceding the FY in which the sale of goods is carried out,

- not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

**Recipient - Buyer\*\***

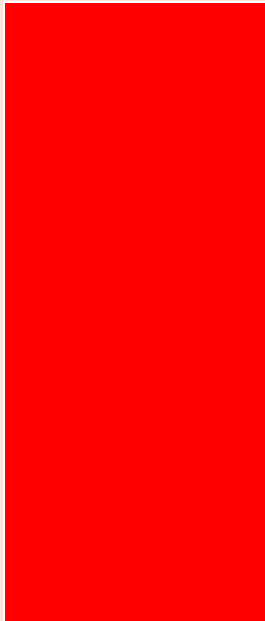
upto31/03/21]

time of receipt of the consideration for sale of goods. The Tax needs to be collected on sale consideration exceeding Rs. 50 lakhs.}

- ii) trade representation of a foreign State; or a local authority as defined in the Explanation to section 10(20) ; or
- iii) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

**Notes:**

- 1) A seller who has received Rs. 1 crore before 1st October, 2020 from a particular buyer and receives Rs. 5 lakhs after 1st October, 2020 would be required to collect tax on Rs. 5 lakhs only and not on Rs.55 lakhs [i.e Rs.1.05 crore - Rs.50 lakhs (threshold)] by including the amount received before 1st October, 2020.
- 2) It may be noted that this TCS applies only in cases where receipt of sale consideration exceeds Rs. 50 lakhs in a financial year. As the threshold is based on the yearly receipt, it may be noted that only for the purpose of calculation of this threshold of Rs. 50 lakhs, the receipt from the beginning of the financial year i.e. from 1st April, 2020 shall be taken into account. For example, in the above illustration, the seller has to collect tax on receipt of Rs.5 lakhs after 1st October, 2020 because the receipts from 1st April, 2020 i.e. Rs.1.05 crore exceeded the specified threshold of Rs.50 lakhs.
- 3) It may also be noted that this TCS shall be applicable only on the receipt exceeding Rs.50 lakhs by a seller from a particular buyer.
- 4) **Applicability to sale of motor vehicle:**
  - (i) Receipt of sale consideration from a dealer would be subjected to TCS u/s.206C(1H) of the Act, if such sales are not subjected to TCS u/s. 206C(1F) of the Act.
  - (ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS u/s. 206C(1H) of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.
  - (iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh



|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  |  |
|--|--|--|--|--|

rupees would not be subjected to TCS u/s. 206C(1H) of the Act if such sales are subjected to TCS u/s.206C(1F) of the Act,

5) It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax u/s.206C(1H) of the Act since the collection is made with reference to receipt of amount of sale consideration.

6) It is provided that the provisions of sec.206C(1H) of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

**Example:**  
To illustrate, a seller is having turnover in excess of Rs.10 crores in FY 2019-20; sells to buyer Mr.X goods worth Rs.55 lakhs, & sells to another buyer Mr. Y goods worth Rs.45 lakhs; the seller should collect tax from Mr. X (as the aggregate sale exceeds the specified threshold of Rs.50 lakhs); but, it will not be obliged to collect tax from Mr. Y (as the value of aggregate sale in the PY 2020-21 does not exceed the specified threshold of Rs.50 lakhs).

**EXEMPTIONS**

Proviso to section 206C: Seller may not deduct TCS if:-Buyer furnish CA certificate in respect of: ROI filed u/s 139, taken into a/c above sum to computing total income and paid tax thereon.

**COMPLIANCE PROVISIONS**

1. TCS to be deposited within 7 days from the last day of the month in which collection is made.
2. Interest @ 1% per month or part of the month: From the date on which such tax was deductible To the date on which the tax was actually paid.
3. If seller fails to collect TCS has to pay from his own pocket.
4. Collectee has to furnish his PAN else, TCS deducted at: HIGHER of: ① Twice the rate or, ② 5 %. This shall not apply to NR not having PE in India.

## ABOUT THE AUTHOR

CA. Durgesh Singh has overall 19 years teaching experience at CA Final for Direct Taxes. He is immensely popular with students for his teaching skills on the subject. With a big four background, he is currently a partner in a large CA Firm with an expertise in Corporate and International Taxation. He believes in the mantra that “if you know why, you know how”. He is known for conceptual teaching along with problem solving in class for better presentation of answers in exams. At the same time he summarises the entire subject through charts for last day revision and preparing for the exam day through mock tests. His students have been All India Rank holders and best paper awardees. His students are preferred in Big Four as his teaching is more contemporary, suited to the present dynamic scenario. He is the only teacher of repute who teaches both Direct Taxes (Paper 7) and International Taxation (Paper 6C) bringing real life case studies in class, many of which (including the popular Vodafone case) has been dealt by him in practice.



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