All India Taxes Ready Referencer

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CA Alok Kumar Agarwal
CA Shailendra Kumar Mishra

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Ready Referencer
CA Alok Kumar Agarwal (Chartered Accountant)

CA Alok Kumar Agarwal is a talented professional with carrying the credit of Author of a Book namely “ALL INDIA VAT READY RECKONER”. He has graduated in Commerce from St. Joseph’s College, Darjeeling and is a fellow member of the Institute of Chartered Accountants of India. He came into practice after finishing his CA and has successfully delivered good results for the clients with whom he shares a very good understanding and works as a partner.

CA Alok, founder member of ASC Group, is an eminent name in the field of Finance, Corporate Taxation and Business Advisory Services, having eighteen years of experience in the sphere. Mr. Agarwal has diversified experience as a practicing Chartered Accountant in fields of finance such as VAT, Service Tax, Excise, customs, Direct Tax, Company Laws, Auditing, Corporate finance, RBI regulations for setting up business in India etc. A great believer of use of technologies in professional services and creation of multi-disciplinary mega firm to provide one stop solution for all corporate needs, he is recognized for his out-of-box thinking and innovative approach. He is a prolific speaker and has delivered lectures and talks on various forums on many topics concerning complex issues on VAT and other tax related matters. He shares a healthy attitude and mentality towards corporate and legal problems, and uses his keen sense of logical thinking and problem solving skills to decipher the alleged tribulations in the on-going industry. Besides being proficient in his fields of practice, he is a thoughtful leader and a research oriented person which enabled him to develop team of 125+ members.

CA Shailendra Kumar Mishra (Chartered Accountant)

CA Shailendra Kumar Mishra is an enthusiastic professional with an ability to get a core understanding of the client’s needs and providing the best solutions for it. He came into practice straight after qualifying his Chartered Accountancy exams and since then he has worked as one of the core team members of ASC Group.

CA Shailendra’s work exposure helps him to give the solutions to the client in all the areas involving Direct Taxes, Indirect Taxes and other matters relating of finance and setting up of business. While he handles all the issues of the clients at ease, but his core expertise and keen interest lies in handling issues related to Direct Taxes including International Taxation and Transfer Pricing. In a very short span of time, he has taken over the position of HOD in the area of Direct Taxes of the group. He has gained a rich experience dealing with the International Taxation and Transfer Pricing related issues of the clients. He delivers effective and best solutions for the complex issues relating to the business models of the clients. He mostly prefers consultancy and guidance work through review of documents from preliminary stage, final drafting of documents, guidance on preparation of documents, appeals and presentation.
About ASC Group

Who we are

ASC Group, a Delhi-NCR based firm, started its journey way back in 1995 with the formation of Alok Sinhal & Co, a Chartered Accountant firm, registered with the Institute of Chartered Accountants of India (ICAI). It has been a voyage of 18 years since we begun and now we stand diversified in service and nature but united in innovation & improvement. ASC group is a team of Chartered Accountants, Company Secretaries, Advocates, MBA's and other professionals who are involved in providing consultancy to our clients in various financial, business and other Tailor-made issues. ASC follows the policy of departmentalization for different expertise areas by creating different entities and separate teams for the clients for their tailor made issues. ASC group has diversified its business into 4 different entities for providing different specialized services to its clients. Each entity of the group is specialized in providing services a different area of expertise.

Vision

ASC Group is established with a Vision of Growth, both Vertically & Horizontally and a Mission of providing Comprehensive range of Services to its Clients in an efficient and cost effective manner. We have a stated policy of ensuring high quality services to each client ranging from small business unit to giant multinational company located within or outside India. This is achieved by bringing professional and analytical skills to an assignment which we have developed through strong academic background, regular internal training, continuing professional education and engagement experience of our personnel.

Strength

Since 1995, ASC Group has expanded from two persons in to a team of more than 125 people. ASC Group is a renowned group for its services in Delhi-NCR and is continuously spreading its wings in other cities and countries as well. ASC Group has continuously added new vertical every year by adding new services in its scope of providing services by professional education and hiring new and experienced staff for the required field. ASC Group has team specializing in different areas who are involved in managing the work of particular client. Diverse nature of quality and specialized services provided makes it a single window shop for its clients.
India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), Customs Duties, Central Excise and Service Tax.

Value Added Tax (VAT), stamp duty, State Excise, land revenue and tax on professions are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc.

In last 10-15 years, Indian taxation system has undergone tremendous reforms. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Various books has been written on the subjects concerning Income Tax, Excise, Service Tax, VAT, and other local and central taxes levied in India. But most of them cover only one of the above mentioned areas of taxation and are very technical in nature. Some writers have tried to cover these aspects in a single book but in a much summarized form. Thus, it was a long felt need for a comprehensive book in which all the taxes can be explained in an understandable manner for the readers.

The purpose of this book is to give an insight of overall knowledge of all types of taxes that are prevailing in India. This book is to educate those people who want to get a basic knowledge of how to start business in India and what all taxes should be kept in mind while commencing the business. The readers of this book will be able to know the structure of each and every taxation department and the remedies available to them against these authorities.

This book is mainly meant for those people who are sitting at the position of Chief Operating Officers and financial controllers of multinational companies, individuals who wants to commence their own business in India and to individuals who wants to have a basic knowledge of each and every tax in India. This Book does not cater to the needs of the professionals who are looking for solutions for very technical problems as this book is limited to the basic concepts of all the taxes in India. The main essence of this book is that the topics covered are organized in such a manner so as to help a reader to clearly understand the procedures involved in the every taxation structure in India.
Acknowledgements
I would like to express my sincere thanks for the cooperation of my co-writer Mr. Shailendra Kumar Mishra and also present my gratitude to Advocate Deepak Kumar Dass, CA Nitin Agarwal, CA Kapil Agarwal, CS Mohit Nagar and Vikas Goyal for their continuous support in the process of writing this book.

In setting and bringing out such a project as this, the possibility of errors and omissions cannot be ruled out. Therefore, we expect a valuable feedback from the learned readers, bringing to our notice any mistake, omission or discrepancy that might have crept therein despite our sincere efforts to avoid them. The suggestions shall be most welcomed to boost our morale and to go ahead to improve overall quality of the book in the forthcoming editions.

Kindly revert us at info@ascgroup.in

Wishing all the readers enjoyable reading!

Place: New Delhi

CA Alok Kumar Agarwal
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DOING BUSINESS IN INDIA
INTRODUCTION—INDIA

India, officially the Republic of India, is a country in South Asia. It is the seventh-largest country by area, the second-most populous country with over 1.2 billion people, and the most populous democracy in the world. Bounded by the Indian Ocean on the south, the Arabian Sea on the south-west, and the Bay of Bengal on the south-east, it shares land borders with Pakistan to the west; China, Nepal, and Bhutan to the north-east; and Burma and Bangladesh to the east. In the Indian Ocean, India is in the vicinity of Sri Lanka and the Maldives; in addition, India’s Andaman and Nicobar Islands share a maritime border with Thailand and Indonesia.

India is a country of ancient times having unlimited natural resources. Its ancient culture, the rivers, mountains and vegetation, not to forget its exotic spices, make the country a wonderful place to visit or to live or to business.

The Republic of India is the third largest Asian economy after China and Japan. Among the major emerging markets, India ranks second in terms of economic growth with the IMF forecasting a GDP growth rate of 6.9 percent for 2012. India is the second most populous country in the world; approximately thirty percent of the country’s 1.2 billion inhabitants reside in urban areas. India’s industrialized economy encompasses diverse manufacturing sectors (steel production, oil and gas refining, auto, plastics, textiles) while also including traditional village farming, modern agriculture, and handicrafts. Services, especially information technology, are the major source of economic growth, accounting for more than half of India’s output with less than one third of its labour force, which is currently estimated to be 457 million workers.

In response to ongoing security concerns, Indian government policies have mitigated terrorist attacks and crime. The increased security presence in urban areas combined with conservative monetary and fiscal policies has allowed India to become one of the more stable economies in the region and thereby lessened the impact of the ongoing global economic downturn.

The private sector provides an estimated 90% of jobs in developing economies. Where government policies support a dynamic business environment with firms making investments, creating jobs and increasing productivity all people have greater opportunities. A growing body of evidence suggests that policy makers seeking to strengthen the private sector need to pay attention not only to macroeconomic factors but also to the quality of laws, regulations and institutional arrangements that shape daily economic life.

Political profile of India

Government Type
Democratic Republic with a Parliamentary system of Government.

States & Union Territories
29 States and 7 Union Territories.
Constitution
The Constitution of India came into force on 26th January 1950. The Constitution of India is the source of the legal system in the country.

Executive Branch
The President of India is the Head of State, while the Prime Minister is the Head of the Government and runs office with the support of the Council of Ministers which forms the Cabinet.

Legislative Branch
At Central level, India has bicameral parliament comprising of Lok Sabha (House of People) and Rajya Sabha (Council of States). The primary function of parliament is to pass laws of matters specified in constitution to be under its jurisdiction.
At state level, states are operate through State Legislature

Judicial Branch
The Supreme Court of India is the apex body of the Indian legal system, followed by other High Courts and subordinate courts.
Any Person who is starting a business in India can run any business through the following business vehicles in India:

**Types of Business Vehicles**

1. Company
2. Limited Liability Partnership (LLP)
3. Partnership firm
4. Sole Proprietorship
5. Non Profit Organization

**Company**

Company is characterized by the fact that ownership and management are separate. The capital of the Company is provided by a group of people called shareholders who entrust the management of the Company in the hands of persons known as the Board of Directors.

A Company is an artificial legal person known created by process of law which makes it a separate entity and distinct from its members who constitute it. It also has perpetual succession. In other words Board of Directors/ Shareholders may change but Company remains same.

Company is governed by law of Companies Act, 1956 and administrated by Ministry of Corporate Affairs (MCA).

**There are two types of Company**

- Public Limited Company
- Private Limited Company

**Comparative Statement between Private Limited Company and Public Limited Company**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Particular</th>
<th>Private Limited Company</th>
<th>Public Limited Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Meaning</td>
<td>It is closely held Company which consist less corporate compliance requirement</td>
<td>It is widely held Company which consist more corporate compliance requirement</td>
</tr>
<tr>
<td>2.</td>
<td>Minimum/Maximum number of Shareholder/Investor</td>
<td>Two/Fifty</td>
<td>Seven/Unlimited</td>
</tr>
<tr>
<td>3.</td>
<td>Minimum/Maximum number of Director</td>
<td>2/12 (twelve can be increased with government approval )</td>
<td>3/12 (twelve can be increased with government approval )</td>
</tr>
<tr>
<td>4.</td>
<td>Minimum Capital requirement</td>
<td>INR 1,00,000 (approx US $ 2000)</td>
<td>INR 5,00,000(approx US $ 10,000)</td>
</tr>
</tbody>
</table>
Memorandum of Association (MOA)

A Memorandum of Association (MOA) is a legal document prepared at the time of formation of company to define its relationship with shareholders. It regulates a company’s external activities. The MOA is accessible to the public and describes the company’s name, physical address of registered office, names of shareholders and their shareholding.

Article of Association (AOA)

It is a document which specifies the regulations for a company’s operations. The articles of association define the company’s purpose and lays out how tasks are to be accomplished within the organization, including the process for appointing directors and how financial records will be handled.

MCA is three layers systems to administer the Affairs of Companies

1. Ministry of Corporate Affairs itself
2. Regional Director (RD)
3. Registrar of Companies (ROC)

Ministry of Corporate Affairs (MCA)

The Ministry is primarily concerned with administration of the Companies Act, 1956, other allied Acts, rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law

Regional Directors (RD)

RD is second layer authority of MCA. There are Seven Regional Directors (RD) are in-charge in India of the respective regions, each region comprising a number of States and Union Territories. They supervise the working of the offices of the Registrars of Companies and the Official Liquidators working in their regions. They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act. Certain powers of the Central Government under the Act have been delegated to the Regional Directors. They have also been declared as heads of Department.

Registrar of Companies (ROC)

ROC is third layer authority of MCA. It covers the various States and Union Territories are vested with the primary duty of registering companies floated in the respective states and the Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as registry of records, relating to the companies registered with them, which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.
## Process of Incorporation of the Company

<table>
<thead>
<tr>
<th>Step No.</th>
<th>Steps</th>
<th>Timeframe Working days</th>
<th>Processing/ Documents Required</th>
</tr>
</thead>
</table>
| 1        | Digital signature Certificate (DSC)  
A promoter has to take DSC for signing the forms on behalf of the Company | 1 | In case of Indian National  
1. Copy of any address proof  
2. Copy of PAN card  
In case of Foreign National:  
1. Copy of Passport  
2. Copy of any permanent address proof |
| 2        | Director Identification Number (DIN)  
Approved DIN is a pre-requisite for process of incorporation | 1 | Documents required  
In case of Indian National:  
1. Self attested copy of PAN card  
2. Self attested copy of any permanent Address proof.  
3. Self attested copy of any present address proof, if any  
4. Photograph in .jpg format  
In case of Foreign National:  
1. Copy of Passport  
2. Copy of any permanent address proof  
3. Copy of any present address proof, if any.  
4. Photograph in .jpg format  
Note: In case of foreign National who is residing outside India then documents 1-3 listed above should be attested by the Consulate of the Indian Embassy or Foreign public notary otherwise it should be attested by Indian public Notary. |
| 3        | Application for name availability  
Filing of form 1A | 6 | The promoters can provide maximum 6 (six) names in the order of priority.  
ROC will approve any of the applied name which is suitable for it. |
| 4        | File incorporation documents:  
MOA & AOA  
Details of Directors  
Details of Registered Office | 6 | • Subscriber sheet signed by Shareholders  
• Address of Registered office  
• Address Proof of Registered office  
• No Objection Certificate from owner of such premise |
| 5        | Issuance of Certificate of Incorporation | Same day |
**Limited Liability Partnership (LLP)**

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership firm. It is a separate legal entity, and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.

Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is known a mixture of a company and a partnership.

**Minimum Requirements to form a LLP**

- Minimum 2 designated partners
- At least 1 designated partner shall be an Indian resident
- If a body corporate is a partner, it has to nominate a natural person as its nominee
- The partners and designated partners can be same person
- There is no concept of share capital but there has to some sort of contribution from each partner
- Director Identification Number (DIN) for all the Partners/ Designated Partners

**Designated Partner**

Designated partner is responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

**Partner**

Partner is person who is contributing in the LLP but not responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership.

**Procedure /Steps Involved In Incorporation of LLP**

<table>
<thead>
<tr>
<th>Step No.</th>
<th>Steps</th>
<th>Timeframe Working days</th>
<th>Processing/ Documents Required</th>
</tr>
</thead>
</table>
| 1       | Digital Signature Certificate (DSC)  
A Designated Partner has to take DSC for signing the forms on behalf of the LLP | 1 | Documents required (self attested)  
1. Copy of any address proof  
2. Copy of PAN card |
| 2       | Director Identification Number (DIN)  
Approved DIN is a pre-requisite for incorporation process | 1 | Documents required  
In case of Indian National:  
1. Self attested copy of PAN card  
2. Self attested copy of any permanent address proof. |
### Applicability for name availability

<table>
<thead>
<tr>
<th>3</th>
<th>Application for name availability</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Filling of E-form 1</td>
</tr>
</tbody>
</table>

### File incorporation documents

<table>
<thead>
<tr>
<th>4</th>
<th>Application for name availability</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Filling of E-form 1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

### Advantages of LLP
- Limited liability of partners
- No audit requirement unless contribution exceeding Rs. 25 lakhs or turnover exceeding Rs. 40 lakhs
- Low cost of formation & compliances
- A firm, a private limited company or a public limited company can be converted in LLP
- Professionals like Chartered Accountant (CA), Company Secretary (CS), Cost & Works Accountant (CWA) and Advocates, etc. can form LLP
- No limitation on maximum number of partners.
• A body corporate can be a partner
• Right of partner can be transferred, either wholly or partly
• Lesser compliances.
• Stamp duty exemption can be availed in case of conversion from firm, Company to LLP

Disadvantages of LLP
• Unlimited liability of partners and LLP in case of fraud
• FDI is subject to approval of Government
• Accounting standard yet not notified

Partnership Firm
Partnership is a relation between two or more persons who have collectively agreed to carry on business and share profits or losses of the business. The owners of a partnership business are individually known as the “partners” and collectively as a “firm
Registration of Partnership firm is not mandatory. It is easy to form and not much legal formalities involved.
An NRI and Person of Indian Origin can invest in Partnership firm/ Proprietary Concern on non-repatriation basis subject to certain condition.

Main Features of Partnership
1. A partnership is easy to form as no cumbersome legal formalities are involved. Its registration is also not essential. However, if the firm is not registered, it will be deprived of certain legal benefits.
2. The minimum number of partners must be two, while the maximum number can be 10 in case of banking business and 20 in all other types of business.
3. The firm has no separate legal existence of its own i.e., the firm and the partners are one and the same in the eyes of law.
4. In the absence of any agreement to the contrary, all partners have a right to participate in the activities of the business.
5. Ownership of property usually carries with it the right of management. Every partner, therefore, has a right to share in the management of the business firm.
6. Liability of the partners is unlimited. Legally, the partners are said to be jointly and severally liable for the liabilities of the firm. It means that if the assets and property of the firm is insufficient to meet the debts of the firm, the creditors can recover their loans from the personal property of the individual partners.
7. Restrictions on the transfer of interest i.e. none of the partners can transfer their interest in the firm to any person (except to the existing partners) without the unanimous consent of all other partners.
8. The firm has a limited span of life i.e. legally, the firm must be dissolved on the retirement, lunacy, bankruptcy, or death of any partner.

Advantages
• Formation is easy
• Greater capital and credit resources
• Better judgment and more managerial abilities
**Disadvantages**

- Absence of Regulator
- Liability for the actions of other partners
- Limited life
- Unlimited liability

**Comparison of LLP with Partnership and Company**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Basis of Comparison</th>
<th>LLP</th>
<th>Company</th>
<th>Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Registration</td>
<td>To be registered with ROC under LLP Act, 2008</td>
<td>To be registered with ROC under Companies Act, 1956</td>
<td>Registration is optional</td>
</tr>
<tr>
<td>2</td>
<td>Name</td>
<td>Name should contain ‘Limited Liability Partnership’ or ‘LLP’ as last words</td>
<td>Name should contain ‘Limited’ / ‘Private Limited’ as last words</td>
<td>Any name as per choice</td>
</tr>
<tr>
<td>3</td>
<td>Legal entity</td>
<td>LLP is a separate legal entity registered under LLP Act, 2008</td>
<td>Company is a separate legal entity registered under Companies Act, 1956</td>
<td>Not a separate legal entity</td>
</tr>
<tr>
<td>4</td>
<td>Formation Cost</td>
<td>The cost of Formation is lesser than of formation of Company.</td>
<td>The cost of Formation is higher than of formation of LLP</td>
<td>The Cost of Formation is negligible.</td>
</tr>
<tr>
<td>5</td>
<td>Formation by Foreign Nationals</td>
<td>Foreign Nationals alone cannot form a LLP</td>
<td>Foreign Nationals alone can form a Company</td>
<td>Foreign Nationals cannot form Partnership Firm in India</td>
</tr>
<tr>
<td>6</td>
<td>Minimum Number of Members</td>
<td>Minimum 2 Designated Partners</td>
<td>Minimum 2 in case of Private Company 7 in case of Public Company.</td>
<td>Minimum 2 Partner</td>
</tr>
<tr>
<td>7</td>
<td>Management Team</td>
<td>Minimum 2 Designated Partners</td>
<td>Minimum 2 Directors in case of Private Company, 3 Directors in case of Public Company.</td>
<td>No requirements</td>
</tr>
<tr>
<td>8</td>
<td>Remuneration to Managerial Personnel</td>
<td>Remuneration of partners will be determined by LLP</td>
<td>Remuneration to Directors of Public Companies are governed by Companies Act</td>
<td>The firm can pay any remuneration to its partners</td>
</tr>
<tr>
<td>9</td>
<td>Liability of Partners / Members</td>
<td>Limited to the extent of contribution towards LLP</td>
<td>Limited to the amount of share capital agreed to be contributed on each</td>
<td>Partners have unlimited liability</td>
</tr>
<tr>
<td></td>
<td><strong>Capital Contribution</strong></td>
<td>Determined by partners as per the LLP agreement.</td>
<td>Limited to the paid amount of share capital agreed to be contributed</td>
<td>Unlimited may extend to their personal assets</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>11</td>
<td><strong>Tax Liability</strong></td>
<td>Income of Company is taxed at a flat rate of 30% plus surcharge and cess as applicable.</td>
<td>Income of Company is taxed at a flat rate of 30% plus surcharge cess as applicable.</td>
<td>Income of Partnership is taxed at a flat rate of 30% plus surcharge and cess as applicable.</td>
</tr>
<tr>
<td>12</td>
<td><strong>Transfer of ownership Rights</strong></td>
<td>Ownership transfer is governed by the LLP Agreement.</td>
<td>Ownership is easily transferable by transfer of shares</td>
<td>Not transferable.</td>
</tr>
<tr>
<td>13</td>
<td><strong>Statutory Meetings</strong></td>
<td>There is no requirement to hold any meeting</td>
<td>Board Meetings and General Meetings are required to be conducted as per Companies Act, 1956</td>
<td>There is no provision in regard to holding of any meeting</td>
</tr>
<tr>
<td>14</td>
<td><strong>Annual Filing</strong></td>
<td>Annual Statement of accounts and Solvency &amp; Annual Return needs to be filed every year.</td>
<td>Annual Accounts and Annual Return needs to be filed with the Registrar of Companies</td>
<td>No return except Income Tax Returns</td>
</tr>
<tr>
<td>15</td>
<td><strong>Dissolution</strong></td>
<td>Voluntary or by order of Company Law Board</td>
<td>Voluntary or by order of High Court</td>
<td>By agreement, mutual consent, insolvency, certain contingencies, and by court order.</td>
</tr>
</tbody>
</table>

**Proprietorship Firm**

A Proprietorship firm is the simplest form of doing business whereby the firm does not constitute a separate legal entity like in the case of Ltd. Co.’s. It simply refers to a person who owns the business and is personally responsible for its debts. A sole proprietorship can operate under the name of its owner.

**Advantages**

- A sole proprietor has complete control and decision-making power over the business.
- Sale or transfer can take place at the discretion of the sole proprietor.
- No corporate tax payments.
- Minimal legal costs to forming a sole proprietorship.
- Few formal business requirements.
Disadvantages

The sole proprietor of the business can be held personally liable for the debts and obligations of the business. Additionally, this risk extends to any liabilities incurred as a result of acts committed by employees of the company.

Non-Profit Organization (NPO)

An incorporated organization which exists for educational or charitable reasons, and from which its shareholders or trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations, and programs. Many non-profit organizations also seek tax exempt status, and may also be exempt from local taxes including sales taxes or property taxes. Well-known non-profit organizations include Habitat for Humanity, the Red Cross, and United Way. It is also called not-for-profit organization. FDI shall not be allowed in any form of NPO.

Under Indian law, three legal forms exist for Non-Profit Organizations

Section 25 Company (Companies Act, 1956)

Due to better laws, Section 25 companies have the most reliable strongest organizational structure for NPO. Section 25 companies are those companies which are formed for the sole purpose of promoting commerce, art, science, religion, charity or any other useful object and have been granted a license by the Central Government recognizing them as such.

Thus there are three criteria for determining whether a particular company is section 25 Company or not:

1. Its objects should be only to promote commerce, art, science, religion, charity or any other useful object.
2. It should intend to apply its profits or other incomes only in promoting its objects; and
3. It shall have license of section 25 Company issued by Registrar of Companies/Regional Director.

Formation Procedure of Section 25 Companies:

Step-1 Form 1A: Name approval

An application in E-Form 1A has to be filed for availability of name to the Registrar of Companies. Maximum six names in preferential order can be proposed.

Step-2 Filing of Application to the ROC

The applicants must furnish to the ROC for license and also file details of the registered office of the proposed Company is to be, or is situate a copy of the application and each of the other documents that had been filed before the Registrar of Companies.
Step-3 Grant of Approval
If the registrar satisfies that the application is complete in all respects and in the best interest of the country, ROC can grant the license under this section with or without conditions and may also direct the Company to insert in its memorandum, or in its articles, or in both, such conditions of the license as may be specified by him in this behalf.

Step-4 Other Incorporation formalities
After obtaining license under section 25 the Company shall be formed as a normal company and the other formalities of incorporation shall be complied with.

Step-5 Registration under Section 80G of Income Tax Act, 1961
If a section 25 Company gets itself registered under section 80G of Income Tax Act, 1961 then the person or the organization making a donation to the NGO will get a deduction of 50% from his/its taxable income. The Company has to apply in Form No. 10G to the Commissioner of Income Tax for such registration. Normally this approval is granted in 2-3 years but can be granted earlier depending upon the situations.

Revocation of License
The Central Government after giving reasonable opportunity of hearing can revoke the license by passing a speaking order.

Winding up of the Company
It can also be wound up if the objects for which it had been established have been fully achieved. The surplus assets if any may be given to a similar charitable cause.

Hence, having noticed various benefits and drawbacks of section 25 Companies, its clear that such Companies are a well regulated form of non-profit organizations and the prescribed incorporation and dissolution procedures and other provisions helps the government in keeping a check on the working of such Companies.

Trust
Creation of a trust, particularly relating to an immoveable property is also a specie of transfer of property. Trust is defined in section 3 of the Trust Act, 1882 as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner”. In simple words it is a transfer of property by the owner to another for the benefit of a third person along with or without himself or a declaration by the owner, to hold the property not for himself and another.

Requirements of Trust
A trust is not a contract of agency to hold the property, as in that case there would be no transfer of the property. In trust there is a transfer from the owner to the trustee subject to certain terms and conditions. Bailment is also a kind of trust, but in bailment also there is no transfer of any interest in the property, but only a transfer of possession without ownership. Thereof, a trust is essentially a transfer of property by one to the other to be held by the other for the benefit of some person or for carrying out some object. It is not also a sale because a sale cannot be conditional and in sale there is consideration which is absent in a trust.
The purpose of a trust must be lawful, that is

- It should not be forbidden by law
- It should not be of such nature that, if permitted it could defeat the provisions of any law.
- It should not be fraudulent.
- It should not involve or imply injury to the person or property of another or
- It should not be such as would be regarded by a court as immoral or opposed to the public policy

Registration of Trust

A trust of immoveable property can be created by two ways. One by a non-testamentary document and another by a testamentary document such as will. In other words, a trust regarding a immovable property cannot be created orally but it must be by a document duly registered. A trust of a moveable property can be created either by a document or delivering the property to the trustee with necessary oral directions. If the directions are given in writing it would amount to a trust by a non-testamentary document which may or may not be registered.

A person who creates a trust is called the settlor, the person to whom the property is transferred on trust is called a trustee and the person for whose benefit the property is transferred is called the beneficiary or “cestuique trust”.

Declaration of Trust

A trust can also be created by the author himself declaring that he would hold the property, not as owner, but as a trustee for the benefit of some person or persons including himself and in that case the transfer of property is not necessary as one need not transfer his property but in such a case the declaration of trust is by the owner and he alone should be the trustee. Such a declaration would, however, require registration under the Registration Act.

Who can create a Trust

A Trust can be created by any person competent to contract or even by a manner with the authority of a competent court and respect of any property which is transferable and over which the author of the trust has dispossessing power.

Types of Trust

- **Public Trust** means Trust created for the promotion of public welfare and not for the benefit of one or more individuals. It may or may not be a charitable trust. Also called purpose of trust.
- **Private Trust** means Trust created for the benefit of one or more ascertainable beneficiaries, and not for the promotion of the welfare of the general public or for the advancement of a cause.
**Society**

Society means an association or company of persons (generally not incorporated) unit and together for any mutual or common purpose. In a wider cause, the community or public; the people in general.

**Society may be registered under the following objectives:**

(i) charitable purpose  
(ii) military orphan funds or  
(iii) promotion of science, literature, or the fine arts  
(iv) the diffusion of useful knowledge, the diffusion of political education  
(v) foundation or maintenance of libraries or reading rooms  
(vi) public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs

Government often forms societies to implement its centrally sponsored schemes.

---

**Comparison between Section 25 Company, Society & Trust**

<table>
<thead>
<tr>
<th>Basis of Comparison</th>
<th>Section 25 Company</th>
<th>Society</th>
<th>Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objects</strong></td>
<td>Promotion of commerce, art, science, religion, charity</td>
<td>Registered as charitable societies promotion of science, literature, or the fine arts</td>
<td>A public charitable trust is usually floated when there is property involved, especially in terms of land and building</td>
</tr>
<tr>
<td><strong>Statute</strong></td>
<td>Companies Act, 1956</td>
<td>Societies Registration Act, 1860</td>
<td>Indian Trust Act, 1882</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>Registrar of Companies</td>
<td>Registrar of Societies</td>
<td>Charity Commissioner</td>
</tr>
<tr>
<td><strong>Members required</strong></td>
<td>Two</td>
<td>Seven</td>
<td>Two</td>
</tr>
<tr>
<td><strong>Board of management</strong></td>
<td>Board of Directors/ Managing Committee</td>
<td>Governing Body</td>
<td>Trustee</td>
</tr>
<tr>
<td><strong>Main documents</strong></td>
<td>Memorandum of Association and Article of Association</td>
<td>Memorandum of Association rules and regulation (by laws)</td>
<td>Trust Deed</td>
</tr>
</tbody>
</table>

The given above are the Vehicles which a person is allowed to start business in India, however non-residents are having certain other options also to start their business with different type of business vehicles which has been described below:

**Branch Office**

A Foreign Company can establish a Branch Office in India which will carry on either the same or substantially the same activity as that carried on by the Foreign Company. Branch Office is regulated by the Reserve Bank of India (RBI). Branch Office is not separate entity as Subsidiary
or Joint Venture Company. A prior permission of RBI/Government is required to set up an Branch Office.

As per the RBI Guidelines Foreign Company which wants to set up Branch Office in India shall have profit making track record during immediately preceding five financial years in the home country.

**Liaison Office**

A Foreign Company can set up a Liaison Office which means a place of business to act as a channel of communication between the principal place of business or Head Office entities in India but which does not undertake any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel;

A prior permission of RBI/Government is required to set up a Branch Office. As per the RBI Guidelines Foreign Company shall have profit making track record during immediately preceding three financial years in the home country.

**Project Office**

A Foreign Corporation that has secured contract from an Indian company to execute a project in India may set up a project office in the country without obtaining prior permission of the RBI can, subject to prescribed reporting compliance.

- The project funding directly inward remittance from abroad
- The project is funded by a bilateral or multilateral international financial agency
- The project has been cleared by an appropriate authority
- The company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project

However if the above criteria are not meet, the foreign entity has to approach the RBI, central office for approval.

A Brief comparison of the Business Vehicles that can be adopted to start a new business by non-resident or foreign company has been described below:

**Comparative Summary**

<table>
<thead>
<tr>
<th>Basis of Comparison</th>
<th>Subsidiary and joint venture Company</th>
<th>Limited Liability Partnership</th>
<th>Branch Office</th>
<th>Liaison Office</th>
<th>Project Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process of Establishment</td>
<td>Approval of Government/ Automatic route according to the FDI guidelines</td>
<td>Approval of Government according to the FDI guidelines</td>
<td>Prior Approval of RBI/Government is required</td>
<td>Prior Approval of RBI/ Government is required</td>
<td>Prior approval is not required if certain condition are fulfilled</td>
</tr>
<tr>
<td>Permitted Activities</td>
<td>Permitted only if it has got the contract from Indian Company</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<tr>
<td>Any activity subject to FDI guidelines</td>
<td>Activities permitted by RBI except Retail trading, manufacturing and processing activities</td>
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<tr>
<td>Any activity subject to FDI guidelines</td>
<td>Only liaison activities and communication channels role is permitted</td>
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<tr>
<td>Activities permitted by RBI except Retail trading, manufacturing and processing activities</td>
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<td>Only liaison activities and communication channels role is permitted</td>
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<tr>
<td>Permitted only if it has got the contract from Indian Company</td>
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<table>
<thead>
<tr>
<th>Regulatory Compliance</th>
<th>-same-</th>
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</thead>
<tbody>
<tr>
<td>Required more compliance as it is separate entity</td>
<td>Required Registration and filing of financial statement and Annual Activity Certificate</td>
</tr>
<tr>
<td>LLP is required substantial less compliance as compared to Company</td>
<td>-same-</td>
</tr>
<tr>
<td>Required Registration and filing of financial statement and Annual Activity Certificate</td>
<td></td>
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<tr>
<td>-same-</td>
<td>-same-</td>
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<table>
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<tr>
<th>Funding</th>
<th>-same-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding by local as well overseas entity through equity instrument or any other instrument as permitted by RBI</td>
<td>Funding only out of funds received from head office from abroad through normal banking channels</td>
</tr>
<tr>
<td>Funding through capital contribution in form of cash consideration only</td>
<td>-same-</td>
</tr>
<tr>
<td>Funding through capital contribution in form of cash consideration only</td>
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<tr>
<td>-same-</td>
<td>-same-</td>
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</table>
Foreign Direct Investments in India (FDI)

The objective of India’s Foreign Direct Investment (FDI) policy is to invite and to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. The guidelines and the Regulatory process have been substantially liberalized to facilitate foreign Investment in India. The administrative and compliance aspects of FDI including the modes /instruments of investments in an Indian Company (e.g. Equity, Compulsorily Convertible Preference Shares Compulsorily Convertible Debentures, ADR/GDR, etc) are embedded in the Foreign Exchange Regulations prescribed and monitored by the Reserve Bank of India (RBI). The Foreign Exchange Regulation also contains beneficial schemes/provisions for Investments by Non-Resident Indians /Person of Indian Origin within the overall framework/policy.

For the purpose of FDI in an Indian Company, the following categories assume relevance:

- Sectors in which FDI is prohibited
- Sectors in which FDI is permitted
  - Investment under Automatic Route; and
  - Investment under Prior Approval Route i.e. with prior approval of the Government through the Foreign Investment Promotion Board (FIPB) The following diagram depicts the FDI policy in India
There Are Two Types of Routes to Invest in India

Automatic

Approval

**Automatic route**

The automatic route connotes no requirement of any prior regulatory approval but only post facto filing/ intimation with the RBI as under:

- Filing of an intimation with the RBI, in the prescribed format within 30 Days of receipt of investment money in India
- Filing of prescribed documents and particulars of issue of shares within 30 days of issue of shares to foreign investors

FDI by a Foreign Company / Investor in an Indian Company in most of the Business / commercial sectors now falls under the Automatic Route and very few Cases /transactions require prior Government /FIPB approval

**Approval route**

FDI in sectors/transactions requiring prior Government Approval is categorized as that falling under the Prior Approval Route

Such approval is granted by the Government of India Ministry of Finance the Foreign Investment Promotion Board (FIPB).

**Who can invest in India?**

A non-resident entity can invest in India, subject to the FDI Policy. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route.

NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis.

An FII may invest in the capital of an Indian Company under the Portfolio Investment Scheme which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit for FII investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian Company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI.
**Some Sector Specific Guidelines has been described below**

<table>
<thead>
<tr>
<th>Prohibited Sectors</th>
<th>Permitted Sectors</th>
<th>Automatic Route</th>
<th>Approval Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lottery Business including Government/private lottery, online lotteries</td>
<td>Agriculture &amp; Animal Husbandry-100%</td>
<td></td>
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</tr>
<tr>
<td>Gambling and Betting including casinos</td>
<td><strong>Mining</strong>&lt;br&gt;metal and non-metal ores-100%&lt;br&gt;Coal and Lignite-100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chit funds</td>
<td>Petroleum &amp; Natural Gas-100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nidhi company</td>
<td>Broadcasting-49%&lt;br&gt;Cable Network-49%</td>
<td></td>
<td>Defence-26%</td>
</tr>
<tr>
<td>Trading in Transferable Development Rights</td>
<td><strong>Airports</strong>&lt;br&gt;Greenfield projects- 100%&lt;br&gt;Existing projects-74%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate Business or Construction of Farm Houses</td>
<td>Scheduled Air Transport Service- 49%&lt;br&gt;Non-Scheduled Air Transport Service- 74%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes</td>
<td>Helicopter services/seaplane services requiring DGCA approval- 100%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Setting up hardware facilities such as up-linking, HUB**
  - Setting up of Up-linking HUB/Teleports-49%
  - Up-linking a Non-News & Current Affairs TV Channel-100%
  - Up-linking a News & Current Affairs TV Channel-26%

- **Print Media**
  - Publishing of Newspaper-26%
  - Publishing/printing of Scientific and Technical Magazines/specialty journals/periodicals,-100%
<table>
<thead>
<tr>
<th>Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems)</th>
<th>Other services under Civil Aviation sector: Ground Handling Services- 74% Maintenance and Repair organizations; flying training institutes; and technical training institutions-100%</th>
<th>Airports Existing projects- beyond 74%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Development: Townships, Housing, Built-up infrastructure- 100%</td>
<td>Non-Scheduled Air Transport Service- up to 74% beyond 49%</td>
<td></td>
</tr>
<tr>
<td>Industrial Parks – new and existing- 100%</td>
<td>Other services under Civil Aviation sector: Ground Handling Services- beyond 49% and up to 74%</td>
<td></td>
</tr>
<tr>
<td>Telecom services-49%</td>
<td>Telecom services beyond 49% but upto 74%</td>
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<tr>
<td>Internet Service Provider with gateways- 49%</td>
<td>Courier services- 100%</td>
<td></td>
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<tr>
<td>Infrastructure provider providing dark fibre, right of way, duct space, tower- 49%</td>
<td>Satellites – Establishment and operation- 74%</td>
<td></td>
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<tr>
<td>Cash &amp; Carry Wholesale Trading/ Wholesale Trading- 100%</td>
<td>Private Security Agencies- 49 %</td>
<td></td>
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<tr>
<td>E-commerce activities- 100%</td>
<td>Test marketing- 100%</td>
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</tr>
<tr>
<td>Banking –Private sector- 49%</td>
<td>Internet Service Provider with gateways- beyond 49% and up to 74%</td>
<td></td>
</tr>
<tr>
<td>Insurance- 26%</td>
<td>Infrastructure provider providing dark fibre, right of way, duct space, tower- beyond 49% up to 100%</td>
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<tr>
<td>Non-Banking Finance Companies- 100%</td>
<td>Single Brand product retail trading- 100%</td>
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<tr>
<td>Merchant Banking (ii) Under Writing (iii) Portfolio Management Services</td>
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<tr>
<td>(iv)</td>
<td>Investment Advisory Services</td>
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<tr>
<td>(v)</td>
<td>Financial Consultancy</td>
<td></td>
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<td>(vi)</td>
<td>Stock Broking</td>
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<tr>
<td>(vii)</td>
<td>Asset Management</td>
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<tr>
<td>(viii)</td>
<td>Venture Capital</td>
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<tr>
<td>(ix)</td>
<td>Custodian Services</td>
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<tr>
<td>(x)</td>
<td>Factoring</td>
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<tr>
<td>(xi)</td>
<td>Credit Rating Agencies</td>
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<tr>
<td>(xii)</td>
<td>Leasing &amp; Finance</td>
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<tr>
<td>(xiii)</td>
<td>Housing Finance</td>
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<td>(xiv)</td>
<td>Forex Broking</td>
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<tr>
<td>(xv)</td>
<td>Credit Card Business</td>
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<tr>
<td>(xvi)</td>
<td>Money Changing Business</td>
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<tr>
<td>(xvii)</td>
<td>Micro Credit</td>
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<tr>
<td>(xviii)</td>
<td>Rural Credit</td>
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<tr>
<th>Pharmaceuticals</th>
<th>Pharmaceuticals</th>
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<tr>
<td>Greenfield- 100%</td>
<td>Existing- 100%</td>
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<tr>
<th>Asset Reconstruction Companies- 74%</th>
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</thead>
<tbody>
<tr>
<td>Banking –Private sector- Beyond 49% and up to 74%</td>
</tr>
<tr>
<td>Banking- Public Sector- 20%</td>
</tr>
<tr>
<td>Commodity Exchange- 49%</td>
</tr>
<tr>
<td>Credit Information Companies- 49%</td>
</tr>
<tr>
<td>Infrastructure Company in the Securities Market like stock exchange, clearing corporation, depositors- 49%</td>
</tr>
</tbody>
</table>
FDI in Multi-Brand Retail Sector

FDI in multi-brand retail is allowed, up to 51%, under the Government route, subject to specified conditions.

(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.

(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.

(iii) At least 50% of total FDI brought in shall be invested in ‘back-end infrastructure’ within three years of the first tranche of FDI, where ‘back-end infrastructure’ will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market product infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back end infrastructure.

(iv) At least 30% of the value of procurement of manufactured Processed products purchased shall be sourced from Indian ‘small industries’ which have a total investment in plant & machinery not exceeding US $ 1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point of time, this valuation is exceeded, the industry shall not qualify as a ‘small industry’ for this purpose. This procurement requirement would have to be met, in the first instance, as an average of five years’ total value of the manufactured, processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be crosschecked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakhs as per 2011 Census and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking; In States/Union Territories not having cities with population of more than 10 lakhs as per 2011 Census, retail sales outlets may be set up in the cities of their choice, preferably the largest city and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities. The locations of such outlets will be restricted to conforming areas, as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

(vii) Government will have the first right to procurement of agricultural products.

(viii) FDI in multi-brand retail initially allowed in the following states/union territory:
   a. Andhra Pradesh
   b. Assam
   c. Delhi
   d. Haryana
   e. Jammu & Kashmir
   f. Maharashtra
Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

**Foreign Investment Promotion Board (FIPB)**

It is a national authority under Ministry of Finance of Government of India which is having objective to promote the foreign investment in India. It provides a single window clearance for proposals on FDI in India.

FIPB comprises of the following Secretaries to the Government of India:

(i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson
(ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
(iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry
(iv) Secretary to Government, Economic Relations, Ministry of External Affairs
(v) Secretary to Government, Ministry of Overseas Indian Affairs

**Levels of Approvals for Cases under Approval Route**

1. The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.1200 crore.
2. The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).
3. The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Minister of Finance (in-charge of FIPB).

**Foreign investments under Portfolio Investment Scheme (PIS)**

A Foreign Institutional investor (FII) including Asset Management Companies, Pension Funds, Mutual Funds, Banks, Investment Trusts, Insurance Companies Re-insurance Companies, Incorporated/ Institutional Portfolio Managers, Investment Manager / Advisor International or Multilateral organisation, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies Foreign Government Agencies, Sovereign Wealth funds, Foreign Central Bank, Broad based Fund, Trustee of a Trust registered with Securities Exchange of India (SEBI) can invest under Portfolio Investment Scheme subject to prescribed guidelines by RBI. SEBI approved FII having the general permission to invest in such scheme.

NRI can also invest in India under such scheme subject to approval of RBI (Power of RBI delegated to Authorized Dealer Category-I Bank).
Foreign Venture Capital Investments

A Foreign Venture Capital Investor (FVCI) registered with SEBI can invest in Indian Venture Capital Undertaking (IVCU) Venture Capital Fund (VCF) or scheme floated by IVCU and VCF with the prior approval of RBI.

IVCU means a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI.

A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996.

Other Foreign Investments

a. On non-repatriation basis
   An NRI can invest in equity instrument and debt instrument issued by Indian Company without any limit. NRI can also invest in government securities, mutual funds treasury bills, Money Market Mutual Funds.

b. On repatriation basis
   An NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

*Repatriation means taking back money to the home country earned from investment in India.
Funding to the Business

A person can fund its business by following route

**Equity Share Capital**

It is a conventional mode of the funding to the business. Any person can infuse the funds in the business through Equity Shares. It can be issued by the Company only when MOA & AOA of the Company authorized to issue the Capital. Equity share Capital having the voting rights in the Company. Each share of equity stock constitutes a contract between the shareholder and the corporation. The owner of a share of common stock is ordinarily entitled to participate in and to vote at shareholder’s meetings. Shareholder can participates in the profits through the receipt of dividends after the payment of dividends on preferred stock.

Equity capital is integral to a company’s financing strategies, as it provides the lifeblood necessary to fund short-term initiatives. Besides, equity helps senior leadership maintain healthy working capital ratios. Working capital gauges an organization’s short-term cash and equals current assets minus current liabilities. Having a varied group of equity holders helps a company diversify its financing sources, enabling corporate managers to seek additional funds for long-term expansion plans.

**Preference Share Capital**

It is another route to infuse the fund in the Company. Preference share capital is more in nature of loan less in nature of share capital. Preference share holder is having assured return from the Company. At the time of winding-up and issuance of dividend preference is given to the preference share holder over to the Equity share holder.

As per the Companies Act, 1956 preference share has to be redeemed within 20 years. If a non-resident infuses the funds through preference share then it shall be in rupee denominated instrument.

**Debentures/ Borrowing**

Companies can raise the funds through debenture, bonds and loans. Debentures are creditor ship securities representing long-term indebtedness of a company. A debenture is an instrument executed by the company under its common seal acknowledging indebtedness to some person or persons to secure the sum advanced. It is, thus, a security issued by a company against the debt. A company is allowed to raise debt or loan through debentures after getting certificate of commencement of business if permitted by its Articles of Association. Companies Act has not defined the term debenture Debenture is secured in nature. If the debenture issued to the non-resident then such investment through convertible debenture treated as FDI. Debenture that is not compulsorily convertible into equity shares are treated as ECBs and hence need to conform to ECB guidelines.
ADR/GDR/FCCB

Indian companies are allowed to raise funds through American Depository Receipts, Global Depository Receipts and Foreign Currency convertible bonds from outside of India. Investment through such instruments mentioned above may be made through the automatic route or approval route according to the relevant sectoral policy/guidelines.

ECB

It is an External Commercial Borrowing which is raised from foreign. External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers’ credit, suppliers’ credit, securitised instruments (e.g. floating rate notes and fixed rate bonds) availed from non-resident lenders with minimum average maturity of 3 years.

ECB can be accessed under two routes, viz., (i) Automatic Route and (ii) Approval Route.

Permitted End Use

ECB can be raised for investment such as import of capital goods, new projects, modernization/expansion of existing production units in industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India. Infrastructure sector is defined as:

- Power
- Telecommunication
- Railways
- Roads including bridges
- Sea port and airport
- Industrial parks
- Urban infrastructure (water supply, sanitation and sewage projects)
- Mining, exploration and refining
- Cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.
Repatriation of Funds

Repatriation of Dividends
Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). But subject to the provision of Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

Repatriation of Capital
Foreign capital invested in India is generally allowed to be repatriated after payment of taxes due on them provided the investment was made on a repatriable basis. The repatriation is however subject to any lock in period/condition that may be applicable on industry sector under the foreign direct investment regulations.

Repatriation of Royalties and Technical Knowhow
Indian companies can enter the technology transfer Agreement with foreign companies are permitted to remit payment for knowhow and royalty under the terms of foreign collaboration agreement subject to tax withholding, if any.

Repatriation of Consultancy Services
Remittance for consultancy services is allowed outside India upto US $1m per project without approval of RBI. Further upto US $10m per project is allowed for (i) power (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, and (vii) urban infrastructure (water supply, sanitation and sewage projects).

Remittance of Pre-incorporation Expenses
Remittance of foreign exchange towards reimbursement of pre-incorporation expenses incurred in India is allowed up to 5 per cent of the investment brought into India or USD 100,000, whichever is higher, on the basis of certification from statutory auditors.
### Types of accounts which can be maintained by an NRI / PIO in India

<table>
<thead>
<tr>
<th>Sl No</th>
<th>NRO</th>
<th>NRE</th>
<th>FCNR</th>
</tr>
</thead>
</table>
| 1.    | In form of current, savings, recurring or fixed deposit accounts | In form of savings, current, recurring or fixed deposit accounts  
Such accounts can be opened only by the non-resident himself and not through the holder of the power of attorney | In the form of only term deposits of 1 to 5 years |
| 2     | It denominated in Indian Rupees | It denominated in Indian Rupees | Account can be in any freely convertible currency |
| 3.    | Maximum permissible payment is US$ 1mn. Per financial year | Loans up to Rs.100 lakh can be extended against security of funds held in NRE Account either to the depositors or third parties. | Loans up to Rs.100 lakh can be extended against security of funds held in FCNR (B) deposit |
| 4.    | Accounts may be held jointly with residents and / or with non-resident Indian | Accrued interest income and balances held in NRE accounts are exempt from Income tax and Wealth tax, respectively |  |
| 5.    | Nomination facility is available | Balances held in the NRE account are freely repatriable |  |
Industrial Undertakings

Industrial Undertaking means an undertaking whose undertake the manufacturing activities and mentioned under the Schedule of Industrial Development Regulation Act, 1951.

Categories of Industrial Undertaking

List of Industries Reserved for manufacture of Items Exclusively in the Public Sector

1. Atomic energy – Production, separation or enrichment of special fissionable materials and substances and operation of the facilities, specified in DIPP Notification No. S.O. 2630 (E) dated 19.10.2009.
2. Railway transport.

List of Industries In Respect of which Industrial Licensing is Compulsory

- Coal and Lignite.
- Petroleum (other than crude) and its distillation products.
- Distillation and brewing of alcoholic drinks.
- Sugar.
- Animal fats and oils.
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- Asbestos and asbestos-based products.
- Plywood, decorative veneers, and other wood based products such as particle board, medium density fibre board, block board.
- Raw hides and skins, leather, chamois leather and patent leather.
- Tanned or dressed furskins.
- Motor cars.
- Paper and Newsprint except bagasse-based units.
- Electronic aerospace and defence equipment; All types.
- Industrial explosives, including detonating fuse, safety fuse, gun powder, nitrocellulose and matches.
- Hazardous chemicals.
- Drugs and Pharmaceuticals (according to Drug Policy).
- Entertainment electronics (VCRs, colour TVs, C.D. Players, Tape Recorders).
- White Goods (Domestic Refrigerators, Domestic Dishwashing machines, Programmable Domestic Washing Machines, Microwave ovens, Airconditioners)
- Non-SSI unit want to carry on business which is reserved for SSI units.

**Industrial Entrepreneur Memorandum (IEM)**

Industries which are not falling under the above two list and undertake manufacturing activities shall have to get Industrial Entrepreneur Memorandum (IEM) before set up the manufacturing plant. IEM is in nature of Intimation rather than any approval.
Learning Objectives

1. A Quick glance on Amendments made during Finance Bill 2013-14
2. History of Income Tax Act
3. Introduction to Income Tax
5. Administration of Income Tax
6. Constituents of Income Tax
7. Applicability of Income Tax
8. Liability to Pay Income Tax
9. Residential Status
10. Incidence of Tax
11. Computation of Taxable Income
12. Income from Salary
13. Income from House Property
14. Income from Capital Gain
15. Income from Profit and Gain from Business and Profession
16. Income from Others Sources
17. Tax Treatment on Charitable Trust
18. Agricultural Income
19. List of Exempt Income
20. Clubbing of Income
21. Sett off Losses and Carry Forward
22. Deduction from total Income
23. Tax Deducted at Source and its Rate Chart
24. Tax Collected at Source and its Rate Chart
25. Minimum Alternative Tax
27. Withholding Tax Rates
28. Advance pricing agreement.
29. Agent of a Non-Resident
30. Transfer Pricing
31. Due dates of filing Income Tax Return
32. Permanent Account Number
33. Forms Income tax Return
34. Payment of Advance tax and its calculations
35. Penalties
36. Assessments
37. Appeal
38. Settlement Commission
39. Advance Ruling Authority
40. Annual Information Return
Changes in Rates of Taxes

**Individual, Hindu Undivided family, Association of persons, Body of Individuals, Artificial juridical person:**

- The rate of tax remains the same for these types of person for the financial year 2013-14 as compared to financial year 2012-13.
- The amount of income-tax computed as per above slab shall be increased by a surcharge at the rate of ten percent of such income-tax in case of a person having a total income exceeding one crore rupees.
- Rebate of 2,000/- for individuals having total income up to 5 lakhs.

**Co-operative Societies, Firms, Local Authorities**

- The rate of tax remains the same for these types of person for the financial year 2013-14 as compared to financial year 2012 13.
- However the amount of income-tax shall be increased by a surcharge at the rate of ten percent of such income-tax in case of persons having total income exceeding one crore rupees.

**Companies**

The rate of tax remains the same for companies for the financial year 2013-14 as compared to financial year 2012-13. There is change in the levy of surcharge which is as under:

All companies registered in India

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Existing surcharge</th>
<th>Proposed change in surcharge</th>
<th>Existing effective tax including surcharge and education cess</th>
<th>Proposed effective tax including surcharge and education cess.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the total income is one crore or less</td>
<td>Nil</td>
<td>Nil</td>
<td>30.9%</td>
<td>30.9%</td>
</tr>
<tr>
<td>If the total income exceed one crore to ten crore</td>
<td>5%</td>
<td>5%</td>
<td>32.445%</td>
<td>32.445%</td>
</tr>
<tr>
<td>If the total income exceeds ten crore</td>
<td>5%</td>
<td>10%</td>
<td>32.445%</td>
<td>33.99%</td>
</tr>
</tbody>
</table>

In case of foreign companies, the existing surcharge of two per cent shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees.

The surcharge at the rate of five percent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.
Other Provisions applicable for Individuals and HUF

A. Deduction in respect of interest on loan sanctioned during financial year 2013-14 for acquiring residential house property:

1st Home Buyers who take a loan not exceeding Rs. 25 Lakhs and the value of residential house does not exceed Rs. 40 Lakhs to be provided an additional deduction of interest of Rs. 1 Lakh u/s 80EE.

B. Raising the limit of percentage of eligible premium for life insurance policies of persons with disability or disease:

It is proposed to provide that any sum including the sum allocated by way of bonus received under an insurance policy issued on or after 01.04.2013 for the insurance on the life of any person who is a person with disability or a person with severe disability as referred to in section 80U, or Suffering from disease or ailment as specified in the rules made under section 80DDB, shall be exempt under clause (10D) of section 10 if the premium payable for any of the years during the term of the policy does not exceed 15% of the actual capital sum assured.

It is also proposed to amend sub-section (3A) of section 80C so as to provide that the deduction under the said section on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person referred to above shall be allowed to the extent the premium paid does not exceed 15% of the actual capital sum assured.

C. Taxability of immovable property received for inadequate consideration

The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

Other Provisions Applicable for Companies

A. Incentive for acquisition and installation of new plant or machinery by manufacturing company:

Investment Allowance 5% to manufacturing Companies that invest more than Rs. 100 Crores in Plant & Machinery during the period 01.04.2013 to 31.03.2015.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

B. Extension of the sunset date under section 80IA for the power sector:

It is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

C. Lower rate of tax on dividends received from foreign companies:

Section 115BBD of Income-tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% if such dividend is included in the total income for the Financial Year 2012-13 i.e. Assessment Year 2013-14.
D. Removal of the cascading effect of Dividend Distribution Tax (DDT):
   It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act.

   This amendment will take effect from 1st June, 2013.

E. Concessional rate of withholding tax on interest in case of certain rupee denominated long-term infrastructure bonds:
   In order to facilitate subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), it is proposed to amend section 194LC of the Income-tax Act so as to provide that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilized for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of this section, the borrowing by the company shall be deemed to be in foreign currency. The benefit of reduced rate of tax @ 5% would, therefore, be available to such non-resident in respect of the interest income arising on such subscription subject to other conditions provided in the section.

   This amendment will take effect from 1st June, 2013.

F. Additional Income-tax on distributed income by company for buy-back of unlisted shares:
   An insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares.

   These amendments will take effect from 1st June, 2013.

Provisions Applicable for Trusts, Firms, Limited Liability Partnerships

A. Rationalization of tax on distributed income by the Mutual Funds:
   In order to provide uniform taxation for all types of funds, other than equity oriented fund, it is proposed to increase the rate of tax on distributed income from 12.5% to 25% in all cases where distribution is made to an individual or a HUF.

   In order to bring parity in taxation of income from investment made by a non-resident Investor in an Infrastructure debt fund (IDF) whether set up as a IDF-NBFC or IDF-MF, it is proposed to amend section 115R to provide that tax @ 5% on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

   This amendment will take effect from 1st June, 2013.

B. Distribution tax to be paid by securitization trusts:
   Specified securitization trusts distributing income to its investors will be liable to pay distribution tax as follows:
• no distribution tax to be paid where the payment is made to a person who is exempt from tax under the provisions of the Income-tax Act;
• 25% in case of income distribution to individuals and HUF;
• 30% in case of income distribution to other investors.

Dividend income received by an investor from securitization trusts will be exempt from tax.

This amendment will be effective from 1st June, 2013.


A. Commodities Transaction Tax:
A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered into in a recognized association.

The ‘taxable commodities transaction’ means a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognized associations. The rate of tax is 0.01 per cent to be paid by seller.

Further, it is proposed to amend section 36 of the Income-tax Act to provide that an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.

B. Taxation of Income by way of Royalty or Fees for Technical Services:
The tax rate in case of non-resident taxpayer, in respect of income by way of royalty and fees for technical services as provided under section 115A, is proposed to be increased from 10% to 25%. This rate of 25% shall be applicable to any income by way of royalty and fees for technical services received by a non-resident, under an agreement entered after 31.03.1976, which is taxable under section 115A.

C. One hundred percent deduction for donation to National Children’s Fund:
It is proposed to allow hundred per cent deduction in respect of any sum paid to the Fund in computing the total income of an assessee.

D. Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land):
It is proposed to insert a new section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1% of such sum.

In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakh rupees.

This amendment will take effect from 1st June, 2013.

E. Computation of income under the head “Profits and gains of business or profession” for transfer of immovable property in certain cases:
It is proposed to provide by inserting a new section 43CA that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration for the purposes of computing income under the head “Profits and gains of business of profession”.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to the Assessment Year 2014-15 and subsequent assessment years.

F. Amendment in the definition of Capital Asset regarding agricultural lands:
It is proposed to amend item (b) of sub-clause (iii) of clause (14) of section 2 so as to provide that the land situated in any area within the distance, measured aerially (shortest aerial distance), (I) not being more than two kilometers, from the local limits of any municipality or cantonment board and which has a population of more than ten thousand but not exceeding one lakh; or (II) not being more than six kilometers, from the local limits of any municipality or cantonment board and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometers, from the local limits of any municipality or cantonment board and which has a population of more than ten lakh, shall form part of capital asset.

It is also proposed to define the expression “population” to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Similar amendments are also proposed in clause (1A) of section 2 of the Income-tax Act, 1961 relating to the definition of “Agricultural Income” and in respect of the definition of “urban land” in the Wealth-tax Act, 1957.

G. Key man insurance policy:
It is proposed to amend the provisions of clause (10D) of section 10 to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy.

The above amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to Assessment Year 2014-15 and subsequent assessments years.

H. Contribution not to be in cash for deduction under section 80GGB & section 80GGC:
With a view to discourage cash payments by the contributors, it is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under section 80GGB (any sum contributed by an Indian company to any political party or an electoral trust) and 80GGC (any sum contributed by any person other than local authority and artificial juridical person to any political party or an electoral trust) in respect of any sum contributed by way of cash.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the Assessment Year 2014-15 and subsequent assessment years.

I. Tax Residency Certificate in the case of non residents:
It is proposed to amend sections 90 and 90A in order to provide that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A. This position was earlier mentioned in the memorandum
explaining the provisions in Finance Bill, 2012, in the context of insertion of sub-section (4) in sections 90 & 90A.

J. Return of Income filed without payment of self-assessment tax to be treated as defective return:
The return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

This amendment will take effect from 1st June 2013.

K. Direction for special audit under sub-section (2A) of section 142:
It is proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

This amendment will take effect from 1st June 2013.

L. Penalty under section 271FA for non-filing of Annual Information Return:
It is proposed to amend the aforesaid section so as to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is further proposed to provide that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

This amendment will take effect from 1st April 2014.
Income Tax Act, 1961

History of Income tax in India

The 19th century saw the establishment of British Rule in India. Following the Mutiny of 1857, the British Government faced an acute financial crisis. To fill up the treasury, the first Income-Tax Act was introduced in February, 1860 by James Wilson, who became British-India’s first Finance Minister. Thenceforth, there were many developments in the field of taxation. The tax system was modeled largely on the lines of the British system prevailing then. James Wilson, while introducing the I-T Act in 1860, quoted from Manu for levying income-tax in the country. The Act received the assent of the Governor General on July 24, 1860, and came into effect immediately. It was divided into 21 parts consisting of no less than 259 sections. The salient features of the Act were:

Income was classified under four schedules: i) income from landed property; ii) income from professions and trade; iii) income from securities, annuities and dividends; and iv) income from salaries and pensions. Tax was imposed on each of these sources. Exemption limit for the general public was fixed at Rs. 200 against the exemption limit of Rs. 4,980 to the military and police and Rs. 2,100 for the naval and marine officers.

Agricultural income was subject to tax. The rate of tax was 2 per cent for incomes ranging from Rs. 200 to Rs. 499, and for incomes above this, 4 per cent. Of the 4 per cent charge, 1 per cent was to be retained by provincial governments and 3 percent was to go to the Central Government. Compulsory returns were required to be submitted by all who were liable to tax. Except in Calcutta, the administration of the tax was left in the hands of the land-revenue officers. And the financial year commenced on August 1, 1860.

This first Act of 1860 yielded about Rs. 1.50 crores of tax revenue. This Act continued for five years before lapsing in 1865. The income-tax receipts in 1860-61 were 1.1 millions, in 1861-62, 2 millions; in 1862-63, 1.9 millions; in 1863-64, 1.5 millions; and in 1864-65, 1.3 millions.

After the expiry of the Act, the important events in the history of tax laws in India were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>1886</td>
<td>License tax converted into the Income Tax Act (Act 11 of 1886)</td>
</tr>
<tr>
<td>1916</td>
<td>Graduated rates of taxation on income above Rs. 2,000 introduced</td>
</tr>
<tr>
<td>1917</td>
<td>Super tax introduced</td>
</tr>
<tr>
<td>1918</td>
<td>Income Tax Act of 1918 passed</td>
</tr>
<tr>
<td>1922</td>
<td>Indian Income Tax Act, 1922 passed</td>
</tr>
<tr>
<td>1939</td>
<td>Substantial amendments made to the Income T Act, 1922</td>
</tr>
<tr>
<td>1961</td>
<td>A new act titled ‘Income-tax Act, 1961’ was drafted and came into force from April 1, 1962. This Act, with numerous amendments made from time to time by various Finance acts, is currently in force.</td>
</tr>
</tbody>
</table>

Objectives of income: The basic objective of taxation is to raise money needed to finance government expenditure. But taxes have other effects too. As a factor affecting the pricing of goods, they
determine what to produce and in what measure. By taxing the affluent sections of society more, they change the distribution of incomes and wealth. There is a bewildering array of taxes in any economy, especially in developing countries. Some - such as sales-tax, income-tax and wealth tax - are visible, and yet others - such as excise, Customs duties, and so on - are invisible (as they are imposed on raw materials) and are known as indirect taxes. At present, people are taxed on what they earn, on what they spend, on what they own and even on what they leave behind for their successors to inherit.

Direct taxes, in addition to financing federal government expenditure, serve several functions. They help in resource allocation, encourage or discourage certain kinds of economic and social behavior, redistribute income and wealth, stimulate and stabilize economic growth and even help in solving certain specific economic problems.

The tax system of a country, thus, reflects the social, economic and political aims of the Government. As a nation’s economic goals expand, as its policy objectives change, and as its industry grows, diversifies or fails to expand, tax policy has to alter.

**Introduction to Income Tax Act, 1961**

Ministry of Finance is governed by Central Government. Department of Revenue, a department under Ministry of Finance, regulates and supervises collections of Income Tax. Income Tax is levied on the income derived from various activities performed within India. Income Tax is a direct tax since it is imposed on income earned. Income Tax extends to whole of India. Tax collected by Central Government is utilized for various infrastructural developments and for the welfare of public. To create a system of taxation, a nation must make choices regarding the distribution of the tax burden—who will pay taxes and how much they will pay—and how the taxes collected will be spent. In democratic nations where the public elects those in charge of establishing the tax system, these choices reflect the type of community that the public wishes to create. An important feature of tax systems is the percentage of the tax burden as it relates to income or consumption. In India we follow progressive taxation. A progressive tax is a tax imposed so that the effective tax rate increases as the amount to which the rate is applied increases. In other words, as the income increases the tax rate increases and vice versa. For example, the first $10,000 in earnings may be taxed at 7%, the next $10,000 at 10%, and any more income at 30%. Progressive taxation can be used to reduce economic inequality in a society.

Income Tax is imposed on net profits from business, net gains, salary earned, and other income. Computation of income subject to tax may be determined under accounting principles used in the jurisdiction, which may be modified or replaced by tax law principles in the jurisdiction. Various income tax systems exist, with varying degrees of tax incidence. When the tax is levied on the income of companies, it is often called a corporate tax. Income tax systems often have deductions available that lessen the total tax liability by reducing total taxable income. They may allow losses from one type of income to be counted against another. It is typically collected on a pay-as-you-earn basis, with corrections at the end of the year for over payments and under payments.
Constitution of Income Tax

Constitution of India

22 Parts → 395 Articles → 12 Schedules

Part 11

Article No.246

Schedule VII

Union List

State List

Concurrent List

Constitution of India States that, Parliament has exclusive powers to make laws with respect to any of matters enumerated in List.

State Government has exclusive powers to make laws in respect of matters in this list.

State Government has the exclusive powers to make Laws in respect of matters in the list, with the prior approval of central government.

Entry No. 84
Administration of Income Tax

1. The **Income tax Act, 1961**: The levy of income tax is governed by Income Tax Act, 1961. The Act contains 298 sections and XIV schedules. These undergo changes every year with additions and deletions brought about by the Finance Act passed by parliament. Income tax Act provides for:
   - Determination of taxable income
   - Determination of tax liability
   - Procedure of Tax assessment, Appeals, Penalties and prosecutions
   - Lays down power and duties of various Income tax Authorities

2. **Income tax Rules, 1962**: rules give directions and provide procedures to what is mentioned in the Act. CBDT frames rules from time to time and rules should be studied along with provisions of Act. Rules cannot be inconsistent with the Act. In other words, rules cannot overrule the provisions of the Act.

3. **Circulars, Notifications, ordinances** etc issued from time to time:
   - **Budget**: Every year the Finance Minister presents the budget in the parliament. The Parliament possesses legislative supremacy and thereby ultimate power over all political bodies in India. The Parliament comprises the President of India and the two Houses—Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President has the power to summon and prorogue (means to discontinue a session or defer a session) either House of Parliament or to dissolve Lok Sabha.
•  **Finance bill** is one of the most important components of the budget. Finance bill once enacted becomes the Finance Act which brings the amendments in Direct Tax and Indirect Tax for the next financial year. The Annual Finance Act comes into effect once it is passed by both the Lok Sabha and the Rajya Sabha and the President accords his assent. Finance Bill is generally released during last week of February every year.

• **Ordinance**: It is an amendment made between two budgets. An amendment is directly signed by President. This amendment is to be passed by parliament within 6 months of signing.

• **Notifications**: Central Government through official gazette brings out certain changes in law as it has been conferred power under the relevant sections of the Income tax Act. Gazette of India Notifications are published and are printed by the Government of India Printing Presses regularly. This is an authorized legal document of Government of India containing the mode of operations under the law of the land.

• **Issuance of Circulars**: The CBDT issues from time to time circulars clarifications, instructions etc for the proper administration of this act. These circulars are binding on Income tax authorities and an assessee can claim benefit under such circulars. An assessee is not bound by circulars, it is in the option of the assessee whether to follow the circular or not.

4. **Judicial decisions**: The Constitution of India is the supreme legal document of the country. There are various levels of judiciary in India — different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government.

Some important definitions

1. **Financial Year**: It is the year which starts from 1st day of April and ends on 31st March.

2. **Previous Year**: means year preceding to Assessment year. All the income earned in previous year is assessed in assessment year. For e.g. the previous year to the assessment year 2012-2013 is the financial year starting from 1.4.2011 and ending on 31.3.2012. The total income earned during this period is to be taxed during the assessment year 2012-2013 at the rates, and in accordance with the law, applicable to this assessment year.

   a. **In case of newly commenced business**, previous year would start from date of commencement of business up to 31st March. For e.g. if the business is commenced on 1-9-2012, then in that case the previous year would be 1-9-2012 to 31-3-2013.

3. **Assessment Year**: Assessment year is succeeding the previous year. Assessment year means the period of twelve months commencing from 1st April every year and ending on 31st March of the next year. Income of previous year of an assessee is taxed during the following assessment year at the rates prescribed by the relevant Finance Act. For e.g. if assessee earns income in previous year 2012-2013 then in this case he would be required to assess his tax and pay the same during the assessment year 2013-2014.

4. **Assessee**: “Assessee” means any person who is subject to Income Tax.

   Tax Incidence on an assessee depends on his residential status. For instance, whether an income accrued to an individual outside India is taxable depends upon the resident status of the
individual in India. Similarly, whether an income earned by a foreign national in India (or outside India) is taxable in India depends on the resident status of the individual, rather than on his citizenship. Therefore, the determination of the residential status of a person is very significant in order to find out his tax liability.

**Applicability of Income Tax**

Income tax Act 1961 extends to whole of India.

**Who is liable to pay tax in India?**

Any Person having nexus or business connection in India is liable to pay tax in India.

Person includes-

1. **Individual**
2. **Hindu undivided family:** The Hindu Undivided Family can best be defined as a family that consists of a common ancestor and all his lineal male descendants and their wives and unmarried daughters. The Hindu Undivided Family (HUF) cannot be created by acts of any party. The only exceptions are in the case of an adoption or a marriage when a stranger may become a HUF member. The person who manages the affairs of the family is known as the Karta. Normally, the senior-most member of the family acts as Karta. However, a junior male member can also act as Karta with the consent of the other members.
3. **Company:** means any Private Ltd. Or Public Ltd. Company as defined by companies act 1956.
4. **Firm:** a partnership or association of two or more persons or entities for the purpose of carrying on a business, the aforementioned business itself.
5. **Association of persons or body of individuals:** an ‘association of persons’ the members of the association must join together for the purpose of producing an income. An ‘association of persons’ can be formed only when two or more individuals voluntarily combine together for a certain purpose. An association of persons does not mean any and every combination of persons. It is only when they associate themselves in an income-producing activity that they become an association of person's e.g. labor association, resident welfare association
   The expression ‘body of individuals’ a combination of individuals who merely receive income jointly, it includes a combination of individuals who have a unity of interest but who are not actuated by a common design, and one or more of whose members produce or help to produce income for the benefit of all.
6. **Local authority:** An administrative unit of local government. The expression local authority means:
   - Panchayat
   - Municipality
   - Municipal Committee and District board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local funds.
7. **Artificial judicial person,** not falling within any of the above classes: It includes entities which are not natural persons but are separate entities in the eyes of law. Though they may not be sued directly in a court of law but they can be sued through persons managing them.
Section 6: Residential Status

Residential status in case of an individual

An individual may be

1. Resident and ordinarily resident
2. Resident but not ordinarily resident
3. Non resident

**Step 1**: First find out whether such individual is “Resident in India”.

**Step 2**: If such individual is “Resident” in India, then find out whether he is “ordinarily resident in India”. However, if such a person is a Non Resident then no further investigation is necessary.

**Basic condition** to test whether an individual is Resident in India-

An individual is said to be a resident in India in any previous year if he satisfies at least one of the basic conditions:

<table>
<thead>
<tr>
<th>1st basic condition</th>
<th>His stay in India is for 182 days or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>2nd basic condition</td>
<td>He is in India for a period of 60 days or more during previous year and 365 days or more during 4 years immediately preceding the previous year</td>
</tr>
</tbody>
</table>

**Note**: In the following two cases the period of 60 days shall be substituted by 182 days in order to become a resident of India:

1. An Indian citizen who leave India during the previous year for the purpose of taking employment outside India or an Indian citizen leaving India during the previous year as a member of the crew of an Indian ship. (Employment includes Self Employment also i.e. own business and Profession)
2. An Indian citizen or a person of Indian origin who comes on a visit to India during the previous year (a person is said to be of Indian origin if his parents or grandparents were born in undivided India)

**Additional conditions to test whether an individual is Resident and ordinarily resident**: A Resident individual is said to be a resident and ordinarily resident if he satisfies both the following two additional conditions:

<table>
<thead>
<tr>
<th>1st additional condition</th>
<th>He has been resident in at least 2 out of 10 previous years immediately preceding the relevant previous years</th>
</tr>
</thead>
<tbody>
<tr>
<td>2nd additional condition</td>
<td>He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year</td>
</tr>
</tbody>
</table>

**Residential status of Individual**

<table>
<thead>
<tr>
<th>Resident and ordinarily resident</th>
<th>Satisfies at least one of the basic condition and both the additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident and not ordinarily resident</td>
<td>if he satisfies at least one of the basic condition and none of the additional conditions</td>
</tr>
<tr>
<td></td>
<td>if he satisfies at least one of the basic condition and one of the two additional conditions</td>
</tr>
</tbody>
</table>
Non Resident If he satisfies none of the basic conditions, in case of Non Resident additional conditions are not relevant

Residential status in case of a Hindu undivided family (HUF)

An HUF is said to be resident in India if control and management of its affairs is wholly or partly situated in India. Control and management does not merely mean right to control or manage. Control and management refers to the decisions taken regarding affairs of the HUF. The control and management lies at the place where decisions regarding the affairs of the HUF are taken.

<table>
<thead>
<tr>
<th>Place of Control</th>
<th>Residential status of family</th>
<th>Ordinarily resident or not</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly in India</td>
<td>Resident</td>
<td>If the Karta satisfies both the additional conditions</td>
</tr>
<tr>
<td>Wholly out India</td>
<td>Non Resident</td>
<td>—</td>
</tr>
<tr>
<td>Partly in India and partly outside India</td>
<td>Resident and ordinary resident</td>
<td>If the Karta satisfies both the additional conditions</td>
</tr>
</tbody>
</table>

If Karta does not satisfies one of the additional conditions then the HUF is resident but not ordinarily resident.

Residential status in case of a Firm and Association of Person (AOP)

A firm or an AOP is said to be resident in India if control and management of affairs are situated wholly in India.

<table>
<thead>
<tr>
<th>Place of Control</th>
<th>Residential status of Firm or AOP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly in India</td>
<td>Resident</td>
</tr>
<tr>
<td>Wholly out India</td>
<td>Non Resident</td>
</tr>
<tr>
<td>Partly in India and partly outside India</td>
<td>Resident</td>
</tr>
</tbody>
</table>

Residential status of a Company

A Company is said to be a resident in India in any previous year if

a. it is an Indian company, or
b. During the relevant previous year, the control and management of its affairs is situated wholly in India.

<table>
<thead>
<tr>
<th>Place of Control</th>
<th>An Indian Company</th>
<th>Company other than Indian company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly in India</td>
<td>Resident</td>
<td>Resident</td>
</tr>
<tr>
<td>Wholly out India</td>
<td>Resident</td>
<td>Non Resident</td>
</tr>
<tr>
<td>Partly in India and partly outside India</td>
<td>Resident</td>
<td>Non Resident</td>
</tr>
</tbody>
</table>

Note: A company can never be “ordinarily” or “not ordinarily” resident in India.
Residential status in case of every other person

Every other person is resident in India if control and management of his affairs is, wholly or partly, situated within India during relevant previous year. On the other hand, every person is non-resident in India if control and management of its affairs is wholly situated outside India.

Section 5: Incidence of Tax

Relationship between Residential status and Incidence of tax

In order to understand the relationship between residential status and incidence of tax one should understand the difference between “Indian Income” and “Foreign Income”.

**Indian Income:** Any of the following three is an Indian income:

1. If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.
2. If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during previous year.
3. If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

**Foreign Income:** If the following two conditions are satisfied then such income is foreign income:

1. Income is not received (or not deemed to be received) in India.
2. Income does not accrue or arise (or does not deemed to accrue or arise) in India.

In brief the provision is explained as follows:

<table>
<thead>
<tr>
<th>Whether income is received or deemed to be received in India during relevant year</th>
<th>Whether income accrues or arises or is deemed to accrue or arise in India</th>
<th>Status of income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Indian Income</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Indian Income</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Indian Income</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Foreign Income</td>
</tr>
</tbody>
</table>

**Meaning of accrued income:** Income that has been earned or accumulated over a period of time but not yet received. In other words, the income a company earns over a period of time but has not collected by the end of a reporting period. Reporting period means the period for which accounts are prepared in a year.

For example, if a company earns Rs. 1,00,000/- but did not received Rs. 25,000/- till the finalization of final accounts, then such amount i.e. Rs. 25,000/- will be referred as Accrued income. Another example is explained as under for sale on credit basis where sale is recorded in October 2012 but cash is received in April 2013.
Incidence of tax for different tax payers: Incidence of tax: Tax incidence means the final burden of tax. In other words, incidence of tax is on person who actually bears/pays the final tax liability.

For Individual and HUF

<table>
<thead>
<tr>
<th></th>
<th>Resident and ordinarily resident in India</th>
<th>Resident and not ordinarily resident in India</th>
<th>Non Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indian Income</strong></td>
<td>Taxable in India</td>
<td>Taxable in India</td>
<td>Taxable in India</td>
</tr>
<tr>
<td><strong>Foreign Income:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) If it is business income and business is controlled wholly or partly from India</td>
<td>Taxable in India</td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
</tr>
<tr>
<td>(ii) If it is income from profession which is set up in India</td>
<td>Taxable in India</td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
</tr>
<tr>
<td>(iii) If it is business income and business is controlled from India</td>
<td>Taxable in India</td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
</tr>
<tr>
<td>(iv) If it is income from profession set up outside India</td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
<td>Not taxable in India</td>
</tr>
<tr>
<td>(v) Any other foreign income (like salary, rent etc)</td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
<td>Not taxable in India</td>
</tr>
</tbody>
</table>

For other taxpayer (like company, firm, AOP, BOI etc)

<table>
<thead>
<tr>
<th></th>
<th>Resident in India</th>
<th>Non Resident in India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indian Income</strong></td>
<td>Taxable in India</td>
<td>Taxable in India</td>
</tr>
<tr>
<td><strong>Foreign Income</strong></td>
<td>Taxable in India</td>
<td>Not taxable in India</td>
</tr>
</tbody>
</table>

Some important conclusions
- Indian Income is always taxable in India irrespective of the residential status of assessee.
- Foreign Income is taxable in hands of resident, resident and ordinarily resident (in case of individual) in India. Foreign income is not taxable in hands of non-resident.
- In case of resident but not ordinarily resident foreign income is taxable only if it is business income and business is controlled from India or professional income from a profession which is set up in India. In any other case foreign income is not taxable in hand of resident and not ordinarily resident.
An overview of process of computation of taxable income

Computation of Total Income

Determine Residential Status

Classification of income under five heads

Salaries
Income from house property
Profits and gains from Business and Profession
Capital gain
Other sources

Aggregation of Income

Application of clubbing provisions

Set off carry forward of losses

Gross Total Income

Deductions from Gross Total Income

Taxable Income

Total Income
## Computation of Tax Liability

<table>
<thead>
<tr>
<th>How to find out Tax Liability</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Total Income</strong></td>
<td>.............</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction under section 80C to 80U</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>.............</td>
</tr>
<tr>
<td>Divide the net Income into the following-</td>
<td></td>
</tr>
<tr>
<td>Income subject to special tax rates</td>
<td>.............</td>
</tr>
<tr>
<td>Remaining income subject to normal Tax Rates</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Income Tax on Net Income</strong>-</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Add:</strong> Surcharge @ 0%, 2%, or 5%.</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Add:</strong> Education Cess @2%</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Add:</strong> Secondary Education Cess @1%</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Total Tax</strong></td>
<td>.............</td>
</tr>
<tr>
<td><strong>Deduct:</strong> Rebate u/s 86, 89, 90, 90A or 91</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Tax Liability</strong></td>
<td>.............</td>
</tr>
<tr>
<td><strong>Add:</strong> Interest / penalty</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Less:</strong> Prepaid Taxes i.e. advance Tax, self assessment tax, TDS</td>
<td>.............</td>
</tr>
<tr>
<td>TCS, MAT/AMT credit</td>
<td>.............</td>
</tr>
<tr>
<td><strong>Tax Payable/Refundable</strong></td>
<td>.............</td>
</tr>
</tbody>
</table>
Income Tax Slab Rate Applicable for 
the Assessment Year 2014-15

Individual, Hindu Undivided family, association of persons, 
body of individuals, artificial juridical person

a. For Individual assessee (both men and women assessee)

<table>
<thead>
<tr>
<th>Total Income</th>
<th>Rate of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal Rs.2,00,000</td>
<td>NIL</td>
</tr>
<tr>
<td>From Rs.2,00,001 to Rs.5,00,000</td>
<td>10%</td>
</tr>
<tr>
<td>From Rs.5,00,001 to Rs.10,00,000</td>
<td>20%</td>
</tr>
<tr>
<td>Above Rs.10,00,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

b. For Resident Individuals who is of the age of sixty years or more but less than eighty years

<table>
<thead>
<tr>
<th>Total Income</th>
<th>Rate of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal Rs.2,50,000</td>
<td>NIL</td>
</tr>
<tr>
<td>From Rs.2,50,001 to Rs.5,00,000</td>
<td>10%</td>
</tr>
<tr>
<td>From Rs. 5,00,001 to Rs. 10,00,000</td>
<td>20%</td>
</tr>
<tr>
<td>Above Rs.10,00,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

c. For Resident Individuals who is of the age of eighty years or more

<table>
<thead>
<tr>
<th>Total Income</th>
<th>Rate of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5,00,000</td>
<td>NIL</td>
</tr>
<tr>
<td>Form 5,00,001 to 10,00,000</td>
<td>20%</td>
</tr>
<tr>
<td>Above Rs.10,00,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

d. The amount of income-tax computed as per above slab shall be increased by a surcharge at the 
rate of ten percent of such income-tax in case of a person having a total income exceeding one 
crore rupees.

e. Rebate of 2,000/- for individuals having total income up to 5 lakhs
Any individual having income up to 2,20,000 will not be required to pay any tax and every individual having total income above 2,20,000/- but not exceeding ₹ 5,00,000/- shall get a tax relief of ₹ 2,000/-. 

In case of Firm: Income Tax is @30% of total taxable income. Education cess @3% would apply on amount of income tax.

In case of Association of persons and Body of Individuals: same rates as in case of individual referred in point 1 above would be applicable. Education cess @3% would also apply on amount of income tax.
Co-operative Societies, Firms, Local Authorities

<table>
<thead>
<tr>
<th>Income Level/Slabs</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 10,000</td>
<td>10% of the income</td>
</tr>
<tr>
<td>10,001 to 20,000</td>
<td>1,000+20% of the income in excess of 10,000</td>
</tr>
<tr>
<td>Where the total income exceeds 20,000</td>
<td>3,000+30% of the amount of income which exceeds 20,000</td>
</tr>
</tbody>
</table>

- Education cess @3% would apply on amount of income tax.
- However the amount of income-tax shall be increased by a surcharge at the rate of ten percent of such income-tax in case of these types of person having total income exceeding one crore rupees.

Companies

a. The rate of tax remains the same for companies for the financial year 2013-14 as compared to financial year 2012-13.
b. There is change in the levy of surcharge which are as under

<table>
<thead>
<tr>
<th>All companies registered in India</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Level</td>
<td>Proposed change in surcharge</td>
</tr>
<tr>
<td>Total income less than or equal to Rs. 1 Crore</td>
<td>Nil</td>
</tr>
<tr>
<td>If the total income Exceed one crore to ten crore</td>
<td>5%</td>
</tr>
<tr>
<td>If the total income exceeds ten crore</td>
<td>5% 10%</td>
</tr>
</tbody>
</table>

In case of foreign companies, the existing surcharge of two per cent shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees.

The surcharge at the rate of five percent shall be levied if the total income of the company other than domestic company exceeds Ten Crore rupees.
Income from Salary

Every payment made by employer to his employee for service rendered would be chargeable to tax as “Income from Salaries”. Any remuneration paid by an employer to an employee in consideration of his services is called salaries. It includes monetary value of those benefits and facilities, which are provided by the employer and are taxable. An employer employee relationship is a master-servant relationship where the employer has the right to give directions to the employee about the work to be performed.

Examples where there is no control of Payer over payee:

- Partner of a firm
- Director who is not employee
- Members of parliament
- Guest Lecturers etc.

In all these cases income of the receiver is not taxable under the head “Salary”.

Section: 15 Charging Section of Salary

Basis of Charge: Salary is taxable either on due basis or receipt basis which ever matures earlier:

(i) Due basis – when it is earned even if it is not received in the previous year.
(ii) Receipt basis – when it is received even if it is not earned in the previous year i.e. Advance Salary.
(iii) Arrears of salary- which were not due and received earlier are taxable when due or received, whichever is earlier. Salary includes:

1. Basic salary
2. Fees, Commission and Bonus
3. Taxable value of cash allowances
4. Taxable value of perquisites
5. Retirement Benefits

Taxable value of all allowances

Allowance is a fixed monetary amount paid by the employer to the employee (over and above basic salary) for meeting certain expenses, whether personal or for the performance of his duties. These allowances are generally taxable and are to be included in gross salary unless specific exemption is provided in respect of such allowance. For the purpose of tax treatment, we divide these allowances into 3 categories:

1. Fully taxable cash allowances
2. Partially exempt cash allowances
3. Fully exempt cash allowances

1. Fully taxable cash allowances: This category includes all the allowances, which are fully taxable. So, if an allowance is not partially exempt or fully exempt, it gets included in this category. The main allowances under this category are enumerated below:
<table>
<thead>
<tr>
<th>Allowance</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dearness allowance and Dearness Pay</td>
<td>This allowance is paid to compensate the employee against the rise in price level in the economy, whole of it is taxable. When a part of Dearness Allowance is converted into Dearness Pay, it becomes part of basic salary for the grant of retirement benefits and is assumed to be given under the terms of employment.</td>
</tr>
<tr>
<td>City Compensatory Allowance</td>
<td>This allowance is paid to employees who are posted in big cities. The purpose is to compensate the high cost of living in cities like Delhi, Mumbai etc. However, it is fully taxable.</td>
</tr>
<tr>
<td>Tiffin / Lunch Allowance</td>
<td>It is fully taxable. It is given for lunch to the employees.</td>
</tr>
<tr>
<td>Non practicing Allowance</td>
<td>This is normally given to those professionals (like medical doctors, chartered accountants etc.) who are in government service and are banned from doing private practice. It is to compensate them for this ban. It is fully taxable.</td>
</tr>
<tr>
<td>Warden or Proctor Allowance</td>
<td>These allowances are given in educational institutions for working as a Warden of the hostel or as a Proctor in the institution. They are fully taxable.</td>
</tr>
<tr>
<td>Deputation Allowance</td>
<td>When an employee is sent from his permanent place of service to some place or institute on deputation for a temporary period, he is given this allowance. It is fully taxable.</td>
</tr>
<tr>
<td>Overtime Allowance</td>
<td>When an employee works for extra hours over and above his normal hours of duty, he is given overtime allowance as extra wages. It is fully taxable.</td>
</tr>
<tr>
<td>Fixed Medical Allowance</td>
<td>Medical allowance is fully taxable even if some expenditure has actually been incurred for medical treatment of employee or family</td>
</tr>
</tbody>
</table>

2. **Partially exempt allowances:** This category includes allowances which are exempt up to a certain limit. For certain allowances, exemption is dependent on amount of allowance spent for the purpose for which it was received and for other allowances, there is a fixed limit of exemption. **In other words we can say that allowances are exempt to the extent of amount received or amount spent whichever is less.**

There is an exhaustive list for such allowances. They are:

- **Entertainment Allowance:** This allowance is first included in gross salary under allowances and then deduction is given to only central and state government employees under Section 16 (ii).

- **Specific Allowances** for meeting official expenditure. Certain allowances are given to the employees to meet expenses incurred exclusively for the performance of official duties and hence are exempt to the extent actually incurred for the purpose for which it was given. These include:
  - **Travelling Allowance:** This allowance is given to meet the cost of travel on tour or on transfer
  - **Daily Allowance:** This allowance is given to meet the ordinary daily charges on tour on transfer.
• **Conveyance Allowance**: This allowance is given to meet the expenditure incurred on conveyance official duties.

• **Helper Allowance**: This allowance is given to meet the expenditure on a helper for official duties.

• **Academic Allowance**: This allowance is given to encourage academic, research and training.

• **Uniform Allowance**: This allowance is given to meet expenditure on purchase or maintenance of uniform.

• Specific Allowances to meet personal expenses: There are certain allowances given to the employees for specific personal purposes and the amount of exemption is fixed i.e. not dependent on actual expenditure incurred in this regard. These allowances include:

<table>
<thead>
<tr>
<th>Allowances</th>
<th>Exemption Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children Education Allowance</td>
<td>Rs.100 p.m. per child (Maximum 2 children )</td>
</tr>
<tr>
<td>Children Hostel Expenditure Allowance</td>
<td>Rs. 300 p.m. per child (Maximum 2 children )</td>
</tr>
<tr>
<td>Tribal Area Allowance</td>
<td>Rs. 200 p.m.</td>
</tr>
<tr>
<td>Transport Allowance</td>
<td>Rs. 800 p.m. &amp; Rs. 1600 p.m. for blind\handicapped</td>
</tr>
<tr>
<td>Transport Allowance for transport employee</td>
<td>Least 70% of allowance or Rs. 10,000 p.m.</td>
</tr>
<tr>
<td>Underground Allowance</td>
<td>Rs.800 p.m.</td>
</tr>
<tr>
<td>Compensatory field area Allowance</td>
<td>Maximum Rs. 2600 p.m.</td>
</tr>
<tr>
<td>Compensatory hill area Allowance</td>
<td>Maximum Rs. 1000 p.m.</td>
</tr>
<tr>
<td>Special compensatory hill area or high altitude Allowance</td>
<td>Rs.300 p.m. to Rs. 7,000 p.m.</td>
</tr>
<tr>
<td>Border Area, Remote area Allowance</td>
<td>Rs. 200 p.m. to 1,300 p.m.</td>
</tr>
<tr>
<td>High Altitude Allowance (Non congenial Climate)</td>
<td>Rs. 1,060 p.m. (Altitude for 9000 ft to 15000ft), Rs. 1,600 p.m. (Altitude above 15000ft)</td>
</tr>
</tbody>
</table>

• **House Rent Allowance** (Section:10(13A)): An allowance granted to a person by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him. HRA is exempt from tax up to a limit prescribed and is taxable if HRA paid to employee exceeds the limit. The exemption of HRA depends upon the following factors:

1. Basic Salary
2. Place of residence
3. Rent paid
4. HRA received

HRA should be exempt from tax and tax is calculated by satisfying the following conditions. They are:

Least of the following should be exempt from tax:

a. HRA Actually Received from Employer
b. Rent paid – 10% of Salary (Basic + Dearness Allowances + Commission based on turnover)
c. 50% or 40% of Basic Salary (Basic + Dearness Allowances + Commission based on turnover)

If an employee’s residence is in metropolitan cities i.e. Delhi, Chennai, Mumbai, and Kolkata consider 50% of Salary, otherwise 40% of Salary.

If an employee is living in his own house and receiving HRA, it will be fully taxable.
5. **Fully exempt Allowance:**
   - Foreign allowance: This allowance is usually paid by the government to its employees being Indian citizen posted out of India for rendering services abroad.
   - Sumptuary Allowances: Allowance to High Court and Supreme Court Judges of whatever nature are exempt from tax.
   - Allowances from UNO organization to its employees are fully exempt from tax.
   - Compensatory Allowances: Received by a judge are fully exempt from Tax.

**Perquisites**

*Perquisites* means benefits attached to an office or position, in addition to salary or wages, which is availed by an employee. Perquisite is taxable under the head salary only if it is allowed by an employer to his employee in the course of employment and results in some personal advantage to the employee. Perquisites can be considered as benefit to the employee and hence taxable in the hands of specified employees only. Perquisites may be provided directly or indirectly. Perquisites need not necessarily be non-monetary.

Some examples of Perquisite are as follows-
- Value of rent-free accommodation provided by the employer.
- Value of concession in rent in respect of accommodation provided to the assessee by his employer.
- The value of any benefit or amenity granted or provided free of cost or at concessional rate to specified employees
- Amount paid by an employer in respect of any obligation which otherwise would have been payable by the employee

**Perquisites can be divided in 3 categories:**
1. Perquisite taxable in all cases
2. Perquisite not taxable
3. Perquisite which are taxable only in hands of specified employee.

**Perquisite Taxable (Subject to conditions)**

(i) Rent Free Accommodation
(ii) Provision for Motor car or any other conveyance for personal use
(iii) Provision of free or concessional Educational facilities
(iv) Reimbursement of Medical expenditure
(v) Expenditure on foreign travel and stay during medical treatment
(vi) Supply of Gas, electricity and water

**Non Taxable**

(i) Leave travel concession subject to conditions and actual amount spent. An employee with his family members can avail facility to travel anywhere in India.
(ii) Computer/Laptop for official purpose
(iii) Initial fees paid for corporate membership of a club
(iv) Refreshment provided during working hours in office premises
(v) Payment of annual premium on personal accident policy
(vi) Provision of Medical facilities
(vii) Gift not exceeding Rs. 5,000 per annum  
(viii) Telephone/Mobiles  
(ix) Interest free/concessional loan not exceeding Rs. 20,000 (limit not applicable for medical treatment)  
(x) Gift to employees of Moveable assets (other than computer/laptop, electronic items and car) after using for 10 years  
(xi) Subscription to periodicals and journal required for discharge of work  
(xii) Free meal provided during working hours or through non transferable vouchers not exceeding Rs.50 per meal or free meal provided during working hours in a remote area

**Perquisite Taxable only in hands of specified employee**  
(i) Car owned by employer but used by employee both for personal and official purpose  
(ii) Gas and electricity purpose  
(iii) Education facility for children  
(iv) Free transport allowance by employer engaged in Transport business  
(v) Service of Domestic servant provided by employer

**Retirement benefits**

**Pension**

```
Pension:- Section 10(10A)

  Commuted Pension (lump sum payment)
    Central /state govt./ statutory corporation/ local authority employees
      Fully exempt from tax

    Other Employees

  Uncommuted Pension (periodical payment)
    Taxable in case of all employees (Govt. as well as Non Govt.)

In case of receipt of gratuity
In case of non receipt of gratuity
```
Gratuity

There are some other retirements benefits are also there:

1. Death-Cum-Retirement Gratuity (Section 10(10)).
2. Leave Salary (Section 10(10AA))
3. Compensation on Voluntary Retirement (Section 10(10C))
4. Retrenchment Compensation (Section 10(10B))
Income from House Property

Section 22: Charging Section
Income is taxable under head “Income from House Property” if the following 3 conditions are satisfied:
1. The property should consist of building or land appurtenant thereto.
2. The assessee should be the owner of the property
3. The property should not be used by the owner for the purpose of any business or profession carried on by him.

Notes:
1. Even if letting out is the business of the assessee, still rental income of building is taxable under the head house property only.
2. Building includes not only residential business, but also factory buildings, offices, shops, godowns and other commercial premises.
3. Income from letting out of vacant land is taxable under the head Income from other sources.

Section 27: Deemed Owner
1. In the case of gift to spouse or minor child (not being a minor married daughter), transferor shall be deemed as owner.
2. Holder of impartial estate is deemed as owner.
3. In the case of allotment or lease under a housing building scheme of society, company or other association, the person to whom building has been allotted shall be deemed as owner.
4. The person who acquired house without registration in part performance of a contract u/s 53A transfer of property act, 1882 is deemed as owner.
5. The lessee of a building in case building is leased out for not less than 12 years is deemed as owner.

For the purpose of computation of tax Property is classified in to:
1. Self occupied property
2. Let out property
3. Partly Let out Property
4. Deemed to be let out property
Method of Computation

- **Notes**: Interest on borrowed Capital:
  The loan may be taken for purchase, construction, repair, renewal or reconstruction of the building. Deduction is allowed on accrual basis, even if not actually paid.

- **Interest of Pre-construction period**:
  If loan is taken prior to completion of construction or purchase of house, then total interest for the period prior to the previous year in which the property has been acquired or construction is completed is deductible in 5 equal installments.
  The deduction shall start from the year in which property is acquired or construction is completed.

**Deduction in respect of interest on loan sanctioned during financial year 2013-14 for acquiring residential house property**:
Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property.

The proposed new section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.
It is further provided that the deduction under the proposed section shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

It is also provided that the deduction shall be subject to the following conditions:

- The loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;
- The amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees;
- The value of the residential house property does not exceed forty lakh rupees;
- The assessee does not own any residential house property on the date of sanction of the loan.

This amendment will take effect from 1st April, 2014 and accordingly apply in relation to the assessment year 2014-15 and subsequent assessment years.

**Maximum Interest for Self Occupied House**

If Loan Taken is taken for Purchase. Construction, Construction completed in 3 years, then deduction is allowed upto Rs. 1,50,000/- otherwise upto Rs. 30,000/-

However, total deduction of all loans cannot exceed Rs. 1,50,000/-

- **Municipal Taxes:**
  Allowed only when such taxes is being paid by the owner of the property. Such deduction is allowed on actual payment basis.

- **Deemed to be Let Out Property:**
  In case there is more than one self occupied property then except one house remaining houses shall be deemed to be let out, at the option of the assessee.

**Calculation of Gross Annual Value (GAV)**

- Municipal Value
  - Fair rental Value
  - Standard Rent
  - Annual Rent

\[
\text{Gross Annual Value} = \begin{cases} 
\text{Whichever is Higher} & \text{If Municipal Value} \\
\text{Whichever is Lower} & \text{If Municipal Value}
\end{cases}\\
\begin{cases} 
\text{Whichever is Higher} & \text{If Fair rental Value} \\
\text{Whichever is Lower} & \text{If Fair rental Value}
\end{cases}\\
\begin{cases} 
\text{Whichever is Higher} & \text{If Standard Rent} \\
\text{Whichever is Lower} & \text{If Standard Rent}
\end{cases}
\]

**Notes:**

- Municipal Value is the value determined by the municipal Authorities for levying municipal taxes on house property.
- Fair rent means rent which similar property in the same locality would fetch.
- The Standard rent is fixed by the Rent Control Act.
### Summary

<table>
<thead>
<tr>
<th></th>
<th>Let Out</th>
<th>Could Not</th>
<th>Self Occupied</th>
<th>Deemed to be Let Out</th>
<th>Partly Let Out</th>
<th>Vacant</th>
</tr>
</thead>
<tbody>
<tr>
<td>GAV</td>
<td>a. Expected rent</td>
<td>b. Actual rent whichever is higher</td>
<td>Nil</td>
<td>Nil</td>
<td>Expected Rent</td>
<td>a. Expected rent</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>b. Actual rent whichever is higher</td>
</tr>
<tr>
<td>Deduction of Interest</td>
<td>Actual</td>
<td>30,000/- or 1,50,000/-</td>
<td>30,000/- or 1,50,000/-</td>
<td>Actual</td>
<td>Actual</td>
<td>Actual</td>
</tr>
</tbody>
</table>

### Income from Capital Gains

#### Section: 45 Charging Section

Any gain arising from transfer of capital asset is chargeable under head “Capital Gain” in the previous year in which such transfer took place unless such capital gain is exempt u/s 54, 54B, 54D etc. Capital Gain can be taxed subject to the following conditions:

- The assessee must have owned the capital asset
- The assessee must have transferred the capital asset in the previous year
- There must have been profit or gain as a result of such transfer

#### Section 2(14): Definition of Capital asset

Capital asset means property of any kind held by an assessee whether or not connected with his business or profession.

However it does not include:

1. Stock, stores, raw material held for the purpose of his business or profession
2. Gold Deposit Bonds issued under Gold Deposit Scheme 1999
3. Rural agricultural land in India
4. Personal effect i.e. Movable property held for personal use by the assessee or any member dependent on him. However it excludes the following:
   - Jewellery,
   - Archaeological Collections,
   - Drawings, Paintings, or any work of art
   - Sculptures,

**Explanation as added by Finance Act, 2012:** Property includes and shall be deemed to have always included any rights in or in relation to an Indian company, including right of any management or control or any other rights whatsoever.
Types of Capital Assets

Capital assets are of two types:

- Short term capital asset and
- Long term capital asset

Cost of acquisition of an asset is the sum total of amount spent for acquiring the asset

- Where the asset was purchased, the cost of acquisition is the price paid or incurred. Where the asset was acquired by way of exchange for another asset, the cost of acquisition is the fair market value of that other asset as on the date of exchange.
- Any expenditure incurred in connection with such; purchase, exchange or other transaction e.g. brokerage charges, legal expenses paid shall also form a part of cost of acquisition.
- In relation to goodwill of a business, tenancy rights, route permits, loom hours, right to carry on business, patents, copyright or trademark. then
  a. If such assets are purchased by assessee from its owner – then Cost of acquisition is the amount of purchase price.
  b. In case of Self Generated assets- Cost of Acquisition is taken to be NIL.
- Cost of acquisition of assets acquired before 01-04-1981
  If an asset has been acquired by the assessee himself or by previous owner before 1-04-1981, then assessee has the option to take either actual cost of acquisition to him/previous owner or the fair market value of the asset on 01-04-1981 as cost for computing capital gains.
**Cost of improvement**

It means all expenditure of a capital nature incurred in making additions or alternations to the capital asset.

Cost of improvement for goodwill of a business, right to manufacture, produce or process any article or thing is NIL.

All expenditure of capital nature incurred on improvement of asset by previous owner and the assessee on or after 1-04-1981 shall be treated as cost of improvement. Hence in other words we can say that, cost of improvement incurred before 1-04-1981 shall be ignored in all cases.

**Section 2(47): Transfer**

Transfer in relation to capital Asset includes:

- Sale, exchange or relinquishment of a capital asset;
- Extinguishment of any rights in a capital asset;
- Compulsory acquisition of the capital asset under any law;
- Conversion of a capital asset into stock-in-trade;
- Part performance of a contract of sale;
- Maturity or redemption of Zero coupon bonds;
- Allotment under a house building scheme of society, company or other association.

Explanation as added by Finance Act, 2012 – “Transfer” includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, Voluntarily or involuntarily, by way of an agreement (whether entered in India or outside India) or otherwise. notwithstanding that such transfer of right has been characterized as being effected or dependent upon or flowing from the transfer of share or shares of a company registered or incorporated outside India.

**Section 47: Transactions not regarded as transfer**

No capital gain will arise on the following transactions, because these are not regarded as transfer:

- Distribution of capital assets on the total or partial, partition of a Hindu Undivided Family.
- Transfer of capital asset under gift, will or an irrevocable trust.
- Transfer of a capital asset by a holding company to its subsidiary company and vice versa. if
  a. Holding co. holds entire share capital of subsidiary co. and
  b. Transferee is an Indian co.
- Transfer of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company.
- Transfer in a scheme of amalgamation, of shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company if the conditions are satisfied:
  a. at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company and
b. Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated.

- Transfer in a scheme of amalgamation of banking company with a banking institution sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act of a capital asset by the banking company to the banking institution.

- Transfer of Capital asset on conversion of a **firm to a company**, if
  a. All Assets/liability of a firm become the asset and liabilities of company and
  b. All shareholder of the company become partners in the ratio of their share capital and
  c. Shareholder receive only share in profit and capital as consideration and
  d. Partners have at least 50% profit sharing ratio for at least 5 years.
  e. Total sales or receipts of the company in any 3 proceeding previous year do not exceed Rs. 60 lacs.
  f. No amount is paid to any partner out of accumulated profits on the date of conversion for 3 years.

- Transfer of capital asset by a private company or unlisted public company to a limited liability partnership or any transfer of shares held in the company by a shareholder as a result of conversion of the company, if
  a. All Assets/liability of a company become the asset and liabilities of the firm and
  b. All shareholder of the company become partners in the ratio of their share capital and
  c. Shareholder receive only share in profit and capital as consideration and
  d. Partners have at least 50% profit sharing ratio for at least 5 years.
  e. Part of the company in any 3 proceeding previous year do not exceed Rs. 60 lacs.
  f. No amount is paid to any partner out of accumulated profits on the date of conversion for 3 years.

- Transfer of capital asset on conversion of Sole proprietary concern in a company if,
  a. All assets and liabilities of proprietor become asset/liability of the company
  b. Proprietor receive only shares in consideration
  c. Shareholders have at least 50% voting power for at least 5 year.

- Any transfer by the demerged company to the resulting company, if the resulting company is an Indian Company.

- Transfer of bonds or GDR referred to in section 115AC, made outside India by a NON-RESIDENT to another NON-RESIDENT which was purchased in foreign currency.

- Any Transfer of a Capital asset, being any work of art, archaeological, scientific, or art collection, book, manuscript, drawing, painting, photograph or print, to the Government, university, National Museum, National Art gallery, National archives or any such other public museum or institution as may be notified by the Central Government.

- Any transfer by way of conversion of bonds, or debentures or debentures stock or deposit certificates of a company into the shares or debentures of that company.

- Transfer of land by a sick industrial company under a scheme prepared and sanctioned under Sick Industrial Companies Act.

- Any transfer of a capital asset in a transaction under Reverse Mortgage Scheme shall not be regarded as transfer.
Section: 48 Computation of Capital Gain

<table>
<thead>
<tr>
<th>Sale Consideration received</th>
<th>***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>***</td>
</tr>
<tr>
<td>Less: Indexed Cost of improvement</td>
<td>***</td>
</tr>
<tr>
<td>Less: Expenses on Transfer</td>
<td>***</td>
</tr>
<tr>
<td>Short term/Long term Capital Gain</td>
<td>***</td>
</tr>
</tbody>
</table>

First proviso to Section 48: Capital Gain in case of Non-Resident

In case of an assessee who is a Non-Resident, the capital gain arising from the transfer of shares or debentures in an Indian Company, shall be computed by converting:

- The cost of acquisition of the asset
- The expenditure of incurred wholly and exclusively in connection with such transfer and
- Sale consideration received or accruing as a result of transfer of capital asset

Into the same foreign currency as was initially utilized in the purchase of such shares and debentures. The capital gain so computed in the foreign currency shall be reconverted into Indian currency.

The above-said manner of computation of capital gains shall apply to capital gain arising from every reinvestment thereafter in and sale of, shares or debentures in Indian company.

Second Proviso to Section 48: Indexation

For computing Long term capital gain, indexation using Cost inflation index shall be done to cost of acquisition and cost of improvement and the resultant figure would be indexed cost of acquisition and indexed cost of improvement.

**Indexed cost of acquisition =**

\[
\text{Actual Cost} \times \text{Cost Inflation Index for the year in which asset is transferred}
\]

Cost inflation Index for the first year in which asset was first held by the assessee or for the year beginning on 01-04-1981 (whichever is later)

**Indexed cost of Improvement means:**

\[
\text{Cost of Improvement} \times \text{Cost inflation Index for the year in which asset is transferred}
\]

Cost inflation Index for the year in which improvement took place.

Third Proviso to Section 48

The indexation under the second proviso to section 48 shall not be applied to the capital gain arising from the transfer of bonds and debenture.

However, the benefit of indexation is available for capital indexed bonds issued by the Central Government.

Fifth Proviso to Section 48: STT not allowed as deduction

No deduction shall be allowed in computing the income chargeable under the head “Capital Gain” in respect of any sum paid on account of any sum paid on account of Security Transaction Tax.
Section 51: Advance Money Forfeited
If any advance money is forfeited by the assessee, then the amount so forfeited shall be deducted from
- The cost for which the assets was acquired or
- The fair market value or
- Written down value. as the case may be, for computing cost of acquisition
Note: If advance money forfeited is more than the cost of acquisition, then such excess shall not be taxable.

Section 10(38) Exemption of LTCG from listed equity shares
LTCG from transfer of equity shares or units of equity oriented mutual fund (where funds are invested in equity shares in domestic company more than 65% of total proceeds of fund) shall be exempt if:
   a. They are sold through recognized stock exchange
   b. Security transaction tax is chargeable on such transaction.

Section 111A Tax on STCG from listed equity shares
Short term Capital Gain from transfer of equity shares or units of equity oriented mutual fund shall be taxable 15% if,
   a. They are sold through recognized stock exchange.
   b. Security transaction tax is chargeable on such transaction.
No deduction under chapter VI-A shall be allowed from such income.

Section 50B: Computation of capital gain in slump sale
Slump sale means sale of undertaking for a lump sale consideration without determining the values of the individual assets and liabilities.
Any profits from slump sale shall be chargeable as LTCG in the year of transfer, if undertaking is owned by the assessee for more than 36 months immediately preceding the date of transfer.
No indexation benefit is available in such transfer.
For computing capital gain, Cost of Acquisition and Cost of Improvement shall be Net worth.
Notes:
   b. A report from Chartered accountants is required to be furnished verifying the net worth has been computed correctly.
   c. Written down value shall be considered in case of Depreciable assets
   d. Book Value shall be considered in case of other assets,

Section 45(1A): Insurance Claim on Destruction
If any person receives any money or assets under an insurance from an insurer on account of destruction of any capital asset, then any profit from receipt of such money shall be chargeable under
this head and shall be deemed to be the income of such person of the previous year in which such money or asset was received and money received or FMV of the asset received, shall be deemed to be full consideration.

**Section 45(2): Conversion of Capital Asset**

Capital gains from conversion of capital asset into stock in trade shall be charged to tax in the previous year in which Stock in trade is sold by assessee.

For Computing capital gains the FMV of the asset on the date of conversion shall be deemed to be sale consideration.

**Section 45(3): Transfer of a Capital Asset by a partner to firm**

The capital gain from the transfer of a capital asset by a partner to firm by way of capital contribution shall be chargeable to tax in the previous year in which the transfer took place. The amount recorded in the books of firm as value of capital asset shall be deemed to be sale consideration.

**Section 45(4): Dissolution of firm**

The capital gain from transfer by way of distribution of capital assets on dissolution of a firm or otherwise shall be chargeable to tax as the income of the firm in which such dissolution took place. The FMV of capital asset on the date of dissolution shall be taken as the sale consideration.

**Section 45(5): Compulsory Acquisition**

Where a capital asset is compulsory acquired under any law then,

- **Original Compensation:**
  Capital Gain for original compensation shall be taxable in the year in which such compensation or part thereof is first received by the assessee.

- **Enhanced Compensation:**
  Any increased compensation is taxable in the year in which such increased amount is received, (only the amount received shall be taxable and not the entire increased compensation). For increased compensation the cost of acquisition and Cost of Improvement shall be taken to NIL and all expenses incurred on realization of increased compensation may be deducted as expenses on transfer.

**Section 10(37): Exemption of compulsory Acquisition of Agricultural land**

In case of Individual or HUF, any income from the transfer of urban agricultural land shall be exempt, if

- Such land was being used for agricultural purposes by such HUF or Individual or his parents, during two years immediately preceding the date of transfer and
- Transfer is by way of compulsory acquisition by any law.
Section 50C: Special provision for full value of consideration in certain cases

Where the sale Consideration on the transfer of land or building or both is less than the value assessed by the stamp valuation authority for payment of stamp duty in respect of such transfer, the value so assessed or assessable shall be deemed to be the sale consideration acquiring as a result of such transfer.

Where,

- The assessee claims before any assessing officer that the value assessed by the stamp valuation authority as determined above exceeds the fair market value of the property on the date of transfer and
- The value so assessed by the stamp valuation authority has not been disputed in any appeal before any authority or court
- The assessing officer may refer the valuation of the capital asset to a valuation officer and then value determined by valuation officer shall be taken as sales consideration.

If the value ascertained by the valuation officer exceeds the value assessed by the stamp valuation authority, the value assessed by the stamp valuation authority shall be taken as the sale consideration accruing as a result of the transfer.

Section 50D: Fair Market Value deemed to be the full value of consideration

Where the consideration is received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, the Fair Market Value of the said asset on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

Exemption Chart For The Head Capital Gains

<table>
<thead>
<tr>
<th>Sections</th>
<th>54</th>
<th>54B</th>
<th>54D</th>
<th>54EC</th>
<th>54F</th>
<th>54G</th>
<th>54GA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assets Transferred</td>
<td>Residential House</td>
<td>Agricultural Land</td>
<td>Land &amp; Building for Industrial under on compulsory acquisition</td>
<td>Any Asset</td>
<td>Any asset other than residential house</td>
<td>P&amp;M or L/B used for IA in urban area</td>
<td>P&amp;M or L/B used for IA in urban area</td>
</tr>
<tr>
<td>Who is entitled</td>
<td>Individual/ HUF</td>
<td>Individual</td>
<td>All</td>
<td>All</td>
<td>Individual or HUF</td>
<td>ALL</td>
<td>ALL</td>
</tr>
<tr>
<td>Use or Holding Period</td>
<td>LTCA</td>
<td>Use by him+ parents for 2 years or more</td>
<td>Used for 2 years or more</td>
<td>LTCA</td>
<td>LTCA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>New Assets</td>
<td>Residential House</td>
<td>Agricultural Land</td>
<td>Land &amp; Building for industrial Undertaking</td>
<td>Bonds of NHAI, RECI</td>
<td>Residential house</td>
<td>P/M &amp; L/B for IU in non-urban area + shifting expenses</td>
<td>P/M &amp; L/B for IU in Special eco-nomic zone + shifting expenses</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>--------------------------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>----------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
</tr>
<tr>
<td>Exemption</td>
<td>Capital Gain Investment</td>
<td>Capital Gain Investment</td>
<td>Capital Gain Investment</td>
<td>Capital Gain Investment</td>
<td>Proportionate of Net Consideration invested</td>
<td>Capital Gain Invested</td>
<td>Capital Gain Invested</td>
</tr>
<tr>
<td>Pre-scribed period for Investment</td>
<td>Purchased within one year before, or two years after date of transfer, or completed construction within 3 years after the date of transfer</td>
<td>Within two years after date of transfer</td>
<td>Within 3 year after the date of receipt of compensation on such compulsory acquisition</td>
<td>Six month from transfer</td>
<td>Same as sec 54</td>
<td>Same as one year before or within 3 years after the transfer</td>
<td>Same as one year before or within 3 years after the transfer</td>
</tr>
<tr>
<td>Treatment of unutilized amount</td>
<td>Deposit in capital gain A/c scheme upto due date of furnishing the return of income</td>
<td>Deposit in capital gain A/c scheme upto due date of furnishing the return of income</td>
<td>NA</td>
<td>Same as sec 54</td>
<td>Same as sec 54</td>
<td>Same as sec 54</td>
<td>Same as sec 54</td>
</tr>
<tr>
<td>Sale of new asset</td>
<td>If sold within 3 years from the date of purchase/ construction, capital gain claimed as exempt shall be reduced from cost of acquisition of new asset.</td>
<td>If sold within 3 years from the date of purchase/ construction, capital gain claimed as exempt shall be reduced from cost of acquisition of new asset.</td>
<td>If sold within 3 years from the date of purchase/ construction, capital gain taxable as LTCG in the year of transfer of new asset.</td>
<td>If sold within 3 years from the date of purchase/ construction, capital exempt shall be taxable as LTCG in the year of transfer</td>
<td>Same as sec 54</td>
<td>Same as sec 54</td>
<td>Same as sec 54</td>
</tr>
</tbody>
</table>
Income from Profits and Gains from Business and Profession (PGBP)

- **INCOMES**
  - Incomes, which are taxable under this head Section 28 and 41 (1)
  - Incomes, which are never taxable under this head

- **EXPENDITURES**
  - Expenditures, which are allowed to be deducted under this head
  - Expenditures, which are generally allowed to be deducted under Section 37
  - Expenditures, which are specifically (expressly) allowed to be deducted Section 30 to 36
  - Expenditures, which are specifically (expressly) disallowed under Section 40 and 40A
  - Expenditures, which are generally not allowed to be deducted.
Income from Business and Profession (PGBP)

Any income which is related to business is taxable under head business and professional activity.

Income from Business and profession: ***
Less: Any Expenses ***
Profit ***

How we compute Income under head PGBP

Find out Net Profit as per P&L Account XXX
Add: Expenses which have been debited to Profit & loss account but are not Allowable as deduction under section 30 to 37 XXX
Add: Income which is not credited in P&L and allowable under PGBP XXX
Less: Deduct those Expenses which are not claimed, but to be claimed As deduction under section 30 to 37 XXX
Less: Income which are credited in P&L account and disallowed under PGBP XXX

Charging Section: Section 28

Charging section defines the income which is chargeable to tax under head PGBP

1. Profits and Gains of Business or Profession carried on by the assessee at any time during the previous year
2. Compensation received for terminating ‘Agency’ continued by the assessee or compensation received for modification of any agreement,
3. Sale proceeds of an Import License or an Export License,
4. Cash assistance received from Government. For e.g.: Subsidy received from Government.
5. Duty Drawback of excise duty upon exporting goods, or profit on sale of ‘Duty Entitlement Pass Book (DEPB) Scheme,
6. Salary, Bonus, Commission, Interest on Capital or any other remuneration received by a partner from partnership firm, provided such payment was allowed to the firm as a deduction from its income,
7. Any sum whether received or receivable, in cash or in kind, under an agreement for not carrying out any activity in relation to any business or not to share any know-how, patent, copyright, trademark, license, franchise or any other business or commercial rights of similar nature or any information or technique likely to assist in the manufacture or processing of goods or provision for services (popularly known as ‘Non-Compete Fees’),
8. Profit on transfer of the Duty Free Replenishment Certificate (DFRC),
9. Value of Benefit / Perquisite (whether convertible into money or not) arising from business or exercise of profession,
10. Gift received by the assessee, whether in cash or in kind, related to his Business or Profession (if gift is in the nature of a ‘Personal gift’, then it is not chargeable to tax as an income under any head except u/s 56(2) under the head ‘income from other Sources’),
11. Maturity proceeds of a Key-man Insurance Policy (K.I.P.), including bonus therein, if any, sum whether received or receivable, in cash or in kind, on account of any Capital Asset (other than
Land / Goodwill / Financial Instrument) being demolished, destroyed, discarded or transferred, if the entire amount of such capital asset was allowed as a deduction u/s 35AD,

12. Profits and Gains of managing Agency,
13. Income from Speculative Transaction.

**Section 145: Method of accounting**

Profits are to be computed in accordance with the cash or mercantile method of accounting regularly employed in accordance with accounting standard notified by the central government.

The central government has notified two AS for the assessee following mercantile system

a. AS-I – Disclosure of accounting policies
b. AS-II – Disclosure of prior period and extraordinary items and changes in accounting policies.

**Section 145A: Method of accounting in certain cases**

The valuation of purchase and sale of goods and inventory for determining the income under this head, shall be as per method of accounting regularly employed and shall include any tax, duty, cess etc incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. Such taxes etc shall be included even if after such payment assessee can claim refund or credit thereof later on.

Interest on compensation or on enhanced compensation shall be deemed to income of the year in which it is received.

**Section 30: Rent, Rates, Taxes, Repair and Insurance for Building**

- Where the premises are occupied by the assessee as a tenant, as a tenant. then he shall be allowed as deduction of Rent paid for such premises and the amount paid on account of repairs (where the cost of repair is borne by assessee himself).
- Where the assessee is the owner of property. then he shall be allowed as deduction of the amount paid by him on account of current repairs to the premises.
- Deduction shall be allowed for any sum paid on account of land revenues, local rates or municipal taxes for the premises.
- Deduction shall be allowed in respect of any premium paid in respect of insurance against risk of damages or destruction of premises.

**Section 31: Repairs and Insurance of Machinery, Plant and Furniture**

Amount paid on account of Repairs and Insurance premium in respect of Machinery, Plant and Furniture of shall be allowed as deductions which are revenue expenditure in nature.

**Section 32: Depreciation**

- It is a major expense for an industry, because every industry holds some Assets with it.
- Depreciation is charged on Tangible Asset i.e. Building, Machinery, Plant, Furniture and on Intangible Assets i.e. Know-how, Patent, Copyright, Trademarks, Licenses, Franchises etc which is used for business and profession.
Depreciation on assets – available if all the following **3 conditions** are satisfied:

a. Assessee should be the owner of the asset, either entirely on his own or jointly with others.

b. Asset must be used in the Business or Profession of the assessee.

c. Asset must have been used during the Previous Year. (whether ‘active use’ or ‘passive use’)

Depreciation is **not charged on an individual asset**, but is charged on a “**Block of Assets**”, as defined by section 2 (11) and is computed on Written down Value (WDV), as follows [as per section 43(6)]:

**Block of Assets**

Block of assets means a group of assets falling within a class of assets comprising Tangible Assets and Intangible Assets in respect of which the same percentage of depreciation is prescribed.

**Rates of Depreciation**

<table>
<thead>
<tr>
<th>Block</th>
<th>Nature of Assets</th>
<th>Rate of Depreciation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>Residential building other than hotels and boarding houses</td>
<td>5</td>
</tr>
<tr>
<td>Block -2</td>
<td>Office, factory, godowns or building - not mainly residential purpose</td>
<td>10</td>
</tr>
<tr>
<td>Block-3</td>
<td>Temporary erections such as wooden structures</td>
<td>100</td>
</tr>
<tr>
<td>Furniture</td>
<td>Furniture -Any furniture /fitting including electrical fitting</td>
<td>10</td>
</tr>
<tr>
<td>Block -5</td>
<td>Any plant or machinery (not covered by block 6,7,8,9,10,11, &amp;12) and motors cars( other than those used in a business of running them on hire) acquired or put to use on or after April 1,1990</td>
<td>15</td>
</tr>
<tr>
<td>Block -6</td>
<td>Ocean -going ships, Vessels ordinary operating on inland Waters including speed boats</td>
<td>20</td>
</tr>
<tr>
<td>Block -7</td>
<td>Buses, Lorries and taxies used in business of running them on hire, machinery used in semi-conductor industry, moulds used in rubber and plastic goods factories</td>
<td>30</td>
</tr>
<tr>
<td>Block -8</td>
<td>Airplanes, life saving medical equipment</td>
<td>40</td>
</tr>
<tr>
<td>Block -9</td>
<td>Containers made of glass or plastic used as refills, new commercial vehicle which is acquired during Jan 1, 2009 and Sept 30, 2009 and put to use before Oct 1, 2009 for the purpose of business/profession</td>
<td>50</td>
</tr>
<tr>
<td>Block -10</td>
<td>Computers including computer software. Books (other than annual publications) owned by a professional.</td>
<td>60</td>
</tr>
<tr>
<td>Block -11</td>
<td>Energy saving devices; renewal energy devices; rollers in flour mills, sugar works and steel industry.</td>
<td>80</td>
</tr>
<tr>
<td>Block -12</td>
<td>Air Pollution control equipment; water pollution control equipment; Solid waste control equipment, recycling resource recovery systems; (being annual publications) owned by assessee carrying on a profession or books (may or may not be annual publications) carrying on business in running leading libraries.</td>
<td>100</td>
</tr>
</tbody>
</table>
| Block -13 | **Intangibles Asset**  
Intangible assets (acquired after March 31, 1998) - Know how, Patents, copyrights, trademarks licenses, franchises and any other business or commercial rights of similar nature | 25 |

**POINTS TO BE NOTED ABOUT DEPRECIATION:**

a. It is **Mandatory** for the assessee to claim depreciation. Depreciation shall be allowed to the assessee whether or not; the assessee has claimed deduction in respect of depreciation in computing his Total income.

b. **No depreciation** is allowed when W.D.V. of block of assets become **zero** or **negative**.

c. **No depreciation** is allowed when **block become empty**.

d. Depreciation is allowable at the rates prescribed by the Income Tax Act and not at the rates prescribed by the Companies Act or as per wear and tear of the asset or as per normal practice followed by the assessee. Depreciation is always to be charged as per provisions of the Income Tax Act, 1961 and the rates of depreciation are provided by Appendix – 1 and 1A of Income Tax Rules, 1962.

e. If an asset is **newly purchased** during the Previous Year and **put to use** for **less than 180 days** then only **half year’s depreciation** is allowed.

f. If the given asset is partly used for ‘Personal purpose’ or for any other non-business or non-professional purposes, then only proportionate depreciation on such asset will be allowed.

**ADDITIONAL DEPRECIATION**

Apart from normal depreciation, assessee will be eligible for an additional depreciation **@20% of the cost of acquisition of ‘New Plant & Machinery’** (other than ships and Aircrafts) acquired and installed, provided that the assessee is engaged in **Manufacture / Production of any Article or a Thing or in the business of Generation and Generation and Distribution of Power**.

Points shall be worth noting with regards to **ADDITIONAL DEPRECIATION**:

- Unlike **‘Normal Depreciation’, ‘Additional Depreciation’** is not available every year. The benefit of ‘Additional Depreciation’ is available only in the year in which new Plant & Machinery is first put to use.
- Additional Depreciation is allowed only on Plant & Machinery and no other asset.
- Second-hand Plant & Machinery is not eligible for Additional Depreciation.
The following Plant & Machinery are **not eligible for Additional Depreciation:**

- Ships / Aircrafts / any Road Transport Vehicle,
- Any P & M, which was previously used by person (whether in India or outside India) before its installation by assessee (i.e. a ‘Second-hand P & M’),
- P & M installed in Office Premises / Residential Accommodation / Guest House, Office Appliances,
- Any P & M, whose entire actual coat of acquisition was allowed as a deduction (by way of depreciation or otherwise) in any P.Y. under the head ‘Profits and Gains of Business and Profession.

**Unabsorbed Depreciation**

If the amount of depreciation (including Addln. Depreciation) of the current year, remains unabsorbed due to inadequacy of profits in the current P.Y., then:

a. Such unabsorbed Depreciation can be set off against other incomes under other heads, other than:
   - Salary income and
   - Winning from Lottery / Crossword Puzzle / Card Game / Races/ Gambling / Betting.

b. If it still remains unabsorbed, it can be carried forward to the any number of subsequent years.

c. In subsequent years also it can be set off against any income other than ‘Salary’ and ‘Winning Incomes’.

d. Even if the business / profession, from which the unabsorbed depreciation arose, is discontinued, then also the benefit of set off and carry forward of unabsorbed depreciation will still be available as above only.

**Section 43(6): Written down Value**

**Block of Asset with Depreciation @10 % amount**

Opening W.D.V. of the block \[XXX\]

(+) Cost of any new asset within the same block purchased during the year \[XXX\]

(-) Selling Price of any asset of the block sold during the year \[(XXX)\]

Balance W.D.V. available for charging depreciation [Section 43(6)] \[XXX\]

(-) Depreciation at the rate applicable to the block i.e. 10 % in this case \[(XXX)\]

(10 % of balance W.D.V. as calculated above) \[XXX\]

Closing W.D.V. of the block \[XXX\]

**Section 43(1): Actual Cost**

Actual Cost of the asset means the actual cost of the asset less any part of such cost as is met by or borne by any other person / authority, whether directly or indirectly.
What Actual Cost Actually Include:

All Expenses incidental to acquisition of asset
Expenses Incurred before putting the asset to use
Loan taken in foreign currency
Salary to training staff

There are some more Explanation given in Income Tax Act for Actual Cost in different situation, for that we have to refer *Explanations to Section 43(1) of Income Tax Act-1961*.

How we Charge depreciation on Straight line basis?

First of all we have to understand what straight line basis depreciation is, and then we proceed on which type of assessee Straight line method is applicable.

**Straight Line depreciation mean** method of calculating the depreciation of an asset which assumes the asset will lose an equal amount of value each year. The annual depreciation is calculated by subtracting the salvage value of the asset from the purchase price, and then dividing this number by the estimated useful life of the asset.

This method is basically followed only by that assessee who are engaged in generating / distributing power and not by other assessee.

SLM can be followed only in respect of ‘Tangible Assets’. For ‘Intangible Assets’, assessee will have to follow WDV method only.

**TERMINAL DEPRECIATION**: If

\[
\left( \frac{\text{Sale Consideration of the asset on which depreciation has been claimed following SLM}}{\text{Opening WDV of such asset at the beginning of the current P.Y}} \right) < 1
\]

Then such loss is called as “*Terminal Depreciation*” and will entirely be allowed to be deducted under the head ‘Profits and Gains of Business and Profession’.

**BALANCING CHARGE**: If

\[
\left( \frac{\text{Sale Consideration of the asset on which depreciation has been claimed following SLM}}{\text{Opening WDV of such asset at the beginning of the current P.Y}} \right) > 1
\]

Then such excess will be partly taxable under the head ‘PGBP’ u/s 41(2) and partly taxable under the head ‘Capital Gains’.

That much part of such excess, as much as is equal to the amount of depreciation already claimed on such asset will be called as “*Balancing Charge*” and will be taxable under the head ‘PGBP’ and balance excess if any will be dealt with under the head ‘Capital Gains’.
## Section 35: Expenditure on scientific research

<table>
<thead>
<tr>
<th>Sec No.</th>
<th>Expenditure Incurred</th>
<th>Quantum of Deduction</th>
</tr>
</thead>
</table>
| 35(1)(i)  | (a) Revenue Expenditure Incurred Before Commencement of Business  
(b) Revenue Expenditure Incurred After Commencement of Business                          | Expenditure incurred on salary (excluding perquisite) and on purchase of material used in research within the 3 years immediately preceding the year of commencement of business, shall be allowed as a deduction in the year of commencement.

100% of revenue expenditure laid out or expected on Scientific Research related to the business carried on by the assessee. |
| 35(1)(ii) | Payment made to a university, college or other institution                                                                             | An amount equal to 175% of any sum paid to Research association which has as its object of undertaking the scientific research or to a university, college or other institution to be used for research provided such association/university/college/institution is approved by central government under section 35(1) (ii).

[Research is not related to business of assessee.] |
| 35(1)(iiia)| Payment made to a company                                                                                                              | An amount equal to 125% of any sum paid to a company to be used by it 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 research and development is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner. |
| 35(1)(iii) | Payment made to a university, college, or other approved institution                                                                | An amount equal to 125% of any sum paid to a university, college, or other approved institution to be used for research in social science or statistical research provided such university/college/institution is approved by Central Government under section 35(1)(iii). [Research is not related to business of assessee.]

Note: the deduction for the sum paid under section 35(1) (ii)/35(1) (iii) shall not be denied if the approval of research institute has been withdrawn subsequent to the making of payment by the assessee. |
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>35(1)(iv)</td>
<td>Capital expenditure on scientific Research</td>
<td>100% Deduction of capital expenditure (excluding land) on scientific research related to business carried on by the assessee. Capital expenditure incurred on scientific research within 3 years immediately preceding the commencement of business shall be allowed as deduction in the year in which business is commenced. Note 1. No depreciation shall be allowed in respect of assets for which deduction has been claimed under section 35. Note 2. It is not necessary that the assessee should carry out the research himself. If research is carried out by some other person for the business of the assessee, payment made to such other person will be treated as expenditure on research. Note 3. The set off and carry forward of unab sorbed research capital expenditure is in the same manner as that of depreciation. Note 4. If land and building is purchased through a composite agreement, then the cost of the land and building shall be bifurcated on the basis of their FMV Cost of the land is not allowable as deduction and cost of building shall be allowed as deduction under section 35(1)(iv).</td>
</tr>
<tr>
<td>35(2AA)</td>
<td>Higher Deduction on Payment Mode to Approved Specified Persons for Scientific Research</td>
<td>Deduction: 200% of sum paid to a National Laboratory, university, IIT or specified person approved by prescribed authority with a specific direction that it shall be used for scientific research under an approved research Programme. [Research is related to business of assessee.]</td>
</tr>
</tbody>
</table>
### Section 35ABB: Telecom license Fees

This deduction is available to all assessee, whether Individual / HUF / Company / Firm / LLP / AOP / BOI.

a. This deduction is available on account of payment of fees for **acquiring a license** or any **Right to operate Telecommunication services** (including Mobile / Internet / Radio Paging), provided such expenditure is capital in nature and payment for the same has been made.

b. **Quantum of Deduction:** Deduction will be available in equal installments for a period starting from the year in which the payment is made and ending in the year in which such license expires / comes to an end. [This implies that the deduction u/s 35ABB will be available only if the license Fees has actually been paid by the assessee].

c. **No Depreciation u/s 32** will be available on the license Fees for which deduction u/s 35ABB has been claimed and allowed.

d. **Consequences in case of Amalgamation / Demerger:** If Amalgamation / Demerger takes place before the expiry of the license period, then deduction u/s 35ABB shall be allowed to the Amalgamated Company or the Resulting Company, as the case may be, for the balance amount and the balance period in such a way as if amalgamation / demerger had not taken place.

e. **Penalty** charged by Department of Telecommunication (DoT) cannot be considered at par with license Fees and therefore cannot be allowed as a deduction u/s 35ABB or under any other provision of the Income Tax Act, 1961.

However, 'Extra License Fees' payable by assessee, will be allowed as a deduction u/s 35ABB in equal installments for the remaining period of license, starting from the year of payment of such extra license fees till the year in which the license expires.
Section 35CCA: Deduction for payment for carrying out Rural Development Program

If a person spent any amount on Rural Development program, then he is eligible for taking deduction Under Section 35CCA of Income Tax Act for making such payment subject to that such payment is made to any of the following 4:

a. An Association / Institution for carrying out any program for Rural Development, which is approved on/before 28-02-1983,
b. Such an Association / Institution, which has as its object, training persons for implementation of Rural Development program approved on/before 28-02-1983,
c. National Fund for Rural Development (NFRD), set by Central Government,

Note: An amount which is allowed as a deduction u/s 35CCA will not be allowed as a deduction under any other provision of the Act.

Section 35D: Amortization of certain Preliminary Expenses

An expense which is incurred by assessee before setting up of his business/ undertaking or after commencement of his business for extension of an existing undertaking or for setting up of new unit, shall be entitled to a deduction of the expenditure so incurred over a period of time.

This deduction is available only to:

- An Indian Company, or
- A Resident Non-Corporate Assessee

(Not available to a Foreign Company, even if it becomes resident in India).

What types of “Eligible Expenditure” are allowed as preliminary expenditure?

There are 9 types of expenditures which are allowed:

PART – A

Any of the following 4 expenditures incurred by assessee itself, or paid by assessee to a Concern approved by CBDT:

Expenditures in connection with:

- Preparation of Feasibility Report,
- Preparation of Project Report,
- Conducting a Market Survey or any other survey necessary for the business of the assessee,
- Engineering services.

PART – B

Any of the following 5 expenditures incurred by assessee itself, or paid by assessee to a Concern whether approved by CBDT or not approved:

- Legal charges for drafting any agreement relating to the setting up of the business,
- Legal charges for drafting Memorandum and Articles of Association,
- Printing charges of Memorandum and Articles of Association,
• Registration Fees for registering a Company under the Companies Act, 1956,
• Expenses in connection with Public Issue of Shares / Debentures of a Company (like Underwriting Commission / Brokerage, charges for drafting / typing / printing / advertising of the Prospectus)

For the purpose of this deduction, the eligible expenditure shall not exceed the following limit:

<table>
<thead>
<tr>
<th>For Indian Company</th>
<th>For a Resident Non-Corporate</th>
</tr>
</thead>
</table>
| a. 5% of the ‘Cost of the Project’, or  
   5% of the ‘Capital employed in the business’ 
   Whichever is higher | 5% of the ‘Cost of the Project’ |

Excess of eligible expenditure over the above mentioned limits shall be ignored for the purpose of Section 35D.

Quantum of Deduction
Deduction will be 20% of the total eligible expenditure subject to above limit is divided in to 5 consecutive years starting from the previous year in which:
• the business is commenced, or
• the extension of the existing undertaking is completed, or
• the new Unit commences its production / operation as the case may be.

Section 35DD: Amortization of Amalgamation or Demerger Expenses
Where an assessee being an Indian Company, incurs any expenditure, wholly and exclusively for the purpose of amalgamation or Demerger of an undertaking, then assessee shall be entitled to get deduction equal to 20% of such expenditure in 5 successive previous years beginning with the previous year in which the Amalgamation or demerger took place.

Section 35DDA: Expenditure on Voluntary Retirement Scheme (VRS) Compensation to employees
This deduction is available to all assessee, whether Individual / HUF / Company / AOP / BOI / Firm / LLP where any expenditure incurs in any previous year by way of payment of any sum to an employee in connection to his Voluntary Retirement.

How much Deduction is allowed:
Deduction will be 20% of the amount paid to any employee as VRS Compensation.
Deduction is available in 5 consecutive years, starting from the year in which payment is made to employee.

Employee will get exemption u/s 10(10CC) on VRS Compensation received by him.
However, if the scheme of voluntary retirement is not approved by Govt., then exemption u/s 10(10CC) will not be available to the employee, but deduction u/s 35DDA will still be available to the employer.
Common points applicable for section 35D / 35DDA:

1. Deduction under section 35D / 35DD / 35DDA, will not be allowed unless assessee (other than a person being a Company or a Co-Operative Society) furnishes an Audit Report of a Chartered Accountant in a prescribed form.

2. If a particular expenditure does not qualify for deduction under section 35D / 35DD / 35DDA, it may still be allowable u/s 37(1).

3. Consequences in case of Amalgamation / Demerger: If Amalgamation / Demerger takes place before the expiry of the allowable period of deduction, then deductions under section 35D / 35DD / 35DDA, will be allowed as follows:

<table>
<thead>
<tr>
<th>Deduction in respect of</th>
<th>In case of a Company</th>
<th>In case of a Co-Operative Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. the Previous Year in which such Amalgamation / Demerger takes place</td>
<td>Will be allowed to the Amalgamated Co. / Resulting Company <em>(New Co.)</em></td>
<td>Will be apportioned between Amalgamating / Demerged Co-Op. Bank and Amalgamated / Resulting Co-Op. Bank, in the ratio of number of days in which the assets were used by them in such P.Y.</td>
</tr>
</tbody>
</table>

Section 35CCC: Expenditure on Agricultural Extension Projects

Where an assessee incurs an expenditure on agricultural extension project as notified by the boards and in accordance with the guidelines, then, a deduction equal to 150% of such expenditure shall be allowed. The assessee is not allowed to claim deduction under any other provision of this act for the same or other assessment year, if deduction availed under this section.

Section 35CCD: Expenditure on Skill Development Projects

Where an Company incurs an expenditure (other than Land and Building) on any Skill Development Projects as notified by the boards and in accordance with the guidelines, then, a deduction equal to 150% of such expenditure shall be allowed. The assessee is not allowed to claim deduction under any other provision of this act for the same or other assessment year, if deduction availed under this section.
**Expenditure / Contribution on eligible Projects / Schemes:**

1. This deduction is available under **section 35AC** to promote Socio-Economic welfare and upliftment of general public.

   **Deduction is available to**
   
   All assessee, whether Individual / HUF / Company / Firm / LLP / AOP / BOI.

   **Quantum of Deduction:**
   
   Deduction u/s 35AC will be **equal to contribution made** by assessee for carrying out any eligible project / scheme notified by Central Govt. as per the recommendations of the National Committee-
   
   b. a Local Authority,
   c. Association / Institution approved by the National Committee.

2. This deduction is available only if the assessee **obtains a certificate in Form No. 58A** from the recipient of the contribution.

   In case of a Company, which has incurred such expenditure on its own, **certificate of a CA will have to be obtained in Form No. 58B**.

3. An expenditure, which is allowed as a deduction under section 35AC, will not be allowed once again under any other provision of the Income Tax Act. (This is basically to **avoid double deduction** of the same amount).

**Section 35AD: Specified Business**

Deduction on account of Capital Expenditure in respect of certain 'Specified Business':

Normally, capital expenditures are not allowed to be deducted while computing business income.

Assessee is allowed deduction only in respect of revenue expenditures.

Deduction of 100% or 150% of capital expenditure as the case may be (except of capital expenditure in respect of acquisition of following three assets, namely, Land / Goodwill / Financial instrument) incurred by eligible assessee in respect of any of the following specified businesses, will be allowed to be deducted in the year of incurring such capital expenditure.

Specified Businesses: These are those businesses in respect of which Government of India has grant deduction under section 35AD of Income Tax Act as eligible business.

The following businesses have been specified under this section along with the date of their commencement:
<table>
<thead>
<tr>
<th>Specified Business</th>
<th>Eligible Assessee</th>
<th>Percentage of Deduction Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Laying and Operating Cross Country Pipeline Network for distribution of:</td>
<td>a. An Indian Company,</td>
<td>100% deduction of expenditure incurred</td>
</tr>
<tr>
<td>a. Natural Gas,</td>
<td>b. Consortium of such Indian Companies,</td>
<td></td>
</tr>
<tr>
<td>b. Crude Oil,</td>
<td>c. An Authority / Board or Corporation, established by or under any Central / State Act</td>
<td></td>
</tr>
<tr>
<td>c. Petroleum Oil (including 'Storage Facilities' being an integral part of such</td>
<td></td>
<td></td>
</tr>
<tr>
<td>network)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Setting up and Operating a Cold Chain Facility</td>
<td>Any Person</td>
<td>150% deduction of expenditure incurred</td>
</tr>
<tr>
<td>3. Setting up and Operating a Warehousing Facility for storage of Agricultural produce</td>
<td>Any Person</td>
<td>150% deduction of expenditure incurred</td>
</tr>
<tr>
<td>4. Building and Operating a Hotel of 2 star and above in any part of the country (Hotel should be certified as 2 star or above by Central Govt.)</td>
<td>Any Person</td>
<td>100% deduction of expenditure incurred</td>
</tr>
<tr>
<td>5. Building and Operating a Hospital with minimum 100 patient beds in any part of India</td>
<td>Any Person</td>
<td>150% deduction of expenditure incurred</td>
</tr>
<tr>
<td>6. Developing and Building a Housing Project under a ‘Slum Redevelopment / Rehabilitation Scheme’ framed by Central / State Government and notified by CBDT</td>
<td>Any Person</td>
<td>100% deduction of expenditure incurred</td>
</tr>
<tr>
<td>7. Developing and Building a Housing Project under a ‘Scheme for Affordable Housing’ framed by Central / State Government and notified by CBDT</td>
<td>Any Person</td>
<td>150% deduction of expenditure incurred</td>
</tr>
<tr>
<td>8. a. New Plant for production of ‘Fertilizers’ or b. Newly installed capacity of existing Plant for production of ‘Fertilizers’</td>
<td>Any Person</td>
<td>150% deduction of expenditure incurred</td>
</tr>
<tr>
<td>9. Setting up and Operating of Inland Depot or container Freight Station. notified or approved under Custom Act, 1962 (business should commence its operation on or before 01-04-2012)</td>
<td>Any Person</td>
<td>100% deduction of expenditure incurred</td>
</tr>
<tr>
<td>10. Bee keeping and production of Honey and Beeswax (business should commence its operation on or before 01-04-2012)</td>
<td>Any Person</td>
<td>100% deduction of expenditure incurred</td>
</tr>
<tr>
<td>11. Setting up and Operating a warehousing facility for storage of Sugar (business should commence its operation on or before 01-04-2012)</td>
<td>Any Person</td>
<td>100% deduction of expenditure incurred</td>
</tr>
</tbody>
</table>
Section 35E: Amortization of Expenditure on prospecting Minerals or Development of Mine of Minerals

This is a new deduction inserted by Minister of finance for the ASSESSEES who is engaged in the operation of prospecting minerals or Development of mines and minerals or other natural deposits of any such minerals.

1. This deduction is available only to:
   a. An Indian Company, or
   b. A Resident Non-Corporate Assessee
   (Not available to a Foreign Company, even if it becomes resident in India)

2. This deduction is available in respect of “Eligible Expenditure” incurred by assessee on operations relating to:
   a. Prospecting for the Minerals / Group of associated Minerals specified in the seventh schedule, or
   b. Development of a Mine / other Natural Deposit of such Minerals / Group of associated Minerals specified in the VIIth schedule.

3. How much Deduction is allowed: 10% of ‘eligible expenditure’ allowed in 10 consecutive years starting from the year in which commercial production starts
   a. However, the amount of deduction under this section (i.e. 10% of eligible expenditure) shall not exceed the income from commercial exploitation of all the mines or natural deposits of the assessee.
   b. Excess, if any shall be carried forward to the next previous year and shall then be added to the installment of eligible expenditure of such next previous year.
   c. Deduction allowable in such next previous year shall be lower of the following two:
      • 10% of the ‘Eligible Expenditure’ of such next previous year (+) excess brought forward from earlier previous year (as explained in point (b.) above), or
      • Income of such next previous year from the commercial exploitation of all the Mines / Natural Deposits of Minerals of the Assessee.

4. The deduction u/s 35E will be in respect of those eligible expenditures, which are incurred, either:
   a. in the year of commencement of commercial production of one or more of the specified minerals, and
   b. within 4 years, immediately preceding, the year of commencement of commercial production of specified Minerals.

5. “Eligible Expenditure”: It means any expenditure incurred wholly and exclusively on operations relating to:
   a. Prospecting for the Minerals / Group of associated Minerals specified in the seventh schedule, or
   b. Development of a Mine / other Natural Deposit of such Minerals / Group of associated Minerals specified in the VII the schedule.
But it does not include the following 5 expenditures:

- Any expenditure which is directly or indirectly met by any person / authority other than assessee,
- Expenditure on acquisition of any Site of Minerals / Group of associated minerals or acquisition of any right in such site,
- Expenditure on acquisition of any Natural Deposit of Minerals / Group of associated minerals or acquisition of any right in such Natural Deposit,
- Expenditure on acquisition of or expenditure of a capital nature in respect of any Building / Plant / Machinery / Furniture / Fitting on which depreciation u/s 32 inadmissible,
- Any proceeds realized by the assessee from Sale / Salvage / Insurance Compensation in respect of any property / rights brought into existence as a result of the expenditure.
- Deduction u/s 35E is available only if the assessee (being a person other than Company / Co-Op. Society) furnishes a report of a CA in Form No. 3B.
- An expenditure, which is allowed as a deduction under section 35E, will not be allowed once again under any other provision of the Income Tax Act. (This is basically to avoid double deduction of the same amount).

Consequences in case of Amalgamation / Demerger:

If Amalgamation / Demerger take place before the expiry of 10 years’ period, then deductions under section 35E for the year of Amalgamation / Demerger as well as for the remaining unexpired period will be allowed to the Amalgamated Company or the Resulting Company, as the case may be.

Section 36: Expenses allowed

The following deductions are specifically allowed under this section

1. Any Insurance Premium paid in respect of insurance against risk of damage / destruction of stocks/stores.
2. Insurance Premium paid by a Federal Milk Co-Operative Society on the lives of cattle owned by the member of the society.
3. Insurance Premium paid by an assessee as an employer on the health of his employees is allowed as a deduction, provided such premium is paid by any mode other than by ‘cash’.
4. Bonus or Commission paid to an employee is allowed as a deduction subject to conditions given in section 43B i.e. if not paid in place of profits.
5. Interest on borrowed Capital is allowed as a deduction, provided such loan or borrowed capital was used for business or profession.
7. Employer’s contribution to ‘Recognized Provident Fund (RPF)’ and ‘Approved Superannuation Fund.
8. Employer’s contribution to Employees’ Pension Fund, Gratuity Fund, Staff Welfare Scheme.
9. Employee’s Contribution towards recognized provident fund or an approved superannuation fund
10. Actual cost less amount realized from the dead body of an animal on the death of animals not used as Stock in trade.
11. Bad Debts, it shall not include provision for bad and doubtful debts made in the account.

12. Provision Bad and Doubtful Debts by rural branches of Commercial Banks: deduction is not allowed for provision for bad and doubtful debt, but for rural branches of commercial banks, deduction on account of provision for bad and doubtful debts will be allowed, as follows:

<table>
<thead>
<tr>
<th>Rural Branch of:</th>
<th>Amount of deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. A Foreign Bank</td>
<td>5% of Total Income before deduction under this section and before deduction under chapter VI-A</td>
</tr>
<tr>
<td>b. A Public Financial Institution / State Financial Instant. / State Industrial Investment Corporation</td>
<td>5% of Total Income before deduction under this section and before deduction under chapter VI-A</td>
</tr>
<tr>
<td>c. A Scheduled Bank (other than a Foreign Bank) / Non-Scheduled Bank / Co-Operative Bank (other than Primary Agricultural Credit Society or a Primary Co-Operative Agricultural and Rural Development Bank)</td>
<td>7.5% of Total Income before deduction under this section and before deduction under chapter VI-A (+) 10% of Aggregate Average Advances made by Rural branches (to be computed as per Rule 6ABA of the Income Tax Rules)</td>
</tr>
</tbody>
</table>

13. **Transfer to Special Reserve:** Deduction is available to the following assessee
   - A Financial Corporation engaged in providing long term finance
     - Industrial Development,
     - Agricultural Development, or
     - Development of Infrastructure facility in India.

14. Expenditure on promotion of Family Planning amongst employees. However, if such expenditure is of capital in nature, then deduction is allowed to the company in 5 equal instalments.

15. Securities Transaction Tax (STT) paid by assessee in connection with securities.

16. Commodities Transaction Tax (CTT) paid by assessee in connection with transactions of commodities is deductible.

17. Contribution to ‘Credit Guarantee Trust Fund.

**Section 37: General Deduction**

Any expenditure other than specially mentioned in the preceding paragraph (Section 30 to 36) shall be allowed as deduction, if following conditions are satisfied:

1. It is not in the nature of capital expenditure.
2. It is not in the nature of personal expenses of the assessee.
3. It should have been incurred wholly and exclusively for the purpose of Business or Profession.

**Section 37(2B): Payment made to Political Party**

1. Notwithstanding contained in section 37, no allowances shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract or pamphlet or like published by the political party.
Section 38(2): Assets not exclusively used for Business/Profession

If any building, machinery, Plant or furniture is not exclusively used for business or profession, the deduction shall be restricted to such proportion as determined by assessing officer.

Section 40(a): Disallowance of expenses

1. Interest / Royalty / Fees for Technical Services (FTS) or other sum chargeable under the Act, which is payable outside India or payable to a Non-Resident paid without TDS compliance under Chapter XVIIB
2. Certain payments to Residents without TDS
3. Fringe Benefit Tax (FBT)
4. Income Tax
5. Wealth Tax
6. Salary to Non-Resident or to a person outside India without deducting TDS
7. Tax on Non-Monetary Perquisite borne by or paid by employer
8. Payments by Partnership Firm / LLP to its Partners
9. Payments by AOP / BOI to its Members
10. Employer’s Contribution towards Provident Fund or any other Fund

Section 40A: Expenses not deductible under certain circumstances

1. Payment to specified person
2. Payment made in cash in excess of Rs. 20,000/- to any person in a day.(Read with rule 6DD)
3. Payment made by account payee cheque in violation of a contract
4. Employer’s contribution to gratuity fund
5. Employer’s contribution to approved gratuity fund, recognized provident fund or approved superannuation fund.

DEEMED PROFIT: In the following 7 situations, the concerned receipt is deemed to be the profit of business and is chargeable to tax in the year of receipt:

Section 41(1): Recovery against any deduction in any earlier previous year & Remission and cessation of trading liability.
Section 41(2): Balancing Charge
Section 41(3): Sale of Assets used for Scientific Research
Section 41(4): Recovery of Bad Debts: If a deduction was allowed to the assessee on account of Bad Debt and subsequently such Bad Debt is recovered, then it is taxable in the year in which it is recovered.

Even if such recovery is in the hands of the successor to business under amalgamation / demerger / conversion / succession by death of assessee, then such amount will be taxable in the hands of the successor, provided such recovery was allowed as a deduction to the predecessor.

However, the taxable amount will be as follows:

\[
\left( \text{Amount of such Bad Debts recovered} \right) \left( \text{Less} \right) \left( \text{Amount of Bad Debts, not allowed as a deduction by AO earlier} \right)
\]
Section 41(4) applies, even if the business, in respect of which deduction was allowed, is not in existence in the year of such recovery.
Section 41(4A): Amount withdrawn from Special Reserve
Section 41(5): Adjustment of Loss in case of discontinued Business / Profession
Section 176(3A) / (4): Recovery after discontinuance of Business / Profession

**Section 43B: Deduction on actual payment basis**

Deduction on expenses shall be allowed only in the previous year in which such sum is actually paid by the assessee.

Following are such cases:

1. Any sum payable by the assessee by way of Tax, duty, cess, by whatever name called under any law;
2. Employer's contribution to provident fund, gratuity fund, superannuation fund or any other fund for the welfare of the employee's.
3. Bonus or commission payable to employee's
4. Interest on any loan or borrowing from any public financial institutions
5. Interest on any loan or advances from a schedule bank

**Other miscellaneous provisions relating to Business and Profession**

**Presumptive Taxation Schemes**

Presumptive Taxation mean assessee has the option to determine his business income on some presumption basis, instead of his actual income.

Basically this scheme is followed by small traders, who are not able to maintain his proper books of account.

In following cases, instead of actual income, the taxable income will be some percentage of Gross Receipts or Turnover, which is called as ‘Presumed Income’ and scheme is called as ‘Presumptive Taxation Scheme’:

**Income of certain Businesses**

If an assessee being an Individual / HUF / Partnership Firm (other than an LLP), whether Resident or Non-Resident, who is carrying on any business other than the business of plying, hiring or leasing of goods carriage as referred to in section 44AE and gross receipts / turnover from such business does not exceed 60 Lacs for the previous year, then income from such business shall be estimated / presumed to be 8% of gross receipt / turnover from such business. (Section 44AD)

**Income from Business of Plying, Hiring or Leasing of Goods Carriage**

In case of any assessee (whether Individual / HUF / Company / Firm / LLP / AOP / BOI) (whether Resident or Non-Resident), who is carrying on the business of plying / hiring / leasing of goods carriage (business of transportation of goods) and assessee does not own more than 10 goods carriage at any time during the entire previous year (not even for one single day), then income from such business shall be presumed to be as follows:
• For **Heavy Goods Vehicle**: **5,000 per month** or a part of a month, during which the goods carriage was owned by

• For Other than Heavy Goods Vehicle: **4,500** per month or a part of a month, the assessee, (whether operated or not)

**Presumptive Taxation for Non-Residents / Foreign Companies: Section 44B / 44BB / 44BBA:**

The income of Non-Resident / Foreign Company engaged in the following specified businesses will be deemed to be the following percentage of their turnover from such business, as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Business</th>
<th>Business Income = % of Turnover attributable to Indian operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Section 44B</td>
<td>Shipping Business</td>
<td>7.5%</td>
</tr>
<tr>
<td>2. Section 44BB</td>
<td>Business of: a. providing services / facilities in connection with Prospecting for / Extraction of / Production of Mineral Oils, or b. supplying Plant &amp; Machinery on hire used in the Prospecting for / Extraction of / Production of Mineral Oils</td>
<td>10%</td>
</tr>
<tr>
<td>3. Section 44BBA</td>
<td>Business of operating Aircraft (Airline business)</td>
<td>5%</td>
</tr>
<tr>
<td>4. Section 44BBB (applies only to Foreign Companies)</td>
<td>Business of: a. Civil Construction, in connection with a b. Erection of Plant &amp; Machinery, Turnkey Power Project c. Testing and Commissioning of Plant &amp; Machinery approved by Central Government in both cases</td>
<td>10%</td>
</tr>
</tbody>
</table>

**Notes:**

a. **For Section 44B:** It shall be 7.5% of the aggregate of the following:

   • Amount received / receivable by assessee or any person on behalf of assessee **whether in India or outside India** for carriage of Goods / Passengers / Mail / Livestock, *shipped at any port in India*,
   
   • Amount received / receivable / deemed to be received by assessee or any person on behalf of assessee **in India** for carriage of Goods / Passengers / Mail / Livestock, *shipped at any port outside India*,
   
   • Amount received / receivable / deemed to be received by way of *Demurrage Charges, Handling Charges* or any other amount of similar nature.

b. **For Section 44BB:** It shall be 10% of the Amount received / receivable by assessee or any person on behalf of assessee **whether in India or outside India** for providing services / facilities or supplying plant & machinery for prospecting or extraction of or production of mineral oil.

c. **For Section 44BBA:** It shall be 5% of the aggregate of the following:

   • Amount received / receivable by assessee or any person on behalf of assessee **whether in India or outside India** for carriage of Goods / Passengers / Mail / Livestock, from *any place in India*,
   
   • Amount received / receivable / deemed to be received by assessee or any person on behalf of assessee **in India** for carriage of Goods / Passengers / Mail / Livestock, from *any place outside India*,
d. For Section 44BBB: It shall be 10% of the Amount received / receivable by assessee or any person on behalf of assessee whether in India or outside India on account of such Civil Construction / Erection / Testing / Commissioning of Plant & Machinery.

e. Assessee's covered by section 44BB and 44BBB, if actual income is less than 10% of turnover as explained above, then they may declare actual income in their Return of Income, provided the following 2 conditions are cumulatively satisfied:
   - Assessee will have to compulsorily maintain Books of Accounts for its Indian operations in accordance with the provisions of section 44AA and
   - Assessee will have to get such Books of Accounts audited by a Chartered Accountant in accordance with the provisions of section 44AB.

f. No further deduction will be allowable to assessee covered by section 44B / 44BB / 44BBA / 44BBB, in respect of any expenditure enumerated in section 30 to 43A, but deduction under Chapter VI-A will be permissible.

g. The special provisions contained in Chapter XII-G (Tonnage Tax Scheme) (Section 115V to section 115VZC) are applicable only to an Indian Shipping Company, whereas provisions of section 44B are applicable to Non-Residents or Foreign Company engaged in shipping business. In other words, both the provisions i.e. provisions of Chapter XII-G and provisions of section 44B are mutually exclusive and cannot be applied to the same assessee.

Section 33AB: Tea / Coffee / Rubber Development Account

Any assessee who is carrying on the business of growing and manufacturing Tea / Coffee / Rubber in India, deposits an amount in a Special Account with National Bank of Agriculture and Rural development (NABARD) [in accordance with the scheme approved by Tea / Coffee / Rubber Board (with the previous approval of Central Government)] either within 6 months from the end of the previous year or on/before the due date of filing Return of Income, whichever is earlier, Then deduction is available under this section to the extent of the lower of the following two:

- Amount deposited in such Special Account or
- 40 % of the profits from such business (before claiming this deduction and before claiming set off of losses u/s 72)

Section 33ABA: Site Restoration Fund

Any assessee carrying on the business of Prospecting for / Extraction of / Production of Petroleum / Natural Gas or both, in India, deposits an amount on / before the end of the previous year in any of the following two accounts, then deduction will be available under this section:

- A ‘Special Account’ opened with State Bank of India (SBI) [in accordance with a scheme approved by Central Government of India – Ministry of Petroleum and Natural Gas]; or
- An account called ‘Site Restoration Account’ opened in accordance with a scheme framed by Ministry of Petroleum and Natural Gas.

Quantum of deduction will be the lower of the following two:

- Amount deposited in such ‘Special Account’ with SBI or in ’Site Restoration Account’ or
- 20 % of the profits from such business (before claiming this deduction and before claiming set off of losses u/s 72)
Some Important Sections

Section 31: Rent, rates, taxes, repairs and insurance of premises/building used for purpose of business

Section 41: Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. has obtained whether in cash or in any other manner any amount in respect of such loss or expenditure or benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him shall be deemed to be profits under head business and profession, whether the business is in existence or not.

Section 40A: Amount expressly disallowed: Income tax, wealth tax, salary payable outside India without tax deduction at source, Provident fund payment without tax deduction at source.

Section 40A (2): Where an assessee incurs any expenditure in respect of which payment has been or is to be made to any related person or related party and the assessing officer is of the opinion that such expenditure is excessive or unreasonable with regard to the fair market value then excess of expenditure over fair market value which is unreasonable shall not be allowed as deduction.

Section 40(b): of Income Tax Act places some restrictions and conditions on the deductions of expenses available to an assessee assessable as a partnership firm in relation to the remuneration and interest payable to the partners of such firm. The deductions regarding salary to partners and any payment of interest to partners cannot exceed the monetary limits specified u/s 40(b) and are available subject to the fulfillment of conditions mentioned therein.

Income under Head of Other Sources

Section 56 (1): Charging Section

Any income which cannot be taxed under the first four heads shall be taxable under the head other sources.

Section 56(2): Specific incomes taxable under the head other sources

In particular the following incomes shall be chargeable to income-tax under the head “Income from other sources”, namely:

1. Income by way of interest.
2. Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.
3. Dividends.
4. Where any sum of money, the aggregate value of which exceeds Rs. 50,000/- or any kind of movable or immovable property the value or stamp duty value of which exceeds Rs. 50,000/- is received:
Provided that nothing shall be taxable in case where gift received from-

- Any relative
- On the occasion of marriage of the individual
- Under a will or by way of inheritance
- In contemplation of death of payer
- From any local authority, trust or university etc

5. Family pension.

6. Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy, if such income is not chargeable to income-tax under the head “Profits and gains of business or profession” or under the head “Salaries”.

7. Income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head “Profits and gains of business or profession”.

8. Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head “Profits and gains of business or profession”.

9. Any other income which is not taxable under first four heads.

Deductions allowable under Section 57, in respect of Income from Other Sources

1. Expenses incurred in connection with earning of such income shall be allowed to be deducted.

2. In the case of income in the nature of family pension, a deduction of a sum equal to \(33\frac{1}{3}\%\) of such income or \(\text{Rs} 15,000\), whichever is less shall be allowed.

3. “Family Pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

4. As per section 145A, interest received for late payment of compensation from the Government or other similar agency in connection with compulsory acquisition of land or building shall be taxable in the year in which it has been received and it will be taxable under the head other sources however, deduction shall be allowed at 50% of such interest.

5. In respect of income from letting, deduction of repair, insurance and depreciation

Amounts not deductible under Section 58

While computing income, any personal expense shall not be allowed to be deducted and also in case of capital expenditure only depreciation shall be allowed.

- Income tax or wealth tax
- Interest paid outside India on which tax has not been deducted at source.
- As per section 58, no deduction in respect of any expenditure or allowance shall be allowed in computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever.
Profits chargeable to tax Section 59
If the assessee has claimed any expenditure while computing income and subsequently he has recovered the same amount, the amount so recovered shall be considered to be income of the year in which amount has been recovered.

Taxability of Interest income Section 56
- Interest income under Income Tax Act do not accrue on day to day basis rather it is considered to be the income of the person who is holding the security on due date.

Example
Mr. Sameer Khanna has invested 10, 00,000 on 01.04.2012 in ABC Ltd. @10%. The interest is due on half yearly basis i.e. on 30th Sept and 31st March of each year but Mr. Sameer Khanna was in urgent need of money hence he has sold the security on 01.09.2012 to Mr. Dinesh Tayal. In this case, interest income of Mr. Sameer Khanna shall be nil and that of Mr. Dinesh Tayal shall be 1,00,000.

As per section 57, if any expenditure has been incurred in connection with interest income, such expenditure shall be allowed to be deducted and it will also include any sum paid as commission or service charges to a banker or any other person for the purpose of realizing such interest.

As per section 58, any personal expense of the assessee is not deductible.
Similarly as per section 58, any interest which is payable outside India and on which tax has not been deducted at source shall not be allowed to be deducted.

Interest income exempt from tax Section 10(15)
Certain interest incomes notified under section 10(15) shall be fully exempt from income tax and such incomes are:
1. Interest on Capital Investment Bonds issued by the Government.
2. Interest on Relief Bonds issued by RBI.
3. National Defence gold bond
4. National plan saving scheme
5. Special Bearer bond
6. Public Providend Fund
7. Interest on Post Office Savings Bank Account to the extent of ₹3,500 per year and in the case of joint account, exemption shall be allowed upto ₹7,000 per year. (Notification No. 32/2011 dated 3rd June 2011.)
8. Any other interest income notified under section 10(15).

Method of Accounting Section 145
If any person is not maintaining any books of accounts or he is maintaining books of accounts on the basis of mercantile system of accounting, in this case interest income shall be taxable on due basis otherwise interest income is taxable on receipt basis.
Interest or dividend income from UTI or Mutual Funds Section 10(35)

If any person has received any interest or dividend from the UTI or Mutual Fund notified under section 10(23D), such income is exempt from income tax.

If UTI or Mutual Funds have distributed any interest or dividend, as per section 115R, 115S, 115T UTI or Mutual Funds, have to pay additional income tax (Corporate dividend tax) at the rate of 12.5% plus surcharge @ 5% plus education cess @2% plus SHEC @1%, if the amount is distributed to individual or Hindu Undivided Family.

If amount is distributed to any other person, rate shall be 30% plus surcharge @ 5% plus education cess @2% plus SHEC @1%.

Casual Income Section 56

Under section 2(24)(ix), casual income shall include card games, cross word puzzles, betting, races including horse races, any game show on electronic media or any other gambling.

While computing income from casual income, as per section 58(4) no expenditure or allowance or deductions shall be allowed and accordingly the gross receipt itself shall be considered to be income.

Example

Mr. Pankaj Tiwari purchased one lottery ticket of ₹10,000 and there was a winning of 1,20,000. In this case, his tax liability shall be ₹37,080.

Since no expenditure etc. is allowed hence there cannot be any loss from casual income, accordingly set off and carry forward is not applicable.

Casual income shall be taxed at flat rate of 30%.

Section 14A: No deduction on Exempted Income

For computing the total income under the Five Head, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which is exempt.

Income from Owning and Maintaining of Race Horses Section 56

If any person has income from owning and maintaining of race horses, such income shall be taxable under the head other sources and income shall be computed in the normal manner and will be taxed at the normal rates.

If any person has any loss from the activities of owning and maintaining race horse, such loss is not allowed to be set off from any income under any head. However, if the assessee has any other business of owning and maintaining race horses, loss of one such business can be set off from the income of other such business.

If the loss cannot be set off, it will be allowed to be carried forward as per section 74A but such carry forward is allowed for a maximum period of four years and brought forward loss can be set off only from the income of owning and maintaining race horses.
Income from owning and maintaining of any other animal

If the assessee is engaged in the business of owning and maintaining any other animal, his income shall be computed under the head business/profession because section 56 includes only income from owning and maintaining race horses.

Income from letting out of Buildings along with Plant & Machinery, Furniture & Fixtures etc. provided they are inseparable Section 56

If any person has let out any house property, income is taxable under the head house property and if any person has let out plant and machinery etc. income is taxable under the head business/profession.

E.g. Mr. Karan Singh has the business of letting out generators; in this case, income is taxable under the head business/profession.

If any person has let out any house property along with plant and machinery furniture and fixtures etc. and they are inseparable. e.g. Letting out of a factory building, in such cases, income is taxable under the head other sources but after deducting all the expenses in connection with such building or plant and machinery etc. and the various expenses may be repairs, insurance premium, depreciation, municipal taxes etc.

If any person has let out any building along with furniture fixtures etc. and they are inseparable, income shall be computed under the head other sources as per section 56 and all expenditure covered under section 30, 31 and 32 shall be allowed as per section 57.

Dividend Income Section 56

Dividend income from the domestic company shall be exempt from tax in the hands of the shareholder as per section 10(34).

(However dividends from a foreign company shall continue to be taxed in the hands of the shareholder. Similarly dividend from co-operative society shall be chargeable to tax.)

As per section 115O, 115P, 115Q, the domestic company has to pay additional income tax 5% + surcharge @ 5% + education cess @2% + SHEC @1% and such additional income tax has to be paid maximum within 14 days from the date of declaration or distribution whichever is earlier.

Meaning of domestic company

As per section 2(22A), Domestic Company means an Indian company, or any other company which, has made the prescribed arrangements for the declaration and payment, within India, of the Dividend income.

Meaning of prescribed arrangements for declaration and payment of dividends within India Rule 27

A company shall be considered to have made prescribed arrangements if it has complied with the following conditions:
1. The share-register of the company for the shareholders shall be regularly maintained at its principal place of business within India in respect of any assessment year from a date not later than 1st April of such year.

2. The AGM for passing the accounts and for declaring the dividends shall be held only at a place within India.

3. The dividends declared, shall be payable only within India to all shareholders.

**Dividend chargeable to tax**
If any person has received any dividend from a foreign company such dividends shall be chargeable to tax in the hands of the shareholder.

**Meaning of Dividend [Section 2(22)]**
The term dividend has a very limited meaning under Companies Act but it has a very wide meaning under Income Tax Act and is called deemed dividend and it includes:

Dividends covered under section 2(22) (a), 2(22) (b), 2(22) (c) and 2(22) (d) shall be exempt in the hands of shareholders under section 10(34) and domestic company has to pay additional income tax under section 115-O.

Dividends covered under section 2(22) (e) shall be taxable in the hands of the shareholder and company shall be exempt from payment of additional income tax under section 115-O.

- **Distribution in cash or as assets Section 2(22)(a)**
  If any company has distributed any amount to its shareholders either in cash or in kind, it will be considered to be dividend but only to the extent of accumulated profits whether capitalized or not.

  *(Capitalized profits are profit converted into capital like bonus shares.)*

  **Example**
  ABC Ltd. has share capital of 35 lakhs. The company has general reserve of 25 lakhs and has distributed dividends. One of the shareholders Mr. Garvit Gulati has received dividend of 27,000 and is holding 2% of the shares. In this case, his share in the accumulated profits is ₹50,000 hence entire amount of ₹27,000 received by him shall be considered to be dividend.

- **Issue of debentures/bonus shares etc. Section 2(22)(b)**
  If any company has issued bonus shares to the equity shareholders, it will not be considered to be dividend but if the bonus shares have been issued to the preference shareholders, it will be considered to be dividend but to the extent of accumulated profits whether capitalized or not. Further, market value of the bonus shares shall be taken into consideration.

  **Example**
  Mr. Nikhil Sharma is holding 100 preference shares in ABC Ltd. The company has issued him 100 bonus shares and their market value is Rs. 1,200.

  In this case, it will be considered to be dividend but only to the extent of accumulated profits whether capitalized or not.
• **Distribution on liquidation Section 2(22)(c)**
  If any company has distributed any amount to its shareholders in connection with its liquidation, it will be considered to be dividend but only to the extent of accumulated profits whether capitalized or not and any excess over it shall be considered to be full value of consideration as per section 46 and capital gains shall be computed accordingly.

• **Distribution on reduction of share capital Section 2(22)(d)**
  Any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits whether capitalized or not.

• **Loan and advance by a closely held company Section 2(22)(e)**
  If any closely held company has given any loan or advance to an equity shareholder who is beneficial owner of equity shares holding not less than 10% of the voting power of the company, in such cases such loan or advance shall be considered to be dividend in the hands of such shareholder but only to the extent of accumulated profits excluding capitalized profits.

**Example**

ABC Pvt. Ltd. a closely held company has general reserves of Rs. 7,00,000 and current profits of Rs. 2,00,000. The company has given a loan of Rs. 3,00,000 to one such shareholder Mr. Aman Chhabra. In this case, it will be considered to be dividend in the hands of Mr. Aman Chhabra. If loan given by the company is Rs. 10,00,000, the amount of dividend shall be Rs. 9,00,000.

If the loan or advance has been given to any concern in which such a shareholder has substantial interest, such loan or advance shall also be considered to be dividend in the hands of such concern but only to the extent of accumulated profits excluding capitalized profits.

If loan or advance was given to any such shareholder and subsequently the loan amount was repaid by him, even in such cases the loan or advance shall be considered to be dividend. As decided in **Tarulata Shyam v CIT (1977) (SC)**.

If any such company has the business of lending as substantial part of its business, in such cases the above provisions shall not apply.

‘Concern’ means a Hindu Undivided Family, or a firm or an association of persons or a body of individuals or a company.

**Substantial interest** – A person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern.
Charitable Trust

What is charitable trust?
A charitable trust is a trust which is run for charitable purpose.

Section 2(15): “Charitable Purpose” defined:
Charitable Purpose includes
I) Relief of the poor
II) Education
III) Medical relief
IV) Preservation of environment (including watersheds, forests and wildlife)
V) Preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.

First proviso: THE ADVANCEMENT OF ANY OTHER OBJECT OF GENERAL PUBLIC UTILITY shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration irrespective of the nature or use or application or retention of the income from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty five lakh rupees or less in the previous year.

Registration of Trust under Income Tax Act 1961

Procedure for registration:
1. First off all make an application under section 12A to commissioner for registration of trust.
2. After receipt of an application, Commissioner shall call for such documents and information from the trust as he thinks necessary in order to satisfy himself.
3. He may make further enquiries about the genuineness of the trust.
4. After satisfying himself about the object of Trust and its activities:
   (i) Pass an order in writing to registering the Trust
   (ii) If he is not satisfied, pass an order in writing refusing to register the Trust or Institution.

Note: A reasonable opportunity of being heard shall be given to applicant for refusal to register the Trust.

Every Order granting or refusal of registration shall be passed before the expiry of 6 months from the end of the month in which application was received under section 12A. If no order passed then it is assumed that Trust has been registered.

How to compute Income of trust?
To compute the income of trust following points should be considered:
1. 15% of Income is to be computed on gross receipt basis.
2. At least 85% of income (excluding corpus donations) must be applied towards the approved objects of the Trust.

4. If For any reason that the whole or any part of the income has not been received during that year, and the assessee submits a declaration to the Assessing Officer on or before the due date of filing of return that such income shall be applied to such purposes in the year of receipt or in the immediately succeeding year, then the amount for which such declaration is given shall be deemed to be applied to such purposes during the previous year in which income was derived.

Let we take an example to explain how we arrive at income of Trust-

<table>
<thead>
<tr>
<th></th>
<th>Year 1 (In lakhs)</th>
<th>Year 5 (In lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Income of Trust</td>
<td>100</td>
<td>200</td>
</tr>
<tr>
<td>Less: Basic exemption limit 15%</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td>Balance to be applied</td>
<td>85</td>
<td>170</td>
</tr>
<tr>
<td>Less: Not Received</td>
<td>(20)</td>
<td>20 (now received)</td>
</tr>
<tr>
<td>Net to be Applied</td>
<td>65</td>
<td>190</td>
</tr>
</tbody>
</table>

Note: The assessee submits a declaration to the Assessing Officer on or before the due date of filing of return that such income shall be applied to such purposes in the immediately following previous year, then the amount for which such declaration is given shall be deemed to be applied to such purposes in the previous year in which such income was derived. If such sum is not applied to such purposes in the immediately succeeding previous year, then the amount not so applied shall be deemed to be the income of such immediately succeeding previous year.

When Income from property held under trust will be exempt?

a. Trust is registered with Commissioner of Income Tax u/s 12AA (vide application Form 10A).

b. Books are audited (vide form 10B) if income (including corpus donations) exceeds Rs. 1,80,000 before claiming section 11 & 12 exemptions.

c. At least 85% of income (excluding corpus donations) must be applied towards the approved objects of the Trust.

d. Unapplied Income + Accumulated Income + Corpus Donations shall all be invested in specified modes of investments as u/s 11(5).

Restrictions applicable on trust

If a trust is not working as per the objects laid down under Act the exemption given under the Act can be withdrawn.

There are some incidences given under which exemption given under the Act can be withdrawn, which are described as follows:

Any Income which:

1. Is applied to purposes other than the purpose for which it was accumulated or set apart, then it shall be deemed to be the income of the previous year in which it is so applied, or

2. Ceases to remain invested in modes specified in section 11(5), then it shall be deemed to be the income of the previous year in which it so ceases, or
3. Is not utilized for the purpose for which it is so accumulated or set apart during the 5 year period or in the year immediately following the expiry thereof, then it shall be deemed to be the income of the previous year immediately following the expiry of the 5th year, or
4. Is donated to any trust registered under section 12AA or to any specified institutions referred to in section 10(23C), then it shall be deemed to be the income of the previous year in which it is so donated.

Agricultural Income

What is Agricultural Income?
Agricultural income” means:
1. Any rent or revenue derived from agricultural land.
2. Any income derived from such land by:
   (i) Agriculture; or
   (ii) Processing of agricultural produce; or
   (iii) The sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him.


How we compute Agricultural Income?
There are certain steps given in the Act to compute the agriculture income of Assessee.
However for computation of Income Tax, the agricultural income is aggregated with non-agricultural income if:

- Agricultural income exceeds Rs.5,000
- Assessee has non-agricultural income which exceeds the taxable limit.
- Assessee is an Individual, HUF, AOP/BOI (taxable at normal rates applicable to an individual).

To compute the income following steps are to be followed:

Step-1: Agricultural and non-agricultural income of the assessee will then be aggregated and income tax is calculated on the aggregate income as if such aggregate income were the total income.

Step-2: The net agricultural income is then increased by the first slab of the income on which tax is charged at nil rates and income tax is calculated on net agricultural income, so increased, as if such income were the total of the assessee.

Step-3: The amount of income-tax determined at step-1 will be reduced by the amount of income-tax determined under step-2.

Step-4: Find out the balance. Add education cess, and secondary and higher education cess.

Step-5: The amount so arrived at is the income-tax payable by the assessee.
Exempt Income under Section 10

- Share of partner from partnership firm assessed as such.
- Interest earned on NRE account by non-resident.
- LTC to any place in India for family and self from employer. The exemption is available for only two journeys in a block of four years. The last block was 2002-2005 and the current block is 2006-2009. Carry forward of one year is allowed. Restricted to two children. Children born before 1/10/1998 or multiple children not covered by restriction. Actual expenditure on air (economy)/rail/road fare only exempted.
- Any allowance or perquisite paid by Government to a citizen of India for rendering service outside India.
- Retirement-cum-death gratuity.
- Leave encashment.
- Compensation received under Industrial dispute Act at the time of retrenchment.
- Amount received on voluntary retirement in accordance with scheme, which confirms the guidelines as prescribed. The limit is Rs 5,00,000/- only once.
- Sum received under Life Insurance Policy including bonus except sum received under Keyman insurance or where the annual premium is more than 20% of sum assured. In the latter case, if the amount is received on death of the person insured then it is exempt.
- Payment from Statutory Provident fund, or recognized PF in accordance with the guidelines.
- Payment from approved superannuation fund.
- Interest on Provident Fund, Public Provident Fund (PPF), Post Office saving account and notified Government bonds.
- House Rent allowance to the extent provided.
- Special allowance as prescribed. This is prescribed in Rule 2BB.
- Lease rental paid by an Indian company to foreign enterprise under approved lease agreement for hire of aircraft or engine.
- Education scholarship.
- Compensation received under workmen compensation act upto Rs 5 Lakh.
- Daily allowance and constituency allowance of MP/MLA and other allowances upto Rs 2000 per month.
- Interest from Deposit scheme for Retiring Government Employee, 1989 (No new account can be opened from 9/7/2004)
- Pension and family pension in case of person of recipient of specified awards.
- Approved awards instituted in public interest.
- Specified income of local bodies.
- Income of approved scientific research association with some conditions.
- Income of news agency set up in India solely for collection and distribution of news as notified by the Central Government with some conditions.
- Income of approved professional bodies other than income from house property, income received for rendering specific services and income by way of interest or dividend (subject to certain conditions).
- Income of approved fund established for notified purposes for welfare of member employees or their dependents (subject to some conditions).
- Income of fund set up by LIC or any other insurer under an approved pension scheme (subject to some conditions).
- Income of institutions/authority existing solely for development of Khadi or village industries (subject to some conditions).
- Income of body/authority established for administration of public religious or charitable trusts or endowments, etc.
- Trust or institution or fund for charity or religious purpose approved by Government (subject to certain condition)
- Institution or other educational institution existing solely for education purpose approved by Government (subject to certain condition)
- Hospital or other institution existing solely for philanthropic purposes approved by Government (subject to certain condition)
- Income of Mutual fund registered under SEBI Act and notified Mutual Fund set up by public sector bank or public financial institution or authorized by RBI subject to notified conditions.
- Income of notified investor protection fund set up by recognized stock exchanges in India either jointly or separately (subject to certain conditions).
- Income of Credit Guarantee Fund Trust for Small Industries created by Govt and SIDBI.
- Income of venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking. From A. Yr 2008-2009, the exemption is restricted to only for investments in specified businesses which are, business of nanotechnology, information technology relating to hardware and software development, seed research and development, bio-technology, research and development of new chemical entities in the pharmaceutical sector, production of bio-fuel, building and operating composite hotel-cum convention centre with seating capacity of more than three thousand, dairy or poultry industry and infrastructure development.
- Dividend Income from Indian companies.
- Income arising out of international sporting event approved by International body and notified by Central Government.
- Income from unit of a mutual fund registered under SEBI Act and notified Mutual Fund set up by public sector bank or public financial institution or authorized by RBI
- Any income arising from the transfer of long term capital asset, being an equity share in a company or unit of an equity oriented fund on which security transaction tax has been paid.

**Income exempt under other provisions**

**Section 10A:** Special provision in respect of newly established undertakings in Free Trade Zone, Electronic Hardware Technology park or software technology park from export of articles or things or computer software (subject to certain conditions) for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software. No benefit after Assessment Year 2009–2010.
Section 10B: Profit derived by 100% EOU from the export of articles or things or computer software (subject to certain conditions) for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software. No benefit after A. Yr 2009-2010.

Section 10BA: Profits of an undertaking from export of hand made articles of artistic value which requires the use of wood as the main raw material (subject to certain conditions). No benefit after A. Yr 2009-2010. Can not be availed if 10A or 10B is availed.

Section 10AA: An entrepreneur who has established his unit in a Special Economy zone is entitled to exemption from 100% profit form export of article or things or services for a period of 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit beings to manufacture or produce such articles or things or provide services. 50% for next five years. (On fulfillment of certain conditions)

Sections 11 to 13: Income from property held for charitable or religious purpose, on fulfillment of various conditions.

Section 13A: Specified income of registered political parties on fulfillment of some conditions.

Clubbing of Income

Clubbing of income means, Income of other persons included in assessee's total income.

Transfer of income without transferring the asset (Section 60)

If any person has transferred any income without transferring the asset, in such cases clubbing provision shall also be applicable.

Example

Mr. Pulkit Bhatia has two deposits of Rs. 10 lakhs each and interest income on each deposit is Rs. 1.5 lakhs. He has transferred income of one of the deposit to his brother Mr. Vinay Bhatia. In this case, clubbing provision shall be applicable and income shall be taxable in the hands of Mr. Pulkit Bhatia.

Transfer of asset through revocable transfer (Section 61)

If any person has transferred any asset through revocable transfer, income from that asset shall be clubbed in the income of transferor.

Example

Mr. Neeraj Gupta has transferred a deposit of Rs. 10 lakhs to his friend Mr. Surender Jaswal with the condition that the deposit can be taken back by him at any time. In this case, clubbing provision shall be applicable.

Transfer of an asset through irrevocable transfer (Section 62 and 63)

If any person has transferred any asset through irrevocable transfer, in this case clubbing provision shall not apply. However, if the transferor has any right to interfere with the asset in any manner or has any right to derive any benefit from the asset, clubbing provision shall be applicable.
All income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises.

If any person has transferred any asset through a transfer which is not revocable during the life time of the beneficiary, in this case clubbing provision shall not apply.

Example
Mr. Saurabh Arora has transferred one asset to Mr. Nishant Tandon with the condition that the asset shall be retained by Mr. Nishant Tandon as long as he is alive and after that the asset shall be taken back by Mr. Saurabh Arora. In this case, clubbing provision shall not apply.

Meaning of Revocable Transfer
A transfer shall be deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets.

Salary income from a concern in which the spouse has substantial interest [Section 64(1)(ii)]

1. If any person is getting salary, commission, fee or any other remuneration whether in cash or in kind from a concern in which his or her spouse has substantial interest and further salary etc. is being received without any technical or professional qualification, in such case, salary etc. so received shall be clubbed in the income of the spouse having substantial interest.

Example
Mr. Karan Yadav is holding 11% shares of ABC Ltd. and his father is holding 10% shares in ABC Ltd. and his wife Mrs. Dipti Yadav is employed in ABC Ltd. without any technical or professional qualification, in this case, salary income of Mrs. Dipti Yadav shall be clubbed in the income of Mr. Karan Yadav.

2. Technical and professional qualification shall include not only degree or membership but also any experience or expertise or any natural talent also, as decided in Batta Kalyani vs. CIT, (1985) (AP).

3. As per section 2(41), Relative, means the husband, wife, brother or sister or any lineal ascendant or descendant.

4. As per section 2(32), Substantial Interest means having 20% or more of the equity shares in a company or having 20% of more of the shares in profits in any other concern.

5. If husband and wife both have substantial interest either alone or along with their relatives in a concern and both are employed without any technical or professional qualification, in such cases salary income of both of them shall be clubbed in the income of spouse having higher income before taking into consideration the income to be clubbed.

E.g. Mr. X has 8% equity shares and his brother has 3% equity shares and Mrs. X has 10% equity shares and father of Mrs. X has 4% equity shares in ABC Ltd. and Mr. X and Mrs. X both
are employed without any technical or professional qualification and Mr. X is getting salary of ₹2,00,000 and Mrs. X is getting salary of ₹5,00,000 and Mr. X has income under the head house property ₹4,00,000 and Mrs. X has income under the head house property ₹1,50,000, in this case salary income of both of them shall be clubbed in the income of Mr. X.

6. If any person has substantial interest in the holding company, but the spouse is employed in the subsidiary company, in that case clubbing provision shall not apply.

7. If any person has transferred the asset to the spouse and the spouse has invested it in some partnership firm as capital contribution or otherwise, in this case interest received from the partnership firm shall be clubbed in the income of the transferor, but if any salary has been received from partnership firm, it will not be clubbed. If any share has been received from the profits of partnership firm, such shares shall be exempt under section 10(2A).

8. If any person has transferred any asset to the spouse and spouse has further transferred this asset, in this case, capital gain shall be considered to be the income of the transferor. Seventi Lal Manek Lal Sheth v. CIT (1968)(SC)

9. Cross-transfers are also covered –
   A chain of transfers, if not comprehended by the word ‘indirectly’ would easily defeat the object of the law which is to tax income of the wife arising out of assets transferred to her by her husband. It is not necessary that there should be consideration in the technical sense.

   If two transfers are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade implications of section 64, the case will fall within that section - CIT v. C.M. Kothari [1963] (SC).

10. If any person has given loan to the spouse, income from such loan shall not be clubbed.

**Transfer of the asset to the son’s wife [Section 64(1)(vi)]**

If any person has transferred the asset to the son’s wife, in this case, clubbing provision shall apply in the similar manner as in the case of transfer of the assets to the spouse.

Such clubbing provisions are applicable from 01.06.1973.

**Transfer of assets to any other person [Section 64(1) (vii)/ (viii)]**

If any person has transferred the asset to any other person, clubbing provision shall not be applicable, but if the transferor has any right to receive any benefit from the asset or the benefit shall be received by the spouse of the transferor or by the son’s wife of the transferor, in that case, clubbing provision shall be applicable.

**Asset held by Minor Child [Section 64(1A)]**

1. If any income accrues or arises to a minor child, such income shall be clubbed in the income of mother or father whosoever has higher income before taking into consideration the income to be clubbed.

2. If the marriage of mother, father doesn’t subsist, in that case, income shall be clubbed in the income of mother or father whosoever maintains the minor child.

3. Minor child for this purpose shall include even an adopted child and also step child, however, it will not include the minor child suffering from a disability mentioned under section 80U. E.g. Minor son of Mr. X has interest income of ₹2,00,000 and the minor child is suffering from a disability; in this case, clubbing provisions shall not be applicable.
4. If any minor child has income through
   (i) Manual labor or
   (ii) has income through activity involving application of his skill, talent or specialized knowledge and experience, in this case, clubbing provision shall not apply, rather it will be considered to be the income of minor child and his tax liability shall be computed separately but the return shall be filed by his father as his guardian as per section 60.

5. If the income of minor child is to be clubbed, exemption shall be allowed under section 10(32) upto ₹1,500 per annum per child.

6. If any minor child has income from manual labor or through activity involving application of his skill, talent or specialized knowledge and experience, such income shall not be clubbed but if such income has been invested further, any new income shall be clubbed in the income of mother or father.

Example

Minor son of Mr. Rajender Choudhary is a child actor. He has income of ₹5, 00,000 from stage acting, this income will not be clubbed but if this amount was invested by him in a bank as fixed deposit; interest received by him shall be clubbed.

Transfer of the asset by the member of Hindu Undivided Family to the Hindu undivided family [Section 64(2)]

If an individual who is a member of a Hindu Undivided Family, having separate property has, converted the property as belonging to the Hindu Undivided Family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or it has been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual, the income derived from the converted property shall be deemed to arise to the individual and not to the family.

Where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse on partition shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and the clubbing provisions shall apply accordingly.

Note: Income for the purpose of clubbing includes loss also.

Under section 65, if any particular income has been clubbed, but tax could not be recovered from the person in whose income, income of any other person has been clubbed, in such cases tax can be demanded from the person whose income was clubbed but only with regard to the income which was clubbed.

Transfer of Assets to Spouse [Section 64(1)(iv)]

1. If any person has transferred any asset, other than a house property to his or her spouse directly or indirectly without adequate consideration, in such cases, income of the asset shall be clubbed in the income of transferor.
2. If the asset is transferred for adequate consideration, clubbing provisions are not applicable. Similarly, if the asset is transferred under an agreement to live apart, clubbing provision shall not apply.

3. If there is inadequate consideration, clubbing provisions shall be applicable only with regard to the income relating to that part of the consideration which is considered to be inadequate.

4. In order to apply clubbing provision relationship of husband and wife must exist on the date of transfer of the asset and also on the date of accrual of income otherwise clubbing provision shall not be applicable, as decided in Philip Johan Plasket Thomas v. CIT [1963] (SC).

5. If any person has transferred the asset to the spouse and the income from the asset was further invested by the spouse, in this case, any fresh income shall not be clubbed, as decided in CIT v. M. P. Birla [1983] (Bom.).

6. Where the asset transferred directly or indirectly by an individual to the spouse has been invested by the transferee in any business, the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day.

**Set-Off Losses**

Income under the Income Tax Act is taxable under five heads:

1. Income from salaries
2. Income from house property
3. Income from business or profession
4. Income from capital gains
5. Income from other sources

It is possible for an individual to have income under more than one head.

The Income Tax Act has *prescribed rules to set-off loss arising from one head against other heads* of income.

For example, Gaurav’s salary is Rs.4 lacs p.a. However, he has made a loss of Rs.50,000 on sale of shares (capital loss). The question that arises is whether the loss on sale of shares can be set-off against his salary income.

The answer to the above question lies in the set-off provisions mentioned in the Income Tax Act.

Set-off means the process of reducing one’s income using losses under other heads or same head of income.

Procedure for setting off losses: To set-off a loss from income there are some steps given hereunder.

Step 1.

Set-off loss from same head of income – “**Inter-source**” adjustment

Step 2.

If the loss is still existing, loss can be set-off from other heads of income (subject to certain restrictions) – “**Interhead**” adjustments

Step 3.

If loss still persists, the same can be carried forward to the subsequent assessment years – Carry forward of losses
Step 1 - Inter source adjustment:
Under each head of income mentioned, there may be more than one source of income.

For example: A person can have two or more businesses under the head ‘Business Income’.

The restrictions to this form of setting off are as follows:

a. Loss from speculative business can be set-off only against gain from speculative business and not any other business income.
b. Loss from the activity of owning and maintaining race horses can be set-off only against gain arising from the activity of owning and maintaining race horses and not any other income.
c. Long term capital loss can be set-off against long term capital gains and not short term capital gains.

Step 2 - Inter head adjustment:
If the losses cannot be set-off fully through inter source adjustment, they can next be set-off against other heads of income. This is called “inter-head” adjustment.

Step 3 - Carry forward of losses:
If still the losses cannot be set-off fully through inter head adjustment, they can be carried forward to the next years. However, the loss so carried forward can be set-off only against same head of income, i.e. the benefit of “inter-source” adjustment is lost.

<table>
<thead>
<tr>
<th>Nature of Income</th>
<th>Set off From Same Head</th>
<th>Set off From Inter Head</th>
<th>Carry forward up to</th>
<th>Set off in next Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income From Salary</td>
<td></td>
<td></td>
<td></td>
<td>No Losses</td>
</tr>
<tr>
<td>Income From House Property</td>
<td>Yes</td>
<td>Yes</td>
<td>8 Yrs</td>
<td>Same Head</td>
</tr>
<tr>
<td>Income From PGBP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Speculative</td>
<td>Yes</td>
<td>No</td>
<td>4 Yrs</td>
<td>Same Source</td>
</tr>
<tr>
<td>- Non – Speculative</td>
<td>Yes</td>
<td>Yes (Not from Salary)</td>
<td>8 Yrs</td>
<td>Same Head</td>
</tr>
<tr>
<td>Income From Capital Gain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- LTCG</td>
<td>Yes</td>
<td>No</td>
<td>8 Yrs</td>
<td>Same Source</td>
</tr>
<tr>
<td>- STCG</td>
<td>Yes</td>
<td>Yes</td>
<td>8 Yrs</td>
<td>Same Head (STCG/LTCG)</td>
</tr>
<tr>
<td>Income From Other Sources</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Owing and maintenance horse races</td>
<td>Yes</td>
<td>No</td>
<td>4 Yrs</td>
<td>Same Source</td>
</tr>
<tr>
<td>- any other income</td>
<td>Yes</td>
<td>Yes</td>
<td>8 Yrs</td>
<td>Same Head</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specified Business u/s 35AD</td>
<td>Yes</td>
<td>No</td>
<td>No Limit</td>
<td>Any Specified Business</td>
</tr>
<tr>
<td>Unabsorbed Depreciation</td>
<td>Yes</td>
<td>Yes</td>
<td>No Limit</td>
<td>Any Income other than Salary</td>
</tr>
</tbody>
</table>
Chapter VI-A (Deductions from Total Income)

Deduction from Income

After computing the income under all the five heads and after having adjustment for set-off and carry forward a deduction under chapter-VI is allowed from the gross total income of the assessee. Important deductions under Chapter VI-A of Income tax Act are:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Income Tax Section</th>
<th>Category</th>
<th>Amount of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>80C</td>
<td>Aggregate of amount paid/ incurred/invested towards any of the following:</td>
<td>Up to Rs. 1,00,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. Premium paid towards Life Insurance Policy not exceeding 20% of the total Sum Assured.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Contribution towards approved Provident Fund including PPF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. Subscription towards National Saving Certificate</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>d. Contribution to UTIs Retirement Benefit Plan</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>e. Investment in UTIs Unit Linked Insurance Plan</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>f. Approved Mutual Fund Investment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>g. Repayment of Housing Loan Principal towards Self-occupied Residential Property</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>h. Payment of Tuition fees towards any two children of the assessee</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>i. Fund / Deposit Scheme of National Housing Bank Under Home Loan Account Scheme Investment in Pension</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>j. Fixed Deposit of any Scheduled Bank /Housing Finance Co. for not less than 5 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>k. Investment in Equity Shares Debentures of Approved Public Finance Instn. or Company</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>80 CCC</td>
<td>Premium paid towards IRDA approved Pension Fund</td>
<td>Up to Rs. 1,00,000</td>
</tr>
<tr>
<td>3</td>
<td>80CCD</td>
<td>Amount paid/deposited in an approved Pension Scheme of Central Government &amp; matching contribution made by the Employer to the Pension A/c of individual.</td>
<td>Up to 10% of Salary</td>
</tr>
<tr>
<td>4</td>
<td>80 CCE</td>
<td>Aggregate of deduction u/s 80C, 80CCC &amp; 80CCD Shall not exceed Rs.1 lakh.</td>
<td>----</td>
</tr>
<tr>
<td>5</td>
<td>80 D</td>
<td>a. Medical Insurance Premium paid by any mode Other than cash. Up to Rs.15,000.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. For Senior Citizens Up to Rs.20,000.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>6</td>
<td>80DD</td>
<td>a. Any expenditure for Medical, Nursing &amp; Rehabilitation incurred on dependent relative suffering from permanent Physical Disability, Autism, Cerebral Palsy and Multiple disability.</td>
<td>Upto Rs.50,000 if disability is over 40% &amp; Rs 1,00,000 disability is over 80%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Deposits under LIC, UTI’s Scheme &amp; other IRDA approved Insurers for the benefit of Physically Handicapped dependent</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>80DDB</td>
<td>a. Actual expenditure incurred on medical treatment of self, or dependent family members suffering from terminal diseases like Cancer, AIDS, Renal failure etc.</td>
<td>Upto Rs.40,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. For Senior Citizens.</td>
<td>Upto Rs.60,000</td>
</tr>
<tr>
<td>8</td>
<td>80E</td>
<td>Interest on repayment of Loan taken from charitable / financial institution for Self, Spouse, Children Higher Education for a maximum of 8 years</td>
<td>Any amount of Interest</td>
</tr>
<tr>
<td>9</td>
<td>80G</td>
<td>Any donations for charitable purpose can be claimed by the taxpayer only at the time of filing of return of income.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>80GG</td>
<td>Deduction in respect of rents paid provided no House is owned by self, spouse or minor child in the place of work and is residing in any of the specified cities. The officials concerned should produce rent receipts with declaration in Form10BA</td>
<td>Lowest of Rs. 2,000/- Per month or an amount equal to 25% of of total income (excluding LTCG or STCG) or rent paid in excess of 10% of total income.</td>
</tr>
<tr>
<td>11</td>
<td>80U</td>
<td>Persons suffering from permanent physical Disability and includes Autism, Cerebral Palsy, Multiple Disability, Person with Disability and Severe Disability. It should be certified by the medical authority.</td>
<td>Rs.50,000 if disability is over 40% and Rs.1,00,000/- if disability is over 80%.</td>
</tr>
</tbody>
</table>

### Area based deduction

<table>
<thead>
<tr>
<th>Sections</th>
<th>80IA</th>
<th>80IB</th>
<th>80IC</th>
<th>80ID</th>
<th>80IE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Available for</td>
<td>Development of infrastructure</td>
<td>Development of SEZ</td>
<td>Manufacturing in specified areas (Ref. Note)</td>
<td>Operating hotels &amp; building, Convention center in specified areas (Ref. Note) (Constructed between1.04.08 to 31.07.11)</td>
<td>Manufacturing of specified articles / eligible business in specified areas- (Ref. Note- manufacturing start between 1st April 08 to 1st April 2018)</td>
</tr>
</tbody>
</table>
### Common provisions under all the sections

1. Central Government may specify the class of undertaking to which these deductions shall not apply.
2. Accounts must be audited by a CA and the report should be furnished.
3. In case of transfer, the deduction shall be allowed to transferee for the remaining period only (Except 80IC & 80ID).

<table>
<thead>
<tr>
<th>First year of deduction shall start from the year:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Under Section</strong></td>
</tr>
<tr>
<td>80-IA</td>
</tr>
<tr>
<td>80-IAB</td>
</tr>
<tr>
<td>80-IC</td>
</tr>
<tr>
<td>80-ID</td>
</tr>
</tbody>
</table>

**Note:** Article does not include Tobacco, Pan Masala, Plastics Carry bags.

5. It is not formed by dividing or the reconstruction of a business already in existence.
6. At least 80% of total cost of plant and machinery should be new Plant. Therefore maximum 20% can be old used plant.
7. If deduction is claimed under this section then no other deduction shall be allowed form the profit of such undertaking.

**Notes:**

1. Specified area for

<table>
<thead>
<tr>
<th>SECTION</th>
<th>AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td>80-IC</td>
<td>Sikkim, Himachal Pradesh, Uttarakhand or North-eastern states</td>
</tr>
<tr>
<td>80-ID</td>
<td>NCR of Delhi &amp; Faridabad, Gurgaon, Gautam Budh Nagar and Gaziabad And <strong>in specified district having a world heritage site.</strong></td>
</tr>
<tr>
<td>80-IE</td>
<td>North eastern states (i.e. the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim &amp; Tripura.)</td>
</tr>
</tbody>
</table>
Tax Deduction at Source: When a person responsible for paying any income deducts income tax on income at the time of payment of income, it is called “deduction of tax at source”.

The person who deducts tax is known as “Tax Deductor”. It is the duty of tax deductor to deduct the tax and deposit the same to the Government Treasury. Deductor is also termed as Employer in cases where the payments are under Salaries.

The person from whom tax is being deducted or accrued for deduction is known as “Tax deductee”.

TAN is a Unique 10 Digit Alphanumeric Number

**USED TO DEDUCT TDS**

**DEDUCTOR**

Deductor is a person/company who is liable to deduct the Tax at source.

**DEDUCTEE**

Deductee is the person, from whom the tax is being deducted or accrued for deduction.

**TYPES OF DEDUCTEES**

- **SALARIES**
- **NON SALARIES - RESIDENT**
- **NON SALARIES – NON RESIDENT**
Bill raised by ‘A’ for Rs. 1,00,000

Now when payment made by ‘B’ for professional charges to ‘A’ he deduct TDS of 10% (rate prescribed under Act).

Total payment made by ‘B’ is Rs. 90,000/- only.

TDS deposited by ‘A’ Rs. 10,000/- to the govt.

Now ‘A’ can adjust his tax liability with TDS amount.

Depending on the nature of the deduction being made, deductees and respective submission forms are categorized to 3 types:

1. **Salaries**: In case of salaries, the deductee is termed as an Employee. All the information of deductions and payments in this category should be submitted in Form 24Q to the government.

2. **Non-Salaries: Resident**: In case of non-salaries and the payment is made to a resident in India, the deductee is termed as a deductee or a Party. All the information of deductions and payments in this category should be submitted in Form 26Q to the government.

3. **Non-Salaries: Nonresident**: In case of non-salaries and the payment is made to a non-resident of India, the deductee is termed as a Deductee or a Party. All the information of deductions and payments in this category should be submitted in Form 27Q to the government.

For deduction of TDS first of all assessee requires a valid TAN number.

TAN Number is a 10 Digit Alphanumeric Number and is used as an abbreviation for Tax Deduction and Collection Account Number.

**TDS Certificate**

A tax deductor is also required to issue TDS certificate to the deductee within specified time under section 203 of the Income Tax Act, 1961.

The deductee should produce the details of this certificate, during the regular assessment of income tax, to adjust the amount of TDS against the Tax payable by the Deductee [assessee].

**Types of TDS certificates**

**Salaries — Form 16**: In case of Salaries, the certificate should be issued in FORM 16 containing the Tax computation details and the Tax deducted & Paid details.

This refers to the details submitted over Form 24Q.

**Non-salaries — Form 16A**: In case of Non-Salaries, the certificate should be issued in FORM 16A containing the Tax deducted & Paid details. Separate certificates should be prepared for each Section [nature of payment].

This refers to the details submitted over Form 26Q and 27Q.
# TDS Rate Chart for the Financial Year 2013-14 and Assessment Year 2014-15

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>192</td>
<td>Salary</td>
<td>Salary Income must be more than exemption limit /after deduction</td>
<td>Normal Income Tax Rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>193</td>
<td>Interest on securities</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs.5,000</td>
</tr>
<tr>
<td>194</td>
<td>Dividends</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Deducted if DDT has been Paid U/s 115-O)</td>
</tr>
<tr>
<td>194A</td>
<td>Interest other than interest on securities</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Banking Company / Co-operative society / Post Office- Rs. 10000 Others - Rs. 5000</td>
</tr>
<tr>
<td>194B</td>
<td>Winning from Lottery or Crossword Puzzle</td>
<td>30%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 10000</td>
</tr>
<tr>
<td>194BB</td>
<td>Winning from Race Horse</td>
<td>30%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 5000</td>
</tr>
<tr>
<td>194C</td>
<td>Payment to Contractor and Sub-Contractors</td>
<td>1% (in Case of Individual and HUF) / In other Case 2%</td>
<td>Rs. 30000 in a single payment or Rs. 75000 in aggregate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>194D</td>
<td>Insurance Commission</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 20000</td>
</tr>
<tr>
<td>194EE</td>
<td>Deposits under NSS</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 2500</td>
</tr>
<tr>
<td>194F</td>
<td>Repurchase of Units by Mutual Fund or UTI</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 1000</td>
</tr>
<tr>
<td>194G</td>
<td>Commission on sale of Lottery Tickets</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 1000</td>
</tr>
<tr>
<td>194H</td>
<td>Commission or Brokerage</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 5000</td>
</tr>
<tr>
<td>194I</td>
<td>Rent</td>
<td>2% in case of rent of P&amp;M / In other case it is 10%</td>
<td>Rs. 180000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>194J</td>
<td>Fees for Professional or Technical Services</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 30000</td>
</tr>
<tr>
<td>194K</td>
<td>Income in respect of units</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs.2500</td>
</tr>
<tr>
<td>194LA</td>
<td>Compensation on acquisition of immovable property(COMPULSORY ACQUITIONS)</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>Rs. 2,00,000</td>
</tr>
</tbody>
</table>
Compensation on acquisition of immovable property

As per Finance Act 2013, if consideration paid or payable for transfer of any immovable property is more than Rs. 50 lakhs then, TDS @ 1% is required to be deducted by the Buyer of the property and deposit it to the Government in Form 26QB.

**Tax Collection at Source (TCS):** It is basically charged for unregulated industries where it is difficult to find who is payer.

E.g.  

```
A  Sale Scrap  B

'A' collect payment + TCS
```

Basic Amount –10,000/-
TCS 2.06% 216/-
10,216/-

Now ‘B’ can take credit of TCS paid during filing his return.

**TCS Rate Chart**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Tax</th>
<th>Surcharge</th>
<th>Education Cess</th>
<th>Secondary Education Cess</th>
<th>Limit for Tax Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>6CA</td>
<td>Alcoholic Liquor For Human Consumption</td>
<td>1%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CI</td>
<td>Tendu Leaves</td>
<td>5%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CB</td>
<td>Timber obtained Under a Forest Lead</td>
<td>2.5%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CC</td>
<td>Timber obtained (other than Forest)</td>
<td>2.5%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CD</td>
<td>Forest Produce (other than Tendu Leaves)</td>
<td>2.5%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CE</td>
<td>Scrap</td>
<td>1%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CF</td>
<td>Parking Lot</td>
<td>2%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CG</td>
<td>Toll plaza</td>
<td>2%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CH</td>
<td>Mining And Quarrying</td>
<td>2%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>No Exemption Limit</td>
</tr>
<tr>
<td>6CJ</td>
<td>Minerals being coal or lignite or iron ore</td>
<td>1%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td>Bullion-exceeds 2,00,000/- Jewellery-exceeds Rs. 5,00,000/-</td>
</tr>
<tr>
<td>6CK</td>
<td>Sale of bullion and jewellery</td>
<td>1%</td>
<td>2%*</td>
<td>2%*</td>
<td>1%*</td>
<td></td>
</tr>
</tbody>
</table>
Tax is deductible (and is so deducted) during the last month (i.e., in the month of March) of the previous year but it is not deposited on or before the due date of submission of return of income
- No deduction in the current previous year
- If tax is deposited with the Government after the due date of submission of return of income, the expenditure will be deductible in that year in which tax will be deposited.

Tax is deductible (and is so deducted) during any month but other than the last month (i.e., any time before March 1) of the previous year but it is not deposited on or before March 31 of the previous year
- No deduction in the current previous year
- If tax is deposited with the Government after the end of the current previous year, the expenditure will be deductible in that year in which tax is deposited.

Furnishing Information regarding TDS: The Revised procedure for furnishing information regarding remittances being made to non-residents with effect from July 1, 2009 is as follows:

1. The Person making the payment (remitter) will obtain a certificate from a chartered accountant (other than employee) in Form No. 15CB.
2. The Remitter will then access the website to electronically upload the remittance details to the department in Form No. 15CA (undertaking). The information to be furnished in Form No. 15CA is to be filled using the information contained in Form No. 15CB (certificate).
3. The Remitter will then take a print out of this filled up Form No. 15CA (Which will bear an acknowledgement number generated by the system) and sign it. Form No. 15CA (undertaking) can be signed by the person authorized to sign the return of income of the remitter or a person so authorized by him in writing.
4. The duly signed Form No. 15CA (undertaking) and Form No. 15CB (certificate) will be submitted in duplicate to the Reserve Bank of India/authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.
5. A Remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount, on which the tax is to be deducted, is not required to obtain a certificate from the Accountant in Form No. 15CB. However, he is required to furnish information in Form No. 15Ca (undertaking) and submit it along with a copy of the certificate from Assessing Officer as per the procedure mentioned above-Circular No. 4 /2009,dated June 29,2009.
Minimum Alternate Tax

What is the objective behind the introduction of MAT?

Normally, a company is liable to pay tax on the income computed in accordance with the provisions of the income tax Act, but the profit and loss account of the company is prepared as per provisions of the Companies Act.

There were large number of companies who had book profits as per their profit and loss account but were not paying any tax because income computed as per provisions of the income tax act was either nil or negative or insignificant.

In such case, although the companies were showing book profits and declaring dividends to the shareholders, they were not paying any income tax.

These companies are popularly known as Zero Tax companies.

In order to bring such companies under the income tax act net, MAT was introduced.

What is the origin of MAT?

The levy of a minimum tax on companies was first introduced through section 80VVA by the Finance Act, 1983 w.e.f. A.Y. 1984-85.

The concept of tax on book profits was introduced originally under section 115J by the Finance Act, 1987 with effect from A.Y. 1988-89 and it was withdrawn with effect from A.Y. 1990-91.

Here, the tax was levied on 30% of Book Profits.

Subsequently the concept was reintroduced with a few changes, imposing Minimum Alternate Tax (MAT) under section 115JA with effect from A.Y. 1997-98 and had effect up to A.Y.2000-01.

Section 115JB was introduced in Finance Act, 2000 w.e.f. 1.4.2001, whereby, a company shall be liable to pay higher of tax computed under:

Income Tax Act provisions and tax computed under Sec 115JB.

Applicability of MAT provision

The provisions of this chapter are applicable only to Companies & limited liability partnership firm and not to any other assessee like Individual, HUF, Partnership Firm, etc.

To calculate the amount of MAT first of all we have to compute Book Profit.

How we calculate Book Profits on which Mat is to be calculated?

Calculation of Book Profit under Sec 115JB(2)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit as per P&amp;L A/c (computed as per companies act)</td>
<td>xx</td>
<td></td>
</tr>
<tr>
<td><strong>Total A</strong></td>
<td></td>
<td>xx</td>
</tr>
<tr>
<td>As Increased by:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax paid (including Tax on distributed profit u/s 115O, Distribution Tax u/s 115R, education cess, surcharge and interest on income tax )</td>
<td>xx</td>
<td></td>
</tr>
</tbody>
</table>
### Income tax Payable or Income tax provisions

- Any transfer to reserve
- Provisions for unascertained liability
- Provisions for loss of subsidiary company
- Dividend Paid/Proposed
- Expenses relating to exempt income u/s 11
- Expenses relating to exempt income u/s 12
- Depreciation (As per Companies Act)
- Amount of Deffered Tax & Provision Thereof
- Amount or amounts set aside as provision for diminution in value of asset (to the extent any of above is debited to P & L A/c)

### Total B

### Total C (A + B)

### As Reduced by:

- Withdrawal from the reserve or provisions
- Exempt income u/s 10 (other than clause 38 of Sec 10)
- Exempt income u/s 11
- Exempt income u/s 12
- The amount of loss b/f or unabsorbed depreciation. whichever is less as
- Per books of accounts

- Profit of sick industrial company
- Profit of tonnage Tax Company (section-115VO)
- Depreciation (as per Companies Act) (however excluding depreciation on revaluation of assets)
- Amount withdrawn from the revaluation reserve to the extent it does not exceed the amount of depreciation on account of revaluation of assets
- Amount of Deffered Tax. if credited to P & L A/c

### Total D

### Book Profits on which MAT is to be calculated (C – D)

---

**What is rate of Tax under MAT?**

Tax Rate applicable for the Assessment Year 2014-15 is 18.5% of its Book Profits.

**Report is to be furnished under section 115JB**

Under Sec 115JB(4), every company to which this section applies, shall furnish a report in Form 29B, as prescribed under rule 40B, from an accountant, certifying that the Book Profits has been computed in accordance with the provisions of Sec 115JB. This report has to be accompanied with the return of income filed under Sec 139(1) or 142(1) (i).

**What is MAT Credit?**

If amount of MAT paid, is in excess of regular tax paid then such excess amount is known as MAT credit which can be utilized for future tax liability.
Provision of MAT credit is given under section 115JAA of Income Tax Act-1961 which is described as below:

Sec 115JAA provides for calculation and carry forward of MAT Credit in respect of MAT paid u/s 115JB (1) for the assessment year commencing on 1.4.2006 and any subsequent assessment year. The amount of tax paid under section 115JB is allowed to be carried forward to the extent of the MAT paid in excess of the regular tax and can be set off against tax payable up to the tenth assessment year (w.e.f. 1.4.2010) immediately succeeding the assessment year in which tax credit becomes allowable under the provisions of section 115JAA.

Working for claiming MAT credit and carry forward of balance unutilized MAT credit

Year 1:

<table>
<thead>
<tr>
<th>If Tax Payable &lt; MAT</th>
<th>Tax Liability = MAT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MAT (Cr) c/f = MAT – Tax Payable</td>
</tr>
<tr>
<td>If Tax Payable &gt; MAT</td>
<td>Tax Liability = Tax Payable as per I.T. Act</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) c/f = NIL</td>
</tr>
</tbody>
</table>

Year 2 and thereafter:

<table>
<thead>
<tr>
<th>If Tax Payable &lt; MAT</th>
<th>There is an Bought Forward MAT(Cr)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tax Liability = MAT</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) c/f = MAT (Cr) b/f + Current Year [MAT – Tax Payable]</td>
</tr>
<tr>
<td></td>
<td>There is NO Bought Forward MAT(Cr)</td>
</tr>
<tr>
<td></td>
<td>Tax Liability = MAT</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) c/f = Current year [MAT – Tax Payable]</td>
</tr>
<tr>
<td>If Tax Payable &gt; MAT</td>
<td>There is an Bought Forward MAT(Cr)</td>
</tr>
<tr>
<td></td>
<td>If Net Tax Payable &lt; MAT</td>
</tr>
<tr>
<td></td>
<td>Adjustable MAT (Cr) = Current Year [Tax Payable – MAT]</td>
</tr>
<tr>
<td></td>
<td>Tax Liability = Tax Payable – Adjusted MAT(Cr) = Current Year MAT</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) carry forward = MAT (Cr) b/f – Adjusted MAT (Cr)</td>
</tr>
<tr>
<td></td>
<td>If NTP &gt; MAT</td>
</tr>
<tr>
<td></td>
<td>Tax Liability = Net Tax Payable</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) c/f = MAT (Cr) b/f</td>
</tr>
<tr>
<td></td>
<td>There is no brought forward MAT(Cr)</td>
</tr>
<tr>
<td></td>
<td>Tax Liability = Tax Payable as per I.T. Act</td>
</tr>
<tr>
<td></td>
<td>MAT (Cr) c/f = NIL</td>
</tr>
</tbody>
</table>

Where, MAT = Minimum Alternate Tax

B/f= Brought Forward
C/F= Carry forward
NTP= Net Tax Payable

Note: The MAT Credit available in the hands of company shall not be allowed to LLP.
The above provisions are applicable in case of company, but there is difference of provision if these are applicable to Limited liability partnership (LLP)

**What is Applicable on LLP?**

Alternate minimum tax i.e. AMT is applicable on Limited liability partnership.

**When it is Applicable?**

Basically it is applicable when LLP’s tax payable under the normal provision of income tax is lesser than AMT.

**What is the rate of AMT?**

The rate of tax applicable is 18.5% plus education cess of adjusted total income (effective rate is 19.055%).

**How we compute Adjusted Total Income?**

Adjusted Total Income is to be computed as follow:

<table>
<thead>
<tr>
<th>Total Income as computed under the normal provision of the Income Tax Act</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: Deductions under Chapter VI-A (Heading C- deduction in respect of certain incomes)</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Deduction under Section 10AA (Deduction in respect of profit of SEZ units)</td>
<td>XXX</td>
</tr>
<tr>
<td>Adjusted Total Income</td>
<td>XXX</td>
</tr>
</tbody>
</table>

**Points to be Noted**

AMT will apply to the LLPs claiming profit linked deductions under sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE and 10AA.

LLP claiming deduction under section 35AD are not liable to pay AMT on such deduction. Therefore, it is beneficial for the LLPs to claim deduction under section 35AD than to claim deduction under section 80-IA/80-IB/80-IC/80-ID/80-IE, wherever applicable.

AMT will be applicable on LLPs claiming profit based deduction not expense based deductions like 80G, 80GGA, 80GGC.

**Audit Report**

LLP is required to obtain a report from a chartered Accountant certifying the computation of the adjusted total income and AMT. Such report shall be furnished on or before the due date of filing of return.

**Tax Credit for AMT**

Tax credit will be available to LLP if:

AMT paid is in excess of the regular tax then such excess will be available as credit against future tax liability.

The AMT credit will be allowed to be carried forward and set-off for a period of 10 years succeeding the year in which such credit becomes available.

Credit is allowed in the year in which regular tax is more than AMT. This credit is restricted to the difference between the regular tax computed under the normal provision and the AMT.
International Taxation

International taxation basically related to taxation with Non Resident or foreign Companies.

Who is Non Resident / Foreign Company?

**Non Resident:** An Indian Citizen who stays abroad for employment/ carrying on business or vacation outside India or stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident.

**Foreign Company:** A company which is registered outside India and which also has a business establishment in India.

What Type of Income is taxable for Non Resident / Foreign Company?

- If it is business income and business is controlled wholly or partly from India.
- If it is income from profession which is set up in India
- If it is business income and business is controlled from India
- If it is income from profession set up outside India
- Any other foreign income (like salary, rent etc)

Here are some Specified sections, whereby specified services have been mentioned which are taxable at specified rates.

<table>
<thead>
<tr>
<th>Nature of Income</th>
<th>Section 115A: Taxability in Hands of Non-Residents and Foreign Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest received:</td>
<td>Royalty and fee for Technical services other than referred in 44DA:</td>
</tr>
<tr>
<td>(i) From govt. or Indian concern on money borrowed by govt/Indian concern other than referred to in (ii) below.</td>
<td>a) Received from Govt. in pursuance of agreement</td>
</tr>
<tr>
<td>(ii) From an infrastructure debt fund referred to in section 10(47).</td>
<td>b) Received from Indian concern in pursuance of agreement approved by Central Govt. or in accordance with industrial policy for the time being in force.</td>
</tr>
<tr>
<td>(iii) Interest received from specified companies- In respect of monies borrowed in foreign currency under an loan agreement or by way of issue of Long term Infrastructural Bond</td>
<td></td>
</tr>
<tr>
<td>Royalty and fee for Technical services other than referred in 44DA:</td>
<td></td>
</tr>
<tr>
<td>a) Received from Govt. in pursuance of agreement</td>
<td></td>
</tr>
<tr>
<td>b) Received from Indian concern in pursuance of agreement approved by Central Govt. or in accordance with industrial policy for the time being in force.</td>
<td></td>
</tr>
<tr>
<td>Rate of Tax</td>
<td>If agreement is entered:</td>
</tr>
<tr>
<td>a) 20% of interest referred in clause (i) above.</td>
<td>-After 1st June 1997 - 25%</td>
</tr>
<tr>
<td>b) 5% of interest referred in clause (ii) and (iii) above.</td>
<td></td>
</tr>
<tr>
<td>Slab benefit not available.</td>
<td></td>
</tr>
<tr>
<td>Whether Return of Income is Required?</td>
<td>YES</td>
</tr>
<tr>
<td>No, if</td>
<td></td>
</tr>
<tr>
<td>a) Total income includes only interest income</td>
<td></td>
</tr>
<tr>
<td>b) TDS is deducted</td>
<td></td>
</tr>
<tr>
<td>Deduction u/s 28 to 44C and section 57 (in respect of such income)</td>
<td>NO</td>
</tr>
<tr>
<td>Deduction under chapter VI-A</td>
<td>Not available on such interest income.</td>
</tr>
<tr>
<td>Provision of Set off carry forward of losses</td>
<td>Applicable</td>
</tr>
</tbody>
</table>
| Other points to be remembered | - Money borrowed means loans, Debentures, Bonds, Deposits in Indian Company, Govt. securities  
- Does not apply if money is lent in Indian currency | - Place of delivery of Know how is irrelevant i.e. must be used in India.  
- Royalty includes rent/ hire charges / lease charges of machinery and equipments.  
- Section 115A does not apply if Non resident or Foreign company has permanent establishment in India and agreement is entered after 31-03-2003. |

There is a special Provision for computing income by way of Royalties, etc. in case of NON Residents and Foreign Companies.

**Section 44DA** provides that income by way of royalty or fees for technical services received by non residents and foreign companies from the Government or an Indian Concern under an agreement made after 31-03-2003, will be computed after allowing all expenses under chapter of PGBP and tax at the regular tax rate, where-

- Such non-resident carries on business/profession through a permanent establishment or from a fixed place in India, and
- The right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be.

**What is Permanent Establishment?**

The word ‘Permanent Establishment’ includes a fixed place of business through which the business of the enterprise is wholly or partially carried on.

**Notes:**

1. It is optional to claim section 44DA or section 115A.
2. Amount paid for technical services and knowhow used for prospecting/ extraction/ production of petroleum is covered by either Section 115A or section 44DA.

However, rent paid / amount paid for supply of plant & machinery on hire / services to be used in prospecting/ extraction/ production of petroleum is covered by section 44BB.
Special Provisions applicable for Non Residents

There are some Special provisions also which are related to Non Residents and foreign institutional Investors:

<table>
<thead>
<tr>
<th>Applicable To</th>
<th>Section 115AB</th>
<th>Section 115AC</th>
<th>Section 115AD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overseas Financial Organisation</td>
<td>Non Resident Including Foreign Co.</td>
<td>Foreign Institutional Investors</td>
<td></td>
</tr>
<tr>
<td>Applicable For</td>
<td>Units of UTI and Mutual Funds Purchased In Foreign Currency.</td>
<td>i) Bonds of an Indian company issued abroad and purchased in foreign currency.</td>
<td>Securities other than units of UTI and Mutual Funds purchased in any currency. (securities referred to in section 115AC are not covered here)</td>
</tr>
<tr>
<td>Tax Rates</td>
<td>LTCG-10%</td>
<td>LTCG-10% Interest-10%</td>
<td>LTCG-10% STCG-30% Interest-20% STCG referred in section 111A 15%</td>
</tr>
<tr>
<td>Exemption From filing ROI</td>
<td>Not Applicable</td>
<td>No Return of Income required to be filled if i) Total income includes only interest referred in section 115AC and ii) TDS Deducted on such Income.</td>
<td>Not Applicable.</td>
</tr>
</tbody>
</table>

What is Specified Assets?

Shares of an Indian Company (private or public), debentures of public limited Company, deposits in public limited Indian company, government securities.

What is Foreign Exchange Assets?

Specified Assets purchased in convertible foreign exchange.
How we compute Income of NRI’s?

Interest Income

Long term capital gain (it should be derived in foreign currency and no indexation benefit available)

Other Income

Total Income

Note: No deduction is available to assessee under chapter VI-A

Benefit of Indexation not Available

NRI who derive LTCG within 6 months from the date of transfer and then invest the net consideration in specified assets then-

\[
\text{LTCG} \times \frac{\text{Cost of new Asset}}{\text{Net Consideration}} = \text{LTCG} \times \frac{\text{Cost of new Asset}}{\text{Net Consideration}}
\]

Condition: Assets should be retaining for 3 years otherwise earlier exempt LTCG will be taxable.

Tax Rates Applicable:

LTCG - 10%

Interest income - 20%

Other Income - Normal tax rates.

Tax Rate Applicable on Non-Resident Sports

Men or Sports Associations or other person

<table>
<thead>
<tr>
<th>Section</th>
<th>Where total income of Assessee</th>
<th>Applicable rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>115BBA</td>
<td>being a sportsman who is not a citizen of India and is a non-resident, includes any income received by way of (A)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i) Participation in India in any game or sport or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ii) Advertisement or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>iii) Contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(A) being a non-resident sports association or institution, includes any income guaranteed to be paid or payable to such association or institution in relation to any game or sport played in India;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(B) being an entertainer who is not a citizen of India, includes any income received or receivable from his performance in India</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20% of such income</td>
<td></td>
</tr>
<tr>
<td>115BB</td>
<td>Income being by way of winning from Lottery/ crossword puzzle/ Race horse including (not being income from owing &amp; maintaining race horse) / card game/ other income of any sort/ gambling of any form or nature.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>30% of income by way of such winning (No slab rate applicable)</td>
<td></td>
</tr>
</tbody>
</table>
Section 115JG: Conversion of an Indian branch of Foreign Company into subsidiary Indian company.

1. Where a foreign company is engaged in the business of banking in India through its branch situated in India and such branch is converted into a subsidiary company thereof, being an Indian company (hereafter referred to as an Indian subsidiary company) in accordance with the scheme framed by the Reserve Bank of India, then, notwithstanding anything contained in the Act and subject to the conditions as may be notified by the Central Government in this behalf,
   (i) the capital gains arising from such conversion shall not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place;
   (ii) the provisions of this Act relating to treatment of unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in the case of the foreign company and the Indian subsidiary company shall apply with such exceptions, modifications and adaptations as may be specified in that notification.

2. In case of failure to comply with any of the conditions specified in the scheme or in the notification issued under sub-section (1), all the provisions of this Act shall apply to the foreign company and the said Indian subsidiary company without any benefit, exemption or relief under sub-section (1).

3. Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company or the Indian subsidiary company in accordance with the provisions of sub-section (1) and, subsequently, there is failure to comply with any of the conditions specified in the scheme or in the notification issued under sub-section (1), then,
   (i) such benefit, exemption or relief shall be deemed to have been wrongly allowed;
   (ii) the Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary amendment; and
   (iii) the provisions of section 154 shall, so far as may be, apply thereto and the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the failure to comply with the condition referred to in sub-section (1) takes place.

4. Every notification issued under this section shall be laid before each House of Parliament;
Double Tax Avoidance Agreement

What is Double Taxation?
Double taxation is levying of tax by two countries on the same declared income of an assessee. This double liability is mitigated by tax treaties through an agreement between countries. India has comprehensive Double Taxation Avoidance Agreements (DTAA) with 84 countries. This means that there are agreed rates of tax and jurisdiction on specified types of income arising in a country to a tax resident of another country.

*Under the Income Tax Act 1961 of India*,
There are two provisions:
Section 90 and Section 91, which provide specific relief to taxpayers to save them from double taxation.
Section 90 is for taxpayers who have paid the tax to a country with which India has signed DTAA, while Section 91 provides relief to taxpayers who have paid tax to a country with which India has not signed a DTAA.
Thus, India gives relief to both kinds of taxpayers.
A large number of foreign institutional investors who trade on the Indian stock markets operate from Mauritius and the second being Singapore.
According to the tax treaty between India and Mauritius, capital gains arising from the sale of shares are taxable in the country of residence of the shareholder and not in the country of residence of the company whose shares have been sold.
Therefore, a company resident in Mauritius selling shares of an Indian company will not pay tax in India. Since there is no capital gains tax in Mauritius, the gain will escape tax altogether.

Powers given under DTAA
The central government may enter into an agreement with the government of any country outside India or specified territory-
OR
Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and central government shall adopt such agreement.

Why there is need of DTAA?
Need of DTAA arise due to following circumstances:

i) For the avoidance of double taxation of income in India and Foreign Country; or

ii) For recovery of Income tax under this act and under the corresponding law in force in that country; or

iii) For exchange of information for the prevention of evasion or avoidance of income tax chargeable under this act or law under foreign country; or
iv) Investigation of cases of such evasions and avoidance; or  
v) For granting relief from such doubly taxed income.  
The provision of DTAA shall apply to the extent they are more beneficial to that assessee.  
DTAA or Income Tax Act, whichever is more beneficial to the assessee shall apply.  

**What are the key benefits that derived after coming DTAA?**  
The key benefits and effect of Double Tax Avoidance agreement is that  
i) Income is taxed in only one country or  
ii) If income is being taxed in both the countries, then the tax paid in one country is allowed as deduction from the tax payable in other country, as per the agreement.  
There are some countries with which India has no DTAA, in that case a relief under section 91 of Income Tax Act-1961 is provided to assessee.  

**What is the relief given under section 91 to the assessee?**  
If there is a country with which India doesn't have a DTAA, assessee who is a resident of India derive an income also outside India, pays income tax thereon in foreign country and as well as in India,  
Then he shall be allowed to deduct the lower of the following amount from income tax payable by him in India in respect of such double taxed Income;  
(i) \[
\frac{\text{Tax on Total Income In India}}{\text{Total Income in India}} \times \text{Such double taxed income}
\]
(ii) \[
\frac{\text{Tax paid in foreign country}}{\text{Total income assessed in foreign Country}} \times \text{Such double taxed income}
\]

*Note:* The Indian Government has made it mandatory for the assessee's that in order to avail the Treaty benefits between India and other countries, assessee has to obtain a Tax Residency Certificate (TRC) from the country of its residence. This TRC will be issued by the local jurisdictional authority of assessee in India.
# With Holding Tax Rates

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividend [not being covered by section 115-0]</th>
<th>Interest</th>
<th>Royalty</th>
<th>Fees for Technical Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
</tr>
<tr>
<td>Armenia</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Australia</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15%</td>
</tr>
<tr>
<td>Austria</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Belarus</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Belgium</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15% (10% if paid on loan granted by a bank)</td>
</tr>
<tr>
<td>Botswana</td>
<td>Both</td>
<td>7.5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Brazil</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15% [Note 2]</td>
</tr>
<tr>
<td>Country</td>
<td>Both</td>
<td>15%</td>
<td>15% [Note 2]</td>
<td>15% of royalty relating to literary, artistic, scientific works other than films or tapes used for radio or television broadcasting; 20% in other cases</td>
</tr>
<tr>
<td>-------------------</td>
<td>------</td>
<td>-----</td>
<td>--------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>Both 15% [Note 2]</td>
</tr>
<tr>
<td>Canada</td>
<td>Both</td>
<td>15%</td>
<td>15% [Note 2]</td>
<td>Both 10%-20%</td>
</tr>
<tr>
<td>China</td>
<td>Both</td>
<td>10%</td>
<td>10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Both</td>
<td>10%</td>
<td>10% [Note 2]</td>
<td>Both 15%</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Both</td>
<td>10%</td>
<td>10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Country</td>
<td>Dividend [not being covered by section 115-O]</td>
<td>Royalty</td>
<td>Interest</td>
<td>Fees for Technical Services</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------------------------</td>
<td>---------</td>
<td>----------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td>[Right of State to Tax]</td>
<td>[Tax Rate]</td>
<td>[Right of State to Tax]</td>
<td>[Tax Rate]</td>
</tr>
<tr>
<td>Denmark</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>20%</td>
</tr>
<tr>
<td>Georgia</td>
<td>15% if loan is granted by bank;</td>
<td></td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Germany</td>
<td>20% in other cases</td>
<td></td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Finland</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>France</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Greece</td>
<td>15% if at least 25% of the shares of the company paying the dividend is held by the recipient;</td>
<td>15%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Hungary</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Iceland</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Ireland</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Israel</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Country</td>
<td>Type</td>
<td>Rate</td>
<td>Type</td>
<td>Rate</td>
</tr>
<tr>
<td>------------------</td>
<td>-------</td>
<td>-------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Italy</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company; 20% in other cases</td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Japan</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Jordan</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Kenya</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15%</td>
</tr>
<tr>
<td>Korea</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 20% of the capital of the company paying dividend is held by the recipient; 20% in other cases</td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Kuwait</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Libyan Arab Jamahiriya</td>
<td>Source</td>
<td>20%</td>
<td>Source</td>
<td>20%</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 10% of the shares of the company paying dividend is held by the recipient company; 15% in other cases</td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Country</td>
<td>Dividend [not being covered by section 115-0]</td>
<td>Interest</td>
<td>Royalty</td>
<td>Fees for Technical Services</td>
</tr>
<tr>
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<tr>
<td></td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
</tr>
<tr>
<td>Malta</td>
<td>Both</td>
<td>10% if at least 25% of the shares of the company paying dividend is held by the recipient company; 15% in other cases</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Mongolia</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15% [Note 2]</td>
</tr>
<tr>
<td>Mauritius</td>
<td>Both</td>
<td>5% if at least 10% of the capital of the company paying the dividend is held by the recipient; 15% in other cases</td>
<td>Both</td>
<td>20% [Note 2]; Nil (in some cases)</td>
</tr>
<tr>
<td>Montenegro</td>
<td>Both</td>
<td>5% if at least 25% of the shares of the company paying dividend is held by the recipient company; (in some cases 15%) in other cases</td>
<td>Both</td>
<td>10% (Note 2)</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Both</td>
<td>5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Morocco</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Both</td>
<td>7.5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Namibia</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Country</td>
<td>Type</td>
<td>Rate</td>
<td>Description</td>
<td>Type</td>
</tr>
<tr>
<td>--------------</td>
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</tr>
<tr>
<td>Nepal</td>
<td>Both</td>
<td>10%</td>
<td>10% if at least 10% of the shares of the company paying the dividend is held by the recipient; 20% in other cases</td>
<td>Both</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 2]</td>
<td>Both</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Both</td>
<td>15%</td>
<td>Both 10% [Note 2]</td>
<td>Both</td>
</tr>
<tr>
<td>Norway</td>
<td>Both</td>
<td>15%</td>
<td>Both 15% [Note 2]</td>
<td>Both</td>
</tr>
<tr>
<td>Oman</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 2]</td>
<td>Both</td>
</tr>
<tr>
<td>Philippines</td>
<td>Both</td>
<td>15%</td>
<td>Both 15% if at least 10% of the shares of the company paying the dividend is held by the recipient; 20% in other cases</td>
<td>Both</td>
</tr>
<tr>
<td>Poland</td>
<td>Both</td>
<td>15%</td>
<td>Both 15% [Note 2]</td>
<td>Both</td>
</tr>
<tr>
<td>Country</td>
<td>Dividend [not being covered by section115-O]</td>
<td>Interest</td>
<td>Royalty</td>
<td>Fees for Technical Services</td>
</tr>
<tr>
<td>----------------------</td>
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</tr>
<tr>
<td></td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
</tr>
<tr>
<td>Portuguese Republic</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 20% of the shares of the company paying the dividend is held by the recipient; 15% in other cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quatar</td>
<td>Both</td>
<td>5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 10% of the shares of the company paying the dividend is held by the recipient; 10% in other cases</td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Romania</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>if at least 25% of the shares of the company paying the dividend is held by the recipient; 20% in other cases</td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>[Note 2]</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>Both</td>
<td>5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No separate provision</td>
</tr>
<tr>
<td>Serbia</td>
<td>Both</td>
<td>5%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(if recipient is company and holds 25% shares) otherwise 15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Shareholder Type</td>
<td>Minimum Taxation</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>------------------</td>
<td>-------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>Both</td>
<td>10% if at least 25% of the shares of the company paying the dividend is held by the recipient; 15% in other cases</td>
<td>Both 10% if loan is granted by a bank/similar institute including an insurance company; 15% for others</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Both</td>
<td>5% if at least 10% of the shares of the company paying the dividend is held by the recipient; 15% in other cases</td>
<td>Both 10%</td>
<td>Both 10%</td>
</tr>
<tr>
<td>South Africa</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Spain</td>
<td>Both</td>
<td>15%</td>
<td>Both 15% [Note 2]</td>
<td>Both [Note 4]</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>Both</td>
<td>15%</td>
<td>Both 10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Sudan</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Sweden</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Swiss</td>
<td>Both</td>
<td>10%</td>
<td>Both 10% [Note 5]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Syria</td>
<td>Residence</td>
<td>Nil</td>
<td>Both 7.5% [Note 2]</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Syrian Arab Republic</td>
<td>Both</td>
<td>10% (5% if shareholder is a company holding at least 10% shares)</td>
<td>Both 10%</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Taipei</td>
<td>Both</td>
<td>12.5%</td>
<td>Both 10%</td>
<td>Both 10%</td>
</tr>
<tr>
<td>Country</td>
<td>Dividend [not being covered by section 115-O]</td>
<td>Interest</td>
<td>Royalty</td>
<td>Fees for Technical Services</td>
</tr>
<tr>
<td>--------------------</td>
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</tr>
<tr>
<td></td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
<td>Right of State to Tax</td>
<td>Tax Rate</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>Both</td>
<td>10% (5% if shareholder is a company holds 25% shares)</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>Both</td>
<td>10% if at least 10% of the shares of the company paying the dividend is held for a period of at least 6 months prior to the date of payment of the dividend; 15% in other cases</td>
<td>Both</td>
<td>12.50%</td>
</tr>
<tr>
<td>Thailand</td>
<td>Both</td>
<td>15% if dividend is paid by an industrial company and at least 10% of capital of such company is held by the recipient; 20% in other cases</td>
<td>Both</td>
<td>10% for financial institutions and insurance company; 25% for others [Note 2]</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10% [Note 2]</td>
</tr>
<tr>
<td>Turkey</td>
<td>Both</td>
<td>15%</td>
<td>Both</td>
<td>10% if recipient is bank, etc.; 15% in other cases [Note 2]</td>
</tr>
<tr>
<td>Country</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td>10%</td>
</tr>
<tr>
<td>-------------------------</td>
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<td>-----------</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>Both</td>
<td>[Note 2]</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>Uganda</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>Ukraine</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>United Arab Republic</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>United Mexican States</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Both</td>
<td>10%</td>
<td>Both</td>
<td></td>
</tr>
</tbody>
</table>

*Note 1: If the dividend is paid by an industrial company and at least 25% of capital of such company is held by the recipient, then 15% in other cases.

*Note 2: If interest is paid by a bank/similar financial institute, then 12.5% for others.

*Note 3: If interest is paid to a bank, then 15% for others.*
<table>
<thead>
<tr>
<th>Country</th>
<th>Dividend [not being covered by section 115-O] Tax Rate</th>
<th>Royalty [not being covered by section 115-O] Tax Rate</th>
<th>Fees for Technical Services Tax Rate</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>15% if at least 10% of the voting stock of the company paying the dividend is held by the recipient; 25% in other cases</td>
<td>Both 10%</td>
<td>Both 15% [Note 3]</td>
<td>Both 15%</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>15%</td>
<td>Both 15% [Note 2]</td>
<td>Both 15% [Note 2]</td>
<td>Both 15%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>15%</td>
<td>Both 15% [Note 2]</td>
<td>Both 15% [Note 2]</td>
<td>Both 15%</td>
</tr>
<tr>
<td>Zambia</td>
<td>5% if at least 25% of the shares of the company paying the dividend is held for a period of at least 6 months prior to the date of payment of the dividend; 15% in other cases</td>
<td>Both 15%</td>
<td>Both 15%</td>
<td>No Separate Provision</td>
</tr>
</tbody>
</table>
Notes:
1. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying the interest.
2. Dividend/interest earned by the Government and certain institutions like the Reserve Bank of India is exempt from taxation in the country of source.
3. Royalties and fees for technical services would be taxable in the country of source at the following:
   a. 10 per cent in case of rental of equipment and services provided along with know-how and technical services;
   b. In any other case
   During first five years of the agreement
   - 15 per cent if the payer is Government or specified organization;
   - 20 per cent in other cases;
   Subsequent years, 15% in all cases.
Income of Government and certain institutions will be exempt from taxation in the country of source.
4. Royalties and fees for technical services would be taxable in the country of source at the following:
   a. 10 per cent in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;
   b. 20 per cent in case of fees for technical services and other royalties.
5. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 20 per cent of the capital of the company paying the interest.

**Section 92CC: Advance pricing agreement**

The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which the arm’s length price is to be determined, in relation to an international transaction to be entered into by that person.

2. The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

3. Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

4. The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.
5. The advance pricing agreement entered into shall be binding:
   a. on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and
   b. on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

6. The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

7. The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

8. Upon declaring the agreement void ab initio:
   a. all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and
   b. notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

9. The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

10. Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

**Section 92CD: Effect to advance pricing agreement**

1. Notwithstanding anything contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

2. Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

3. If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.
4. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

5. Notwithstanding anything contained in section 153 or section 153B or section 144C,
   a. the order of assessment, reassessment or recomputation of total income under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;
   b. the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

6. For the purposes of this section,
   (i) “agreement” means an agreement referred to in sub-section (1) of section 92CC;
   (ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where:
       a. an assessment or reassessment order has been passed; or
       b. no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section.

Section 163: Agent of Non Resident

Laws made by a sovereign country are enforceable only as far as its sovereignty extends. As such, revenue laws of one Sovereign State are not applicable in another Sovereign State, nor the Courts of one State will assist another State in implementation of its revenue laws in any foreign jurisdiction.

If a Non-Resident residing abroad has sufficient territorial connection with India and he has earned income from such connection (refer section 9 of the Income-tax Act), the law made by Parliament levying taxes on such income will be constitutionally valid. But enforcement of such tax liability is an altogether different matter. If the non-resident has a fixed place of business in India, an assessment can definitely be made and taxes easily collected from him. But the position changes if the non-resident having no or temporary presence in India, earns income in the nature of interest, royalty, dividend, fees for technical services, capital gains or even business income. It will not be possible to enforce the tax liability on the non-resident staying abroad, as he cannot be compelled to comply with notices, nor the Courts of the country of residence of the non-resident will assist in the matter, the only exception is that if the source-country has entered into a double taxation avoidance agreement containing the article on ‘assistance in the collection of taxes’ with the country of residence of the nonresident, it can take recourse to that, provided the other country accepts that the income was taxable in the source country in accordance with the bilateral convention.

A nonresident person, residing or carrying on business abroad and having no presence in India who imports certain services from a nonresident or resident carrying on a business of providing such services in India cannot be expected to deduct tax on behalf of Indian government and remit the amount to India. He will have the least impetus to do it. Such liability cannot also be enforced on
him, unless Indian tax administration will have some other option, like attachment of assets in India belonging to the nonresident or his associates, to twist their arms.

In fact most probably due to these reasons, section 160(1)(i) of the Income-tax Act provides that in respect of the income of a non-resident specified in sub-section (1) of section 9, the person, who is an agent of the nonresident (under general law) including a person, who is treated as an agent under section 163, will be construed as representative assessee of the nonresident. The term ‘agent’ has been given a wide definition in section 163 to include:

a. who is employed by or on behalf of the non-resident; or
b. who has any business connection with the non-resident; or
c. from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
d. who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:

(i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and
(ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

Note: No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.
Transfer Pricing

What is Transfer price?
The Income Tax Department has explained ‘Transfer price’ as under
‘One party transfers to another, goods or services, for a price, that Price is known as “Transfer price”.

What is Transfer Pricing?
The Income Tax Department has explained ‘Transfer Pricing’ as under: ‘the expression “Transfer Pricing” generally refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises.
It also refers to the value attached to transfers between unrelated parties which are controlled by a common entity.

E.g.
Suppose a company A purchased goods for Rs. 100/- and sells it to its associated company B in another country for Rs. 200, who in turn sells in the open market for Rs. 400/-. Had A sold it direct, it would have made profit of Rs. 300/-, but by routing it through B, it restricted to it Rs. 100, permitting B to appropriate the balance.
The transaction between A and B is arranged and not governed by market forces.
The profit of Rs. 200/- is, thereby shifted to the country of B.
In short we can say Transfer pricing may mean manipulation of price in relation to international transaction between the parties, which are controlled by the same interest, involving two or more countries with differing tax rates and legislation and realizing profits in the country, which has the most favorable tax regime resulting into reduction of tax liability.

When Indian Transfer pricing provisions come into effect?
Finance Act, 2001 introduced detailed provisions relating to transfer pricing, requiring all ‘international transactions’ between ‘associated enterprises’ to be at arm’s length. These provisions are applicable to the transactions with effect from 1st April, 2001. The law with respect to transfer pricing in India is to a great extent in lines with that prescribed by the Organization for Economic Cooperation and Development (‘OECD’).

What is the Scope and Application of transfer pricing provisions?
Any income/expense arising from an international transaction as well as domestic transaction with an associated enterprise must be computed having regard to the Arm’s Length Price.
Also, costs or expenses allocated or apportioned between two or more associated enterprises based on mutual agreement or arrangement, should be determined having regard to arm’s length prices.
The transfer pricing provisions would not however apply in cases wherein the application of the arm’s length price results in a downward revision in the income chargeable to tax in India or results in an increase in the loss.

**TRANSFER PRICING**

- Determine whether an entity is Associated Enterprises (Section 92A)
- Determine whether an International Transaction occurred (Section 92B)
- Meaning of Specified domestic Transaction (Section 92BA)
- Determine whether Transfer Pricing Study is needed

Transfer Pricing Study is needed in cases involving International Transactions exceeding Rs. 1 Crore and Specified Domestic Transactions exceeds Rs. 5 Crores.

**What these studies involve?**
- Functional, assets and risk analysis of the International Transaction
- Comparability with Uncontrolled Transaction
- Selecting and applying Most Appropriate Method (MAM)
- Determination of arm’s length price Section 92C

**Note:** Transfer pricing study is needed under section 92D read with section 10 because it involves maintenance of records as prescribed in the rules.

It is not mandatory to get the transfer price study done till the time your transaction exceed the prescribed limit. However a person is supposed to explain the basis of the transfer price entered into with its AE’s at the time of Income Tax Assessment/Scrutiny (if any).

Therefore it is advisable for practical purpose to get a preliminary study done for the documentation of the basis of the price under taken with the AE’s.

(i) All factors to be supported by documentation & Accounts Report (Rules 10D & 10E & Section 92D & 92E)

(ii) No transfer pricing study is needed for the cases where International Transactions does not exceed Rs. 1crore.
(iii) A report of chartered Accountant is needed in form 3CEB even if you enter a transaction of one rupee with your Associated Enterprises.

**Section 92A: Definition of Associated Enterprises**

Section 92A provides the definition of ‘associated enterprises’ for the purpose of Indian transfer pricing law. It defines an ‘associated enterprise’ to mean an enterprise in relation to another enterprise:

a. which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

b. In respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Further, it provides that for the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—

a. one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

b. any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

c. a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

d. one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

e. more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

f. more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

g. the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

h. ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

i. the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

j. where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
k. where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
l. where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
m. There exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

An ‘enterprise’ has been defined under section 92F(iii) to mean a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind, [or in carrying out any work in pursuance of a contract] or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places.

**Section 92B: Definition of International Transaction**

*Section 92B (1) defines an ‘International Transaction’ to mean a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.*

*Section 92B(2) further provides that a transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.*

**Section 92BA: Meaning of Specified Domestic Transactions**

*Specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely:*

(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;
(ii) any transaction referred to in section 80A;
(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
(vi) any other transaction as may be prescribed,
and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees.

Section 92C: Computation of Arm’s Length Price

Indian transfer pricing legislation recognizes the six methods identified by OECD for determination of arm’s length prices.

Section 92C (1) provides that the arm’s length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transactions or class of transactions or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely:

a. comparable uncontrolled price method;
b. resale price method;
c. cost plus method;
d. profit split method;
e. transactional net margin method;
f. Other Method Notified by Board
   CBDT has inserted the sixth method for determination of the arm’s length price in relation to an international transaction by way of Notification No. 18/2012, dated 23rd May 2012 thereby inserting Rule 10AB (‘Rule’) to the Income-tax Rules, 1962. The new method inserted by way of Rule 10AB (rule is applicable from FY 2011-12) provides as under:
   “any method which take into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts” shall be considered as one of the method for determination of ALP”

g. Such other method as may be prescribed by the Board.

The law requires most appropriate method out of the methods as mentioned above to be applied, for determination of arm’s length price, in the manner as may be prescribed.

The Regulations provide no priority of methods. Rather, the selection of the pricing method to be used to test the arm’s length character of a controlled transaction must be made under the ‘Most Appropriate Method Rule’.

The ‘Most Appropriate Method’ is that method which, under the facts and circumstances of the transaction under review, provides the most reliable measure of an arm’s length result.
Report of Chartered Accountants (Form 3CEB)

It is mandatory to obtain a chartered accountant’s report in respect of all international transactions between associated enterprises and furnish the report with the income tax return. The form of the report has been prescribed. The report requires the accountant to give an opinion on the proper maintenance of prescribed documents and information by the taxpayer. Further, the accountant is required to certify the correctness of an extensive list of prescribed particulars.

Selection of Most Appropriate Method

Mentioned below is the analysis for arriving at the Most Appropriate Method:

a. Comparable Uncontrolled Price Method (CUP Method)

The CUP Method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.

Where it is possible to locate comparable uncontrolled transactions the CUP Method is the most reliable and the most preferred method over all other methods.

However, it is practically difficult to apply CUP Method in majority of cases due to non-availability of similar information related to the transactions under consideration.

b. Resale Price Method (RPM)

RPM begins with the price at which a product that has been purchased from an AE is resold to an independent enterprise. This price is then reduced by an appropriate gross margin on this price (the resale price margin) representing the amount out of which the reseller would seek to cover its selling and operating expenses and in the light of the functions performed (taking into account the assets used and risks assumed) make an appropriate profit. What is left after subtracting the gross margin can be regarded, after adjustments for other costs associated with the purchase of the product (e.g. customs duties), as an arm’s length price for the original transfer of property between the associated enterprises. This method is most useful when it is applied to marketing operations.

c. Cost Plus Method (CPM)

The CPM begins with the costs incurred by the supplier of property (or services) in a controlled transaction for property transferred or services provided to an associated purchaser. An appropriate cost plus markup is added to this cost, to make an appropriate profit in light of the functions performed and the market conditions. What is arrived at after adding the cost plus mark up to the above costs may be regarded as in arm’s length price of the original controlled transaction. This method is probably more useful where semi finished goods are being sold between Associated Enterprises, where associated parties have concluded joint facility agreements or long term buy and supply arrangements, or where the controlled transaction is of provision of services.

The CPM is generally employed in cases involving the manufacture, assembly or production of tangible products or services that are sold/provided to related parties. It compares the normal gross profit mark up on costs (both direct and indirect) earned by a manufacturer/service provider to the gross profit mark up earned by uncontrolled manufacturers/service providers.
d. **Profit Split Method (PSM)**

The PSM seeks to eliminate the effect on profits of special conditions made or imposed in a controlled transaction by determining the division of profits that independent enterprises would have expected to realize from engaging in the transaction or transactions. The PSM first identifies the profits to be split for the associated enterprises from the controlled transactions in which the associated enterprises are engaged. It then splits those combined profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been anticipated and reflected in agreement made at arm's length.

Where comparables data are available, they can be relevant in the profit split analysis to support the division of profits that would have been achieved between independent parties in comparable circumstances.

e. **Transactional Net Margin Method (TNMM)**

TNMM is more tolerant to some functional differences between controlled and uncontrolled transactions than gross profit margin based methods. The TNMM examines the net profit relative to an appropriate base (e.g. costs, sales, assets) that a taxpayer realizes from a controlled transaction. In this method the net profit indicator of the taxpayer from the controlled transaction should ideally be established by reference to the net profit indicator that the same taxpayer earns in comparable uncontrolled transactions. In TNMM, net profit indicators are less affected by transactional differences than is the case with price, as used in the CUP Method. Therefore, in the absence of exact comparables that are necessary for gross profit based analyses, net margin or operating profit was considered the most reliable and viable indicator of profit level.

After analysis of above five methods, the most appropriate method should be applied.

**Maintenance and keeping of information and document by persons entering into international transaction (Section 92D)**

1. Every person who has entered into an international transaction shall keep and maintain such information and document, as may be prescribed.

   However, this is not applicable in case aggregate value of international transaction exceeds Rs. 1 crore.

2. Such information and document are required to be kept for 8 years from the end to relevant Assessment year.
3. The Assessing officer or commissioner (Appeals) may require any assessee to furnish information and documents maintained under sub section (1) with in a period of 30 days from the date of receipt of notice.

**Filing Return of Income**

<table>
<thead>
<tr>
<th>Section</th>
<th>Assesses Covered</th>
<th>Circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>139(1)</td>
<td>1. Company</td>
<td>All cases</td>
</tr>
<tr>
<td></td>
<td>2. Firm</td>
<td>All cases</td>
</tr>
<tr>
<td></td>
<td>3. Any other person other than company or firm</td>
<td>If total income exceeds maximum amount not chargeable to tax.</td>
</tr>
</tbody>
</table>
| Fourth Proviso to section 139(1) | All asseses who is resident of India, but not ordinarily Resident of India | • Has any asset located outside  
• Has any financial interest in any entity located outside India  
• Having any signing authority in any Bank Account locate outside India |
| Fourth Proviso to section 139(1) | All asseses other than company & Firm | If total income before giving effect to:  
• Provision of Section 10A/10B  
• Chapter VI-A  
• Exceeds the maximum amount not chargeable to tax |

**Due Date in Above Cases**

<table>
<thead>
<tr>
<th>Case</th>
<th>Date of Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Company who is required to furnish report of transfer pricing under section 92E (Finance Act, 2011)</td>
<td>30th November of the Assessment Year</td>
</tr>
<tr>
<td>2. Company other than referred above</td>
<td>30th September of the Assessment Year</td>
</tr>
<tr>
<td>3. Audit requirement under Income tax Act or any other law</td>
<td>30th September of the Assessment Year</td>
</tr>
<tr>
<td>4. Working partner of a firm whose accounts are required to be audited under Section 44AB of Income Tax Act, 1961</td>
<td>30th September of the Assessment Year</td>
</tr>
<tr>
<td>5. Others</td>
<td>31st July of the Assessment Year</td>
</tr>
</tbody>
</table>

**Section 139A: Permanent Account Number (PAN)**

**PAN – Legal Framework**

The legal authority for allotment and use of the new series of PAN is derived from Section 139A of the Income-tax Act, 1961. This section lays down the framework for PAN, e.g., who is required to apply for PAN, who else can apply for PAN, who will allot PAN, transactions where PAN is required to be quoted, use of PAN in TDS certificates and TDS returns, that one person can have only one PAN and the manner of applying for PAN.

The manner of applying for PAN is laid down in Rule 114 of the Income-tax Rules, 1962. This rule, amended in 2003, also specifies the copies of documents required to be submitted along with the PAN application as proof of identity and address of the PAN applicant.
Rule 114B lists down the documents in which PAN is required to be quoted while entering into specified transactions/activities. Persons who do not have PAN are exempted from quoting PAN on furnishing a declaration in Form 60. Rule 114C lists the persons to whom section 139A does not apply. These are persons who have agricultural income by furnishing declaration in Form 61, non-residents, and Central Govt./State Govt. and Consular offices, where they are payers.

Penalty of Rs.10,000/- is imposable u/s 272B for failure to comply with the provisions of section 139A.

**What is PAN?**

Permanent Account Number (PAN) is a ten-digit alphanumeric number, issued in the form of a laminated card, by the Income Tax Department, to any “person” who applies for it or to whom the department allots the number without an application.

PAN enables the department to link all transactions of the “person” with the department. These transactions include tax payments, TDS/TCS credits, returns of income/wealth/gift/FBT, specified transactions, correspondence, and so on. PAN, thus, acts as an identifier for the “person” with the tax department.

PAN was introduced to facilitate linking of various documents, including payment of taxes, assessment, tax demand, tax arrears etc. relating to an assessee, to facilitate easy retrieval of information and to facilitate matching of information relating to investment, raising of loans and other business activities of taxpayers collected through various sources, both internal as well as external, for detecting and combating tax evasion and widening of tax base.

**Example:**

A typical PAN is AFZPK7190K.

First three characters i.e. “AFZ” in the above PAN are alphabetic series running from AAA to ZZZ

Fourth character of PAN i.e. “P” in the above PAN represents the status of the PAN holder.

- “P” stands for Individual,
- “F” stands for Firm,
- “C” stands for Company,
- “H” stands for HUF,
- “A” stands for AOP,
- “T” stands for TRUST etc.

Fifth character i.e. “K” in the above PAN represents first character of the PAN holder’s last name/surname.

Next four characters i.e. “7190” in the above PAN are sequential number running from 0001 to 9999.

Last character i.e. “K” in the above PAN is an alphabetic check digit.

**Why is it necessary to have PAN?**

It is mandatory to quote PAN on return of income, all correspondence with any income tax authority. From 1 January 2005 it will be mandatory to quote PAN on challans for any payments due to Income Tax Department.
It is also compulsory to quote PAN in all documents pertaining to the following financial transactions:

a. sale or purchase of any immovable property valued at five lakh rupees or more;
b. sale or purchase of a motor vehicle or vehicle,
c. a time deposit, exceeding fifty thousand rupees, with a banking company;
d. a deposit, exceeding fifty thousand rupees, in any account with Post Office Savings Bank;
e. a contract of a value exceeding one lakh rupees for sale or purchase of securities;
f. opening a bank account;
g. making an application for installation of a telephone connection (including a cellular telephone connection);
h. payment to hotels and restaurants against their bills for an amount exceeding twenty-five thousand rupees at any one time;
i. payment in cash for purchase of bank drafts or pay orders or banker’s cheques for an amount aggregating fifty thousand rupees or more during any one day;
j. deposit in cash aggregating fifty thousand rupees or more with a bank during any one day;
k. payment in cash in connection with travel to any foreign country of an amount exceeding twenty-five thousand rupees at any one time.

**Types of Income Tax Return**

In income tax Act there are various types of income tax returns such as

- Charitable or Religious Trust or Institution under Section 139(4A)
- Political Party Return Section 139(4B)
- Return of Income of certain specified institutions Section 139(4C)
- Regular Return,
- Loss Return,
- Belated Return,
- Revised Return,
- Defective Return

**Return of Charitable or Religious Trust or Institution**

If the total income of a charitable or religious trust or institution before exemption under section 11 and Section 12 exceeds the maximum amount not chargeable to tax, then the trust or institution is under an obligation to furnish the return of income within the time as prescribed in section 139(1).

**Return of Political Party**

If the total income of a Political Party before exemption under section 13A exceeds the maximum amount not chargeable to tax, then political party is under an obligation to furnish the return of income within the time as prescribed in section 139(1).

**Return of Income of Certain Specified Institutions**

The following institutions should furnish their return of Income In Form ITR-7 and verified In the prescribed manner along with the prescribed particulars before the prescribed due date:
• Scientific Research Association referred to in Section 10 (21)
• News Agency referred to in Section 10(22B)
• Professional Association or Institution referred to In Section 10(23A)
• Khadi and Village Industries Development institution referred to In Section 10(23B)
• Fund or Institution or trust or institution or any university or other educational institution or any hospital or other medical Institution referred to in Section 10(23C).
• Trade unions referred to in Section 10(24).

When applicable: If income of the above institution, without giving effect to the provisions of Section 10 and Chapter VI-A Deductions, exceeds the maximum amount which is not chargeable to income tax.

Section 139(4D): Obligation of Universities, Colleges and other such Institutions to file return of income

Applicability: Every University, College or other Institution u/s 35(1)/(2)/(3), who are not required to file return of income or loss under any other Section.

Obligation: The above persons are required to file their return of income or loss in every previous year.

Regular Return:
Regular return is the income tax return filed by assessee on or before the due date it is covered u/s 139(1) of the income tax Act.
Thus, if an assessee submits his return of income before due date of filing of return of income, then the return of income is called Regular return.

Loss Return:
A return filed by an assessee indicating the amount of loss incurred is called Loss return.
It is covered u/s 139(3) of the income Tax Act. Thus, if an assessee submits his return of income in which assessee declares the loss incurred by him during the previous year, and then the return of income is called Loss return.

It important to note here, that if the loss return is submitted before the before due date of filing of return of income, then only the loss can be carried forward.

Belated Return:
Belated return is the return filed by the assessee after the due date; it is covered u/s 139(4) of the income tax Act.
Thus, if an assessee submits his return of income after the due date of filing of return of income, then the return of income is called Belated return.

Revised Return:
Revised return is a new return filed by income tax assesses which corrects the information filed earlier in the regular return is called Revised return. It is covered u/s 139(5). A return can be revised any number of times by an assessee. A belated return however, cannot be revised.
Time period for revising a return and for filing a belated return is the **earlier of the following two dates:**

- End of one year from the end of relevant Assessment year or
- Date of Completion of Assessment.

**Section 139(6A): Details are to be furnished by person engaged in business and profession**

Assessee engaged in business or profession shall furnish the following additional particulars

1. Audit Report u/s 44AB, if applicable.
2. Where report has been furnished prior to the furnishing of the return, a copy of such report and the proof of furnishing the report.
3. Particulars of the location and style of the principal place of business and the branches.
4. Names and addresses of the partners, members as the case may be.
5. Extent of share of all such partners/ members in the profits and gains of the business or profession.

**Section 139B: Tax Return Preparers**

a. Tax Return Preparer:
   Tax Return Preparer refers to any individual who has been authorized to act as Tax Return Preparer under a scheme authorized under this section. However, it does not include Chartered Accountants, Legal Practitioners and Officers of the Assessee's Banker or employees of Specified Classes of persons.

   Specified Classes of Persons: It refers to persons who are required to furnish a return of income. It does not include Companies or Persons, whose accounts are required to be audited u/s 44AB or under any other law for the time being in force.

   Power of Board:
   The Board is empowered to frame a scheme for furnishing return of income by any specified classes through a Tax Return Preparer.

   **Duty of Tax Return Preparer:**
   Every Tax Return Preparer shall assist the persons furnishing the return of income in such manner specified in the scheme and affix his signature on such return.

   **Structure of the Scheme:**
   The Scheme framed by the Board may provide for the following -

   a. Manner in which and the period for which the Tax Return Preparers shall be authorized,
   b. Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
   c. Code of conduct for the Tax Return Preparers,
   d. Duties and obligations of the Tax Return Preparers
   e. Circumstances under which the authorization given may be withdrawn,
   f. Any other matter which is required to be, specified by the Scheme for the purposes of this section.
6. Approval of House of Parliament:
   a. Scheme framed u/s 139B should be laid before each House of Parliament for a total period of 30 days, which may be comprised in one session or in two or more successive sessions.
   b. If both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be framed, the scheme shall thereafter have effect, as the case may be.
   c. Any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.

Section 139D: Filing of Return of Income in Electronic Form

The Board may make rules providing for:
Applicability: All Classes of persons who shall be required to furnish the return in electronic form.
Prescribed form: The return in electronic form may be furnished in the prescribed form and manner.
Furnishing of documents: The documents, statements, receipts or audited reports which may not be furnished along with the return in electronic form shall be produced before the Assessing officer on demand.

Section 140: Signing and Verification of Return of Income

<table>
<thead>
<tr>
<th>Person</th>
<th>Signatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>• Present in India: Assessee himself</td>
</tr>
<tr>
<td></td>
<td>• Absent from India: individual himself or person authorized by him (Power of Attorney holder)</td>
</tr>
<tr>
<td></td>
<td>• Mentally Incapacitated: Person competent to act on his behalf or legal guardian</td>
</tr>
<tr>
<td></td>
<td>• Other Reason: Person duly authorized by him (Power of Attorney Holder).</td>
</tr>
<tr>
<td></td>
<td>• General: By the Karta</td>
</tr>
<tr>
<td>H.U.F.</td>
<td>Karta absent from India or is mentally incapacitated: Any other Adult Member of the Family</td>
</tr>
<tr>
<td></td>
<td>General: Managing Director</td>
</tr>
<tr>
<td></td>
<td>MID not able to Sign or there is no MD: Any other Director</td>
</tr>
<tr>
<td>Company</td>
<td>Company not Resident in India: Holder of a valid Power of Attorney</td>
</tr>
<tr>
<td></td>
<td>Company is in Liquidation or Receiver is appointed: The Liquidator</td>
</tr>
<tr>
<td></td>
<td>Management taken over by Government: The Principal Officer</td>
</tr>
<tr>
<td>Partnership Firm</td>
<td>General: Managing Partner</td>
</tr>
<tr>
<td></td>
<td>No Managing Partner or Managing Partner not able to Sign: Any other partner not being a minor</td>
</tr>
<tr>
<td>Local Authority</td>
<td>Principal Officer</td>
</tr>
<tr>
<td>Political Party</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Association of Person</td>
<td>Any Member or Principal officer</td>
</tr>
<tr>
<td>Any other person</td>
<td>That person or some other person who is competent to sign on his behalf.</td>
</tr>
</tbody>
</table>
Prescribed Forms for filing Income Tax Return

<table>
<thead>
<tr>
<th>Forms</th>
<th>Return of Income for</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITR-1</td>
<td>Individuals having salary and interest income and no other Income</td>
</tr>
<tr>
<td>ITR-2</td>
<td>Individuals and HUFs having income from any source except from business or profession</td>
</tr>
<tr>
<td>ITR-3</td>
<td>Individuals and HUFs being partners in Firms and not having Proprietary Business or Profession</td>
</tr>
<tr>
<td>ITR-4</td>
<td>For Individuals and HUFs having Proprietary business or profession</td>
</tr>
<tr>
<td>ITR-5</td>
<td>Combined form of Return of Income and Fringe Benefits for Firms/AOP/BOI</td>
</tr>
<tr>
<td>ITR-6</td>
<td>Combined Form for Return of Income and Fringe Benefits for Companies</td>
</tr>
<tr>
<td>ITR-7</td>
<td>Combined Form For Return of Income and Fringe Benefits For Charitable/Religious Trusts, Political parties and other Non-Profit Organizations</td>
</tr>
<tr>
<td>ITR-8</td>
<td>Stand alone form for Return of Fringe Benefits for persons who are not liable to file return of income but are liable to file Return of Fringe-Benefits</td>
</tr>
</tbody>
</table>

Advance Tax

Advance tax is tax liability which is deposited by an assessee in advance to the credit of central government at some specified percentage and on or before the specified dates.

Some points are given under the act to define the Advance Tax, which are described as below:

1. Advance Tax in respect of an assessment year is payable in the financial year immediately preceding the assessment year. Therefore, for the assessment year 2014-2015, advance tax is payable in the financial year ending on 31.3.2013.

2. Advance tax shall be calculated by estimating the year income and then applying the tax rates in force. TDS/TCS and MAT credit shall be deducted to arrive at advance tax liability.

3. An assessee is required to pay advance tax if his liability for advance tax is Rs. 10,000/- or more.

4. Advance tax is payable in the following installments:

Due dates in case of Assessee other than Companies

<table>
<thead>
<tr>
<th>Due date of Installment</th>
<th>Amount payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before 15th September</td>
<td>Not less than 30% of the advance tax liability.</td>
</tr>
<tr>
<td>On or before 15th December</td>
<td>Not less than 60% of the advance tax liability as reduce by the amount, if any, paid in earlier installment.</td>
</tr>
<tr>
<td>On or before 15th March</td>
<td>The whole amount of the advance tax liability as reduce by the amount, if any, paid in earlier installments.</td>
</tr>
</tbody>
</table>

Due dates in case of Companies

<table>
<thead>
<tr>
<th>Due date of Installment</th>
<th>Amount payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before 15th June</td>
<td>Not less than 15% of the advance tax liability.</td>
</tr>
<tr>
<td>On or before 15th September</td>
<td>Not less than 45% of the advance tax liability as reduce by the amount, if any, paid in earlier installment</td>
</tr>
<tr>
<td>On or before 15th December</td>
<td>Not less than 75% of the advance tax liability as reduce by the amount, if any, paid in earlier installment</td>
</tr>
</tbody>
</table>
On or before 15\textsuperscript{th} March & The whole amount of the advance tax liability as reduce by the amount, if any, paid in earlier installments. \\

Any amount paid by way of advance tax on or before 31\textsuperscript{st} March shall also be treated as advance tax paid during the financial year for all purpose of the Act.

**Mandatory & Penal Interest under Sections 234A, 234B, & 234C**

<table>
<thead>
<tr>
<th><strong>SECTION 234A(1)</strong></th>
<th><strong>SECTION 234B(1)</strong></th>
<th><strong>SECTION 234C(1)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Penal Interest for default in furnishing of ROI</td>
<td>Compensatory Interest for default in payment of Advance Tax</td>
<td>Compensatory Interest for deferment in installments of Advance Tax</td>
</tr>
</tbody>
</table>
| 1. **Chargeability:** Interest Payable if:  
  a. ROI is filed after the due date specified u/s 139(1) or  
  b. ROI is not filed | 1. **Chargeability:** Interest Payable if:  
  a. Advance tax paid by assesses during the previous year < 90\% of the “Assessed Tax” or  
  b. No advance tax is paid by the assesses.  
  \textit{Note: “Assessed Tax” Means Tax determined u/s 143(3)/147/153A xx}  
  Less: Relief of tax u/s 89 & 90 (-)xx  
  Less: Relief of tax u/s 90A (-)xx  
  Less: Relief of tax u/s 91 (-)xx  
  Less: MAT Credit u/s 115JAA (-)xx  
  Less: TDS/TCS (-)xx  
  \textbf{ASSESSED TAX XXX} | 2. **Chargeability:** Interest Payable if:  
  a. Advance tax paid on or before 15\textsuperscript{th} September < 30\% of “Tax due on Returned income” or  
  b. Advance tax paid on or before 15\textsuperscript{th} December < 60\% of “Tax due on Returned income” or  
  c. Advance tax paid on or before 15\textsuperscript{th} March < “Tax due on Returned income” or  
  d. No advance tax has been paid by the assesses  
  \textit{Note: “Assessed ” means Tax on total income declared in ROI xx}  
  Less: Relief of tax u/s 89 & 90 (-)xx  
  Less: Relief of tax u/s 90A (-)xx  
  Less: Relief of tax u/s 91(-)xx  
  Less: MAT Credit u/s 115JAA (-)xx  
  Less: TDS/TCS (-)xx  
  \textbf{Tax due on Returned income XXX} |
1. **Computation:**
   a. **Rate:** 1% per month simple interest
   b. **Period:** Commences from the date next following the due date is specified u/s 139(1) and ends on:
      (i) in case where ROI is filed, the date of filing of ROI,
      (ii) in case where ROI is not filed, the date of completion of assessment u/s 144/147/153A

   *Note:* Part of the month shall be considered as full month.

1. **Computation:** Where no tax has been paid after 31st March of the previous year U/S 140A or otherwise
   a. **Rate:** 1% per month simple interest.
   b. **Period:** Commences from 1st April of the assessment year and ends on:
      (i) the date of determination of income u/s 143(1) and
      (ii) where the assessment is made u/s 143(3)/144/147/153A, the date of completion of such assessment.

   *Note:* Part of the month shall be considered as full month.

1. **Computation:**
   a. **Rate:** 1% per month simple interest.
   **Period:** 3 months
   **Amount:** 30% of “Tax due on Returned income”
   **Less:** Advance Tax paid on or before 15th September.
   b. **Rate:** 1% per month simple interest.
   **Period:** 3 months
   **Amount:** 60% of “Tax due on Returned income”
   **Less:** Advance Tax paid on or before 15th December.
   c. **Rate:** 1% per month simple interest.
   **Period:** 3 months
   **Amount:** 30% of “Tax due on Returned income”
   **Less:** Advance Tax paid on or before 15th March.

   *Note:* The above Provision of section 234C, as regards chargeability and computation, are for NON-CORPORATE ASSESSEES.
## Penalties

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of default</th>
<th>Penalty leviable</th>
</tr>
</thead>
<tbody>
<tr>
<td>140A(3)</td>
<td>Failure to pay wholly or partly (a) Self-assessment tax, or (b) Interest, or (c) Both Under section 140A(1)</td>
<td>Such amount as Assessing Officer may impose but not exceeding tax and interest in arrears. [Penalty under section 221(1) for being an assessee in default.]</td>
</tr>
<tr>
<td>221(1)</td>
<td>Default in making payment of tax or interest or any demand.</td>
<td>Such amount as Assessing Officer may impose but not exceeding amount of demand in arrears. [Penalty under section 221(1) for being an assessee in default.]</td>
</tr>
<tr>
<td>271(1)</td>
<td>Failure to comply with a notice under section 142(1) or section 143(2) or failure to comply with a direction under section 142(2A).</td>
<td>Rs. 10,000 for each failure.</td>
</tr>
<tr>
<td>271(1)(b)</td>
<td>Concealment of particulars of income or furnishing of inaccurate particulars of income.</td>
<td>Minimum: 100% of tax sought to be evaded. Maximum: 300% of tax sought to be evaded.</td>
</tr>
<tr>
<td>271A</td>
<td>Failure to keep, maintain, or retain books of account, documents, etc., as required by section 44AA or failure to retain such books of accounts or documents for the period specified in section 44AA.</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>271AA</td>
<td>Failure to keep and maintain any such information and document as required by section 92D(1) or section 92D(2)</td>
<td>2% of the value of each international transaction entered into by such person</td>
</tr>
<tr>
<td>271AAB</td>
<td>Undisclosed income of the previous year in which search has been initiated or previous year whose due date of filing of ROI has not expired before the date of search.</td>
<td>10% of the undisclosed income</td>
</tr>
<tr>
<td>271B</td>
<td>Failure to get accounts audited or furnish a report of audit as required under section 44AB.</td>
<td>Half per cent of total sales, turnover, or gross receipts, etc., or Rs. 1,50,000 whichever is less.</td>
</tr>
<tr>
<td>271BA</td>
<td>Failure to furnish a report from an accountant as required by section 92E.</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td>271C</td>
<td>• Failure to deduct the whole or part of tax deducted at source (TDS) • Failure to pay the whole or part of Corporate Dividend Tax under section 115-O. • Failure to pay the whole or part of tax on winnings from lotteries, crossword puzzles etc. where such winnings are wholly partly in kind under second proviso to section 194B.</td>
<td>Amount equal to tax not deducted or paid</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>271CA</td>
<td>Failure to collect the whole or any part of the tax as required by or under the provisions of Section 206C.</td>
<td>Amount of tax, which such person failed to collect.</td>
</tr>
<tr>
<td>271D</td>
<td>Taking or accepting certain loans and deposits in contravention of the provisions to section 269SS.</td>
<td>Amount equal to loan or deposit taken or accepted.</td>
</tr>
<tr>
<td>271E</td>
<td>Repaying any loan or deposit specified in section 269T in contravention of its provisions.</td>
<td>Amount equal to loan and deposit repaid.</td>
</tr>
<tr>
<td>271F</td>
<td>Failure to furnish return as required by section 139(1) on or before the end of the relevant assessment year.</td>
<td>Rs. 5,000</td>
</tr>
<tr>
<td>271FA</td>
<td>Failure to furnish an Annual Information return as required under section 285BA within the time prescribed under section 285BA.</td>
<td>Rs. 100/- per day for every day during which the failure continues.</td>
</tr>
<tr>
<td>271G</td>
<td>Failure to furnish information or documents under section 92D.</td>
<td>2% of the value of the international transaction for each such failure.</td>
</tr>
<tr>
<td>271H.a</td>
<td>Failure to furnish TDS/TCS return with in time prescribed</td>
<td>Penalty minimum of Rs. 10,000/- and maximum upto Rs. 1,00,000/-</td>
</tr>
<tr>
<td>271H.b</td>
<td>Furnishing incorrect information in the quarter return of TDS/TCS</td>
<td></td>
</tr>
<tr>
<td>272A(1).a</td>
<td>Refusal to answer any question put to by an Income tax Authority.</td>
<td>Rs. 10,000 for each failure or default.</td>
</tr>
<tr>
<td>272A(1).b</td>
<td>Refusal to sign any statement made in course of proceedings under the Act.</td>
<td></td>
</tr>
<tr>
<td>272A(1).c</td>
<td>Failure to attend or produce books of account or documents required under a summon issued under section 131.</td>
<td></td>
</tr>
<tr>
<td>272A(2).a</td>
<td>Failure to give notice of discontinuance of business or profession u/s 176.</td>
<td>Rs. 100 for every day during which the failure continues. However, in respect of penalty for failures in relation to declaration mentioned in section 197A, furnishing of TDS/TCS certificate and furnishing of TDS/TCS quarterly return, the penalty shall not exceed amount of TDS/TCS.</td>
</tr>
<tr>
<td>272A(2).b</td>
<td>Failure to furnish in due time the information required under section 133.</td>
<td></td>
</tr>
<tr>
<td>272A(2).c</td>
<td>Failure to furnish the return of income under section 139(4A) or under section 139(4C) or to furnish within the time allowed therein.</td>
<td></td>
</tr>
<tr>
<td>272A(2).d</td>
<td>Failures to deliver in due time a copy of declaration in section 197A.</td>
<td></td>
</tr>
<tr>
<td>272A(2).e</td>
<td>Failure to furnish TDS or TCS certificate.</td>
<td></td>
</tr>
<tr>
<td>272A(2).f</td>
<td>Failure to furnish TDS/TCS returns.</td>
<td></td>
</tr>
<tr>
<td>272AA</td>
<td>Failure to comply with section 133B</td>
<td>Not exceeding Rs. 1,000</td>
</tr>
<tr>
<td>272B.a</td>
<td>Failure to comply with the provisions section 139A. i.e. PAN</td>
<td>Rs. 10,000 for each such failure.</td>
</tr>
<tr>
<td>272B.b</td>
<td>Failure to quote permanent account number in any document required, Or</td>
<td></td>
</tr>
<tr>
<td>272B.c</td>
<td>Quoting incorrect PAN.</td>
<td></td>
</tr>
</tbody>
</table>
272BB

(i) Failure to obtain Tax Deduction and collection Account Number (TDCAN).
(ii) Failure to quote TDCAN in the challans, certificates, returns of TDS and TCS and prescribed documents.
(iii) Quoting incorrect TDCAN.

Rs. 10,000 for each failure/default.

Penalties under Transfer Pricing

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of default</th>
<th>Penalty</th>
</tr>
</thead>
</table>
| Section 271 (1) (c) | Income increased on account of transfer pricing. | Minimum: 100% of amount of tax sought to be evaded  
Maximum: 300% of amount of tax sought to be evaded |
| Section 271AA | Penalty for failure to keep and maintain information and documentation | 2% of the value of each international transaction entered. |
| Section 271BA | Penalty for failure to furnish report from the Chartered Accountant | Rs. 1lakh                                    |
| Section 271 G | Penalty for failure to furnish information or document under section 92D(3) | 2% of the value of each international transaction entered. |
Assessment

File the Income Tax Return U/s 139(1)

Department Issue Intimation U/s 143(1)

- Refund
- Demand

Department issue the Scrutiny notice U/s 143(2) it can be along with 142(1)

- Scrutiny assessment U/s 143(3)

- Either Demand or Reduction of refund / loss

  - If Assessee agree with the department
    - Pay demand/Accept Refund
  - If Assessee disagree with the department
    - File an Appeal

Agree with department

Assessee deposits the demand

Rectification order passed by assessing officer

In case of disagreement, Assessee files the rectification U/s 154

- Rectify by department i.e. in favour of assessee
- Not rectified by the department i.e. against the assessee

File an Appeal

File the revision application U/s 263/264
What is Assessment?

Assessment is about collecting of information, review of information filled by assessee in their Income Tax Return.

Procedure of Assessment

After the end of financial year i.e., the previous year, an assessee is required to compute his exact amount of income and tax thereon. The income so computed and tax on it has to be filled in a form and tax is deposited in bank, a copy of the income tax form and the proof of the income tax deposited in the bank is prepared in duplicate. A copy is submitted with income tax office and the assessee himself retains the other copy.

Types of Assessment

1. **Self assessment U/S 140A**
   - No Notice

2. **Scrutiny assessment U/S 143(3)**
   - Notice U/S 143(2)

3. **Best judgment assessment U/S 144**
   - Notice U/S 143(2)/142(1)/148

4. **Income escaping U/S 147**
   - Notice U/S 148

Assessment means checking, judging or in simple words computing the income and tax on it. In the Income Tax Act there are four types of Assessment:

1. Self assessment u/s 140A.
2. Scrutiny assessment u/s 143(3).
3. Income escaping assessment u/s 147.
4. Best judgment assessment u/s 144.

**Self Assessment U/S 140A**

Every person who is required to file income tax return should file his return of income. Thus, an assessee himself files his return of income, and pay tax as per the return of income filed. This process of self-calculation of income and tax is called self-assessment.

Since the tax and income under return of income is calculated by assessee himself therefore, it is called self-assessment.

**Scrutiny Assessment U/S 143(3)**

On the basis of return of income filed, AO may undertake deep examination of some return of income roughly 2% to 3% of the total returns filed.

In scrutiny assessment the AO calls the assessee to furnish the explanations and books of accounts.

*For undertaking the scrutiny assessment the AO has to issue a notice to the assessee under section 143(2).*

If Assessee produces the information and explanations required by the Assessing Officer (AO) the AO completes the assessment and determine the Taxable income and income tax liability on the basis of the information and explanations produced before him.
After Completion of scrutiny Assessment Assessee has Three options:

1. Agree with the order passed by the income tax authority, accordingly pay the demand if any or accept the amount of refund, or loss determined by authority.
2. Can make an application for rectification u/s 154 if any clerical error persist,
3. Can make a Revision application to Commissioner of income Tax under section 263/264
4. Assessee can move an appeal to CIT (A), after that to ITAT thereafter to High Court and then Supreme Court if required in all hierarchy.

**Income Escaping Assessment U/S 147**

If AO believes that the income of assessee of any PY has escaped assessment, he can reopen the assessment and complete it as per new information about income or tax. Assessment up to last 6 years can be opened. In order to open an income escaping assessment AO has to issue notice u/s 148 to the assessee.

**Best Judgement Assessment U/S 144**

Best Judgment Assessment, as the name indicates Best Judgment Assessment means the computation of income and tax is undertaken by the AO himself, on the basis of the best of his judgment. The Best judgment Assessment can be made by an AO under the following cases:

1. Assessee does not file his regular return of income u/s 139.
2. Assessee does not comply with instructions u/s 142 (1), i.e., notice requiring filing his return of income or 142 (2A), i.e., notices requiring assessee to conduct audit of his accounts.
3. Assessee does not comply with instructions u/s 143(2), i.e., notice of scrutiny assessment.
4. AO is not satisfied regarding completeness of accounts.

Since in all of the above cases either assessee does not cooperate with the Assessing Officer (AO) or does not file return of income or does not have complete accounts. Thus, the assessing officer cannot calculate the income and therefore, he has to judge the income on the basis of his best assumptions/judgments. The AO must give a hearing to the assessee before completing the assessment as per best of his judgment. No refund can be granted under best judgment assessment.

**Intimation U/S 143(1)**

After filing of return of income under section 139(1), income Tax department issue intimation under section 143(1) to the assessee. An intimation contain calculation details of an assessee’s total income & tax thereon and accordingly determine the demand made or refund due to an assessee.

Intimation under this section shall be sent in the following three cases only:

(i) Where **tax is found payable** on the basis of the return, after making the adjustments referred to in section 143(1) and giving credit to the taxes and interest paid; or

(ii) Where **tax is found refundable** on the basis of the return, after making the adjustments referred to in section 143(1) and giving credit to the taxes and interest paid; or

(iii) Where adjustments referred to in section 143(1) have been made resulting **increase/reduction of loss** declared by the assessee and no tax or interest is payable by the assessee and no interest is refundable to the assessee.
No intimation after the expiry of one year from the end of financial year in which return is filled shall be sent to the assessee.

**Rectification of Mistake U/S 154**

It is way to rectify any mistake which is apparent from the record.

If there is a mistake apparent from the record, or any mistake appeared in intimation u/s 143(1), then assessee may file an application to income-Tax-Authority or department may also rectify on suo-moto.

Income tax authority may

a. Amend any order passed by it
b. Amend any intimation under section 143(1).

**Notice Under section 142(1)**

- **142(1)(i)**
  - Under this Assessing officer Give a notice for demanding from his/her Return of Income accounts to Verify correctness of them.

- **142(1)(ii)**
  - On practical basis if AO sent notice U/s 143(2), 148 then AO also serve notice U/s 142(1)(ii) for demanding books of accounts to verify the correctness of them.

**Notice under section 142(1)**

If the assessee has not furnished the return of income within the time prescribed under section 139(1), then Assessing Officer may issue a notice requiring him to furnishing the return of income with the time specified in notice.

The **notice U/S 142(1) can be issued even after the end of the relevant Assessment Year.**

**Notice under Section 143(2)**

For making assessment under section 143(3) the assessing officer is required to serve a notice under section 143(2).

This notice is served within 6 months from the end of the financial year in which return is filed.

Furthermore this notice can be issued only if the assessee has filed return under section 139 or in response to a notice issued under section 142(1).
**Time Limit for Issuing Notice**

<table>
<thead>
<tr>
<th>Section</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>142(1)</td>
<td>Time specified under notice.</td>
</tr>
<tr>
<td>143(1)</td>
<td>Up to 1 year from the end of financial year in return is filled.</td>
</tr>
<tr>
<td>143(2)</td>
<td>Within 6 month from the end of the financial year in which return is furnished.</td>
</tr>
<tr>
<td>148</td>
<td>Notice shall be issued up to 4 year but not less than 6 years, if income escaped assessment is Rs. 1,00,000 or more. Notice shall be issued up to 4 year but not less than 16 years, if income escaped assessment is for the assets located outside India.</td>
</tr>
</tbody>
</table>

**Time Limit for Completion of Assessment**

<table>
<thead>
<tr>
<th>Assessment</th>
<th>Normal period of Assessment/Reassessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment u/s 143(3) / 144</td>
<td>2 years from the end of the relevant assessment year. (3 years in case of transfer pricing case)</td>
</tr>
<tr>
<td>Assessment u/s 147</td>
<td>1 year from the end of the financial year in which notice under section 148 was served. (2 years in case of transfer pricing case)</td>
</tr>
</tbody>
</table>

**Appeals and Appellate Authorities**

What is appeal?

Any assessee who is not satisfied with any order passed by the assessing authority then he is free to file an appeal to the appellate authority as prescribed under the Income Tax Act, 1961.

Under Income Tax Act, 1961 there are four hierarchies for filing an appeal with the appellate authorities which has been mentioned below:

1st Appellate authority ----> Commissioner of Income Tax (Appeals)
2nd Appellate authority ----> Income Tax Appellate Tribunal
3rd Appellate Authority ----> High Court
4th Appellate authority ----> Supreme Court

The assessee is given a right of appeal by the Income Tax Act, 1961, if he feels aggrieved by the order of Assessing Authority.

The rules and procedures for filing an appeal to the above appellate authorities have been prescribed under Income Tax Act, 1961 and Income Tax Rules, 1962.
Settlement Commission

Application to Settlement Commission (ITSC)

Within 14 days, Acceptance of Rejection order of application passed by ITSC u/s 245D(1)

If order not passed within 14 days, then application is deemed to be accepted

After acceptance, ITSC shall call for report from CIT within 30 days of acceptance

CIT shall submit report within 30 days of receipt of communication

Report received within 30 days, ITSC may declare the application as invalid

Report not received within 30 days, ITSC shall proceed without the report

Such order shall be passed within 15 days of receipt of report, after giving an opportunity of being heard to the applicant

Application allowed to be proceeded

ITSC may call records from CIT for further inquiry and investigation, as ITSC may deem necessary

CIT shall furnish the report within 90 days of receipt of Communication from ITSC.

ITSC may also proceed without such report, if report is not received within 90 days.

After examining the records and the report of CIT, and after giving an opportunity of being heard, ITSC shall pass an Order under section 245D (4) within 18 months from the end of the month in which application for settlement was received
Section 94A: Notified Jurisdictional Area

The Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify by notification in the Official Gazette, such country or territory as a Notified Jurisdictional Area (NJA) in relation to transactions entered into by any assessee.

A) Applicability to Non-Residents:
The Memorandum states that the provisions have been enacted to discourage transactions of a resident assessee with persons located in NJA. However, this is not borne out from the language of the provision – “entered into by any assessee.” On a literal reading of the term “any assessee,” it is apparent that it would apply to resident as well as non-resident assessee. Hence, if a PE of a non-resident in India enters into a transaction with a party in notified jurisdictional area, then it could be subject to the transfer pricing provisions. As per Section 94A(6)(ii): PE: “Permanent Establishment” shall have the same meaning as defined in Section 92F(iiiia);

B) Pre-Conditions for Applicability:
The section is applicable only if the following pre-conditions are fulfilled:

(i) There is a country or territory outside India with whom India does not have effective exchange of information on taxation matters;
(ii) Such country/area is a specified by notification in the Official Gazette as a NJA, having regard to the lack of effective exchange of information with such country or territory.
(iii) An assessee enters into a transaction where one of the parties to the transaction is a person located in NJA.

C) Consequences:
(i) All the parties to the transaction shall be deemed to be associated enterprises within the meaning of Section 92A
(ii) The transaction as defined in Section 94A(2) shall be deemed to be an international transaction within the meaning of Section 92B
(iii) The provisions of Sections transfer pricing [except the second proviso to Section 96 (2)], shall apply to such transaction, and accordingly, the income or expenditure, as the case may be, shall be computed having regard to the ALP

D) Whether a Country with Whom India Has a DTAA Can Be Notified under Section 94A?
‘Effective’ has been defined as ‘existing in fact; actual’. Hence, what is required is actual exchange of information in fact, with a treaty country and not a merely contractual legal ability to obtain information. In view of this, on a literal reading, a DTAA country could also be notified, if there is lack of effective exchange of information.

E) Deduction:
The section classifies all deductions into the following:
(i) Payments made to financial institution.
(ii) Any other expenditure or allowance

F) No Relief for Prescribed Variation:
The second provision to Section 92C(2) provides that if the variation between the actual price of transaction and the ALP does not exceed such percentage as may be notified by the Central
Government in this behalf, then no adjustment will be made and the actual price shall be treated as the ALP. This provision is not applicable in the case of a transaction falling under Section 94A. As a consequence, the ALP shall be considered as the expenditure or income, as the case may be.

G) **Maintenance of Information and Documentation**
All the parties to a transaction covered under Section 94A will be required to maintain information and documentation in accordance to Section 92D and the prescribed rules.

H) **Accountant’s Report**
All the parties to a transaction covered under Section 94A will have to obtain a report from an accountant in terms of Section 92E.

I) **Non-Applicability to Past Transaction**
The provision states that it is applicable only if an assessee “enters” into a transaction with a person who is located in NJA. The use of the present tense in the word “enters” and “is” suggests that the provision should apply to a transaction after definition. He will, of course, have to establish that he is not having a permanent establishment and/or is not established in the NJA and he is not otherwise ‘located’ in the NJA. The definition does not cover subsidiaries or affiliates or holding company of such persons if they do not satisfy the definition. To illustrate, a holding company of an entity in an NJA will not be covered if it is incorporated in some other country or territory and it is not a resident of the NJA or does not have a PE in such area or cannot be otherwise regarded as located in NJA.

J) **Income:**
Section 94A(4) provides that if an assessee has received or credited any sum from any person located in NJA, the assessee shall offer explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if that person is not the beneficial person of the owned sum). If the assessee does not offer any explanation or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then such sum shall be deemed to be the income of the assessee for that previous year.

K) **Capital Receipt:**
The Section applies to any sum including share capital, loans, deposits, distribution by a trust to a beneficiary, etc. It would apply to sums which are otherwise capital receipts.

---

**Advance Rulings**

<table>
<thead>
<tr>
<th>a. “Advance Ruling” means -</th>
<th>b. “Applicant” means any person who is a -</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) A determination by the AAR</td>
<td>Non-resident,</td>
</tr>
<tr>
<td>in relation to a transaction which has been undertaken or is proposed to be undertaken</td>
<td></td>
</tr>
<tr>
<td>by a NR applicant</td>
<td></td>
</tr>
<tr>
<td>Such determination shall include the determination of any question of law or question of fact specified in the application.</td>
<td></td>
</tr>
</tbody>
</table>
**AAR means **Authority for Advance Ruling.

**How we make an application for advance ruling?**

Application for advance ruling is made under sec 245Q of Income Tax Act, 1961.

Following is the procedure to make an application for advance ruling.

**Step I:** Make an application in prescribed form and manner stating the question on which the Advance ruling in sought.

**Step II:** Application shall be in quadruplicate and be accompanied by a fee of Rs. 10,000/- or such fees as may be prescribed in this behalf, whichever is higher. 

**Step III:** Application can be withdrawn within 30 days from the date of application.

**What procedure followed by authority after receipt of application for advance ruling?**

**Procedure on Receipt of Application**

<table>
<thead>
<tr>
<th>Step</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step I</strong></td>
<td>AAR shall forward a copy of application to CIT to ascertain whether the case is pending or not, and if necessary call for the records.</td>
</tr>
<tr>
<td><strong>Step II</strong></td>
<td>AAR may allow or reject the application. However in following 3 cases, AAR shall reject the application:</td>
</tr>
<tr>
<td>(i)</td>
<td>With regard to NR 7 R applicant, when the question raised in the application is pending before any ITA, ITAT or COURT on the date of application.(can be pending later on)</td>
</tr>
<tr>
<td>(ii)</td>
<td>Question raised in the application involves determination of FMV of any property</td>
</tr>
<tr>
<td>(iii)</td>
<td>Question in the application relates to a transaction which is designed prima facie for the avoidance of tax</td>
</tr>
</tbody>
</table>

| Public sector company (PSU) | }
Income Tax Law

- Opportunity of being heard shall be given to the applicant before order of rejection of application.
- Reason for rejection shall be given in order
- Copy of order shall be sent to the applicant and to the CIT
- No appeal is possible against order of rejection

**Step III**
After allowing application and after examining the information placed by the applicant or obtained by the authority, AAR pronounces its Advance ruling on the question specified in the application.

**Step VI**
On request of applicant, AAR shall, before pronouncing its Advance Ruling, provide an opportunity of being heard either in person or through a duly authorized representative.

**Step V**
AAR shall pronounce its Advance ruling within 6 months from the date of receipt of application.

**Step VI**
A copy of the Advance Ruling pronounced by AAR shall be sent to applicant and to the CIT.

“The Order of AAR giving its opinion is a final order and no Appeal is possible against such an order”

**Annual Information Return**

Government of India has made rules for furnishing of Annual information return to be submitted by several institutions.

**Furnishing of Annual Information Return**

The Annual Information Return shall be furnished by every person mentioned in column (2) of the Table below in respect of all transactions of the nature and value specified in the corresponding entry in column (3) of the said Table, which are registered or recorded by him during a financial year:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Class of Person</th>
<th>Nature and value of transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Banking Company</td>
<td>Cash deposits aggregating to <strong>ten lakh rupees</strong> or more in a year in any saving account of a person maintained in that bank.</td>
</tr>
<tr>
<td>2.</td>
<td>An institution issuing credit card</td>
<td>Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to <strong>two lakh rupees</strong> or more in the year.</td>
</tr>
<tr>
<td>3.</td>
<td>Mutual Fund</td>
<td>Receipt from any person of an amount of <strong>two lakh rupees</strong> or more for acquiring units of that fund.</td>
</tr>
<tr>
<td>4.</td>
<td>A company or institution issuing bonds or debentures</td>
<td>Receipts from any person of an amount of <strong>five lakh rupees</strong> or more for acquiring bonds or debentures issued by the company or institution.</td>
</tr>
<tr>
<td>5.</td>
<td>A company issuing shares through a public or right issue.</td>
<td>Receipt from any person of an amount of <strong>one lakh rupees</strong> or more for acquiring shares issued by the company.</td>
</tr>
</tbody>
</table>
6. Registrar or Sub-registrar
Purchase or sale by any person of immovable property valued at **thirty lakh rupees** or more.

7. An officer of the Reserve Bank of India
Receipt from any person of an amount or amounts aggregating to **five lakh rupees** or more in a year for bonds issued by the Reserve Bank of India.

**Section 271FA: Penalty for Failure to Furnish Annual Information Return**

- If a person who is **required to furnish** an annual information return,
- **Fails to furnish** such return within the time prescribed,
- Such person shall pay penalty of **Rs. 100/- for every day** during which the failure continues.

*Note:*

1. Annual information return is to be furnished by **31st August** immediately **following the financial year** in which the above transaction are **registered or recorded**.
2. AIR is to be furnished to the prescribed income tax authority which is **NSDL**.
WEALTH TAX LAW
Learning Objectives

1. Introduction of Wealth Tax
2. Constitution of Wealth Tax
3. Administration of Wealth Tax
4. Constituents of Wealth Tax
5. Applicability of Wealth Tax
6. Scope of Taxation
7. Computation of Wealth Tax
8. Definition of Assets
9. Deemed Assets
10. Clubbing of Assets
11. Exemptions in respect of certain assets
12. Debts
13. Valuation of Assets
14. Filing of Returns
15. Due Dates and Penalty

Introduction of Wealth Tax

Wealth tax is a direct tax, which is charged on the net wealth of the assessee. It is a tax on the benefits derived from ownership of property. It is not levied on productive assets; hence investments in share, debentures, UTI, mutual funds, etc are exempt from it. The Wealth tax is to be paid year after year on the same property on its market value, whether or not such property yields any income. Wealth tax, in India, is levied under Wealth-tax Act, 1957.
Constitution of Wealth Tax

CONSTITUTION OF INDIA

22 Parts → 395 Articles → 12 Schedules

Part 11 → Article No. 246

Schedule VII

Union List
State List
Concurrent List

Constitution of India
States that, Parliament has exclusive powers to make laws with respect to any of matter enumerated in List.

Entry No. 84

State Government has exclusive powers to make laws in respect of matters in this list.

State Government has the exclusive powers to make Laws in respect of matters in the list, with the prior approval of central government.
Administration of Wealth Tax

- Chief Commissioner of Income Tax
- Commissioner of Income Tax
- Additional Commissioner of Income Tax
- Joint Commissioner of Income Tax
- Deputy Commissioner of Income Tax
- Assistant Commissioner of Income Tax
- Income Tax officer
- Inspectors

Constituents of Wealth Tax

1. **The Wealth Tax Act, 1957**: The levy of wealth tax is governed by Wealth Tax Act, 1957. The Act contains 298 sections and XIV schedules. These undergo changes every year with additions and deletions brought about by the Finance Act passed by parliament. Wealth tax Act provides for:
   - Determination of taxable wealth
   - Determination of tax liability
   - Procedure of Tax assessment, Appeals, Penalties and prosecutions
   - Lays down power and duties of various Wealth tax Authorities

2. **Wealth tax Rules, 1957**: rules give directions and provide procedures to what is mentioned in the Act. CBDT frames rules from time to time and rules should be studied along with provisions of Act. Rules cannot be inconsistent with the Act. In other words, rules cannot overrule the provisions of the Act.

3. **Circulars, Notifications, ordinances** etc issued from time to time:
   - **Budget**: Every year the Finance Minister presents the budget in the parliament. The Parliament possesses legislative supremacy and thereby ultimate power over all political bodies in India. The Parliament comprises the President of India and the two Houses—Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President has the power to
summon and prorogue (means to discontinue a session or defer a session) either House of Parliament or to dissolve Lok Sabha.

- **Finance bill** is one of the most important components of the budget. Finance bill once enacted becomes the Finance Act which brings the amendments in Direct Tax and Indirect Tax for the next financial year. The Annual Finance Act comes into effect once it is passed by both the Lok Sabha and the Rajya Sabha and the President accords his assent. Finance Bill is generally released during last week of February every year.

- **Ordinance:** It is an amendment made between two budgets. An amendment is directly signed by President. This amendment is to be passed by parliament within 6 months of signing.

- **Notifications:** Central Government through official gazette brings out certain changes in law as it has been conferred power under the relevant sections of the Wealth tax Act. Gazette of India Notifications are published and are printed by the Government of India Printing Presses regularly. This is an authorized legal document of Government of India containing the mode of operations under the law of the land.

- **Issuance of Circulars:** The CBDT issues from time to time circulars clarifications, instructions etc for the proper administration of this act. These circulars are binding on Wealth tax authorities and an assessee can claim benefit under such circulars. An assessee is not bound by circulars, it is in the option of the assessee whether to follow the circular or not.

- **Judicial decisions:** The Constitution of India is the supreme legal document of the country. There are various levels of judiciary in India — different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. Courts hear criminal and civil cases, including disputes between individuals and the government.

**To whom Wealth Tax is applicable?**

[Section 3 Charging Section]

Wealth tax shall be charged to every individual, H.U.F, Trust and company @1% of the amount by which net wealth exceeds Thirty Lakh Rupees as on corresponding valuation date i.e. last day of financial year.

*Note:* No surcharge or education cess is charged on wealth tax.

**Entities exempt from Wealth Tax [Section 45]**

No wealth tax shall be levied under this Act in respect of the net wealth of any company registered under section 25 of the companies Act, 1956; any co-operative Society; any social club; any political party; any mutual fund specified in sec 10(23D) of Income Tax Act, 1956; Reserve bank of India *(added by Finance Act,2012).*
**Scope of Taxation**

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Residential Status</th>
<th>Assets in India</th>
<th>Assets outside India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual – Citizen of India</td>
<td>Resident and ordinary resident</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>Individual – any other case including foreign national who is a resident and ordinary resident</td>
<td>Indian Citizens: Non-resident or not ordinary resident</td>
<td>Included</td>
<td>Not included</td>
</tr>
<tr>
<td></td>
<td>Foreign Nationals: Resident or non resident</td>
<td>Included</td>
<td>Not included</td>
</tr>
<tr>
<td>HUF</td>
<td>Resident and ordinary resident</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td></td>
<td>Non-resident or not ordinary resident</td>
<td>Included</td>
<td>Not included</td>
</tr>
<tr>
<td>Company</td>
<td>Resident</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td></td>
<td>Non Resident</td>
<td>Included</td>
<td>Not included</td>
</tr>
</tbody>
</table>

**Computation of Net Wealth**

Net wealth of an assessee is to be computed in the following manner:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Value of assets belonging to assessee as on valuation date [Note 1]</td>
<td>XXX</td>
</tr>
<tr>
<td>(b) Deemed assets [Note 2]</td>
<td>XXX</td>
</tr>
<tr>
<td>(c) Exempt assets [Note 3]</td>
<td>XXX</td>
</tr>
<tr>
<td>Gross Wealth (a+b-c)</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: Debts owed by the assessee on the valuation date [Note 4]</td>
<td>XXX</td>
</tr>
</tbody>
</table>

**Note 1 – Meaning of Assets [Section 2 (ea)]**

Following are the assets liable to wealth tax:

1. Any building or land appurtenant thereto (hereinafter referred to as ‘house’)
2. Motor cars
3. Jewellery
4. Yachts, boats and aircrafts
5. Urban Land
6. Cash in hand

1. **Any building or land appurtenant thereto (hereinafter referred to as ‘house’) [Section 2(ea) (i)]**

Any building or land appurtenant thereto means house whether used for residential or commercial or guest house purpose or otherwise including a farm house situated within twenty-five kilometers from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name).
Not to include:
• Any house used for residential purpose and which is allotted by a company to an employee or a director who is in whole time employment, having a gross annual salary of less than ten lakh rupees,
• Any house used for residential or commercial purpose which forms part of stock in trade,
• Any house which the assessee may occupy for the purpose of any business or profession carried on by him,
• Any residential property that has been let out for a minimum period of three hundred days in the previous year, and
• Any property in the nature of commercial establishments and complexes.

2. Motor Cars [Section 2(ea) (ii)]
Indian or imported motor car including jeep, jonga, motor van but excluding bus, truck, delivery van, ambulance, two wheelers or three wheelers etc. It does not include if it is used by assessee in the business of running them on hire or as stock in trade.

3. Jewellery [Section 2(ea) (iii)]
Jewellery (ornaments and semi precious and precious stones), bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metals or any alloy containing one or more of such precious stones(not being stock in trade of the assessee).

However, it does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

4. Yachts, boats and aircrafts [Section 2(ea) (iv)]
Yachts, boats and aircrafts (other than those used by the assessee for commercial purpose)

5. Urban Land [Section 2(ea) (v)]
Urban land means land situated-
• In any area which is comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or
• In any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board may having regard to the extent of, and scope for urbanisation and other relevant consideration, specify in this behalf by notification in the Official Gazette.

Not to include:
• Any land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or
• The land occupied by any building which has been constructed with the approval of the appropriate authority or
• Any unused land held by the assessee for industrial purpose for a period of two years from the date of acquisition by him
• Any land held by the assessee as stock in trade for a period of ten years from the date of acquisition by him.
6. **Cash in hand [Section 2(ea) (vi)]**

Cash in hand in excess of fifty thousand rupees, of individual and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

**Note 2 – Meaning of Deemed Assets [Section 4]**

In computing the net wealth of an Individual, the value of certain assets held by other persons shall be included in his/her net wealth.

Following assets shall be treated as deemed assets:

- Assets transferred to spouse without or otherwise than for adequate consideration or in connection with an agreement to live apart,
- Assets transferred to son’s wife without adequate consideration,
- Assets transferred to any person otherwise than under irrevocable transfer,
- Assets transferred to a person or association of person without adequate consideration for the direct or indirect or immediate or deferral benefit of the person who transferred or his/her spouse or his/her son’s wife,
- Assets held by minor including step or adopted child but not being a married daughter,
- Where the assessee is a partner of a firm or a member of any association of persons other than a cooperative society, the value of the interest of the assessee in the assets of the firm or association of persons determined as per schedule III shall be included in his net wealth.
- Where a minor is admitted to the benefits partnership in a firm, the value of the interest of such minor in the assets of the firm determined as per schedule III will be included in the net wealth of parent.
- Conversion by individual his self acquired property into joint family property without adequate consideration shall be included in the net wealth of individual and not HUF.
- Subsequently, if on partition of family, out of assets transferred by individual, share received by spouse that to be deemed asset for individual (Assume it is indirect transfer)
- Where the assessee is member of cooperative housing society and building or part thereof is allotted, assessee shall be the deemed owner of such building. Amount payable under such scheme is deducted as debts owned in relation to asset.
- The holder of impartible estate shall be the deemed owner of all the properties comprised in the estate.
- A person who is allowed to take or retain possession of any building in part performance of a contract of the nature referred to in section 53A of transfer of property act shall be the deemed owner of such building and the value of such building shall be included in computing the net wealth of such person.

**Clubbing of assets**

- If properties are Assets as on valuation date then it is to be clubbed in transferor wealth even if these were not Assets at time of transfer.

  *Example:* Husband transfers shares to the wife on 1.1.2013 for inadequate consideration. The wife sells the shares and purchases a house property on 31.3.2013
• Accretions to Assets transferred to the spouse, etc. for inadequate consideration is taxable in transferee hand, it will not be clubbed with transferors wealth.
  Example: Minor earn from skills….> buy house….>give it on rent….> with rent income buy car then this car is to be clubbed with parent’s wealth. But house is child’s wealth.

**Note 3 – Exemption in respect of certain assets [Section 5]**
Wealth tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee-

- Any property (in India or outside India) held under trust or under legal obligation for any public purpose of charitable or religious nature in India.
  (i) Exemption is available for business assets only when such business in incidental to the attainment of objectives and separate books maintained.
  (ii) If trust deed provides that property can also be used for other than charitable or religious purposes then exemption is not available.
- Interest in co-parcenary property of HUF.
- In Case of NRIs, being a person of Indian origin or a citizen of India who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India for permanent residence, the following assets are not taxable in the hands of NRI for seven successive assessment year commencing with the assessment year next following the date on which such person returned to India.
- Any one house (may be let out, Residential, commercial, farm house, self occupied, or Guest house etc.) or part of a house or a plot of land (land area 500 Sq. Mt.or less) belonging to Individual or HUF.

**Note 4 – Debts [Section 2(m)]**
Debts owed by the assessee on the valuation date are deductible if these are incurred on the assets included in the wealth.

**Points to be noted:**
- Debts owned on the valuation date by assessee on assets included in wealth are deductible, even if the value of assets is less; whole amount of debt is deductible.
- If assets are exempted u/s 5 then debt owned are not deductible.
- In case of non residents, the assets located in India shall be included in their net wealth. Debts outside India are deductible if such debts have been incurred to acquire assets in India included in the net wealth.
- In case of residents, assets located outside India and debts incurred in relation to such assets shall be included in the net wealth.
Valuation of Assets

The value of any assets other than cash shall be the value as on the valuation date of the relevant assessment year determined in the manner laid down in schedule III of the Wealth Tax Act.

Following are the rules laid down for the valuation of various assets:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Rule numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Building or land Appurtenant thereto</td>
<td>➢ 3 to 8</td>
</tr>
<tr>
<td>• Assets of business</td>
<td>➢ 14</td>
</tr>
<tr>
<td>• Interest in firm/AOP</td>
<td>➢ 15,16</td>
</tr>
<tr>
<td>• Jewellery</td>
<td>➢ 18,19</td>
</tr>
<tr>
<td>• Urban Land, Cars, Yachts, Aircrafts and boats</td>
<td>➢ 20</td>
</tr>
</tbody>
</table>

How to determine value of immovable property?

- The value of any immovable property being a building or land appurtenant thereto shall be determined as per part B of Schedule III as on the valuation date as given below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valuation of property as per Rules 3, 4 and 5</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Adjustment for unbuilt area of plot of land as per rule 6</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: Adjustment for unearned increase in the value of the land as per rule 7</td>
<td>XXX</td>
</tr>
</tbody>
</table>

- However, the value of a house (including part of the house) belonging to the assessee and exclusively used by him for residential purpose throughout the period of 12 months immediately preceding the valuation date, may at the option of the assessee be taken to be:
  (i) Either the value determined as per Part B of Schedule III as on the valuation date, or
  (ii) The value determined as per the Part B of Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to assessment year 1971-72, whichever valuation date is later.

- Notwithstanding what is stated above, in the following cases the value of the property shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date:
  (i) Where having regard to the facts and circumstances of the cases, the Assessing Officer with the previous approval of joint commissioner, is of the opinion that it is not practicable to apply rules 3 to 7 of Part B of Schedule III.
  (ii) Where the difference between the unbuilt area and the specified area exceeds 20% of the aggregate area.
  (iii) Where the property is constructed on a leasehold land and the lease expires within a period not exceeding 15 years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease.

Step I – Determination of Actual Rent

Actual Rent (for property let out period) =
Actual rent received or receivable for property let out period
Add: \(1/9^{th}\) of Actual rent received or receivable where the repairs borne by tenant
Add: Taxes agreed to be borne by tenant (for property let out period)
Add: 15% interest on refundable or non refundable deposit (other than advance rent for 3 or less months) from tenant, reduced by interest actually paid to tenant on such if any [Interest shall be computed on the monthly outstanding balance and part of the month shall be ignored]
Add: Lease premium or non refundable deposit received for leasing out divided by no. of years of lease (for property let out period)
Add: Value of benefit received or receivable by assessee for leasing property (for property let out period)
Add: Any obligation of owner met by tenant (for property let out period)

**Step II – Determination of Annual Rent**

**Step III – Determination of Gross Maintainable Rent [GMR]**
Step IV - Determination of Net Maintainable Rent [NMR]

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Maintainable Rent [NMR]</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: 15% of GMR</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: Municipal Taxes (Accrual Basis) whether borne by tenant or assessee</td>
<td>XXX</td>
</tr>
<tr>
<td>Net Maintainable Rent [NMR]</td>
<td>XXX</td>
</tr>
</tbody>
</table>

Step V - Computation of Value of Immovable Property as per Rule 3 to 5

- If property acquired or constructed after 31/03/1974:
  a. Net Maintainable Rent x Capitalization Factor
  b. Total cost of acquisition or construction and cost of improvements
     a or b whichever is higher. (Rule 3, 4, 5)
- If acquired before 01/04/74 then value should be net maintainable rent x capitalization Factor

Exception:
Where property acquired or constructed after 31-03-1974
House exclusively used by assessee for his own residence throughout P.Y and whose costs (Acquisition or construction and improvement) not exceed 25 Lacs (50 Lacs for metro cities), then the value as per rule 3, 4 and 5 shall be the N.M.R X Capitalization Factor.

Capitalization factor:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>If property is on freehold land</td>
<td>12.50</td>
</tr>
<tr>
<td>If on leasehold land and unexpired period of lease on valuation date is</td>
<td>10.00</td>
</tr>
<tr>
<td>50 years or more</td>
<td></td>
</tr>
<tr>
<td>If on leasehold land and unexpired period of lease on valuation date is</td>
<td>8.00</td>
</tr>
<tr>
<td>less than 50 years</td>
<td></td>
</tr>
</tbody>
</table>

Rule 6: Adjustment for Unbuilt Area of Plot of Land

- Rule 6 is applicable if: Unbuilt area > Specified area
- Therefore, if unbuilt area is greater than specified area, then addition shall be made as per rule 6.

<table>
<thead>
<tr>
<th>Percentage of default</th>
<th>Addition as per rule 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 5%</td>
<td>NIL</td>
</tr>
<tr>
<td>Above 5% but upto 10%</td>
<td>20% of value as per Rules 3,4&amp;5</td>
</tr>
<tr>
<td>Above 10% but upto 15%</td>
<td>30% of value as per Rules 3,4&amp;5</td>
</tr>
<tr>
<td>Above 15% but upto 20%</td>
<td>40% of value as per Rules 3,4&amp;5</td>
</tr>
<tr>
<td>Above 20%</td>
<td>Rules 3 to shall not apply</td>
</tr>
<tr>
<td></td>
<td>Rule 8 shall apply</td>
</tr>
<tr>
<td></td>
<td>Schedule III value = FMV of property</td>
</tr>
</tbody>
</table>

\[
\text{Percentage of Default} = \frac{\text{Unbuilt Area} - \text{Specified Area}}{\text{Aggregate Area}} \times 100
\]
Specified area means:
- Where property is situated in Bombay, Calcutta, Delhi or Madras – 60% of aggregate area
- Where property is situated in specified cities – 65%
- For other cities – 70%

Rule 7: Adjustment for unearned increase
- Unearned increase is Value of land on valuation date as determined by government for computing unearned increase less lease premium paid or payable to government.
- If property is constructed on lease hold land from government or government authority and government is entitled to recover a specified percentage of unearned increase in value of land at time of transfer of property then value as per 3, 4, 5 and 6 shall be reduced by
  a. 50% of value as per rule 3, 4, 5 & 6
  b. Unearned increase value to be recovered by govt.
     whichever is less (a or b)

What are Business Assets?
Where the assessee is carrying on a business for which accounts are maintained by him regularly, the net value of the assets of the business is liable to wealth tax.

How to determine value of Business Assets? [Rule 14]
Step I - Determine the value of assets disclosed in the balance sheet as under:

<table>
<thead>
<tr>
<th>Depreciable Assets</th>
<th>W.D.V as per Income Tax Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non Depreciable</td>
<td>Book Value</td>
</tr>
<tr>
<td>Urban Land held as stock in trade after 10 years from the date of its acquisition</td>
<td>Value adopted for income-tax purposes</td>
</tr>
</tbody>
</table>

Points to be noted:
- Only the assets as defined in section 2 (ea) should be taken.
- The value of following assets shall not be taken into account although they are disclosed in the balance sheet:
  (i) Advance tax paid under Income Tax Act;
  (ii) Assets on which wealth tax is not payable;
  (iii) Any amount shown in the balance sheet including the debit balance of profit and loss account or profit and loss appropriation account which does not represent the value of any assets;
  (iv) Any asset shown in balance sheet which does not really pertain to the business.
- The following amounts of liability shall not be taken into account although disclosed in the balance sheet:
  (i) Capital employed in the business other than borrowed capital;
  (ii) Reserves by whatever name called (provision for any purpose other than taxation shall be treated as a reserve);
  (iii) Any provision made for meeting any future or contingent liability;
(iv) Any liability shown in the balance sheet which does not really pertain to the business;
(v) Any debt owed, which is utilised for acquiring an assets, not chargeable to wealth tax. However, where it is not possible to calculate the amount of debt so utilised, proportionate amount of such liability shall be taken into account.

\[
\text{Proportionate Amount} = \frac{\text{Total debts owed by the assessee} \times \text{Value of assets}}{\text{Total value of assets of the business}}
\]

**Step II – Determine schedule III value of the above assets as under:**

| • House | • Rules 3 to 8 |
| • Jewellery | • Rules 18 & 19 |
| • Urban Land, Motor Cars, Yachts, Boats and Air Crafts | • Fair Market Value (Rule 20) |

**Step III**

- If the value as per step II exceeds the value as per Step I by more than 20% of value as per Step I
  - Then take value as per Step II

- If the value as per step II does exceeds the value as per Step I by more than 20% of value as per Step I
  - Then take value as per Step I

**What is value of interest in a firm or association of persons?**

In case of an assessee who is a partner in a firm or a member of an AOP the value of his interest in wealth of Firm or AOP should be included in his/her wealth.

**How to determine value of interest in a firm or association of persons? [Rule 15 & 16]**

- Determine net wealth of firm/AOP/BOI as if it were an assessee as per rule 14 without exemption u/s 5.
- The portion calculated above, upto capital of the firm/AOP/BOI should be allocated to partners/members in capital contribution ratio.
- Balance of above calculation should be allocated in dissolution ratio. If dissolution ratio not available then in profit sharing ratio.

*Note: If partner or member is minor distribute his share also. After that, this minor share will be clubbed accordingly in his/her parents wealth as per clubbing rules discussed earlier*

**Points to be noted:**

- If net wealth of firm includes Section 5 exempt asset, then the exemption in respect of such asset shall be available to member/partner in dissolution ratio and in absence of dissolution ratio, in profit sharing ratio.
• If firm has assets located outside India but partner is non-resident or not ordinary resident or non citizen then following shall not be included in partners net wealth:
  
  Such partner share as per rule 15 & 16 x (Assets located outside India - Debts in respect of such assets) / Net wealth of Firm.

How to determine value of Jewellery? [Rule 18 &19]

• Valuation at price, it will fetch if sold in Open Market as on valuation date.
• Return should support a statement in O-8A form if valuation not more than 5 lacs, otherwise Report in O-8 from registered valuer for one year and for next 4 subsequent A.Y new report not required but same report shall be adopted even if value of jewellery > 5 Lacs. Only Adjustment of Market value of gold etc. or adjustment of acquisition or sale of jewellery required.
• A.O can make reference to Valuation officer u/s 16A in respect of subsequent 4 A.Y.

Valuation of other assets [Rule 20]

The value of any asset other than referred to in above mentioned paragraphs shall be value it will fetch if sold in open market.

Restrictive Covenants to be ignored in determining market value [Rule 21]

The price or other consideration for which any property may be acquired by or transferred to any person under terms of a trust deed or under any restrictive covenant in any instrument of transfer shall be ignored for the purposes of determining the value of the property under this schedule.

Filing of Wealth Tax Return [Section 14]

Every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under the wealth tax act on the valuation date exceeded the maximum amount which is not chargeable to wealth tax, shall, on or before the due date, furnish a return in Form BA of his net wealth.

Due dates for filing return

• Where the assessee is required to furnish a report of Transfer Pricing under section 92E
  
  – 30th November of the Assessment Year.

• Where the assessee is other than referred in (a) above –
  (i) a company; or
  (ii) a person (other than a company) whose accounts are required to be audited under the Income Tax Act or under any other law; or
  (iii) a working partner of firm whose accounts are required to be audited under the Income Tax or under any other law;

  – 30th September of the Assessment Year.

• In the case of any other assessee,

  – 31st July of the Assessment Year.
Interest on delay in filing of return

If the return of net wealth is furnished after the due date, the assessee shall be liable to pay simple interest at the rate 1% for every month or part of month comprised in the period commencing on the date immediately following the due date and ending on the date of furnishing of the return. The interest has to be calculated on the amount of tax payable on the net wealth and should be paid before filing the return.
CUSTOMS LAW
Learning Objectives

1. Introduction to Customs Law
2. Constitution of Customs Law
3. Administration of Customs Law
4. Constituents of Customs Law
5. Basic concepts and definitions
6. Registration Procedure
7. Valuation of Goods
8. Import Export Procedure
9. Foreign Trade Policy
10. Assessment Procedure
11. Refund Procedure
12. Duty Drawback
13. Transit and Transhipment

Introduction to Customs Law

The Customs authorities in India play a very vital role for the Indian economy as they are assigned a number of tasks, some of which has been listed below:

(i) Collection of customs duty on imports and exports as per basic Customs laws (Customs Act, 1962 and Customs Tariff Act, 1975);
(ii) Enforcement of the various provisions of the Customs Act governing imports and exports of cargo, baggage, postal articles and arrival & departure of vessels, air craft’s etc.;
(iii) Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under Customs Act and other allied enactments;
(iv) Prevention of smuggling including interdiction of narcotics drug trafficking; and
(v) International passenger processing.

The Customs Authorities are overall responsible for handling growing international traffic properly and effectively and to make it administratively possible that all the cargo/goods/passengers etc., imported/coming into India or exported-going out of the country by sea, air, land or rail routes are checked by the Customs (for ensuring that they are complying with all the related laws before entry/exit into/from India) that unrestricted freedom of access into the country or exit out of the country is not permitted.

Objective of Custom Law

- Collecting revenue of custom duty
- Protecting domestic industry
- Regulating Import-Export procedure
- Etc.
Constitution of Customs Law

- The *Constitution of India (Article 265)* lays down that no tax shall be levied or collected except by authority of law.
- The law for the levy and collection of Customs duty is the Customs Act, 1962.
- This legislation has been enacted by Parliament in exercise of the exclusive powers vested in it under *Article 246 read with Entry 83 of list-I of VII Schedule of the Constitution.*
- Customs Duty is the major tax revenues for the Union Government and constitute around 30% of its total tax revenues.

Together with Central Excise duties, the contribution amount is nearly *three-fourth* of total tax revenue of the Union Government.

Need of Custom Law

- Customs duty is probably the oldest form of taxation in India.
- They are as old as international trade itself.
- Just as domestic production flows provide the base for excise taxation, in the same manner international trade flows are the basis for customs duties.

Administration of Customs Law

```
Ministry of Finance
  ↓
Department of Revenue
  ↓
Central Board of Excise & Customs (CBEC)
  ↓
Chairman (Central Board of Excise & Customs)
  ↓
Member (Central Board of Excise & Customs)
  ↓
Commissioner (Customs)
  ↓
Additional Commissioners (Customs)
  ↓
Deputy Commissioners (Customs)
  ↓
Assistant Commissioners (Customs)
  ↓
  Probationers
```
Constituents of Custom Law

- Custom Act-1962
  - Levy & collection of duties
  - Import export procedure
  - Prohibition on Import or Export of goods.
  - Warehousing
  - Appeals and Settlement Commission
  - Advance Rulings
  - Offences and Penalties

- Custom Tariff Act-1975
  - Containing rates of custom duty
    - Schedule-I
      - Rates of Import Duty
    - Schedule-II
      - Rates of Export Duty

Scope and coverage of Customs Law

There are two Acts, which form part of Customs Law in India, namely, the Customs Act, 1962 and Customs Tariff Act, 1975:

1. The Customs Act, 1962
   - The Act extends to the whole of India.
   - The Customs Act, 1962 is the basic act for levy and collection of Custom duties in India.
   - The main objective of Customs Act, 1962 is the prevention of illegal imports and exports of goods.
   - It contains various provisions relating to imports and exports of goods as well as merchandise baggage of persons arriving in India.

2. The Customs Tariff Act, 1975
   - The Customs Duty is levied on goods imported or exported from India at the rates specified under the Customs Tariff Act, 1975.
   - The Act contains two schedules:
     - **Schedule 1** - It gives classification and rates of duties for imports (known as Import Tariff).
     - **Schedule 2** - It gives classification and rates of duties for exports (known as Export Tariff).
   - The Tariff Schedule in the current Customs Tariff Act was replaced in the year 1986.

Meaning of customs duty:

- Customs duty is a duty or tax, which is levied by Central Government on import of goods in India, and export of goods from India.
- It is collected from the importer or exporter of goods, but the burden is actually borne by its consumer and not by the importer or the exporter who pay it to the government.
- These duties are usually levied with *ad valorem rates* and their base is determined by the domestic value of the imported goods calculated at the official exchange rate.
- Similarly, export duties are imposed on export values expressed in domestic currency.
**Why there is need of Custom Duty?**

The customs duty is levied, primarily, for the following purposes:

1. To increase revenue of government.
2. To regulate imports of foreign goods in India.
3. To safeguard foreign exchange and regulate supply of goods into domestic market.
4. To provide protection to the domestic industry from foreign competition by restricting import of selected goods and services, import licensing, import quotas, and outright import ban.

**Types of Custom Duties**

While Customs Duty include both import and export duty, but as export duties contributed only nominal revenue, due to emphasis on raising competitiveness of exports, import duty alone constituted major part of the revenue from Customs Duty. The import duty is imposed under the Customs Act, 1962 and Customs Tariff Act, 1975. The structure of Customs Duty includes the following:

1. **Basic Customs Duty:** - The duties of custom shall be levied at such rates as may be specified under the Custom Tariff Act, 1975 on goods imported into, or exported from India.
   
   *It may be at the standard rate* or, in the case of import from some countries, *at the preferential rates*.

   A preferential Rate is applicable only if goods are imported from "Most Favoured Nation". This benefit shall be given to the importer only when he submits at the time of importation proof as to "Country of Origin" of goods, otherwise standard rate shall be applied.

**Most Favoured Nations**

The term "Most Favoured Nation" means the member countries of the World Trade Organization who are accorded the status of MFN. As per the MFN agreements the recipient of this treatment must, nominally, receive equal trade advantages as the "most favoured nation" by the country granting such treatment.

Some of the most favoured nations are Bangladesh, Korea, Mauritius, Srilanka, Tonga etc.
2. **Auxiliary Duty of Customs**
   This duty is levied under the Finance Act and is leviable on all goods imported into the country at the rate of 50 per cent of their value. However this statutory rate has been reduced in the case of certain types of goods into different slab rates based on the basic duty chargeable on them.

3. **Additional Customs Duty:** Additional customs duty is basically applicable to compensate the Central Excise Duty leviable on like goods produced or manufactured in India. It is commonly referred to as **countervailing duty or C.V.D.**

   Additional Custom Duties are of three Types:
   
   **A. C.V.D Section 3(1):** It is payable only if the imported article is such that, if produced in India, its process of production amounts to “manufacture” as per the Central Excise Act, 1944. CVD 3(1) is applicable to counter balance the **Excise duty leviable on Final Product in India.**
   
   **B. C.V.D Section 3(3):** These are the notified imported article prescribed under the Act. CVD 3(3) is applicable to counter balance the **Excise duty leviable on Raw material in India.**
   
   At present it is leviable on:
   i) Stainless Steel products for household purposes
   ii) Transformer Oil

   **C. C.V.D Section 3(5):** It is applicable on Notified Imported Article (known as Special CVD).

   It is levied to counter balance the **Sales Tax/VAT/Local Tax** or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India.

4. **Export Duties**
   Under Customs Act, 1962, goods exported from India are chargeable to export duty. The items on which export duty is chargeable and the rate at which the duty is levied are given in the Customs Tariff Act, 1975 as amended from time to time under Finance Acts. However, the Government has emergency powers to change the duty rates and levy fresh export duty depending on the circumstances.

5. **Cess**
   Cess is leviable on some specified articles of exports like coffee, coir, lac, mica, tobacco (unmanufactured), marine products, cashew kernels, black pepper, cardamom, iron ore, oil cakes and meals, animal feed and turmeric. Cess is collected as a part of Customs Duty and is then passed on to the agencies in charge of the administration of the concerned commodities.

6. **Education cess on customs duty**
   Education cess has been imposed on imported goods w.e.f. 9-7-2004. The cess will be 2% of the aggregate duty of customs i.e., BCD + CVD excluding safeguard duty, countervailing duty, Anti Dumping Duty.

7. **National Calamity Contingent Duty**
   A National Calamity Contingent Duty (NCCD) of customs has been imposed vide section 129 of Finance Act, 2001. This duty is imposed on pan masala, chewing tobacco and cigarettes. It varies from 10% to 45%. NCCD of customs of 1% was imposed on PFY, motor cars, multi utility vehicles and two wheelers and NCCD of Rs 50 per ton was imposed on domestic crude oil, vide section 134 of Finance Act, 2003
There are some more duties given under the Act:

<table>
<thead>
<tr>
<th>Basis</th>
<th>Protective Duty (Sec 6)</th>
<th>Safe Guard Duty (Sec 8B)</th>
<th>Safe Guard Duty (China) (Sec 8C)</th>
<th>Countervailing Duty on Subsidized Articles (Sec 9)</th>
<th>Anti-dumping Duty (Sec 9A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>To protect the interest of any industry established in India (Immediate action)</td>
<td>Serious injury to domestic industry due to import in increased quantity</td>
<td>Market disruption to domestic industry due to import in increased quantity from China.</td>
<td>Where any country or territory grants any subsidy upon the exportation of any article there from into India.</td>
<td>Where any article is exported in to India at less than its normal value.</td>
</tr>
<tr>
<td>Provisional Duty</td>
<td>Pending final determination of injury, such duty may be imposed provisionally for a period of 200 days made final or it shall be refunded</td>
<td>Pending final determination of injury, such duty may be imposed provisionally for a period of 200 days made final or it shall be refunded</td>
<td>Pending final determination of injury, such duty may be imposed provisionally till the time subsidy is not determined. Excess amount shall be refunded</td>
<td>Pending final determination of injury, Anti-dumping Duty (ADD) may be imposed provisionally for 6 month. Even retrospectively imposition on provisional basis is possible for a maximum period of 90 days. Excess amount shall be refunded.</td>
<td></td>
</tr>
<tr>
<td>Period of Imposition</td>
<td>As CG may specify in the notification</td>
<td>Initial maximum period 4 years (Including provisional period) After extension, maximum total period 10 years</td>
<td>Initial maximum period 4 years (Including provisional period) After extension, maximum total period 10 years</td>
<td>Initial maximum period 5 years (Including provisional period) After extension, maximum total period 10 years</td>
<td>Initial maximum period 5 years (Including provisional period) After extension, maximum total period 10 years</td>
</tr>
</tbody>
</table>
## Basic Concepts and Definitions

To understand the import-export procedure first of all we have to understand basic terms & definitions used inCustom, which are described as follows:

<table>
<thead>
<tr>
<th>BASIC TERM</th>
<th>MEANING</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIA</td>
<td>Includes the territorial waters of India. (with its grammatical variations and related expressions)</td>
</tr>
<tr>
<td>INDIAN CUSTOMS WATER</td>
<td>Means the waters extending into the sea up to the limit of Contiguous Zone of India (i.e., Up to 24 NM).</td>
</tr>
<tr>
<td>IMPORT</td>
<td>Bringing into India from a place outside India.</td>
</tr>
<tr>
<td>IMPORTED GOODS</td>
<td>Any goods brought into India from a place outside India but do not include goods which have been cleared for home consumption.</td>
</tr>
<tr>
<td>IMPORTER</td>
<td>In relation to any goods at any time between their importation and the time when they are cleared for home consumption any owner or any person holding him out to be the importer.</td>
</tr>
<tr>
<td>EXPORT</td>
<td>Taking out of India to a place outside India.</td>
</tr>
<tr>
<td>EXPORT GOODS</td>
<td>Any goods which are to be taken out of India to a place outside India</td>
</tr>
</tbody>
</table>
**Registration**

Under Customs Law, each importer/exporter shall be required to apply for registration with the Customs department via application form as prescribed. The department issues a unique registration number to every importer/exporter which is known as Import Export Code (IEC).

IEC Code is unique 10 digit code issued by DGFT – Director General of Foreign Trade, Ministry of Commerce, Government of India to Indian Companies.

**Application for Grant of IEC Number**

An application for grant of IEC number shall be made by the Registered/Head Office of the applicant and apply to the nearest Regional Authority of Director General of Foreign Trade, the Registered office in case of company and Head office in case of others, falls in the ‘Aayaat Niryaat Form - ANF2A’ and shall be accompanied by documents prescribed therein.

Only one IEC would be issued against a single PAN number. Any person can have only one IEC number and in case there are more than one IEC’s allotted to a proprietor, the same may be surrendered to the Regional Office for cancellation.

**Documents Prescribed to be submitted along with the application are as follows:**

1. **Covering Letter** on your company’s letter head for issue of new IEC Code Number.
2. Two copies of the application in prescribed format (Aayaat Niryaat Form ANF 2A) must be submitted to your regional Jt. DGFT Office.
3. Each individual page of the application has to be signed by the applicant.
4. Part 1 & Part 4 has to be filled in by all applicants. In case of applications submitted electronically.
5. No hard copies of Part 1 may be submitted. However in cases where applications are submitted otherwise, hard copy of Part 1 has to be submitted.
6. Only relevant portions of Part 2 need to be filled in.
7. Rs 250.00 Bank Receipt (in duplicate)/Demand Draft/EFT details evidencing payment of application fee in terms of Appendix 21B.
8. Certificate from the Banker of the applicant firm in the format given in Appendix 18A.
10. Two copies of passport size photographs of the applicant duly attested by the Banker of the applicant.
11. Self addresses envelope with Rs.25/- postal stamp for delivery of IEC certificate by registered post or challan/DD of Rs.100/- for speed post.

Valuation of Goods for the purpose of Assessment

What is the Taxable Event under Custom Act?
Goods become liable to import duty or export duty when there is ‘Import into’, or ‘Export from’ India.
In case of Import — when goods reach Customs barrier and Bill of Entry for Home Consumption is filed.
In case of Export — when Shipping bill is filed and goods leaves the Territorial Waters of India.

What is Assessable Value?
Assessable value is the value on which duty of customs is to be calculated.

For computation of Assessable Value there are two ways to compute

1. When Imported goods are covered under [Legal Metrology Act-2009 and product is notified under section 4A of Central Excise Act-1944] then Assessable value shall be computed as follows:
   Declared MRP on Goods XXX
   Less: notified % XXX
   Assessable Value XXX

2. When Imported goods are not covered under Legal Metrology Act, then Assessable value shall be computed as follows:
   Value as per section 14(1) and 14(2) XXX
   Add: Basic Custom Duty XXX
       Total (A) XXX
   Add: CVD 3(1) or 3(3) @ 10 % XXX (Previously EC of 3% was also Levied here )
       Total (B) XXX
   Add: Education Cess @ 2% on (BCD+CVD) XXX
   Add: Secondary Higher education Cess @ 1% on (BCD+CVD) XXX
       Total (C) XXX
   Add: CVD 3(5) @ 4% on Total (C) XXX
   Assessable Value XXX
Valuation Rules for imported goods

Valuation in Customs Act has to be done as per valuation rules. These rules are based on ‘WTO Valuation Agreement’ (Earlier termed as GATT Valuation Code). These rules are only for valuation of imported goods and not applicable to exported goods.

The value of imported goods for purposes of assessment of duty is determined in accordance with the provisions of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which were brought into force on 16th August, 1988.

The value of imported and exported goods shall be the Transaction Value of such goods.

For assessment of duty or for any other purpose of any other law, it should be the transaction value of the goods, that is to say,

- The price actually paid or payable for the goods when sold for exporting it to India,
- For delivery at the time and place of importation,
- Where buyer and seller of goods are not related,
- And the price is the sole consideration for sale,
- There are no restrictions as to dispose of or use of the goods by such buyer,
- And includes the amount paid or payable for cost and service including various cost and services, commission and brokerage engineering, design work, royalty, licence fees, cost of transportation to place of importation, insurance, loading unloading charges.

How we calculate the Transaction Value?

1. A Declaration to be filed by the assessee under rule- 11 regarding goods quantity, value, etc.

2. Above filed declaration may be rejected under rule 12

   - If declaration accepted
     - Then Transaction value as per Rule 3 (1)
     - Assessable Value = Transaction Value

   - If declaration rejected
     - Then as per Rule 3(4), follow Rule 4 to 9 sequentially
     - Rule 4- AV= TV Value of identical goods
     - Rule 5- AV= TV Value of similar goods
     - Rule 7- Deductive Value
     - Rule 8- Computed Value
     - Rule 9- Best judgment

   - Any other Expense

   - Rule 10(1) Inclusion/Exclusion
   - Commission/Brokerage/Packing
   - Apportioned value of goods
   - Royalty & license fee

Section 14(1) 
Price actually paid or payable

Rule 10(2) 
-Cost of transport

...
Computation of Assessable Value

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free on Board Price (FOB) XXX (Foreign Currency)</td>
</tr>
<tr>
<td>Add: Cost of transportation XXX (Foreign Currency)</td>
</tr>
<tr>
<td>Add: Cost of Insurance XXX (Foreign Currency)</td>
</tr>
<tr>
<td>Adjustments under rule 10(1) XXX (Foreign Currency)</td>
</tr>
<tr>
<td>CIF (Cost including Freight) Value XXX (Foreign Currency)</td>
</tr>
<tr>
<td>Convert such CIF into INR [CIF (Foreign Currency) X Rate of Exchange] XXX (INR)</td>
</tr>
<tr>
<td>Add: Landing Charges 1% of CIF in INR XXX</td>
</tr>
<tr>
<td>Assessable Value XXX</td>
</tr>
</tbody>
</table>

Note:
- **Free on board** (FOB) price is the transaction value as per rule 14(1)
- In case goods are imported by Air then cost of transportation shall be restricted to 20% of FOB price.
- **Cost of insurance** if it is not ascertainable then 1.125% of FOB shall be taken.
- Landing charges is always taken as 1% of CIF value.
- Rate of Exchange shall be taken as determined by CBEC & relevant date shall be the date on which bill of entry u/s 46 is to be filed.

**What rate of Basic Custom Duty shall be taken?**

Basic custom duty is the rate, which is chargeable on Assessable Value.

It depends on different kind of situations:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Situation</th>
<th>Rate of duty or tariff value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In the case of goods cleared for home consumption</td>
<td>The date on which bill of entry for home consumption is filed u/s 46 or Date of entry inward, if goods are imported by vessel/ date of arrival of goods in case of aircraft WHICH EVER IS LATER shall be taken as rate of duty.</td>
</tr>
<tr>
<td>2</td>
<td>In case the goods are cleared from warehouse u/s 68 for home consumption</td>
<td>The date on which bill of entry for home consumption is presented u/s 68.</td>
</tr>
<tr>
<td>3</td>
<td>In the case of any other goods</td>
<td>The date of payment of duty</td>
</tr>
</tbody>
</table>

**Tariff Value**

The board may also by notification fix tariff value for any class of Imported or exported goods, and where such tariff value is fixed, duty shall be chargeable with reference to such tariff value.

**How we see a tariff value under the Act?**

We take an example to understand, how we see a tariff value under the Act-

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Chapter/heading/ sub-heading/ tariff</th>
<th>Description of goods</th>
<th>Tariff value $ (Per Metric Tonne)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1511 10 00</td>
<td>Crude palm oil</td>
<td>447</td>
</tr>
<tr>
<td>2.</td>
<td>1511 90 10</td>
<td>RBD Palm Oil</td>
<td>476</td>
</tr>
<tr>
<td>3.</td>
<td>1511 90 90</td>
<td>Others Palm Oil</td>
<td>462</td>
</tr>
<tr>
<td>4.</td>
<td>1511 10 00</td>
<td>Crude Palmolein</td>
<td>481</td>
</tr>
</tbody>
</table>

For rules mentioned above please refer Custom Act, 1962.
Import Export Procedure

It is procedure through which goods are entered in India and after arrival of goods a systematic procedure is followed.

Whenever goods are imported into India, first of all Vehicle/Ship/Aircraft are kept in Custom Area.

What is Custom Area?
Custom area as explained earlier means the area of custom station, and includes any area in which imported goods are ordinarily kept before clearance by Custom Authorities.

What is Custom Station?
“Custom Station” means any Custom Port, Custom Airport, and Land Custom Station. “Custom Port” means any port appointed u/s 7(a), to be a custom port and includes a place appointed u/s 7(aa), to be an inland container depot. “Custom Airport” means any airport appointed under section 7, to be a custom airport. “Land Custom Station” means any place appointed under section 7, to be a land custom station.

After Arrival of goods at Custom Port/Airport under section 29 of Custom Act- 1962, following procedure has to be followed, which are summarised in chart form-

What is Bill of Entry?
Bill of Entry
This is a very vital and important document which every importer has to submit under section 46. Bill of Entry should be submitted in quadruplicate – original and duplicate for customs, triplicate for the importer and fourth copy is meant for bank for making remittances.
Bill of Entry is merely a declaration by an Importer or Exporter of the exact nature, precise quantity and value of goods that have landed or are being shipped out. It is prepared by a qualified Customs Clerk or broker, it is examined by Customs authorities for its accuracy and conformity with the tariff and regulations.

What is Import General Manifesto?
An import general manifesto word is used when goods are imported by vessel/air, but when it is imported by Vehicle then it is known as Import Report.
This is a report which contains information about the goods imported, name of the vessel, country of origin, name of master/pilot etc.
It contains four parts:
- A General Declaration
- A Cargo Declaration
- Vessel store list
- A list of private property in the possession of crew.
Import Procedure

1. Filling of Import General Manifesto (IGM) under section 30

2. Imported goods not to be unloaded until Entry Inward Granted by Authority

3. Goods unloaded at port only which are mentioned in IGM
   Under section 32

4. Goods are unloaded at approved Place only
   Under section 33

5. Goods must be removed at the presence of proper officer
   Under section 34

6. Filling of Bill of Entry for home consumption in WHITE Colour
   Under section 46
   - Bill of Entry is properly assessed by proper officer
   - Assessee has to pay all duties of custom within 5 days otherwise liable to pay interest @ 18% P.A.
   - After assessment proper officer issue a clearance order under section 47(1)
   - After paying port dues including demurrages, importer can take delivery of goods

7. Filling of Bill of Entry for warehousing in yellow Colour
   Under section 46
   - Proper Officer Roughly Assess duty and amount
   - Assessee Execute a Bond, twice of amount of duty, under section 59
   - After assessment proper officer issue a clearance order under section 60
   - Transfer goods in warehouse after paying port dues

8. Filling of Bill of Entry for home consumption in Green Colour
   Under section 68
In India, the Export Procedure as per customs has some laid down procedures while exporting any goods. However, when sometimes a person tries to export some goods/services read with the provisions of other Acts explained later, like Central Excise Act, 1944 then the procedural requirements increases at some stages. Here is a flowchart which explains the simple documentation to be made at the time of export of goods or services.
Assessment System

Sec 17: Final Assessment

Sec 18: Provisional Assessment

FAS
[First Appraisement/Examination System]

SAS
[Second Appraisement/Examination System]

Sec 17(1): Entry of goods -- Importer (by filing B/E)
Exporter (by filing Shipping Bill / Bill of Export) & then Examination & Testing of Goods

Sec 17(2): After Examination/testing, Assessment of Duty

Sec 17(3): PO may demand Documents / Information

Sec 17(4): Assessment of duty relying upon [B/E] or [Shipping Bill or Bill of Export] & thereafter – Examination & Testing of Goods

Provisional Assessment (PA) Order: (security shall be furnished)
PA Duty paid to be adjusted against Final Assessment duty

- PA Duty < FA Duty – Int @ 13% p.a. payable alongwith
- PA Duty > FA Duty – Int @ 6% p.a. receivable alongwith
- Refund arising out of finalization of PA shall be subject to doctrine of Unjust enrichment

Assessment contrary to claim of assessee – assessee not in agreement with the assessment of the PO – PO shall pass separate assessment order — within 15 days of assessment on B/E or Shipping Bill [Sec 17(5)]

This is always subject to "re-assessment" if particulars furnished in the entry found inaccurate subsequently

(1) Inability of importer to produce any document / furnish any information
(2) PO thinks it necessary to conduct certain Chemical or other tests on the goods
(3) PO thinks it necessary to make further enquiry to verify genuineness of document submitted / information furnished
Special Cases

Sec 19: Assessment of “SET OF ARTICLES”

Article shall be charged to that attracting “Specific Duty”

Article shall be charged to attracting “Ad Valorem Duty”

Benefits:

(1) Single Classification of different machineries;
(2) Concessional rate of duty (i.e., relatively lower rate of duty)

Some Examples of “Eligible Project”
(1) NTPC Power Plant;
(2) NHPC Power Plant;
(3) Power Projects of Tehri Hydro Development Corporation Ltd;

2 Exceptions: (Proviso)

Set of Article = [Main Article + Accessories / Spare Parts / Repairs & Maintenance Implements]

--- Main Article --- @ ROD (Rate of duty) as applicable to it
--- Accessory etc. --- @ ROD as applicable on the main article

Conditions:

i) Compulsory Supply;
ii) Price of Main Article is inclusive of charges for accessories etc.

Refund under Customs Act, 1962

Refund of Duty against an order of Assessment

<table>
<thead>
<tr>
<th>Refund of Duty against an order of Assessment</th>
<th>Sec 27 of Customs Act, 1962</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time limit:</strong> 2 time limits</td>
<td></td>
</tr>
<tr>
<td>a. In the case of any import made</td>
<td></td>
</tr>
<tr>
<td>• by any Individual for his personal use or</td>
<td></td>
</tr>
<tr>
<td>• by Government or</td>
<td></td>
</tr>
<tr>
<td>• by any Educational Research or charitable institution or hospital, - 1 year from relevant date;</td>
<td></td>
</tr>
<tr>
<td>b. Other Cases: - 6 months from relevant date</td>
<td></td>
</tr>
</tbody>
</table>

Exceptions to Doctrine of Unjust Enrichment: 6 Exceptions

<table>
<thead>
<tr>
<th>Exceptions to Doctrine of Unjust Enrichment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Duty Drawback on export of goods;</td>
<td></td>
</tr>
<tr>
<td>b. CD paid and borne by importer/exporter;</td>
<td></td>
</tr>
<tr>
<td>c. CD paid and borne by buyer</td>
<td></td>
</tr>
</tbody>
</table>
d. CD paid and borne by notified persons

e. CD paid on imports made by an individual for his personal use (in such case he must have not passed on burden of such duty);

f. Refund of Export duty on re-import of goods (in situation covered in section 26);

**Interest on delayed refund**

**Sec 27-A**
If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five percent and not exceeding thirty percent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty subject to some conditions.

**ED/ST to be shown separately on invoice**

**Sec 28-C** Every person who is liable to pay duty on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

**Presumption that duty burden has been passed on**

**Sec 28-D** Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

Benefits provided by Government of India to Export Import Dealers in India are given in the Foreign Trade Policy. Some of the benefits have been defined below:

**Foreign Trade Policy (FTP)**

The Government of India, Ministry of Commerce and Industry announces Five Years Plan after every five years. It is a planning of coming 5 years which are developed, executed and monitored by the planning commission of India. Foreign Trade Policy is one of the part of this five year plan.

FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favourable balance of payments position.

The current FTP covers the period 2009-2014. The FTP is updated every year on the 31st of March and the modifications, improvements and new schemes become effective from 1st April of every year.

**What kind of benefits is provided to importer and exporter under FTP?**

The Government of India offers many incentives to Indian importer under special schemes. These schemes are mostly available on those imported products, which will be later on used for manufacturing of goods meant for export.

The following are some of the important Export incentives offered by the Government of India, which significantly reduce the effective tax rates for the import companies. We will discuss some of the major export incentives in brief which can be relevant to any common person:
Duty Entitlement Pass Book (DEPB)

Duty Entitlement Pass Book is basically an export incentive scheme available to the manufacturers and traders who are engaged in exporting the product outside India after manufacturing it or after procuring it from the manufacturer.

The objective of DEPB scheme is to neutralize the incidence of basic custom duty on the import content of the exported products.

DEPB Scheme consists of

a. Post-export DEPB and
b. Pre-export DEPB.

The pre-export DEPB scheme was abolished w.e.f. 1/4/2000.

Under the post-export DEPB, which is issued after exports, the exporter is given a Duty Entitlement Pass Book at a pre-determined credit on the FOB value. The DEPB allows import of any items except the items which are otherwise restricted for imports.

Duty Free Replenishment Certificate (DFRC)

Under the Duty Free Replenishment Certificate (DFRC) schemes, import incentives are given to the exporter for the import of inputs used in the manufacture of goods without payment of basic customs duty. Such inputs shall be subject to the payment of additional customs duty equal to the excise duty at the time of import. Duty Free Replenishment Certificate (DFRC) shall be available for exports only up to 30.04.2006 and from 01.05.2006 this scheme is being replaced by the Duty Free Import Authorisation (DFIA).

Duty Free Import Authorisation (DFIA)

Effective from 1st May, 2006, Duty Free Import Authorisation or DFIA’s are issued to allow duty free import of inputs which are used in the manufacture of the export product (making normal allowance for wastage, and fuel, energy, catalyst etc.) which are consumed or utilised in the course of their use to obtain the export product.

Duty Free Import Authorisation is issued on the basis of inputs and export items given under Standard Input and Output Norms (SION).

Deemed Exports

Deemed Exports refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange.

As the deemed export is also a source of foreign exchange, so the Government of India has given the benefit duty free import of inputs. The Deemed Exports are treated at par with normal exports while evaluating the eligibility of benefit of various export incentives available to exporters in India.

Generally, the sale of goods or providing services in the area of SEZ’s, EOU’s and other FTZ’s are declared as Deemed Exports.
Served from India Scheme (SFIS)

Government of India has introduced “Served from India Scheme” to facilitate exporter of various type of services. The objective of this scheme is to accelerate growth in export of services so as to create a powerful and unique ‘Served from India’ brand, instantly recognized and respected world over.

In order to create a powerful “Served from India” brand all over the world, the government has provided different type of import incentive to the invisible export providers. Under the Served from India Scheme, import incentive is given for import of any capital goods, spares, office equipment and professional equipment.

Under this scheme, Service Providers of more than 100 services like Professional Services, Computer Related services, Hotels, Restaurants, Educational Services, Research and Development services, Communication Services, Construction and Related Engineering Services, Distribution Service, Environmental related Services, Tourism and Transport related Services, Health Related Social Service, Recreational, Cultural and Sporting Services etc. are entitled for Duty Credit Scrip. Service providers, who have a total foreign exchange earning of at least Rs.10 Lakhs in preceding or current financial year shall qualify for Duty Credit Scrip. For Individual Service Providers, the criterion is reduced to Rs.5 Lakhs of foreign exchange earnings.

Manufacture under Bond Scheme

Under the Manufacture under Bond Scheme, all factories registered to produce their goods for export are exempted from import duty and other taxes on inputs used to manufacture such goods. Against this the manufacturer is allowed to import goods without paying any customs duty. The production is made under the supervision of customs or excise authority.

Export Promotion Capital Goods Scheme (EPCG)

EPCG is a special type of incentive given to the EPCG license holder. Capital goods imported under EPCG Scheme are subject to actual user condition and the same cannot be transferred/sold till the fulfilment of export obligation specified in the license.

In order to ensure that the capital goods are imported under EPCG Scheme, the license holder is required to produce certificate from the jurisdictional Central Excise Authority (CEA) or Chartered Engineer (CE) confirming installation of such capital goods in the declared premises.

Under Export Promotion Capital Goods (EPCG) scheme, a license holder can import capital goods such as plant, machinery, equipment, components and spare parts of the machinery at concessional rate of customs duty of 5% and without CVD and special duty.
Export Incentives
The Government of India has framed several schemes to promote exports and to obtain foreign exchange. These schemes grants incentive and other benefits. A few important export incentives, from the point of view of indirect taxes are briefed below:

Free Trade Zones (FTZ)
Several FTZs have been established at various places in India like Kandla, Noida, Cochin, etc. No excise duties are payable on goods manufactured in these zones provided they are made for export purpose. Goods being brought in these zones from different parts of the country are brought without the payment of any excise duty. Moreover, no customs duties are payable on imported raw material and components used in the manufacture of such goods being exported. If entire production is not sold outside the country, the unit has the provision of selling 25% of their production in India. On such sale, the excise duty is payable at 50% of basic plus additional customs or normal excise duty payable if the goods were produced elsewhere in India, whichever is higher.

Electronic Hardware Technology Park / Software Technology Parks
This scheme is just like FTZ scheme, but it is restricted to units in the electronics and computer hardware and software sector.

Advance Licence / Duty Exemption Entitlement Scheme (DEEC)
In this scheme advance licence, either quantity based or value based, is given to an exporter against which the raw materials and other components may be imported without payment of customs duty provided the manufactured goods are exported. These licences are transferable in the open market at a price.

Duty Drawback
Introduction
An important principal in the levy of Custom Duty is that the goods should be consumed within the country of importation. If the goods are not so consumed, but are exported out of the country, the cost of exported goods gets unduly escalated on account of incidence of custom duty. Duty Drawback means getting refund of the duties already paid at the time of import.
The re-export of the goods imported into the country is broadly on two occasions:

**RE-EXPORT**

- **U/s 74(1)**
  - i. Where the goods are sent back "AS SUCH" to the foreign country U/S-74
  - The circumstances arises due to certain trade practices. Briefly they relate to:
    - Goods not conforming to the specification of the order
    - Goods not permitted to be imported into the country on account of the trade restriction.
    - The goods after being imported and temporarily retained in the country and later taken out of the country. In other words, the very objective of the importation was limited to temporary retention in India.
  - ii. Where the goods are sent back AFTER USE to the foreign country; u/s 74(2)

- **U/s 75(1)**
  - Where the goods are used in the manufacture of other articles for export u/s 75.
  - This factor gained greater importance with the establishment of 100% Export Oriented Units (EOUs) where goods manufactured are mainly exported to earn foreign exchange.
  - The principal method of encouraging the export of goods has been the drawback of customs and the central excise duties and service tax paid on inputs or raw materials and input services.

Duty Drawback rates in India is the special rebate given under Section 75 of Indian Customs Act on exported products or materials.

Duty drawback rates or concession are only applicable on products which are used in the processing of goods manufactured in India and then exported to foreign countries.

Duty Drawback is **not given** on inputs obtained without payment of customs or excise duty.

In case of re-export of goods, it should be done within 2 years from the date of payment of duty when they were imported. **98% of the duty** is allowable as drawback, only after inspection.

If the goods imported are used before its re-export, the drawback will be allowed as at a reduced per cent.

All industry drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance and Government of India and are periodically revised - normally on 1st June every year.

A refund can be obtained when an import fee has already been paid for a good, but that good is then subsequently exported. In order to obtain a duty drawback, a business does not have to pay the import duty, nor do they have to perform the product's exportation, they only need to be assigned the drawback from those to whom it would typically be due.

The duties and tax neutralized under the scheme are

(i) Customs and Union Excise Duties in respect of inputs and
(ii) Service Tax in respect of input services.
The Duty Drawback is of two types: (i) **All Industry Rate** and (ii) **Brand Rate**.

(i) **All Industry Rate**

a. **The All Industry Rate (AIR)** is essentially an average rate based on the average quantity and value of inputs and duties (both Excise & Customs) borne by them and Service Tax suffered by a particular export product.

b. **Legal frame work of AIR**

   The All Industry Rates are notified by the Government in the form of a Drawback Schedule every year and the present Schedule covers more than 3900 entries.

   The legal framework in this regard is provided under Sections 75 and 76 of the Customs Act, 1962 and the Customs & Central Excise Duties and Service Tax Drawback Rules, 1995 (henceforth referred as Drawback Rules).

(ii) **Brand Rate**

a. **The Brand Rate of Duty Drawback** is allowed in cases where the export product does not have any AIR of Duty Drawback or the same neutralizes less than 4/5th of the duties paid on materials used in the manufacture of export goods.

b. **Legal frame work of Brand Rate**

   This work is handled by the jurisdictional Commissioners of Customs & Central Excise.

   Exporters who wish to avail the Brand Rate of Duty Drawback need to apply for fixation of the rate for their export goods to the jurisdictional Central Excise Commissionerate.

   The Duty Drawback facility on export of duty paid imported goods is available in terms of Section 74 of the Customs Act, 1962.

**All Industry Rate (AIR) of Duty Drawback**

The AIR of Duty Drawback are notified for a large number of export products every year by the Government after an assessment of average incidence of Customs, Central Excise duties and Service Tax suffered by the export products.

The AIR are fixed after extensive discussions with all stakeholders viz. Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products.

The AIR of Duty Drawback is generally fixed as a percentage of FOB prices of export product.

The scrutiny, sanction and payment of Duty Drawback claims in major Custom Houses are done **through the EDI system**.

**The EDI system** facilitates credit/disbursal of Drawback directly to the exporters bank accounts once the EGM has been filed by respective airlines / shipping lines. The correct filing of EGM is essential for speedy processing and disbursal of Drawback claims.
Brand Rate of Duty Drawback

Where the export product has not been notified in AIR of Duty Drawback or where the exporter considers the AIR of Duty Drawback insufficient to fully neutralize the duties suffered by his export product, he may opt for the Brand Rate of Duty Drawback.

Under this scheme, the exporters are compensated by paying the amount of Customs, Central Excise duties and Service Tax incidence actually incurred by the export product.

For this purpose, the exporter has to produce documents/proof about the actual quantity of inputs/services utilized in the manufacture of export product along with evidence of payment of duties thereon.

The exporter has to make an application to the Commissioner having jurisdiction over the manufacturing unit, within 3 months from the date of the ‘Let Export’ order.

The application should include details of materials/components/input services used in the manufacture of goods and the duties/taxes paid on such materials/components/input services.

The period of 3 months can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

In terms of Rule 6 of the Drawback Rules, 1995 on receipt of the Brand Rate application, the jurisdictional Commissioner shall verify the details furnished by the exporter and determine the amount/rate of Drawback.

Where exporter desires that he may be granted Drawback provisionally, the jurisdictional Commissioner may determine the same, provided the exporter executes a general bond, binding himself to refund the Drawback amount granted to him, if it is found later that the Duty Drawback was either not admissible to him or a lower amount was payable.

Section 74 Drawbacks

In case of goods which were earlier imported on payment of duty and are later sought to be exported within a specified period, Customs duty paid at the time of import of the goods, with certain cuts, can be claimed as Duty Drawback at the time of export of such goods.

Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Section 74 of the Customs Act, 1962.

In cases the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No Duty Drawback is available if the goods are exported 18 months after import.

Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

Procedure for claiming Duty Drawback The Duty Drawback on export goods (whether AIR or Brand Rate) is to be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export under Drawback.

In case of exports under electronic Shipping Bill, the Shipping Bill itself is treated as the claim for Drawback.
In case of manual export, triplicate copy of the Shipping Bill is treated as claim for Drawback. The claim is to be accompanied by certain documents as laid down in the Drawback Rules 1995. If the requisite documents are not furnished or there is any deficiency, the claim may be returned for furnishing requisite information/documents. The export shipment, however, will not be stopped for this reason.

**Limitations on admissibility of Duty Drawback**

The Customs Act, 1962 lays down certain limitations and conditions for grant of Duty Drawback.

No Duty Drawback shall be admissible where:

(i) The Duty Drawback amount is less than Rs. 50/-.
(ii) The Duty Drawback amount exceeds one third of the market price of the export product.
(iii) The Duty Drawback amount is less than 1% of FOB value of export (except where the amount of Duty Drawback per shipment exceeds Rs. 500/-).
(iv) Where value of export goods is less than the value of imported material used in their manufacture. If necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

**Summary**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Duty Drawback U/s 74 i.e. Export of Goods “as Such”- or after use</th>
<th>Duty Drawback U/s 75 i.e. Export after process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Meaning of Duty Draw back</strong></td>
<td>Duty Draw back Means: - Refund of Import duty paid on as such goods.</td>
<td>Duty Draw back Means: -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Refund of Import duty paid on Raw Material</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Refund of Excise duty paid on Domestic Raw Material</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Refund of Service Tax paid on Import Services</td>
</tr>
<tr>
<td><strong>Goods Eligible for Duty Draw Back</strong></td>
<td>All Goods</td>
<td>Notified Goods</td>
</tr>
<tr>
<td><strong>Identity of goods Exported</strong></td>
<td>Export as such (Unchanged) Or After Use (e.g. Car)</td>
<td>Change (Since Export After Processing)</td>
</tr>
<tr>
<td><strong>Rate of Duty Draw Back</strong></td>
<td>As Such – 98% After Use – No Duty Draw Back as per I(^{st}), II(^{nd}), III(^{rd}) notifications.</td>
<td>Notified rate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• All Imported Rate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Brand Rate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Special Brand Rate</td>
</tr>
<tr>
<td><strong>Period of Usage</strong></td>
<td>As specified in the notification</td>
<td>No such restriction</td>
</tr>
</tbody>
</table>
Special Additional Duty Refund (SAD)

As per the Customs Laws, on some products there levies a duty named Special Additional Duty (SAD) which is to be paid by every importer of that particular product while importing it into India. In September 2007, through notification no. 102/2007 the Government of India came out with a notification that the SAD paid by the importers at the time of import will be refunded to them subject to some conditions prescribed.

Since then, some notifications have been released by the Government of India to prescribe some rules or give some clarifications in the said subject. We hereby list the documents to be submitted with the department for claiming refund of SAD:

(i) TR6 challan for evidencing payment of special additional duty.
(ii) Original BOE on which SAD paid & corresponding purchase invoices, purchase order and packing list.
(iii) Sale invoice of imported goods in respect of which refund is claimed.
(iv) VAT Payment challans for evidencing payment of appropriate VAT on imported goods.
(v) Signed working sheet for the refund amount claimed.
(vi) Certificate from CA who must be statutory auditor or VAT auditor of applicant.
(vii) In case of sale through consignment agents/stockists, copy of consignment sale agreement required.
(viii) Self declaration/Affidavit to ensure fulfilment of doctrine of unjust enrichment. Any other document considered necessary for the claim.

Who can Claim SAD Refund?
SAD refund can be claimed by importers who imports goods in India and sells imported goods as it is i.e. goods don't lose their identity. In nutshell, importer trader is allowed to claim SAD Refund after sale of imported goods and payment of VAT amount. Refund is not available to manufacturers who consume these goods in manufacturing process or end consumers of goods.

What is the time limit for filing the application for Refund?
SAD Refund must be claimed within one year from payment of SAD i.e. date of TR6 challan of corresponding BOE.

Transit & Transhipment

<table>
<thead>
<tr>
<th></th>
<th>Transit</th>
<th>Transhipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>Transit means when Goods are transited in the same conveyance which brings the goods into India.</td>
<td>Transhipment means when Goods are transhipped in a conveyance other than the conveyance which brings the goods into India.</td>
</tr>
<tr>
<td>Submission of Docs</td>
<td>No need of filing any fresh documentation for carrying goods from first port to another port.</td>
<td>Fresh documentation is required for carrying goods from first port to another port.</td>
</tr>
</tbody>
</table>

Baggage

Baggage includes unaccompanied baggage but does not include motor vehicles. Whatever a person brings from abroad becomes a baggage.

There is no separate bill of entry and the passenger will have to know the law, the monetary limits and the quantities allowed and accordingly decide to choose the channel.

When the passenger walks through the green channel, he is stating that there are no dutiable goods. A passenger walking through the red channel is stating that he has dutiable goods.

Baggage Rate: 35%
The rate of duty and tariff valuation, applicable to baggage shall be the rate and valuation in force on the date on which declaration is made in respect of such baggage u/s 77.
Declaration by owner:
For custom clearance declaration shall be given by owner of baggage about its contents to the Proper officer.
There is no need for filing of any bill of entry u/s 46 for clearance of baggage.
In substitute of that a “declaration of contents” is required to be filed in terms of section 77 of customs Act.
The proper officer may pass free of duty any article in the baggage in respect of which the said officer is satisfied:
- That it has been in his use
- That is for the use of the passenger or his family, (only up to such limits specified in the Baggage Rules, 1998.

Duty Free allowances and entitlements for Indian Residents and Foreigners residing in India

A Resident means a person holding a valid passport issued under the passports Act, 1967 and normally residing in India

I. For passengers coming from countries other than
   a. Nepal, Bhutan, Myanmar, Hongkong or China.
   b. Pakistan by Land Route

<table>
<thead>
<tr>
<th>Duty Free allowance for bonafide baggage consisting of</th>
<th>For passengers of age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10 years and above</td>
</tr>
<tr>
<td>(i) Used personal effects (excluding jewellery) required for satisfying daily necessities of life</td>
<td>Free</td>
</tr>
<tr>
<td>(ii) Other articles carried in person or in accompanied baggage</td>
<td></td>
</tr>
<tr>
<td>a. (a) if Stay abroad for more than three days</td>
<td>Valued upto Rs.6000/- Nil</td>
</tr>
<tr>
<td>b. (b) if Stay abroad upto three days</td>
<td></td>
</tr>
</tbody>
</table>

Note:
1. The free allowance shall not be pooled with the free allowance of any other passenger.
2. The free allowance is not applicable to the following goods:
   - Fire arms.
   - Cartridges of fire arms exceeding 50.
   - Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.
   - Alcoholic liquor or wines in excess of 2 litres.
   - Gold or silver, in any form, other than ornaments.
3. One laptop computer (notebook computer) over and above the said free allowances mentioned above is also allowed duty free if imported by any passenger of the age of 18 years and above
4. The goods over and above the free allowances shall be chargeable to customs duty @ 35% + an education cess of 3% i.e. to say the effective rate is 36.05%.
5. Alcoholic drinks and tobacco products imported in excess of free allowance are chargeable to custom duty at the rates applicable to their commercial imports as per the Customs tariff Act.

6. Import of Indian currency is prohibited. However, in the case of passengers normally resident of India who are returning from a visit abroad Indian currency upto Rs. 7500 is allowed.

7. Incase the value of one item exceeds the duty free allowance, the duty shall be calculated only on the excess of such amount.

II. For passengers coming from
- Nepal, Bhutan, Myanmar, Hongkong or China, other than by land route
- Pakistan by land route

<table>
<thead>
<tr>
<th>Duty Free allowance for bonafide baggage consisting of</th>
<th>For passengers of age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10 years and above</td>
</tr>
<tr>
<td>(i) Used personal effects (excluding jewellery) required for satisfying daily necessities of life</td>
<td>Free</td>
</tr>
<tr>
<td>(ii) Other articles carried in person or in accompanied baggage</td>
<td>Valued upto Rs.25000/-</td>
</tr>
<tr>
<td>(a) Stay abroad for more than three days</td>
<td>Valued upto Rs.12000/-</td>
</tr>
<tr>
<td>(b) Stay abroad upto three days</td>
<td></td>
</tr>
</tbody>
</table>

Note:
1. The free allowance shall not be allowed to be pooled with the free allowance of any other passenger.

2. The free allowance is not applicable to the following goods:
   a. Fire arms.
   b. Cartridges of fire arms exceeding 50.
   c. Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.
   d. Alcoholic liquor and wines in excess of 2 litre each.
   e. Gold or silver, in any form, other than ornaments.

3. One laptop computer (notebook computer) over and above the said free allowances mentioned above is also allowed duty free if imported by any passenger of the age of 18 years and above.

4. The goods over and above the free allowances shall be chargeable to customs duty @ 35% + an education cess of 3% i.e. to say the effective rate is 36.05%.

5. Alcoholic drinks and tobacco products imported in excess of free allowance are chargeable to custom duty at the rates applicable to their commercial imports.

6. Import of Indian currency is prohibited. However, in the case of passengers normally resident of India who are returning from a visit abroad Indian currency upto Rs. 7500 is allowed.

7. Incase the value of one item exceeds the duty free allowance, the duty shall be calculated only on the excess of such amount.

III. For passengers coming from Nepal, Bhutan, Myanmar or China by Land Route

<table>
<thead>
<tr>
<th>Duty Free allowance for bonafide baggage consisting of</th>
<th>For passengers of age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10 years and above</td>
</tr>
<tr>
<td>(i) Used personal effects (excluding jewelry) required for satisfying daily necessities of life</td>
<td>Free</td>
</tr>
<tr>
<td>(ii) Other articles carried in person or in accompanied baggage</td>
<td>Nil</td>
</tr>
</tbody>
</table>
CENTRAL EXCISE LAW
Learning Objectives

1. Introduction to Central Excise
2. Constitution of Central Excise
3. Administration of Central Excise
4. Constituents of Central Excise
5. Basic Concepts and definitions
6. Registration
7. Invoices and Records
8. Valuation of Goods
9. Due date and Manner of payment
10. Cenvat Credit
11. Export of Goods
12. Refund of Cenvat Credit
13. Filing of Returns
14. Confiscation and Penalty
15. Disputes and their Resolution
16. Settlement Commission
17. Powers to grant Exemption
18. Central Excise Tariff Act, 1985

Introduction to Central Excise

Central Excise Duty is in the nature of Indirect Tax. The Parliament of India has been given powers under Article 246 of the Indian Constitution to levy Central taxes in India. The Central Excise Duty is levied on those commodities which are manufactured or produced. Excise Duty is charged on Goods which are excisable, which are manufactured or produced in India. Unlike in Income Tax where tax is levied on income earned, and Sales tax is levied when good sold, excise duty is imposed when goods are manufactured. Though excise is levied on manufacture of goods, it is collected at the time of removal from the factory of production. Thus, till the time of removal of goods the collection of duty is deferred and permitted to store without payment of duty within the factory of production. As stated above, excise duty is imposed on manufacturing of goods and collected at the time of removal, therefore, it is not relevant that the manufacturer is the owner of the manufactured goods or not or the goods have been sold or not. Excise duty is payable even if finished goods consumed captively, removed to own depts. / branches, supplied as free gifts or samples, lost/destroyed or manufactured on job work basis.

The law related to Central Excise came in India in the year 1944 through Central Excise Act, 1944. Till 1969, there was physical control system wherein each clearance of manufactured goods from the factory was done under the supervision of the Central Excise Officers. Introduction of Self-Removal procedure was a watershed in the excise procedures. Now, the assessee is allowed to quantify the duty on the basis of approved classification list and the price list and clear the goods dear on payment of appropriate duty.
Constitution of Central Excise

The Central Excise law is administered by the Central & Excise and Customs (CBEC or Board) through its field offices, the Central Excise Commissionerate's. For this purpose, the country is divided into 23 Zones and a Chief Commissioner of Central Excise heads each Zone. There are total 93 Commissionerate's in these Zones headed by Commissioner of Central Excise. Divisions and Ranges are the subsequent formations, headed by Deputy/Assistant Commissioners of Central Excise and Superintendents of Central Excise, respectively.
**What is Excise Duty?**

Excise duty is a tax on manufacture or production of goods *not upon sales except alcoholic liquor for human consumption and Narcotics Alcohol liquor for human consumption is under State excise.*

**Where the Excise Act is Applicable?**

Excise Act is applicable to whole over India Including the state of Jammu & Kashmir.

**Organizational Hierarchy of Excise/ Custom Department**

Government of India

\[ \downarrow \]

Central Board of Excise and Custom (CBEC)

\[ \downarrow \]

Chief Commissioner of Central Excise

\[ \downarrow \]

Commissioner of Central Excise

\[ \downarrow \]

Additional Commissioner of Central Excise

\[ \downarrow \]

Joint Commissioner of Central Excise

\[ \downarrow \]

Deputy/ Assistant Commissioner of Central Excise

\[ \downarrow \]

Superintendent- Equivalent to appraiser in Custom Department

\[ \downarrow \]

Inspector (Non Gazetted officer)–Equivalent to Examiner/ Preventive officer in Custom
Administration of Central Excise

Ministry of Finance

Central Board of Direct Taxes

Department of Expenses

Department of Revenue

Excise Department

Chief CCE

CCE

Additional Commissioner/J.C

AC/DC

Superintendent of Central Excise / Range Officer

Constituents of Central Excise

Central Excise Legislation

Central Excise Act, 1944

Central Excise Valuation Rules, 2000

Central Excise Tariff Act, 1985

Notifications

Central Excise Rules

This the basic Act providing for charging of duty, valuation, powers of officers, provisions of arrests, penalty and appeals etc.

These rules determine the method for valuation of goods for the purposes of charging Excise Duty.

This Act determines the classification of product determining the heading and subheading of CETA under which a particular product is covered in order to prescribe duty to be charged on that particular product.

Central Government has been granted powers to issue notifications for granting partial or full exemption from Excise Duty.

Central Excise Act grants power to government to frame to rules which are to be used for the purposes of Central Excise Act.
Basic Concepts and Definitions

Central Excise Law is levied on manufacture or production of goods. The liability of paying Central Excise is on the manufacturer.

Basic Condition for Excise Liability

Section 3 of Central Excise Act (often called the ‘Charging Section’) states that ‘There shall be levied and collected in such a manner as may be prescribed, duties on all excisable goods other than salt which are produced or manufactured in India.

There are some basic conditions for levy of Central Excise duty.

- The duty is on goods.
- The goods must be excisable i.e. mentioned in CETA.
- The goods must be manufactured or produced.
- Such manufacture or production must be in India. Unless all of these conditions are satisfied, Central Excise Duty cannot be levied.

Goods

Goods have not been defined in Central Excise Act (CEA).

Sale of Goods Act defines that “Goods” means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Sec 2(d) of the CEA defines excisable goods to be goods, which are specified in the Tariff as being subject to a duty of excise.

There are two aspects of Goods i.e.

- Goods must be:
  (i) Movable; and
  (ii) Marketable

It was held in the case of UOI V/S Delhi Cloth Mills Co. Ltd wherein the Supreme Court decided that in order to be goods the articles must be capable of coming to the market to be bought and sold.

Movable

Movable means goods, which can be shifted from one place to another place, as such, without any dismantling, then article will be movable.

E.g. motor car, mobile phone, computer etc.

However, if transfer to another place is done after dismantling mainly for ease in transportation then article will be movable.

But if dismantling is basic need for the movements of an article then article will be immovable.

The goods attached to earth are immovable goods, such as, Dams, Roads, and buildings etc.
Marketable

Marketable means goods which are capable of being bought & sold for a consideration. But it only means saleable or suitable for sale. It need not be actually ‘sold’ as per decided case law of Indian Cable Co. (Supreme Court).

Goods produced for free distribution, as sample, gifts, or replacement during warranty period is also liable for excise duty. “Actual sale is not relevant, even captive consumption can attract duty liability, if marketable”

Factory

According to section 2(e) Factory means any premises, where any part of the excisable goods other than salt are manufactured or any manufacturing process is being carried out.

Manufacture

The word Manufacture as specified in various Court decisions shall be called only when a new and identifiable goods emerge having a different name, character, or use.

Manufacture includes any process which is incidental to or ancillary to the completion of manufactured product or which is specified in relation to any goods in the section or chapter notes of the First Schedule to CETA as amounting to manufacture or which, in relation to goods specified in third schedule to the CEA, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer.

E.g. Manufacture has taken place when table is made from wood or pulp is converted into base paper, or sugar is made from sugarcane.

Production

Production has also not been defined under CEA but production is used to cover items like coffee, tea, tobacco, etc. which is called to have been manufactured not produced.

Manufacturer

Manufacturer is a person who actually manufactures or produces the excisable goods.

As per section 2(f), the manufacturer shall be understood accordingly and shall include Not only the person who employs hired labour, but also any person engaged in the production or manufacture on his own account.

Also, the Supreme Court has held that manufacture implies a change or transformation resulting in emergence of a new and different article having a distinctive name, character or use. For determining as to whether a process amounts to manufacture under its ordinary meaning under Section 2(f) of the CEA, recourse must be taken to settled judicial principles as laid down by the Courts in various cases. One of the determining tests for manufacture is whether the process in question brings into existence, a new commercial commodity which is distinct from the starting material, having different name, character or use. Further, the commodity already in existence will serve no purpose
but for the said process. If these two conditions are satisfied, then the process in question amounts to ‘manufacture’ within Section 2(f) of the CEA.

**Assembly**

Assembly is a process of putting together a number of items or parts of an item to make a product or item. From a general point of view, all cases of assembly would amount to manufacture. The assembly may take place within the factory gate of the manufacturer or at the customer’s site.

**Dutiability of Waste & Scrap**

No any prudent business man would like to manufacture waste, but still it is true that waste is a by-product of manufacturing process. Also intention is not relevant in manufacturing. Waste and scrap can be dutiable if marketable. Goods like waste and scrap even if not covered by the word manufactured, can still be covered by the word “produced”. Hence, such waste and scrap will be chargeable to duty, if covered in the tariff.

The processing of Raw Material by a person may lead to production of following:

![Diagram](image)

**Note 1**

The above said “by product” and “waste & scrap” arise during the course of manufacturing process are exempt from duty, if the finished goods manufactured/produced are itself exempted goods. Excise duty is applicable on the value of goods at the time of removal of goods from factory.

**Removal of goods**

Excise duty is payable on each removal of goods. Excisable goods can be removed from the place where they are manufactured or produced or from a warehouse only after excise duty payable thereon, is paid.
Registration – Procedures and Issues

Persons liable to register

In accordance with Rule 9 of Central Excise Rules, 2002, below mentioned persons are required to obtain Central Excise registration:

- Every manufacturer of dutiable goods
- First and second stage dealers desiring to issue Cenvatable invoices
- Persons holding warehouses for storing non-duty paid goods

Type of Assessee liable to Register

- SSI (Note 1)
- NON SSI (Note 2)
- Manufacturer (Defined earlier)
- First Stage Dealer (Note 3)
- Second Stage Dealer (Note 4)
- 100% EOU (Note 5)

Note 1:
Small Scale Industry (SSI) is one whose aggregate value of Turnover does not exceed Rs. One Hundred and Fifty Lakhs made on or after the 1st day of April in any financial year.

SSI also enjoys duty exemption, under notification No. 8/2003
1. Exemption from Normal rate of Basic Excise Duty,
2. Exemption from Normal rate of Special Excise Duty,

This exemption is available in respect of Aggregate value of 1st clearance of upto 150 Lakhs, for home consumption during a financial year.

Conditions for being SSI

The Aggregate Value of Clearances of all excisable goods for home consumption by the manufacturer from one or more factories, or from a factory by one or more manufacturers should not exceed 400 lakhs in the preceding financial year.

Manufacturer also has the option to not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him.

The above option should be exercised once and once it is opted it can’t be withdrawn.

The person who clears the goods bearing the brand name and trade name of others can not avail the benefit of SSI. Only SPECIFIED CLEARANCES bearing brand name and trade name of others shall be eligible for benefit of SSI.
Specified Clearances

a. Clearances bearing brand name and trade name of manufacturing unit itself.

b. Clearances bearing brand name and trade name, where the Goods being in the nature of components/parts of machinery/Equipment or appliances; by following End-use based exemption procedures laid down in Rules.

c. Where goods bearing brand name trade name of
   - Khadi and Village Industries Commission (KVIC),
   - State Khadi and Village Industries Board (SKVIB),
   - National Small Industries Corporation (NSIC),
   - State Small Industries Development Corporation (SSIDC),
   - State Small Industries Corporation (SSIC).

Note 2: A NON SSI unit is one whose turnover exceeds Rs. One Hundred and Fifty Lakhs subject to the above laid down conditions.

Note 3: A First stage dealer means a dealer who purchases goods directly from
   - The Manufacturer,
   - The premises of the consignment agent of the said manufacturer or
   - Any other premises from where the goods are sold on behalf of the said manufacturer, under a cover of an invoice.

Note 4: Second stage dealer means a dealer who purchases the goods from the first stage dealer.

Note 5: An Export oriented unit (EOU) scheme was introduced in early 1981 whereby these units are given certain benefits to encourage exports, earn foreign exchange for the country and various other objectives. EOU is one which has interlinking with domestic economy through procurement and/or sale of goods in the Domestic Area and has to get itself registered.

The units are allowed to import or procure locally without payment of duty all types of goods including capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipments including material handling equipments, required for export production or in connection therewith.

Person not liable to register

- Persons who manufactures the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by way of a notification.
- Small scale units availing the exemption, based on value of clearances under a notification. However, such units will be required to give a declaration once the value of their clearances crosses Rs.90 lakhs for a financial year.
- Persons manufacturing excisable goods by following the warehousing procedures given under Customs Act, 1962 subject to certain conditions.
- A person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2004).
- Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.
**Procedure for registration**

New registrants are required to follow the below mentioned procedure:

- Log on www.aces.gov.in and register accordingly by following the hyperlink “Click Here to Register with “ACES”
- An acknowledgement is generated, which confirms that password has been delivered to the email address of the user which indicates that the user can now login as a normal user using his credentials.
- Login with username and password
- Change password
- Click on “REG” tab and click on “Fill A - 1” from the drop down list
- Fill the form with desired details
- Proceed by clicking “Save & Continue”
- Duly filled A - 1 would be generated, giving the option to make any changes by way of “Modify” tab
- Print the duly filled/modified form
- Click on “Submit”
- Submit the printed form and printed acknowledgement along with requisite documents (self Attested) to the excise authorities
- Obtain registration certificate

**Note:** Existing assessee are required to get themselves registered with ACES merely by filing a declaration with range officer and thereby obtaining TPIN and password from the department.

**Documents required for registration (Self Attested copies)**

- PAN card copy of authorized signatory
- PAN card copy of the company/firm
- Ground plan of factory (which should also provide description of boundaries of premises to be registered)
- List of directors/partners
- Memorandum and Articles of Association/Partnership deed
- General power of attorney (in case application is signed by authorized agent)
- Apart from these, department may also require certain additional documents, some of which are mentioned hereunder:
- PAN card copy of directors/partners other than signatories
- Address proofs of the factory premises like:
  - Copy of purchase agreement along with electricity bill, water bill etc., if factory is owned.
  - Copy of Leave and license agreement along with electricity bill, water bill etc., if factory is taken on lease.
  - ‘No objection certificate’ from the licensor and last paid rent receipt may also be required
- Residence proof of directors/partners
- Registration Certificate under any other laws, if any.
Issues

Validity of Registration Certificate
Once Registration Certificate is granted, it has a permanent status unless it is suspended or revoked by the appropriate authority in accordance with law or is surrendered by the person or company concerned.

Penalty for failure to get registered
If the manufacturer or producer who is required to take registration fails to apply for registration, a penalty up to duty of contravening goods or Rs 10,000, whichever is higher, can be imposed and contravening goods can be confiscated. Moreover, imprisonment up to 7 years (minimum 6 months) can be imposed.

Separation of premises by a public road
When two premises of the same factory are segregated by public road, canal, railway line, single registration would suffice.

Registration of same premise with different Assessee
As per the decided case, MANIBHADRA PROCESSORS Versus ADDITIONAL COMMISSIONER OF C. EX. 2005 (184) E.L.T. 13 (Bom.), one and same premise cannot be registered in name of two different persons.

Person holding earlier registration certificate must surrender registration certificates in respect of that premises, then only new person can get registration in respect of that premises.

Excise registration number
An excise reg. number is a 15 digit number in which 1st ten digits denotes PAN number + another two digits denotes applicant status and rest three digits (No. of premises)
E.g. AQHJH9466HXM002 this ‘XM’ denotes that assessee is a manufacturer.

Separate Excise registration number
If a person has more than one premises, then separate registration certificate require for each of such premises.
Invoices and Records

Invoice

Invoice is basically required for removal of the goods. Invoice is the document under which the excisable goods are to be cleared by the manufacturer. No excisable goods shall be cleared except under an invoice. This is also the document which indicates the assessment of duty.

There is no prescribed format for the Invoice, however some details have been prescribed which should be mentioned on the Invoices generated which has been mentioned below:

The invoice should be serially numbered and shall contain the following:

- Registration number
- Address of the concerned Central Excise Division & Name of the consignee
- Description, classification
- Time and date of removal
- Mode of transport and vehicle registration number
- Rate of duty, quantity and value of the goods and the duty payable thereon.
- Range number in which Assesee fall
- Details of Division and Commissionerate
- Whether goods transfer from warehouse, factory or depot
- Merchant’s name
To understand how invoices are raised under Central excise, a format is given here:

<table>
<thead>
<tr>
<th>Invoice</th>
<th>(Original for Buyer)</th>
<th>(Duplicate for Transporter)</th>
<th>(Triplicate for Assessee)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Under Rule 11 of Central Excise Rules)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASC Consulting Pvt. Ltd.</td>
<td>Invoice No.</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>73,National Park, Lajpat Nagar-IV</td>
<td>Delivery Challan No.</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>New Delhi-110024, India</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Regn No.AAAC6163DXM001</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Range XX New Delhi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Division XXXXXXXXX</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Commissionerate Delhi III XXXXX</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise Tariff Heading: XXXXXXX</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consignee:</td>
<td>Buyer's Order No.</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Buyer:</td>
<td>Model/Vehicle No.</td>
<td>Destination</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Terms of Delivery</td>
<td>Terms of Payment</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Spec No.</th>
<th>No of Rolls/Sheets</th>
<th>Description of Good</th>
<th>Qty.</th>
<th>Rate (Rs.)</th>
<th>Per</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXX</td>
<td>XX</td>
<td>XXXXXXXXX</td>
<td>XXXX</td>
<td>XX</td>
<td>XX</td>
<td>XXXXXX</td>
</tr>
<tr>
<td>Basic Excise Duty</td>
<td>12%</td>
<td>XXXX</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BED Education Cess</td>
<td>2%</td>
<td>XXXX</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BED Secondary Edu. Cess.</td>
<td>1%</td>
<td>XXXX</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freight Outward</td>
<td>-</td>
<td>XXXX</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Information if any

Amount Chargeable (In words) XXXX XXXX XXXX XXX

Date & Time of Removal

Declaration: We declared that the above invoice shows the actual price of goods described and that all particulars are true and correct.

For ASC Consulting Pvt. Ltd.

Authorised signatory
The serial number of the invoice can be given at the time of printing or by using franking machine. **Hand written serial numbers are not acceptable.** In case of computer generated invoice, the serial number is allowed to be generated and printed by the computer at the time of preparation of invoice, if the computer is capable of generating the number automatically and without the possibility of assignment of the same number more than once.

The invoice shall be prepared in triplicate in the following manner, namely:

- The **original copy** is to be marked as **ORIGINAL FOR BUYER**;
- The **duplicate copy** is to be marked as **DUPLICATE FOR TRANSPORTER**;
- The **triplicate copy** is to be marked as **TRIPLICATE FOR ASSESSEE**.

The assessee may make more than **three copies** for his other requirements. But the extra copies shall be prominently marked with the words: **“NOT FOR CENVAT PURPOSE”**.

**Use of more than one set of invoices**

Only one set of invoice book shall be in use at a time unless otherwise allowed by the Deputy/Assistant Commissioner of Central Excise in the special facts and circumstances of each case.

**Authentication of Invoices**

The owner or working partner or Managing Director or Company Secretary or any person duly authorized in this regard shall authenticate each invoice, before being brought into use.

**Rounding off of duty in the invoice**

The amount of duty being shown in the invoices issued under Rule 11 should be rounded off to the nearest rupee as provided under Section 37D of Central Excise Act, 1944 and the duty amount so rounded off should be indicated both in figures and words.

**Cancellation of the invoices**

When an assessee desires to cancel an invoice, the following procedures are to be followed:

- Intimation relating to cancellation of the invoice should be sent to the jurisdictional Range Superintendent on the same date.
- If the intimation could not be filed on the same day due to exceptional circumstances beyond the control of the assessee, the same can be sent on the next working day.
- The original and duplicate copy of the cancelled invoice should also be sent along with the intimation.
- Triplicate copy of the cancelled invoice may be retained by the assessee in the invoice book so that the same can be produced when required by the Audit group, Preventive group or other visiting officers.

**Procedure for cancellation of invoices online**

- Log onto **www.aces.gov.in**.
- Click on Central Excise appearing on the menu bar on the top of the screen and log in to your account.
• After logging in click on CLI Invoice Books Cancellation Type the invoice number Invoice book number Reasons for cancellation Date of cancellation and save the details.

• Print the acknowledgment that is generated and it should be signed and attach it along with a letter stating the reason for cancellation which should be printed on a letter head of the company.

• It should be submitted to the department within 24 hours of cancellation.

Records to be maintained under Central Excise

Maintenance of Accounts:
The assessee is required to maintain records on all important aspects such as receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, Daily Stock Account and Cenvat Account.

Electronic maintenance of records
The assessee may maintain or generate all or any of the records, returns, invoices and other documents prescribed under the statute, using a computer, in electronically readable format. No specific permission from the Central Excise Department is required for this purpose.

Following is the whole List of Documents required to be maintained under Central Excise Act

General records to be maintained by the assessee
1. RG-1 register, i.e. daily stock account of excisable goods;
2. Form-IV register of receipt and issue of raw material;
3. Personal Ledger Account;

Additional records to be maintained by the assessee availing modvat.
1. RG-23A Pt.-I – entry book of input receipts;
2. RG-23A Pt.-II – entry book for taking credit of duty paid on inputs;
3. RG-23C Pt.-I – entry book of capital goods received;
4. RG-23C Pt.-II – entry book for taking credit of duty paid on capital goods;
5. Record of inputs sent for job work outside the factory under Rule 57F(4);
6. Record of inputs received in the factory for job work;
7. Challan book under Rule 57F(4) for sending inputs or partially processed inputs for job work;
8. Challan book for sending capital goods for tests, repairs etc. under Rule 57S.

Additional records to be maintained by the manufacturers of V.P. sugar
1. RG-4 – cane account;
2. RG-6(C) or (G) – register of daily manufacture;
3. RG-7 – daily drier account;
4. RG-8 – Sugar store account;
5. RG-9 – Gunny bag account;
6. RG-11 – Daily account of sugar received for crushing.

Matches
1. RG-2 – daily account of splints and veneers and composition of match heads;
2. RG-3 – register of stock and receipts of Central Excise Stamps purchased;

Tobacco products
RG-12 – register of manufacture of excisable tobacco products;

Embroidery
RG-25 – production register cum account current to be maintained by the manufacturers of embroidery working under special procedure.

Tea
- RG-17 – daily account of loose tea utilised in the production of package tea.

**Daily stock account (RG-1)**

Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding
- Description of the goods produced or manufactured,
- Opening balance,
- Quantity produced or manufactured,
- Inventory of goods, quantity removed,
- Assessable value,
- The amount of duty payable and particulars regarding amount of duty actually paid.

The records, which are relevant for Central Excise, shall be **authenticated by the assessee on the first and last page.**

These records shall be **preserved for a period of five years** immediately after the financial year to which such records pertain.
Valuation of Goods

Valuation of goods can be done in various forms which have been mentioned below:

**Specific Duty (Qty. based duty)**
Based upon certain UNITS like

**Weight**
For e.g.:-
- Molasses (per M.T.)
- Cement (per M.T.)
- Sugar (per qty. basis)

**Volume**
Match box (per 100 boxes)

**Size**
Marble Slabs & Tiles- per square
Television--screen size basis

**Production Capacity based duties**
Or
Compound Levy
Scheme duties = A fixed amount per month / Qtr / Year-
Based upon production capacity.

**Value Based Duties OR Duties Ad Valorem**
I.e. Excise Duty=Assessable value*Rate of duty

**Specific cum Duties ADVALOREM**

**INVOICE**
Date-1 June 2012

<table>
<thead>
<tr>
<th>Name</th>
<th>Units</th>
<th>Rate/Unit</th>
<th>Amt.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stainless steel</strong></td>
<td>1</td>
<td>500000</td>
<td>500000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>500000</td>
</tr>
</tbody>
</table>

Excise duty Rs. 30000/- per cold
Rolling machine *(fixed)*

**INVOICE**
Date-1 June 2012

<table>
<thead>
<tr>
<th>Name</th>
<th>Units</th>
<th>Rate p.u.</th>
<th>Amt.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Match Boxes</strong></td>
<td>10</td>
<td>500</td>
<td>5000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>5000</td>
</tr>
</tbody>
</table>

Excise duty Rate

**INVOICE**
Date-1 June 2012

<table>
<thead>
<tr>
<th>Name</th>
<th>Retail Sale price</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Readymade Garments</strong></td>
<td>500000</td>
</tr>
</tbody>
</table>

Excise duty 30% of RSP
Fixed in CETA(ch.61-62)

**Date-1 June 2012**

Des. of goods

| **Total** | 650000 |
What is Valuation?
Where rate of duty is dependent on value of the goods, value has to be determined in accordance with the provisions of Central Excise Act, 1944, as follows:
(i) Value Under Section 4
(ii) Value based on retail sale price under section 4A, if applicable.
(iii) Tariff value fixed under Section 3, if applicable.

Valuation as per section 4 (AD VALOREM)
Where the duty of excise is chargeable on any excisable goods with reference to their value, then, such value shall be the, transaction value, on each removal of goods provided if all the following conditions are satisfied:
Conditions:
(i) The goods are sold by assessee (For Exceptions refer Rule No. 8, 4, 10(A) of Central Excise Valuation Rules, 2000)
(ii) Delivery should be made at the time and Place of Removal (For Exceptions refer Rule No. 7 & 5 of Central Excise Valuation Rules, 2000)
(iii) The assessee and buyer are not related (For Exceptions refer Rule No. 9 & 10 of Central Excise Valuation Rules, 2000)
(iv) The price is the sole consideration for the sale (For Exception refer Rule No. 6 of Central Excise Valuation Rules, 2000)
In any other case, the value shall be determined in such manner as may be prescribed.

Valuation based on Maximum Retail price (Section 4A)
The provision relating to duty based on MRP is dealt in Section 4A. Section 4A was introduced with effect from 14-5-1997 and today covers more than 100 Tariff headings.
Condition:
The goods are required to declare retail sale price on the packaged goods, under legal Metrology Act, 2009. The Government has notified such products for the purpose of this section.

What is meant by MRP?
MRP or Retail Sales Price is the maximum price at which the goods in packaged form maybe sold to the ultimate customer and includes all the costs to reach the point of sale as well as all taxes i.e. price should be the only consideration for sale.

What does MRP Include?
Such price includes the following:
• All taxes, local or otherwise,
• Freight, transport,
• Commission to dealers and
• Charges for advertisement,
• Charges for delivery, packing, forwarding and the like.
What is Definition of Retail Sale Price?
The retail sale price (RSP) has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

To which Goods does section 4A apply?
The said section would apply to those goods, which are covered under the Legal Metrology Act, 2009, or any other similar law for the purpose of declaring the retail sale price on the package thereof.

What is Transaction Value?
Transaction Value means the price actually paid or payable for goods, when it is sold, and includes, any amount charged for:
- Advertising and publicity,
- Marketing and selling,
- Storage,
- Outward handling,
- Servicing,
- Warranty, commission or any other matter.
But it does not include the amounts like Excise duty, sales tax and other taxes if actually paid or payable.

Who is Related Party?
The person shall be deemed to be related if:
(i) They are inter-connected undertaking;
(ii) They are relatives;
As per section 2(6) of the companies Act 1956
The following are relatives:
a. Member of HUF
b. Husband and wife
c. Person related to one another in the manner indicated
In the schedule enumerated 22 different relationship
Including step mother, daughter, brother, sister.
(i) Amongst them the buyer is a sub-distributor of such distributor.
(ii) They are so associated that they have interest directly or indirectly in the business of each other.

What is Place of Removal?
“Place of Removal” has been defined basically to mean a factory or a warehouse, and will include a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory.

What is Time of Removal?
In respect of excisable goods removed from depot, time of removal shall be deemed to be the time, when they are cleared from the factory.
Valuation

Maximum Retail Sale Price Declared on Goods 1100.00
Less: Abatement 40 % 440.00
Assessable Value 660.00
Excise Duty @ 8% 52.80
Education Cess 2% 1.06
Secondary & higher Education cess 0.53
Total duty Payable 54.00

Due Date and Manner of Payment

Due Dates of Payment

| Every assessee shall pay duty | On the goods removed from the factory or the warehouse during the month. | By the 6th day of the following month. (if the duty is paid electronically through internet banking)  
By the 5th day of the following month. (in any other cases)  
Except in the case of goods removed during the month of March, the duty shall be paid by the 31st march. |
| --- | --- | --- |
| Small scale industry | On the goods removed from the factory or the warehouse during the Quarter. | By the 6th day of the following the quarter, (if the duty is paid electronically through internet banking)  
By the 5th day of the following Quarter. (in any other cases)  
Except in the case of goods removed during the last Quarter, starting from the 1st day of January and ending on the 31st of March, for which the duty shall be paid by the 31st day of March. |

Some related points to payment

<table>
<thead>
<tr>
<th>Mandatory Payment</th>
<th>Where an assessee has paid “total duty of Rs. 10 Lakhs or more including the amount of duty paid by utilization of CENVAT CREDIT or by Personal Ledger Account(PLA) in the preceding financial year” shall thereafter, deposit the duty electronically through internet banking.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Made by cheque</td>
<td>If the assessee deposit the duty by cheque, then the day of presentation of the cheque in the bank, designated by the CBEC; for this purpose shall be deemed to be the date on which the duty has been paid, subject to cheque realization.</td>
</tr>
</tbody>
</table>

Note:

(i) If assessee fails to pay the amount within due date then he shall be liable to pay the outstanding amount with interest at the rate specified (i.e. 18% P.A.) by central government.

(ii) If payment is not made within 30 days from the due date, then he shall pay excise duty for each consignment at the time of removal, without utilizing the CENVAT CREDIT till the date the
assessee pays the outstanding amount including interest thereon and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences in these rules shall follow.

**Manner of Payment**

**Modes of Payment**

- PLA (Account Current)
- CENVAT
- INPUT (Note 1)
- CAPITAL GOODS (Note 2)
- INPUT SERVICE (Note 3)

**Account current and Cenvat account**

The duty can be discharged by debiting the Account Current (also referred to as Personal Ledger Account PLA) and by debit to the CENVAT Credit Account maintained by the assessee under the provisions of the CENVAT Credit Rules, 2004. The amount of duty deposited in the Bank is credited to the Account Current (Personal Ledger Account).

For payment of duty, a person first deducts the CENVAT available from the Excise liability and then pays the balance in a designated bank account i.e. referred to as PLA.

**Personal Ledger Account**

This is basically used in excise to maintain the entries of cash (Cheque or e-payment) deposit and payment of duty from this amount throughout the year. If the credit is less than payable duty then you have to deposit the balance amount in bank and put the entries in PLA register. The excise duty is paid through account current which is popularly known as PLA. The credit in PLA account is taken when duty is deposited through GAR-7 challan.

The form of PLA has been prescribed in the CBEC manual and according to that PLA contains the following details:

- Serial No. and date
- Details of credit like GAR-7 challan number, its date and amount
- Details of debit and credit balance.

**Note:** There is no restriction to maintain the minimum amount, which should be necessarily remain in the balance to credit of an assessee in his PLA.

**Procedure for Payment**

1. First of all login to web site [www.aces.gov.in](http://www.aces.gov.in) then enter in tab Central Excise.
2. Put the user name and password and click on the login.
3. To pay Excise Duty and Service Tax online, the Assessee has to enter the 15 digit Assessee Code allotted by the jurisdictional Commissionerate.
4. There will be an online check on the validity of the Assessee Code entered.
5. If the Assessee code is valid, then corresponding assessee details like Name, Address, Commissionerate code etc. as present in the Assessee Code Master will be displayed.
6. Based on the Assessee Code, the duty / tax i.e. excise duty or service tax to be paid will be automatically selected.
7. The Assessee is required to select the type of duty / tax to be paid by clicking on Select Accounting Codes for Excise or Select Accounting Codes for Service Tax depending on the type of duty / tax to be paid.
8. At a time the assessee can select upto six Accounting Codes.
9. The assessee should also select the bank through which payment is to be made.
10. On submission of data entered, a confirmation screen will be displayed. If the taxpayer confirms the data entered in the screen, it will be directed to the net-banking site of the bank selected.
11. The taxpayer will login to the net-banking site with the user id/password provided by the bank for net-banking purpose and enter payment details at the bank site.
12. On successful payment, a challan counterfoil will be displayed containing CIN, payment details and bank name through which e-payment has been made. This counterfoil is proof of payment being made.

What is Cenvat Credit?

The Cenvat Credit is duty paid on inputs, capital goods and tax paid on input services would be available to both the ‘manufacturers’ and ‘output service providers’. The duty paid on almost all inputs which are used in the manufacture of final products leviable to duty is available as credit. This is called the Cenvat Credit (earlier MODVAT). This amount can be used in lieu of cash to discharge the Central Excise Duty (now also called CENVAT).

Cenvat Credit is a scheme where the manufacturers or the output service providers are allowed a set off of the taxes paid on the inputs or the input services that are used while manufacturing the final products or providing the output service.

Note 1: The CENVAT Credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output services.

Note 2: The CENVAT Credit in respect of Capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year.

It is also be noted that CENVAT Credit in respect of Inputs/Capital goods may be taken by the provider of Output Service when the input/capital goods are delivered to such provider, subject to maintenance of documentary evidences of delivery and location of the inputs/capital goods.

However 100% CENVAT can be utilized in the same financial year in the following situations:

1. Removal of capital goods as such in the same financial year
2. In case of CVD3 (5) credit shall be allowed immediately on receipt of the capital goods in the factory of manufacturer.
3. If assessee is eligible to avail of the SSI exemption.
Note 3: The CENVAT Credit in respect of Input Service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan is received but subject to a condition of payment made in 3 months from the date of invoice.

But in case of Reverse Charge, Service Receiver may book the credit of service tax on or after the day on which “Payment” is made of value of service to service provider and service tax to the central government.

As per Rule 3(5) of Cenvat Credit Rules-2004

(Removal of Inputs, Capital goods AS SUCH)

When inputs or capital goods, on which CENVAT credit has been taken and such goods are removed as such from the factory, then an amount equal to the credit availed in respect of such inputs or capital goods shall be paid and such removal shall be made under the cover of an invoice.

But in case where manufacturer removes goods outside the factory for providing free warranty for final products then in that case, such payment shall not be required to be made.

Removal of Capital Goods as waste and scrap i.e. “After Use”

If the capital goods, on which Cenvat Credit has been taken, are removed after being used, whether as capital goods or as scrap and waste, the manufacturer shall pay an amount equal to the Cenvat credit taken on the said goods after being reduced by the percentage as specified in the rules. The specified percentages have been shown below:

1. For computers and computer peripheral
   - For each quarter in the first year @ 10% (Totaling upto 40% in first year)
   - For each quarter in the second year @ 8% (Totaling upto 32% in second year)
   - For each quarter in the third year @ 5% (Totaling upto 20% in third year)
   - For each quarter in the fourth & fifth year @ 1% (Totaling upto 4% in each year)

2. For capital goods, other than computers and computer peripherals @ 2.5% for each quarter.

Documents Required for Availing Cenvat Credit

- **INPUT & CAPITAL GOODS**
  - Domestic Input / Capital goods
  - Imported input / Capital goods

- **INPUT SERVICE**
  - Assessee purchased the goods from an importer
  - Assessee import the goods himself
Supporting Documents Required for Taking Credit of Duty Paid

Credit of duty paid on DOMESTIC inputs or capital goods
- Manufacturer invoice where goods are procured from his factory or his depot
- Invoice from premises of his consignment agent or from any other premises where goods are sold on behalf of him
- First stage dealer invoice (FSD)
- Second stage dealer invoice (SSD)

Credit of duty paid on IMPORTED inputs or capital goods

<table>
<thead>
<tr>
<th>In case of self imported</th>
<th>In case of purchase from an Importer /FSD/SSD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill of Entry</td>
<td>Importer invoice where goods are procured from his depot or from premises of his consignment agent</td>
</tr>
<tr>
<td>Certificate issued by appraiser of custom where goods have been imported by post</td>
<td>First stage dealer invoice</td>
</tr>
<tr>
<td></td>
<td>Second stage dealer invoice</td>
</tr>
</tbody>
</table>

Credit of Tax paid on input service
- Invoice of Input Service provider
- Invoice of Input Service Distributor
- GAR-7 Challan in case of reverse charge

Duties eligible for Cenvat Credit

<table>
<thead>
<tr>
<th>Basic Excise Duty</th>
<th>Duty of excise specified in First Schedule of CETA,</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Excise Duty</td>
<td>Duty of excise specified in Second Schedule of CETA, (this duty is imposed on few selected items like Pan masala, polyester, motor cars, etc.) * Basically SED has been merged with BED (Basic Excise Duty).</td>
</tr>
<tr>
<td>NCCD</td>
<td>National calamity Contingent duty leviable under finance Act 2001. (Only few items are subject to this duty like Pan masala, gutaka, cigarettes, jarda, mobile phones.</td>
</tr>
<tr>
<td>CVD 3(1)/3(3)</td>
<td>Additional duty leviable u/s 3(1) of the Custom Tariff Act, equivalent to the duty of excise specified above.</td>
</tr>
<tr>
<td>Health Cess</td>
<td>Additional excise duty leviable under Finance Act, 2005(Leviable on Pan Masala and Tobacco Products)</td>
</tr>
</tbody>
</table>
Following Duties shall not be eligible for Cenvat Credit

<table>
<thead>
<tr>
<th>Duty</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty on medical and toilet preparations</td>
<td>This duty is imposed under medical &amp; toilet preparations Act, 1955.</td>
</tr>
<tr>
<td>Additional duty on mineral products</td>
<td>This duty is imposed under mineral products Act.</td>
</tr>
<tr>
<td>Clean energy cess</td>
<td>This duty is imposed on coal lignite or peat.</td>
</tr>
</tbody>
</table>

Let us take an example of an Indian Manufacturer and an Importer to analyse the eligibility of CENVAT credit for a Manufacturer who is liable to pay Excise duty on his output.

Yarn ➔ Readymade Garments

![Diagram showing the transaction between Indian and US manufacturers]

**LOCAL INVOICE**

<table>
<thead>
<tr>
<th>In Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of Yarn</td>
</tr>
<tr>
<td>+ Excise Duty @ 10.3%</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>+ VAT @ 4%</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

See Note 1

**IMPORT INVOICE**

<table>
<thead>
<tr>
<th>In Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable Value</td>
</tr>
<tr>
<td>Basic Custom Duty @ 10%</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>CVD 3(1) @ 10%</td>
</tr>
<tr>
<td>Total (A)</td>
</tr>
<tr>
<td>(EC + SHEC) @ 3%</td>
</tr>
<tr>
<td>Total (B)</td>
</tr>
<tr>
<td>CVD 3(5) @ 4%</td>
</tr>
<tr>
<td>Total Value</td>
</tr>
</tbody>
</table>

See Note 2

Note 1:
Cenvat Credit available to be set off against the Excise duty liability here in this case will be Rs. 1030.

Note 2:
- No Credit of Basic Custom duty will be available
- Credit of CVD3 (1)/CVD3 (5) is fully allowed
- No credit of Education and Secondary& Higher Education Cess is allowed in case of import.
- CVD (Countervailing Duty) is a type of custom duty explained in Customs Law of this Book.

**What are Final products?**

Means *Excisable Goods* manufactured or produced from Input, or using input service.
What is Input?

Input means
1. all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes
   - lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product,
   - goods used as paint, or as packing material, or as fuel, or
   - goods for generation of electricity or steam  
     o used in or in relation to manufacture of final products or
     o for any other purpose, within the factory of production.
2. all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service.

Explanation 1: The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be eligible as an input for any purpose whatsoever.

Explanation 2: Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer.

What are Capital Goods?

Any tangible assets that an organization uses to produce goods or services such as office buildings, equipment and machinery.

Means
1. the following goods, namely:
   (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No 68.02 and sub-heading No. 6801.10 of the First Schedule to the Excise Tariff Act;
   (ii) pollution control equipment;
   (iii) components, spares and accessories of the goods specified at (i) and (ii);
   (iv) moulds and dies, jigs and fixtures;
   (v) refractories and refractory materials;
   (vi) tubes and pipes and fittings thereof; and
   (vii) storage tank, used -
     o in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
     o for providing output service.
2. motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;
What is Input Service?

Input Service means any service,
1. used by a provider of taxable service for providing an output service, or
2. used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation
   o to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,
   o advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs,
   o activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.

What is Output Service?

Means any taxable service provided by the provider of taxable service, to
- a customer,
- client,
- subscriber,
- policy holder or
- any other person,
as the case may be, and the expressions ‘provider’ and ‘provided’ shall be construed accordingly.

What are Exempted goods?

Means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty.

What are Exempted services?

Means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.

Who is Input Service Distributor?

Means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

Distribution of credit by Input Service Distributer (ISD)

ISD may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions:
a. The credit distributed against an invoice does not exceed the amount of service tax paid thereon;
b. No credit of service tax paid shall be allowed to unit which is exclusively engaged in manufacture of exempted goods or providing exempted services;
c. Credit of service tax related to services used in more than one unit shall be distributed proportionately on the basis of the TURNOVER of the respective unit to the sum total of the turnover of all the units to which the service relates.

**Export of Goods**

**What is Export?**

“Export” includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

**Export includes export to all countries except Bhutan.**

There are mainly two types of export procedure:

1. Export on payment of duty under Rule 18 of Central Excise Rules, **Rebate Of Duty**
2. Export without payment of duty under Rule 19 Central Excise Rules, **Export without payment of duty**

**Rebate of Duty (Rule 18 of Central Excise Rules 2002)**

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such-goods and the rebate shall be subject to such conditions or limitations.

Exporter can claim by way of refund, the duties paid on:

a. Finished excisable goods which have been exported
b. Materials used in manufacture of exported goods.

**Conditions for claiming Rebate under above Rule 18**

1. Amount of rebate claimed shall not be less than 500/-
2. Market price of excisable goods at the time of exportation is not less than the amount of rebate claimed.
3. Excisable goods shall be exported after payment of duty, direct from a factory/warehouse.
4. Export of goods is not prohibited under any law for the time being in force.
5. Excisable goods shall be exported within 6 months from the date of clearance from the factory/warehouse.

**Documents required for filing Rebate Claim under Rule 18**

1. A request on the letterhead of the exporter containing claim of rebate, A.R.E 1 numbers and dates, corresponding invoice numbers and dates on each A.R.E 1 and its calculations.
2. Invoice issued under rule 11.
4. Self attested copy of Bill of Lading.
5. Original copy of the A.R.E 1.
6. Proof of duty payment.
7. Disclaimer certificate. (in case claimant is other than exporter)

**Export without payment of duty (Rule 19 of Central Excise Rules)**

1. Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.
2. Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioners.

**Conditions for export without payment of duty**

(Rule 19 of Central Excise Rules)

1. Merchant Exporter shall furnish a bond in Form: B-1 (General Bond) (Bond shall be executed with AC/DC) equal to the duty chargeable and shall be backed with surety and security.
2. Manufacturer-Exporter may also furnish letter of undertaking in form UT-1 instead of Bond.

**Refund of duty paid for export under bond (Rule 18)**

- Refund Application in Form as prescribed under Notification.
- Relevant extracts of the records maintained under CENVAT Credit Rules in respect of input duty credit taken
- Statement/Documents to show use of inputs/input services in the exported goods.
- Original copy of ARE-1
- Invoice issued under Rule 11 of CER, 2002
- Self attested copy of Shipping Bill (EP copy) and Bill of lading/ Airway Bill
- Disclaimer certificate (in case claimant is other than exporter)
Note 1: When an importer imports goods and sale in local market then he can be allowed credit of CVD3 (1) and CVD3 (5) under Cenvat credit rules 2004 paid at the time of importing goods.

Note 2: When an importer import goods and export the same then provision related to duty drawback under Customs Act shall apply.

Note 3: When goods are purchased locally and sold in local market then input credit of Cenvat can be utilized for payment of excise duty.

Note 4: When goods are purchased locally and exported without payment of duty then Refund can be claimed of the duties paid at the time of purchase under Rule 5 of Central Credit Rules 2004.

Refund of Cenvat Credit

A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provide an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the following formula:

Refund Amount = \( \frac{(Export \ Turnover \ of \ Goods + Export \ Turnover \ of \ Services)}{Total \ Turnover} \times Net \ Cenvat \ Credit \)

*Net Cenvat Credit* means total CENVAT credit availed in inputs and input services by the manufacturer or the output service provider reduced by the amount reversed during the relevant period.

“Export Turnover of Goods” means the value of final products and intermediate products cleared during the relevant period.

“Export turnover of Services” means the value of the export service calculated in the following manner, namely:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments received during the relevant period for export services</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Export services whose provision has been completed for which payment has been received in advance in any period prior to the relevant period</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: Advances received for export services for which the provision of services has not been completed during the relevant period</td>
<td>XXX</td>
</tr>
</tbody>
</table>

“Total Turnover” means sum total of value of:

a. All excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

b. Export Turnover of services determined as above and the value of all other services, during the relevant period; and

c. All inputs removed as such against an invoice, during the period for which the claim is filed.

*Provided that Refund may be claimed under this rule, within a period of one year from such commencement.

No Cenvat Credit is final product/service exempt

Cenvat credit is not available if inputs or input services are used for manufacture of exempted goods or provision of exempted output services
Partial manufacture/provision of exempted products/services [Rule 6(3) of Cenvat Credit Rules]

Cenvat credit of inputs and input services is not available if final product/output service is exempt from excise duty/service tax. In case of manufacturer manufacturing both exempt and dutiable goods (and service provider providing taxable as well as exempt services), it may happen that same inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has following options:

Rule 6 now provides various options under which the credit attributable towards exempted goods and exempted services can be reversed. The Options can classified under 2 heads:

- Maintain separate books of accounts
- No separate books of accounts

Maintain separate accounts

Rule 6(2) The manufacturer or provider of output service should maintain separate accounts for:

a. the receipt, consumption and inventory of inputs used:
   (i) in or in relation to manufacture of exempted goods;
   (ii) in or in relation to manufacture of dutiable final products excluding exempted goods;
   (iii) for the provision of exempted services;
   (iv) for the provisions of output service excluding exempted services; and

b. the receipt and use of input services:
   (i) in or in relation to manufacture of exempted goods and their clearance upto the place of removal;
   (ii) in or in relation to manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
   (iii) for the provision of exempted services;
   (iv) for the provisions of output service excluding exempted services and should take credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

In other words, the credit should be allowed only of the inputs/input services:

a. Used in or in relation to the manufacture of dutiable final products, excluding exempted goods. (In case of input service, the credit relating to clearance of such final products upto the place of removal should also be available); and
b. used for the provision of output services, excluding exempted services

In this option the use of costing standards to bifurcate the input services could also be an option which can be examined with intimation to the revenue. No separate accounts – Rule 6(3) With effect from 01.04.11, changes have been brought about in Rule 6 of Cenvat Credit Rules 2004 to cover a scenario where the assessee does not wish to maintain separate accounts. The rule now gives the assessee three options:

a. Pay an amount equal to 6% (upto 01.04.2012 it was 5%) of value of exempted goods and exempted services. or
b. Pay an amount as determined by the formula prescribed in Rule 6(3A). The formula would be applicable where payment of 6% spoken of above is not opted for.

c. Maintain separate accounts for inputs and proportionate reversal for input services.

**Cenvat credit on capital goods** – If capital goods are partly used for exempted goods and party for dutiable final products, entire Cenvat credit of duty paid on capital goods is available. Cenvat credit of duty on capital goods is not allowable only when it is *exclusively* used for manufacture of final products which is exempted [rule 6(4)]

**No reversal or payment of amount in certain cases** – If excisable goods are removed to SEZ, EOU, EHTP, STP, UN agencies or for exports or removal of gold or silver arising in manufacture of copper or zinc by smelting, payment of 5% ‘amount’ is not required [rule 6(6)].

**Cenvat credit of service tax in case of supplies made by DTA to EOU** – Supplies from DTA to EOU are entitled to Cenvat credit of service tax paid – para 6.11(v) of FTP.

### Filings of Returns

**Returns to be filed under Central Excise**

<table>
<thead>
<tr>
<th>Return Form</th>
<th>Assessee</th>
<th>Frequency To File Return</th>
<th>Date of Filing/Periodicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>ER-1</td>
<td>Return by Non-SSI</td>
<td>Monthly Return</td>
<td>Within 10days to SCE</td>
</tr>
<tr>
<td>ER-2</td>
<td>Return of 100% EOU</td>
<td>Monthly Return</td>
<td>Within 10days to SCE</td>
</tr>
<tr>
<td>ER-3</td>
<td>Return by SSI</td>
<td>Quarterly Return</td>
<td>Within 10days to SCE</td>
</tr>
<tr>
<td>ER-4 (Annual Financial information statement)</td>
<td>Assessee paying total excise duty &gt;Rs. 100 lakh</td>
<td>Annually Return</td>
<td>30th Nov annually to SCE</td>
</tr>
<tr>
<td>ER-5 (Annual Information Statement)</td>
<td>Assessee paying total excise duty &gt;Rs. 100 lakh or more and manufacturing specified goods.</td>
<td>Annual Return</td>
<td>30th April annually to SCE</td>
</tr>
<tr>
<td>ER-6 (Return of Receipt And Consumption Of Principal Inputs)</td>
<td>Assessee paying total excise duty &gt;Rs. 100 lakh or more and manufacturing specified goods.</td>
<td>Monthly Return</td>
<td>Within 10 days to SCE</td>
</tr>
<tr>
<td>ER-7 (Every Assessee except Biri, Match Boxes, Reinforced concrete pipes)</td>
<td>Annual Installed Capacity Statement</td>
<td>Annual Return</td>
<td>30th April Annually</td>
</tr>
</tbody>
</table>
ER-8 (where an assessee is availing the exemption under N/N-1/2011 or N/N 12/2012 is availed and does not manufacture any other goods.)

| Form A | An assessee availing area based exemption | Quarterly Return of production and removal of goods and relevant particulars. | Within 20th days after the close of the quarter to which the returns relates. |

**How are the returns scrutinized by officers?**

- The preliminary scrutiny of return would be done by the system.
- The scrutiny would be done based on the risk involved.
- Then the returns would be forwarded to the Joint/Additional commissioner.
- The Commissioner should not select those units which are to be mandatorily audited.
- Based on the checklist set out, the scrutiny would be done and non compliance issues would be raised.
- It may also lead into referrals for audit and anti-evasion.

**Assessment**

![Assessment Diagram](image)

**Assessments & Audits**

Before each removal, whether outside the factory of manufacture or production or for captive consumption, duty has to be assessed on the excisable goods.

**Self-Assessment**

Self assessment means duty liability is required to be determined by assessee himself, at the time of removal of excisable goods and discharge the same.

Provided that in case of cigarettes the Superintendent of central excise/Inspector shall assess the duty payable before removed by the assessee.

**Provisional Assessment**

Provisional assessment means when the assessee is unable to determine the value of excisable goods or the rate of duty applicable thereto.
Assessee may request to AC/DC in writing giving reasons for payment of duty on provisional basis and value as may be specified by him.

The assessee is required to execute a bond in proper form with such surety and security, in such amount as the AC/DC deem fit, binding the assessee for payment of difference between the amounts of duty provisionally assessed.

What is meant by Audit?
Audit refers to the scrutinizing and verification of documents, records and transactions in order to ensure that the facts are true and fair. It also helps to draw conclusions regarding the veracity of records of transactions and the effectiveness of systems prevailing in the organization.

What is meant by Audit under Central Excise?
From the Central Excise point of view audit means scrutinizing of the records of assessee and the verification of the actual process of receipt, storage, production and clearance of goods with a view to check whether the assessee is discharging the central excise duty in accordance with law and following the central excise procedures faithfully.

What are the Different Types of Audit?
The revenue departmental audits are following types:

b. Valuation Audit under Section 14A
c. Cenvat Credit Audit under Section 14AA

What is Scope of Excise Audit 2000?
The Central Board of Excise and Customs (CBEC) made this audit applicable in case of all assessee paying cash duty of over Rs. 1 crore per annum.

a. At present, in addition to audit of such units, those units which pay excise duty in cash of Rs. 10 lakhs or more but less than Rs.1 Crore would be audited once in two years.
b. At least 20% of the Units paying cash duty less than Rs.10 lakhs are to be audited in a year.

What is Coverage of Special Audits under sections 14-A and 14-AA of Central Excise Act?
Special audits under sections 14-A and 14-AA could be undertaken as per the order of the Excise officers in respect of excise valuation or for checking the validity and accuracy of Cenvat credits availed by an assessee.

a. Under Section 14A an officer not below the rank of the Assistant Commissioner /Deputy Commissioner of CE could order a manufacturer to get the accounts of his factory, depots, office, or other places audited by a Cost Accountant/Chartered Accountant.
b. Such auditor would be nominated by the Chief Commissioner of Central Excise.
c. The direction to get audit done shall be only after getting permission from the Chief Commissioner of Central Excise.
d. The audit report should be submitted to such officer within 180 days including the period of extension.

What is meant by Appeals?

Appeal is a remedy available to the aggrieved party by the decision or order passed by the authority, wherein the higher authority decides about the correctness of the said decision or order.

In case of orders passed by officers lower than the rank of Commissioner of Central Excise, the first appeal lies to the Commissioner (Appeals) and thereafter to the Appellate Tribunal and finally to the Supreme Court.

But where the order of the Tribunal does not relate to determination of rate of duty or value of goods, a reference has to be made to the High Court, instead of Appeal made to Supreme Court.

The Central Government has also got revisionary powers where it says that any person aggrieved by any order passed by the Commissioner (Appeals) may apply to the central government for revision of the order.

Does duty and penalty have to be deposited as a pre-condition to Appeal?

Where there is an order of demand for duty and penalty on which the appeal is preferred it is a pre-condition that the duty and penalty to be deposited. However the appellate authority may dispense with such pre-deposit of the duty demanded or penalty levied on the reason that those pre-deposit would cause undue hardship to such person.

The law relating to appeal can be summarized as under:

<table>
<thead>
<tr>
<th>Order passed by</th>
<th>Appeal lies to</th>
<th>Form to be used</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All officers upto and including the Additional Commissioner</td>
<td>Commissioner (Appeals) Within sixty days of communication of order</td>
<td>EA1 (assessee) EA2 (Revenue department)</td>
</tr>
<tr>
<td>2. Commissioner / Commissioner (Appeals) Note: except where order of Commissioner (Appeals) relates to loss of goods, rebate on exports/exports in bond (other than Nepal/ Bhutan) revision lies to Central Government</td>
<td>Appellate Tribunal (within 3 months of communication of order sought to be appealed against)</td>
<td>EA3 – Cross objections to EA3 to be filed in EA4 by opposing party EA5 for application by Depart-Men</td>
</tr>
<tr>
<td>3. Appellate Tribunal (not involving rate of duty or valuation)</td>
<td>High Court (reference to High Court) Within 180 days of receipt of order</td>
<td>EA6 (Appellant) EA7 (cross objections)</td>
</tr>
</tbody>
</table>
4. Appellate Tribunal (relating to rate of duty / valuation) | Supreme Court | No specified form
---|---|---
Within sixty days from the date of the order sought to be appealed against or within 60 days of receipt of order whichever is later

5. Commissioner (Appeals) relating to loss of goods in transit, rebate on exports, export under bond (other than Nepal/ Bhutan) | Government of India (Revisionary Authority) | EA 8
Within 3 months of receipt of order

An appeal to the Appellant Tribunal shall be in the prescribed form and along with the following fee:

<table>
<thead>
<tr>
<th>Amount of duty/penalty demanded</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 5,00,000</td>
<td>1,000</td>
</tr>
<tr>
<td>More than 5,00,000-upto 50,00,000</td>
<td>5,000</td>
</tr>
<tr>
<td>More than 50,00,000</td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Procedure for Advance Ruling under Central Excise**

**What is Advance Ruling?**

Advance Ruling means determination of question of law or fact, regarding liability to pay duty in relation to an activity proposed to be undertaken, by the Authority.

**Who is Applicant under Advance Ruling?**

1. A non-resident setting up a joint venture in India in collaboration with a non resident or a resident; or
2. A resident setting up a joint venture in India in collaboration with a non resident; or
3. A wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
4. A joint venture in India;
5. A resident falling within any such class or category of persons, as the Central Government may specify, by notification in official Gazette.

**Who is “Authority” under Advance Ruling?**

“Authority” means the authority for Advance Rulings, constituted by the central government.
The “Authority” shall consist of following members who are appointed by the central government.

a. A chairperson who shall be retired judge of Supreme Court and
b. The officer of Indian custom and excise service, qualified to be a Member of the Board and
c. The officer of Indian Legal Service; qualified to be additional Secretary to Government of India.

**Powers of the Authority**

The Authority shall hear and determine applications, made under Section 23(1) of Central Excise Act and such other applications, petitions and representations of an incidental or ancillary nature for a complete and effective disposal of the applications.

**Power to remove difficulty**

If there is any difficulty in giving effect to any order/advance ruling of the Authority, the authority either suomotu or on a petition made by the applicant or the Commissioner may, within a period of three months pass orders to remove such difficulties.

**Reopening of the hearing**

The Authority may reopen the hearing of any case, before pronouncement of its order/advance ruling, for sufficient cause.

**Procedure for filing applications**

An application shall be submitted in Form – AAR (CE) of the Central Excise (Advance Rulings) Rules, 2002

It must be filled up in quadruplicate and presented by the applicant in person or by an authorized representative to the Secretary or any other officer authorized by Secretary in this behalf or sent by registered post or by courier service or by speed post addressed to the Secretary along with a fee of two thousand five hundred Indian rupees in the form of demand draft drawn in favour of “Authority for Advance Rulings”

**Submission of additional facts before the Authority**

The Authority either suomotu or on a petition made to this effect may permit or require the applicant or the Commissioner to submit such additional facts as may be necessary to enable it to pronounce its advance ruling. Amendment of a question on which advance ruling is sought on a petition made by an applicant, the Authority may permit amendment of a question, in appropriate cases.

**Continuation of proceedings after the death, etc. of the applicant**

Where the applicant, being an individual, dies, or being a company or association of persons, whether incorporated or not, is wound up or dissolved or disrupted or amalgamated or succeeded to, by any other person or otherwise comes to an end, the application shall not abate and the proceedings in the application may be continued by the executor, administrator, liquidator, receiver or assignee or other legal representative of the applicant, as the case may be, on a petition made in this behalf, if the Authority considers that the circumstances so justify.
**Cases where application of Applicant can be rejected by the Authority**

(i) Where the question raised in application is already pending IN THE APPLICANT CASE before any Central Excise officer, the Appellate Tribunal or any Court;

(ii) Where the question raised is the same as in a manner already decided by any Appellate Tribunal or any court.

**Applicability of Advance Ruling**

Decision given by Advance Ruling is binding on the Applicant who sought it for matters specified in the application and on the Commissionerate in respect of Applicant.

Note: No Appeal can be filed against advance ruling

**Confiscation and Penalty**

**Section 11AC**

Mandatory penalty equal to the duty not levied or paid or short levied or short paid or erroneously refunded is liable to be imposed, if the same is by reason of fraud or suppression of facts or misstatement or contravention of the provisions of the Act/Rules with intent to evade payment of duty.

However, in the event of payment of the duty and interest within 30 days of the communication of the order the penalty shall be 25% of the duty subject to the condition that the reduced penalty is also paid within the said period of 30 days.

**Rule 15 (1) of the Cenvat Credit Rules, 2004**

A person who takes Cenvat credit in respect of inputs or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods has been paid, as indicated in the document accompanying the inputs or capital goods or contravenes any of the provisions of the Cenvat Credit Rules in respect of any inputs or capital goods shall be liable to a penalty not exceeding the duty on the said excisable goods or Rs. 2000/- whichever is greater. The said excisable goods are also liable for confiscation.

**Interest and Penal Provisions**

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Contravention</th>
<th>Quantum of Interest/ Penalty/ Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 9</td>
<td>• Contravention of Sec. 8 - Restriction on possession of excisable goods or variety of such goods as notified; • Transport of prohibited excisable goods; • Failure to obtain registration • Evasion of duty payment;</td>
<td>a. If duty involved exceeds Rs.1 lakh: upto 7 years &amp; Fine Imprisonment for a minimum period of 6 months. Imprisonment for lesser period is permissible, if the Court records special and adequate reasons for such reduction.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>Sec. 9AA</td>
<td>Offences by companies</td>
<td>By the person in charge and responsible for the conduct of the business of the company shall also be liable for the offence. Applicable provisions as in the case of individuals.</td>
</tr>
<tr>
<td>Sec. 11A</td>
<td>Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded</td>
<td>Penalty equal to 25% of the amount involved.</td>
</tr>
<tr>
<td>Sec. 11AA</td>
<td>Nonpayment of duty determined by an order issued under Section 11A (2).</td>
<td>Interest @ 15% for the period from the date of such order till the date of payment of such duty</td>
</tr>
<tr>
<td>Section 11BB</td>
<td>Delay in sanction of refund beyond 3 months time from date of receipt of refund claim.</td>
<td>Interest @ 6% is payable</td>
</tr>
<tr>
<td>Section 11DD</td>
<td>Interest on amounts collected in excess of duty</td>
<td>Interest @ 15%</td>
</tr>
<tr>
<td>Section 11DDA</td>
<td>Protection of revenue interest (Provisional attachment)</td>
<td>Provisional attachment valid for six months. Attachment period extendable by Chief Commissioner up to 2 years.</td>
</tr>
<tr>
<td>Section 22</td>
<td>Vexatious search or seizure by Central Excise officers without reasonable grounds.</td>
<td>Fine upto Rs.2000/- Imprisonment upto 2 years or fine or both on any person for giving false information causing arrest or search.</td>
</tr>
<tr>
<td>Section 23</td>
<td>Failure/refusal to perform duties of his office by any Central Excise officer</td>
<td>Imprisonment upto 3 months or fine upto 3 months pay or both.</td>
</tr>
<tr>
<td>Section 37E</td>
<td>Proceedings or prosecutions under Central Excise Act in public interest.</td>
<td>Publication of names and particulars of persons. No publication relating to penalty till appeal is filed/ disposed.</td>
</tr>
</tbody>
</table>
### Under the Central Excise Rules, 2002:

<table>
<thead>
<tr>
<th>Rule 8</th>
<th>Failure to pay duty by due date</th>
<th>Interest @ 13% from first day after due date till payment of dues.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Default for more than 30 days</td>
<td>Consignment wise payment of duty without utilization of the Cenvat credit till payment of dues with interest.</td>
</tr>
<tr>
<td>Rule 25</td>
<td>Removal of goods in contravention of Central Excise Rules/Notifications issued there under; Non-accounting of excisable goods; Manufacture without applying for Registration Certificate; Contravention of any provision under Central Excise Rules/Notifications issued there under such rules.</td>
<td>Confiscation of goods and Penalty upto duty amount or Rs. 2000 whichever is greater.</td>
</tr>
<tr>
<td>Rule 26</td>
<td>Possession, transport, deposit, keeping, concealing, selling or purchasing of goods liable for confiscation.</td>
<td>Penalty upto duty amount or Rs.2000/- whichever is greater.</td>
</tr>
<tr>
<td>Rule 26</td>
<td>Issue of Excise invoice without delivery of goods or abetment in making such invoice or issue of such document by which ineligible benefit like Cenvat credit is likely to be taken or has been taken.</td>
<td>Penalty upto such ineligible benefit or Rs. 5000/- whichever is greater.</td>
</tr>
<tr>
<td>Rule 27</td>
<td>Breach of rules for which no penalty is separately provided.</td>
<td>Penalty upto Rs. 5000/- and confiscation of goods.</td>
</tr>
</tbody>
</table>

### Under the Cenvat credit Rules, 2004:

| Rule 14 | Availment of Cenvat credit wrongly or erroneously refund. | Interest payable along with such credit amount and provisions of Section 11A and Section 11AB applicable. |
| Rule 15 | Wrong availment of Cenvat credit or contravention of CCR in case of inputs and capital goods. | Penalty of Rs. 2000 or upto duty amount, whichever is greater and confiscation of goods. Penalty under Section 11AC is also payable, if credit availed is due to fraud, collusion, suppression etc with intent to evade duty payment. |
| Rule 15 | Wrong availment of Cenvat credit or contravention of CCR in case of inputs | Penalty upto Rs. 2000/ penalty as per Section 78 of Finance Act, 1994 also payable, if credit availed is due to fraud, with intent to evade tax payment. |
| Rule 15A | Contravention of CCR for which there is no specific penalty | Penalty upto Rs. 5000/- |
Disputes and their Resolution

When Could Demand arise under Central Excise?

Demand of Duties:
The demand under this provision arises when any duties of excise

- has not been levied; or
- has not been paid; or
- the duty is short levied; or
- is short paid or
- erroneously refunded.

Is show cause notice mandatory to be issued to make demand?
Yes, for making such demand of differential duty, the Central Excise Officer shall serve the show cause notice. A proceeding starts with the issue of a Show Cause Notice (SCN) to the assessee. The SCN gives the assessee an opportunity of rebutting and representing his case.

What is the Time limit for Serving Show Cause Notice?
Where the demand involves fraud or collusion or willful mis-statement or suppression of facts or contravention of any provisions with an intent to evade payment of duty - 5 years from relevant date. In other cases - 1 year from relevant date. Where the service of notice is stayed by court order, the period of such stay would be excluded in computing this time limit (both 1 year as well as 5 years).

When would the invocation of extended period not be applicable?
The extended period can be invoked under the Central Excise Act, where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. When there is no intention to evade the payment of duty, the question of invoking the extended period of limitation does not arise.

How to Reply to Demand Notice?

- The date of the communication of demand to the manufacturer should be noted and the proof of the same should be retained.
- The Demand Notice may be checked by assessee to ensure that there are no errors in the same, and is issued within 1 year. If SCN is proper in all respects the amount may be debited or paid in cash and revenue department should be intimated with the compliance.
- In some cases it could be possible that the demand is unjustified. In such cases, the manufacturer may choose to ignore the said notice. However it would be better to communicate to the revenue department in writing asking them to explain on what grounds and under which provisions of the law the demand / reversal is sought to be made.
• The manufacturer may, if there appears to be confusion in understanding, provide the reasons why the said demand is not tenable. He should include all material facts on which he feels that the demand is not proper.
• As the notice is not a Show Cause Notice he would be replying to the officer who issued the notice.
• If the revenue department does not agree and goes ahead to issue a Show Cause Notice the assertions set out in reply to demand notice by manufacturer would be required to be rebutted by it.

**What is the rate of interest applicable where a person is liable to pay demand?**

If the demand, is raised on the person who is liable to pay duty then he also have to pay interest at the notified rate of 18% and the interest would be payable from the first day of the month succeeding the month in which duty was supposed to be paid or refunded as the case may be.

In case the amount determined is either increased or decreased by Commissioner (Appeals) or CE-STAT or Court as the case may be, then the amount of interest payable would also be determined accordingly.
Settlement Commission

Object: - Out of Court settlement of dues
(to avoid lengthy and costly Litigation)
- Quick & easy settlement of Disputes

Eligible Person
- Assessee
- Importer/Exporter
- Any other person

Case should be pending before Adjudicating Authority on the date of application.
Value of case - Should be more than 3 Lakhs.
It should be normal case.
If Goods, Books of A/C or other docs have been seized then application should be made after 180 days of such seizure.
Application should be made along with fees of Rs. 1000/-
Note: Application once made cannot be withdrawn.
Pay duty+ interest (as admitted by him)

Benefit of Such disclosure before Settlement Commission
Settlement commission may reduce or waive off fine, penalty, (Not Interest duty) & can grant immunity from prosecution under CE/CUSTOM law (not from IPC)

Assessee has to make a true & fair disclosure of his duty liability which has not been disclosed

CCE

Settlement Commission
Powers to Grant Exemption from Duty (Section 5)

Central Government is satisfied, it may grant exemption from duty

ABSOLUTE EXEMPTIONS i.e. (Unconditional)

- 100% Exemption
  - Mandatory to Avail
- Partial Exemption i.e. 50%, 80%
  - Optional to Avail

CONDITIONAL EXEMPTION

- 100% Exemption
  - Mandatory to Avail
- Partial Exemption i.e. 50%, 80%
  - Optional to Avail

Central Excise Tariff Act 1985 (CETA)

What is the relevance of CETA?
CETA is basically known as Central Excise Tariff Act-1985. An Act to provide for tariff rates for Central Duties of Excise,

It contains the rates at which duties of excise shall be levied under the Central Excise Act-1944.

Why there is a need of CETA?
There are thousands of varieties of goods manufactured in India and all goods cannot carry the same RATE or AMOUNT of duty and it is not possible to identify all the products individually it is therefore necessary to identify numerous products through Groups And Sub-Groups and then decide a Rate of Duty.

Hence we required tariff codes of items at which, rates are determined for a particular item.

To what extent and commencement, CETA is applicable?
The Act extends to whole of India. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

The rates at which duties of excise shall be levied under the Central Excise Act, 1944 (1 of 1944) are specified in the First Schedule and the Second Schedule.
Constituents of Central Excise Tariff Act, 1985

Central Excise Tariff Act (CETA) is based on International Convention of HSN i.e. harmonized system of nomenclature/harmonized commodity description and coding system.

Under CETA there is Classification of Goods which means—determination of heading or subheading under which a particular product will be covered.

The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 91 chapters (in fact 96 chapters out of which 5 are blank) and specific code is assigned to each item. There are over 1,000 tariff headings and 2,000 sub-headings.

Hence there is 8 digit Coding system introduced under Central Excise Tariff Act.

CETA contains two schedules:

The first schedule gives basic excise duties (i.e. Cenvat duty) leviable on various products.

Second schedule gives list of items on which special excise duty is payable.

Sections and Chapters of CETA

Central Excise Tariff Act is divided in 20 sections. Each of the sections is related to a broader class of goods e.g. Section I is ‘Animal products’

Section divided in Chapters

Each of the sections is divided into various Chapters and each Chapter contains goods of one class.

For example, Section XI relates to Textile and Textile Articles and within that Section, Chapter 50 is Silk.

Chapter Notes - Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter.

Groups and Sub-groups within the Chapter - Each chapter is further divided into various headings depending on different types of goods belonging to same class of products.

For example, Chapter 50 relating to Silk is further divided into 5 headings. 50.01 relates to Silk worm cocoons, 50.02 relates to raw silk, 50.03 relates to silk waste, 50.04 relates to silk yarn and 50.05 relates to woven fabric of silk.

For example 5004.11 means silk yarn containing 85% or more by weight of silk or silk waste, 5004.19 means containing less than 85% by weight of silk or silk waste.

Every four-digit code is called a ‘Heading’ and every six digit code is called a ‘subheading’ and 8-digit code is called a ‘Tariff Item’.

<table>
<thead>
<tr>
<th>XX</th>
<th>XX</th>
<th>XX</th>
<th>XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>68</td>
<td>17</td>
<td>50</td>
<td>13</td>
</tr>
</tbody>
</table>

 Chapters    Heading    Notes    Tariff Item
Six Digit classification - All excisable goods are classified using 4 digits system and 2 more digits are added for further sub-classification whenever required. In above example, first two digits i.e. ‘50’ related to the Chapter Number, next two digits e.g. 01 or 02 relate to heading of the goods in that chapter and last 2 digits indicate subheading.

Coding of Single and Double dashes - Single dash (-) at the beginning of description indicates a group, while two dashes (- -) at the beginning indicate a sub-group.

The single dash (-) indicates sub-classification of article covered by the heading, while double dash (- -) is the sub-classification of the preceding article which has single dash (-) i.e. it is a sub-sub-classification.
SERVICE TAX LAW
Learning Objectives

1. Introduction to Service Tax in India
2. Constitution of service tax
3. Administration of service tax
4. Constituents of Service Tax
5. Registration
6. Invoice & Records under service tax
7. Concept of consideration and valuation of Service tax
8. Point of Taxation Rules
9. Reverse Charge
10. Place and Provision of Services Rules 2012
11. Manner and due date of Payment
12. Negative list, Mega exemption Notification, Declared services
13. Filing of Returns
14. Assessment
15. Demand and Penalties
16. Appellate Procedure

Introduction to Service Tax in India

The genesis of service tax is the recommendations made in 1990’s by the Tax Reforms Committee headed by Professor Dr. Raja J. Chelliah.

Based on the above recommendations, Dr. Manmohan Singh, the then Union Finance Minister, introduced the concept of service tax in F.Y. 1994-95 w.e.f. 01.07.1994.

Initially service tax was imposed only on three services i.e. telephone, non-life insurance and stock brokers and charged service tax @ 5% on such said services. Slowly and gradually the Government of India has extended the applicability of service tax on most of the services which has been explained later.

Selective Approach/Comprehensive Approach to Service Tax

Every country has a taxation system for services adopting either a Comprehensive Approach or a Selective Approach.

Under Comprehensive Approach all services are made taxable and a list is given in case some services are to be exempted and such list is termed as “Negative List”.

Under Selective Approach, only selective services are subjected to service tax.

While most of the developed countries levy tax on all the services providing very few and limited exemptions, most of the developing countries have opted to levy tax on selected services only.

Constitution of Service Tax

The Government derives its power to levy taxes from Constitution of India. As per article 265, no tax shall be levied or collected except by authority of law. As per Article 246, of the Constitution of
India, Schedule VII has mentioned the matters on which Central Government and State Government can make laws. Such matters are divided into three categories.

**List – I:** Union List (It contains the matters in respect of which only the Central Government can make Law). (Total Entries 97)

**List – II:** State List (It contains the matters in respect of which only the State Government can make law). (Total Entries 66)

**List – III:** Concurrent List (It contains the matters in respect of which both the Central Government and the State Government have power of legislation). (Total Entries 46)

Initially there was no specific entry in the Union List for levying service tax. Service tax was levied by the Central Government by drawing power from **Entry 97 of the Union List. Entry 97** is a ‘residuary entry’ in List-I, which has been reproduced below:

“97 – Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.”

The ‘residuary entry’ provides wide power to the Central Government in respect of taxation of the subjects not mentioned in the Lists given by the constitution.

Entry 92C was introduced in the VII schedule in the Union List with effect from 07.01.2004 vide article 268A. **Entry 92C reads as under:**

“92C – Taxes on services”

**Administration of Service Tax**

Ministry of Finance has two main Departments

1. Department of Revenue
2. Department of Expenditure

All the taxes are covered under the Department of Revenue and the Department of Revenue have two Boards of Taxes:

1. Central Board of Direct Taxes (CBDT)
2. Central Board of Excise and Customs (CBEC)

Service Tax is administered by CBEC and the administration of service tax is as given below in the descending (decreasing) order:

1. Central Board of Excise and Customs (CBEC)
2. Chief Commissioners of Central Excise (Chief CCE)
3. Commissioners of Central Excise (CCE)
4. [Director General of Service Tax (Co-coordinator between 1 & 3)]
5. Joint Commissioner/ Additional Commissioner
6. Assistant Commissioner/ Deputy Commissioner
7. Superintendent of central excise/ Inspector
Constituents of Service Tax

Sources of Service Tax Law are as given below:

1. Finance Act, 1994
2. Rules
3. Notifications
4. Circulars
5. Trade Notices

1. **Finance Act, 1994**
   In the year 2004, the provisions relating to charging of “Education Cess” on the service tax were made applicable through Chapter VI of the Finance (No.2) Act, 2004.
   Thereafter “Secondary and Higher Education Cess” was levied through Chapter VI of Finance Act, 2007.

2. **Rules on Service Tax**
   Section 94/96-I of Finance Act, 1994 grants power to the Central Government to make rules for service tax. Central Government has made rules as given below:
   (i) Service Tax Rules, 1994
   (ii) Point of Taxation Rules, 2011
   (iii) Service Tax (Determination of Value) Rules, 2006
   (iv) Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.
   (v) Export of Service Rules, 2005
   (vi) Service Tax Return Preparer Scheme, 2009
   (vii) Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007
   (viii) Service Tax (Registration of Special Category of Persons) Rules, 2005
   (ix) CENVAT credit Rules, 2004

3. **Notifications on Service Tax**
   Section 93, 94, 96-I of Finance Act, 1994 empowers Central Government to issue notifications to exempt any service from service tax.

4. **Circulars and office letters on Service Tax**
   The Central Board of Excise and Custom has issued circulars and instructions to explain scope of taxable services and the scheme of service tax administration.

5. **Trade Notices on Service Tax**
   Trade notices are issued by the commissioners for effective administration of service tax law. The trade notices are circulated among the field officers and also copies are given to Trade Associations.
Note on Extent, Commencement and Application of Service Tax

Extent, Commencement and Application Section 64


Thus, services provided in the state of Jammu and Kashmir are not liable to service tax.

Service tax will not be payable if service is provided in Jammu & Kashmir, however, if a person from Jammu & Kashmir provides services outside Jammu & Kashmir, the service will be liable to service tax under the concept of Reverse Charge which has been explained later on.

Merely because the office of the service provider is situated in Jammu & Kashmir, it does not mean that service is provided in Jammu & Kashmir.

Services provided within the Territorial Waters will be liable to service tax, as levy of service tax extends to whole of India except Jammu and Kashmir and ‘India includes territorial waters’.

Indian territorial waters extend up to 12 nautical miles from the Indian land mass. (1 nautical mile = 1.852 km)

The provisions are applicable even in the Exclusive Economic Zone of India i.e. the provisions are applicable up to 200 nautical miles from the baseline (Notification no. 1/2002 dated 01.03.2002)

As per Notification No. 21/2009 ST, dated 07.07.2009, Service provided to or from Installations, Structures and Vessels in entire Continental Shelf and Exclusive Economic Zone of India have been brought within the ambit of provisions relating to Service Tax.

Example 1

Mr. A of Delhi provided service to Mr. B of J & K. the service was provided and used in J & K.

No service tax shall be payable in such cases.

Example 2

Ahmed & Co of Srinagar (J&K) rendered Taxable Services of Rs. 8,00,000/- outside the state of J&K

Since Service is rendered in Taxable Territory, hence service tax is payable and liability of paying service tax is with service Receiver under the concept of Reverse Charge mechanism. (As amended by Finance Act, 2012, which states that, the reverse charge is applicable when service is rendered by a person located in Non Taxable Territory (i.e. Outside india+state of J&K)

Charge of Service Tax

Section 66 is the charging section which deals with levy and collection of service tax.

It prescribes the rate applicable for levying of service tax. The prescribed manner for collection and payment of service tax is provided in the Service Tax Rules, 1994. The rate of service tax at present is 12% and Education Cess and Secondary and Higher Education Cess is payable @ 3% on service tax.

E.g. If a service provider has issued a bill of Rs. 10,00,000, service tax shall be

\[ 10,00,000 \times 12.36\% = 1,23,600. \]

As per Sec 66-B, Service tax is leviable only if Service has been provided or agreed to be provided in a taxable territory.
**Concept of Service**

As per Sec 65-B (44)

**Service Means**

*Any Activity carried out*

- By a person for another
- For a consideration
- And includes a Declared Service

**Service tax procedures includes**

(i) Registration
(ii) Maintenance of books and records
(iii) Payment of service tax
(iv) Availment and utilization of CENVAT credit
(v) Filing of service tax returns
(vi) Assessment and recovery of service tax
(vii) Interest and penalties
(viii) Rectification of mistakes
(ix) Revision of assessment order
(x) Appeals
(xi) Search and seizure
(xii) Advance rulings etc.

**Registration**

Section 69 (Chapter V of the Finance Act, 1994) read with Rule 4 of Service Tax Rules, 1994

Every person liable for paying service tax shall make an application to the [concerned Superintendent of Central Excise] in Form ST-1 for registration within a period of thirty days from the date on which aggregate value of taxable services in a financial year exceeds Rs 9 lakh however he will liable for service tax after crossing the Limits of Rs 10 lakh.

Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

**Centralized Registration under Service Tax**

Centralized registration is opted in case where the accounting and billing operations of the assessee are centralized in an administrative office which may be a branch or Head Office despite the services being provided from more than one location.

The premises that is registered here is the one where the centralized accounting and billing is done. This decision is at the option of the tax payer and he can also opt to have multiple registrations.
In such cases **one of the places shall be considered to be Head Office** and **all other premises** shall be considered to be **branches.** **For this a single registration certificate** shall be issued.

If the **service provider does not have centralized accounting** and also there is **no centralized billing system**, he will **not be allowed** to opt for **centralized registration**.

**Note:**

*Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned [Superintendent of Central Excise].
*A person may apply for voluntary registration at any time and also a person may forgo (reject) the general exemption of 10, 00,000.*
*Person liable to make payment under reverse charge is also eligible to seek centralized registration.*

**What is the procedure for registration?**

Online registration has been made mandatory for all kinds of assesses vide commissioner of service tax Trade Notice No 14/ST/2009 dated 17.09.2009.

The assessee shall make an online application in form ST 1 to the Superintendent of Central Excise in duplicate.

Procedure for online registration:

- The user shall **first log onto the site** [www.aces.gov.in](http://www.aces.gov.in) **and select** – Service Tax option on the left side of the screen.
- He shall then register himself by **clicking on** – New users to click here to register with ACES option. On clicking the same he will be required to give certain basic details and an e-mail id.
- On submitting the form password for such registration will be sent to registered e-mail id.
- User can login into ACES website with this password.
- Password is only to gain access to ACES and it does not imply that registration with the department is done.
- For a new assessee who does not have a service tax registration certificate, shall register with ACES with the ID and password that is sent as mentioned above after that select the option – REG and – Fill ST-1.
- The form shall be filed online with all the required details and submitted online itself.
- A print of the form submitted online shall be taken along with the documents as mentioned below shall be submitted to the department at the concerned Commissionerate.

Application shall be filed within 30 days from the date of providing taxable service and shall bear the address sought to be registered. All the taxable services provided should be mentioned on the application and there would not be separate applications for each of such taxable services. Form should be signed by the director/partner/sole proprietor as the case may be or the authorized signatory.

**Following documents are required for Registration**

1. Self certified copy of PAN.
2. Copy of MOA/ AOA in case of Companies
3. Copy of board resolution in case of Companies
4. Copy of Lease deed/Rental agreement of the premises
5. Copy of any address proof in case of self occupied property - Landline telephone bill not older than 3 months/ Electricity bill not older than 3 months/ Copy of bank account statement showing the name of the applicant and address of premises as mentioned in application not older than 3 months/ annual property tax payment receipt
6. A brief technical write up on the services provided
7. Registration certificate of Partnership firm
8. Copy of a valid Power of Attorney where the owner/MD/Managing Partner does not file the application.
9. NOC, Photo ID proof of person giving NOC
10. Details of director/partner/proprietor
11. Details of major bank account of applicant
12. Undertaking in annexure-III

The following documents are required in addition to the documents mentioned above for centralized registration:

a. Proof of address of each such premises or branches for which centralized registration is sought.
b. Motorized affidavit certifying of keeping centralized accounting and billing.
c. Copy of Cancelled Cheque.

Department shall grant him a registration certificate in Form No ST-2 within 7 days from the date of receipt of application otherwise the service provider shall be deemed to be registered.

The service provider shall be given a Registration Number by the Department which will be called STP code i.e. Service Tax Payer Code and it will be 15 digit PAN based number and first 10 digit shall be that of PAN and remaining 5 digit shall be allotted by Service Tax Department

\[ \text{e.g. AAEPC1298D – ST-001} \]

The last three digits shall indicate total number of registration for the same permanent Account Number.

**Amendment of Registration Certificate**

**Amendment of Registration Certificate Rule 4(5A) of STR, 1994**

Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.

A service provider may apply for amendment in registration in the following cases:

a. Change in place of business
b. Change in the name of business
c. Change in services rendered i.e. there may be addition / deletion of services
d. Any other similar change
How to make amendments with regard to changes in particulars?

• The changes shall be intimated to the department within 30 days of such change.
• The fact that the ST 1 is being filed for an amendment should be clearly highlighted on the form.
• The assessee shall submit a certified copy of the Registration Certificate.
• The application may also be accompanied by a covering note explaining the circumstances that lead to the change with copies of relevant documents being given.
• Such amendment can be done online which will then have to be submitted to the department with the required documents.

Cancellation of Registration Certificate

Every registered assessee, who ceases to provide the taxable service for which he is registered or if he dies, registration certificate shall be cancelled.

The Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued there under, and thereupon cancel the registration certificate (As per rule 4(8)).

Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

Invoice & Records under Service Tax

Issue of Invoice/Bill by Service Provider

As per Rule 4A of STR, 1994, every person providing taxable service, not later than 30 days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, signed by such person or a person authorized by him.

Such Invoice bill/Challan etc. shall be serially numbered and shall contain the following, namely:

1. The name, address and the service tax registration number of such person;
2. The name and address of the person receiving taxable service;
3. Description, classification and value of taxable service provided or to be provided; and
4. The service tax payable thereon.
5. Date of raising of invoice
6. Details of the customer’s/client’s work order/purchase order
7. The amount of ST and Education cess/SHE Cess charged on such service tax
8. Breakup of the amount charged towards the service / goods.
9. Details as to exemption being claimed with reference to the concerned notification.
10. The Bill should be properly signed and duly authorized with stamp.
A Simple format for the service invoice is given below:

<table>
<thead>
<tr>
<th>Description of service provided</th>
<th>Amount in Rs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross amount</td>
<td></td>
</tr>
<tr>
<td>Exemption being claimed (details)</td>
<td></td>
</tr>
<tr>
<td>Amount to be subjected to service tax</td>
<td></td>
</tr>
<tr>
<td>Service tax @ 12%</td>
<td></td>
</tr>
<tr>
<td>Education cess @2%</td>
<td></td>
</tr>
<tr>
<td>Secondary and Higher Education cess @1%</td>
<td></td>
</tr>
<tr>
<td>Total service tax (In words)</td>
<td></td>
</tr>
<tr>
<td>Total VAT/sales tax</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td><strong>Total bill amount</strong></td>
<td></td>
</tr>
</tbody>
</table>

Provided also that in case of “continuous supply of service”, every person providing such taxable service shall issue an invoice, bill or Challan, as the case may be, within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed:

Meaning of “Continuous supply of Service”

Rule 2(c) of Point of Taxation Rules has defined the meaning of continuous supply of service. The rules refer those services that are supplied continuously for a period exceeding three months or services that are specified by the government as continuous supply of services subject to prescribed conditions, if any. Construction Services are one of the examples of Continuous supply of service.

**Issue of Invoice/Bill by Input Service Distributor**

Every “Input Service Distributor” distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a Challan signed by such person or a person authorized by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, Challan shall be serially numbered and shall contain the following, namely:

- The name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be;
- The name and address of the said input service distributor;
- The name and address of the recipient of the credit distributed;
- The amount of the credit distributed.

Meaning of “Input Service Distributor”

As per the definition given in Rule 2(m) of the Cenvat Credit Rules 2004, Input Service Distributor means the office of the output service provider who receives the invoices for purchase of services
from the output service provider under Rule 4A of the Service Tax Rules 1994. Practically, the registration for a premise is taken as Input Service Distributor so that credit pertaining to that premise can be transferred to another premise for adjusting it against service tax liability.

**Records under Service Tax**

The records includes computerized data, as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable. All such records shall be preserved at least for a period of **5 years** immediately after the financial year to which such records pertain.

Every assessee **shall make available**, at the registered premises, at all reasonable time, all such records, **for inspection** and examination by the Central Excise Officer authorized in writing by the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be.

Every assessee shall, on demand, make available to the officer so authorized, or the audit party deputed by the commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding 15 working days from the day when such demand is made or in such further period as may be allowed by such officer or the audit party, as the case may be.

They can ask for the following:

1. The records as mentioned below in Rule 5
2. Trial Balance or its equivalent
3. The Income Tax Audit report, if any, u/s 44AB of Income Tax Act, 1961, for the Scrutiny of the officer or audit party as the case may be.

**Explanation:** For the purposes of this rule, “registered premises” includes all premises or offices from where an assessee is providing taxable services.

As per section 77, any person who has failed to maintain the books of accounts shall be liable for penalty which may extend up to Rs.10,000.

**What Type of records to be kept and whether there are any statutory records to be maintained?**

1. The assessee should follow the basic guidelines laid down here – Where the service provider has both taxable as well as exempted services, separate material accounts may be kept for both types of services and Cenvat credits shall be availed only on those materials or services which has been used for providing taxable services.
2. This can be done by segregating the material receipts at the GRN (Goods Receipt Note) stage itself by having separate series for materials meant for use in taxable services.
3. Proper recording of Cenvat credits in respect of inputs and input services.
4. The list of records is to be declared within the end of the month in which the first Service tax return is being filed.

**Determination of Rate for Service Tax**

As per rule 5B of STR, 1994, the rate of tax in case of services provided, or to be provided shall be the **rate prevailing at the time when the services are deemed to have been provided** under the rules made in this regard.
Rate of service tax levied on value of taxable services is 12.36% subject to certain abatement provided on specified services.

**Concept of consideration and valuation**

After ascertaining the taxability, the valuation of taxable services becomes important for the reason that the service tax liability is determined based on the value of taxable service. The value is arrived normally on gross basis and is on the amounts charged for the taxable services provided. The non-taxable services or non-service activities would not form part of gross value for service tax computation.

| i) | where the provision of service is for a consideration in money | Gross amount charged by the service provider for such service provided or to be provided by him |
| ii) | where the provision of service is for a consideration not wholly or partly consisting of money | Such amount in money, with the addition of service tax charged, as is equivalent to the consideration |
| (iii) | where the provision of service is for a consideration which is not ascertainable | The amount as may be determined in the prescribed manner |

**As per Rule 5 of the Service Tax (Determination of Value) Rules, 2006**

Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

No deduction is allowed for the reimbursement of expenses unless such expenses are incurred by the service provider as a pure agent of the service receiver.

**Pure Agent**

Pure agent, means a person who:

- Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service
- Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service
- Does not use such goods or services so procured and
- Receives only the actual amount incurred to procure such goods or services

**What is works contract and in what manner it is taxable?**

Firstly from a general point of view, works contract is a contract whereby both labour and material services are involved for execution of a particular contract.
Further, Any agreement for execution of works relating to civil works, construction, manufacture, processing, fabrication, erection, Installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property for cash/deferred payment or other valuable consideration is a works contract.

When a contract fulfilling the above conditions is executed by the dealer, he is liable to pay tax on the sale value of goods involved in the execution of works contract at the rates provided in the schedule. It is immaterial whether transfer of property on such goods occurred in the same form or otherwise.

**Service portion in execution of Works Contracts**

A contract to be covered under the definition of the works contract under service tax, the following conditions would be the essential criteria

There would be a contract for provision of service

- During the provision of such service, there is involvement of transfer of property in goods which are liable to VAT and
- The scope of the contract has to be essentially be for construction, erection, commissioning, installation, completion, fitting out, repairs, maintenance, renovation, alteration or any other similar activity of;
- Such activity has to be either on movable or immovable property

**Valuation in Works Contract Service**

**Valuation Part I**

1. Value of service = Gross amount Charged – value of property in goods
   For the purposes of this clause,

2. Gross Amount Charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

3. **value of works contract service shall include,**
   - labour charges for execution of the works;
   - amount paid to a sub-contractor for labour and services;
charges for planning, designing and architect’s fees;
- charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- cost of establishment of the contractor relatable to supply of labour and services;
- other similar expenses relatable to supply of labour and services; and
- profit earned by the service provider relatable to supply of labour and services;
- Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

**Valuation Part II**

1. *Where the value has not been determined under above method*, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner.

<table>
<thead>
<tr>
<th>Type of Works Contract</th>
<th>Value of Service portion in execution of Works Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>For execution of original works</td>
<td>40% of total amount shall be value</td>
</tr>
<tr>
<td>For maintenance or repair or reconditioning or restoration or servicing of any goods</td>
<td>70% of total amount shall be value</td>
</tr>
<tr>
<td>For other works contracts</td>
<td>60% of total amount shall be value</td>
</tr>
</tbody>
</table>

The persons who are claiming the deduction towards value of materials from the total amount charged or who are paying the service tax on 40%, 60% or 70% of the total amount as the case may be, he shall not be eligible to take the benefit of Cenvat credit on inputs used during the course of construction service.

As per definition given in Service Tax (Determination of Value) Rules 2006, “Original Works” means;

(i) All new constructions; or
(ii) All types of additions and alterations to abandoned or damaged structures on land that is required to make them workable.
(iii) Erection, commissioning or installation of plant, machinery or equipment or structure, whether pre-fabricated or otherwise.

**Point of Taxation**

Prior to 01.04.2011, service tax was to be paid on actual receipt basis but w.e.f. 01.04.2011, service tax shall be paid on the basis of point of taxation i.e. the point in time when the service shall be deemed to have been provided shall be taken into consideration.

*As per Rule 3*, services shall be deemed to have been provided
On the date of invoice issued by the service provider **but if** the invoice has been issued **after expiry of 30 days from** the date of completion of service, Services shall be deemed to have been provided on the date of completion of service.

For an easy presentation, the Point of Taxation determining the point of levy of Service Tax has been described here through the help of a flowchart:

```
Analysis

Date on which payment is received (to the Extent of Amount Received)

Where Invoice is issued within specified time limit:
THE DATE OF ISSUE OF INVOICE
(Or)
Where Invoice is not issued within 30 days:
SERVICE COMPLETION DATE
(as the case may be)

Taxable Event will be whichever is earlier
```
Determination of Point of Taxation in case of Change of Rate of Tax

Where the Services are provided before the change to rate of Service Tax

- Invoice issue & payment received After the change in Rate of Tax
  - Whichever is Earlier

- Invoice issued before the change in rate BUT payment received later on.
  - Date of issue of Invoice

- Payment received Before BUT Invoice issued after the provision of Service.
  - Date of Payment

- Payment received after the change in rate of tax BUT Invoice Issued before the change in rate of tax.
  - Date of Payment

Where the Services are provided after the change of rate of Service Tax

- Payment received and Invoice Issued before the change in rate of tax.
  - Whichever is Earlier

- Invoice issued after the change in rate of tax but payment received before the change in rate of Tax.
  - Date of Invoice

**Payment of tax in cases of new services:**
Where a service is taxed for the first time, then,

a. NO TAX shall be payable to the extent the invoice has been issued and payment received against such service become taxable;

b. NO TAX shall be payable if the payment has been received before the service become taxable and invoice has been issued **within 14 days** of the day of date when the service is taxed for the first time.

**What is “Reverse Charge”?**

**Reverse Charge** means the persons who receive the taxable services shall be liable to pay Service Tax instead of the person who provides the Taxable Services.

Every person providing a taxable service is required to pay service tax at the prescribed rate. However in certain cases the service recipient is made liable to pay service tax on the services received. Since the person receiving services is made liable to pay service tax, the mechanism of collection of such tax is called as reverse charge (RCM).
However, in addition to the concept of reverse charge a **new concept of joint charge** (recipient and provider of services liable to pay tax) has also been introduced in Year 2012.

**What is Joint Charge Mechanism?**

Under the **concept of Joint Charge**, for one service the service provider as well as service receiver is made liable for payment of service tax to a certain extent that is notified. This liability is independent of the other person's liability. In other words the failure to comply with the provisions by one person on his part would not impact the compliance requirement of other person and vice versa.

**What is covered under Reverse Charge?**

The following is list of the services which are covered under the reverse charge as notified by the Notification No. 30/2012 - S.T. dated 20.06.2012:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of a service</th>
<th>Person Liable to pay Service Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Services by an insurance agent to any person carrying on insurance business.</td>
<td>Person carrying on insurance business</td>
</tr>
<tr>
<td>2</td>
<td>Services by a goods transport agency in respect of transportation of goods by road.</td>
<td>Specified person (explained below) who is liable to pay freight</td>
</tr>
<tr>
<td>3</td>
<td>Services by way of sponsorship to any body-corporate or partnership firm located in the taxable territory</td>
<td>Such body corporate or partnership firm</td>
</tr>
<tr>
<td>4</td>
<td>Services by way of sponsorship to any body-corporate or partnership firm located in the taxable territory</td>
<td>Such body corporate or partnership firm</td>
</tr>
<tr>
<td>5</td>
<td>Services by an arbitral tribunal to any Business Entity.</td>
<td>Such Business Entity</td>
</tr>
<tr>
<td>6</td>
<td>Services by individual advocate or a firm of advocates by way of legal services to any business entity</td>
<td>Such Business Entity</td>
</tr>
<tr>
<td>7</td>
<td>Services provided or agreed to be provided by a director of a company to the said company</td>
<td>Such Company</td>
</tr>
<tr>
<td>8</td>
<td>Services of renting of a motor vehicle designed to carry passengers provided by • any individual, • Hindu Undivided Family or • proprietary firm or • partnership firm, whether registered or not, • including association of persons wherein the service provider has claimed abatement of 60% following the conditions of the Notification No. 26/2012-ST dated 20.06.2012</td>
<td>Person Receiving the Service</td>
</tr>
<tr>
<td>9</td>
<td>Any taxable services received by any person who is located in taxable territory from any person who is located in a non-taxable territory.</td>
<td>The person located in taxable territory who is receiving such service</td>
</tr>
</tbody>
</table>
Note: This is to mention that in the case of services like Renting of a Motor Vehicle, works contract services and supply of Manpower the liability to pay service tax will be NOT be on service receiver when the provider of service is a body corporate.

**What is covered under Joint Charge?**

Similar to the reverse charge the same Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 7.08.2012 deals with even joint charge as well. As per the said notification, the cases in which the joint charge would be applicable and to what extent is provided below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of a service</th>
<th>Percentage of service tax payable by the person providing service</th>
<th>Percentage of service tax payable by the person receiving the service</th>
</tr>
</thead>
</table>
| 1      | Services of renting of a motor vehicle designed to carry passengers provided by  
|        | • any individual,  
|        | • Hindu Undivided Family or  
|        | • proprietary firm or  
|        | • partnership firm, whether registered or not,  
|        | • including association of persons wherein the service provider is *not claiming any abatement*  
|        | And the services receiver is **business entity who is a body corporate**  
|        | However if the service receiver is also in similar line of business, the service provider himself will have to pay service tax. For eg. Such service provided by to another person who will give the vehicle on rent | 60% | 40% |
| 2      | Services of supply of manpower for any purpose or security services provided by  
|        | • any individual,  
|        | • Hindu Undivided Family or  
|        | • proprietary firm or  
|        | • partnership firm, whether registered or not,  
|        | • including association of persons And the services receiver is **business entity who is not a body corporate** | 25% | 75% |
3 Services of service portion in execution of works contract provided by
• any individual,
• Hindu Undivided Family or
• proprietary firm or
• partnership firm, whether registered or not,
• including association of persons wherein the service provider is not claiming any abatement
And the services receiver is business entity who is not a body corporate

<table>
<thead>
<tr>
<th>50%</th>
<th>50%</th>
</tr>
</thead>
</table>

The Point of Taxation of in case of REVERSE CHARGE shall be the date on which payment is made, provided that, where payment is not made within a period of 6 MONTHS OF THE DATE OF INVOICE, the point of taxation shall be determined as if this rule does not exist.

In Case of “Associated Enterprises” where the person providing the service is located outside India, the Point of Taxation shall be the date of debit in books of account of the person receiving the service or date of making the payment whichever is earlier.

For the purpose of Point of Taxation Rules DATE OF PAYMENT shall be:

The dates on which

a. The payment is ENTERED in the books of accounts or
b. The amount is CREDITED to the bank account of the person liable to pay tax

Whichever is earlier.

NOTE: The date of Payment shall be the DATE of CREDIT in the bank account WHEN:

(i) There is change in effective rate of tax OR when a service is taxed for the first time during the period between such entry in the books of account and its credit in the bank account; and
(ii) The credit in bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
(iii) The payment is made by way of an instrument which is credited to a bank account.
Point of Taxation in Reverse Charge Mechanism

In case of Advance Payment

Date of Advance Payment

In case payment is made after provision of service

In case payment is not made within six months

If bill is issued within prescribed time

Date of Bill/Invoice

If bill is not issued within prescribed time from the date of completion of Service

Date of Completion of Services
Place of Provision of Service Rules, 2012

Finance Act, 2012 has introduced various amendments in Service tax laws. These amendments are basically done with the aim of rationalizing the tax regime of the Country.

Government has brought several new concepts in Service tax law. One such concept is dissemination of the concept of the “Place of Provision of Service”.

In terms of Section 66C of the Finance Act, the Place of Provision of Service Rules, 2012 have been issued vide Notification No.28/2012-ST, dated 20.06.2012 and with this the earlier Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been repealed.

Importance of Place of Provision of Service

Presently the Place of provision is relevant for the following purposes:

- Whether service has been provided in taxable territory
- Services provided to and from Jammu and Kashmir
- Assessee providing services from different locations without having Centralized Registration
- Export of service for exemption and Import of Service for liability of service tax on reverse charge basis
- Services provided to and from Special Economic Zone (SEZ)

Rule 3: General Residuary rule

Rule 3 of Place of Provision of Service Rules is the residuary rule. It will apply only when a later specific rule is not applicable. Normally, the location of the service receiver should be the place of provision of service. However, in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the service provider.

Rule 4: Place of provision of performance based services

In respect of the following services, the place of provision of service shall be the location where the services are actually performed:

- Services in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service.
- The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed.

Examples: Such services are repair, reconditioning, storage, warehousing, etc.

However, where such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service.
a. Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, who require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

**Examples:** Such services are cosmetic or plastic surgery, beauty treatment services, photography services, Internet café services, etc.

**Rule 5: Place of provision of services relating to immovable property**

In case of a service that is directly *in relation to immovable property*,

The *place of provision of service shall be the location of the immovable property*, irrespective of where the provider or receiver is located.

Also it is needless to mention that this rule doesn't apply if a provision of service has only an indirect connection with the immovable property.

As per the CBEC Education Guide, the following criteria will be used to determine if a service in respect of immovable property is located in the taxable territory:

(i) The service consists of lease, or a right to use, occupation, enjoyment or exploitation of an immovable property.

(ii) Service is physically performed or agreed to be performed on a specific immovable property (e.g., maintenance) or property to come into existence (e.g., construction).

(iii) The direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

(iv) The purpose of the service is:

   a. The transfer or conveyance of the property or the proposed transfer or Conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

   b. The determination of the title to the property.

**Examples of Services which are land related**

(i) Renting of Immovable property, (ii) Surveying of land or sea bed,

(ii) Supply of hotel accommodation or warehouse space, etc.

**Examples of Services which are not land related**

(i) Services of an agent who arranges finance for the purchase of a property,

(ii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.
Rule 6: Place of Provision of Services relating to events

Place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event and of services ancillary to such admission, shall be the place where the event is held.

Rule 7: Part performance of a service at different locations

This rule overrides Rule 4 (Performance or goods related services), Rule 5 (immovable property related services) and Rule 6 (event based services).

This rule covers the situations where the actual performance of a service is at more than one location and occasionally one or more such locations may be outside the taxable territory.

This rule provides that where any service referred to in rule 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

Rule 8: Place of Provision of services where provider and receiver are located in taxable territory

The place of provision of service, which is provided by the service provider in taxable territory to a receiver in taxable territory, shall be the location of the recipient of service. There may be situations where the place of provision of service may be determinable to be outside the taxable territory by virtue of Rule 4 to 6, but the service provider, as well as service receiver is located in the taxable territory. In such situations Rule 7 will be applicable and the place of provision shall be deemed to be in taxable territory, notwithstanding the earlier rules.

For Example, a tour operator in India organizes tour outside India. Here, the entire service is performed outside India. However, applying the rule 8, service tax will be payable.

Rule 9: Place of Provision of Specified services

As per Rule 9, the place of provision of service shall be the location of the service provider in respect to the following services-

a. Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
b. Online information and database access or retrieval services;
c. Intermediary services;
d. Service consisting of hiring of means of transport, up to a period of one month.

Rule 10: Place of Provision of goods transportation services

The place of provision of transportation of goods services provided by any mode of transportation shall be the place of destination of the goods, (except when the same is provided by mail or courier).
However, in case of GTA (Goods Transportation Agency), the place of provision of service shall be the location of the person liable to pay service tax.

**Rule 11: Place of Provision of passenger transportation services**

As per this rule, the place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Continuous Journey as per Rule 2(d) means a journey for which:

a. a single ticket has been issued for the entire journey; or
b. more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey.

**Rule 12: Place of Provision of services provided on board conveyance**

This rule intends to cover services like movie, music, video, software games, etc. provided on board against a specific charge, which is not supplied as part of the fare.

The place of provision of such services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

E.g. A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight.

The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

**Rule 13: Powers to notify description of services or circumstances for certain purposes**

By virtue of this rule, Central Government is given power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

**Rule 14: Order of application of rules**

This rule provides the manner in which the place of provision of service is to be determined in case where it seems prime facie that more than one rule of the place of provision rules is applicable.

It is provided that in such cases the place of provision shall be determined in accordance with the rule that comes later and which merit equal consideration.

E.g. An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai.
If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory).

With this result, the service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e., New Delhi. 

*Place of provision being in the taxable territory, the service would be taxable in India.*

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

### Manner and Due Date of Payment

#### Manner of Payment

Every person who is providing taxable services to any person shall pay service tax at the rate specified in the Act in such manner and within such period as may be prescribed i.e. liability of service provider.

However in respect of notified taxable service, service tax shall be paid by such person and in such manner as may be prescribed @ 12% and all the provision of this chapter shall apply to such person as if he is the person liable to pay service tax i.e. liability of Service Receiver.

In normal case liability to pay service tax is on provider of Taxable service but in many circumstances this liability is shifted to receiver of Taxable services i.e. the Provision of Reverse Charge come into force.

#### Due Date for Payment

<table>
<thead>
<tr>
<th>Assessee</th>
<th>Duration of Payment</th>
<th>Due Date for Payment</th>
</tr>
</thead>
</table>
| Assessee can be an Individual, proprietorship concern or a partnership firm | Quarterly | (A) If the tax is paid electronically through internet banking: **by 6th of the Month**  
(B) In any other case: by the 5th of the month, Immediately following the quarter in which the Service is deemed to be provided as per the rules frame in this regard. |
| All other Assessee  
For e.g. Company | Monthly | (C) If the tax is paid electronically through internet banking: **by 6th of the Month**  
(D) In any other case: by the 5th of the month, Immediately following the calendar month in which the service is deemed to be provided as per the rules framed to this regard. |

**Note:** The service Tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case may be, shall be to the credit of the Central government by the 31st day of March of the calendar year.
Note:
1. Payment to be made through GAR-7 Challan
2. In case of Payment made by cheque( relevant date of payment is date of presentation of cheque in Bank- Subject to realization)
3. Delay in payment – chargeable to interest u/s 75.

**Mandatory Electronic payment**

If the assessee has paid a TOTAL SERVICE TAX of **Rs. 10 lakhs or more** including the amount paid by utilization of CENVAT CREDIT, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

### Treatment of Payments under Service Tax

- **Short payment / Non Payment of Service Tax**
  - Service tax to be recovered
  - Show cause notice along with
  - Interest and penalty as the case may be

- **Excess Amount of Service Tax paid to Central Government**
  - Service not provided (wholly or partly)
    - Or Invoice is renegotiated
  - Payment at Own Volition
  - Mis-interpretation of law Taxability of service Classification/ Applicability of Exemption Notification
  - Provisional Assessment

  - Book the credit of such excess amount of service tax
  - OR Invoice is renegotiated
  - May adjust against future service tax liability
  - Refund of such excess service tax may be claimed.
  - Refund of excess service tax shall be allowed.

### A brief note on “Adjustment of Excess payment of service tax” under different situation

**Interest on Delayed Payment of Service Tax**

Every person who fails to credit the tax or part thereof to the account of the central government within the period prescribed, he shall pay simple interest at the rate of 18% for the time being fixed by the central Government, for the period by which such crediting of the tax or any part thereof is delayed.
But in the case of service provider, whose value of taxable services provided in a financial year does not exceed Rs. 60 lakh, such rate of interest shall be reduced to 15%.

**Advance payment of Service Tax**

Every person liable to pay service tax, may voluntary, pay an amount as service tax in advance, to the credit of the Central Government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period:

Provided that the assessee shall,

(i) Intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and

(ii) Indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.

**Refund of Service Tax / Issue of Credit Note**

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee,

- Has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
- Has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

**Negative List**

In the new system, all services, other than the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B.

W.e.f 01.07.2012 there is sea change in the way services are to be taxed.

Taxation would be based on what is popularly known as – Negative List of Services.

This is a comprehensive method of taxation normally adopted by advanced/ developed countries. Developing countries where the economy has not developed/ population not literate avoid this method of taxation to avoid the disputes due to large scale non compliance on account of ignorance.

**Following is the Negative list of services on which no service tax has been levied by Government:-**

a. services by Government or a local authority excluding the following services to the extent they are not covered elsewhere

   (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

   (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

   (iii) Transport of goods or passengers; or
(iv) Support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

b. Services by the Reserve Bank of India;
c. Services by a foreign diplomatic mission located in India;
d. Services relating to agriculture by way of
   (i) Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
   (ii) Supply of farm labour;
   (iii) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
   (iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
   (v) Loading, unloading, packing, storage or warehousing of agricultural produce;
   (vi) Agricultural extension services;
   (vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

e. Trading of goods;
f. Any process amounting to manufacture or production of goods;
g. Selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
h. Service by way of access to a road or a bridge on payment of toll charges;
i. Betting, gambling or lottery;
j. Admission to entertainment events or access to amusement facilities;
k. Transmission or distribution of electricity by an electricity transmission or distribution utility;
l. Services by way of
   (i) pre-school education and education up to higher secondary school or equivalent;
   (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
   (iii) education as a part of an approved vocational education course;
m. Services by way of renting of residential dwelling for use as residence;

n. Services by way of
   (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
   (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
o. Service of transportation of passengers, with or without accompanied belongings, by:
   (i) a stage carriage;
   (ii) railways in a class other than:
      a. first class; or
      b. an air-conditioned coach;
   (iii) metro, monorail or tramway;
(iv) inland waterways;
(v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
(vi) metered cabs, radio taxis or auto rickshaws;

p. services by way of transportation of goods:
   • by road except the services of:
     ◦ a goods transportation agency; or
     ◦ a courier agency;
   • by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
   • by inland waterways;

q. funeral, burial, crematorium or mortuary services including transportation of the deceased.

**Mega Exemption Notification**

Under the previous service tax law (i.e., law prevailing upto 30th of June, 2012) there were totally around 88 exemption notifications. Though this new system of tax has come into effect the need for exemptions is not obviated.

Some of the existing exemptions have been built into the negative list, while some are continued to be exempted in the current scenario under the new category. For the sake of convenience and simplicity, most of the exemptions now form a part of one notification which is popularly called as ‘Mega Exemption Notification’ 25/2012-ST, dated 20\(^{th}\) June 2012.

The Exemptions contained in the notification are discussed below in detail:

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or paramedics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of:
   • renting of precincts of a religious place meant for general public; or
   • conduct of any religious ceremony;
6. Services provided by Advocates
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of:
   • auxiliary educational services; or
   • renting of immovable property;
10. Services provided to a recognised sports body by:
   • an individual as a player, referee, umpire, coach or team manager for participation in a
     sporting event organized by a recognized sports body;
   • another recognised sports body;

11. Services by way of sponsorship of sporting events organised, by recognized body

12. Services provided to the Government, a local authority or a governmental authority by way
    of construction, erection, commissioning, installation, completion, fitting out, repair, mainte-
    nance, renovation, or alteration of:
    • a civil structure or any other original works meant predominantly for use other than for
      commerce, industry, or any other business or profession;
    • a historical monument, archaeological site or remains of national importance, archaeologi-
      cal excavation, or antiquity specified under the Ancient Monuments and Archaeological
      Sites and Remains Act, 1958 (24 of 1958);
    • a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or
      cultural establishment;
    • canal, dam or other irrigation works;
    • pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treat-
      ment or disposal; or
    • a residential complex predominantly meant for self-use or the use of their employees or
      other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

13. Services provided by way of construction, erection, commissioning, installation, completion,
    fitting out, repair, maintenance, renovation, or alteration of:
    • a road, bridge, tunnel, or terminal for road transportation for use by general public;
    • a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru
      National Urban Renewal Mission or Rajiv Awaas Yojana;
    • a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43
      of 1961) and meant predominantly for religious use by general public;
    • a pollution control or effluent treatment plant, except located as a part of a factory; or
    • a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works per-
    taining to:
    • an airport, port or railways, including monorail or metro;
    • a single residential unit otherwise than as a part of a residential complex;
    • low- cost houses up to a carpet area of 60 square metres per house in a housing project ap-
      proved by competent authority empowered under the ‘Scheme of Affordable Housing in
      Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Govern-
      ment of India;
    • post- harvest storage infrastructure for agricultural produce including a cold storages for
      such purposes; or
    • mechanised food grain handling system, machinery or equipment for units processing agri-
      cultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright relating to original liter-
    ary, dramatic, musical, artistic works or cinematograph films;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and/or (ii) a licence to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods:
   • petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
   • relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
   • defence or military equipments;
   • postal mail or mail bags;
   • household effects;
   • newspaper or magazines registered with the Registrar of Newspapers;
   • railway equipments or materials;
   • agricultural produce;
   • foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
   • chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of:
   • fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
   • goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
   • goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire:
   • to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
   • to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by:
   • air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
   • a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
   • ropeway, cable car or aerial tramway;
24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of:
   • carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
   • repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under Specified schemes:

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-
   • the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
   • a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution:
   • as a trade union;
   • for the provision of carrying out any activity which is exempt from the levy of service tax; or
   • up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities:
   • sub-broker or an authorised person to a stock broker;
   • authorised person to a member of a commodity exchange;
   • mutual fund agent to a mutual fund or asset management company;
   • distributor to a mutual fund or asset management company;
   • selling or marketing agent of lottery tickets to a distributor or a selling agent;
   • selling agent or a distributor of SIM cards or recharge coupon vouchers;
   • business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
   • sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to:
   • agriculture, printing or textile processing;
   • cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act,1985 (5 of 1986);
   • any goods on which appropriate duty is payable by the principal manufacturer; or
   • processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;
31. Services by an organiser to any person in respect of a business exhibition held outside India;
32. Services by way of making telephone calls from:
   • departmentally run public telephone;
   • guaranteed public telephone operating only for local calls; or
   • free telephone at airport and hospital where no bills are being issued;
33. Services by way of slaughtering of bovine animals;
34. Services received from a provider of service located in a non-taxable territory by:
   • Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
   • an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
   • a person located in a non-taxable territory;
35. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material;
36. Services by Employees’ State Insurance Corporation to persons governed under the Employees’ Insurance Act, 1948 (34 of 1948);
37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

What is meant by Declared Services?
The Government of India has come with a new set of services known as Declared Services. These services have been declared separately as taxable services to avoid further litigation on the issue of taxability of those types of services.

Any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994.

It means for a service to come under the category of declared services, it has to satisfy two basic conditions conjunctively:
1. it must be an activity by one person to another for consideration
2. it must be specified (i.e. declared) under section 66E

The following nine activities have been specified in section 66E:
• renting of immovable property;
• construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
• temporary transfer or permitting the use or enjoyment of any intellectual property right;
• development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;
• agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
• transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
• activities in relation to delivery of goods on hire purchase or any system of payment by installments;
• service portion in execution of a works contract;
• service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

Filing of Returns

Every assessee liable to pay service tax shall submit a half yearly return in Form ‘ST-3’ or ‘ST-3A’, as the case may be.

Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

If the last date is a holiday, return can be filed on the next day without any penalty.

Every assessee shall submit the half yearly return electronically.

Every service provider who is registered shall also be required to file the return even if service tax liability is nil i.e. if any service provider has gross receipt exceeding 9,00,000 shall be required to get registered and in that case return has to be filed even if service tax liability is nil.

Note:

1. E-filing of return is mandatory for all service tax assesses Vide notification no 43//2011 ST dated 25.08.2011.
2. CBEC had earlier issued a notification for filling return on quarterly basis, but it is not yet decided by Government of India whether return is to be filed quarterly or half yearly.

Note on Revision of Service Tax Return

An assessee may submit a revised return, in Form ST-3, to correct a mistake or omission, within a period of 90 days from the date of submission of the return under rule 7.

Note on Delay Furnishing of Service Tax Return

Where the return is furnished after the due date prescribed for submission of such return, the person liable to furnish the said return along with additional fee for delay in furnishing of returns and pay to the credit of the Central Government, if the period of delay is:

<table>
<thead>
<tr>
<th>Delay in Days (from due date of filing of return)</th>
<th>Amount of payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15 days</td>
<td>Rs. 500/-</td>
</tr>
<tr>
<td>16-30 days</td>
<td>Rs. 1000/-</td>
</tr>
<tr>
<td>More than 30 days</td>
<td>Rs. 1000/- + Rs. 100 for each day of delay beyond 30days. However, total amount of payment under this rule shall not exceed Rs. 20,000/-</td>
</tr>
</tbody>
</table>
Documents to be submitted along with Service Tax Return

Now there is no requirement to furnish the documents along with the returns because now all returns are filed online.

E-Filing of Service Tax Return

- With effect from 01.10.2011, e-filing of service tax returns has been made mandatory for all the assesses.
- The assessee can e-file the return through software ACES i.e. AUTOMATION OF CENTRAL EXCISE AND SERVICE TAX.
- The assessee should login the relevant site www.aces.gov.in.
- To transact business on ACES a user has to first register himself with ACES through a process called “Registration with ACES”.
- The assessee should have STP code i.e. PAN based 15 digit registration number allotted by Service Tax Department.
- The assessee should fill in self-chosen user-ID and his e-mail ID. System will check the availability of the chosen user ID and then generate a password and will send it to the assessee on the e-mail ID mentioned by him and the assessee can submit the return in the prescribed form.

For an assessee who provides more than one taxable service, filing of a single return is sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him.

Even if no service has been provided during a half year and no service tax is payable; the assessee has to file a Nil return within the prescribed time limit.

Assessment

The assessee is required to assess the tax payable by him and pay the same on monthly or quarterly basis as applicable.

In other words, what is envisaged here is self-assessment.

The service provider to opt for payment on provisional basis where there is a difficulty in ascertaining the amount to be paid.

Provisional payment of Service Tax

In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis.

The concerned officer may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.

For the purpose of provisional assessment at the time of filing the return, the assessee is required to file a statement in form ST-3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month.
The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST - 3A may complete the assessment after calling for necessary documents or records, if need be.

**Self adjustment of Service Tax**

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

The adjustment of excess amount paid, shall be subject to the following conditions, namely:

- Excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,
- Excess amount paid by an assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,
- The details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

**Demand, Appeals, Recovery and Penalties**

**Demand & Adjudication:**

Demand may arise when the assessee doesn't pay the tax/duty or short pays the tax/duty or avails the benefit of any notification prescribed under law without satisfying the conditions set out in the notification or avails ineligible credits (Section 73).

In such cases and other related statutory provisions relating to demand & interest under service tax are given in a table format for better understanding:

<table>
<thead>
<tr>
<th>Section</th>
<th>Statutory provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec 73</td>
<td>Recovery of duties not levied or not paid or short levied or short paid within 18 months. This is the principal section for invoking all demands by the Department.</td>
</tr>
<tr>
<td>Proviso to Sec 73</td>
<td>Above said 18 months will be extended to 5 yrs. If it involves fraud, collusion, willful misstatement or suppression of fact with intent to evade the payment of duty.</td>
</tr>
<tr>
<td>Sub-section 73(1A)</td>
<td>The same charges when a follow – up demand is given for a period subsequent to the previous notice(s) on same grounds.</td>
</tr>
<tr>
<td>Section 73(1A)</td>
<td>Issue of only a statement, containing the details of service tax not levied or paid Or short levied or short paid or erroneously refunded for the subsequent period on the same grounds. Such statement would be construed as service of notice.</td>
</tr>
<tr>
<td>Sec 73(2)</td>
<td>Deals with determination of demand after issue of notice and assessee shall pay the amount so determined</td>
</tr>
</tbody>
</table>
Sec 73(4A)
In case of during audit or investigation or verification, it is found that there is short levy/ non levy/short paid/not paid service tax or erroneous refund but transaction are specified in the records, the service tax paid fully or partly, along with interest and penalty at 1% of such tax, for each month where default continues, upto 25% of tax amount before notice is issued and inform the CE officer in writing of same. After receipt of same, the notice would not be serviced u/s 73 (1) and such proceeding in respect of such amount shall be concluded. Any additional amounts could be collected as determined to be payable by the CE office.

Sec 73(3)
No notice to be served when the service tax is paid before issuance of SCN in cases not involving fraud, collusion etc., this is not applicable for service tax become payable before 14.05.2003.

Sec 75
Every person who fails to credit the tax or any part to the Government shall pay simple interest at 18% pa (15% in case turnover is less than 60 Lakhs in the previous financial year).

Sec 78
Penalty in case of fraud, suppression, willful mis-statement etc.

Sec 73A
Service provider should have to pay the amounts so collected from the service receiver to the Central Government. This provision also applies in case where the service provider has collected the taxes in any manner from the service receiver.

Sub Sec 73A (3)
Central Excise Officer shall issue a notice, where any person collected the tax but not paid to the credit of CG.

Rule 14 CCR 2004
Cenvat Credit taken / utilised wrongly or erroneously refunded then the provisions of Section 73 & 75 will apply.

As per CBEC circular No 80/1/2005-ST, dated 10-08-2005, Show cause notice can be issued by different rank central excise officer with monetary limit for the purpose of section 73 are given below:

<table>
<thead>
<tr>
<th>Central Excise Officer</th>
<th>Amount of ST or Cenvat specified in a notice for the purpose of adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent of Central Excise</td>
<td>Not exceeding Rs.1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)</td>
</tr>
<tr>
<td>Assistant/Deputy commissioner of CE</td>
<td>Not exceeding 5 Lakh</td>
</tr>
<tr>
<td>Joint Commissioner of CE</td>
<td>Above 5 Lakh but not exceeding Rs. 20 Lakh</td>
</tr>
<tr>
<td>Additional Commissioner of CE</td>
<td>Above Rs. 20 Lakh but not exceeding Rs 50 Lakh</td>
</tr>
<tr>
<td>Commissioner of CE</td>
<td>No limit</td>
</tr>
</tbody>
</table>

**Rectification of Mistakes**

An order can be amended by the Central Excise Officer within two years from the date of passing the same to correct a mistake apparent from the records. Under Section 74 where any matter has been considered and decided by way of appeal or revision relating to the order referred above, any other matter on the order can be rectified with the exception of the matter that has been so decided.
Where due to rectification under Section 74 any refund due to an assessee is reduced or increases his liability, then such assessee should be given a reasonable opportunity of being heard in the matter.

**Revision**

The Commissioner of Central Excise has been empowered to call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order for the purpose of satisfying himself as to the legality or propriety of any decision or order. After examination of the record if he finds any issue or point which may effect on the protection of interest of revenue, then he may by an order direct such authority or subordinate to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order specified by him.

Every order under Section 84 shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

Where the **Commissioner of Central Excise** order or **direct the adjudicating authority** to apply to the Commissioner of Central Excise (Appeals) for the determination of points arising out of the decision then the adjudicating authority in this behalf, shall **make an application to the Commissioner of Central Excise (Appeals) within a period of one month** from the date of communication of such order.

**Appeals**

The provisions related to appeals are governed by the Section 85 & 86 of the Finance Act 1994. The detailed discussion on the same is further carried out in the following manner:

**Appeals to Commissioner (Appeals)**

Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to Commissioner of Central Excise may appeal to the first appellate authority i.e. Commissioner of Central Excise (Appeals).

1. The appeal **should be filed along with a stay application** to be relieved from the **pre-deposit of the Duty** determined under the order to be appealed in terms of Section 35F of Central Excise Act.
2. The appeal shall be filed within 2 months from the date of communication/ receipt of the decision.
3. The commissioner may condone the delay for a further period of 1 month, further there is no power to condone the delay beyond the said period of one month after the initial period of 2 months.

**Appeal to Appellate Tribunal**

Any person aggrieved by an order passed by a Commissioner of Central Excise under Section 73 or 83A or an order passed by the Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order.

**The appeal is also known as Second Appeal.**

1. The appeal shall be filed within three/four months (as the case may be) of the date of receipt of the order.
2. Either assessee or the commissioner of central excise shall be having 45 days from the receipt of the notice for filing cross objection memorandum.

**Fees for appeal to Tribunal**
The prescribed fee is as under and is to be paid through demand draft/pay order

<table>
<thead>
<tr>
<th>Total of Service tax, Interest and penalty (Rs.)</th>
<th>Fee (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5,00,000/-</td>
<td>1000/-</td>
</tr>
<tr>
<td>5,00,001/- to 50,00,000/-</td>
<td>5000/-</td>
</tr>
<tr>
<td>More than 50,00,000/-</td>
<td>10,000/-</td>
</tr>
</tbody>
</table>

The fee for the stay application or rectification or restoration shall be Rs. 500/-
No such fee shall be paid by the central excise officer for the appeal and in case of Cross objection memorandum.
Where the matter involves only the question of facts and nothing of law, the order passed by the Tribunal will be final and it cannot be taken further.

**Appeal to High Court**
The appeal can be made against the order of the Appellate Tribunal when it involves a substantial question of law.
The appeal is to be made within 180 days from the receipt of the order sought to be appealed u/s 35G of CEA, 1944 as amended by time to time.

**Appeal to Supreme Court**
An appeal would lie to the Supreme Court from:
1. Any judgment of the high court on appeal as mentioned above; or
2. On a reference made by the appellate tribunal before 1.07.2003; or
The order of the Tribunal will have to go to High court generally, however if the matter involves rate of tax or valuation the case can be taken directly to the Supreme Court.

Where there is an order of demand for tax and penalty on which the appeal is preferred it is a pre condition that the duty and penalty to be deposited.
However the appellate authority may dispense which such pre-deposit of the duty demanded or penalty levied on the reason that that pre-deposit would cause undue hardship to such person.
The law relating to appeal can be summarized in the form of following table.

<table>
<thead>
<tr>
<th>Order passed by</th>
<th>Appeal lies to</th>
<th>Form to be used</th>
<th>Section reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assistant/Deputy/Additional Commissioner, and assessing officer</td>
<td>Commissioner (Appeals) Within 3 months of receipt of order</td>
<td>ST-4</td>
<td>Sec. 85</td>
</tr>
<tr>
<td>2. Commissioner/ Commissioner (Appeals)</td>
<td>Appellate Tribunal (within 3 months of receipt of order)</td>
<td>ST-5</td>
<td>Sec. 86</td>
</tr>
<tr>
<td>3. Memorandum of Cross Objections</td>
<td>Appellate Tribunal (45 days from the date of Communication of Appeal)</td>
<td>ST-6</td>
<td>Sec 86</td>
</tr>
</tbody>
</table>

**Penalties**

**Penalties leviable under service tax provisions are given below:**

**Section 76 - Failure to make payment of service tax within due date:**

Penalty which shall not be less than Rs.100 per day or 1% of the tax per month whichever is higher from the first day after the due date till the date of actual payment of Service Tax subject to maximum of 50% of tax amount that assessee has failed to pay.

**Section 77: General Penalty**

<table>
<thead>
<tr>
<th>Section</th>
<th>Default and quantum of penalty for the same</th>
</tr>
</thead>
</table>
| 77(1)(a) | Fails to take registration according to Section 69  
Penalty will be highest of the following  
Amount up to Rs.10,000/-  
Rs.200/- per day for each day of default |
| 77(1)(b) | Failure to keep, maintain or retain books of accounts and other documents  
Penalty may extend upto Rs.10,000/- |
| 77(1)(c) | Failure to furnish information, produce documents or appear before the Central Excise Officer. Penalty will be highest of the following:  
Amount up to Rs.10,000/-  
Rs.200/- per day for each day of default |
| 77(1)(d) | Fails to pay tax electronically, through internet banking  
Penalty may extend upto Rs.10,000/- |
| 77(1)(e) | Issuance an invoice with incorrect or incomplete details or fails to account an invoice in the books of accounts  
Penalty may extend upto Rs.10,000/- |
| 71(2) | Contravention of any provisions of this chapter or any rules made thereunder  
Penalty may extend upto Rs.10,000/- |
Section 78: Penalty for Suppressing etc.
Where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this chapter or of the rules made thereunder with the intention to evade payment of service tax. Penalty will be as under:

1. Penalty will be 100% of the amount of service tax not levied or paid or short levied or short paid or erroneously refunded.
2. The above said penalty will be reduced to 50%, if the assessee has recorded the true and complete details of the transaction.
3. The above said penalty will be reduced to 25% if the tax dues are paid within a period of 30 days (90 days in case of Small Scale Sector Assessee) together with interest and reduced penalty from the date of communication of concerned order.

Section 80: Penalty not to be imposed in certain cases

| Section | Penalty not to be imposed if….
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>80(1)</td>
<td>Penalty under Section 76, 77 or first proviso to sub-section (1) of Section 78 are leviable if the assessee proves that there was reasonable cause for the default</td>
</tr>
<tr>
<td>80(2)</td>
<td>Penalty u/s 76,77 and 78 shall not be levied if the service tax payable as on 6th day of March 2012 in relation to renting of immovable property along with interest is paid in full within six months from the 28.05.2012 i.e., by 28.11.2012</td>
</tr>
</tbody>
</table>
ALL INDIA VAT
Learning Objectives

1. Introduction of VAT in India
2. Constitution of VAT in India
3. Administration of VAT in India
4. Constituents of VAT in India
5. Registration under VAT
6. VAT invoice & Records
7. Tax Implications Under VAT
8. Input Tax Credit
9. Composition Scheme
10. Returns
11. Audit
12. Assessment
13. Meaning of Central Sales Tax
14. Registration under Central Sales Tax
15. Meaning of Inter-state Sale
16. Stock Transfer
17. Works Contract Tax under VAT
18. Tax Deducted at Source under VAT

Introduction of VAT in India

A country should balance the requirements of revenue in a fair manner. Direct and indirect taxes together pass heavy burdens to the common citizen.

Suppose, a manufacturer purchase two inputs X and Y and pays excise on them. After manufacture, excise duty is paid on final product Z. Thus, there is payment of duty on the duties already paid for the inputs.

Economists suggested that there is a need of system to avoid cascading effect of taxes. This will reduce the price of goods leading to benefit to the customer and makes the price of commodity more competitive. This is the origin of Value Added Tax (VAT), a smart system for collection tax.

Historical Background

VAT was first proposed for Germany in 1919 by Dr Wilhelm Von Siemens as an improved turnover tax. Thereafter in 1921 Professor Thomas S. Adams suggested VAT for the United States of America. Since 1954, when VAT was introduced in France, about 130 countries have adopted the same.

India introduced VAT under the name of Modified Value Added Tax (MODVAT) in 1986. Initially Indian MODVAT system was framed to give credit on excise duty paid on manufacturing commodities. Since then scope of MODVAT has extended over the years and has been renamed as Central Value Added Tax (CENVAT).
**VAT in India**

VAT is one of the most radical reforms proposed in indirect taxes, designed to make accounting more transparent, cut trade barriers, boost tax revenue and tackle the problem of tax evasion.

In November 1999, the decision to introduce VAT was publicly discussed first at a conference of state chief ministers and finance ministers. Attempts were made to introduce a harmonious VAT in the States, keeping at the same time in mind the issue of sovereignty of the States regarding the State tax matters. For this the first objective was of harmonising sales tax rates by implementing uniform floor rates of sales tax for different categories of commodities. This was followed by the preparation of steps for the introduction of State-level VAT.

For the purpose a Standing Committee of State Finance Ministers was formed which was then made an Empowered Committee of State Finance Ministers. Thereafter, the Empowered Committee has met regularly and discussions and collective efforts brought out a White paper which provided basis for the preparation of various State VAT legislations. In order to avoid any unhealthy competition among the States which may lead to distortions in manufacturing and trade, attempts have been made from the very beginning to harmonise the VAT design in the States, keeping also in view the distinctive features of each State and the need for federal flexibility.

The States passed legislations on State-Level VAT on the basis of draft model VAT law, prescribed by the Central Government. The VAT system of taxation was adopted by majority States and Union Territories in the Year 2005 by replacing the General Sales Tax Laws. Presently in India, out of 35 States and Union Territories, 33 are following this new system of Sales Taxation. The States/Union territories which are yet to implement the VAT system are Andaman and Nicobar Islands and Lakshadweep.

Each state or union territory has its own methods to assess the tax liability and collection methods from the dealers who fall under the purview of VAT.

**Concept of VAT**

The Concept of VAT is a very popular system of indirect taxation which emerged in European Countries. The VAT system is designed to bring user-convenience and transparency in the entire system of taxation. The working system of VAT is simple to follow, implement and administer.

The earlier system of Taxation was allowing dual taxation which lead to cascading effect of tax. This ultimately resulted in wrong assessment of tax liability and tax evasion. The concept of VAT resolved the cascading effect of taxes resulting in prevention of Tax evasions.

The VAT system levies tax on every level of Value addition to the product or good. At the same time the tax paid for acquiring this product or good would be allowed as tax credit and can be used for payment of VAT at the time of selling the product or good to the immediate dealer. The net effect of tax will be only on the portion of Value added by the seller or manufacturer. The following example clearly explains the flow of VAT system and its effect on the Selling price.
Tax implication under Value Added Tax Act

<table>
<thead>
<tr>
<th>Seller</th>
<th>Buyer</th>
<th>Selling Price (Excluding Tax)</th>
<th>Tax Rate</th>
<th>Invoice value (Including Tax)</th>
<th>Tax Payable</th>
<th>Tax Credit</th>
<th>Net Tax Outflow</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
<td>100</td>
<td>4% CST</td>
<td>104</td>
<td>4</td>
<td>0</td>
<td>4.00</td>
</tr>
<tr>
<td>B</td>
<td>C</td>
<td>114</td>
<td>12.5% VAT</td>
<td>128.25</td>
<td>14.25</td>
<td>0</td>
<td>14.25</td>
</tr>
<tr>
<td>C</td>
<td>D</td>
<td>124</td>
<td>12.5% VAT</td>
<td>139.50</td>
<td>15.50</td>
<td>14.25</td>
<td>1.25</td>
</tr>
<tr>
<td>D</td>
<td>Consumer</td>
<td>134</td>
<td>12.5% VAT</td>
<td>150.75</td>
<td>16.75</td>
<td>15.50</td>
<td>1.25</td>
</tr>
</tbody>
</table>

Total to Govt.  

| VAT CST | 16.75 | 4.00 |

Constitution of VAT

Introduction of State VAT is an important reform measure at State level. The State VAT has replaced the earlier Sales Tax systems of the States. VAT, being a ‘tax on sale or purchase of goods within a State’ is a State Subject by virtue of Entry 54 of State List of the Seventh Schedule of the Constitution of India. Since VAT/Sales tax is a State subject, the Central Government has been playing the role of a facilitator for successful implementation of VAT.

Administration of VAT

Value Added Tax Authorities

Value Added Tax Authorities

1. For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.
2. To assist the Commissioner in the administration of this Act:
   a. the Government may appoint as many [Special] Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and
   b. The Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties; in this Act referred to as “Value Added Tax Authorities”.
3. The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.
4. The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions.
Constituents of VAT

Rules on VAT
Rules should be read with the statutory provisions contained in the Act. Rules are made for carrying out the provisions of the Act. The rules can never override the Act and cannot be in conflict with the same.

Circulars on VAT
Circulars or instruction letters explain the scope of VAT administration etc. These circulars/instructions have to be read with the statutory provisions and notifications of VAT. The circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the departmental circulars.

Notifications on VAT
VAT Act of respective state empowers the state to issue notifications to exempt any commodity from Value Added Tax and to make rules to implement VAT provisions. Accordingly, notifications on VAT have been issued by the State Government from time to time. These notifications usually declare date of enforceability of VAT provisions, provide rules relating to VAT, make amendments therein, provide or withdraw exemptions from commodity or deal with any other matter which the State Government may think would facilitate the governance of Value Added Tax matters.

Trade Notices
The Commissionrates issue trade notice for effective implementation and administration of the various provisions of VAT. The same are circulated among the field officers and the instructions which pertain to trade are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices. Individual assesses may also apply for copies of trade notices. The trade notice disseminate the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which VAT can be deposited; give clarifications regarding VAT matters, etc.

Registration
Registration is the process of obtaining Certificate of Registration (RC) from the authorities under the VAT Act. A dealer registered under the VAT Act is called a registered dealer. Any dealer, who intends to carry on the business of purchase and sale of goods in the State and is liable to pay tax, must holds a valid registration certificate under the Act. Only the registered dealers are allowed input credit on purchases made only from a registered dealer.

Eligibility for Registration
Registration of dealers with gross annual turnover above Rs.5 lakhs is compulsory. VAT registration is not compulsory for the small dealers with gross annual turnover not exceeding Rs.5 lakhs.
This limit for applicability of registration varies from state to state. There is a provision for voluntary registration. All existing dealers are to be automatically registered under the VAT Act. A new dealer will be allowed 30 days time from the date of liability to get registered. An application for registration should be made to the VAT Authority.

Generally, a dealer means any person, who consequent to, or in connection with, or incidental to, or in the course of his business, buys or sells goods for a consideration or otherwise.

**Compulsory Registration**

If an assessee fails to obtain registration under the VAT Act, he may be registered compulsorily by the Commissioner. The Commissioner may assess the tax due from such person on the basis of evidence available with him. In this event the assessee shall have to forthwith pay such amount of tax. Further, failure to get registered shall result in attracting default penalty and forfeiture of eligibility to set off all input tax credit related to the period prior to the compulsory registration.

**Voluntary Registration**

A dealer otherwise not eligible for registration may also obtain registration if the Commissioner is satisfied that the business of the applicant requires registration. The Commissioner may also impose any terms or conditions that he thinks fit.

**Documents Required for VAT Registration**

Most of the states have introduced online registration process but in some states manual filling of documents in the prescribed form is done and the form with the supporting documents is to be submitted at the commercial office of the state. But whether the registration is done through manual or online, basic documents that are required for availing a successful registration are mentioned below:

- ID and address proof of the proprietor / partner / director
- Photograph of proprietor / partner / director
- Rent / lease / sale deed agreement of the business premises
- Partnership deed in case of firm / LLP
- MOA / AOA in case of a company
- Trust deed in case of a society
- Copy of Income Tax Assessment Order with PAN or copy of PAN card
- Electricity / gas / water bill of the business premises and
- Registration fees
- Surety in form of registered dealer / security in form of Bank Guarantee(applicable in certain States)

The above mentioned documents include other requirements that are state specific and vary according to the rules and laws of the particular state.
Cancellation of Registration

The registration can be cancelled on:

- discontinuance of business; or
- disposal of business; or
- transfer of business to a new location; or
- annual turnover of a manufacturer or a trader dealing in designated goods falling below the specified amount.

Tax Payer’s Identification Number (TIN)

TIN (Tax Payer’s Identification Number) is a code to identify a tax payer. It is the registration number of the dealer. The taxpayer’s identification number will consist of 11 digit numerals throughout the country. First two characters will represent the State code as used by the Union Ministry of Home Affairs. The set-up of the next nine characters will be, however, different in different States. TIN will facilitate computer applications, such as detecting stop filers and delinquent accounts. TIN will help cross-check information on tax payer compliance, for example, the selective cross-checking of sales and purchases among VAT taxpayers.

VAT Invoice

Invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorised under the Act

The whole structure of the VAT with input tax credit is founded on a documentation of a tax invoice, a cash memo or a bill. The white paper mainly provides for the following provisions, which are mandatory, and failures to comply with these attracts penalty:

1. Every registered dealer whose turnover of sales exceeds the specific amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with prescribed particulars.
2. The tax invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
3. The dealer shall keep a counterfoil or duplicate of such tax invoice duty signed and dated.

Importance of VAT Invoices (Tax Invoices)

Invoices are crucial documents for administrating VAT. In the absence of VAT paid by the dealer earlier cannot be claimed as set off. Invoices should be preserved with full care. In case of any original invoice is lost or misplaced, a duplicate authenticated copy must be obtained from the issuing dealer.

A VAT invoice:

1. Helps in determining the input tax credit;
2. Prevent cascading effects of taxes;
3. Facilitates multi-point taxation of the value addition;
4. Promotes assurances of invoices;
5. Assists in performing audit and investigation activities effectively;
6. Checks evasion of tax.
Records

The following records should be maintained under VAT system:

1. Purchase records
2. Sales record
3. VAT account
4. Separate record of any exempt sale

Further, the following records should also be kept and produced to an officer:

1. Copies of all invoices issued, in serial number
2. Copies of all credit and debit notes issued, in chronological order
3. All purchase invoices, copies of custom entries, receipts for payment of customs duty of tax, and credit and Debit notes received to be filed chronologically either date of receipt or under each supplier’s name
4. Details of the amount of tax charged on each sale or purchases
5. Total of the output tax and input tax in each period and a net total of the tax payable or the excess carried forward, as the case may be, at the end of each month
6. Details of goods manufactured and delivered from the factory of taxable persons
7. Details of each supply of goods from the business premises, unless such details are available at the time of supply in invoices issued at, or before, that time

Failure to keep these records may attract penalty. All such records should be preserved for the period specified in respective state provisions.

Input Tax Credit (ITC)

The essence of VAT is in providing set-off for the tax paid earlier, and this is given effect through the concept of input tax credit/rebate. This input tax credit in relation to any period means setting off the amount of input tax by a registered dealer against the amount of his output tax.

It is reiterated that tax paid on the earlier point is called input tax. This amount will be adjusted/rebated against the tax payable by the purchasing dealer on his sales. This credit availability is called input tax credit.

It may be mentioned here that the set off under VAT Acts are subject to one very important condition. It is generally provided in VAT Acts that the set off on any goods should not exceed the tax received on the same goods in Government Treasury. Therefore, the purchasing dealer, desirous of claiming set off, should also look into the credentials of the vendor so as to be sure that he will get the set off of tax paid to him.

Scope of input Tax Credit

Input tax credit shall be allowed to a registered dealer on purchase of any goods made within the State from a dealer holding a valid certificate of registration under the Act. Further, the input tax credit will be given to both manufacturers and traders for purchase of inputs/supplies meant for both sales within the State as well as to other States, irrespective of when these will be utilized/sold.
Even for stock transfer/consignment transfers/branch transfer of goods out of the State, input tax paid in excess of 2% (as CST rate is 2%) will be eligible for tax credit. This rate of Reversal may vary from state to state. It is also to be noted that in some States partial input tax credit is available in respect of inputs used for manufacture of exempted goods.

**Input Tax Credit available on capital goods**

Input tax credit on capital goods will be available for traders and manufacturers. Tax credit on capital goods may be adjusted over a maximum of 36 equal monthly instalments. The States may at their option reduce this number of instalments. The State of Maharashtra has decided to give full input tax credit in the month of purchases only. However, if the capital asset is sold within the period of 36 months proportionate input credit will be withdrawn. There is a negative list for capital goods (on the basis of principles already decided by the Empowered Committee) which are not eligible for input tax credit.

Each State-VAT legislations may define ‘capital goods’ differently.

**Procedural requirements for claiming set off**

The dealer will have to bifurcate their purchase into capital goods eligible for set off and capital goods not so eligible on the basis of items covered by the negative list and retention rules. States have their own decisions for reduction in set off or providing negative lists in respect of credit for capital goods. In respect of eligible capital goods, the dealer will be required to follow the procedural requirements for claiming set off successfully. He has to further comply with the relevant provisions in respect of allowability.

The allowable set off on capital goods will be part of normal set off. The dealer will be able to adjust this set off against his other VAT liability.

**Purchases not eligible for Input Tax Credit**

Input tax credit may not be allowed in the following circumstances:

1. Purchases from unregistered dealers;
2. Purchases from registered dealer who opt for composition scheme under the provisions of the Act;
3. Purchase of goods as may be notified by the State Government
4. Purchase of goods where the purchase invoice is not available with the claimant or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;
5. Purchase of goods where invoice does not show the amount of tax separately;
6. Purchase of goods, which are being utilized in the manufacture of, exempted goods other than exports;
7. Goods in stock, which have suffered tax under an earlier Act but under VAT Act they are covered under exempted items;
8. Purchase of goods used for personal use/consumption or provided free of charge as gifts);
9. Goods imported from outside the territory of India (commonly known as high seas purchases);
10. Goods imported from other States viz. inter-State purchases.
11. Goods like motor vehicles, toilet articles, furniture etc. which are not used in relation to production of goods or held for sale/resale.

**Carrying forward of Tax Credit**

Input tax credit is first to be utilized for payment of VAT. The excess credit can be then adjusted against the central sales tax (CST) for the said period. After the adjustment of VAT and CST, excess credit, if any, will be carried over to the end of the next year. In some states like Karnataka, the excess credit can be adjusted against the Karnataka sales tax and even for payment of entry tax. If there is any excess unadjusted input tax credit at the second year, then the same will be eligible for refund. However, some States have decided to grant refund after the end of the first financial year itself.

**Refund to Exporters within Three Months**

The White Paper provides for the grant of refund of input tax paid if the goods are exported out of the country within a period of 3 months from the end of the period in which the transaction for export took place.

**Exemption or Refund to SEZ and EOU Units**

Units located in Special Economic Zone (SEZ) and Export Oriented Units (EOU) is granted either exemption from payment of input tax or refund of the input tax paid within three months. State Governments may reduce the time period of 3 months.

**Reimbursement of tax to UNO and Embassies**

In some of the states the specialized agencies of the United Nations Organization and Consulates and also Embassies of any other countries located in the state are getting the reimbursement of tax paid subject to fulfillment of conditions.

**Composition Scheme**

Principles laid down in White Paper

The relevant provisions provided in the white paper in relation to composition scheme read as under:

“Small Dealers with annual gross turnover not exceeding Rs. 50 lakhs who are otherwise liable to pay VAT, shall however have the option for composition scheme with the payment for tax at a small percentage of gross turnover. The dealer opting for this composition scheme will not be entitled to input tax credit. The limit for composition varies with every state.

The commercial tax department introduced a new method of levying tax called as the Composition Scheme especially after considering the small dealers whose turnover was low and were unable to maintain the records as per the requirements of VAT Act. These dealers have to pay a lump sum as VAT on the sale value of goods. The VAT paid will not be shown in the invoices. They can account for the total turnover and pay VAT on the same at the end of the return period.
Threshold exemption limit

The white paper, in order to provide relief to small dealers, specifies that registration for VAT will not be compulsory for dealer below a threshold (5 lakhs) turnover (the limit differs according to respective state's VAT law), and there will be a provision for optional and simple composite scheme of taxation of a small percentage of gross turnover.

However, the empowered Committee of state finance ministers subsequently allowed the states to increase the threshold limit for small dealers to Rs 10 lakhs with the condition that the concerned state would bear the revenue loss on account of increase in the limit beyond Rs 5 lakhs.

State law to provide for composition scheme

The VAT act is so designed that the high value tax payer should not be spared and the small dealers should be free from hassles of compliances procedures. The states have to provide composition scheme for small dealer’s i.e. the dealer whose turnover exceeds Rs 5 lakhs (now Rs 10 lakhs as per the decisions of the empowered committee of state finance ministers) but does not exceeds Rs 50 lakhs. Such a dealer has a option to pay composite amount of tax based on its annual gross turnover at an applicable rate subject to such conditions as may be prescribed. However, in such cases a dealer shall not be entitled to input tax credits on inputs and shall not be authorized to issue vatable invoices.

Features of Composite Schemes

The decision to join composite scheme will be an individual decision. This decision will depend on the facts as to how VAT affects the dealers business. The advantage of this scheme is that it saves lot of labour and efforts in keeping record. It also simplifies calculation of tax liability of a dealer. Such schemes generally have the following features:

1. A very small tax will be payable;
2. There will be a simple return form to cover longer return period,

The major disadvantage of this scheme is the ineligibility of the dealer to avail input tax credit and issue tax invoice in order to pass on tax credit. Hence the dealers desirous of availing input tax credit on their purchase may not prefer to buy from composition dealers.

Eligibility for the Composition Scheme

Every registered dealer who is liable to pay tax under respective state VAT Acts and whose turnover does not exceeds Rs 50 lakhs in the last financial year is generally entitled to avail this schemes. However, the following are not eligible for the composition scheme:

1. A manufacturer or a dealer who sell goods in the course of inter- state trade or commerce; or
2. A dealer who sell goods in the course of import or export out of the territory of India.
3. A dealer transferring goods outside the state otherwise than by sale or for execution of work contract.
Exercising of Option

It is generally optional for a dealer to opt for this composition scheme. A dealer who intends to avail such composition scheme shall exercise the option in writing for a year or part of the year in which he himself gets registered. For this the dealer has to intimate to the commissioner.

If a dealer avails this scheme, he need not maintain any statutory record as prescribed under the act. Only the record for purchases, sales and inventory should be maintained. However, if a dealer does not avail the scheme, he has to maintain the prescribed statutory record as per the respective state VAT acts.

The dealer should not have any stock of goods which were brought from outside on the day he exercises his option to pay tax by way of composition and shall not use any goods brought from outside the state after such date. The dealer should also not claim input tax credit on the inventory available on the date on which he opts for the composition scheme.

VAT Chain under Composition Scheme

Loss to a Seller: If the composition scheme is availed by a dealer then such dealer cannot avail input tax credit in respect of input tax paid. Hence the dealer will be losing the input tax credit on purchases made by him. He will not be able to pass benefit of input tax credit, which will add to the cost of the goods.

Loss to the Purchaser: The purchaser shall not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Therefore, as soon as the dealer opts for the composition scheme, the VAT chain will be broken, and the benefit of tax paid earlier will not be passed on the subsequent buyers.

Returns

Under VAT laws there are simple forms of returns. Returns are to be filed monthly/quarterly/annually as per the provisions of the state Acts/rules. Returns will be accompanied with the payment of challan. In these cases the returns along with the payment can be filed with treasury.

A registered dealer may be required to file a monthly/quarterly/annual return along with the requisite details such as output tax liability, value of input tax credit, payment of tax credit, payment of VAT etc. opportunity may be provided to lodge revised returns.

Every return furnished shall be scrutinized expeditiously within the prescribed time limit from the date of filling the return. If any technical mistake is detected on scrutinizing, the dealer shall be required to pay the deficit appropriately.

Return filling procedures under VAT laws are designed with the objectives of:

1. Reducing the compliances cost incurred by the businesses in completing and filling the returns; and
2. Encouraging business to comply with their obligations to file returns and pay VAT through the application of penalties in case of late payment of VAT and late filling of returns; and
3. Ensuring the efficient processing of the data included in the returns.
Audit

In the VAT system considerable weightage is placed on audit work in place of routine assessment work.

Correctness of self-assessment will be checked through a system of departmental audit. A certain percentage of the dealers will be taken up for audit every year on a scientific basis. If, however, evasion is detected in the course of audit, the previous record of the concerned dealer may be taken up for audit.

Authorized officers of the department will visit the business place of the dealer to conduct the audit. The auditors will examine the correctness of the return vis-à-vis the books of accounts of the dealer or any other information available with them. They will equipped with the information gathered from various agencies such as suppliers, income tax department, excise and customs department, bank etc. officers of the higher rank will supervise to ensure that the audit work done in a free, fearless and impartial manner.

Account to be Audited in certain cases

Under the sales-tax laws, tax evasion is considered on a large scale. The sales-tax department of various states have not been able to effectively check the menace of tax avoidance and tax evasion. Therefore, apart from the departmental audit many states have also incorporated the concept of audit of accounts by chartered accountants.

The state of Maharashtra has prescribed an elaborate list of particulars furnished by the dealers. These particulars have to be verified by the VAT auditor.

However, auditing for all type of dealers may not be necessary. The selection of cases has to be made in the accordance with the criteria of the size of the dealers. In such a case, the return supported by the audited statement can be accepted summarily. However, it might indeed be useful to cull out the fixed proportion of large and medium sized dealers for regular assessments on regular basis.

Assessment

The basic simplification of VAT is with reference to assessment. Under VAT system, there is no compulsory assessment at the end of each year. The VAT liability is self assessed by the dealer himself in terms of submission of returns upon setting off the tax credit, return forms etc. The other procedures are also simple in all the states.

Deemed assessment concept is the major feature of the VAT. If no specific notice is issued proposing departmental audit of the books of account of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self assessed on the basis of the return submitted by him.

VAT pre-supposes that the entire dealers are honest. Scrutiny may be done in cases where a doubt arises of under-reporting of transaction or evasion of tax. Honest dealer will be protected and fictitious or dishonest would be penalized heavily.
System of cross checking

In the VAT system more emphasis has been laid on self assessment. Hence, a system of cross-checking is essential. Dealer may be asked to submit the list of sales or purchases above a certain monetary value or to give the dealer-wise list from whom or to whom the goods have been purchased/sold for values exceeding a prescribed monetary ceiling.

A cross-checking computerized system is being worked out on the basis of coordination between the tax authorities of the State Governments and the authorities of central excise and income tax to compare constantly the tax returns and set-off documents of VAT system of the states and those central excises and income tax. This comprehensive cross-checking system will reduce tax evasion and also lead to significant growth of tax revenue.

At the same time, by protecting the interests of tax complying dealers against the unfair practise of tax-evaders, the System will also bring in more equal competition in the sphere of trade and industry.

Central Sales Tax [CST]

The State Government were empowered to levy and collect tax on sales made within its own territory but there was no specific provisions of levying tax on sale and purchase having interstate composition. As a result, same goods came to be taxed by several states on the ground that one or more ingredient of sale was present in their state. This led to multiple levy of tax. Therefore Central Sales Tax Act 1956 was enacted by the Parliament and received the assent of the president on 21.12.1956. Imposition of tax became effective from 01.07.1957.

The concept of Central Sales Tax is closely related to the concept of taxation in the Constitution. Sales tax has come to play an increasing role in the fiscal system of modern States. Under the constitution, taxation of sale and purchase of goods is a State subject except sale or purchase of goods in the course of inter-state trade. In respect of inter-state sale or purchase of goods the Sale Tax is levied under provisions of CST, 1956 and the entire proceeds are retained by the State.

Meaning of CST

It is an Indirect Tax as the burden falls on the consumer. It is levied by Central Govt on taxable turnover of Inter-state sale of goods made by registered dealer in ordinary course of business.

Features of CST ACT

- It states that every dealer who makes an Inter-State Sale must be a registered dealer.
- Such dealer, who makes an Inter State Sales, is liable to pay Central Sales Tax.
- Sec.3 explains when the sale of goods will be called an Inter State Sale.
- It explains what an import and export sale is.
- Sec.4 explains when a sale will be outside all other States.
- Normally CST is charged at a single point, but in some cases there can be multiple point tax on account of subsequent sale.
- Goods for the purpose of CST have been divided into - Declared & other goods.
- CST is leviable from the first rupee of sales made in the course of Inter-state sale.
The Central Sales-tax is levied under this Act but it is collected by the State Government from where the goods have been sold.

**Registration**

**Compulsory Registration**

As per Sec.7 (1), every dealer liable to pay Central Sale Tax has to register himself with sales tax authority. (As per section 6(1) of CST Act, every dealer effecting sale in the course of Inter State trade is liable to pay CST).

**Voluntary Registration**

It can be applied if the following two conditions are satisfied:

- He must be a dealer liable to pay tax under the Sales Tax Law of appropriate State.
- He is not liable to pay tax under the CST Act, i.e. he does not make an ISS.

It is useful when dealer makes Interstate purchases but all his sales are intra state.

**Note:** Compulsory registration is effective from the date of inter-state sale if the registration is applied within 30 days of making the inter-state sale. However, voluntary, registration will be effective from the date of making the application for registration.

**Benefits of Registration**

1. Concessional rate of tax on Interstate purchases under cover of C form.
2. Exemption from payment of tax under Sec.6 (2).
3. Branch transfer/stock transfer is exempt by submitting Form F.
4. Can claim benefit U/s 5(3) by issuing H form.
5. No tax on purchases by a unit in Special economic zone.
6. The dealer can avoid penalty or prosecution proceedings for non-registration.

**Security**

1. Purpose: The security is demanded for ensuring proper collection of tax payable under the Act and for the proper custody and use of the forms prescribed under the Act.
2. Amount: The registering authority can demand for security not exceeding in the aggregate the tax payable for the year on the turnover estimated. However demand can also be raised for furnishing of security in addition to the security already furnished, for keeping pace with the growth of business.
3. Timing: The security can be demanded before or after granting the registration.
4. Mode: The registering authority may require the dealer to furnish security in any one or more of the following modes:
   a. Cash
   b. Promissory notes
   c. Post office certificates
   d. Post office savings pass book
e. FDR's of any scheduled bank
f. Surety bond of a dealer etc.

**Amendment of Certificate of Registration**

A certificate may be amended either on the request of the dealer or by the authority himself after due notice to the dealer. The amendment is done in the following circumstances:

a. When there is a change in the name of the business,
b. When there is a change in the nature of the dealer’s business,
c. When there is a change in the class or classes of goods,
d. Change/addition of place of business, warehouse etc,
e. For any other reason.

**Cancellation of Registration**

1. Cancellation by the Assessing Authority by its own motion:
   This can be done, after giving an opportunity to the dealer, under the following circumstances:
   - If the dealer has ceased to carry on business,
   - If the dealer has ceased to exist,
   - If the dealer fails to furnish security or additional security when asked for,
   - If the dealer fails to furnish fresh surety bond within 90 days on the death of the surety or his becoming insolvent,
   - If the dealer fails to pay any tax or penalty payable under this Act,
   - If the dealer ceases to pay tax under the Sales Tax law of the appropriate State,
   - For any other sufficient reason.

2. Voluntary:
   - A registered dealer may apply within 6 months before the end of a year to the authority for the cancellation & the authority shall cancel the registration if the dealer is not liable to pay tax under this Act.
   - Any such cancellation shall take effect from the end of the year.

Registration certificate is not transferable.

**Meaning of Inter State Sale (ISS) [Section 3]**

A sale of goods shall be named as ISS (Interstate sale) under the following situations:

**If the sale occasions the movement of goods from one State to another (Sec.3 (a))**

E.g.: A of Delhi sells goods to B of Karnataka. As per the terms of contract, goods are delivered by A in Delhi to a transport company and Transport Company delivers goods to B at Bangalore. In this case, because of the sale, goods have moved from Delhi to Bangalore and, therefore, it is inter-State sale chargeable to the central sales tax. In other words sale is not inter-State if movement of goods is not related to contract for sale,

**If the sale is effected by a transfer of documents of title of goods from one State to another. (Section 3 (b))**
E.g.: A of Delhi sells goods to B of Jaipur, while the goods are in transit; B sells the goods by transfer of documents to C of Bangalore. In this case there are two ISS's. Sale by A to B is under 3(a) and sale by B to C is under 3(b).

Note: 3(a) Vs. 3(b): In the former case the movement of goods is under the contract of sale or purchase but in the latter the contract comes into existence after commencement and before termination of the inter-State movement of the goods.

**Meaning of movement:** For this purpose, it should be noted that movement of goods commences at the time of delivery to a carrier for transportation and terminates at the time when delivery is taken from such carrier. In other words, so long as the goods are in the custody of the transporter, the goods are deemed to be in movement.

'Document of Title of Goods': When the goods are handed over to the carrier/transporter, he hands over a receipt to the seller. The seller sends the receipt to buyer. The buyer gets delivery of goods on submission of the receipt to the carrier/transporter. The receipt of carrier is 'document of title of goods'. It generally includes the following: Railway receipts (RR) – in case of movement of goods by rail, Lorry receipts (LR) – in case of movement of goods by road, Air way Bill (AB) – in case of movement of goods by air, Bill of Lading (BL) – in case of movement of goods by sea.

**Note:** Temporary movement through another State is not Inter State sale: There could be instances where the movement of goods commences and terminates in the same State but during the course of such movement the goods pass through another State. Any such case would not amount to a sale in the course of inter-State trade (E.g. During the course of movement of goods from A (U.P.) to B (U.P), we may have to enter into Haryana)

**Note:** There are no restrictions on number of endorsement Sales.

### Stock Transfer

In stock/branch transfer, goods move from one State to another, but there is no 'sale'. Goods are sent to branch or depot or consignment agent in other State. Stock transfer/branch transfer is not subject to tax since there is no 'sale'.

Under Stock Transfer, State VAT laws require reversal of input tax credit on purchases if such goods are stock transferred – thus there is no impact only when goods have been imported or purchased from another state (in which case there is no Input tax credit)

Form F is required to be submitted to establish stock transfer.

**Some of the salient features of stock transfer and inter-state sales with respect to Central Sales Tax are as follows:**

- While inter-state sales are subject to CST, intra-state sales are governed by the respective state VAT legislations.
- Stock transfers to a branch outside the state are not subject to either VAT or CST. However, VAT credit on inputs is required to be reversed (as per the state VAT laws).
- Disputes arise when the VAT authorities start considering some stock transfers as inter-state sales and proceed to recover tax thereon from the seller.
- The High Courts of various states have been giving divergent views on this issue, which has now
been settled by the Supreme Court in the case of ‘Hyderabadi Engineering Industries’. Armed with this latest decision from the Supreme Court, the VAT department can be expected to be up in arms against the dealers.

**When Stock Transfer is treated as Inter-State sale**

Suppose that A Ltd., manufacturing Steel, has a factory at Jamshedpur, Bihar. A Ltd manufactures Steel of various standard shapes and sizes. A Ltd has a depot at Howrah in West Bengal. Steel plates, rods, billets etc. are sent to its depot at Howrah. When the goods are sent from Jamshedpur to Howrah, there is inter State movement, but the movement has not occasioned on account of any contract for sale. Hence, it is not an Inter-State sale but a stock transfer.

However, assume that a buyer from Howrah wants Steel of a particular size and specification, which is not a standard size and specification and hence is not available in Howrah depot of A Ltd. He approaches A Ltd and A Ltd manufactures Steel in its Jamshedpur factory in Bihar as per the specific requirements of the buyer. After manufacture, goods are sent to depot of A Ltd at Howrah and goods are sold to the buyer from Howrah depot of A Ltd. In such case, the movement of goods from contract and hence it is an ISS, even if goods are supplied from depot of A Ltd at Howrah.

*Note:* In some cases, ultimate buyer of goods is known even before goods are dispatched from the factory. In some cases, goods are dispatched directly to the buyer. Only Invoice is raised by the depot to show it as a stock transfer. Such dispatch just cannot be considered as ‘stock transfer’. It has to be held as ‘Inter-State Sale’.

**Works Contract Tax**

Work Contracts includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property. A works Contract is a contract for carrying out certain works on any immovable or movable property of others.

A contract which has aspect of material as well as service shall be called composite contract. A composite contract has two natures Divisible and Indivisible Contract.

**Divisible Contract**

Divisible Contracts are sale contract for VAT purpose. Segregation of material is possible and known. Suppose there is contract for 100, 80 are for material and 20 for service component. Then 80 shall be taxed at the rate as specified in the tariff applicable to the item and 20 shall be considered for computation of service tax.

**Indivisible Contract**

Indivisible Contracts are works contract for VAT purpose. In such contracts segregation of material and labour are not possible.
The works contracts are not normal sales. In the normal sale there is a transfer of property in definite or ascertained goods. The goods remain same before and after the delivery of the goods. However, in works contracts it does not happen. The goods before the delivery and after the execution of works contracts are different, many times in different form also. For example, at the site of construction of a building, before the Construction (works contract) commences, the goods like cement, steel, sand etc. are lying but after the Construction a building (immovable goods) comes to an existence. This is the difference between the ‘Normal’ sale and the ‘deemed sale’ in the indivisible works contract. The Supreme Court of India, in its various landmark judgments has confirmed in the following wordings the difference between a normal sale (as defined under the sale of goods Act) and an indivisible / composite works contract;

“In a contract of sale, the main object is the transfer of Property and delivery of the possession of Chattel as a Chattel to the buyer, where it is not so, it is a contract of Works & Labour” (Hindustan Aeronautics Ltd. 55-STC 314-SC).

**Levy of VAT on Indivisible Contracts**

There is a Uniform Scheme of Taxation for levy of VAT on Works Contracts under all the State VAT Acts. There are no separate or different taxation schemes in different States. This is a positive factor for Contractors under VAT Regime. In all the State VAT provisions, there are three options available for the Contractors to levy VAT on deemed sales (Works Contracts) and VAT is leviable on the ‘Material Value’ of the Contract. The said three options (Uniform in all the VAT States) are as under,

1. Actual Labour Deduction (Legal Option A-1)
2. Standard Labour Deduction (Legal Option A-2)
3. Composition Tax (Non Legal or Alternative Option B)

1. **Actual Labour Deduction (Legal Option A-1)**

VAT is payable on the ‘Material Value’ of the Contract. The deductions are available for arriving at the Material Value from the total contract price. Such deductions are specified in the corresponding provisions of the state VAT Acts which are based on the guidelines given by the Supreme Court in the case of Gannon Dunkerley (88 STC 204) or the Contractors can arrive at the Material value / price of the Contract by adopting cost + value Addition method. In this method, the Contractor adds to the ‘Material Cost’ which is determined by considering all the purchase bills of the materials (imports, outside the State and within the State), the margin on such material cost plus any incidental expenses attributed towards the material value. In other words, the Contractor determines the Material Price after adding Material Cost and Margin to such cost.

The specified rate of VAT would be applicable on such Material Value /Price, depending upon the classification of such materials (Steel 4%, others 12.5% VAT) in which the property passes to the Contractee. In this option, the Contractor can avail full VAT set off / credit of the VAT paid to the local vendors (Not on CST paid to the outside the State Vendors) provided he obtains corresponding ‘Tax Invoices’ from his local vendors. Therefore, the cost of VAT is zero for the Contractors in this legal option. Similarly, the Contractees /Customer also can avail the full benefit except on the purchases covered under the Negative list under the State VAT Act on which No
All India Taxes – A Ready Referencer

VAT set off/Credit is available. Mostly the Civil Works, Construction jobs, erection of immovable property (Structures) are covered in the Negative lists. On the other works contract purchases, the full VAT set off / Credit is available to the Contractee /customer. The T.D.S. (works contract) provisions are applicable to the Contractee in this option which are discussed later.

In nutshell, in the option, the Contractor gets full VAT set off / credit on the VAT paid on the inputs and the Contractee also gets the credit, if it is not in the Negative list (Like processing Jobs, Job works, Printing Jobs, Repair Jobs etc.) The Contractors are benefited under VAT System as the Contractors can avail full set off / credit.

However, in this option the Contractor has to maintain proper books of accounts and the other records to identify the material value of the Contract.

It is the Best option available since the Contractor levies VAT only on the ‘Actual Material Value’ of the contract, even though it is litigation prone option. Many Contractors who execute big indivisible works contracts, Turnkey Jobs opt for this option.

2. **Standard Labour Deduction (Legal Option A - 2)**

Under this legal option, the VAT is payable on the ‘Material Value’ of the Contract. The Material value is calculated after deducting the ‘Labour Portion’ from the total contract value / Price.

However, in this option a table is available in the State VAT Act / Rules which shows ‘Standard Labour portion’ attributed to the various works contracts. The Contractor has to deduct such ‘Standard Labour portion’ shown in such tables from the total Contract price to arrive at the ‘Material value’. The Contractor would charge specified VAT, on such material value. Each State has provided the said ‘Standard Labour’ table, under this option.

The advantage in this option compare to the Actual Labour Deduction (Legal Option) is that it is litigation free. The Sales Tax Departments would allow the said ‘labour portion deductions’ as the same are provided in the VAT Rules itself. Also no identification record has to be maintained by the contractor for the materials used in the contracts. However, the Contractor has to consider both the options A-1 and A2 in the case where the Contractee/ Customer does not get the VAT set off / credit and then selecting the cheaper option.

Like in Actual Labour Deduction (Legal Option) in this option also, the Contractor gets full credit / set off on the VAT paid on the inputs and the Contractee also gets full set off of the VAT paid provided the said purchases are not in the Negative list of VAT set off / credit. The TDS provisions are applicable to the contractee in this option also which are discussed later.

3. **Composition Tax (Non Legal or Alternative Option B)**

Option B is the “Composition Tax” option. This is a non legal alternative option, simpler option for those Contractors who cannot maintain the proper Accounts, Record of the material and other portion in their contracts. The contractees / customer prefers this option as small amount of Composition Tax 2% / 4% is payable to the Contractor instead of 12.5% VAT payable in legal options. A-1 and A-2. However, VAT credit/set off is not being available to them in this option.

Under the “Composition” option, the Contractor has to pay Composition Tax (VAT) on the total Contract value / price, No deduction of labour is available in this option. Similarly, No VAT set off / Credit is available on the purchases of inputs to the Contractors and the same is not available to the Contractees also. (Except under Maharashtra VAT Act/Rules, partial VAT Credit
is available to both Contractor and Contractees in the Composition Tax option). The Rates of Composition Tax differ from state to state. Generally it is 2% (for civil contracts) @ 4% for other Contracts. However, exception is in Maharashtra State where the Rate of Composition Tax is 5% on Civil Contracts and 8% on other Contracts. In Maharashtra, in this option, in excess over 4% Credit is available on the input purchases for civil contracts (where composition Tax Rate is 5%) and 4% of the total credit available for other Contracts (where Composition Tax Rate is 8%). Thus, partial VAT Credit is available to the Contractors in the Composition Tax option. However, full credit is available to the Contractees in this option in Maharashtra provided such purchases are not included in the Negative list under MVAT Rules.

Therefore, except in Maharashtra, in all other states No VAT set off / credit is available to both the Contractor and the Contractee in the Composition tax option. The TDS provisions of Works Contract are applicable to Contractees in this option which is discussed later.

In Short, in all the States only the said 3 options (A-1, A-2 and B) are available in the hands of the Contractors for levy of VAT on the local works contract transactions in the VAT system. If no VAT set off/Credit is available to the Contractees / Customer, then the Composition Tax option is the Cheapest since the Rate of Composition Tax is lower than 12.5% VAT. Therefore, if the Contractee / Customer can not avail the VAT set off / Credit in all the three options, then, the VAT / Composition Tax paid to the contractor is the cost to such Contractee /Customer, hence in such cases the Contractor and Contractee should select the best option available after considering the Actual Figures in all the three options.

The States have provided separate sections / Rules under the respective State VAT Acts for the works contracts transactions which include said three options of levy of VAT, TDS, VAT Credits and Negative lists.

**General Negative list Items for Works Contracts under State VAT Act & Rules**

**a.** Purchases effected by way of works contract where the contract results into an immovable Property.

**b.** Purchases of Building material which are not resold but are used in the activity of Construction. (Free issues)

**c.** Purchases of works contracts made by the Contractees in Civil Contracts.

**d.** Any purchases of Consumables or of goods treated as Capital Assets by the Contractor/dealer where he is principally engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him.

(Please refer to the specific provisions of works contracts under the relevant state VAT Acts for such Negative lists)

**Tax Deducted at source under Works Contract Tax (TDS)**

In most of the State VAT Acts, the provisions of Tax deducted at source (TDS) are incorporated. The logic behind the TDS (WC) provisions is that the Contractors are not organized in many cases and they do not pay taxes on time, therefore in this provision the contractee / customer deducts the
prescribed % of TDS from the Contract Price and pays the same before the prescribed dates, directly, to the respective State Government through the specified challan. The TDS is to be deducted by the specified customers only as notified by the State Governments. Generally, the dealers registered under the State VAT Acts, State and Central Governments, Corporations, Government Undertakings, Co-operative Societies only have to deduct the said TDS (WC) and not by all the Customers. The monetary limit of the turnover is prescribed between Contractor and Contractee for such deduction in the hands of the Customer in most of the VAT Acts.

It is responsibility of the Contractee / Customer to deduct the prescribed % of TDS (As provided in the relevant VAT Act & Rules) and pay the same to the State Government before the prescribed date, otherwise interest / penalty is leviable on such Contractees / Customers.

However, as per the State VAT Act provisions, the Seller (Contractor) are liable to pay VAT, if No TDS is made by the Contractee/Customer. The State Governments have prescribed different VAT Forms under the provision of TDS (WC). In certain States, the Contractee has to obtain TANs (Tax deductible Account Number) and file Annual Returns of TDS under the TDS provisions.
About Delhi that includes the Indian capital New Delhi, stands on the Yamuna River in northern India. It borders the Indian states of Haryana on the north, west and south and Uttar Pradesh (UP) to the east. It is also the capital of India. Delhi is the largest commercial centre in northern India. It is the second most populous metropolis in India after Mumbai and the largest city in terms of area.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Property tax,
- Betting Tax,
- Tax on consumption of electricity,
- Tax on vehicles and animals,
- Tax on Buildings,
- Theatre tax
- Advertisement tax
- Duty on transfer of property
- Entertainment tax

Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called the Delhi Value Added Tax Act, 2004.
  
  It extends to the whole of the National Capital Territory of Delhi.

  - **VAT Tax Schedule**

    | Schedule   | Rate     |
    |------------|----------|
    | General    | 12.5%    |
    | Schedule I | List of Exempted commodities |
    | Schedule II| 1%       |
    | Schedule III| 5%       |
    | Schedule IV| 20%      |

  - **Filing of Returns**

    | Tax period   | Due date of filling                                      |
    |--------------|----------------------------------------------------------|
    | Quarterly    | 25th day after the end of tax period for online and manually till the 28th day after the end of tax period |

  - **Manner of Payment**

    | Turnover Case | Due date of Payment                                      |
    |---------------|----------------------------------------------------------|
    | Monthly if turnover exceeds 5 crores | 21 days from the end of the relevant Month. |
    | Quarterly in any other case | 21 days from the end of the relevant Quarter. |
Road Permit/ Way Bill
Applicable in Delhi w.e.f 01.04.2013.
Inward-Form T-2
Outward Form T-1

Entry Tax
Not Applicable.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Property tax
The Corporation levies property tax on all land and buildings under its jurisdiction in order to meet its civic obligations. Section 114 of the DMC Act enumerates that property tax in Delhi would constitute a general tax between 10-30 percent of the rateable value of lands and buildings within the urban areas and on all land and buildings within the rural areas at rates determined by the Corporation. Higher levels of tax rates are applicable on buildings that run any kind of trade or business.

Betting tax
Government also receives revenue from the Delhi Race Course where betting on horse racing in respect of both on-course and off-course races takes place. Bets can be placed by the general public either with the bookmakers or in computers which are called totalizators. The stewards of the Club are responsible for collecting betting tax at the rate of the 20% and for depositing the same with the Department in cases where people place bets at the totalizators. For bets placed with the bookmakers, the bookmakers are responsible for collecting and depositing betting tax at the rate of 10% on all sums of money placed by way of bets with them.

Tax on Consumption of Electricity
The Corporation levies tax on consumption of electricity. 5 % tax is charged on the total electricity consumed by a household or commercial establishment. Distribution companies include this tax component in the electricity bill, thus collecting the tax on behalf of the Corporation.

Tax on vehicles and animals
MCD levies a tax on vehicles and animals. The Motor Vehicles Tax is collected at the time of purchase. In Delhi, it averages 6 %, whereas the all-India figure is around 3 %. Tax on animals, also known as pet tax, is collected by MCD. It is meant for any animal drawing a vehicle; this implies that the person who owns the vehicle will pay the tax rather than the person who owns the animal.
• **Tax on Buildings**
The Corporation can levy a tax on buildings, payable along with the application for the sanction of building plans Annexure 4 details the rates of tax as determined by the Corporation. Tax rates remain the same for any further additions and alterations. In the case of areas more than 100 square yards but not exceeding 250 square yards, no tax is levied if the estimated cost of a proposed structure is below Rs 500.

• **Theatre tax**
MCD imposes an entertainment tax on theatre, drama, concerts, circuses, variety entertainment, fetes and other types of entertainment. The rates of tax range from Rs 7-10 per show. Tax is collected indirectly in the form of ticket prices. The price that people pay for the ticket has an implicit tax component, which is later calculated and submitted to the theatre tax department at Kashmere Gate.

• **Tax on Advertisements**
MCD levies a tax on advertisements other than those published in newspapers. These advertisements are on hoardings, land, buildings, frame posts, and structures. Some others on the list are non-illuminated advertisements carried by animals, human beings and vehicles, those that are exhibited on cinema screens or those that are suspended across streets. Exemption from this tax is given only to those businesses or persons who put advertisements on buildings where the business is being done.

• **Duty on transfer of property**
This tax is applicable with respect to all property situated within or outside Delhi. The said duty is levied in the form of surcharge on duty imposed by the Indian Stamp Act 1899 on every instrument of the description specified, and the rate as determined by the Corporation, not exceeding 5%. The property tax department collects this tax.

• **Entertainment Tax**
The Department regulates the entertainment activities in the N.C.T. of Delhi as per the provisions of The Delhi Entertainments and Betting Tax Act., 1996. Entertainment means any exhibition, performance, amusement, game, sport or race, (including horse race) and cinematographic exhibitions. The liability to collect entertainment tax from the patrons and to deposit the same with the Government lies with the proprietors / organizers of entertainments. Cinemas are the main source of revenue from Entertainment Tax and the rate of tax on entry tickets to cinematographic exhibitions is thirty (30%) percent.
HARYANA

About

Haryana state lies in northern India and surrounds Delhi on three sides, forming the northern, western and southern borders of Delhi. The capital city of Haryana is Chandigarh, which is even the capital of the state of Punjab. Haryana is also one of the most economically developed regions in South Asia. Forty percent of the national capital region falls in Haryana state.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Entertainment Tax,
- Passengers and Goods Taxation.

Types of Taxes

- **VAT [Value Added Tax]**
  This Act may be called the Haryana Value Added Tax Act, 2003
  It extends to the whole of the State of Haryana.
  - **VAT Tax Schedule**
    Schedule A—at the various rates specified therein as per section 7(1)(a)(i);
    Schedule B—exempted goods;
    Schedule C—at 4% or such other rate not exceeding 10% (it may be noted that a dealer dealing in goods specified in Schedule C, S. Nos. 1-101 shall be taxed @ 5%);
    Schedule D—at the rate mentioned against such goods, otherwise at 4% or such lower rate applicable on the sale of such other goods;
    In case of other goods not specified in any of above-mentioned schedules, @ 12.5% or such other rates not exceeding 15%; and
    Schedule G—at the various rates specified therein.
    In case if you are selling goods to manufacturer within state against D1 Forms then concessional rate will be 4%.
    Note: Surcharge of 5% is applicable on all schedules.
  - **Filing of Returns**
    Every VAT dealer shall also file Quarterly return in VAT R1, VAT R4 or VAT R4A by end of the month immediately following each quarter.
    Every VAT dealer shall furnish on or before 30th November every year an annual commodity tax return vide Form VAT R3 and annual return vide VAT R2.
  - **Manner of Payment**
    Every dealer whose liability to pay tax for the last year or part thereof according to the return filed by him is equal to or more than Rs. 1,00,000 or other sum as prescribed, shall pay, on or before the 15th day of each month, the full amount of tax payable by him for the previous month.
Every dealer on whom above limit does not apply shall pay full amount of tax payable for the quarter by end of the month immediately following each quarter.

- **Road Permit/Way Bill**
  This is applicable on both inward and outward.
  Inward will be used by the registered dealer to whom it has been issued, for importing goods in the state of Haryana or for receiving goods from persons other than registered dealers in Haryana.
  Outward will be used by the registered dealer to whom it has been issued for the dispatch or delivery of goods.

- **Entry Tax**
  Entry tax is not applicable in this state.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  This Act may be called the Haryana Tax on Luxuries Act, 2007.
  It extends to the whole of the State of Haryana.
  It shall be deemed to have come into force on the 7th day of August, 2007.
  There shall be levied and collected a tax, on the charges collected for luxuries provided in a hotel for residents or others such as health club, beauty parlor, swimming pool, lawn, conference hall and the like when such charges are collected separately, at the rate of 10% or such other rate not exceeding 15% as the State Government may, by notification in the Official Gazette, direct.

- **Entertainment tax**
  This Tax is levied in respect of admission to public entertainment (eg. hotels, resorts, clubs, Exhibitions, Celebrity stage shows, fun and theme parks etc.).
  Any person admitted to an entertainment shall be liable to pay an entertainments duty at a rate, which the Government may specify, by a notification in this behalf, and the said duty shall be collected by the proprietor and rendered to the Government in the manner prescribed.
  Such tax shall be exempt in following situations:
  - If the whole of the net proceeds of the entertainment will be devoted to philanthropic, charitable, educational or scientific purposes which have been approved as such by the Government.
- The Government may for promotion of peace and international goodwill or encouragement of arts and crafts sports or other public interest, by general or special order, exempt any entertainment.
- Persons playing sports in registered clubs having sports activities as an item in their memorandum of association but excluding fun parks and similar commercial ventures.

**Passengers & Goods Taxation**

This tax is levied on passenger and goods carried by road in certain vehicles. No such tax shall be levied, charged and paid on goods including minerals and mineral ores, proved to be exported out of the territory of India, whether by one transaction or by a series of transactions.

In case of contract carriages, public carriers and private carriers, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods respectively, in the manner prescribed.
**PUNJAB**

<table>
<thead>
<tr>
<th>About</th>
<th>Punjab a state in India is situated in the northwestern corner of the country. It is one of the smallest and the most prosperous states of India. The five rivers Sutlej, Beas, Ravi, Chenab and Jhelum gave it its name 'punj-ab' or the 'land of five waters'. The state capital is Chandigarh which is the administrative capital of Punjab. Punjab is a state in India known for its agriculture, livestock, forestry, industries, minerals, tourism.</th>
</tr>
</thead>
</table>

| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax,  
• Entertainment Tax,  
• Luxury Tax.  

| VAT [Value Added Tax] | This Act may be called the Punjab Value Added Tax Act, 2005.  
It shall come into force from the 1st day of April, 2005.  
○ VAT Tax Schedule  
Schedule A: Exempt  
Schedule B: 5.5%  
Schedule C: 1%  
Schedule C-1: 4.5%  
Schedule D: 20.5%  
Schedule E: List of goods taxable at special rates  
Schedule F: 13% (General Category)  
Note: 10% Surcharge is applicable in Punjab.  
○ Filing of Returns |

<table>
<thead>
<tr>
<th>Particular</th>
<th>Payment mode</th>
<th>Return Filing Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>If GT &gt; Rs. 1 crore (Form VAT16)</td>
<td>If payment made in cash.</td>
<td>Within 30 days from expiry of each month.</td>
</tr>
<tr>
<td></td>
<td>If payment made by cheque.</td>
<td>Within 20 days from expiry of each month.</td>
</tr>
<tr>
<td>If GT &lt; Rs. 1 crore (Form VAT 15)</td>
<td>If payment made in cash.</td>
<td>Within 30 days from expiry of each quarter.</td>
</tr>
<tr>
<td></td>
<td>If payment made by cheque.</td>
<td>Within 20 days from expiry of each quarter.</td>
</tr>
</tbody>
</table>
Manner of Payments

<table>
<thead>
<tr>
<th>Particular</th>
<th>Payment mode</th>
<th>Tax Payment Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly, if annual tax liability of the previous year exceeds 2 lakhs</td>
<td>If payment made in cash or RTGS</td>
<td>Within 30 days of following month.</td>
</tr>
<tr>
<td></td>
<td>If payment made by cheque/DD</td>
<td>Within 20 days of following month.</td>
</tr>
<tr>
<td>Quarterly-Tax liability of previous year does not exceed 2 Lakhs</td>
<td>If payment made in cash/RTGS</td>
<td>Within 30 days of following quarter.</td>
</tr>
<tr>
<td></td>
<td>If payment made by cheque/DD</td>
<td>Within 20 days of following quarter.</td>
</tr>
</tbody>
</table>

Road Permit/Way Bill

In Punjab & Chandigarh, it is not applicable.

Entry Tax

It is applicable in Punjab but not applicable in Chandigarh.

Entry tax is leviable on all persons including taxable person registered under the Punjab Value Added Tax Act, 2005 on entry of goods into the state of Punjab for the notified goods of which the list along with rates of entry tax is mentioned below in table. Here it is pertinent to point out that entry tax is payable on the goods even imported from outside the territory of India. Entry tax is not leviable if the goods are not notified for levy of entry tax U/s 3 or 3A or goods though notified but are coming in the state of Punjab for Job Work, Rejected Material and Returned Material subject to certain conditions or goods are not meant for state of Punjab but are in transit for destination outside the state of Punjab.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

CST [Central Sales Tax]

This Act may be called the Central Sales Tax Act, 1956.

It extends to the whole of India

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Entertainment Tax

Entertainments duty is levied in respect of admission to public entertainments (which includes any exhibition, performance, amusement, game sport or race to which persons are ordinarily admitted on payment or moving pictures or series of pictures which are shown in a cinema house or on the television with the aid or any type of antenna with a cable network attached to it or cable television) at a rate which government may specify.
- **Luxury tax**

The Government of Punjab has levied tax on Luxuries provided in Hotels at prescribed rates above certain limit. The Luxuries provided by the Hotel includes the charges for Air conditioning, Telephone, Fax, Internet, Television, Radio music, Health club, Beauty Parlor, Swimming pool, Conference Hall or other amenities whether such charges are received collectively or separately but excluding charges for food and drink. Such tax is also levied on Luxuries provided by Banquet Halls/Marriage Palaces charging above specified limit at prescribed rate, which shall include charges for Air cooling, Air conditioning, Chairs, Tables, Linen, Utensils and vessels, Shamiana, Tent, Pavilion, Electricity, Water, Fuel, Interior or exterior Decoration, Music orchestra, Live telecast etc. but excluding charges for food and drink.
**UTTAR PRADESH**

<table>
<thead>
<tr>
<th>About</th>
<th>Uttar Pradesh (literally translated as “Northern Province”) abbreviated as U.P., is a state located in northern India. Lucknow is the capital city of Uttar Pradesh and Kanpur is economic and industrial capital of U.P.</th>
</tr>
</thead>
</table>
| Types of Taxes | • VAT  
• CST |
| Brief Note on Taxes | • **VAT**  
This Act may be called the Uttar Pradesh Value Added Tax Act, 2008. It extends to the whole of Uttar Pradesh. It shall be deemed to have come into force on January 1, 2008  
❖ **VAT Tax Schedule**  
Schedule I: Exempt.  
Schedule II - A: List of goods taxed at 5%.  
Schedule II –B: List of goods taxed at 5% IT Products.  
Schedule II –C: List of industrial inputs taxed at 5%.  
Schedule III: 1%  
Schedule IV: Different Rates for different Items as described in schedule  
Schedule V: For all goods except goods mentioned or described in Schedule-I, Schedule-II, Schedule-III and Schedule-IV of this Ordinance are charged 14%  
❖ **Filing of Returns**  
Monthly- Within 20 days from the end of last day of the previous month. (For Dealers liable for payment of tax for the first time in any assessment year and Dealers deals in sensitive commodities)  
Quarterly- Within 20 days from the end of the last day of the previous quarter. (For Dealers other than above)  
❖ **Manner of Payments**  
For all dealers- (Monthly) Up to 20th of the month from the end of last day of the previous month.  
❖ **Road Permit/Way Bill**  
This is applicable on both Inward and outward.  
❖ **Entry Tax**  
Applicability-Yes |
Entry Tax shall be levied and collected a tax on entry of goods specified in the Schedule for consumption, use or sale therein, from any place outside that local area at such rate not exceeding five percent of the value of the goods as may be specified by the State Government and different rates as specified in respect of different goods or different classes of goods. Such tax is payable by a dealer who brings or causes to be brought into the local area such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

• CST
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.
### UTTARAKHAND

<table>
<thead>
<tr>
<th>About</th>
<th>Uttarakhand formerly known as Uttranchal is strategically located at the foothills of the Himalayan ranges and has a mountainous topography. It forms part of the northern boundary of the country, sharing its borders with Nepal and China (Tibet). This state was formed out of the north-western districts of Uttar Pradesh and the Himalayas on 9 November 2000. The provisional capital of Uttarakhand is Dehradun, the largest city in the region.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax.  
• Luxury Tax  |
| Brief Note on Taxes | • **VAT [Value Added Tax]**  
This Act may be called The Uttarakhal Value Added Tax Act, 2005.  
It extends to the whole of the State of Uttarakhal.  
It shall be deemed to have come into force on the 1st day of October, 2005  
  o **VAT Tax Schedule**  
    Schedule I – Exempt  
    Schedule II (A) – 1%  
    Schedule II (B) – 5%. Plus 0.5% additional tax.  
    Schedule II (C) – 20% and 32.5% as mentioned against each item.  
    Schedule III – 5%, 21%, 15%, 8%, 2%, 20%, 21%, 25%, or 32.5% at M or I point as mentioned against each item.  
    Other items, not covered in schedules – 12.5%+Additional tax of 1%  
  o **Filing of Returns**  
    For all dealers return has to be filed quarterly up to 25th of the month following the end of Quarter.  
  o **Manner of Payments**  
    Dealer with GTO > 50 Lakhs during the preceding year:  
    Monthly, up to 25th of the succeeding month (Form VI).  
    In other case:  
    Quarterly, up to 25th of the month following the end of Quarter.  
  o **Road Permit/Way Bill**  
    This is applicable only in case of Inward.  
    Form XVI for registered dealers and Form XVII for unregistered persons for entering goods into state of Uttarakhand. |
- **Entry Tax**
  This tax is applicable in Uttarakhal.
  This tax is levied and collected on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at prescribed rate. Such tax shall be payable by dealer who brings or causes to be brought into the local area such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  An Act to provide for the imposition of a tax on luxuries in hotels.
  Hotel includes a residential unit (including a tent made unit) wherein rooms are provided to customers on rent and it also includes conference hall, marriage hall, community hall, mandap, club, lodge, tent age resort and also space provided on rent by the owners of open space for business purposes, but does not include approved units under paying guest scheme of the department of tourism of the Uttarakhand. A Luxury tax shall be payable at the following rates by every person who occupies a room or suite of rooms.

<table>
<thead>
<tr>
<th>Rent Per Day</th>
<th>Rate of Luxury Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rs. 1000 to 3500</td>
<td>5%</td>
</tr>
<tr>
<td>Above Rs. 3500</td>
<td>10%</td>
</tr>
</tbody>
</table>
## JAMMU & KASHMIR

**About**

JAMMU AND KASHMIR is the northernmost state of India. It is situated mostly in the Himalayan mountains. Jammu and Kashmir shares a border with the states of Himachal Pradesh and Punjab to the south and internationally with the People's Republic of China to the north and east and the Pakistan-administered territories of Azad Kashmir and Gilgit–Baltistan, to the west and northwest respectively.

**Types of Taxes**

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Motor Spirit and Diesel Oil Tax,
- Passenger Tax,
- Entertainment Tax and luxury tax

**Brief note on Taxes**

- **VAT [Value Added Tax]**
  This Act may be called the Jammu and Kashmir Added Tax Act, 2005. It extends to the whole of Jammu and Kashmir. This section has come into force with effect from 3rd day of April, 2005

  o **VAT Tax Schedule**

    | Schedule | Description |
    |----------|-------------|
    | A        | Commodities under VAT (0%) |
    | B        | Commodities under special rate of 1% under VAT |
    | C        | Commodities to be taxed @ 5% |
    | No. 73 of | List of Industrial Inputs And I.T. Products |
    | C        | 5% Rate Items |
    | D1       | Commodities to be taxed at 13.5% |
    | D2       | Commodities to be taxed at 40% |
    | Negative List | Negative List of Items For Input Tax Credit |

  o **Filing of Returns**

    | Types of Dealers   | Types of Return | Due Dates            |
    |---------------------|-----------------|----------------------|
    | All dealers         | Quarterly       | one month from end of the quarter. |
    | Non- Importers      | Annual          | 31st July.           |
    | Works Contractor    |                 |                      |
    | Casual Dealers      | Monthly         | 7 days from the end of the month. |

  o **Manner of Payment**

    All Payment of taxes shall be done before due dates of their filing return.

  o **Road Permit/Way Bill**

Form Vat 65 is declaration needed for carrying goods. It is inward of goods entering the State.
Similarly Form Vat 58 is required for goods moving out of the state.

- **Entry Tax**
The tax is to be levied on the entry of scheduled goods into the state, to be called 'entry tax' at the rates as may be notified from time to time under the Jammu and Kashmir General Sales Tax Act, 1962, the Jammu and Kashmir Value Added Tax Act, 2005, or the Jammu and Kashmir Motor Spirit and Diesel Oil (Taxation of Sales) Act, as the case may be, and such tax shall be charged and collected at the check post by such authority and in such manner as may be prescribed;
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Motor Spirit and Diesel Oil Tax**
An act to provide for the levy of a tax on the retail sale of Motor Spirit and Diesel Oil. Every dealer shall pay to the Government a tax on the sale of motor spirit and diesel oil at such rate or rates not exceeding 12%, advalorem as may be specified by the Government by notification in the Government Gazette.
Provided that tax shall be chargeable on the first sale after import of motor spirit and diesel oil into the State.

- **Passenger Tax**
There shall be levied, charged and paid to the Government a tax on all fares in respect of all passengers carried by motor vehicles, at such rate not exceeding 30% of the value of the fare as may be notified by the Government from time to time in this behalf subject to a maximum of two Naya Paise in any one case the amount of tax being calculated to the nearest Naya Paisa.
**HIMACHAL PRADESH**

**About**
HIMACHAL PRADESH is a state in Northern India, bordered by Jammu and Kashmir on the north, Punjab on the west and south-west, Haryana and Uttarakhand on the south-east and by the Tibet Autonomous Region on the east.

**Types of Taxes**
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Passenger & Goods Tax,
- Luxury tax

**Brief note on Taxes**
- **VAT [Value Added Tax]**
  This Act may be called the Himachal Pradesh Value Added Tax Act, 2005.
  It shall and shall always be deemed to have come into force on the 1st day of April, 2005.
  - **VAT Schedule**
    - General Rate [Category I]
    - Other Rates as follow: [Category II]
    - Schedule A – Part I 1%
    - Schedule A – Part II 4%
    - Schedule A – Part II-A 5%
    - Schedule A – Part II-AA 9%
    - Schedule A – Part III 13.75%
    - Schedule B Goods Exempted from tax
    - Schedule C Goods subject to purchase tax
    - Schedule D Goods Taxable at 25%, 9.7% and 12.5% as per Section 6 (1)(c).
    - Schedule E Goods taxable at special rates
  - **Filing of Returns**
    - Annual return: This has to be filed on 31st November every year for the preceding year.
    - Other returns: Every taxable person shall file quarterly returns within 30 days from the date of expiry of each quarter.
      The dealer, whose turnover during the preceding financial year exceeds 5 crores shall furnish return for each month, within 30 days from the close of the month.
  - **Manner of Payment**
    Dealers filing monthly return shall file monthly tax which shall be paid within 30 days from the end of the month.
    Similarly, dealers filing quarterly return shall file monthly tax which shall be paid within 30 days from the end of the quarter.
Road Permit/Way Bill
Applicable in Himachal Pradesh.

Entry Tax
Applicable in Himachal Pradesh.
Entry tax is leviable on all persons including taxable persons registered under the Himachal Pradesh Value Added Tax Act, 2005, on the entry of goods into the state of Himachal Pradesh. The goods notified goods in the list along with the respective rates of entry tax are delineated in the table below. Here, it is pertinent to point out that entry tax is payable even on the goods imported from outside the territory of India. Entry tax is leviable if the goods are notified for under Schedule II of the Act or if the goods though notified, are coming into the state of Himachal Pradesh for job work, or as rejected material and returned material, and are subject to certain conditions, or are goods that are not meant for state of Himachal Pradesh but are in transit towards a destination outside the state of Himachal Pradesh.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

• CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

• Passenger and Goods Tax
This Act may be called the Himachal Pradesh Passengers and Goods Taxation Act, 1955.
It shall extend to the whole of the State of Himachal Pradesh
Tax shall be levied on all fares in respect of all passengers carried by motor vehicles at such rates not exceeding fifty percent of the value of fares, and on all freights in respect of all goods transported by motor vehicles at such rates not exceeding five percent of the value of freight,

• Luxury Tax
This Act may be called The Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979.
It extends to the whole of the State of Himachal Pradesh.
“luxury provided in a hotel” means accommodation for residence provided in a hotel, rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, sports, extra beds and other amenities provided in a hotel) is fifty rupees per person per day or more as specified by government.
MAHARASHTRA

**About**

Maharashtra is a state in the western sea coastline of India. It is the second most populous state after Uttar Pradesh and third largest state by area in India. The state covers an area of 307,731 km² (118,816 sq mi) or 9.84% of the total geographical area of India. Mumbai, the capital city of the state, is India’s largest city and the financial capital of the nation.

**Types of Taxes**

- Value Added Tax [Local Sales Tax]
- Central Sales Tax
- Entertainment Tax
- Profession Tax
- Luxury Tax
- Local Body Tax

**Brief Note on Taxes**

- **VAT [Value Added Tax]**
  
  This Act may be called the Maharashtra Value Added Tax Act, 2002.

  It extends to the whole of the State of Maharashtra.

  It shall come into force on 1st of April, 2005

  — **VAT Tax Schedules**

<table>
<thead>
<tr>
<th>SCHEDULES</th>
<th>RATE OF TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule A contains essential items like bread, milk, cereals, pulses etc.</td>
<td>NIL</td>
</tr>
<tr>
<td>Schedule B contains bullions and specie, jewellery, diamonds, imitation jewellery etc.</td>
<td>1% or 1.1%</td>
</tr>
<tr>
<td>Schedule C contains essential items, raw materials, packing materials and IT products etc.</td>
<td>2%,3%,4% or 5%</td>
</tr>
<tr>
<td>Schedule D contains liquors and motor spirits, etc.</td>
<td>20% and Above</td>
</tr>
<tr>
<td>Schedule E is in the nature of residuary entry, covering all goods not covered in any of the earlier schedules.</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

— **Filings of Returns**

<table>
<thead>
<tr>
<th>Retailer covered under composition Scheme</th>
<th>Six Monthly</th>
<th>Within 30 days from end of six month</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Return in year of Registration</td>
<td>From date of registration or 1st April to end of quarter in which dealer is registered</td>
<td>within 21 days from end of the quarter</td>
</tr>
<tr>
<td>Subsequent return in first year</td>
<td>Quarterly</td>
<td>Within 21 days from end of the quarter</td>
</tr>
<tr>
<td>Tax Liability during previous year is &lt; Rs.1 lac or refund due was &lt; Rs.10 lac. [In subsequent year]</td>
<td>Six monthly</td>
<td>Within 30 days from end of six month.</td>
</tr>
<tr>
<td>Tax Liability during previous year is &gt; Rs.1 lac and &lt; Rs.10 lac or refund due was &gt; Rs.10 lac and &lt; Rs.1 crore. [In subsequent year]</td>
<td>Quarterly</td>
<td>Within 21 days from the end of the quarter</td>
</tr>
<tr>
<td>Tax Liability during previous year is &gt; Rs.10 lac or refund due was &gt; Rs.1 crore. [In subsequent year]</td>
<td>Monthly</td>
<td>Within 21 days from the end of the month</td>
</tr>
</tbody>
</table>

Note: The dealers filing the return during subsequent year must verify their periodicity of return online as sales tax department of Maharashtra may determine any other periodicity for return filing.

- **Manner of Payments**
  Tax shall be paid within 21 days from the end of the month or quarter as the case may be.

- **Road Permit**
  Not Applicable in Maharashtra.

- **Entry Tax**
  Entry tax is leviable on the purchase value of motor vehicles brought into Maharashtra from other states/1. Union Territories, for use or for sale in the state of Maharashtra from other states/Union Territories, for use or for sale in the state of Maharashtra, subject to the condition that the motor vehicle so brought is liable for registration in Maharashtra or for which an assignment of a new registration mark is required to be obtained under the Motor Vehicles Act. There is no turnover limit for liability to pay entry tax. Presently the notified rate at 4% for Tractors specifically designed for agricultural use and at 12.5% for 2. other motor vehicles. The tax is leviable on Motor Car, Motor Taxi Cab, Motor Cycle, Motor Cycle Combinations, Motor Scooter, etc. Tax is attracted only when all the following conditions are fulfilled.

  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956
  It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Entertainment Tax**
  Entertainment tax is levied on every financial transaction that is related to entertainment such as movie tickets, major commercial shows and big private festivals. As per the Indian Constitution, entertainment is included in List 2. This revenue is reserved primarily for the state governments. Maharashtra entertainment tax is 45%.

- **Professional Tax**
  The Act proposes to levy tax on ‘person’ covered by Schedule I appended to the Profession Tax Act, 1975 (given separately). There are 21 entries in the Schedule to cover the different category of persons. The rates of taxes are also given in same schedule. The person liable to Profession Tax has to obtain Enrollment Certificate within 30 days from date of liability. Normally the tax is required to be paid by 30th June of respective financial year. The payment is to be made in challan No. VIII. Facility of payment by electronic mode is not yet started.

<table>
<thead>
<tr>
<th>Professional Tax Gross [In Rs.]</th>
<th>Per Month [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 5000</td>
<td>0</td>
</tr>
<tr>
<td>5001 – 10000</td>
<td>175</td>
</tr>
<tr>
<td>Above 10001</td>
<td>200</td>
</tr>
<tr>
<td>Rs. 200 except Feb. In Feb it shall be Rs. 300.</td>
<td></td>
</tr>
</tbody>
</table>

- **Luxury Tax**
  A tax placed on products or services that are deemed to be unnecessary or non-essential. This type of tax is an indirect tax in that the tax increases the price of the good or service and is only incurred by those who purchase or use the product.
  The term has remained even though many of the products that are assessed with luxury taxes today are no longer seen as “luxuries” in the literal sense. Today’s definition leans more toward “sinful” items, such as tobacco, alcohol, jewelry and high-end automobiles. They are implemented as much in an attempt to change consumption patterns as to collect tax revenues.

  Luxury taxes can also be called sin taxes.

- **Local Body Tax**
  LBT is another name of Octroi. Octroi is collected at check posts. In LBT check posts are supposed to be removed. It is a tax which can be collected by Corporations on the basis of books of accounts like VAT. Any goods which are brought into the Corporation area (import) from outside Corporation area for use, consumption or sale are liable for LBT. It is a tax on purchase and not on the sale of goods. It is a self-assessment account based tax. If goods are purchased inside Corporation area from unregistered dealer under LBT Act, then also LBT is payable.
Registration

A. Importer

The dealer who is an importer and whose turnover of sale or purchases of taxable goods during the year, equals or exceeds Rs. 5,000/- and the value of goods imported equals or exceeds Rs. 5,000/- and the turnover of Sales or Purchases equals or exceeds Rs. 1,00,000/-, then he is liable for registration under LBT Rules.

B. In Any Other Case

The dealer who is an importer and whose turnover of sale or purchases of taxable goods during the year, equals or exceeds Rs. 5,000/- and the value of goods imported equals or exceeds Rs. 5,000/- and the turnover of Sales or Purchases equals or exceeds Rs. 1,00,000/-, then he is liable for registration under LBT Rules.

C. Temporary Registration

If a dealer is carrying on a business in the city on a temporary basis, then he shall be liable for temporary registration under the Act & Rules, irrespective of turnover of Sales & purchases

Schedules

Schedule A - For Taxable Goods
Schedule B - For Tax Free Goods

Returns and payment

Every registered dealer shall furnish half yearly and annual return. He can furnish revised return before the expiry of one month from the date prescribed for original return. Every dealer liable to pay LBT (Whether registered or unregistered) or a person liable to pay LBT shall pay Local Body Tax, interest due & payable according to return with the 10 days from the end of the month to which such payment relates
GUJARAT

About

Gujarat The Land of the Legends, one of the most industrialized states of India is a state in western India. Its capital city is Gandhinagar while its largest city is Ahmedabad. Gujarat ranks first nationwide in gas-based thermal electricity generation and second nationwide in nuclear electricity generation. It is one of India’s most prosperous states, having a per-capita GDP significantly above India’s average. The State ranks 15th in a list of 142 nations worldwide and actually ranks higher than several developed nations.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Professional Tax,
- Luxury Tax,

Brief Note on Taxes

- **VAT [Value Added Tax]**
  This Act may be called the Gujarat Value Added Tax Act, 2003.
  It extends to the whole of the State of Gujarat.

  - **VAT Tax Schedule**

<table>
<thead>
<tr>
<th>Goods Specified in the Schedule</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule I</td>
<td>Exempt</td>
</tr>
<tr>
<td>Schedule II</td>
<td>5% &amp; other rates specified in the schedule</td>
</tr>
<tr>
<td>Schedule III</td>
<td>Special rates as specified in Schedule</td>
</tr>
<tr>
<td>General category</td>
<td>Goods not specified in any other schedule shall be taxable at the rate of 15%</td>
</tr>
</tbody>
</table>

No such tax is levied on Export Sales or unit carrying business in SEZ area.

- **Filing of Returns**
  Monthly and Quarterly return are to be filed within 30 days and 45 days respectively from the end of the month or quarter as the case may be, to which the return relates, whereas annual return is to be filed within three months from the end of the year to which the annual return relates.

- **Manner of Payment**
  Dealers covered under Schedule III - tax payment is to be made within 12 days from the end of the month/quarter to which the return relates.
  Other Dealers – within 22 days from the end of the month/quarter to which Returns relates

- **Road Permit/Way Bill**
  It is applicable on both inwards and outwards of goods.
  Every movement of goods going outside the state shall be accompanied vide Form 402.
The Carrier of the goods other than the goods specified by the Commissioner from time to time by a public circular, on his entry in the state shall carry Form 403 in triplicate.

- **Entry Tax**
  Entry tax is applicable in the state since 2001. Entry Tax is payable by any person bringing the said goods in the state of Gujarat for consumption, on the purchase value thereof at such rates as may be fixed by the State Government. Different rates may be fixed for different specified goods. The tax shall be in addition to the tax levied and collected as octroi by a municipal corporation of a city.

Entry Tax is payable in Form No.1, Return cum challan, within 22 days by Dealers immediately succeeding the month for which return is required to be furnished registered & within 2 days by others.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.

  It extends to the whole of India

  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Professional Tax**
  This Tax is levied and collected on professions, trades, callings and employment for the benefit of the State and shall be liable to pay the tax to the Designated Authority at such rate fixed by it. Provided further that the tax so payable in respect of any one person shall not exceed two thousand and five hundred rupees in any year. The tax payable under this Act by any person earning a salary or wage, shall be deducted by his employer from the salary or wage payable to such person, before such salary or wage is paid to him, and such employer shall, irrespective of whether such deduction has been made or not, when the salary or wage is paid to such person, be liable to pay tax on behalf of all such persons. Every employer not being an officer of Government liable to pay tax shall obtain a certificate of registration from the prescribed authority in the prescribed manner.

<table>
<thead>
<tr>
<th>Slab Rate for Professional Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Professional Tax Gross [In Rs.]</strong></td>
</tr>
<tr>
<td>0 – 5999</td>
</tr>
<tr>
<td>6000 – 8999</td>
</tr>
<tr>
<td>9000 – 11999</td>
</tr>
<tr>
<td>12000 &amp; Above</td>
</tr>
</tbody>
</table>
• Luxury Tax
Every importer or a manufacturer who in the course of his business, possesses or controls stock of any of the luxury commodities specified in the Schedule the aggregate value of which has exceeded or exceeds Rs. 50,000 shall be liable to pay tax under this Act in respect of the stock received by him. The tax shall be paid in the manner herein provided and at such intervals as may be prescribed. Every registered stockist shall furnish returns of stocks to such authority in such manner, for such period and by such date, as may be prescribed.
RAJASTHAN

About
RAJASTHAN, Rajasthan known as “The land of kings” is the largest state of the Republic of India by area. It is located in the northwest of India. Jaipur is the capital and the largest city of the state.

Types of Taxes
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Entertainment Tax.

Brief note on Taxes
- **VAT [Value Added Tax]**
  This Act may be called the Rajasthan Value Added Tax Act, 2003.
  It extends to the whole of the State of Rajasthan.

  - **VAT Tax Schedule**
    - Schedule I: Goods exempt from Tax
    - Schedule II: Exemption to Persons or Class of Person
    - Schedule III: Goods Taxable at 1%
    - Schedule IV: Goods Taxable at 5%
    - Schedule IV-A: Goods under Category of IT Products
    - Schedule IV-B: Goods under Category of Industrial Inputs
    - Schedule V: Goods Taxable at 14%
    - Schedule V-A: Mineral water-15%
      - Cold drink – 15%
      - Motor parts – 15
    - Schedule VI: Goods taxable at special rates

  - **Filing of Returns**

<table>
<thead>
<tr>
<th>Amount of output tax</th>
<th>Frequency</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAX &lt;= Rs. 20,000</td>
<td>Yearly</td>
<td>90 days after the end of year i.e. 29th June</td>
</tr>
<tr>
<td>Tax &gt; Rs. 20,000 Quarterly And Tax &lt;= Rs. 40 crore</td>
<td>Quarterly</td>
<td>45 days in case the tax paid in the last year was more than Rs. 50,000 from the end of every quarter and the 60 day in any other case</td>
</tr>
<tr>
<td>Tax &gt; Rs. 40 crore</td>
<td>Thrice in a month</td>
<td></td>
</tr>
<tr>
<td>Composition Scheme</td>
<td>Quarterly</td>
<td>90 days after the end of year i.e. 29th June</td>
</tr>
<tr>
<td>Manner of Payments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>
| Thrice a month if the tax payable is more than Rs. 40 crores. | Tax shall be paid on 5th, 14th, & 25th of the following month.  
| Quarterly in all other cases. | The 14th of the month following the end of the quarter  

- **Road Permit/Way Bill**
  Applicable for Taxable notified goods
  RVAT 47A is used for goods entering the state.
  RVAT 49A is used for goods moving out of the state.

- **Entry Tax**
  Applicable in Rajasthan if annual turnover is more than Rs. 1 lac.
  This tax shall be levied, collected and paid to the state Government a tax on entry of any goods or any class of motor vehicles brought into a local area, for consumption, use or sale there. Different rates may be specified in respect of different goods or different class of goods or different local areas. The entry tax shall be levied on taxable purchase value of the goods, if not available then the entry tax shall be levied on taxable market value of goods.  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  This act may be called Rajasthan tax on luxuries act  
  It extend to whole state of Rajasthan  
  An act to provide for a levy and collection of tax on luxuries provided in a hotel and lodging house.

- **Entertainment Tax**
  This act may be called Rajasthan entertainment tax act, 1957  
  It extend to the whole state of Rajasthan  
  Entertainment tax is a tax levied by State Government in respect of admission to theatres, cinemas, and other places of public entertainments and a tax in respect of certain forms of advertisements in such places in the State of Rajasthan and for the payment of compensation to the local authorities now levying such a tax.
### GOA

#### About

Goa known as “Pearl of the Orient” and a “Tourist Paradise” is a tiny emerald land on the west coast of India and smallest state by area in India. Panaji is the state's capital, while Vasco da Gama is the largest city. Goa is rich in natural and human resources. Goa is visited by large numbers of international and domestic tourists each year. It also has rich flora and fauna.

#### Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Entertainment Tax.

#### Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called the Goa Value Added Tax Act, 2005. It extends to the whole of the State of Goa.

  - **VAT Tax Schedule**

    | Schedule   | Rate  |
    |------------|-------|
    | Schedule A | 1%    |
    | Schedule B | 5%    |
    | Schedule C | As specified against each entry |
    | Schedule D | Exempt from tax |
    | Schedule E | Composition rates based on turnover |
    | Schedule F | Tax Invoices, Credit Notes & Debit Notes |
    | Schedule G | No Input Tax Credit Available |
    | General Category | Goods not specified in any other schedule shall be taxable at the rate of 12.5% |

- **Filing of Returns for VAT Dealers**

  Return has to be filed Quarterly within one month from the end of the quarter:

  - Form VAT III – For all Dealers Except Composite Scheme
  - Form VAT IV- Dealers covered under Composite Scheme

- **Manner of Payment of VAT**

  For dealers whose tax liability is < 1 lacs: One month from end of quarter
  For dealers whose tax liability is = or > 1 lacs: 20 days from end of month.
  For dealers registered under composition scheme: 1 month from end of quarter

- **Road Permit/Way Bill**

  Not Applicable in Goa.

- **Entry Tax**

  This tax Came in to force in Goa in 2000.
  The rates of entry tax on specified goods shall be as per the schedule notified.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  This tax shall be levied and collected on the turnover of receipts in respect of luxuries of a hotelier at rate prescribed in Schedule I. It shall also be levied on the turnover of receipts of a proprietor of a beauty parlour, spa or health spa, health club, etc., at the rates provided.

- **Entertainment Tax**
  This tax shall be levied and paid to the Government on all payments received for admission to specified entertainment at the rate specified in ‘A’, ‘B’, ‘C’ & ‘D’ (Section 3).
  The proprietor who provides Entertainment by way of river cruises/boat cruises may at his option in a prescribed manner pay the tax by way of composition at 50% or any lower rate of percentage that the Government may notify for such period of the aggregate value of notional receipts receivable for admission.
  A proprietor or person, upon an application in the prescribed manner may apply to the Commissioner for exemption from levy of entertainment tax on payments for admission to the entertainment under the specified circumstances.
### MADHYA PRADESH

<table>
<thead>
<tr>
<th>About</th>
<th>MADHYA PRADHESH, abbreviated MP, is a state in central India. Its capital is Bhopal. Nicknamed the “heart of India” due to its geographical location in India, Madhya Pradesh is the second largest state in the country by area.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax,  
• Luxury Tax  
• Profession Tax,  
• Entertainment Tax and Advertisement Tax, |
| Brief note on Taxes | • VAT [Value Added Tax]  
This Act may be called the Madhya pradesh Value Added Tax Act, 2004. It extends to the whole of the state of Madhya pradesh.  
   • VAT Tax Schedule  
      Schedule I (Section 16) Rate as specified in schedule  
      Schedule II Part I (Section 9) @ 1%  
      Schedule II Part II (Section 9) @ 5%  
      Schedule II Part III (Section 9) Rate as specified in schedule  
      Schedule II Part IIIA (Section 9) Rate as specified in schedule  
      Schedule II Part IV (Section 9) @ 13%  
   • Filing of Returns  
      | **Tax Period** | **Due Date of Filing** |
| | Quarterly | Within 30 days after the end of quarter |
| | Monthly | Within 15 days from the end of the month (Presently there is no requirement of filing monthly returns unless any dealer or class of dealers is required by commissioner to file monthly returns) |
| | Annually | Dealers whose gross turnover does not exceed Rs. 20 lacs or whose payment of tax does not exceed 10 thousand shall furnish annual returns within 30 days of the expiry of the year. |
|   • Manner of Payments | For the first three quarters: Within 30 days from the end of quarter.  
For the fourth quarter: Within 90 days from the end of quarter. |
Dealers whose gross turnover does not exceed Rs. 20 lacs or whose payment of tax does not exceed 10 thousand shall furnish annual returns within 30 days of the expiry of the year along with a copy of the challan as proof of payment of tax to be made within 30 days of the expiry of each quarter.

- **Road Permit/Way Bill**
  Yes it is Applicable
  Form 49 inward (By Rail - Form 60, Non-commercial shipments - Form 50) is required for goods entering the state.

- **Entry Tax**
  Entry tax shall be levied on the entry in the course of business of a dealer of goods specified in:
  a) Schedule II, into each local area for consumption, use or sale therein; and
  b) Schedule III, into each local area for consumption or use of such goods but not for sale therein; and such tax shall be paid by every dealer liable to be taxed under the Vanijyik Kar Adhiniyam, who has affected the entry of such goods.
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  This Act may be called the Madhya Pradesh Hotel Tatha Vas Grihon Me Vilas Vastuon Par Kar Adhiniyam, 1988. It extends to the whole of Madhya Pradesh.
  
  Luxury tax is the tax imposed on hotelier at the following rates, namely
  
<table>
<thead>
<tr>
<th>Charge for luxury provided in a hotel per day</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>is less than Rs. 60</td>
<td>Nil</td>
</tr>
<tr>
<td>is Rs. 60 or more but does not exceed Rs.150</td>
<td>5% of the turnover</td>
</tr>
<tr>
<td>is more than Rs. 150</td>
<td>10% of the turnover</td>
</tr>
</tbody>
</table>
  
- **Professional Tax**
  This act may be called Madhya Pradesh vriti kar adhiniyam,2010
  
  Every professional is liable to pay tax under this Act, other than a person earning salary or wages in respect of whom the tax is payable by the employer but including a person who, in addition to earning a salary or wage is also carrying on a trade, profession or calling other than agriculture, or who is simultaneously in employment of more than one employer, shall obtain a certificate of registration from the Profession Tax Assessing Authority in such manner and form as may be prescribed.
### Slab Rate of Professional Tax

<table>
<thead>
<tr>
<th>Class of person</th>
<th>Rate of tax per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person in employment whose annual salary or wages-</td>
<td></td>
</tr>
<tr>
<td>0 – 150000</td>
<td>0</td>
</tr>
<tr>
<td>150000 – 180000</td>
<td>Rs 1500 (Rs 125 per month)</td>
</tr>
<tr>
<td>180000 &amp; above</td>
<td>Rs 2500 (Rs 208 per month for eleven months and Rs 212 for 12th month)</td>
</tr>
</tbody>
</table>

- **Entertainment Duty and Advertisement Tax**
  
  **Entertainment Duty:**

  Every proprietor of an Entertainment shall pay entertainment duty to the state government in respect of every payment for admission to the entertainment under Madhya Pradesh Entertainment duty and Advertisement tax Act 1936, a duty at the rate of 50% thereof in Municipal corporation areas and 40% thereof in rest of the areas with effect from 01-05-03. Under section 4(2) (d) of M.P. Entertainment duty act 1936, cinema theatres pay duty by compounding system which is payable weekly in advance.

- **Advertisement Tax**

  There shall be levied and paid to the State Government an advertisement tax on every advertisement exhibited at an entertainment.
BIHAR

About

BIHAR is a state in northern India. It is bounded by Uttar Pradesh to its west, Nepal to the north, Northern part of West Bengal to the east and by Jharkhand to the south. Its capital Patna, earlier known as Pataliputra, was an important centre of Indian civilization.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Advertisement Tax,
- Entertainment Tax,
- Luxury Tax,
- Professional Tax.

Brief note on Taxes

- **VAT [Value Added Tax]**

  This Act may be called the Bihar Value Added Tax Act, 2005.

  It shall extend to the whole of the State of Bihar.

  It shall be deemed to have come into force on the 1st day of April, 2005.

  - **VAT Tax Schedule**

    - 0% in Schedule I;
    - 1% in Schedule II;
    - 5% in Schedule III
    - 4% in schedule IIIA
    - the goods specified in Schedule IV, at the rate not exceeding 50% but not less than 10%, as may be specified by the state government, subject to such conditions and restrictions, by notification; and
    - Any other goods not specified in Schedules I, II, III and IV, at the rate of 13.5%.

  - **Rate of tax on packing material and containers**

    Notwithstanding anything contained in Section 14, where any goods packed in Packing Materials and any container or packing material are sold or purchased, the container or packing Containers material in which such goods are so packed shall be deemed to have been sold or purchased along with such goods and the tax under Sections 3, 4, and 5 shall be levied on the sale or purchase of such container or packing material (whether such packing materials or containers are separately charged for or not) at the rate of tax applicable to the sale or the purchase, as the case may be, of such goods;

    Provided that where the price of the goods is less than the container or packing material in which they are packed, the rate of tax specified in respect of such containers under Sub-section (1) of Section 14 shall apply.
Filing of Returns
Every registered dealer, other than a dealer paying tax under Section 15, shall furnish to the authority specified in Rule 62:
- a quarterly statement;
- an annual return;
- as the case may be.

Manner of Payment
The payment of Vat shall be made on 15th of the following month.

Road Permit/Way Bill
Applicable in Bihar.

All commercial shipments must travel under Form No. DIX, also known as the Bihar Road Permit, whose value is over Rs 10,000.
The Bihar Sales Tax Department issues this form to all registered dealers.

Entry Tax
‘Entry tax’ means tax paid under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993.

‘Entry of goods’, with all its grammatical variations and cognate expressions, means, entry of goods into a local area from any place:
- outside such area;
- outside the state; or
- outside the territory of India, for consumption, use or sale therein;

A tax shall be levied and collected on the entry of scheduled goods into a local area for consumption, use or sale therein for the purpose of development of trade, commerce and industry in the state, at such rate, not exceeding 20% of the import value of such goods, as may be specified by the state government in a notification published in a official gazette subject to such conditions as may be prescribed.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Advertisement Tax
An Act to enact the taxation on advertisement published in newspapers and broadcast by radio or on television with regard to its applicability and enforcement within the state. The tax on advertisement shall be applicable as per the schedule defined by the government. The state may notify different rates in respect of different categories of advertisement.
• **Entertainment Tax**

Entertainment is the tax levied by state government on all payments for admission to any entertainment.

Currently, in Bihar, the following entertainments are exempted from payment of tax.

- If the entire gross proceeds of the entertainment are devoted to philanthropic, religious or charitable purposes, without any charge on such proceeds for any expenses of entertainment.
- If the entertainment is of a wholly educational character.
- If entertainment is provided for purposes which are partly educational, cultural or scientific by an Institution which is not established for profit.
- If the entertainment is provided by an Institution not conducted for profit and established solely for the purpose of public health or interests of agriculture or of a manufacturing industry and consists solely of an exhibition of articles, which are related to these areas.

• **Luxury Tax**

The Act is known as the Bihar Taxation on Luxuries in Hotels Act, 1988.

Luxury tax is levied on luxuries provided in Hotels at the rates defined by the government.

• **Professional Tax**

<table>
<thead>
<tr>
<th>CLASS OF TAX ASSESSE</th>
<th>AMOUNT OF TAX PAYABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>300000-500000</td>
<td>Rs 1000 per annum</td>
</tr>
<tr>
<td>500000-1000000</td>
<td>Rs 2000 per annum</td>
</tr>
<tr>
<td>10000 &amp; above</td>
<td>Rs 2500 per annum</td>
</tr>
</tbody>
</table>
CHHATTISGARH

About

Chhattisgarh, a state in Central India. This state was carved out of India's largest state Madhya Pradesh on 1st November 2000. Raipur is the capital of Chhattisgarh. It is an important electricity and steel-producing state of India. The newly formed state is richly endowed with natural resources. Its forest revenue which alone accounts for 44% of the total state's forest revenue has been the main source of income of Madhya Pradesh.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,

Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called The Chhattisgarh Value Added Tax Act, 2005.
  
  It extends to the whole of Chhattisgarh.

  - **VAT Tax Schedule**
    
    General rate 14% Schedule II, Part IV

    Other Rates

    5% Schedule II, Part II;

    0% in Schedule I;

    1% in Schedule II, Part I;

    25% in Schedule II, Part III;

  - **Filing of Returns**

    | Amount of Turnover | Tax period | Due Date of return |
    |-------------------|------------|--------------------|
    | ≤ Rs. 60 Lakhs    | Yearly     | Within 30 days from date of expiry of the year (online) |
    | > Rs. 60 Lakhs    | Quarterly  | Within 30 days from the end of the quarter. (Online) |

  Also the dealer has to file his annual return vide Form 18 online till 30th November.

  - **Manner of Payment**

    Dealers whose tax Liability ≤ Rs. 2 lakhs in a quarter:

    Within 30 days from the end of quarter.

    Dealers whose tax Liability ≥ Rs. 2 lakhs in a quarter:

    10th of the first and second months of the quarter, and in case of the third month, within 30 days from the end of the quarter.
Road Permit/Way Bill
Not applicable in Chhattisgarh.

Entry Tax
Entry tax is applicable in this state since 1976.

There shall be levied an entry tax on the entry in the course of business of a dealer of goods specified in the Schedule into each local area for consumption, use or sale therein and such tax shall be paid by every dealer who has effected entry of such goods. Entry tax is not eligible for claiming VAT input.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

• CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.

It extends to the whole of India

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

• Luxury tax
Luxuries provided in hotels and lodging houses, hall, lawn and garden in the State of Chhattisgarh are liable to charge Luxury tax at the rate specified in act.
### About JHARKHAND

JHARKHAND, is a state in eastern India. It was carved out of the southern part of Bihar on 15 November 2000. Jharkhand shares its border with the states of Bihar to the north, Uttar Pradesh and Chhattisgarh to the west, Orissa to the south, and West Bengal to the east. The industrial city of Ranchi is its capital and Dumka is sub capital while Jamshedpur is the largest and the biggest industrial city of the state. Some of the other major cities and industrial centres are Dhanbad, Bokaro and Hazaribagh.

| Types of Taxes | • Value Added Tax [Local Sales Tax],  
|               | • Central Sales Tax,  
|               | • Entertainment Tax  
|               | • Advertisement Tax,  
|               | • Luxury tax |

| Brief note on Taxes | • **VAT [Value Added Tax]**  
|                     | This Act may be called the Jharkhand Value Added Tax Act, 2005.  
|                     | It extends to the whole of the State of Jharkhand  
|                     | o **VAT Tax Schedule**  
|                     | Schedule - I: List of goods exempted from payment of VAT  
|                     | Schedule - II Part - A: Goods in respect of which tax is leviable at all points of sale at the Rate of 1%  
|                     | Schedule - II Part - B: Goods in respect of which tax is leviable at all points of sale at the Rate of 5%  
|                     | Schedule - II Part - C: taxed @ 5%  
|                     | Schedule - II Part - D: Goods Taxable @ 14%  
|                     | Schedule - II Part - E: (Special Rate of Tax)  
|                     | Schedule - II PART-F: Any rate for any goods or class of goods as may be specified in this Part.  
|                     | Schedule - III: List of goods liable to Entry Tax @ 4%  
|                     | Appendix - I: Negative List of Capital Goods for Input Tax Credit |
### Filing of Returns

<table>
<thead>
<tr>
<th>Amount of turnover (in the preceding financial year)</th>
<th>Tax period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover ≤ 10 lakhs</td>
<td>Yearly</td>
<td>275 days from the end of relevant financial year</td>
</tr>
<tr>
<td>Any Other Case</td>
<td>Monthly</td>
<td>(a) 25th day of next month for both manual as well as online filing. (b) Where the registration of a VAT dealer is cancelled, a final return in Form JVAT 201 shall be filed within 15 days of the effective date of cancellation of registration. (c) If there is a change in the rate of tax during a tax period, a separate return in respect of each portion of the tax period showing the application of different rates of tax shall be furnished.</td>
</tr>
</tbody>
</table>

### Manner of Payments

- Monthly, upto 15th of every month
- Road Permit/ Way Bill
  - Yes it is applicable.
- Entry Tax
  - Not Applicable in Jharkhand.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

### CST [Central Sales Tax]

This Act may be called the Central Sales Tax Act, 1956.

It extends to the whole of India.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

### Entertainment tax

Entertainment includes any exhibition, performance, amusement, games shows or sports to which person are admitted for payment or in the case of television exhibition with the aid of any type of antenna with the cabale network attach to it or cabale television network.

Or direct to home service, for which person are required to make payment by way of contribution or subscription or installation or rent.
• **Advertisement Tax**
This act may be called the Jharkhand advertisement act, 2012
It shall extend to the whole of the state of Jharkhand
Advertisement shall mean any word, letter, model, sign, neon-signs sky sign, placard, notice, structure, device or representation, whether illuminated or not, in the nature of, and employed wholly or in part exhibits or displayed or retained for the public view for the purpose of advertisement, announcement or direction but shall not include
Such newspaper or broadcast by radio or television or cinematography or broadcast by any
Any political party

• **Luxury Tax**
This ordinance may be called Jharkhand taxation on luxuries in hotel ordinance, 2011
It shall extend to whole of the state of Jharkhand
It shall come into force on such date as the state may by notification in the official gazette, appoint

<table>
<thead>
<tr>
<th>S. no.</th>
<th>Description</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>When the rent of the room exceeds Rs 200 per day but does not exceeds Rs 800 per day</td>
<td>8%</td>
</tr>
<tr>
<td>2.</td>
<td>When the rent of the room exceeds Rs 800 per day</td>
<td>12.5%</td>
</tr>
<tr>
<td>3.</td>
<td>In case the rent does not exceed Rs 3000 a day for a restaurant or a marriage hall etc</td>
<td>8%</td>
</tr>
<tr>
<td>4.</td>
<td>In case the the rent exceeds Rs 3000 a day for restaurant or a marriage hall etc</td>
<td>12.5%</td>
</tr>
</tbody>
</table>
ODISHA

About
ODISHA, formerly known as Orissa, is an Indian state on the subcontinent’s south-east coast, by the Bay of Bengal. Bhubaneswar is the capital of ODISHA.

Types of Taxes
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Entertainment Tax
- Profession Tax,

Brief note on Taxes
- VAT [Value Added Tax]
  This Act may be called the Orissa Value Added Tax Act, 2004.
  It extends to the whole of the State of Orissa.

  VAT Tax Schedule

<table>
<thead>
<tr>
<th>Schedule A</th>
<th>List of goods exempted from Value Added Tax.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule B Part I</td>
<td>Goods taxable at the rate of 1 % list of goods subject to Value Added Tax on Turnover of Sales or Purchases.</td>
</tr>
<tr>
<td>Schedule B Part II</td>
<td>Goods taxable at the rate of 5 % list of goods subject to Value Added Tax on Turnover of Sales or Purchases.</td>
</tr>
<tr>
<td>Schedule B Part IIA</td>
<td>Goods Taxable @ 50%</td>
</tr>
<tr>
<td>Schedule B Part III</td>
<td>Goods taxable at the rate of 13.5 % list of goods subject to Value Added Tax on Turnover of Sales or Purchases.</td>
</tr>
<tr>
<td>Schedule C</td>
<td>List of goods subject to tax at a single point on Turnover of Sales or Purchases</td>
</tr>
</tbody>
</table>

  Filing of Returns

<table>
<thead>
<tr>
<th>Type of dealer</th>
<th>Tax period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>All registered dealer</td>
<td>Yearly</td>
<td>Within six months from the end of the year</td>
</tr>
<tr>
<td>Dealer categorized as workscontractor with a quarterly tax period.</td>
<td>Quarterly</td>
<td>21 days from the end of the Quarter.</td>
</tr>
<tr>
<td>Tax period of dealer categorized as monthly</td>
<td>Monthly</td>
<td>21 days from the end of the quarter</td>
</tr>
<tr>
<td>Dealer whose annual turnover is above Rs. 40 lakhs</td>
<td>Annual VAT Audit Certificate</td>
<td>Within six months from the end of the year</td>
</tr>
</tbody>
</table>

  Manner of Payments
  Monthly: 21 days from the end of the Payments quarter
  Quarterly: 21 days from the end of the quarter
  Yearly: Within six months from the end of the year
Road Permit/Way Bill
Yes it is applicable.
For a registered dealer—both inward and outward: vide VAT 402 shall be required.
For an unregistered dealer only inward: vide VAT 402 A shall be required.

Entry Tax
Applicable for the state of Odisha, for those items which are included in the Schedules only.
Part I of the Schedule—1% Entry Tax
Part II of the Schedule—2% Entry Tax
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Entertainment tax
This act may be called Odisha entertainment tax, 2010
Entertainment includes any exhibition, performance, amusement, games shows or sports to which person are admitted for payment or in the case of television exhibition with the aid of any type of antenna with the cabale network attach to it or cabale television network or direct to home service, for which person are required to make payment by way of contribution or subscription or installation or rent.

Professional Tax
This Act may be called the Orissa State Tax on Professions, Trades, Callings and Employments Act, 2000.
It extends to the whole of the State of Orissa.

<table>
<thead>
<tr>
<th>Class of assesses [In Rs.]</th>
<th>Rate of tax [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary and Wage earners. Such persons including Ministers, Members of Legislative Assembly and Members of Parliament from the State of Orissa whose annual salaries or wages -</td>
<td></td>
</tr>
<tr>
<td>Upto 160000</td>
<td>NIL</td>
</tr>
<tr>
<td>Exceed 160000 but do not exceed 300000</td>
<td>125 per month</td>
</tr>
<tr>
<td>Exceed 300000</td>
<td>200 pm and 300 in the 12th month.</td>
</tr>
</tbody>
</table>
**ANDHRA PRADESH**

<table>
<thead>
<tr>
<th>About</th>
<th>Andhra Pradesh, abbreviated as A.P, is situated on the country's southeastern coast. Its capital and largest city is Hyderabad. Andhra Pradesh is an exporter of many agricultural products. It has the second-longest coastline of 972 km (604 miles) among the states of India. The primary official language of Andhra Pradesh is Telugu and the co-official language is Urdu.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax,  
• Betting Tax,  
• Entertainment Tax,  
• Luxury Tax,  
• Professional Tax,  
• Rural Development Cess, |
| Brief note on Taxes | • **VAT [Value Added Tax]**  
This Act may be called The Andhra Pradesh Value Added Tax Act, 2005. It extends to the whole of Andhra Pradesh.  
○ **VAT Tax Schedule**  
Schedule I—List of goods exempt from tax.  
Schedule II—Transactions zero-rated and eligible for input tax credit  
Schedule III—List of goods taxable @ 1%  
Schedule IV—List of goods taxable @ 5%  
Schedule V—Goods taxable at the Standard Rate (RNR) of 14.5%  
Schedule VI—Goods subjected to tax at special rates.  
○ **Filing of Returns**  
DEALER  
Monthly—Form VAT 200: 20th of the following month  
Monthly—Form 225 is required to be filed by the dealers dealing in cotton, pulses, grains and dals in addition to VAT 200 by the 20th of the following month.  
○ **Turnover Tax Dealer**  
Quarterly—Form TOT 007: 30th of the following month after the end of the quarter.  
Note: Revised Return is to be submitted vide Form 213 within six months from the end of the tax period.  
○ **Manner of Payment**  
Monthly—within 20 days from the end of tax period online through e-payment. |
For a TOT dealer, tax should be paid within 30 days from the end of the quarter.

- **Road Permit/Way Bill**
  It is Applicable on both Inward and Outward.
  
  Advance way bills are required for goods mentioned in the sensitive list only.

- **Entry Tax**
  It shall be levied and collected tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988 (Central Act 59 of 1988)
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  
  It extends to the whole of India
  
  For further reference, kindly refer “All India Vat ready Reckoner” 2013.

- **Betting Tax**
  This tax shall be charged, levied on all monies paid or agreed to be paid by a backer to a license book-maker in respect of a bet whether within or outside the State of Andhra Pradesh. The betting tax shall be deducted or collected by the licensed book-maker from such monies at the time when the money is paid by the backer or in the case of credit bets at such time as may be prescribed, and shall be deemed to have been paid by the backer on account of the tax and this tax shall be retained by the licensed book-maker on behalf of Government.

- **Entertainment Tax**
  These rules may be called the Andhra Pradesh Entertainments Tax Rules, 1939.
  
  Entertainment means cinematograph exhibition, to which persons are admitted on payment;
  
  There shall be levied and paid to the State Government a tax on the amount collected on actual sale of tickets for admission to every show (hereinafter referred to as Entertainments Tax) in respect of entertainments held in the theatres.

- **Luxury Tax**
  Luxury tax is applicable on Hotels, Corporate Hospitals and tobacco products (specified in schedule). It shall be levied and collected from every person residing in a hotel where the rate of charge in respect of any luxury provided in a hotel is Rs. 300/- or more per day per person, a tax at the rate of 5% per centum of such rate and from every person residing in a corporate hospital
where the rate of charge in respect of any luxury provided in a corporate hospital is Rs. 500/- or more per day a tax at the rate of 10% per centum of such rate. Luxury tax is charged at the rate of 50% on Chewing Tobacco preparations commonly known as Khara, Masala, Kimam, Dokta, Zarda, Sukha and Surti and 5% on cigarettes at the first point of supply of luxuries in the state by sale or otherwise.

- **Profession Tax**

Every person engaged in any profession, trade, calling or employment in the State and falling in any one or other of classes specified in the First Schedule to the Act is liable to tax at the rate specified in that Schedule against the class to which he belongs. For Example in case of Professional tax on employees Rate of tax is as follows:

Professional tax rates applicable in Andhra Pradesh on Salary & Wages are as follows:

<table>
<thead>
<tr>
<th>Wages Per Month [In Rs.]</th>
<th>Professional Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-15000</td>
<td>Nil</td>
</tr>
<tr>
<td>15000-20000</td>
<td>150</td>
</tr>
<tr>
<td>20000 and above</td>
<td>200</td>
</tr>
</tbody>
</table>

- **Rural Development Cess**

Andhra Pradesh Rural Development Act, 1996 provides for the levy and collection of cess for the Rural Development in the State. It extends to the whole of the State of Andhra Pradesh. With a view to generate funds for the purpose of development of the rural areas, rural development Cess is levied at the rate of 5 per centum on the advalorem basis on the quantum of purchase of goods specified in the Schedule appended to the Bill. Every dealer liable to pay Cess shall submit so as to reach the assessing authority on or before the 15th of every month a return in Form RD I (in duplicate) showing the total quantity of purchases of goods specified in the Schedule to the Ordinance during the preceding month.
KARNATAKA

About
KARNATAKA, is a state in South West India. Karnataka is bordered by the Arabian Sea and the Laccadive Sea to the west, Goa to the north west, Maharashtra to the north, Andhra Pradesh to the east, Tamil Nadu to the south east, and Kerala to the south west.

Types of Taxes
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Research and Development Cess,
- Stamp Duty,
- Professional Tax,
- Property Tax,
- Entertainment Tax.

Brief note on Taxes
- **VAT [Value Added Tax]**
  This Act may be called the Karnataka Value Added Tax Act, 2003.
  It extends to the whole of the State of Karnataka.
  The tax shall be levied on the sale or purchase of goods.
  It has come into force on first day of April, 2005.

  - **VAT Tax Schedule**
    Schedule I – Exempted Goods
    Schedule II – 1%
    Schedule III & VI – 5.5% & various rates notified depending on the nature of works contract.
    Schedule IV – 20%
    Schedule V – Input tax restricted goods
    General Category – Goods not specified in any other schedule shall be taxable at the rate of 14.5%

  - **Filing of Returns for VAT Dealers**

<table>
<thead>
<tr>
<th>For Composite Dealers; Local Turnover &lt; or = Rs. 25 lakhs in a year.</th>
<th>Quarterly</th>
<th>On or before the 15th day from the end of the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>All other composition dealers whether hoteliers, caterers, works contractors, etc.</td>
<td>Monthly</td>
<td>On or before the 15th day from the end of the month</td>
</tr>
<tr>
<td>Total turnover (including inter-state, exports, etc.) does not exceed Rs. 25 lakhs or equal to Rs. 25 Lakhs (tax period shall be a quarter)</td>
<td>Quarterly</td>
<td>On or before the 15th day from the end of the quarter</td>
</tr>
<tr>
<td>Total turnover exceeding Rs. 25 Lakhs (tax period shall be a month)</td>
<td>Monthly</td>
<td>On or before the 20th day from the end of the month</td>
</tr>
<tr>
<td>If there is any CST turnover or export turnover</td>
<td>Monthly</td>
<td>On or before the 20th day from the end of the month</td>
</tr>
<tr>
<td>Casual trader</td>
<td>Monthly</td>
<td>On or before the 10th day from the end of the month</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If the casual trader stops his business, the return should be filed within seven days of the completion of the last transaction.</td>
</tr>
</tbody>
</table>

- **Manner of Payment of VAT**
  The dealer filing quarterly return shall deposit tax within 15\textsuperscript{th} day of the following quarter.
  The dealer filing monthly return shall deposit tax within 20\textsuperscript{th} day of the following month.

- **Road Permit/Way Bill**
  Applicable in Karnataka.
  Inward [E-Sugama] required for the list of 23 goods specified in Part B from outside state/country and under certain circumstances, from within the state.
  Outward [E-Sugama] required for the list of 29 goods specified in Part-A
  This I have changed

- **Entry Tax**
  It extends to the whole of the State of Karnataka.
  It shall come into force on the first day of October, 1980.
  There shall be levied and collected a tax on [entry of any goods specified in the FIRST SCHEDULE] into a local area for consumption, use or sale therein, at such rates not exceeding five percent of the value of the goods as may be specified [retrospectively or prospectively by the State Government by notification and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas.

  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST** [Central Sales Tax]
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  Luxury tax is a state levy on certain specified luxuries and certain facilities, services, enjoyments, utilities, etc. Generally, luxury tax is levied on specific accommodation and services provided in hotels and clubs of a specific kind and on certain commodities.

  The basic luxury tax rate is 10% on luxuries provided on structures (decorations) in marriage halls, seminar halls, conventional halls and others.

- **Research & Development Cess**
  The Research and Development Cess is levied by the Government of India at 5% on import of technology into India through a foreign collaboration. This cess is required to be paid by the importer of technology on payments made for such imports.

- **Stamp Duty**
  Stamp duty is paid for a transaction executed by way of a document or instrument under the provisions of the Indian Stamp Act or the State Acts. Stamp duty is applicable on purchase of land and various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers, etc. Levy of stamp duty is generally dependent on the state where the agreement is executed. Typically, for immovable property, this duty is payable in the state where the property is located. Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law. The rate of duty is generally calculated on an ad valorem basis, depending on the nature of the instrument and the state where it is executed. Further, stamp duty can be levied at a flat rate on a certain document, irrespective of the amount involved.

  The basic rate slabs are as follows:
  
  - 0.5% on Bonds.
  - 1% stamp duty on market value of property (subject to a maximum of INR 15 lakhs) in case of registration of property.
  - 5% stamp duty on conveyance/ sale deeds

- **Professional Tax**
  Profession tax is a state levy on professions, trades, a calling or employment in a state. Thus, every person who is engaged in any of the activities mentioned above is liable to pay profession tax.

  Every enterprise with employees earning salaries may be required to register itself and withhold profession tax from the salary paid to its employees at specified rates and deposit it into the Government treasury. The employer is liable to pay the requisite amount of profession tax on such salaries or wages,
irrespective of whether it has deducted an equivalent amount from the salaries paid. Slab Rate are as follows:

<table>
<thead>
<tr>
<th>Professional Tax Gross</th>
<th>Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 9999</td>
<td>0</td>
</tr>
<tr>
<td>10000 – 14999</td>
<td>150</td>
</tr>
<tr>
<td>15000 &amp; ABOVE</td>
<td>200</td>
</tr>
</tbody>
</table>

- **Property Tax**
The owner of a property (usually real estate) is liable to pay property tax. The amount of tax is estimated on the value of the property being taxed (ad valorem tax) at applicable rates. Property tax is levied on residents by local municipal authorities, to sustain basic civic services in the city.

- **Entertainment Tax**
State and local governments levy entertainment tax on various entertainment and amusement activities. Entertainment tax rates are fairly high as compared to taxes levied on other luxury goods and services.
KERALA

About

Kerala also known as Keralam, the land of kera or coconut is a state located in the south-west region of India along the coastline, to the extreme south west of the Indian peninsula, flanked by the Arabian Sea on the west and the mountains of the Western Ghats on the east. Thiruvananthapuram is the state capital. Kerala has the highest Human Development Index (HDI) in the country. It also has the highest literacy rate.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Property Tax,
- Property Transfer Tax,
- Advertisement Tax,
- Profession Tax,
- Entertainment Tax

Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called the Kerala Value Added Tax Act, 2003. It extends to the whole of the State of Kerala. It has come into force on first day of April, 2005.

  - **VAT Tax Schedule**
    
    Schedule I: Exempt
    Schedule II: 1%
    Schedule III: 5%
    Other Goods: 13.5%

- **Filing of Returns**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Frequency</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every Dealer whose annual net tax payable for the preceding year was worth Rs. 10 Lakhs and above.</td>
<td>Monthly</td>
<td>On or before the 15th day of the month following the return period.</td>
</tr>
<tr>
<td>Every Dealer whose annual net tax payable for the preceding year was worth above Rs. 2 Lakhs but below Rs. 10 Lakhs.</td>
<td>Monthly</td>
<td>On or before the 20th day of the month following the return period.</td>
</tr>
<tr>
<td>Every Dealer whose annual net tax payable for the preceding year was above Rs. 25,000 but below Rs. 2 Lakhs.</td>
<td>Monthly</td>
<td>On or before the 20th day of the month following the return period.</td>
</tr>
<tr>
<td>Any Other Dealer</td>
<td>Monthly</td>
<td>On or before the 25th day of the month following the return period.</td>
</tr>
</tbody>
</table>
- **Manner of Payments**
  Tax has to be paid monthly on or before due date of filing monthly returns.

- **Road Permit/Way Bill**
  Yes it is Applicable in Kerala.
  
  Form 27B is a mandatory requirement for all the goods coming out of the state of Kerala.
  
  Form 16 is must for inbound shipments to Kerala.

- **Entry Tax**
  Not Applicable in Kerala.

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  
  It extends to the whole of India.
  
  An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  Luxury tax is levied when, any luxury provided in a hotel, house boat, hall, auditorium, hospital, home stay and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition. Luxury provided by a cable operator shall also be included in luxury tax. Provided that the sub-section shall not apply to halls and auditorium located within the premises of ‘places of worship’ owned by such institutions.

  Note: For further reference kindly refer THE KERALA TAX ON LUXURIES ACTS, 1976

- **Property Tax**
  Property Tax is the main source of municipal revenue of Kerala government.
  
  Under Section 233 (Kerala Municipality Act, 1994); the property tax is levied on all real estate properties, both buildings and land, except those which have been exempted by any other law. This type of tax comprises of revenue for general and service purposes like drainage tax, water tax, sanitary tax, lighting tax and many other taxes. The rate of the property tax in case of municipalities is 10 percent
to 25 percent of the annual value of the building. In case of corporation, it is 15 percent to 25 percent. The annual rental value of any property in Kerala is re-fixed at an interval of every 5 years, and one needs to pay it on half yearly basis. This land tax is determined on the basis of area an individual or a company occupies. This tax is paid to the village or municipal office in the name of the title holder of the property. During the time of selling or purchase or property transfer, the tax receipt of the land is a very important document. The owner of a residential or commercial building needs to pay taxes to the local civic bodies like Corporation, Municipality and Panchayat under which the building is constructed.

The governing features of the property tax includes:

1. The kind of the roofing structure of any building like half timbered, concrete and thatched.
2. The taxes also vary as per the flooring material used like marble, tiles, mosaic, bricks and red oxide.
3. The taxes on building also depends on the location
4. It also depends on the total surface area, measured in square feet. If the surface area is more than 3000 Sq Ft, then additional luxury tax needs to be paid every year.

The deadline to pay the property tax is by end of March every year and if one exceeds the deadline then a fine of 24 percent is charged.

- **Property Transfer Tax**
The Property transfer tax is imposed on the Kerala Municipalities (Duty on transfer of property) on the basis of Rule 1962 and Kerala Municipality Act 1994, under Section 270. This duty is on everything related to immovable property located within the municipal boundary. The rate is generally less than 5 percent and is normally collected by the Registration Department. The collected tax is later distributed to the local bodies, after a deduction of collection fees.

- **Advertisement Tax**
The Advertisement tax is paid to the government when anyone wants to fix, display or erect any wall structure or other form of advertisement on any building or land, which is at situated within public or private view as specified by the state government.

- **Profession Tax**
According to Section 245 of Kerala Municipality Act 1994, as an individual or a company, the profession tax needs to be payed on a half yearly basis.
### Slab Rate of Professional Tax:

<table>
<thead>
<tr>
<th>Professional Tax Gross (Half yearly income)</th>
<th>HALF YEARLY TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>12,000 to 17,999</td>
<td>120</td>
</tr>
<tr>
<td>18,000 to 29,000</td>
<td>180</td>
</tr>
<tr>
<td>30,000 to 44,999</td>
<td>300</td>
</tr>
<tr>
<td>60,000 to 74,999</td>
<td>600</td>
</tr>
<tr>
<td>75,000 to 99,999</td>
<td>750</td>
</tr>
<tr>
<td>1,00,000 to 1,24,999</td>
<td>1,000</td>
</tr>
<tr>
<td>1,25000 &amp; above</td>
<td>1,250</td>
</tr>
</tbody>
</table>

- **Entertainment Tax**

  As per the Kerala Entertainment Tax Act, a person needs to pay a minimum of 15 percent and a maximum of 30 percent of the revenue on each admission price towards any mode of entertainment. Generally, admission price of any entertainment place is charged including this tax. A major portion of entertainment tax amount comes from the movie theaters. However, as per the Section 2(2) of Kerala Additional Tax, a surcharge of 60 percent is charged on any entertainment show.
TAMIL NADU

About

TAMIL NADU is one of the 28 states of India. Its capital is Chennai, the largest city. Tamil Nadu lies in the southernmost part of the Indian Peninsula and is bordered by the union territory of Pondicherry, and the states of Kerala, Karnataka, and Andhra Pradesh.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Betting Tax,
- Advertisement Tax,
- Profession Tax,
- Luxury tax

Brief note on Taxes

- **VAT [Value Added Tax]**
  This Act may be called the Tamil Nadu Value Added Tax Act, 2006.
  It extends to the whole of the State of Tamil Nadu.
  It shall come into force on such date as the Government may, by notification, appoint.

  - **VAT Tax Schedule**

<table>
<thead>
<tr>
<th>Schedule I</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part A</td>
<td>Goods which are taxable at the rate of 1 per cent</td>
</tr>
<tr>
<td>Part B</td>
<td>Goods which are taxable at the rate of 5 per cent</td>
</tr>
<tr>
<td>Part-C</td>
<td>Goods which are taxable at the rate of 14.5 percent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule II</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As per description of goods</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule III</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Compounded rate for Hotels, Restaurants and Sweet Stalls</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule IV – Part A</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part B</td>
<td>Omitted.</td>
</tr>
<tr>
<td></td>
<td>Goods exempted from tax by Section 15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule V</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>List of International Organisation - Zero Rate Sale</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule VI</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Transit Pass)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule VII</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Compounded rate for brick kilns</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Goods not specified in any other schedule shall be taxable at the rate of 14.5%</td>
</tr>
</tbody>
</table>

- **Filing of Returns**

<table>
<thead>
<tr>
<th>Amount of turnover (In preceding financial year)</th>
<th>Tax period</th>
<th>Due date of filling return</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover &lt; 200 crores per year</td>
<td>Monthly</td>
<td>20th day of the succeeding month</td>
</tr>
<tr>
<td>Turnover &gt; 200 crores per year</td>
<td>Monthly</td>
<td>12th day of the succeeding month</td>
</tr>
</tbody>
</table>
Manner of Payments

<table>
<thead>
<tr>
<th>Description</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>In case of electronic mode of payment 14th of the succeeding month and the annual P.Y. turnover being more than Rs. 200 crores</td>
<td>14th of the succeeding month</td>
</tr>
<tr>
<td>In case of electronic mode of payment and the P.Y. turnover being less than Rs. 200 crores</td>
<td>22nd of the succeeding month</td>
</tr>
<tr>
<td>In case the payment is made through DD/cheque or through challan and the P.Y. turnover is more than Rs. 200 crores</td>
<td>12th of the succeeding month</td>
</tr>
<tr>
<td>In case the payment is made through DD/cheque or through challan, and the P.Y. turnover is less than Rs. 200 crores</td>
<td>20th of the succeeding month</td>
</tr>
<tr>
<td>All other cases</td>
<td>20th of the succeeding month</td>
</tr>
</tbody>
</table>

Road Permit/Way Bill
Not applicable in Tamil Nadu.

Entry Tax
Not Applicable in Tamil Nadu.

CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Betting tax
This Act may be called the Tamil Nadu Betting Tax Act, 1935.
it extends to the whole of the State of Tamil Nadu
State Government may, by notification in the Official Gazette, from time to time direct that a tax (hereinafter referred to as the betting tax) shall be levied on every book maker in respect of all moneys paid or agreed to be paid to him by backers in consequence of bets made in a place within the race enclosure which the director has, with the sanction of the State Government, set apart for the purpose of such betting.

Advertisement Tax
This act may be called the Tamil Nadu Entertainments Tax Act, 1939.
It extends to the whole of the State of Tamil Nadu.
Entertainment means a horse-race or cinematograph exhibition to which persons are admitted on payment or television exhibition for which persons are required to make payment by way of contribution, or subscription, or installation or connection charges or any other charges collected in any manner whatsoever or an amusement or a recreation parlour where a game such as bowling, billiards, snooker or the like is provided.

- **Profession Tax**
  Applicable to every company which transacts business, and every person who is engaged actively or otherwise in any profession, trade, calling or employment within the town panchayat.
  The assessment of professional tax assessment is calculated on the basis of the half-yearly gross income for the following categories
  - Individuals
  - Private establishment
  - Salaried people
  - Companies

  Slab Rate of Professional Tax:

<table>
<thead>
<tr>
<th>Range of average half yearly income [In Rs]</th>
<th>Half yearly professional tax [In Rs]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 21000</td>
<td>NIL</td>
</tr>
<tr>
<td>21001 – 30000</td>
<td>100</td>
</tr>
<tr>
<td>30001 – 45000</td>
<td>235</td>
</tr>
<tr>
<td>45001 – 60000</td>
<td>510</td>
</tr>
<tr>
<td>Rs 60001 – 75000</td>
<td>760</td>
</tr>
<tr>
<td>75001 and above</td>
<td>1095</td>
</tr>
</tbody>
</table>

- **Luxury Tax**
  This Act may be called the Tamil Nadu Tax on Luxuries, 1981
  It shall come into force on the 13th October, 1980.
  In Tamil Nadu “luxury” means luxury provided in hotel or any tobacco product supplied by a tobacconist for enjoyment over and above the necessities of life.
  Luxury Tax shall be levied on luxury provided in a hotel at the rate specified by the government which shall vary according to facilities provided by hotel which includes air-conditioning, television, radio, music, extra beds and the like but excluding charges for food, drink and telephone calls.
WEST BENGAL

About

WEST BENGAL, is a state in the eastern region of India and is the nation’s fourth-most populous. It is bordered by the countries of Nepal, Bhutan, and Bangladesh, and the Indian states of Odisha, Jharkhand, Bihar, Sikkim, and Assam. The state capital is Kolkata.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Land Tax
- Property Tax,
- Advertisement Tax,
- Profession Tax,
- Entertainment Tax and luxury tax

Brief note on Taxes

- VAT [Value Added Tax]
  This Act may be called the West Bengal Value Added Tax Act, 2003.
  It extends to the whole of West Bengal.
  This section has come into force with effect from 1st day of April, 2005

  - **VAT Tax Schedule**
    Schedule A – Goods on sale of which no tax is payable.
    Schedule AA – Sale of goods which shall be zero rated.
    Schedule B – List of goods taxable at 1%.
    Schedule C – List of goods taxable at 5%.
    Schedule CA – List of goods taxable at 14.5%.
    Schedule D – Goods on which tax is leviable at such rate as may be fixed by notification under section 19.

  - **Filing of Returns**

<table>
<thead>
<tr>
<th>Type Of Dealers</th>
<th>Form No.</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dealers not enjoying deferment or tax holiday or Remission of tax u/s 118 and not paying tax compounding rate u/sub Section 3, 3A, 3B of sec 16</td>
<td>14</td>
<td>Quarterly, within the next English calendar month from the date of expiry of each quarter</td>
</tr>
<tr>
<td>Dealers enjoying deferment or tax holiday or Remission of tax u/s 118</td>
<td>14D</td>
<td>Quarterly, within the next English calendar month from the date of expiry of each quarter</td>
</tr>
<tr>
<td>Dealers paying tax u/s 16(3)/16(3A)/16(3B)/16(6)/18(4)</td>
<td>15</td>
<td>Quarterly, within the next English calendar month from the date of expiry of each Quarter</td>
</tr>
<tr>
<td>Dealers paying tax u/s 16(3) and 18(4)</td>
<td>15R</td>
<td>Annually, within the next English calendar month from the date of expiry of each Year</td>
</tr>
<tr>
<td>Revision of return</td>
<td></td>
<td>Within Six months from the due date of filing of quarterly return and revised return can be submitted only once for each period.</td>
</tr>
<tr>
<td>Late fees</td>
<td>Not exceeding Rs. 2000 for each month or part thereof.</td>
<td></td>
</tr>
</tbody>
</table>

- **Manner of Payments**
  - **First two months:** Within 21 days of the expiry of each month.
  - **Last month of the quarter:** Before filing of return

- **Road Permit/Way Bill**
  - Yes it is Applicable in west Bengal.
  - When a dealer or any person imports any taxable goods or raw jute from any place outside West Bengal, he is required to obtain a way bill vide from 50, in respect of the transport of such goods beyond the area notified for the purpose.

- **Entry Tax**
  - This Act may be called the West Bengal Tax on Entry of Goods into Local Areas Act, 2012.
  - It extends to the whole of West Bengal. There shall be levied a tax under this Act which shall be payable by a dealer or an importer, on the entry of all or any specified goods into a local area for consumption, use or sale therein, on his taxable turnover of imports, or on the quantity or weight of any specified goods as may be notified by the State Government, at such rate or rates as may be specified which shall not exceed five per centurm when such tax is levied on taxable turnover of imports, and different rate or rates of tax may be specified in respect of different specified goods, or for the different categories of consumption or use or sale of such specified goods, or for different local areas.
  - For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  - This Act may be called the Central Sales Tax Act, 1956.
  - It extends to the whole of India.
  - For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.
• **Land Tax**
  In rural areas, people having homestead land have to pay Rs 2 per decimal. This will be in addition to the panchayat taxes. Taxes on rice mills, cold storages would be Rs 20 per decimal which was Rs 3 earlier. Residents of Siliguri, Durgapur and Asansol municipal corporation areas have to pay Rs 175 per decimal if plots are used for commercial purpose.
  
The amount will come down to Rs 150 in Darjeeling and Kulti municipalities and 100 in Burdwan, Raiganj and Kharagpur. In other 17 municipal areas it would Rs 75. The lowest amount will be Rs 25 per annum in 21 other municipalities.

• **Property Tax**
  The main plank of internal resource of the Municipalities is property tax on lands and buildings. Provisions have been made to determine such property tax on the basis of a formula. But such tax (annual) shall not exceed 30% of the annual value of the land or building concerned. Though the Union Government proportions are exempted from property tax but the Municipalities are empowered to impose service charge on such properties at such rates as may be determined by the Central Government. As per provision of this Act Diplomatic Missions, places of public worship, Government or Government aided educational institutions, holdings used for charitable purposes, welfare homes run by the Government and the buildings with a valuation of Rs. 500/- or less are exempted from payment of property tax. In every five years the periodic assessment of holdings is done. Detailed procedure for such assessment is made in the Act.

• **Advertisement Tax**
  Municipality charges fee for issue of license for use of a site for advertisement and also a tax on advertisement on the basis of a regulation made by the Municipalities with the approval of the State Government.

• **Profession Tax**
  This Act may be called the West Bengal State Tax on Professions, Trades, Callings, and Employments Act, 1979. It extends to the whole of West Bengal. It shall come into force, and shall always be deemed to have come into force, on the 1st April, 1979. Every person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of the Schedule shall be liable to pay to the State Government tax at the rate mentioned against the class of such persons in the third column of the said Schedule:
Slab Rate of Professional Tax:

<table>
<thead>
<tr>
<th>Professional Tax Gross</th>
<th>Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 7000</td>
<td>0</td>
</tr>
<tr>
<td>Rs. 7001 to Less than Rs. 8001</td>
<td>Rs 50 pm</td>
</tr>
<tr>
<td>Rs. 8001 to Less than Rs 9001</td>
<td>Rs 90 pm</td>
</tr>
<tr>
<td>Rs.9001 to Less than Rs. 15001</td>
<td>Rs 110 pm</td>
</tr>
<tr>
<td>Rs. 15001 to less than Rs. 25001</td>
<td>Rs 130 pm</td>
</tr>
<tr>
<td>Rs. 25001 to less than Rs. 40001</td>
<td>Rs 140 pm</td>
</tr>
<tr>
<td>Rs.40001 and above</td>
<td>Rs 200 pm</td>
</tr>
</tbody>
</table>

- **Entertainment Tax and Luxury Tax**

  The taxes imposed under this Act can be classified into two categories: entertainment tax and luxury tax. The entertainment tax is imposed on certain types of entertainments like cabaret, dance, floor shows, etc. performed; in air-conditioned hotels and restaurants. The luxury tax is imposed on hotels and restaurants providing air-conditioning facilities. Entertainment tax is calculated on the total sum paid by the person admitted to the place of entertainment. While luxury tax on hotels is payable on the daily charges realised for occupied air-conditioned rooms, luxury tax on restaurants is calculated on the floor area provided with air-conditioning facilities.
# ASSAM

## About

ASSAM is a northeastern state of India. Its capital is Dispur, located at Guwahati. Guwahati is also known as the North-East corridor of India. Located south of the eastern Himalayas, Assam comprises the Brahmaputra and the Barak river valleys along with the Karbi Anglong. Assam is surrounded by six of the other Seven Sister States: Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura and Meghalaya. It is known for Assam tea, large and old petroleum resources, Assam silk and for its rich biodiversity.

## Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Specified Land Tax,
- Amusement and Betting Tax,
- Professional Tax,

## Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called The Assam Value Added Tax Act, 2003.
  
  It extends to the whole of Assam.

  - **VAT Tax Schedule**
    
    Schedule I – List of exempted goods;
    
    Schedule II – List of goods taxable @ 5%;
    
    Schedule III – List of Goods taxable @ 1% and other declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) excluding crude oil @ 4%;
    
    Schedule IV – List of goods taxable at the point of first sale in the state;
    
    Schedule V – All other goods not covered under the I, II, III and IV Schedules a) taxable @ 13.5%,
      
      Works Contract @ 13.5%,
      
      Lease Transactions @ 5%;
    
    Schedule VI – Charged towards Labour Services etc. in relation to Works Contract taxable @ 10% to 30%.
    
    Schedule VII – Negative list of capital goods for input tax credit

  - **Filing of Returns for VAT Dealers**
    
    Every dealer whose turnover of taxable goods exceeds Rs. 40 lakhs shall furnish the return for each month within 21st of Every month.
    
    Every dealer whose turnover or taxable goods does not exceed Rs. 40 lakhs shall furnish the return for each quarter within 21st of succeeding month.
    
    Every dealer shall also furnish an annual return within two months after the close of the year to which it relates vide Form 14.
- **Manner of Payment of VAT**
  Every dealer filing monthly return shall deposit the due tax with the authorities within next 21 days of the succeeding month.
  Every dealer filing quarterly return shall deposit the due tax with the authorities within next 21 days of the succeeding quarter.

- **Road Permit/Way Bill**
  Applicable in Assam.
  In case of the import of taxable goods into Assam for resale, Delivery Note vide Form –61, along with the Invoice and Consignment Note, is required.
  In case of import of taxable goods into Assam for use in the setting up of an industrial unit or for use as raw material in the manufacture of goods or for personal use or consumption, a Road Permit vide Form –62, along with the Invoice and Consignment Note, is required.

- **Entry Tax**
  An act to levy a tax on the entry of goods into any local area in Assam for consumption, use or sale therein for the purpose of providing the infrastructure and amenities to facilitate trade and commerce within the State of Assam and to validate certain taxes imposed on entry of goods into any local area in Assam for consumption, use or sale therein and for matters connected thereto or incidental thereto.
  Every importer who imports any specified goods, for sale or for use in a works contract or for use in manufacture in any local area shall file an application for registration in respect of his business before the assessing authority of the area in which his principal place of business is located within 15 days from the date on which the importer becomes liable to pay tax under the Act.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Luxury Tax**
  These rules may be called the Assam Tax On Luxuries (Hotels and Lodging Houses) Rules, 1989.
  Luxury taxes are taxes imposed on luxuries provided in hotels and lodging houses

- **Specified Land Tax**
  The Assam Taxation (on Specified Lands) Act, 1990 was enacted by the State Legislature of Assam with a view to providing additional revenue to the State by imposing a tax on certain categories of land. The Act, as originally enacted, defines
specified lands to mean any land used or intended to be used for growing tea and for purposes ancillary thereto as well as any land held for the purposes of obtaining or extracting coal.

- **Amusement and Betting Tax**
  This Act provides for levying tax on entertainments, amusements and on certain forms of betting. This Act is subdivided into two chapters - Chapter I deals with entertainment tax and Chapter II deals with betting tax. The rate of entertainment tax for admission into any place of entertainment varies with the cost of admission in graduated slabs. Betting tax is chargeable at the flat rate of 10% of the money received by a licensed bookmaker for horse race, for bets made.

- **Professional Tax**
  An Act to levy a tax on profession, trades, callings and employments As from the first day of April, 1947 and subject to the provisions of this Act, every person, who carries on a trade either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part within the State shall be liable to pay for each financial year a tax in respect of such profession, trade, calling or employment and in addition to any tax, rate, duty or fee which he is liable to pay under any other enactment for the time being in force. Provided that for the purposes of this section a person on leave shall be deemed to be a person in employment.

### Slab Rate of Professional Tax

<table>
<thead>
<tr>
<th>Professional Tax Gross [In Rs.]</th>
<th>Per Month [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 3499</td>
<td>0</td>
</tr>
<tr>
<td>3500 – 4999</td>
<td>30</td>
</tr>
<tr>
<td>5000 – 6999</td>
<td>75</td>
</tr>
<tr>
<td>7000 – 8999</td>
<td>110</td>
</tr>
<tr>
<td>Above 9000</td>
<td>208</td>
</tr>
</tbody>
</table>
SIKKIM

About
SIKKIM, is a landlocked Indian state located in the Himalayan mountains. The state borders Nepal to the west, China’s Tibet Autonomous Region to the north and east, and Bhutan to the southeast. The Indian state of West Bengal lies to the south.

Types of Taxes
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Containers and Packing Materials Tax,
- Professional Tax,

Brief note on Taxes
- VAT [Value Added Tax]
  This Act may be called The Sikkim Value Added Tax Act, 2005.
  It extends to the whole of Sikkim.
  It shall come into force on 1st day of April.
  - VAT Tax Schedule
    Schedule I: Exempt
    Schedule II: 1%
    Schedule III: 4%
    Schedule IV: 4%
    Schedule V: 12.5%
  - Filing of Returns
    | Particulars                                      | Frequency | Due Date                                                                 |
    |-------------------------------------------------|-----------|--------------------------------------------------------------------------|
    | Tax period of periodic returns with due date    | Quarterly | Quarterly return to be filed by all the dealers before the end of one month from the end of the quarter in form 8.  
                                                      |           | Quarterly abstract statement to be filed by dealers who have opted for compounding rate of tax in Form 9A. |
    | Due date of filling annual return               | 30th November in the case of a company (Form 9)  
                                                      |           | 31st October in case the books are required to be audited under any Act (Form 9)  
                                                      |           | 31st July in case of other dealers except as mentioned above (Form 9) |
    - Manner of Payments
      Monthly payment of tax within 15 days from the end of the month to which such tax pertains in the prescribed challan in four copies.
    - Road Permit/Way Bill
      Yes it is Applicable in Sikkim
Any person importing goods into the state of Sikkim other than for personal use shall produce a way bill in Form 25 in triplicate to the officials at the check post for endorsement. The original copy of the way bill has to be kept by the check post officials.

Special way bill in Form 26 for unregistered dealers for dispatch of goods outside Sikkim otherwise than by way of sale.

Way bill in Form No 27 will be used for transferring any goods outside the state of Sikkim.

- **Entry Tax**
  Not Applicable in Sikkim
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Containers and Packing Materials Tax**
  Where any goods are sold in containers or packed in any packing mater the rate of tax applicable to such containers or packing materials shall, whether the price of the containers or packing materials is charged separately or not, be the same as those applicable to the goods contained or packed therein;
  
  Where such goods are exempt from tax, the sale of the containers or packing materials shall also be exempt from tax.

- **Professional Tax**
  Sikkim tax on professional, trades, callings and employments Act, 2006 is applicable in the state of Sikkim with effect from the 1st day of October, 2006.
  
  Payment of professional tax shall be made within 15 days from the end of the month, for the tax deducted in the preceding month.

**Slab for Professional Tax in Sikkim**

<table>
<thead>
<tr>
<th>Amount of Salary &amp; Wages [Monthly]</th>
<th>Tax to be imposed [Monthly]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 20000</td>
<td>NIL</td>
</tr>
<tr>
<td>20001 – 30000</td>
<td>125 per month</td>
</tr>
<tr>
<td>30001 – 40000</td>
<td>150 per month</td>
</tr>
<tr>
<td>40001 &amp; Above</td>
<td>200 per month</td>
</tr>
</tbody>
</table>
ARUNACHAL PRADESH

About

ARUNACHAL PRADESH is a state of India. Located in northeast India, Arunachal Pradesh borders the states of Assam and Nagaland to the south, and shares international borders with Bhutan in the west, Myanmar in the east and the People's Republic of China (PRC) in the north. Itanagar is the capital of the state.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax.

Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called the Arunachal Pradesh Goods Tax Act, 2005.
  
  It extends to the whole of the Arunachal Pradesh.

  - **VAT Tax Schedule**
    
    Schedule I: Exempt
    Schedule II: 1%
    Schedule III: 4%
    Schedule IV: 20%
    Schedule VII: (List of non-creditable goods)
    Schedule VIII: (List of non-taxable imports)
    General Category: Goods not specified in any other schedule shall be taxable at the rate of 12.5%

  - **Filing of Returns**

<table>
<thead>
<tr>
<th>Type of dealer</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>For dealers with annual turnover of less than Rs. 5 crores.</td>
<td>Monthly/quarterly return, within 28 days from the end of the tax period.</td>
</tr>
<tr>
<td>For dealers with annual turnover of more than Rs. 5 crores.</td>
<td>Monthly return within 28 days from the end of the tax return.</td>
</tr>
</tbody>
</table>

- **Manner of Payment**
  
  The net tax of a dealer shall be paid within 28 days of the conclusion of the dealer’s tax period.

- **Road Permit/Way Bill**
  
  Not applicable.

- **Entry Tax**
  
  Entry tax is a tax levied on all imports into Arunachal Pradesh. It is levied on all importers (whether dealers or consumers) as long as the value of the goods imported is more than Rs. 10,000.
| If an importer of specified goods liable to pay tax under this Act becomes liable to pay tax under the Arunachal Pradesh Goods Tax Act, 2005, by virtue of the sale of such specified goods, then his liability under the Arunachal Pradesh Goods Tax Act, 2005, shall be reduced to the extent of tax paid under this Act.  
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.  
- **CST [Central Sales Tax]**  
  This Act may be called the Central Sales Tax Act, 1956.  
  It extends to the whole of India.  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass. |
MANIPUR

About MANIPUR is a state in northeastern India, with the city of Imphal as its capital. Manipur consists of Meitei, Pangal, Naga, Zomi, Kuki, Mizo and Meitei people, and is bounded by the Indian states of Nagaland to the north, Mizoram to the south, and Assam to the west; it also borders Burma to the east.

Types of Taxes

- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Luxury Tax,
- Profession Tax,

Brief note on Taxes

- **VAT [Value Added Tax]**
  
  This Act may be called the Manipur Value Added Tax Act, 2004. It extends to the whole of the State of Manipur. It shall come into force on the 1st day of August 2005.

  - **VAT Tax Schedule**
    
    Schedule I: Vat Rates shall be 1%, 5%, 5%, 13.5%, 20% as per the goods notified in schedule I
    
    Schedule II: Zero floor rate or exempted goods:
    
    General Category: Goods not specified in any other schedule shall be taxable at the rate of 13.5%

  - **Filing of Returns**

    | Amount of turnover (in the preceding financial year) | Tax Period | Due Date of Filing |
    |------------------------------------------------------|------------|--------------------|
    | Rs 5 lakhs < turnover < Rs 40 lakh                    | Quarterly  | 20 days from the close of the relevant quarter. |
    | Turnover ≥ Rs 40 lakh                                 | Monthly    | 20 days from the end of the relevant month. |

  - **Manner of Payments**
    
    20 days from relevant month or quarter.

  - **Road Permit**

    | Inbound sales tax form | No. of copies required | Permit to be handed over by | Outbound sales tax form |
    |------------------------|------------------------|-----------------------------|-------------------------|
    | ST-35/ST-37           | 2 (Both inbound + outbound) | Shipper                     | ST-36                   |

**Inbound Shipments**

All commercial shipments for Manipur must be accompanied by Form 35. The Sales Tax Department issues this form to the registered dealers in Manipur.

**Outbound Shipments**

All outbound shipments must be accompanied with Form 36 from Manipur.
 Entry Tax
Not Applicable in Manipur
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

CST [Central Sales Tax]
This Act may be called the Central Sales Tax Act, 1956.
It extends to the whole of India.
For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

Luxury Tax
Luxury tax is the tax imposed on the luxuries provided in hotels and lodging houses.

Slab for Luxury Tax

| Where the charge is Rs. 100/- (Rupees hundred) or more but does not exceed Rs. 150/- (Rupees one hundred fifty) per day per person. | 10 (ten) per centum of such turnover of receipts. |
| Where the charge exceeds Rs. 150/- (Rupees one hundred fifty) but does not exceed Rs. 200/- (Rupees two hundred) per day per person. | 15 (fifteen) per centum of such turnover of receipts |
| Where the charge exceeds Rs. 200/- (Rupees two hundred) per day per person. | 20 (twenty) per centum of such turnover of receipts. |

Professional Tax
As from assessment year commencing from the 1st day of April of every year and subject to the provisions of this Act, every person who carries on a trade, either by himself or by an agent or representative, or who follows a profession or calling or who is in employment either wholly or in part within the State shall be liable to pay for each assessment year a tax (with reference to his total gross income of the previous year) with regard to such professions, trade, calling or employment and in addition to any tax, rate, duty or fee which he is liable to pay under any other enactment for the time being in force. Provided that the tax repayable by any person shall not exceed (two thousand five hundred) rupees for any assessment year.

Slab for Professional Tax

<table>
<thead>
<tr>
<th>Amount of Salary and Wages (yearly) (In Rs.)</th>
<th>Tax to be imposed (Yearly) (In Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 15000</td>
<td>NIL</td>
</tr>
<tr>
<td>15001 – 20000</td>
<td>300</td>
</tr>
<tr>
<td>20001 - 30000</td>
<td>450</td>
</tr>
<tr>
<td>30001 - 40000</td>
<td>600</td>
</tr>
<tr>
<td>40001 - 50000</td>
<td>750</td>
</tr>
<tr>
<td>50001 – 60000</td>
<td>900</td>
</tr>
<tr>
<td>60001 - 75000</td>
<td>1100</td>
</tr>
<tr>
<td>75001 - 100000</td>
<td>1600</td>
</tr>
<tr>
<td>100001 – 125000</td>
<td>2200</td>
</tr>
<tr>
<td>Above 125000</td>
<td>2500</td>
</tr>
</tbody>
</table>
# MEGHALYA

<table>
<thead>
<tr>
<th>About</th>
<th>MEGHALYA is a state in the north east of India. This state is bounded to the north by Assam and by Bangladesh to the south. The capital is Shillong.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax,  
• Professional Tax. |
| Brief note on Taxes | • **VAT [Value Added Tax]**  
These Rules may be called the Meghalaya Value Added Tax Rules, 2003.  
They shall come into force from the date the State Government in the official Gazette, shall appoint.  
  ❍ **VAT Tax Schedule**  
    Schedule I—List of exempted goods;  
    Schedule II—List of goods taxable @ 5%;  
    Schedule II (A)— Items falling under the category of IT products (rates specified in Schedule II);  
    Schedule II (B)— Items falling under industrial inputs and packing materials (rates specified in Schedule II);  
    Schedule III—Goods taxable @1%;  
    Schedule IV—Goods taxable @13.5%;  
    Schedule IV (A)— Percentage of deduction under the works contract; And  
    Schedule V—the following rates are applicable for the goods included in this Schedule—  
      a. Liquor @ 20%;  
      b. Lottery tickets @ 20%;  
      c. Molasses @ 20%;  
      d. Rectified Spirit @ 20%;  
      e. Medicines and drugs [including vaccines, syringes and dressings, medicated ointments produced under the drugs licence, and light liquid paraffin of IP grade] @ 5%;  
      f. Tobacco and tobacco products, cigars and cigarettes excluding unmanufactured tobacco, bidis and tobacco used in the manufacture of bidis @ 12.5%;  
      g. Gutka @ 20%; and  
      h. Tea leaves @ 4%. |
| | ❍ **Filing of Returns**  
The return shall be submitted under Section 35.  
All registered dealers paying composite tax shall file return within 21 days from the close of the quarter of the year. |
Any dealer not covered under the composite tax scheme shall file return within 21 days from the end of the month of the year.

- **Manner of Payments**
  Tax Payment shall be done within 21 days from the end of the quarter or month as the case may be.
  Dealers filing quarterly return shall make payment of taxes within 21 days from the close of the quarter.
  Dealers filing monthly return shall make payment of taxes within 21 days from the close of the month.

- **Road Permit/Way Bill**
  Applicable in Meghalaya.
  All commercial shipments for Meghalaya must be accompanied by Form 40.

- **Entry Tax**
  Applicable in Meghalaya
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Profession Tax**
  This Act may be called the meghalaya Tax on Professions, Trades, Callings and Employments Act, w.e.f. 01.04.2012

### Slab Rate of Professional Tax

<table>
<thead>
<tr>
<th>Professional Income Gross [In Rs.]</th>
<th>Tax Per Year [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 50000</td>
<td>NIL</td>
</tr>
<tr>
<td>50001- 75000</td>
<td>200</td>
</tr>
<tr>
<td>75001- 100000</td>
<td>300</td>
</tr>
<tr>
<td>100001- 150000</td>
<td>500</td>
</tr>
<tr>
<td>150001- 200000</td>
<td>750</td>
</tr>
<tr>
<td>200001- 250000</td>
<td>1000</td>
</tr>
<tr>
<td>250001- 300000</td>
<td>1250</td>
</tr>
<tr>
<td>300001- 350000</td>
<td>1500</td>
</tr>
<tr>
<td>350001- 400000</td>
<td>1800</td>
</tr>
<tr>
<td>400001- 450000</td>
<td>2100</td>
</tr>
<tr>
<td>450001- 500000</td>
<td>2400</td>
</tr>
<tr>
<td>Above 500000</td>
<td>2500</td>
</tr>
</tbody>
</table>
MIZORAM

<table>
<thead>
<tr>
<th>About</th>
<th>MIZORAM, Land of the Hill People is one of the Seven Sister States listed as in North Eastern India, sharing borders with the states of Tripura, Assam, Manipur and with the neighboring countries of Bangladesh and Burma. Mizoram became the 23rd state of India on 20 February 1987. Its capital is Aizawl.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],  
• Central Sales Tax,  
• Entertainment Tax,  
• Professional Tax. |
| Brief note on Taxes | • **VAT [Value Added Tax]**  
This Act may be called the Mizoram Value Added Tax Act, 2005.  
It shall extend to the whole of the State of Mizoram.  
  
  o **VAT Tax Schedule**  
  Schedule I – Exempted Goods  
  Schedule II-A – 0%  
  Schedule II- B- 1%  
  Schedule II- C- 5%  
  Schedule II- D- 13.5%  
  Schedule III - The rate of tax on works contract shall be 13.5% or such rate as may be notified by the State government from time to time with abatement as listed in Schedule III.  
  Schedule III-A-30% & 15%  
  
  o **Filing of Returns**  
The returns during the first year of the operation of the Act shall be furnished quarterly, as shown herein below, so as to reach the Assistant Commissioner or the Superintendent of Taxes on or before the date noted against each quarter as specified below:  
  a. For the quarter ending 31st March—By 30th May.  
  b. For the quarter ending 30th June—By 31st July.  
  c. For the quarter ending 30th September—By 31st October.  
  d. For the quarter ending 31st December—By 31st January;  
Provided that the Commissioner of Taxes may, by an order in writing, direct any dealer to submit returns for the period of less than the quarter or a month within such date as may be specified in the order and may likewise, at any time, modify or annul his order. |
• **Manner of Payments**
  A dealer shall deposit tax within 30 days from the end of the preceding month.

• **Road Permit/Way Bill**
  Applicable in Mizoram.
  Form no. 34 is required for goods entering in the state of Mizoram.

• **Entry Tax**
  Not Applicable in Mizoram

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  For further reference, please refer book “All India VAT Ready Reckoner” 2012 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Entertainment Tax**
  Entertainment tax is charged in respect of any person admitted on payment for the purpose of entertainment and amusement, games and sports, theatre and cinematography etc.

- **Professional tax**
  In exercise of the powers conferred by proviso to section 4 of the Mizoram professional trades, calling, and employment taxation act 1995

<table>
<thead>
<tr>
<th>Monthly Salary and Wages [In Rs.]</th>
<th>Professional Tax [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 5000</td>
<td>Nil</td>
</tr>
<tr>
<td>5001 - 8000</td>
<td>Rs 75 per month</td>
</tr>
<tr>
<td>8001 – 10000</td>
<td>Rs 120 per month</td>
</tr>
<tr>
<td>10001 – 12000</td>
<td>Rs 150 per month</td>
</tr>
<tr>
<td>12000 – 15000</td>
<td>Rs 180 per month</td>
</tr>
<tr>
<td>Exceeds 15000</td>
<td>Rs 208 per month</td>
</tr>
</tbody>
</table>
TRIPURA

About
TRIPURA, The third-smallest state in the country, and is bordered by Bangladesh to the north, south, and west; the Indian states of Assam and Mizoram lie to its east. The tertiary sector of the economy (service industries) was the largest contributor to the gross domestic product of the state, contributing 53.98 per cent of the state's economy compared to 23.07 per cent from the primary sector (agriculture, forestry, mining) and 22.95 per cent from the secondary sector (industrial and manufacturing).

Types of Taxes
- Value Added Tax [Local Sales Tax],
- Central Sales Tax,
- Amusement & Entertainment tax
- Profession Tax,
- Luxury tax

Brief note on Taxes
- VAT [Value Added Tax]
  These Rules may be called the Tripura Value Added Tax Rules, 2005.
  It shall extend to whole of the state of Tripura.
  They shall come into force with effect from the 1st day of April, 2005.
  - VAT Tax Schedule
    - Schedule I — List of International Public Organisations.
    - Schedule II (a) — 5%;
    - Schedule II (b) — 13.5%;
    - Schedule II (c) — 2%;
    - Schedule II (c) — 1.5%;
    - Schedule II (d) — list of goods outside VAT and taxable at the first point of sale within Tripura; such rates as may be notified by the state government from time to time;
    - Schedule III—Exempted;
    - Schedule VI—4% (industrial inputs);
    - Schedule VII—4% (list of IT products); and
    - Schedule VIII—4% (other goods).
  - Exemptions: The sale of goods as specified in Schedule I shall be exempt from tax under this Act, subject to the conditions and exceptions set out therein.

Filing of Returns
Every registered dealer shall furnish a return regarding the turnover of taxable goods under Section 24 of the Tripura Value Added Tax Act, 2004, to the Superintendent of Taxes vide the following forms:
1. Form X by the dealers other than dealers as mentioned in (2) and (3) below;
2. Form XA by the composite dealers;
3. Form XB by the dealers dealing in items listed under Schedule VIII.

The return shall be furnished quarterly within one month from the expiry of each quarter.

- **Manner of Payment**
  Within 30 days from the expiry of each quarter.

- **Road Permit/Way Bill**
  Applicable in Tripura.
  Commercial shipments to the state must be accompanied with Form XXVI/XXIV in triplicate and shall contain a correct and complete account of the goods carried by the transporter. The above form has to be collected from the shipper. The shipment can move to AAG by air without permit and will be delivered after endorsement from the sales tax department by the consignee.

- **Entry Tax**
  Not Applicable in Tripura.

- **CST [Central Sales Tax]**
  This Act may be called the Central Sales Tax Act, 1956.
  It extends to the whole of India.
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Amusements & Entertainment Tax**
  This Act may be called the Tripura Amusements Tax Act, 1973.
  It extends to the whole of Tripura.
  “Entertainment” includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment.
  Entertainment tax shall be charged, levied and paid to the State Government a tax at the rate of twenty-five per centum on all payments for admission to any entertainment.

- **Luxury tax**
  This Act may be called the Tripura Tax on Luxuries in Hotels and Lodging Houses Act, 1990.
  It extends to the whole of the state of Tripura.
Luxury Tax shall be levied and collected from every person residing in a hotel where the rate of charge in respect of any luxury provided in a hotel to him is rupees one hundred or more per day, per person, a tax at the rate of ten per centum.

- **Profession Tax**

This Act may be called the Tripura State Tax on Professions, Trades, Callings, and Employments Act, 1979. It extends to the whole of Tripura. Every person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of the Schedule shall be liable to pay to the State Government tax at the rate mentioned.

**Slab Rate of Professional Tax**

<table>
<thead>
<tr>
<th>Professional Income Gross [In Rs.]</th>
<th>Per Month [In Rs.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 2500</td>
<td>Nil</td>
</tr>
<tr>
<td>2501- 3500</td>
<td>55</td>
</tr>
<tr>
<td>3501- 4500</td>
<td>85</td>
</tr>
<tr>
<td>4501- 6500</td>
<td>100</td>
</tr>
<tr>
<td>6501- 10000</td>
<td>140</td>
</tr>
<tr>
<td>Above 10001</td>
<td>180</td>
</tr>
</tbody>
</table>
## NAGALAND

<table>
<thead>
<tr>
<th>About</th>
<th>NAGALAND, is a state in the far north-eastern part of India. It borders the state of Assam to the west, Arunachal Pradesh and part of Assam to the north, Myanmar to the east and Manipur to the south. The state capital is Kohima, and the largest city is Dimapur.</th>
</tr>
</thead>
</table>
| Types of Taxes | • Value Added Tax [Local Sales Tax],
• Central Sales Tax,
• Profession Tax,
• Luxury tax |
| Brief note on Taxes | • **VAT [Value Added Tax]**
This Act may be called the Nagaland Value Added Tax Act, 2005.
It extends to the whole of the State of Nagaland.
This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date or dates as the State Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act.
  - **VAT Tax Schedule**
    - Schedule I-Exempted Goods;
    - Schedule II-0 %;
    - Schedule III-1%
    - Schedule IV-4.75%
    - Schedule V-13.25%
    - Schedule VI-20%.
    - Schedule VII-4% & 12.5%
  The rate of tax for a works contract shall be 4% or as may be notified by the state government from time to time. |
### Filling of Returns

<table>
<thead>
<tr>
<th>Type of dealer</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly Returns</td>
<td>For the period ending 30th June—By 31st July</td>
</tr>
<tr>
<td></td>
<td>For the quarter ending 30th September by 31st October,</td>
</tr>
<tr>
<td></td>
<td>For the quarter ending 31st December by 31st January, and</td>
</tr>
<tr>
<td></td>
<td>For the quarter ending 31st March by 30th April.</td>
</tr>
<tr>
<td>Note: If the dealer fails to file a return, he shall be served a notice vide Form VAT29</td>
<td></td>
</tr>
<tr>
<td>Monthly Returns</td>
<td>13th day of the following month</td>
</tr>
<tr>
<td>The appropriate assessing authority may, for reasons to be rendered in writing, fix a monthly return period for a registered Dealer.</td>
<td></td>
</tr>
<tr>
<td>The annual return shall be furnished within 2 months of the close of the year to which it relates.</td>
<td></td>
</tr>
</tbody>
</table>

#### Manner of Payment

The tax shall be paid before due date of furnishing returns.

Provided that for the tax payable during the month of March, the tax shall be paid on or before the 28th day of March.

#### Road Permit/Way Bill

Yes it is Applicable in Nagaland.

Import Declaration: Challan Inward—form no. 23

Bill of Sales: Challan Outward—form no. 24

For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **CST [Central Sales Tax]**
  
  This Act may be called the Central Sales Tax Act, 1956.
  
  It extends to the whole of India.
  
  For further reference, please refer book “All India VAT Ready Reckoner” 2013 written by Mr. Alok Kr. Agarwal and Mr. Deepak Kr. Dass.

- **Professional Tax**
  
  Applicable in Nagaland w.e.f. 01.10.2011 as notified on 23rd January 2012 (NE/RN-646)
  
  This Act may be called the Nagaland State Tax on Professions, Trades, Callings, and Employments Act.
Slab Rate of Professional Tax:

<table>
<thead>
<tr>
<th>Professional Tax Gross</th>
<th>Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Less than Rs. 4000</td>
<td>nil</td>
</tr>
<tr>
<td>(ii) Rs. 4000 or more, but less than Rs. 5000</td>
<td>Rs. 35 per month</td>
</tr>
<tr>
<td>(iii) Rs. 5000 or more, but less than Rs. 7000</td>
<td>Rs. 35 per month</td>
</tr>
<tr>
<td>(iv) Rs. 7000 or more, but less than Rs. 9000</td>
<td>Rs. 110 per month</td>
</tr>
<tr>
<td>(v) Rs. 9000 or more, but less than Rs. 12,000</td>
<td>Rs. 180 per month</td>
</tr>
<tr>
<td>(vi) Rs. 12,000 or more,</td>
<td>Rs. 208 per month</td>
</tr>
</tbody>
</table>

- **Luxury Tax**
  
  Luxury means imposition of a tax on luxuries and sumptuous food in Hotels and restaurant. Subject to the provision of this Act and the rules made there under, there shall be levied a tax on the turnover of receipt of a hotelier or restaurant.