Direct Tax (Paper 7A)

Rate of Income Tax

Default Tax Regime for Individual / HUF / AOP / BOI / AJP [Sec. 115BAC]

Applicable to

Individual / HUF / AOP (other than co-operative society) / BOI / AJP

Rate of Tax

Under this tax regime, income tax shall be computed at the option of the assessee considering the following rate:

Total income	Rate of tax
Upto ₹ 3,00,000	Nil
From ₹ 3,00,001 to ₹ 6,00,000	5%
From ₹ 6,00,001 to ₹ 9,00,000	10%
From ₹ 9,00,001 to ₹ 12,00,000	15%
From ₹ 12,00,001 to ₹ 15,00,000	20%
Above ₹ 15,00,000	30%

Taxpoint: If a person opts for this regime, ₹ 3,00,000 shall be considered as basic exemption limit irrespective of his age. In other words, for all category of individual i.e, senior citizen, super senior citizen and others, basic exemption limit is ₹ 3,00,000

Rebate u/s 87A for tax computed as per sec. 115BAC

Applicable to: Resident Individual

Conditions to be satisfied: Total income of the assessee does not exceed ₹ 7,00,000.

Quantum of Rebate: **Lower** of the following:

a. 100% of tax liability as computed above; or
b. ₹ 25,000/-

Marginal relief is available even total income exceeds ₹ 7,00,000 [available upto ₹ 7,27,770]

Marginal relief = Positive value of (Tax on income – Income in excess of ₹ 7,00,000)

Example

Particulars	Case 1	Case 2	Case 3	Case 4
Assessee	Individual	Individual	Senior Citizen	Individual
Residential status	Resident	Resident		Resident
Regime	Default	Default	Default	Default
Total Income (₹)	6,00,000	6,80,000	7,10,000	7,30,000
Tax on above	15,000	23,000	26,000	28,000
Rebate u/s 87A	**15,000**	**23,000**	**16,000**	**Nil**
Reason			[₹ 26,000 – (₹ 7,10,000 - ₹ 7,00,000)], is positive	[₹ 28,000 – (₹ 7,30,000 - ₹ 7,00,000)], is negative
Tax after rebate	Nil	Nil	10,000	28,000

Surcharge on tax after rebate u/s 87A

Surcharge at the following rate is also payable on tax as computed above after rebate u/s 87A

Total Income	Rate of Surcharge
Total income does not exceed ₹ 50 lacs	Nil
Total income exceeds ₹ 50 lacs but does not exceed ₹ 1 crore	10% of tax
Total income exceeds ₹ 1 crore but does not exceed ₹ 2 crores	15% of tax
Total income exceeds ₹ 2 crores	25% of tax*

Subject to Marginal Relief.

* Where the total income includes dividend, any income chargeable u/s 111A, 112 and 112A, the surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, surcharge higher than 15% is applicable only on tax on income other than dividend, income covered u/s 111A, 112 and 112A. Moreover, in case of an AOP consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed 15%.

Health & Education Cess

Applicable on: All assessee

Rate of cess: 4% of Tax liability after Surcharge

OLD TAX REGIME

Where an assessee opt for old regime of taxation (or want to shift from default tax regime to alternative regime), then he should exercise the option in the prescribed manner:

Where the person not having aforesaid income	Alongwith the return of income to be furnished u/s 139(1) for a previous year relevant to the assessment year. He may choose to pay tax under default tax regime u/s 115BAC in one year and exercise the option to shift out of default tax regime in another year.
Where the person has income from business or profession	Within the due date specified u/s 139(1) for furnishing the returns of income for any previous year relevant to the assessment year **and** such option **once** exercised shall apply to subsequent assessment years. Such person who has exercised the above option of shifting out of the default tax regime for any previous year shall be able to withdraw such option **only once** and pay tax under the default tax regime u/s 115BAC for a previous year other than the year in which it was exercised. Thereafter, such person shall **never** be eligible to exercise option under this section, except where such person ceases to have any business income in which case, option would be available.

In that case, following tax rates are applicable:

Individual/HUF/Association of Persons/Body of Individuals/Artificial Juridical Person

In case of Super Senior citizen

Total Income Range	Rates of Income Tax
Up to ₹ 5,00,000	Nil
₹ 5,00,001 to ₹ 10,00,000	20% of (Total income – ₹ 5,00,000)
₹ 10,00,001 and above	₹ 1,00,000 + 30% of (Total income – ₹ 10,00,000)

Super Senior Citizen means an individual who is resident in India and is of at least 80 years of age at any time during the relevant previous year (i.e. any resident person, male or female, born before 02-04-1944).

In case of Senior citizen

Total Income Range	Rates of Income Tax
Up to ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000	5% of (Total Income – ₹ 3,00,000)
₹ 5,00,001 to ₹ 10,00,000	₹ 10,000 + 20% of (Total income – ₹ 5,00,000)
₹ 10,00,001 and above	₹ 1,10,000 + 30% of (Total income – ₹ 10,00,000)

Senior Citizen means an individual who is resident in India and is of at least 60 years of age at any time during the relevant previous year. (i.e., a resident person, male or female, born on or after 02-04-1944 but before 02-04-1964)

In case of other Individual[1] / HUF / Association of Persons / Body of Individuals / Artificial Juridical Person

Total Income Range	Rates of Income Tax
Up to ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000	5% of (Total Income – ₹ 2,50,000)
₹ 5,00,001 to ₹ 10,00,000	₹ 12,500 + 20% of (Total income – ₹ 5,00,000)
₹ 10,00,001 and above	₹ 1,12,500 + 30% of (Total income – ₹ 10,00,000)

[1]. born on or after 02-04-1964 or non-resident individual

Rebate u/s 87A

Applicable to: Resident Individual

Conditions to be satisfied: Total income of the assessee does not exceed ₹ 5,00,000.

Quantum of Rebate: **Lower** of the following:

a. 100% of tax liability as computed above; or

b. ₹ 12,500/-

Surcharge on tax after rebate u/s 87A

Surcharge at the following rate is also payable on tax as computed above after rebate u/s 87A

Total Income	Rate of Surcharge
Total income does not exceed ₹ 50 lacs	Nil
Total income exceeds ₹ 50 lacs but does not exceed ₹ 1 crore	10% of tax
Total income exceeds ₹ 1 crore but does not exceed ₹ 2 crores	15% of tax
Total income exceeds ₹ 2 crores but does not exceed ₹ 5 crores	25% of tax*
Total income exceeds ₹ 5 crores	37% of tax*

Surcharge is subject to marginal relief.

* Where the total income includes dividend, any income chargeable u/s 111A, 112 and 112A, the surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, surcharge higher than 15% is applicable only on tax on income other than dividend, income covered u/s 111A, 112 and 112A. Moreover, in case of an AOP consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed 15%.

Health & Education Cess

Applicable on: All assessee

Rate of cess: 4% of Tax liability after Surcharge

Firm or Limited Liability Partnership (LLP)

A partnership firm (including limited liability partnership) is taxable at the rate of 30%

Surcharge: 12% of income-tax (if total income exceeds ₹ 1 crore otherwise Nil)

Marginal Relief: Available

Health & Education Cess: 4% of tax liability after surcharge

Company

Company	*Rate*
In the case of a domestic company	
- Where its total turnover or gross receipts during the previous year 2021-22 does not exceed ₹ 400 crore	25%
- In any other case	30%
In the case of a foreign company	40%

Surcharge

Total Income	Domestic Company	Foreign Company
If total income exceeds ₹ 10 crore	12%	5%
If income exceeds ₹ 1 crore but does not exceed ₹ 10 crore	7%	2%
If income does not exceed ₹ 1 crore	Nil	Nil

Marginal Relief: Available at both points (i.e., income exceeds ₹ 1,00,00,000 or ₹ 10,00,00,000)

Health & Education Cess: 4% of tax liability after surcharge

Sec. 115BAC

W.e.f. A.Y. 2024-25, it is provided that the rates provided u/s 115BAC(1A) shall be the rates applicable for determining the income-tax payable in respect of the total income of a person, being an individual or Hindu undivided family or association of persons [other than a cooperative society], or body of individuals, whether incorporated or not, or an artificial juridical person. Thus, rates given in sec. 115BAC(1A) are the default rates. However, if an option is exercised u/s 115BAC(6), then nothing contained in sec. 115BAC(1A) shall be applicable in respect of such person. In such case, the tax rates applicable in earlier regime would be applicable.

Sec. 9

Extending deeming provision u/s 9 to gift to not-ordinarily resident

Under the Act, income which, inter-alia, is deemed to accrue or arise in India during a year is chargeable to tax. Section 9(1) is a deeming provision providing the types of income deemed to accrue or arise in India. Section 9(1)(viii) provide that the any sum of money exceeding ₹ 50,000, received by a non-resident without consideration from a person resident in India, shall be income deemed to accrue or arise in India.

The above provision was introduced as an anti-abuse provision, as certain instances were observed where gifts were being made by persons residents in India to non-residents and were claimed to be non-taxable in India by such non-residents.

However, it has been noticed that certain persons being not ordinarily residents are receiving the gifts from persons resident in India and not paying tax on it.

Thus, the aforesaid deeming provision has been amended to include any sum of money exceeding ₹ 50,000, received by a **not ordinarily resident**, without consideration from a person resident in India under its umbrella.

Sec. 10

Amendment to sec. 10(4D)

The definition of specified fund u/s 10(4D) has been modified to include the reference of International Financial Service Centre Authority (IFSCA) Fund Management Regulation, 2022 with effect from assessment year 2324

Amendment to sec. 10(4E)

Income of non-residents on transfer of Offshore Derivative Instruments (ODI) entered into with IFSC Banking unit is exempt u/s 10(4E). Under the ODI contract, the IFSC Banking Unit (IBU) makes the investments in permissible Indian Securities. Income earned by the IBU on such investments is taxed as capital gains, interest, dividend u/s 115AD. After the payment of tax, the IBU passes such income to the ODI holders. Presently, the exemption is provided only on the transfer of ODIs and not on the distribution of income to the non-resident ODI holders, hence this distributed income is taxed twice in India i.e. first when received by the IBU and second, when the same income is distributed to non-resident ODI holders.

Therefore, in order to remove the double taxation, clause (4E) has been amended, to provide exemption to any income distributed on the offshore derivative instruments, entered into with an offshore banking unit of an International Financial Services Centre as referred to in sec. 80LA(1A), which fulfils such conditions as may be prescribed. It has also been provided that such exempted income shall include only that amount which has been charged to tax in the hands of the IFSC Banking Unit u/s 115AD

Amendment to sec. 10(4G)

The provision has been extended to provide exemption pertaining to any income received by non-resident from such activity as may be notified by the Central Government

Insertion of sec. 10(4H)

Any income of a non-resident or a Unit of an International Financial Services Centre as referred to in sec. 80LA(1A), engaged primarily in the business of leasing of an aircraft, by way of capital gains arising from the transfer of equity shares of domestic company, being a Unit of an International Financial Services Centre, engaged primarily in the business of lease of an aircraft which has commenced operations on or before 31-03-2026.

Such capital gains would arise within the

a. period of 10 assessment years beginning with the assessment year relevant to the previous year in which the domestic company has commenced operations; or
b. period of 10 assessment years beginning with the assessment year 2024-25, where the period referred to in clause (a) ends before 01-04-2034.

Taxpoint: "Aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof

Rationalisation of exempt income under life insurance policies [Sec. 10(10D)]

Sec. 10(10D) provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed 10% of the actual capital sum assured.

It may be pertinent to note that the legislative intent of providing exemption u/s 10(10D) has been to further the welfare objective by subsidising the risk premium for an individual's life and providing benefit to small and genuine cases of life insurance coverage. However, over the years it has been observed that several high net worth individuals are misusing the exemption by investing in policies having large premium contributions (as it is acting as an investment policy) and claiming exemption on the sum received under such life insurance policies.

In order to prevent the misuse of exemption, Finance Act, 2021, amended sec. 10(10D) to, inter-alia, provide that the sum received under a ULIP (barring the sum received on death of a person), issued on or after 01-02-2021 shall not be exempt if the amount of premium payable for any of the previous years during the term of such policy exceeds ₹ 2,50,000. It was also provided that if premium is payable for more than one ULIPs, issued on or after 01-02-2021, the exemption shall be available only with respect to such policies where the aggregate premium does not exceed ₹ 2,50,000 for any of the previous years during the term of any of the policy. Circular no 02 of 2022 dated 19.01.2022 was issued to explain how the exemption is to be calculated when there are more than one policies.

After the enactment of the above amendment, while ULIPs having premium payable exceeding ₹ 2,50,000/- have been excluded from the purview of sec. 10(10D), all other kinds of life insurance policies are still eligible for exemption irrespective of the amount of premium payable.

In order to curb such misuse, it has been amended to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above ₹ 5,00,000 in a year. This income shall be taxable under the head "income from other sources". Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier.

The amended provision shall apply for policies issued on or after 01-04-2023. There will not be any change in taxation for polices issued before this date. However, income shall be exempt if received on the death of the insured person.

Sum received from Agniveer Corpus Fund [Sec. 10(12C)]

A new clause (12C) in section 10 of the Act has been inserted to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.

Removal of exemption of news agency u/s 10(22B)

Sec. 10(22B), inter-alia, provides exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news. This is subject to condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

In accordance with the stated policy of the Government of phasing out of exemptions and deductions under the Act, the exemption available to news agencies u/s 10(22B) has been withdrawn from the assessment year 2024-25.

Amendment to sec. 10(23FE)

The exemption has been extended to cover any sum referred to in sec. 56(2)(xii)

Extending scope of exemption to Sikkimese woman marrying non-Sikkimese and an individual domiciled in Sikkim [Sec. 10(26AAA)]

The provision has been amended to provide exemption to:

a. A Sikkimese woman marrying a non-Sikkimese on or after 01-04-2008
b. An individual who was domiciled in Sikkim on or before 26-04-1975
c. An individual whose specified ancestors were domiciled in Sikkim on or before 26-04-1975

Dividend income of a unit of any International Financial Service Centre [Sec. 10(34B)]

A new clause has been inserted to sec. 10 to provide exemption of dividend income of a unit of any IFSC (primarily engaged in the business of leasing of an aircraft) from a company being a unit of an IFSC (primarily engaged in the business of leasing of an aircraft)

Exemption to development authorities etc. [Sec. 10(46)/46(A)]

Sec. 10(46) provides exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which:

a. has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
b. is not engaged in any commercial activity; and
c. is notified by the Central Government in the Official Gazette for the purposes of this clause.

The restriction on undertaking commercial activities by anybody or authority or Board or Trust or Commission notified u/s 10(46) has been a litigated issue. Recently, Hon'ble Supreme Court of India in the case of Assistant Commissioner of Income-tax (Exemptions) -vs.- Ahmedabad Urban Development Authority in Civil Appeal No 21762 of 2017 vide its order dated 19.10.2022 held that in sub-clause (b) of sec. 10(46), "commercial" has the same meaning as "trade, commerce, business" in sec. 2(15) of the Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e.,

whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity".

However, the Hon'ble Court has also made a fine distinction in respect of statutory authorities, boards etc. which have been established by the State government or Central governments, for achieving essentially "public functions/services". In such cases, the court have held that the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the mischief of business or commercial receipts as their objects are essential for advancement of public purposes/ functions.

In view of the above, it has been amended so as to exclude income of a body or authority or Board or Trust or Commission, not being a company, from the scope of sec. 10(46) and insert a new clause (46A) in section 10 of the Act for their income.

The new clause (46A) has been inserted to exempt any income arising to a body or authority or Board or Trust or Commission, not being a company, which has been established or constituted by or under a Central or State Act with one or more of the following purposes, namely:

a) dealing with and satisfying the need for housing accommodation;
b) planning, development or improvement of cities, towns and villages;
c) regulating, or regulating and developing, any activity for the benefit of the general public; or
d) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

It is also required to be notified by the Central Government in the Official Gazette for the purposes of this clause. Consequential amendment has also been made in the Explanation to the nineteenth proviso of sec. 10 (23C). Similarly, consequential amendment has also been made in sec. 11(7) of the Act.

Exemption to credit guarantee funds [Sec. 10(46B)]

Sec.10(46B) has been inserted to provide exemption for any income accruing or arising to the following:

a) National Credit Guarantee Trustee Company Limited, being a company established and wholly financed by the Central Government for the purposes of operating credit guarantee funds established and wholly financed by the Central Government; or
b) a credit guarantee fund established and wholly financed by the Central Government and managed by the National Credit Guarantee Trustee Company Limited; or
c) Credit Guarantee Fund Trust for Micro and Small Enterprises, being a trust created by the Government of India and the Small Industries Development Bank of India established u/s 3(1) of the Small Industries Development Bank of India Act, 1989

Specifying time limit for bringing consideration against export proceeds into India [Sec. 10AA]

The existing provisions of the sec. 10AA, inter alia, provides 15-year tax benefit to a unit established in a SEZ which begins to manufacture or produce articles or things or provide any services on or after 01.04.2005. The deduction is available for units that begin operations before 01.04.2020, which has been extended to 30.09.2020 through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and is allowed in the specified manner therein.

However, the said section does not provide for the condition to file return before due date provided u/s 139(1) for claiming deduction as is provided for similar deductions. Sec. 143(1) however provides that the deduction u/s 10AA shall be eligible if such return is filed before the due date. Hence, it has been amended to align the two provisions by inserting a proviso to sec. 10AA(1) to provide that no deduction under the said section shall be allowed to an assessee who does not furnish a return of income on or before the due date specified u/s 139(1).

Further, it has been observed that there is no time-limit prescribed in the Act for timely remittance of the export proceeds from sale of goods or provision of services by SEZ Units for claiming deduction under the said section as is provided under other similar export related deductions in the Act. Hence, a new sub-section has been inserted to provide that the deduction u/s 10AA shall be available for such unit, if the proceeds from sale of goods or

provision of services is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of 6 months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

For the purpose of this newly inserted sub-section, the expression "competent authority" shall mean the Reserve Bank of India or such authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Also, it is provided that if the export proceeds from sale of goods or provision of services shall be deemed to have been received in India where such proceeds from sale of goods or provision of services are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Further, clause (i) of Explanation 1 of the said section has been substituted to define the term "convertible foreign exchange" and give reference to new sub section (4A) in the definition of "Export Turnover".

Further, consequential amendment has been made in sec. 155(11A), to insert sec. 10AA to allow the Assessing Officer to amend the assessment order later where the export earning is realized in India after the permitted period.

Salaries

Govt contribution to Agniveer Corpus Fund

Government contribution to Agniveer Corpus Fund account of an individual shall be included in the income of the assessee under the head Salaries. However, deduction u/s 80CCH(2) shall be available to the assessee.

Valuation Rule for Rent Free Accommodation

W.e.f. 01-09-2023, revised rule of valuation shall be applicable. The amended position is mentioned here-in-below:

City in which accommodation is provided	Accommodation is owned by the employer	Accommodation is not owned by the employer
Having population *exceeding 40 lacs* as per 2011 census	10% of salary for the period during which the employee *occupied* the said accommodation.	Rent paid or payable by the employer or 10% of salary, whichever is lower.
Having population *exceeding 15 lacs but not exceeding 40 lacs* as per 2011 census	7.5% of salary for the period during which the employee *occupied* the said accommodation.	
Any other city	5% of salary for the period during which the employee *occupied* the said accommodation.	

***Taxpoint*:**

a. Cap on Valuation in subsequent year(s): W.e.f. 01-09-2023, where the same accommodation is continued to be provided to the same employee for more than one previous year, the aforesaid calculation shall be restricted to the amount calculated as per following formula:

$$\text{Amount calculated for the first P.Y.} \times \frac{\text{CII for the P.Y. for which the amount is calculated}}{\text{CII for the P.Y. in which the accommodation was initially provided to the employee}}$$

- CII – Cost Inflation Index as notified for the purpose of sec. 48
- First previous year means the previous year 2023-24, or the previous year in which the accommodation was provided to the employee, whichever is later.

Provision Illustrated

Particulars	P.Y.2023-24	P.Y.2024-25
Cost Inflation Index (CII)	348	370 (assumed)
Salary	₹ 20,00,000	₹ 28,00,000
Valuation of RFA, say 10% of salary [a]	₹ 2,00,000	₹ 2,80,000
Valuation after applying inflation linked capping [b]	₹ 2,00,000 As it is first P.Y.	₹ 2,12,644 i.e., ₹ 2,00,000 x 370 / 348
Valuation to be taken [Lower of (a) and (b)]	**₹ 2,00,000**	**₹ 2,12,644**

b) The valuation rule is not applicable where any accommodation is provided to an employee working at a mining site; or an on-shore oil exploration site; or a project execution site; or a dam site; or a power generation site; or an off-shore site, which

a. being of a temporary nature and having plinth area not exceeding 800 sq.ft. (w.e.f. 01-09-2023 - 1000 sq. ft) is located not less than 8 kms away from the local limits of any municipality or a cantonment board; or

b. is located in a remote area.

W.e.f. 01-09-2023, "remote area", means any area other than an area which is located:

i. within the local limits of; or

ii. within a distance, measured aerially, of 30 kilometers from the local limits of,

any municipality or a cantonment board having a population of 1,00,000 or more based on the 2011 census

Profits and Gains of Business or Profession

Amendment to sec. 28(iv)

Section 28 provides for income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". Clause (iv) of this section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. This provision was inserted through the Finance Act 1964 and the Circular no 20D dated 7th July 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind. Therefore, the intention of the legislation while introducing this provision was also to include benefit or perquisite whether in cash or in kind.

However, Courts[1] have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of sec. 28 of the Act.

In order to align the provision with the intention of legislature, clause (iv) of sec. 28 has been amended to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.

Ease in claiming deduction on amortization of preliminary expenditure [Sec. 35D]

Section 35D provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc.

The section inter-alia provides that the work in connection with the preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services would need to be carried out either by the assessee himself or by a concern which is approved by the Board.

In order to ease the process of claiming amortization of these preliminary expenses, sec. 35D has been amended to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

[1] CIT -vs.- Mahindra & Mahindra Ltd (2018) (SC)

Promoting timely payments to Micro and Small Enterprises [Sec. 43B]

Section 43B provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income. In order to promote timely payments to micro and small enterprises, sec. 43B has been amended to include payments made to such enterprises within the ambit of sec. 43B.

Accordingly, a new clause (h) has been inserted in sec. 43B to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in sec. 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. However, the proviso to sec. 43B shall not apply to such payments.

Sec. 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the amended sec. 43B will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated u/s 15 of the MSMED Act.

Non-Banking Financial Company (NBFC) categorization [Sec. 43B and 43D]

Sec. 43B provides, inter-alia, that any sum payable by the assessee as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company shall be allowed as deduction on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

Sec. 43D provides, inter-alia, for special provision in case of income of deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Interest income in relation to certain categories of bad or doubtful debts received by such deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

Sec. 43B and sec. 43D currently use two erstwhile categories of NBFC namely, Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Such classification for non-banking financial companies is no longer followed by the Reserve Bank of India for the purposes of asset classification.

In view of the above, sec. 43B and sec. 43D has been amended to substitute the words, “a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company”, for the words “such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf”.

Increasing threshold limits for presumptive taxation schemes [Sec. 44AD and Sec. 44ADA]

The existing provisions of Section 44AD of the Act, inter-alia, provide for a presumptive income scheme for small businesses. This scheme applies to certain resident assessees (i.e., an individual, HUF or a partnership firm other than LLP) carrying on eligible business and having a turnover or gross receipt of ₹ 2 crore or less. Under this scheme, a sum equal to 8% or 6% of the turnover or gross receipts is deemed to be the profits and gains from business subject to certain conditions. If assessee has claimed to have earned higher sum than 8% or 6%, then that higher sum is taxable.

Similarly, sec. 44ADA provides for a presumptive income scheme for small professionals. This scheme applies to certain resident assessees (i.e., an individual, partnership firm other than LLP) who are engaged in specified profession and whose total gross receipts do not exceed ₹ 50 lakh in a previous year. Under this scheme, a sum equal to 50% of the gross receipts is deemed to be the profits and gains from business. If assessee has claimed to have earned higher sum than 50%, then that higher sum is taxable.

Under section 44AB, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds ₹ 1 crore in any previous year. The limit is raised to ₹ 10 crore where at least 95% of receipts/payments are in non-cash mode. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipts in profession exceeds, ₹ 50 lakh in any previous year. Those opting for and fulfilling the conditions laid in the presumptive scheme are exempt from audit under this section.

In order to ease compliance and to promote non-cash transactions, it is amended to increase the threshold limits for presumptive scheme in sec. 44AD and sec. 44ADA of the Act on fulfilment of certain conditions. It is provided that:

- under section 44AD, for eligible business, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total turnover or gross receipts, a threshold limit of ₹ 3 crore will apply.
- under section 44ADA, for professions, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts, a threshold limit of ₹ 75 lakh will apply.
- the receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash.
- provision of sec. 44AB shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sec. 44AD and 44ADA, as the case may be.

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

Sec. 44BB provides for presumptive scheme in the case of a non-resident assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils. Under the scheme, a sum equal to 10% of the aggregate of the amounts specified in sub-section (2) of the said section is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Section 44BBB provides for presumptive scheme in the case of a nonresident foreign company who is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to 10% of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Both sections provide that an assessee may claim lower profits and gains than the profits and gains specified if he keeps and maintains such books of account and other documents specified u/s 44AA and gets his accounts audited and furnishes a report of such audit as required u/s 44AB.

In this context, It has been noted that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years. Conceptually, if assessee is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting off of losses computed as per books of account with income computed on presumptive basis.

To avoid such misuse, sec. 44BB and sec. 44BBB has been amended to provide that notwithstanding anything contained in sec. 32(2) and sec. 72(1), where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.

Capital Gains

Cost inflation index for the financial year 2023-24 is 348

Alignment of provisions of sec. 45(5A) with the TDS provisions of sec. 194-IC

The existing provisions of sec. 45(5A), inter alia, provide that on the capital gain arising to an assessee (individual and HUF), from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in 'cash'.

It has been noticed that the taxpayers are inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax u/s 45(5A). This was not in accordance with the intention of law as is evident from the provisions of sec. 194-IC which, inter alia, provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in sec. 45(5A), paid to the deductee in cash or by way of issue of a cheque or draft or any other mode. Accordingly, it is amended to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by a cheque or draft or by any other mode.

Conversion of Gold to Electronic Gold Receipt and vice versa

Pursuant to the announcement in the Union Budget 2021-22 about Gold Exchange, SEBI has been made the regulator of the entire ecosystem of the proposed gold exchange. Accordingly, SEBI has come out with a detailed regulatory framework for spot trading in gold on existing stock exchanges through the instrument of Electronic Gold Receipts (EGR).

In order to promote the concept of Electronic Gold, it is amended to exclude the conversion of physical form of gold into EGR and vice versa by a SEBI registered Vault Manager from the purview of 'transfer' for the purposes of Capital gains

It is also provided that the cost of acquisition of the EGR for the purpose of computing capital gains shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued, and the holding period for the purpose of capital gains, would include the period for which gold was held by the assessee prior to its conversion into EGR. Similarly, provision for conversion from gold to EGR is also provided.

For the above changes following amendments are made:

- A new clause in sec. 47 has been inserted so as to provide that any transfer of a capital asset, being physical gold to the Electronic Gold Receipt issued by a Vault Manager or such Electronic Gold Receipt to physical gold shall not be considered as 'transfer'.
- A new sub-section (10) to sec. 49 has been inserted to provide that where an Electronic Gold Receipt issued by a Vault Manager, became the property of the person as consideration of a transfer, as referred in the newly inserted clause in sec. 47, the cost of acquisition of the asset for the purpose of the said transfer, shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued. Similarly, where the gold released against an Electronic Gold Receipt, which became the property of the person as consideration for a transfer, as referred in the newly inserted clause in section 47, the cost of acquisition of the asset (being gold) for the purposes of the said transfer shall be deemed to be the cost of the Electronic Gold Receipt in the hands of such person.
- A new clause (hi) has been inserted to Explanation 1 of sec. 2(42A) to provide that the holding period for the purpose of capital gain shall include the period for which the Gold was held by the assessee prior to conversion into the Electronic Gold Receipt. and similarly the holding period for the purpose of capital gain shall include the period for which the Electronic Gold Receipt was held by the assessee prior to conversion into the Gold.

Transfer of interest in a joint venture [Sec. 47(xx) and sec. 49(2AI)]

Clause (xx) has been inserted in sec. 47 to provide that any transfer of a capital asset (being an interest in a joint venture held by public sector company) in exchange of shares in a company incorporated outside India by a foreign company will not be treated as transfer for the purpose of computation of capital gain. "Joint venture" shall mean a business entity has may be notified by the Central Government.

Father sec. 49 (2AI) has been inserted to provide that where the capital asset (being shares as referred to in section 47(xx) became the property of the assessee, the cost of acquisition of such asset shall be deemed to be the cost of acquisition to the assessee of the interest in the joint venture.

Further, meaning to certain terms provided in explanation to sec. 47(viiad) has been amended.

Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property

Under the existing provisions of the Act, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head "Income from house property" u/s 24. Section 48 of the Act, inter alia, provides that the income chargeable under the head "Capital gains" shall be computed, by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.

It has been observed that some assessees have been claiming double deduction of interest paid on borrowed capital for acquiring, renewing or reconstructing a property.

Firstly, it is claimed in the form of deduction from income from house property u/s 24, and in some cases the deduction is also being claimed under other provisions of Chapter VIA of the Act. Secondly while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement u/s 48.

In order to prevent this double deduction, a proviso has been inserted in sec. 48 so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed u/s 24 or Chapter VIA.

Cost of acquisition of a unit of business trust

Section 48(ii) has been amended to clarify that the cost of acquisition of a unit of a business trust shall be reduced by any sum received by unit holder from the business trust with respect to such unit and which is not in the nature of income as referred to in sec. 10(23FC)/(23FCA) and which is not chargeable to tax u/s 56(2)(xii)/115UA(2).

Where transaction of transfer of unit is not considered as transfer u/s 47 and cost of acquisition of such unit is determined u/s 49, sum received with respect to such unit, before such transactions as well as after such transaction, shall be reduced from the cost of acquisition.

Capital gains in case of Market Linked Debentures [Sec. 50AA]

Where capital asset being unit of a Specified Mutual Fund acquired on or after 01-04-2023 or a Market Linked Debenture is transferred, capital gain shall be computed as under:

Full value of consideration received or accruing on transfer or redemption or maturity of such debenture or unit	xxx
Less: Expenses on Transfer (STT is not allowed)	xx
Net Consideration	xxx
Less: Cost of acquisition of the debenture or unit	xx
Short Term Capital Gain (irrespective of period of holding)	**xxx**

Taxpoint:

- No deduction shall be allowed in computing the "Capital gains" in respect of STT
- Such gain shall be taxable at regular rate.

- *Market Linked Debenture* means a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any security classified or regulated as a Market Linked Debenture by the SEBI
- *Specified Mutual Fund* means a Mutual Fund by whatever name called, where **not** more than 35% of its total proceeds is invested in the equity shares of domestic companies. The percentage of equity shareholding held in respect of the Specified Mutual Fund shall be computed with reference to the annual average of the daily closing figures.

Limiting the roll over benefit claimed u/s 54 and 54F

The existing provisions of sec. 54 and 54F allows deduction on the Capital gains arising from the transfer of long-term capital asset if an assessee, within a period of one year before or two years after the date on which the transfer took place purchased any residential property in India, or within a period of three years after that date constructed any residential property in India.

For sec. 54, the deduction is available on the long-term capital gain arising from transfer of a residential house if the capital gain is reinvested in a residential house. On the other hand, in sec. 54F, the deduction is available on the long term capital gain arising from transfer of any long term capital asset except a residential house, if the net consideration is reinvested in a residential house.

The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. However, it has been observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections.

In order to prevent this, it is amended to impose a limit on the maximum deduction that can be claimed by the assessee u/s 54 and 54F to ₹ 10 crore. It has been provided that if the cost of the new asset purchased is more than ₹ 10 crore, the cost of such asset shall be deemed to be ₹ 10 crores. This will limit the deduction under the two sections.

Consequentially, the provisions of sec. 54 and 54F relating to deposit in the Capital Gains Account Scheme have also been amended to provide that the provision, for the purpose of deposit in the Capital Gains Account Scheme, shall apply only to capital gains or net consideration, as the case may be, upto ₹ 10 Crores.

Cost of acquisition in case of certain assets for computing capital gains [Sec. 55]

The existing provisions of the sec. 55, inter alia, defines the 'cost of any improvement' and 'cost of acquisition' for the purposes of computing capital gains. However, there are certain assets like intangible assets or any sort of right for which no consideration has been paid for acquisition. The cost of acquisition of such assets is not clearly defined as 'nil' in the present provision. This has led to many legal disputes and the courts have held that for taxability under capital gains there has to be a definite cost of acquisition or it should be deemed to be nil under the Act. Since there is no specific provision which states that the cost of such assets is nil, the chargeability of capital gains from transfer of such assets has not found favour with the Courts.

Therefore, to define the term 'cost of acquisition' and 'cost of improvement' of such assets, it is amended so as to provide that the 'cost of improvement' or 'cost of acquisition' of a capital asset being any intangible asset or any other right (other than those already mentioned) shall be 'Nil'.

Income from Other Sources

Bringing the non-resident investors within the ambit of sec. 56(2)(viib) to eliminate the possibility of tax avoidance

Section 56(2)(viib), inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for this purpose.

The said clause was inserted to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.

Accordingly, it is amended to include the consideration received from a non- resident also under the ambit of this clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

Distribution by business trust to unit holders – Sec. 56(2)(xii) and 115UA

The Finance No. 2 Act, 2014 introduced a special taxation regime for business trust [Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT)]. The business trust invest in special purpose vehicles (SPV) through equity or debt instruments. The special taxation regime u/s 115UA, inter alia, provides a pass through status to the business trusts in respect of interest income, dividend income received by the business trust from a SPV in case of both REIT and InVIT and rental income in case of REIT. Such income is taxable in hands of the unit holders unless specifically exempted. Sec. 115UA, inter alia, provides any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by the business trust.

Further, sec. 115UA(3), inter-alia, provides that if the "distributed income" received by a unit holder from the business trust is of the nature as referred to in sec. 10(23FC) or (23FCA) i.e., is either rental income of the REIT or interest or dividend received by the business trust from the SPV, then, such distributed income or part thereof shall be deemed to be income of such unit holder.

It has been noticed in certain cases that business trusts distribute sums to their unit holders which are categorised in the following four categories:

a. Interest;
b. Dividend;
c. Rental income;
d. Repayment of debt.

As has been stated above, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder. However, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder.

Dual non-taxation of any distribution made by the business trust i.e. which is exempt in the hands of the business trust as well as the unit holder, is not the intent of the special taxation regime applicable to business trusts.

In view of the above, sec. 56(2)(xii) provides that any specified sum received by a unit holder from a business trust during the previous year, with respect to a unit held by him at any time during the previous year shall be taxable as income from other sources

Taxpoint

Specified sum = A – B -C (If it is negative, it shall be deemed to be zero),

A = Aggregate of sum distributed by the business trust with respect to such unit, during the previous year (or during any earlier previous year or years), to such unit holder, (who holds such unit on the date of distribution of sum or to any other unit holder who held such unit at any time prior to the date of such distribution), which is:
   a. not in the nature of income referred to in sec. 10(23FC) or clause (23FCA); and
   b. not chargeable to tax u/s 115UA(2) [i.e., income which is taxable in hands of business trust]

B = Amount at which such unit was issued by the business trust

C = Amount charged to tax under this clause in any earlier previous year

Taxpoint

- As per sec. 10(23FC), following income of a business trust is exempt:
  a. interest received or receivable from a special purpose vehicle; or
  b. dividend received or receivable from a special purpose vehicle.
- As per sec. 10(23FCA), any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt

Sum received under a Life Insurance Policy [Sec. 56(2)(xiii)]

Where the following conditions are satisfied, then any sum received, including bonus, at any time during a previous year, under a life insurance policy shall be taxable under the head Income from Other Sources.

a. Such receipt is **not** exempt u/s 10(10D)
b. Such sum is **not** received under a unit linked insurance policy
c. Such sum is **not** received under a keyman insurance policy

Computation of income

Sum Received during the previous year	***less***	Aggregate of the premium paid, during the term of such life insurance policy, **and** not claimed as deduction under any other provision of this Act

Taxpoint

As per sec. 10(10D), in the following cases, sum received under a life insurance policy is exempt:

<table>
<tr><th>Policy</th><th colspan="3">Condition(s)</th><th>If Taxable, then</th></tr>
<tr><td colspan="5">Life insurance policy</td></tr>
<tr><td>Sum is received on the death of a person</td><td colspan="3">-</td><td>Exempt</td></tr>
<tr><td rowspan="5">Sum is received on maturity</td><td colspan="3">The premium payable for any year does not exceed the following % of actual capital sum assured:</td><td rowspan="5">If conditions are not satisfied, then it shall be taxable as Income from Other Sources</td></tr>
<tr><td>Policy issued</td><td>Insured is disable[2] or suffering from disease specified u/s 80DDB</td><td>Insured is any other person</td></tr>
<tr><td>Upto 31-03-2003</td><td colspan="2">No Restriction</td></tr>
<tr><td>During 01-04-2003 to 31-03-2012</td><td>20%</td><td>20%</td></tr>
<tr><td>During P.Y. 2012-13</td><td>10%</td><td>10%</td></tr>
</table>

[2] Disable or severe disable as referred to in sec. 80U

<table>
<tr><td></td><td>During 01-04-2013 to 31-03-2023</td><td>15%</td><td>10%</td><td></td></tr>
<tr><td></td><td rowspan="2">On or after 01-04-2023</td><td>15%</td><td>10%</td><td rowspan="2"></td></tr>
<tr><td></td><td colspan="2">Aggregate amount of premium does not exceed ₹ 5 lakh in any of the previous years during the term of any of those policies</td></tr>
<tr><td colspan="5">Unit linked Insurance Policies</td></tr>
<tr><td>Sum is received on the death of a person</td><td colspan="3">-</td><td>Exempt</td></tr>
<tr><td>In other case</td><td colspan="3">The premium payable for any year does not exceed the following % of actual capital sum assured:</td><td rowspan="8">If conditions are not satisfied, then it shall be taxable u/s 45(1B) [i.e., capital gains]
Where it is a LTCA, tax is required to calculated u/s 112A, without taking index benefit[3]</td></tr>
<tr><td rowspan="7"></td><td>Policy issued</td><td>Insured is disable[4] or suffering from disease specified u/s 80DDB</td><td>Insured is any other person</td></tr>
<tr><td>Upto 31-03-2003</td><td colspan="2">No Restriction</td></tr>
<tr><td>During 01-04-2003 to 31-03-2012</td><td>20%</td><td>20%</td></tr>
<tr><td>During P.Y. 2012-13</td><td>10%</td><td>10%</td></tr>
<tr><td>During 01-04-2013 to 31-01-2021</td><td>15%</td><td>10%</td></tr>
<tr><td rowspan="2">On or after 01-02-2021</td><td>15%</td><td>10%</td></tr>
<tr><td colspan="2">Aggregate amount of premium does not exceed ₹ 2,50,000 in any of the previous year during the term of any of those policies</td></tr>
<tr><td colspan="5">Keyman Insurance Policies</td></tr>
<tr><td>Any circumstances</td><td colspan="3"></td><td>Taxable as salary or business income or IFOS, as the case may be</td></tr>
<tr><td colspan="5">Sum referred to in sec. 80DD(3)</td></tr>
<tr><td colspan="5">Where the dependent disabled, in respect of whom an individual or the member of the HUF has paid or deposited any amount in any scheme of LIC or any other insurer, predeceases the individual or the member of the HUF, the amount so paid or deposited shall be deemed to be the income of the assessee of the previous year in which such amount is received. Such amount would not be exempt u/s 10(10D)</td></tr>
</table>

[3] Circular no 02 of 2022 dated 19-01-2022 has been issued in this regard

[4] Disable or severe disable as referred to in sec. 80U

Set off and Carry Forward of Losses

Facilitating certain strategic disinvestment [Sec. 72A and sec.72AA]

Section 72A relates to provisions on carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. Sec. 72A(1) provides that in specified cases, accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the accumulated loss and unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was affected. Conditions have also been laid down in the said section to facilitate carry forward and set off of loss and unabsorbed depreciation in the case of strategic disinvestment. Strategic disinvestment has been defined as sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding below 51% along with transfer of control to the buyer.

Sec. 72AA relates to carry forward of accumulated losses and unabsorbed depreciation allowance in a scheme of amalgamation in certain cases, which, inter-alia, includes amalgamation of one or more banking company with any other banking institution.

To facilitate further strategic disinvestment, the definition of 'strategic disinvestment' has been amended so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in:

a. reduction of its shareholding to below 51%; and

b. transfer of control to the buyer.

However, the first condition shall apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding.

Further requirement of transfer of control may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them

Further, section 72AA has also been amended to allow carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution or a company subsequent to a strategic disinvestment, if such amalgamation takes place within 5 years of strategic disinvestment.

Relief to start-ups in carrying forward and setting off of losses – sec. 79

Section 79 restricts carrying forward and setting off of losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change in shareholding. The carried forward loss is set off only if at least 51% shareholding (as on the last date of the previous year) remains same with the company on the last date of the previous year to which the loss belongs.

However, some relaxation has been provided in case of an eligible start-up as referred to in sec. 80-IAC. The condition of continuity of at least 51%shareholding is not applicable to the eligible start-up, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off. There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of 7 years beginning from the year in which such company is incorporated.

In order to align this period of 7 years with the period of 10 years contained in sec. 80-IAC, the time period for loss of eligible start-ups to be considered for relaxation has been increased from 7 years to 10 years from the date of incorporation.

Deductions

Deduction in respect of contribution to Agnipath Scheme [Sec. 80CCH]

In order to allow deduction from the computation of total income of Agniveer, any contribution made by the assessee or the Central Government to his Agniveer Corpus Fund account and to exempt from tax any payment received by Agniveer or his nominee, from the Agniveer Corpus Fund, following amendments has been made:

- a new clause (12C) in sec. 10 has been inserted to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.
- section 80CCH has been inserted to provide that an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after 01-11-2022, shall be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income.
- Further, sec. 115BAC has been amended to provide that an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund shall get a deduction of the Government contribution to his Seva Nidhi

Removal of certain funds from sec. 80G

Section 80G, inter alia, provides for the procedure for granting approval to certain institutions and funds receiving donation and the allowable deductions in respect of such donations to the assessee making such donations. The section provides the list of these funds to which any sum paid by the assessee in the previous year as donations is allowed as a deduction to an extent of 50%/100% of the amount so donated. From the said list, name of the following funds has been removed

- Jawaharlal Nehru Memorial Fund
- Indira Gandhi Memorial Trust
- Rajiv Gandhi Foundation

Extension of date of incorporation for eligible start-up for exemption – sec. 80-IAC

The existing provisions of the sec. 80-IAC, inter alia, provides for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive assessment years out of 10 years, beginning from the year of incorporation, at the option of the assessees subject to the condition that:
(i) the total turnover of its business does not exceed ₹ 100 crore,
(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and
(iii) it is incorporated on or after 01-04-2016 but before 01-04-2023.
In order to further promote the development of start-ups in India and to provide them with a competitive platform, provisions of section 80-IAC has been amended so as to extend the period of incorporation of eligible start-ups to 01-04-2024.

Amendment to sec. 80LA

Under section 80LA deduction is available to schedule bank / foreign bank having offshore banking unit in SEZ if certain conditions are satisfied. The amount of deduction is 100% of the income for first 5 consecutive assessment years and 50% for next 5 years.
The aforesaid 50% deduction has been increased to 100% deduction for the assessment year 2324 or any subsequent year

Special Tax Rates

Tax on Winning from Online Games [Sec. 115BBJ]

Winning from online games shall be taxable at following special rate of tax:

Meaning	Online game means a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device
Tax Rate	30% + Surcharge, if applicable + HEC @ 4%
Expenditure	No expenditure or allowance can be allowed from such income
Deduction u/ch VIA	Not available
Benefit of unexhausted basic exemption limit	Not available
Taxpoint	Internet means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission

It is to be noted that winning from online games shall not be covered u/s 115BB

Alternate Minimum Tax [Sec. 115JC and 115JD]

Where an assessee is paying tax u/s 115BAC(1A) [i.e., under default tax regime] or u/s 115BAE(5), the provision of alternate minimum tax is not applicable. Further, brought forward tax credit pertaining to alternate minimum tax cannot be adjusted against the tax liability computed u/s 115BAC(1A) or 115BAE(5)

Return and Assessment Procedure

Clarification regarding advance tax while filing Updated Return [Sec. 140B]

The Finance Act, 2022 inserted sub-section (8A) in section 139 enabling the furnishing of an updated return by taxpayers up to 2 years from the end of the relevant assessment year subject to fulfilment of certain conditions as well as payment of additional tax. For the determination of the amount of additional tax on such updated u/s 140B was inserted in the Act.

Section 140B(4) provides for the computation of interest u/s 234B on the tax on updated return. The said sub-section provides that interest payable u/s 234B shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. This implied that interest was payable only on the difference of the assessed tax and advance tax. Further, it also provides advance tax which has been claimed in earlier return of income shall be taken into account for computing the amount on which the interest was to be paid.

Therefore, in order to clarify the provisions of sec. 140B(4), an amendment has been made so as to provide that interest payable u/s 234B shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any.

Preventing permanent deferral of taxes through undervaluation of inventory – Sec. 142

Assessees are required to maintain books of account for the purposes of the Act. The Central Government has notified the Income Computation and Disclosure Standards (ICDS) for the computation of income. ICDS-II relates to valuation of inventory. Section 148 of the Companies Act 2013 also mandates maintenance of cost records and its audit by cost accountant in some cases.

In order to ensure that the inventory is valued in accordance with various provisions of law, sec. 142 relating to Inquiry before assessment has been amended to ensure the following:

- To enable the Assessing Officer to direct the assessee to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Assessee is then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.
- To provide that the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government.
- To provide that except where the assessment is made u/s 144, the assessee will be given an opportunity of being heard in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.

Further, the following consequential amendments has also been made:

- Sec. 153 has been amended so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.
- Sec. 295 has been amended so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain.

Alignment of timeline provisions u/s 153

Section 153, as substituted vide Finance Act, 2016, provides for the time limit for completion of assessment, reassessment or recomputation. Sec. 153(1) provides the time limit for order of assessment u/s 143 or 144 as 21 months from the end of the assessment year in which the income was first assessable. Thereafter, vide subsequent Finance Acts, this time period of 21 months was reduced to 9 months from the end of the assessment year in which the income was first assessable for assessment year 2021-22 and later assessment years. Further, vide Finance Act, 2022 sub-section (1A) was inserted in the section 153 of the Act providing that in a case where an updated return u/s 139(8A) has been furnished by an assessee, an order of assessment or reassessment u/s 143 or 144 may be made at any time before the expiry of 9 months from the end of the financial year in which such return was furnished.

Further, a notice u/s 143(2) can be served on the assessee up to 3 months from the end of the relevant assessment year. This gives a time of 6 months to the Assessing Officer for making assessment which, inter alia, includes making investigations, giving assessees opportunities of hearing, bringing on record any material relevant to the case, analysing judicial positions of various legal matters etc.

Further, with the Faceless Assessment, different aspects of the assessment are carried out by different units viz. Assessment Unit, Verification Unit, Technical Unit and Review Unit, Therefore, a lot of co-ordination is required between the different units in every single scrutiny assessment and adequate time is essential for a rational and speaking order.

The period of 6 months is, however, short to complete the entire process of assessment. As a result, taxpayers' grievances of not being given enough time to explain themselves or provide evidences in their favour may arise. This may also compromise the dispensation of reasonableness of orders as well as natural justice to the assessees. Therefore, it has been amended so that the time available for completion of assessment relating to the assessment year commencing on or after the 1st day of April, 2022 shall be 12 months from the end of the assessment year in which the income was first assessable. Consistent with the above, the time available for completion of assessment proceedings in the case of an

updated return also been increased to 12 months from the end of the financial year in which such return is furnished.

Change in Rule 114B relating to submission of Form 60 in case where person do not have PAN

Any person who does not have a permanent account number and who enters into any transaction specified in this rule, he shall make a declaration in Form No.60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems). However, w.e.f. 10-10-2023, for the purpose of this rule, person does not include company and firm. Further, a foreign company who:

i. does not have any income chargeable to tax in India; and
ii. does not have a permanent account number,

and enters into any transaction referred to at Sl. No. 2 (opening an bank account) or 12 (time deposit) of the Table, in an IFSC banking unit, shall make a declaration in Form No. 60.

Further, it has been provided that rule 114BA shall not apply in a case:

a) where the person, making the deposit or withdrawal of an amount otherwise than by way of cash or opening a current account not being a cash credit account, is a non-resident (not being a company) or a foreign company;
b) the transaction is entered into with an IFSC banking unit; and
c) such non-resident (not being a company) or the foreign company does not have any income chargeable to tax in India.

Similar amendment has also been made in Rule 114BB

TDS / TCS

TDS on payment of accumulated balance due to an employee [Sec. 192A]

Section 192A provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952. The existing provisions of sec. 192A, inter-alia, provide for deduction of tax at the rate of 10% of the taxable component of the lump sum payment due to an employee. Further, no deduction of tax is to be made where the amount of such payment or the aggregate amount of such payment to the payee is less than ₹ 50,000.

The second proviso to sec. 192A provides that any person entitled to receive any amount on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.

It was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases u/s 192A. Hence, second proviso to sec. 192A has been omitted so that in case of failure to furnishing of PAN by the person relating to payment of accumulated balance due to him, tax will be deducted at the rate of 20% as in other non-PAN cases in accordance with sec. 206AA, instead of at the maximum marginal rate.

Removal of exemption from TDS on payment of interest on listed debentures to a resident [Sec. 193]

Sec. 193 provides for TDS on payment of any income to a resident by way of interest on securities. The proviso to sec. 193 provides exemption from TDS in respect of interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India. It is seen that there is under reporting of interest income by the recipient due to above TDS exemption. Hence, such exemption has been withdrawn

Further, any interest payable to a business trust, in respect of any securities, by a special purpose vehicle will not be subject to TDS u/s 193.

TDS and taxability on net winnings from online games [Sec. 194B and sec. 194BA]

Sec. 194B provides that the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ₹ 10,000 shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

Sec. 194BB provides for similar provisions for deduction of tax at source for horse racing in any race course or for arranging for wagering or betting in any race course.

Sec. 115BB provides for the rate of tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature.

It is seen that deductors are deducting tax u/s 194B and 194BB by applying the threshold of ₹ 10,000/- per transaction and avoiding tax deduction by splitting a winning into multiple transactions each below ₹ 10,000/-. This is against the intention of legislature.

It is also seen that in recent times, there has been a rise in the users of online games. There is a need to bring in specific provisions regarding TDS and taxability of online games due to its different nature, being easily accessible vide the Internet and computer resources with a variety of playing options and payment options. Accordingly,

i. Sec. 194B & 194BB has been amended to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ₹ 10,000 during the financial year;
ii. Sec. 194B has been amended to include "gambling or betting of any form or nature whatsoever" within its scope;
iii. Sec. 194B has been amended to exclude online games from the purview of the said section from the 01-07-2023 since a new section 194BA has been introduced for deduction of tax at source on winnings from online games from that date
iv. new sec. 194BA has been inserted, with effect from 01-07-2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner.
v. Further, in a case where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;

Increasing threshold limit for co-operatives to withdraw cash without TDS – Sec. 194N

Sec. 194N provides that a banking company or a co-operative society engaged in carrying on the business of banking or a post office, which is responsible for paying any sum to any person (referred to as the recipient) shall, at the time of payment of such sum in cash, deduct an amount equal to 2% of such sum, as income-tax. The requirement to deduct tax applies only when the payment of amount or aggregate of amount in cash during the year exceeds ₹ 1 crore.

However, in case of a recipient who is a non-filer tax is to be deducted at the rate of 2% on any sum exceeding ₹ 20 lakh but not exceeding ₹ 1 crore in aggregate during the financial year and, at the rate of 5% on sum exceeding ₹ 1 crore in aggregate during the financial year.

Non-filer means a recipient who has not filed any income-tax return for all of the 3 assessment years relevant to the 3 previous years immediately preceding the previous year in which such payment is received.

Section 194N has been amended by inserting a new proviso to provide that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for ₹ 1 crore, "₹ 3 crore" had been substituted.

Amendment to sec. 194R

New explanation 2 has been inserted in the sec. 194R so as to clarify that the provision shall also apply to any benefit or perquisite, weather in cash or in kind or partly in cash and partly in kind.

Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns [Sec. 206AB and 206CCA]

Sec. 206AB provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, sec. 206CCA provides for special provision for higher TCS for non-filers of income-tax returns. These non-filers in these sections are referred to as "specified person".

These sections define "specified person" to mean a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted or collected (as the case may be):

i. for which the time limit for furnishing the return of income u/s 139(1) has expired; and
ii. the aggregate of tax deducted at source and tax collected at source in his case is ₹ 50,000 or more in the said previous year.

The provisos to these definitions exclude a non-resident from the definition of specified person, if the non-resident does not have a permanent establishment in India.

There may be certain persons who are not required to furnish the return of income. It is not the intention to include such persons in the category of non-filers. Hence, in order to provide relief in such cases, the definition of the "specified person" in sec. 206AB and 206CCA has been amended so as to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

Increasing rate of TCS of certain remittances [Sec. 206C(1G)]

Sec. 206C provides for TCS on business of trading in alcohol, liquor, forest produce, scrap etc. Sec. 206C(1G) provides for TCS on foreign remittance through the Liberalised Remittance Scheme and on sale of overseas tour package. In order to increase TCS on certain foreign remittances and on sale of overseas tour packages, following amendment has been made w.e.f. 01-10-2023[5]:

Type of remittance	Earlier Rate	Revised Rate
For the purpose of any education, if the amount being remitted out is a loan obtained from any financial institution as defined in sec. 80E	0.5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh	No Change
For the purpose of education, other than above or for the purpose of medical treatment	5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh	No Change
Overseas tour package	5% without any threshold limit	Upto ₹ 7 lakhs – 5% Above ₹ 7 lakhs – 20%
Any other case	5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh	20% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh

[5] Circular No. 10 of 2023 dated 30-06-2023