CHAPTER 46. TRANSFER PRICING

INTRODUCTION
The increasing participation of multi-national groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multi-national group. The profits derived by such enterprises carrying on business in India can be controlled by the multi-national group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion to tax revenues.

With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multi-national enterprises, chapter of Transfer pricing consisting of section 92 to 92F has been introduced. The Finance Act, 2012 has also extended the Chapter of Transfer Pricing to certain specified domestic transactions.

SECTION 92: COMPUTATION OF INCOME FROM INTERNATIONAL TRANSACTION HAVING REGARD TO ARM’S LENGTH PRICE

(1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation: For removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to arm's length price.

(2) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement 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, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm’s length price.

(3) The provisions of this section shall not apply in case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.
ANALYSIS

1. **Sale of goods and provision of services**
   For example, an enterprise in India sells goods/ provides services to an associated enterprise in U.S.A. for Rs 1,00,000 whereas the arm's length price is Rs 3,00,000.
   Therefore, the income of Indian enterprises shall be determined with reference to arm's length price of the sale/ service of Rs 3,00,000.

2. **Expenses incurred including interest on loan:**
   For example, an enterprise in India purchases goods from an associated enterprise in U.K. for Rs 2,00,000 whereas the arm's length price is Rs 70,000. The income of Indian enterprise shall be determined w.r.t. arm's length price of Rs 70,000.
   Similarly, an enterprise in India takes a loan from an associated enterprise in U.K. @ 24% p.a. whereas the market rate of interest is 11% p.a. Then in such case, the allowance of interest to Indian enterprise shall be on the basis of arm's length interest of 11% p.a.

3. **Allocation or apportionment of costs or expenses:**
   For example, an associated enterprise in U.K. makes Research & Development on a new soap. It incurs research & development expenses of Rs 30,00,000 and Rs 20,00,000 are allocated to the Indian associate enterprise which will manufacture this soap. Now it will be seen whether the Indian enterprise is deriving proportionate benefit to the Research & Development expenditure allocated. The allowance of Rs 20,00,000 being the cost contributed by Indian enterprise shall be on the basis of the arm's length price of service rendered.

Section 92(3) clarifies that the provisions of this section shall not apply where:
(i) computation of income; or
(ii) determination of allowance for any expense or interest; or
(iii) determination of any cost or expense allocated or apportioned
has the effect of reducing the income chargeable to tax or increasing the loss of the assessee to whom transfer pricing is applied.

**SECTION 92A: MEANING OF ASSOCIATED ENTERPRISE**
The term “associated enterprise” in relation to another enterprise is defined in section 92A(1). It means an enterprise -
(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.
Section 92A(2) provides that two enterprises shall be deemed to be associated enterprises for the purposes of sub-section(1) if, at any time during the previous year –
<table>
<thead>
<tr>
<th>Circumstances</th>
<th>Conditions</th>
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<tbody>
<tr>
<td>(i) one enterprise holds, directly or indirectly, shares carrying</td>
<td>not less than 26% of the voting power in the other enterprise</td>
</tr>
<tr>
<td>(ii) Any person or enterprise holds, directly or indirectly, shares carrying</td>
<td>not less than 26% of the voting power in each of such enterprises</td>
</tr>
<tr>
<td>(iii) a loan advanced by one enterprise to the other enterprise constitutes</td>
<td>not less than 51% of the book value of the total assets of the other enterprise</td>
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<td>(iv) one enterprise guarantees</td>
<td>not less than 10% of the total borrowing of the other enterprise</td>
</tr>
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<td>(v) 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</td>
<td>are appointed by the other enterprise</td>
</tr>
<tr>
<td>(vi) 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</td>
<td>are appointed by the same person or persons</td>
</tr>
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<td>(vii) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent</td>
<td>on the use of know-how, patent, copyrights, trademarks, licences, 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</td>
</tr>
<tr>
<td>(viii) 90%, or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise</td>
<td>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</td>
</tr>
<tr>
<td>(ix) the goods or articles manufactured or processed by one enterprise</td>
<td>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</td>
</tr>
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<td>(x) Where one enterprise is controlled by an individual</td>
<td>the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual</td>
</tr>
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<td>(xi) where one enterprise is controlled by a HUF</td>
<td>The other enterprise is controlled by a member of such HUF, or by a relative of a member of such HUF, or jointly by such member and his relative</td>
</tr>
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<td>(xii) where one enterprise is a firm, AOP or BOI</td>
<td>the other enterprise holds not less than 10% interest in such firm, AOP or BOI</td>
</tr>
</tbody>
</table>

(xiii) there exists between the two enterprises any relationship of mutual interest, as may be prescribed. It may be noted that the Rules 10A to 10E do not refer to any relationship of mutual interest.
Section 92A(1) lays down the circumstances when two enterprises can be considered as associated enterprises. The mere fact of participation by one enterprise in the management, control or capital of the other enterprise, or participation by one or more persons in the management, control or capital of both the enterprises is not sufficient unless the tests laid down in section 92A(2) are fulfilled. In other words, the deeming tests contained in section 92A(2) are exhaustive and should be applied to determine the association between two or more enterprises.

Illustrations:

(a) Unilever U.K. holds 26% equity shares of Hindustan Lever. Therefore Unilever and Hindustan Lever are associated enterprises.

(b) Unilever U.K. holds 26% equity shares in Hindustan Lever and 26% equity shares in Africa Lever. Now, Hindustan Lever and Africa Lever are associated enterprises. Also, Unilever and Hindustan Lever are associated enterprises.

(c) Alstom U.S.A. holds 5% shares in Alstom India. The total book value of assets of Alstom India Ltd. is 100 crores. Alstom U.S.A. has given a loan of Rs 52 crores to Alstom India. Therefore Alstom U.S.A. and Alstom India are associated enterprises.

(d) Tetra Pack Austria does not hold any shares in Alfa Laval India Ltd. but has guaranteed the borrowings of X 20 crores made by Alfa Laval Ltd. The total borrowings of Alfa Laval India Ltd. are 200 crores. Therefore, Alfa Laval India Ltd. and Tetra Pack Austria are associated enterprises.

(e) As per the Guidance Note on Transfer Pricing issued by the Institute, "Board of Directors" would refer to the board of directors of the company. The term "Governing Board" would refer to a body or Council that has the executive authority to manage the affairs of the enterprise. Accordingly, A Ltd. and B Ltd. will be associated enterprises if A Ltd.:

(i) appoints 7 out of 12 directors of B Ltd. or
(ii) appoints one executive director or
(iii) appoints one executive member in the Governing Board.

Therefore, appointment of even one person to the post of executive director or executive member would make the enterprises associated enterprises.

(f) Unilever U.S.A. appoints:

(i) 6 Directors out of 10 Directors in Lipton India and 5 Directors out of 9 Directors in Brooke Bond U.K. or
(ii) an executive director in Lipton India and an executive director in Brooke Bond U.K. or
(iii) an executive director in Lipton India and 5 directors out of 9 directors of Brooke Bond U.K.

(iv) 6 Directors out of 10 Directors in Lipton India and an executive director in Brooke Bond Ltd U.K.

then, Brooke Bond U.K. and Lipton India are associated enterprises.
(g) TELCO manufactures Mercedes cars in India using the knowhow of Mercedes Germany. Mercedes cars cannot be manufactured in India without such knowhow and therefore TELCO and Mercedes Germany are associated enterprises.

(h) A Ltd. U.S.A. supplies raw materials and consumables of Rs 92 crores to B Ltd. in India and total raw materials and consumables used by B Ltd. is Rs 100 crores, then A Ltd. and B Ltd. are associated enterprises.

(i) X Ltd. in India sells goods manufactured by it to Y Ltd. in U.S.A., then X Ltd. and Y Ltd. are associated enterprises provided that the prices and other conditions relating to supply of goods are influenced by Y Ltd.

(j) Mr. X is the owner of a proprietorship concern in India. There is a non-resident partnership firm in Dubai in which Mr. X and his wife has 51% share. The proprietorship concern of Mr. X in India and partnership firm in Dubai are associated enterprises.

(k) M/s XYZ HUF is carrying on business in India. The members of HUF/relatives of members form a company outside India. M/s XYZ HUF and the company outside India are associated enterprises.

SECTION 92B: MEANING OF INTERNATIONAL TRANSACTION

International Transaction [Section 92B(1)]: It means 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. It 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 expenses 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.

Deemed International Transaction [Section 92B(2)]: Where, in respect of a transaction entered into by an enterprise with a person other than an associated enterprise (hereinafter referred to as “other person”),

- there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise or,
- where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise; and
- either the enterprise or the associated enterprise or both of them are non-residents,

then such transaction entered into between the enterprise and the other person shall be deemed to be an international transaction entered into between two associated enterprises, whether or not such other person is a non-resident.
ANALYSIS

1. The definition of international transaction under the transfer pricing regulations is very wide and, in its scope, it includes transaction between associated enterprises in the nature of:
   (i) purchase, sale, transfer, lease or use of tangible property; or
   (ii) purchase, sale, transfer, lease or use of intangible property;
   (iii) provision of services; or
   (iv) Capital financing including lending or borrowing or guarantee; or
   (v) any other transaction having a bearing on the profits, income, losses or assets of such enterprises.
   (vi) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date.

   It shall also 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, facility provided or to be provided to any one or more such enterprises.

2. Any transaction between an enterprise and a person other than an associated enterprise will be deemed to be a transaction with an associated enterprise as per section 92B(2) under certain situations. The deeming provision is intended to cover cases where an independent third party can be interposed by two associated enterprises to remain out of the Act.

   An illustration of such a transaction could be where the assessee, being an enterprise resident in India, exports goods to an unrelated person abroad, and there is a separate arrangement or agreement between the unrelated person and an associated enterprise which influences the price at which the goods are exported. In such a case the transaction with the unrelated enterprise will also be subject to transfer pricing regulations.

   According to section 92B(2), a transaction between an enterprise and an unrelated person shall be deemed to be a transaction between associated enterprises if in relation to that transaction -
   (i) there exists a prior agreement between such other person and the associated enterprise; or
   (ii) the terms of the relevant transaction are determined in substance between such unrelated person and the associated enterprise.

   The Finance Act, 2014 clarifies that unrelated person can be resident or not resident.

Example

If A Ltd., an Indian company, has entered into an agreement for sale of product X to Mr. B, an unrelated party, on 1/6/2017 and Mr. B has entered into an agreement for sale of product X with C Inc., a non-resident entity, which is a specified foreign company in relation to A Ltd., on 30/5/2017, then, the transaction between A Ltd. and Mr. B shall be deemed to be an international transaction entered into between two associated enterprises, irrespective of whether or not Mr. B is a non-resident.
Note – C Inc. is deemed to be an associated enterprise of A Ltd. since it is a specified foreign company in relation to A Ltd., which means that A Ltd. holds 26% or more in the nominal value of the equity share capital of C Inc.

SECTION 92BA: MEANING OF SPECIFIED DOMESTIC TRANSACTION

For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

(i) any transaction referred to in section 80A;

(ii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iii) any business transacted between the assessee and other person as referred to in subsection (10) of section 80-IA;

(iv) 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

(v) any business transacted between the persons referred to in section 115BAB(4); 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 Rs. 20 crores.

(1) Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business, and, in either case, the consideration for such transfer recorded in the accounts of the eligible business does not correspond to the market value of such goods or services on the date of transfer, then, for the purpose of deduction under this section, the profits and gains of such eligible business shall...
be computed as if the transfer had been made at the **market value of such goods or services** as on that date.

**Explanation**—For the purposes of this sub-section, "market value", in relation to any goods or services, means—

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.

(2) Where it appears to the Assessing Officer that owing to close connection between the assessee carrying on the eligible business and any other person, or for any other reason, the course of business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall in computing the profits and gains of such business for the purpose of computing deduction under this section, take the amount of profits as may be reasonably deemed to have been derived there from.

Provided that the amount of profits from such transaction shall be determined having regard to arm's length price as defined in section 92F.

**The effect of amendment made by Finance Act, 2012 shall be as under:**

1. Where the aggregate of:
   (i) transactions of expenditure referred to in section 40A(2); and
   (ii) transactions referred to in sections 80-IA, 80-IB, 80-IAB, 80-IC, 80-ID and 80-IE;
   and
   (iii) transactions referred to in section 10AA; exceeds **Rs 20 crores**, then chapter of Transfer Pricing shall apply.

2. The Assessing Officer shall determine the Arm's Length price of such transactions i.e. the fair Market Value of such transactions as if such transactions took place between unrelated person.

3. The Assessing Officer can refer the case to Transfer Pricing Officer (TPO) with the prior permission of Commissioner of Income-tax to determine the Arm's Length Price of such transactions.

4. Entire chapter of Transfer Pricing will apply to such transactions and therefore:
   - Arm's Length price shall be determined as per the six methods prescribed in the chapter of transfer pricing.
   - Allowance of expense shall be as per the Arm's Length Price.
   - Income shall be computed on basis of Arm's Length Price.
   - Assessing Officer can determine Arm's Length Price himself or refer the case to Transfer Pricing Officer.
   - Assessee will be required to maintain prescribed documents and records.
   - Assessee will have to furnish a report from CA wherein the CA will certify that transaction has taken place on arm's length price.
   - Deemed concealment of income, if any, disallowance made on the basis of arm's length price and penalty for concealment of income @ 200% of the amount of tax. **(NOW 270A)**
• Chapter of transfer pricing not to apply if income get reduced or losses get increased because of application of chapter of Transfer Pricing.

Penalties applicable on non-compliance:
• Adjustment is treated as misreporting of income: Penalty will be 200% of the tax u/s 270A.
• Failure to maintain required set of documents: 2% of value of transactions
• Failure to report transaction in report from Chartered Accountant: 2% of value of transactions
• Failure to furnish documentation: 2% of value of transactions
• Failure to furnish report by due date: Rs 1,00,000

SECTION 92C: COMPUTATION OF ARM'S LENGTH PRICE

(1) The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely:
(a) comparable uncontrolled price method;
(b) resale price method;
(c) cost plus method;
(d) profit split method;
(e) transactional net margin method;
(f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed. Provided that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction, shall be computed in such manner as may be prescribed.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that-
(a) the price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or
(b) any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in section 92D(1) and the rules made in this behalf; or
(c) the information or data used in computation of the arm's length price is not reliable or correct; or
(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under section 92D(3),

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:

Provided that no deduction under section 10AA or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section:

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

Illustration 1:

Unilever in U.S.A. holds 27% equity shares of Hindustan Lever in India. Unilever provides knowhow to Hindustan Lever for which Hindustan Lever pays a royalty of Rs 100 lakhs to Unilever. As per DTAA the tax rate on royalty is 10%. Hindustan Lever deducts TDS of Rs 10 lakhs and remits Rs 90 lakhs to Unilever. Hindustan Lever files its return of income of Rs 300 lakhs after claiming expenditure of Rs 100 lakhs on royalty. Unilever also files return of income in India as under:

<table>
<thead>
<tr>
<th>Royalty</th>
<th>100 lakhs</th>
</tr>
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<tbody>
<tr>
<td>Tax as per DTAA</td>
<td>10 lakhs</td>
</tr>
<tr>
<td>Less: TDS</td>
<td>10 lakhs</td>
</tr>
<tr>
<td><strong>Tax payable</strong></td>
<td><strong>Nil</strong></td>
</tr>
</tbody>
</table>

The Assessing officer on the basis of information available with him determines the arm's length price of royalty to be Rs 40 lakhs. Discuss the tax implications.

Answer:

1. Hindustan Lever and Unilever are associated enterprises as per section 92A.
2. Since Unilever is a non-resident and is providing knowhow to Hindustan Lever for which royalty is being paid, there is an INTERNATIONAL TRANSACTION as per section 92B.
3. Section 92C empowers the Assessing officer to determine the taxable income of Hindustan Lever on the basis of information in his possession on the basis of arm's length price of Rs 40 lakhs.
4. The Assessing officer will accordingly assess the income of Hindustan Lever at Rs 360 lakhs after disallowing the royalty of Rs 60 lakhs. As per sec 270A, Rs 60 lakhs is deemed misreported income on which penalty for misreporting of income shall be levied.

5. As per the first proviso to section 92C(4), deduction under section 10AA or under Chapter VI - A otherwise allowable to Hindustan Lever shall not increase on account of additions of Rs 60 lakhs.

6. As per Second Proviso to section 92C(4), Unilever cannot claim that its income should be Rs 40 lakhs instead of Rs 100 lakhs and cannot claim refund of TDS of Rs 6 lakhs.

RULE 10A: MEANING OF EXPRESSIONS USED IN COMPUTATION OF ARM'S LENGTH PRICE

For the purposes of this rule and rules 10B to 10E, -

(a) 'uncontrolled transaction' means a transaction between enterprises other than associated enterprises, whether resident or non-resident;

(b) 'property' include goods, articles or things, and intangible property;

(c) 'services' include financial services;

(d) 'transaction' includes a number of closely linked transactions.

RULE 10B: DETERMINATION OF ARM'S LENGTH PRICE UNDER SECTION 92C

CUP METHOD:

Step-1 Determine the price charged or paid for the property transferred or services provided in a comparable uncontrolled transaction.

Step-2 Such price is then adjusted to account for the functional differences between the international transaction & the comparable uncontrolled transaction, which could materially affect the price in the open market.

Step-3 Such adjusted price is the arm's length price.

For example, Unilever U.S.A. holds 30% shares in Hindustan Lever, an Indian company. Hindustan Lever manufactures compact disc writers and sells them to Unilever and Tatas Ltd. During the year Hindustan Lever supplied 10,000 CD writers to Unilever at a price of Rs 2,000 per unit and 100 CD writers to Tata's at a price of Rs 3,000 per unit. The transactions of Hindustan Lever with Unilever and TATAs are comparable subject to the following differences:

(i) While sale to Unilever is at FOB, sale to TATAs is at CIF. The freight and insurance paid by Unilever for each unit is Rs 550.

(ii) The sales to TATAs are backed by a free warranty for 6 months whereas sales to Unilever are not backed by such warranty. The estimated cost of warranty execution may be taken as Rs 250.

(iii) Since Unilever places a larger order, Hindustan Lever has offered a quantity discount of Rs 20 per unit to Unilever.
One has to start from the price charged in case of comparable uncontrolled transaction and adjust such price for the differences between international transaction and the comparable uncontrolled transaction which could materially affect the market price. Hence, the arm's length price in respect of CD writers sold to Unilever shall be determined in comparison of the price at which goods are sold to TATAs, after adjusting for the above differences. Thus, the arm's length price for the transaction between Hindustan Lever and TATAs works out to:

Sales Price per unit of the CD writer sold to TATAs \( Rs \) 3,000

Less: Differences to be adjusted for:

1. on account of freight and insurance charges \( Rs \) 550
2. on account of cost to warranty \( Rs \) 250
3. on account of bulk order discount \( Rs \) 20

Arm's Length Price for CD writers sold to Unilever \( Rs \) 2,180

<table>
<thead>
<tr>
<th>Price charged from Unilever</th>
<th>10,000 units ( \times ) 2,000</th>
<th>( Rs ) 2,00,00,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arm's Length Price for 10,000 units</td>
<td>10,000 units ( \times ) 2,180</td>
<td>( Rs ) 2,18,00,000</td>
</tr>
<tr>
<td>Therefore, the income of Hindustan Lever shall be increased by</td>
<td></td>
<td>( Rs ) 18,00,000</td>
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**RESALE PRICE METHOD:**

**Step-1** The price at which the property purchased or services obtained by the enterprise from an associated enterprise are sold to an unrelated enterprise is first determined.

**Step-2** Such resale price is reduced by normal gross profit margin accruing to the enterprise from the purchase and resale of similar goods in a comparable uncontrolled transaction, If there is no comparable uncontrolled transaction, then take the Gross profit of an unrelated person from purchase and resale of similar goods.

**Step-3** Then reduce the expenses incurred by the enterprise in connection with purchase of property.

**Step-4** The price so arrived at in step-3 is adjusted to account for the functional differences in the international transaction & the comparable uncontrolled transaction which could materially affect the Gross Profit margin in the open market.

**Step-5** The adjusted price arrived at in step-4 is the arm's length price.

For example, Tetra Pack Austria holds 30% shares of Alfa Laval India Ltd. Alfa Laval India Ltd. imports 1000 towel dispensers from Tetra Pack Austria at a price of \( Rs \) 2,900 per unit and these are sold to Hyatt Regency at a price of \( Rs \) 3,000 per unit. Alfa Laval India Ltd. has bought similar products from Ultimate Industries Ltd. and sold to Taj Palace at a gross profit of 12% on sales. Tetra Pack Austria offers a quantity discount of \( Rs \) 10 per unit whereas Ultimate Industries Ltd. does not offer such quantity discount. Alfa Laval India Ltd. incurred freight of \( Rs \) 10 and customs of \( Rs \) 25 per unit in case of purchases made from Tetra Pack Austria.

Now, arm's length price is determined as under:

Resale Price of goods purchased from Tetra Pack Austria \( Rs \) 3,000

**Less:** Normal Gross Profit Margin @ 12% \( Rs \) 360
Less: Expenses connected with purchases (freight and customs duty paid) Rs 35
Less: Quantity discount allowed by Tetra Pack Austria Rs 10
Arm’s Length Price Rs 2,595
Price paid to Tetra Pack Austria 1,000 units × 2,900 Rs 29,00,000
Arm’s Length Price 1,000 units × 2,595 Rs 25,95,000
Increase in income of Alfa Laval India Ltd. Rs 3,05,000

COST PLUS METHOD
Step 1: Determine the direct and indirect costs of production in respect of property transferred or services provided to an associated enterprise.
Step 2: Determine the normal gross profit mark up to such costs which will arise from transfer of similar goods or services to an unrelated enterprise or in a comparable uncontrolled transaction.
Step 3: The normal gross profit mark up determined in Step 2 should be adjusted to account for the functional differences if any between the international transaction and comparable uncontrolled transaction which could materially affect such profit mark up in the open market.
Step 4: The cost referred to in Step 1 shall be increased by the adjusted profit mark-up arrived in Step 3.
Step 5: The sum so arrived at is the arm’s length price.

For example, Alto Ltd. Germany holds 35% shares in Beta Ltd. India. Beta Ltd. develops software and does both onsite and offsite consultancy services for various customers. Beta Ltd. during the year billed Alto Ltd. Germany for 100 man-hours at the rate of Rs 2,000 per man-hour. The total cost (direct and indirect) for executing this work amounted to Rs 1,75,000.
However, Beta Ltd. billed C Ltd. India at the rate of Rs 3,000 per man-hour for the similar level of manpower and earned a Gross Profit of 50% on its cost.

The transactions of Beta Ltd. with Alto Ltd. and C Ltd. are comparable subject to the following differences:

(i) While Beta Ltd. derives technology support from Alto Ltd., there is no such support from C Ltd. The value of technology support received from Alto Ltd. may be put at 20% of normal gross profits.

(ii) As Alto Ltd. gives business in large volumes, Beta Ltd. offered to Alto Ltd. a quantity discount which may be valued at 10% of normal gross profits.

(iii) In the case of rendering services to Alto Ltd., Beta Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to C Ltd., Beta Ltd. has to assume all the risks and costs associated with the marketing function which may be estimated at 10% of normal gross profits.

(iv) Beta Ltd. offered one month credit to Alto Ltd. The cost of providing such credit may be valued at 3% of gross profits. No such credit was given to C Ltd.
Now, arm's length price under the cost plus method shall be determined as under:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price charged to C Ltd.</td>
<td>3,000</td>
</tr>
<tr>
<td>Gross Profit mark up in case of C Ltd.</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Less:</strong> Differences to be adjusted for:</td>
<td></td>
</tr>
<tr>
<td>(i) Technology support from Alto Ltd. (20% of 50%)</td>
<td>10%</td>
</tr>
<tr>
<td>(ii) Quantity discount to Alto Ltd. (10% of 50%)</td>
<td>5%</td>
</tr>
<tr>
<td>(iii) Risk Factor (10% of 50%)</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Add:</strong> Cost of credit to Alto Ltd.</td>
<td>1.50%</td>
</tr>
<tr>
<td>Arm's Length Gross Profit Mark-up</td>
<td>31.50%</td>
</tr>
<tr>
<td>Direct and Indirect cost</td>
<td>1,75,000</td>
</tr>
<tr>
<td>Arm's Length Income</td>
<td>2,30,125</td>
</tr>
<tr>
<td>Income (Actual) (100 × 2,000)</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Increased Income</td>
<td>30,125</td>
</tr>
</tbody>
</table>

**PROFIT SPLIT METHOD**, which may be applicable mainly in international transactions involving transfer of unique intangibles or in multiple international transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction, by which -

1. The combined net profit of the associated enterprises arising from the international transaction in which they are engaged, is determined;
2. The relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;
3. The combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under sub-clause (ii);
4. The profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction:

For example, ZMC Technology Singapore holds 27% shares in Amco Ltd. India. Further, Crest Ltd. U.S.A. holds 32% shares in Amco Ltd. India. Amco Ltd. India develops software and does both onsite and offsite consultancy. Crest Ltd. U.S.A. has a worldwide presence.

Crest Ltd. U.S.A. received an order from Trium Ltd. U.S.A. for developing a software product. In order to execute the same, ZMC Technology Singapore, Crest Ltd. U.S.A. and Amco Ltd. India have each contributed integrally to the development of the software product. Crest Ltd. U.S.A. finally delivers the product to Trium Ltd. and receives consideration of $ 50,000.

Crest Ltd. U.S.A. in turn pays to ZMC Technology Singapore and Amco Ltd. India a sum of $ 10,000 and $ 12,000 respectively and keeps the balance for itself.
In the entire transaction, a profit of $10,000 is earned. Amco Ltd. India incurred a total cost of $9,500 in executing its functions relating to the above project.

On the basis of functions performed, risks assumed and assets employed, the relative contribution may be taken at 50%, 20% and 30% for Amco Ltd. India, ZMC Technology Singapore and Crest Ltd. U.S.A. respectively.

The arm's length price under profit split method shall be determined as under:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price charged by Crest Ltd. U.S.A. to Trium Ltd.</td>
<td>$50,000</td>
</tr>
<tr>
<td>Amco Ltd. India's share of revenue</td>
<td>$12,000</td>
</tr>
<tr>
<td>ZMC Technology Singapore's share of revenue</td>
<td>$10,000</td>
</tr>
<tr>
<td>Crest Ltd. U.S.A.'s share of revenue</td>
<td>$28,000</td>
</tr>
<tr>
<td>Combined total profits</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

Evaluation of relative contribution:

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amco Ltd. India</td>
<td>50%</td>
<td>$5,000</td>
</tr>
<tr>
<td>ZMC Technology Singapore</td>
<td>20%</td>
<td>$2,000</td>
</tr>
<tr>
<td>Crest Ltd. U.S.A.</td>
<td>30%</td>
<td>$3,000</td>
</tr>
<tr>
<td>Total cost of Amco Ltd. India</td>
<td></td>
<td>$9,500</td>
</tr>
<tr>
<td>Income of Amco Ltd. India on arm's length price</td>
<td></td>
<td>$14,500</td>
</tr>
<tr>
<td>Actual Revenue of Amco Ltd. India</td>
<td></td>
<td>$12,000</td>
</tr>
<tr>
<td>Increased Income</td>
<td></td>
<td>$2,500</td>
</tr>
</tbody>
</table>

**TRANSACTIONAL NET MARGIN METHOD**, by which, -

(i) the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

(ii) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(iv) the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);

(v) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction.

**Illustration:**

Hindustan lever India exports shampoos to Unilever U.K. an associated enterprise and earns a net profit of 10% on sales. The sales are Rs 10,000 crores and net profit is Rs 1,000 crores. Procter Gamble India is also exporting shampoos to other countries and earning a net profit of 25% on its sales. Procter Gamble India's net profit is higher by 2% since its sales are to European Countries only where 2% higher margin on sales is there.
Now adjusted net profit is 23% on basis of transactional net margin method. When applied to sales made by Hindustan Lever, 23% of 10,000 crores comes to 2300 crores. Hence, addition of Rs 1300 crores shall be made to income of Hindustan Lever on account of transfer pricing.

**RULE 10AB: OTHER METHOD OF DETERMINATION OF ARM'S LENGTH PRICE**

For the purposes of section 92C(1)(f), the other method for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

**Illustration:**
An associate enterprise X in India imports toys from its Chinese Associate Enterprise at Rs 100 per toy. Company Y in India also imports similar toys from another Chinese manufacturer at Rs 60 per toy. The Arm's length price of transaction should therefore be Rs 60 per toy.

**RULE 10CA: COMPUTATION OF ARM'S LENGTH PRICE IN CERTAIN CASES**

1. Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92C results in determination of more than one price, then the arm's length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

2. A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed:

   Provided that where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year of the unrelated enterprise undertaking the said uncontrolled transaction, and the said unrelated enterprise, has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then, —

   (i) the most appropriate method used to determine the price of the comparable uncontrolled transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

   (ii) the weighted average of the prices shall be computed by taking weighted average of the current year price and prices of last 2 financial years.

   Provided that the weighted average of such prices shall be included in dataset constructed above.

   **NOTE: RANGE CONCEPT:**

   Rule 10CA provides that Range Concept is applicable where the most appropriate method applied is—

   (i) a method other than the profit split method or a method prescribed by the CBDT under section 92C(1)(d)/(f); and

   (ii) the dataset constructed in accordance with sub-rule (2) consists of six or more entries.
Application of multiple year data for construction of dataset

(3) Where the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (4) and sub-rule (5).

(4) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (3), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (3), the arm's length price shall be taken to be the median of the dataset.

(6) WHEN RANGE CONCEPT NOT APPLICABLE?
In a case where data set consists of less than six entries, the arm's length price shall be the arithmetical mean of all the values included in the dataset:
Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(7) For the purposes of this rule, —
(a) "the thirty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be:
Total entries in data set x 35/100
If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the thirty fifth percentile.
If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the thirty fifth percentile.
(b) "the sixty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be:

*Total entries in data set x 65/100*

If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the sixty fifth percentile.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the sixty fifth percentile.

(c) "the median" of the dataset, having values arranged in an ascending order, shall be:

*Total entries in data set x 50/100*

If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the median.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the median.

**Illustration 1- TNMM**

The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of unrelated enterprise</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3 [Current Year]</th>
<th>Aggregation of OC and OP</th>
<th>Weighted Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A</td>
<td>OC = 100</td>
<td>OC = 150</td>
<td>OC = 225</td>
<td>Total OC = 475</td>
<td>OP/OC = 12%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = 12</td>
<td>OP = 10</td>
<td>OP = 35</td>
<td>Total OP = 57</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>B</td>
<td>OC = 80</td>
<td>OC = 125</td>
<td>OC = 100</td>
<td>Total OC = 305</td>
<td>OP/OC = 8.2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = 10</td>
<td>OP = 5</td>
<td>OP = 10</td>
<td>Total OP = 25</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>C</td>
<td>OC = 250</td>
<td>OC = 230</td>
<td>OC = 250</td>
<td>Total OC = 730</td>
<td>OP/OC = 9%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = 22</td>
<td>OP = 26</td>
<td>OP = 18</td>
<td>Total OP = 66</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>D</td>
<td>OC = 180</td>
<td>OC = 220</td>
<td>OC = 150</td>
<td>Total OC = 550</td>
<td>OP/OC = 6%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = (-)9</td>
<td>OP = 22</td>
<td>OP = 20</td>
<td>Total OP = 33</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>E</td>
<td>OC = 140</td>
<td>OC = 100</td>
<td>OC = 125</td>
<td>Total OC = 365</td>
<td>OP/OC = 2.2%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = 21</td>
<td>OP = (-)8</td>
<td>OP = (-)5</td>
<td>Total OP = 8</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>OC = 160</td>
<td>OC = 120</td>
<td>OC = 140</td>
<td>Total OC = 420</td>
<td>OP/OC = 11.9%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OP = 21</td>
<td>OP = 14</td>
<td>OP = 15</td>
<td>Total OP = 50</td>
<td></td>
</tr>
</tbody>
</table>
From the above, the dataset will be constructed as follows:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2.2%</td>
</tr>
<tr>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td>3</td>
<td>8.2%</td>
</tr>
<tr>
<td>4</td>
<td>9%</td>
</tr>
<tr>
<td>5</td>
<td>10.57%</td>
</tr>
<tr>
<td>6</td>
<td>11.9%</td>
</tr>
<tr>
<td>7</td>
<td>12%</td>
</tr>
</tbody>
</table>

For construction of the arm's length range the data place of thirty-fifth and sixty-fifth percentile shall be computed in the following manner, namely:

Total no. of data points in dataset 7 * (35/100) = 2.45
Total no. of data points in dataset 7 * (65/100) = 4.55

Thirty fifth percentile is next higher number to 2.45 which is a whole number i.e. 3.
Sixty fifth percentile is next higher number to 4.55 is a whole number i.e. 5.
The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range. The transaction price in such cases will be deemed to be the arm's length price and no adjustment shall be required. However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following manner:

The data place of median is calculated by first computing the total number of data point in the dataset * (50/100). In this case it is 7*0.5=3.5.

Since this is not a whole number, the next higher data place, i.e. the value at the fourth place will be the median.
The median is the value at fourth place, i.e., 9%. Therefore, the arm's length price shall be considered as 9% and adjustment shall accordingly be made.

**Illustration 2** - The following prices have been determined as arm's length prices using comparable uncontrolled transactions method:

<table>
<thead>
<tr>
<th>CUP METHOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.90</td>
</tr>
<tr>
<td>2.98</td>
</tr>
<tr>
<td>3.100</td>
</tr>
</tbody>
</table>

**Answer:**
Since the above prices do not relate to unrelated enterprises, the prices of last two years shall not be considered.
Total entries in data set = 20
Thirty fifth percentile = 20*35/100 = 7

Since this is a whole number, the arithmetical mean of value at 7 and 8 shall be the
Thirty Fifth percentile = 107+110/2 = 108.50

Sixty Fifth percentile = 20*65/100 = 13

Since, this is a whole number, the arithmetical mean of value at 13 and 14 shall be the sixty
fifth percentile = 118+119/2 = 118.50

Median = 50/100*20 = 10

Since this is a whole number, the arithmetical mean of value at 10 and 11 shall be the median
= 114+116/2 = 115

If the assessee exports goods to associated enterprise in the range of 108.50 to 118.50, then
the price at which goods are exported shall be the ALP. Let's say goods are exported to
associated enterprise at Rs 109, then the actual transaction price is the ALP and no
adjustment is required. However, if goods are exported to associate enterprise at say Rs 100
(10 lakh goods), then ALP shall be Rs 115 and income of the annexure shall be increased by
15*10 lakh goods = Rs 150 lakh

Illustration 3 — If in the above illustration, the ALP on the basis of CUP method were
determined as under:

<table>
<thead>
<tr>
<th>Price 1: Rs 100</th>
<th>Price 2: Rs 102</th>
<th>Price 3: Rs 90</th>
<th>Price 4: Rs 110</th>
<th>Price 5: Rs 115</th>
</tr>
</thead>
</table>

Since entries in the data set are less than 6, to arithmetical mean of these prices shall be the
ALP
Thus, ALP shall be
100+102+90+110+115/5 = 517/5 = 103.40
In the above illustration, the addition on account of transfer price shall be 103.40 - 100 * 10
lakh goods = Rs 34 lakhs

Illustration 4— In a given case the dataset of 20 prices arranged in ascending order is as
under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Profits (in Rs Thousand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>42.00</td>
</tr>
<tr>
<td>2</td>
<td>43.00</td>
</tr>
<tr>
<td>3</td>
<td>44.00</td>
</tr>
<tr>
<td>4</td>
<td>44.50</td>
</tr>
<tr>
<td>5</td>
<td>45.00</td>
</tr>
<tr>
<td>6</td>
<td>45.25</td>
</tr>
<tr>
<td>7</td>
<td>47.00</td>
</tr>
<tr>
<td>8</td>
<td>48.00</td>
</tr>
<tr>
<td>9</td>
<td>48.15</td>
</tr>
<tr>
<td>10</td>
<td>48.35</td>
</tr>
<tr>
<td>11</td>
<td>48.45</td>
</tr>
<tr>
<td>12</td>
<td>48.48</td>
</tr>
<tr>
<td>13</td>
<td>48.50</td>
</tr>
</tbody>
</table>

46.20
Applying the formula given in the Illustration 1, the data place of the thirty-fifth and sixty-fifth percentile is determined as follows: Thirty-fifth percentile place = 20* (35/100) = 7. Sixty-fifth percentile place = 20* (65/100) = 13.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the seventh and next higher, i.e.; eighth place. This is (47+48)/2 = Rs.47,500. Similarly, the sixty-fifth percentile will be average of thirteenth and fourteenth place prices. This is (48.5+49)/2 = Rs.48,750.

The median of the range (the fiftieth percentile place) = 20*(50/100) = 10

Since the fiftieth percentile place is a whole number, it shall be the average of the prices at the tenth and next higher, i.e.; eleventh place. This is (48.35+48.45)/2 = Rs.48,400.

Thus, the arm's length range in this case shall be from Rs.47,500 to Rs.48,750.

Consequently, any transaction price which is equal to or more than Rs.47,500 but less than or equal to Rs 48,750 shall be considered to be within the arm's length range.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>49.00</td>
</tr>
<tr>
<td>15</td>
<td>49.10</td>
</tr>
<tr>
<td>16</td>
<td>49.35</td>
</tr>
<tr>
<td>17</td>
<td>49.50</td>
</tr>
<tr>
<td>18</td>
<td>49.75</td>
</tr>
<tr>
<td>19</td>
<td>50.00</td>
</tr>
<tr>
<td>20</td>
<td>50.15</td>
</tr>
</tbody>
</table>

SECTION 92CA: REFERENCE TO TRANSFER PRICING OFFICER

(1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1).

(2A) Where any other international transaction [other than an international transaction referred under sub-section (1)], comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him under sub-section (1).
Memorandum Explaining Finance bill, 2011
Section 92CA of the Act provides that the Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction, which has been referred to the TPO by the Assessing Officer.

It is proposed to amend section 92CA so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

(2B) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1).

Memorandum Explaining Finance Bill, 2012
Under section 92E of the Act, there is reporting requirement on the taxpayer and the taxpayer is under obligation to file an audit report in prescribed form before the Assessing Officer (AO) containing details of all international transactions undertaken by the taxpayer during the year.

This audit report is the primary document with the Assessing Officer, which contains the details of international transactions undertaken by the taxpayer. If the assessee does not report such a transaction in the report furnished under section 92E then the Assessing Officer would normally not be aware of such an International Transaction so as to make a reference to the Transfer Pricing Officer. The Transfer Pricing Officer may notice such a transaction subsequently during the course of proceeding before him. In absence of specific power, the determination of Arm's Length Price by the Transfer Pricing Officer would be open to challenge even though the basis of such an action is non-reporting of transaction by the taxpayer at first instance.

It is proposed to amend the section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the Act.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(Amended by Finance Act, 2012)
(3A) Where a reference has been made under sub-section (1) to the Transfer Pricing Officer, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153 or 153B expires.

For example, for Assessment Year 2020-2021, the assessment proceedings are going on under section 143(3). The Assessing Officer makes a reference to Transfer Pricing Officer on 30.8.2022 to determine the arm's length price. Now as per section 153(1), the assessment under section 143(3) can be completed up to 24 months from the end of the relevant Assessment Year. Therefore, assessment under section 143(3) can be completed up to 31.03.2023. As per section 92CA(3A), the Transfer Pricing Officer shall pass the order under section 92CA(3) determining the arm's length price on or before 30.01.2023.

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer. Assessing Officer is bound to follow the price determined by the Transfer Pricing Officer.

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of subsection (1) of section 131 or sub-section (6) of section 133 or section 133A.

Note: In order to enable the TPO to conduct on-the-spot enquiry and verification, it is proposed to amend section 92CA(7) so as to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

Explanation.—For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner, authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92 D in respect of any person or class of persons.

AMENDMENT MADE BY FINANCE ACT 2016

EXTENSION OF TIME-LIMIT TO TRANSFER PRICING OFFICER IN CERTAIN CASES [SEC. 92CA(3A)]

As per the existing provisions, the Transfer Pricing Officer (TPO) has to pass his order 60 days prior to the date on which the limitation for making assessment expires.

However where assessment proceedings are stayed by any court or where a reference for
exchange of information has been made by the competent authority, the time available to TPO for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than 60 days, then such remaining period shall be extended to 60 days.

For the assessment year 2020-21, the Assessing Officer makes a reference to TPO under section 92CA on ___________. Find out the due date of passing order by TPO under section 92CA(3).

- Normally, the Assessing Officer should complete the assessment within 12 months from the end of assessment year 2020-21 (i.e. on before March 31, 2022). In case reference is made to TPO, this time-limit is extended by 12 months (the Assessing Officer should complete the assessment at any time on or before March 31, 2023 in conformity with the arm’s length price determined by the TPO).

In this case, TPO should pass his order under section 92CA(3) before 60 days prior to March 31, 2023 (i.e., at any time on or before 30th Jan 2023).

Suppose in example above, the assessment proceedings are stayed by the Bombay High Court on ___________. The stay is, however, vacated by the Supreme Court on ___________.

- The period commencing on ___________ and ending on ___________ (i.e., __ days) shall be excluded. In other words, the time-limit for passing the order by the Assessing Officer/TPO shall be extended by ____ days as follows –

<table>
<thead>
<tr>
<th>Normal due date for passing order</th>
<th>TPO</th>
<th>Assessing Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: Extension of _____ days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due date after extension (a)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

There is one more check. The Assessing Officer (as well as TPO should have minimum 60 days to pass their order immediately after vacation of stay by the Supreme Court -

<table>
<thead>
<tr>
<th>Date of vacation by Supreme Court</th>
<th>TPO</th>
<th>Assessing Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: 60 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of vacation + 60 days (b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective due date [(a) or (b), whichever is later]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Suppose in example above, the assessment proceedings are stayed by the Bombay High Court on ___________. The stay is, however, vacated by the Supreme Court on ___________. (i.e., ____ days) shall be excluded. In other words, the time-limit for passing the order by the Assessing Officer/TPO shall be extended by ____ days as follows –

<table>
<thead>
<tr>
<th>Normal due date for passing order</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Add: Extension of _____ days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due date after extension (a)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECTION 92CB: POWER OF BOARD TO MAKE SAFE HARBOUR RULES

(1) The determination of-
(a) income referred to in clause (i) of sub-section (1) of section 9; or
(b) arm’s length price under section 92C or section 92CA,

shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation— For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price or income, deemed to accrue or arise under clause (i) of sub-section (1) of section 9, as the case may be, declared by the assessee.

(Amended by Finance Act 2020)

SECTION 92D: MAINTENANCE, AND KEEPING OF INFORMATION AND DOCUMENT BY PERSONS ENTERING INTO INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION

(1) (i) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

(ii) Every person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed. (See along with sec 286)

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of 30 days from the date of receipt of a notice issued in this regard:
SECTION 92E: REPORT FROM AN ACCOUNTANT TO BE FURNISHED BY PERSONS ENTERING INTO INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION

Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

SECTION 92F: DEFINITION OF CERTAIN TERMS RELEVANT TO COMPUTATION OF ARM'S LENGTH PRICE, ETC.

In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

SECTION 92CC: ADVANCE PRICING AGREEMENT (INTRODUCED BY FINANCE ACT, 2012)

(1) 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 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.

(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

SECTION 92CD: EFFECT TO ADVANCE PRICING AGREEMENT
(INTRODUCED BY FINANCE ACT, 2012)

(1) Notwithstanding anything to the contrary 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.—(Amended by Finance Act(No.2) 2019)

(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) 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.

AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:
Clarification with regard to power of the Assessing Officer in respect of modified
return of income filed in pursuance to signing of the Advance Pricing Agreement
(APA)
It is proposed to amend sub-section (3) of section 92CD to clarify that in cases where
assessment or reassessment has already been completed and modified return of income has
been filed by the tax payer under sub-section (1) of said section, the Assessing Officers shall
pass an order modifying the total income of the relevant assessment year determined in such
assessment or reassessment, having regard to and in accordance with the APA.

Amendment made by Finance Act 2020
Computation of profit attributable to permanent establishment in Safe Harbour Rules [Sec. 92CB]
and in Advance Pricing Agreement [Sec. 92CC]
Section 92CB empowers CBDT for making safe harbour rules (SHR) for the purpose of determination
of the arm's length price (ALP) under section 92C or section 92CA. Further, section 92CC empowers
CBDT to enter into an advance pricing agreement (APA) with any person, determining the ALP or
specifying the manner in which the ALP is to be determined.
Amendment – Computation of profit attributable to PE of a non-resident, results in avoidable
disputes in a number of cases. In order to provide certainty pertaining to computation of profit
attributable to PE of a non-resident in India within the four corners of the SHR and the APA, section
92CB (with effect from the assessment year 2020-21) and section 92CC (with effect from April 1,
2020) have been amended as follows –
1. Section 92CB(1) has been substituted so as to provide that the determination of the income
under section 9(1)(i) shall also be subject to safe harbour rules.
2. Section 92CC(1) / (2) / (3) has been substituted so as to provide that the Board, with the
approval of the Central Government, may enter into an advance pricing agreement with any
person, determining the –
a. arm’s length price (or specifying the manner in which arms length price is to be
determined) in relation to an international transaction;
b. income referred to in section 9(1)(i) (or specifying the manner in which said income is to
be determined) as is reasonably attributable to the operations carried out in India by (or
on behalf of) a non-resident.
3. Further for Roll Back Provisions also above amendment is applicable.

ANALYSIS
1. The assessee Hindustan Lever makes an application to CBDT for entering into
Advance Pricing Agreement (APA) on 10th July, 2016 for determining arm's length
price of royalty it pays to Unilever U.K. The application is made to determine ALP for
Previous Year 31.3.2016 to Previous Year 31.3.2020. The agreement cannot be for
more than 5 consecutive Previous Years as specified in the agreement.
2. It may be noted that Advance Pricing Agreement cannot be entered for Specified Domestic Transactions. It can be entered only for International Transactions.

3. The CBDT signs the agreement on 1.9.2017 for Previous Year 31.3.2016 to 31.3.2020. The agreement determines the manner of determination of ALP as per
   (i) 6 methods given in section 92C with some adjustments and variations; or
   (ii) CBDT determines its own method and that is not as per section 92C.

4. Now Section 92C gets overruled and Assessing Officer cannot use the methods given in section 92C to determine the ALP of royalty. He has to follow the method given in Advance Pricing Agreement in the 5 Previous Years.

5. Now section 92CA gets overruled and Assessing Officer cannot refer the case to TPO under section 92CA to determine the ALP of royalty in the 5 Previous Years. He has to follow the method given in Advance Pricing Agreement in 5 Previous Years.

6. The Advance Pricing Agreement shall be binding on assessee, Commissioner of Income-tax and Assessing Officer. Therefore, Assessing Officer will follow the Advance Pricing Agreement and there is no question of filing appeal to Commissioner of Income-tax (Appeals). The Commissioner of Income-tax also cannot reopen case under section 263 since he is also bound by Advance Pricing Agreement. Later on Assessing Officer cannot reopen the case under section 147 since he is bound by Advance Pricing Agreement.

7. Suppose for Previous Year 31.3.2016, assessee filed a return on 30.11.2016 which is not as per Advance Pricing Agreement. Now, assessee shall file a modified return within 3 months from the end of the month in which Advance Pricing Agreement was entered into. Now, assessee will file modified return for Previous Year 31.3.2016 as per Advance Pricing Agreement on or before _____________.

8. If suppose for Previous Year 31.3.2016, assessment under section 143(3) was completed on 30th November, 2017, without applying Advance Pricing Agreement, the Assessing Officer shall assess the income again under section 143(3) for Previous Year 31.3.2016 in accordance with Advance Pricing Agreement. Let's say that modified return is filed on 31.12.2017. The Assessing Officer shall complete the assessment within 1 year from the end of the financial year in which modified return is filed i.e. _____________.

9. If assessee files modified return on 31.12.2017 and assessment under section 143(3) is pending on that date, then Assessing Officer shall complete the assessment under section 143(3) as per Advance Pricing Agreement. The period of assessment for Assessment Year 2016-17 shall be increased from ____________ to _____________.

10. The Advance Pricing Agreement shall not be binding if there is a change in law or facts of the agreement.
11. Suppose, CBDT finds that the Advance Pricing Agreement has been obtained by fraud or misrepresentation of facts. CBDT can declare the Advance Pricing Agreement void, let's say CBDT declares Advance Pricing Agreement to be void on 31.8.2018.

12. If Advance Pricing Agreement is declared void then:
   (i) all provisions of Act will apply as if Advance Pricing Agreement was never entered into,
   (ii) the time periods of the Act shall be increased from __________ to __________ i.e., one year.

Therefore, time limits for issue of notice under section 149(1) shall get increased by one year. The time limits for assessments shall also get increased by one year.

**PROVISION FOR ROLL BACK IN APA SCHEME [SECTION 92CC]**

(a) In order to reduce current pending as well as future litigation in respect of the transfer pricing matters, section 92CC(9A) provides roll back mechanism in the APA scheme.

(b) Accordingly, the APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the APA applies in respect of the international transaction to be undertaken.

The CBDT has, vide Notification No.23/2015 dated 14.3.2015, in exercise of the powers conferred by 92CC(9A) read with section 295, following conditions, procedure and manner for determining the arm’s length price or for specifying the manner in which arm’s length price is to be determined in relation to an international transaction:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Particulars</th>
<th>Conditions, Procedure &amp; Manner of determination of ALP</th>
</tr>
</thead>
<tbody>
<tr>
<td>10F(ba)</td>
<td>Definition of Applicant</td>
<td>A person who has made an application.</td>
</tr>
<tr>
<td>10F(ha)</td>
<td>Definition of Rollback year</td>
<td>Any previous year, falling within the period not exceeding four previous years, preceding the first of the five consecutive previous years referred to in section 92CC(4).</td>
</tr>
<tr>
<td>10MA</td>
<td>Roll back of the agreement</td>
<td>The said rule provides the following:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. The agreement may provide for determining the arm’s length price or specify the manner in which arm’s length price shall be determined in relation to the international transaction entered into by the person during the rollback year (hereinafter referred as “rollback provision”).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. <strong>Conditions for applying for rollback provisions:</strong></td>
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<tr>
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<td></td>
<td>The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) the return of income for the relevant rollback year has</td>
</tr>
</tbody>
</table>
been or is furnished by the applicant before the due date as specified in Explanation 2 of section 139(1).

(iii) the report in respect of the international transaction had been furnished in accordance with section 92E;

(iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and

(v) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);

3. **Non-applicability of Rollback provision:** Rollback provision shall not be provided in respect of an international transaction for a rollback year, if,

   (i) the determination of arm’s length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or

   (ii) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

4. **Manner for determining arm length price to be the same for rollback years and other previous years:** Where the rollback provision specifies the manner in which arm’s length price shall be determined in relation to an international transaction undertaken in any rollback year, then such manner shall be the same as the manner which has been agreed to be provided for determination of arm’s length price of the same international transaction to be undertaken in any previous year to which the agreement applies, not being a rollback year.

5. **Time limit for filing application for rollback provision:** The applicant may furnish along with the application for advance pricing agreement, the request for rollback provision in Form No. 3CEDA with proof of payment of an additional fee of Rs. 5 lakhs.

<table>
<thead>
<tr>
<th>10RA</th>
<th>Procedure for giving effect to rollback provision of an Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rule 10RA has been inserted to provide the “Procedure for giving effect to rollback provision of an Agreement” as follows:</td>
</tr>
<tr>
<td></td>
<td>(i) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.</td>
</tr>
</tbody>
</table>
(ii) The modified return in respect of rollback year shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application.

(iii) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

(iv) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement, shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

(v) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so.

(vi) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.

Subsequent to the notification of the rules, the CBDT has issued Circular No. 10/2015 dated 10.6.2015 adopting a Question and Answer format to clarify certain issues arising out of the said Rules. The questions raised and answers to such questions as per the said Circular are given hereunder:

**Question 1**

Under rule 10MA(2)(ii) there is a condition that the return of income for the relevant rollback year has been or is furnished by the applicant before the due date specified in Explanation 2 to section 139(1). It is not clear as to whether applicants who have filed returns under section 139(4) or 139(5) of the Act would be eligible for roll back.

**Answer**

The return of income under section 139(5) can be filed only when a return under section 139(1) has already been filed. Therefore, the return of income filed under section 139(5) of the Act, replaces the original return of income filed under section 139(1). Hence, if there is a return which is filed under section 139(5) to revise the original return filed before the due date specified in Explanation 2 to sub-section (1) of section 139, the applicant would be entitled for rollback on this revised return of income.

46.32
However, rollback provisions will not be available in case of a return of income filed under section 139(4) because it is a return which is not filed before the due date.

Note – A belated return filed under section 139(4) can also be revised under section 139(5). In such a case, the revised return would replace the belated return. Therefore, an applicant would not be entitled for roll back provisions on a revised return which replaces a belated return.

Question 2

Rule 10MA(2)(i) mandates that the rollback provision shall apply in respect of an international transaction that is same as the international transaction to which the agreement (other than the rollback provision) applies. It is not clear what is the meaning of the word “same”. Further, it is not clear whether this restriction also applies to the Functions, Assets, Risks (FAR) analysis.

Answer

The international transaction for which a rollback provision is to be allowed should be the same as the one proposed to be undertaken in the future years and in respect of which the agreement has been reached. There cannot be a situation where rollback is finalised for a transaction which is not covered in the agreement for future years. The term same international transaction implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached. In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies.

The word “materially” is generally being defined in the Advance Pricing Agreements being entered into by CBDT. According to this definition, the word “materially” will be interpreted consistently with its ordinary definition and in a manner that a material change of facts and circumstances would be understood as a change which could reasonably have resulted in an agreement with significantly different terms and conditions.

Question 3

Rule 10MA(2)(iv) requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant. Clarification is required as to whether rollback has to be requested for all four years or applicant can choose the years out of the block of four years.

Answer

The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then the applicant can apply for rollback for less than four years. Accordingly, if the covered international transaction(s) were not in existence during any of the rollback years, the applicant can apply for rollback for the
remaining years. Similarly, if in any of the rollback years for the covered international transaction(s), the applicant fails the test of the rollback conditions contained in various provisions, then it would be denied the benefit of rollback for that rollback year. However, for other rollback years, it can still apply for rollback.

**Question 4**

Rule 10MA(3) states that the rollback provision shall not be provided in respect of an international transaction for a rollback year if the determination of arm’s length price of the said international transaction for the said year has been the subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement. Further, Rule 10RA(4) provides that if any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant.

There is a need to clarify the phrase “Tribunal has passed an order disposing of such appeal” and on the mismatch, if any, between Rule 10MA(3) and Rule 10RA(4).

**Answer**

The reason for not allowing rollback for the international transaction for which Appellate Tribunal has passed an order disposing of an appeal is that the ITAT is the final fact finding authority and hence, on factual issues, the matter has already reached finality in that year. However, if the ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

There is no mismatch between Rule 10MA(3) and Rule 10RA(4).

**Question 5**

Rule 10MA(3)(ii) provides that rollback provision shall not be provided in respect of an international transaction for a rollback year if the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year. It may be clarified whether the rollback provisions in such situations can be applied in a manner so as to ensure that the returned income or loss is accepted as the final income or loss after applying the rollback provisions.

**Answer**

It is clarified that in case the terms of rollback provisions contain specific agreement between the Board and the applicant that the agreed determination of ALP or the agreed manner of determination of ALP is subject to the condition that the ALP would get modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the applicant as declared in the return of income of the said year, the rollback provisions could be applied. For example, if the declared income is Rs. 100, the income as adjusted by the TPO is Rs. 120, and the application of the rollback provisions results in reducing the income to Rs. 90, then the rollback for that year would be determined in a manner that the declared income Rs. 100 would be treated as the final income for that year.
Question 6
Rule 10RA(7) states that in case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled. It is to be clarified as to whether the entire agreement is to be cancelled or only that year for which roll back fails.

Answer
The procedure for giving effect to a rollback provision is laid down in Rule 10RA. Sub-rules (2), (3), (4) and (6) of the Rule specify the actions to be taken by the applicant in order that effect may be given to the rollback provision. If the applicant does not carry out such actions for any of the rollback years, the entire agreement shall be cancelled.

This is because the rollback provision has been introduced for the benefit of the applicant and is applicable at its option. Accordingly, if the rollback provision cannot be given effect to for any of the rollback years on account of the applicant not taking the actions specified in sub-rules (2), (3), (4) or (6), the entire agreement gets vitiated and will have to be cancelled.

Question 7
If there is a Mutual Agreement Procedure (MAP) application already pending for a rollback year, what would be the stand of the APA authorities? Further, what would be the view of the APA Authorities, if MAP has already been concluded for a rollback year?

Answer
If MAP has been already concluded for any of the international transactions in any of the rollback year under APA, rollback provisions would not be allowed for those international transactions for that year but could be allowed for other years or for other international transactions for that year, subject to fulfilment of specified conditions in Rules 10MA and 10RA. However, if MAP request is pending for any of the rollback year under APA, upon the option exercised by the applicant, either MAP or application for roll back shall be proceeded with for such year.

Question 8
Rule 10MA(1) provides that the agreement may provide for determining ALP or manner of determination of ALP. However, Rule 10MA(4) only specifies that the manner of determination of ALP should be the same as in the APA term. Does that mean the ALP could be different?

Answer
Yes, the ALP could be different for different years. However, the manner of determination of ALP (including choice of Method, comparability analysis and Tested Party) would be same.

Question 9
Will there be compliance audit for roll back? Would critical assumptions have to be validated during compliance audit?
Answer
Since rollback provisions are for past years, ALP for the rollback years would be agreed after full examination of all the facts, including validation of critical assumptions. Hence, compliance audit for the rollback years would primarily be to check if the agreed price or methodology has been applied in the modified return.

Question 10
Whether applicant has an option to withdraw its rollback application? Can the applicant accept the rollback results without accepting the APA for the future years?

Answer
The applicant has an option to withdraw its rollback application even while maintaining the APA application for the future years. However, it is not possible to accept the rollback results without accepting the APA for the future years. It may also be noted that the fee specified in Rule 10MA(5) shall not be refunded even where a rollback application is withdrawn.

Question 11
For already concluded APAs, will new APAs be signed for rollback or earlier APAs could be revised?

Answer
The second proviso to Rule 10MA(5) provides for revision of APAs already concluded to include rollback provisions.

Question 12
For already concluded APAs, where the modified return has already been filed for the first year of the APA term, how will the time-limit for filing modified return for rollback years be determined?

Answer
The time to file modified return for rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

Question 13
In case of merger of companies, where one or more of those companies are APA applicants, how would the rollback provisions be allowed and to which company or companies would it be allowed?

Answer
The agreement is between the Board and a person. The principle to be followed in case of merger is that the person (company) who makes the APA application would only be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years. Other persons (companies) who have merged with this person (company) would not be eligible for the rollback provisions.

To illustrate, if A, B and C merge to form C and C is the APA applicant, then the agreement can only be entered into with C and only C would be eligible for the rollback
provisions. A and B would not be eligible for the rollback provisions. To illustrate further, if A and B merge to form a new company C and C is the APA applicant, then nobody would be eligible for rollback provisions.

**Question 14**

*In case of a demerger of an APA applicant or signatory into two or more companies (persons), who would be eligible for the rollback provisions?*

**Answer**

The same principle as mentioned in the previous answer, i.e., the person (company) who makes an APA application or enters into an APA would only be entitled for the rollback provisions, would continue to apply. To illustrate, if A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA. As B was not in existence in rollback years, availing or grant of rollback to B does not arise.

**AMENDMENT MADE BY FINANCE ACT 2017:**

**SECONDARY ADJUSTMENT IN CERTAIN INTERNATIONAL TRANSACTIONS [SEC. 92CE]**

Section 92CE has been inserted with effect from the assessment year 2018-19.

1. **Meaning of Primary Adjustment and Secondary Adjustment**

   “Primary adjustment” to a transfer price means the determination of transfer price in accordance with the arm’s length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee.

   "Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

2. **Forms of Secondary Adjustment**

   - As per the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.

3. **Alignment of economic benefit of the transaction with the arm’s length position**

   The provisions of secondary adjustment are internationally recognised and are already part of the transfer pricing rules of many leading economies in the world. Whilst the approaches to secondary adjustments by individual countries vary, they represent an internationally recognised method to align the economic benefit of the transaction with the arm's length position.

4. **Cases where secondary adjustment has to be made**

   In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, new section 92CE has been inserted to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price:
(i) has been made suo motu by the assessee in his return of income; or  
(ii) made by the Assessing Officer has been accepted by the assessee; or  
(iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC (ON OR AFTER 1ST APRIL 2017); or  
(iv) is made as per the safe harbour rules framed under section 92CB; or  
(v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A for avoidance of double taxation.

(5) Non-repatriation of excess money by the associated enterprise deemed to be an advance - Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money or part thereof, as the case may be which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the prescribed manner.

Explanation:
For Removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not resident in India. (Added by Finance Act (No.2) 2019)

“Excess money” means the difference between the arm’s length price determined in primary adjustment and the price at which the international transaction has actually taken place.

Rule 10CB(1) prescribes the time limit for repatriation of excess money i.e., on or before 90 days from the date given in column (3) in the cases mentioned in column (2) of the table below:

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Where primary adjustments to transfer price has been made suo-moto by the assessee in his return of income</td>
</tr>
<tr>
<td>(ii)</td>
<td>If primary adjustments to transfer price as determined in the order of the Assessing Officer or the appellate authority has been accepted by the assessee</td>
</tr>
<tr>
<td>(iii)</td>
<td>Where agreement for advance pricing has been entered into by the assessee under section 92CD (ON OR AFTER 1ST APRIL 2017)</td>
</tr>
<tr>
<td>(iv)</td>
<td>Where option has been exercised by the assessee as per the safe harbour rules under section 92CB</td>
</tr>
<tr>
<td>(v)</td>
<td>Where agreement under the Mutual agreement procedure under a DTAA has been entered into u/s 90 or 90A</td>
</tr>
</tbody>
</table>

Rule 10CB(2) prescribes the rate at which the interest income shall be computed in case of failure to repatriate the excess money within the above time limit. The interest would be computed at the rates mentioned in column (3) in respect of the cases mentioned in column (2) of the table below:
### Case Rate

<table>
<thead>
<tr>
<th>Case</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where the international transaction is denominated in Indian rupee</td>
<td>At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%</td>
</tr>
<tr>
<td>(ii) Where the international transaction is denominated in foreign currency</td>
<td>At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%</td>
</tr>
</tbody>
</table>

(6) **No requirement of secondary adjustment in certain cases** - Such secondary adjustment, however, shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed Rs. 1 crore AND the primary adjustment is made in respect of A.Y.2016-17 or an earlier assessment year.

Provided further that no refund of taxes paid, if any, by virtue of provisions of this sub section as they stood immediately before their amendment by the Finance Act (No.2) 2019. (Added by Finance Act (No.2) 2019)

(7) **The rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken.**

(8) **If the money or part thereof is not repatriated within the prescribed time limit, then the interest will be computed including the period of 90 days.**

- **Provisions illustrated** - Implications of the above amendment may be examined with the help of case were studies given below -

1. X Ltd. is an Indian company. It renders services to Y Inc. (an American company which is an associated enterprise of X Ltd. within the parameters of section 92A). During the previous year 2017-18, X Ltd. charges 8 per cent on cost for providing services to Y Inc. However, X Ltd. would have earned a margin of 11 per cent on cost if similar services were provided to unconnected foreign concern. The Assessing Officer makes transfer pricing adjustments to the tune of 3 per cent which comes to an addition of Rs. 11.5 crore to the reported income of X Ltd. The adjustment is accepted by X Ltd. The addition of Rs. 11.5 crore is known as primary adjustment. However, the primary adjustment to the income of X Ltd. does not address the benefit obtained by Y Inc. by retaining Rs. 11.5 crore in cash. Provisions of section 92CE on secondary adjustment seek to target such cash benefit by applying a tax charge on the excess benefit in the hands of foreign entity. Under this section, Rs. 11.5 crore will be considered as a separate transaction as a deemed loan (in the language of section 92CE it is known as “secondary adjustment”) given by X Ltd. to Y Inc. This deemed loan would exist for tax purposes only and would not appear in the books of account of X Ltd. Arm’s length value of interest on deemed loan will be taxable in the hands of X Inc. annually till Rs. 11.5 crore is repatriated by Y Inc. (of America) to X Ltd. (in India).

2. A Ltd. (an Indian company) gets a loan of US $ 50,00,000 from its overseas related company (B Ltd.). A Ltd. is required to pay interest at the rate of 8 per cent per annum. However, TPO finds that interest is excessive to the extent of 3.5 per cent which is accepted by A Ltd. Consequently, primary adjustment of Rs. 1.14 crore is made by the Assessing Officer to the income of A Ltd. for the assessment year 2018-19. The secondary adjustment will result in creating in deemed loan of Rs. 1.14
For the assessment year 2019-20, the adjustment of 3.5 per cent results in addition of Rs. 1.05 crore to the income of X Ltd. This will be primary adjustment. Interest on deemed loan of Rs. 1.05 crore (along with interest on deemed loan of 1.14 crore of the earlier year) will be treated as secondary adjustment for the assessment year 2019-20 (both will continue till Rs. 1.14 crore + Rs. 1.05 crore is repatriated to India).

For the assessment year 2020-21, the adjustment of 3.5 per cent results in addition of Rs. 97 lakh. This is primary adjustment. Since it is not more than Rs. 1 crore, secondary adjustment will not be applicable. However, interest on deemed loan of Rs. 1.14 crore + interest on deemed loan of Rs. 1.05 crore (pertaining to earlier years) will continue (till 1.14 crore + Rs. 1.05 crore is repatriated to India).

**AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:**

**Clarification with regard to provisions of secondary adjustment and giving an option to assessee to make one-time payment**

In order to align the transfer pricing provisions with international best practices, section 92CE of the Act provides for secondary adjustments in certain cases.

It, inter alia, provides that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu, or made by the Assessing Officer and accepted by him; or is determined by an advance pricing agreement entered into by him under section 92CC of the Act; or is made as per safe harbour rules prescribed under section 92CB of the Act; or is arising as a result of resolution of an assessment through mutual agreement procedure under an agreement entered into under section 90 or 90A of the Act.

The proviso to said sub-section provides exemption in cases where the amount of primary adjustment made in any previous year does not exceed one crore rupees; and the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016. Several concerns have been expressed regarding effective implementation of secondary adjustments regime and seeking clarity in law.

In order to address such concerns and to make the secondary adjustment regime more effective and easy to comply with, it is proposed to amend section 92CE of the Act so as to provide that:-

(i) the condition of threshold of one crore rupees and of the primary adjustment made upto assessment year 2016-17 are alternate conditions;

(ii) the assessee shall be required to calculate interest on the excess money or part thereof;

(iii) the provision of this section shall apply to the agreements which have been signed on or after 1st April, 2017; however, no refund of the taxes already paid till date under the pre amended section would be allowed;

(iv) the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India;

(v) in a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional tax is proposed to be increased by a surcharge of twelve per cent;

(vi) the tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid;
(vii) the deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision of this Act; and

(viii) if the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

The amendments proposed in para (i) to (iv) above will take effect retrospectively from the 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

Further, the amendments proposed in para (v) to (viii) will be effective from 1st September, 2019.

**ILLUSTRATION:**

X Ltd. is an Indian company. It renders services to Y Inc. (an American company which is an associated enterprise of X Ltd. within the parameters of section 92A). During the previous year 2019-20, X Ltd. charges 8 per cent on cost for providing services to Y Inc. However, X Ltd. would have earned a margin of 11 per cent on cost if similar services were provided to unconnected foreign entities. The Assessing Officer makes transfer pricing adjustments to the tune of 3 per cent which comes to an addition of Rs. 12 crores to the reported income of X Ltd. (date of assessment order: **December 20, 2020** The adjustment is accepted by X Ltd.

The addition of Rs. 12 crores is known as primary adjustment. However, the primary adjustment to the income of X Ltd. does not address the benefit obtained by Y Inc. by retaining Rs. 12 crores in cash. Provisions of section 92CE on secondary adjustment seek to target such cash benefit by applying a tax on the excess benefit in the hands of foreign entity. Under this section, Rs. 12 crores will be considered as a separate transaction as a deemed loan (in the language of section 92CE it is known as “secondary adjustment”) given by X Ltd. to Y Inc. This deemed loan would exist for tax purposes only and would not appear in the books of account of X Ltd. Arm’s length value of interest on deemed loan will be calculated as per rule 10CB [i.e., where international transaction is denominated in Indian rupee: MCLR of SBI (1 year) + 3.25%]. This interest will be taxable in the hands of X Ltd. annually till Rs. 12 crores is repatriated by Y Inc. (of America) to X Ltd. (in India). Tax consequences in this case will be as follows on the assumption that (a) MCLR (1 year) of SBI + 3.25% comes to 11.7% and (b) Y Inc. has not repatriated Rs. 12 crores to X Ltd. –

**Previous year 2020-21** – Date of final assessment order (no appeal by X Ltd.) is **December 20, 2020**. Excess money is Rs. 12 crores. Time-limit for repatriation is 90 days from the date of final order (i.e., December 20, 2020+90 at the rate of 11.7%. For the previous year ending **March 31, 2021**, it comes to Rs. 38,85,041 (i.e., amount of secondary adjustment for the previous year 2020-21). X Ltd. will pay income-tax on Rs. 38,85,041 at the applicable rate (i.e., 25% or 30% + applicable surcharge + HEC).

**Previous year 2021-22** – The following calculations are given on the assumption that income of X Ltd. before the aforesaid secondary adjustment is Rs. 2 crores. Tax on secondary adjustment is calculated under two different situations: **Situation 1** – X Ltd. does not pay additional income-tax as per section 92CE(2A), **Situation 2** – X Ltd. pays additional income-tax on the entire excess money on **October 31, 2021** under section 92CE(2A) –

<table>
<thead>
<tr>
<th></th>
<th>Situation 1</th>
<th>Situation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary adjustment for the previous year 2020-21</td>
<td>12,00,00,000</td>
<td>12,00,00,000</td>
</tr>
<tr>
<td>Add: Secondary adjustment for the previous year 2020-21</td>
<td>38,85,041</td>
<td>38,85,041</td>
</tr>
<tr>
<td><strong>Total (a)</strong></td>
<td><strong>12,38,85,041</strong></td>
<td><strong>12,38,85,041</strong></td>
</tr>
<tr>
<td>Secondary adjustment for the previous year 2021-22 -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- In Situation 1 [i.e., interest @ 11.7% on (a) from</td>
<td>1,44,94,549</td>
<td></td>
</tr>
</tbody>
</table>

---
### April 1, 2021 to March 31, 2022

<table>
<thead>
<tr>
<th>Situations</th>
<th>Interest @ 11.7% on (a) from April 1, 2021 to October 31, 2021</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Other income</td>
<td>2,00,00,000</td>
<td>2,00,00,000</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax @ 30% + SC : 7% + HEC : 4%</td>
<td>1,15,15,660</td>
<td>94,99,468</td>
</tr>
<tr>
<td>Additional income-tax under section 92CE(2A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income-tax (18% of Rs. 12,00,00,000)</td>
<td>-</td>
<td>2,16,00,000</td>
</tr>
<tr>
<td><strong>Add:</strong> Surcharge @ 12% (always applicable, even if net income is below Rs. 1 crore)</td>
<td>-</td>
<td>25,92,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>-</td>
<td>2,41,92,000</td>
</tr>
<tr>
<td><strong>Add:</strong> Health and education cess @ 4%</td>
<td>-</td>
<td>9,67,680</td>
</tr>
<tr>
<td>Additional tax under section 92CE(2A)</td>
<td>-</td>
<td>2,51,59,680</td>
</tr>
</tbody>
</table>

Note: If the aforesaid additional tax is not paid, secondary adjustment for the previous year 2022-23 will be notional interest [@ MCLR (1 year) of SBI + 3.25%] on (Rs. + ).

### PROVISIONS PERTAINING TO THIN CAPITALISATION

A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible (in some countries, dividend distribution attracts additional tax). Therefore, higher the level of debt in a company (and thus the amount of interest it pays), the lower will be its taxable profit and tax liability. For this reason, debt is often a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits. For this reason, country's tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and, thus, aim to protect a country's tax base.

**Limitation on interest deductible [Sec. 94B]** - Section 94B has been inserted with effect from the assessment year 2018-19.

- **Conditions** - Section 94B is applicable if the following conditions are satisfied -
  1. The assessee (i.e., borrower) is an Indian company or a permanent establishment of a foreign company in India.

  2. It incurs any expenditure by way of interest (or of similar nature) in respect of any debt (or deemed debt). The debt is issued by a non-resident (being an associated enterprise of the borrower). Where the debt is issued by a lender (which is not associated with the borrower) and an associated enterprise either provides an implicit or explicit guarantee to such lender (or deposits a corresponding and matching amount of funds with the lender), such debt shall be “deemed” to have been issued by an associated enterprise. “Debt” means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible.
**AMENDMENT MADE BY FINANCE ACT 2020:**

Nothing contained in sub-section (1) shall apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

3. Interest is deductible while computing income chargeable under the head “Profits and gains of business or profession”.

4. For the aforesaid debt, interest (which is otherwise deductible for computing business/professional income of the borrower for the previous year) is more than Rs. 1 crore.

5. The borrower is not engaged in the business of banking or insurance.

- **Limitation on deduction of interest under section 94B** - If the above conditions are satisfied, interest shall not be deductible while computing income under the head “Profit and gains of business or profession” to the extent it arises from “excess interest”. “Excess interest”, as per section 94B(2), is -
  (a) interest paid or payable in excess of 30 per cent of earnings (before interest, taxes, depreciation and amortization) (EBITDA) of borrower in the previous year; or
  (b) interest paid or payable to associated enterprises for that previous year, whichever is less.

- **Carry forward of the excess interest** - The excess interest of the current year (which is not allowed as deduction) shall be carried forward to the following assessment year and it shall be allowed as a deduction against business/profession income of the borrower to the extent of maximum allowable interest expenditure in accordance with section 94B(2). This carry forward is allowed for 8 assessment years (immediately succeeding the assessment year for which the excess interest was first computed).

**Illustration:**

X Ltd is an Indian Company. It is a subsidiary of A Inc, a US company. X Ltd has taken a loan from A Inc. From the data given below find out disallowance u/s 94B and the net income of X Ltd for AY 2020-21 and AY 2021-22

<table>
<thead>
<tr>
<th>Previous Year (In Crores)</th>
<th>2019 - 20</th>
<th>2020 - 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business income (after deducting the following)</td>
<td>156</td>
<td>400</td>
</tr>
<tr>
<td>- Interest to A Inc</td>
<td>130</td>
<td>140</td>
</tr>
<tr>
<td>- Interest to others (non associated)</td>
<td>70</td>
<td>90</td>
</tr>
<tr>
<td>- Depreciation (Normal and additional u/s 32)</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>- Amt deductible u/s 35</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>- Amortisation u/s 35D</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>- Investment Allowance u/s 32AD</td>
<td>25</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Transfer pricing adjustment u/s 92 made by TPO for point no (b) as follows:

For PY 2019 - 20 he added Rs. 20
For PY 2020 - 21 he added Rs. 40

46.43
**Answer:**

<table>
<thead>
<tr>
<th>Description</th>
<th>a) 156</th>
<th>400</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: Disallowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>u/s 92</td>
<td>b) 20</td>
<td>40</td>
</tr>
<tr>
<td>u/s 94B (Note 1)</td>
<td>59.7</td>
<td>Nil</td>
</tr>
<tr>
<td>C/f from last year</td>
<td></td>
<td>9.5</td>
</tr>
<tr>
<td>Net Income</td>
<td>235.7</td>
<td>430.5</td>
</tr>
</tbody>
</table>

**Note:** Computation of disallowance u/s 94B

<table>
<thead>
<tr>
<th>Description</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Interest deductible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest to A Inc</td>
<td>110</td>
<td>100</td>
</tr>
<tr>
<td>Interest to others</td>
<td>70</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>180</td>
<td>190</td>
</tr>
</tbody>
</table>

**EBITDA:**

<table>
<thead>
<tr>
<th>Time</th>
<th>calculation</th>
<th>result</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017 - 18</td>
<td>(150 + 130 + 70 + 30 + 15)</td>
<td>401</td>
</tr>
<tr>
<td>2018 - 19</td>
<td>(400 + 140 + 90 + 20 + 15)</td>
<td>665</td>
</tr>
</tbody>
</table>

**Disallowance is lower of:**

1. Amt in excess of 30% of EBITDA:
   - (180 - 120.3) (190 - 199.5) = 59.7 Nil

2. Interest to AP
   - 110 100

   Disallowance to be c/f for the next 8 years
   - 59.7

   Disallowance to be c/f from 59.7 (59.7 - 9.5)
   - 50.2
**SEC 286: COUNTRY BY COUNTRY REPORTING:**

(a) the reporting provision shall apply in respect of an international group for an accounting year, if the total consolidated group revenue as reflected in the consolidated financial statement (CFS) for the accounting year preceding such accounting year is above a threshold to be prescribed [Sub-section (7)].

(b) the parent entity of an international group or the alternate reporting entity, if it is resident in India shall be required to furnish the report in respect of the group to the prescribed authority within a period of 12 months from the end of the said reporting accounting year, in the prescribed form and manner [Sub-section (2)];

(c) the parent entity shall be an entity which is required to prepare consolidated financial statement under the applicable laws or would have been required to prepare such a statement, had equity share of any entity of the group been listed on a recognized stock exchange in India;

(d) every constituent entity resident in India, of an international group having parent entity that is not resident in India, shall notify the prescribed income-tax authority on or before the prescribed date –
   - whether it is the alternate reporting entity of the international group; or
   - the details of the parent entity or the alternate reporting entity, if any of the international group, and the country of territory of which the said entities are resident [Sub-section (1)].

(e) the report shall be furnished in prescribed manner and in the prescribed form.

(f) It should contain aggregate information in respect of:
   - the amount of revenue,
   - profit and loss before income-tax,
   - amount of income-tax paid and accrued,
   - details of stated capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed. This shall be based on the template provided in the OECD BEPS report on Action Plan 13 [Sub-section (3)];

(g) A constituent entity of an international group resident in India, shall be required to furnish CBC report to the prescribed authority if the parent entity of the group is resident of a country :-
   - where the parent entity is not obligated to file the report of the nature referred to in sub section (2); or
   - with which India does not have an arrangement for exchange of the CbC report;
   - there has been a systemic failure of the country or territory i.e., such country is not exchanging information with India even though there is an agreement; and this fact has been intimated to the entity by the prescribed authority [Sub-section (4)].
(h) If there are more than one such constituent entity of the same group in India, then the group can nominate (under intimation in writing on behalf of the group to the prescribed authority), then, one constituent entity that shall furnish the report on behalf of the group. This entity would then furnish the report [Proviso to sub-section (4)];

(i) If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by Indian tax authorities [Sub-section (5)];

(j) The prescribed authority may call for such document and information from the entity furnishing the report as it may specify in notice for the purpose of verifying the accuracy. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond a further period of 30 days [Sub-section (6)].

Penalty for non-furnishing of the report by any reporting entity which is obligated to furnish such report [Section 271GB(1) & (3)]

<table>
<thead>
<tr>
<th>Period of delay/default</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Not more than a month</td>
<td>Rs. 5,000 per day</td>
</tr>
<tr>
<td>(b) beyond one month</td>
<td>Rs. 15,000 per day for the period exceeding one month</td>
</tr>
<tr>
<td>(c) Continuing default even after service of order levying penalty either under (a) or under (b)</td>
<td>Rs. 50,000 per day of continuing failure beginning from the date of service of order</td>
</tr>
</tbody>
</table>

Penalty for failure to produce information and documents within prescribed time [Section 271GB(2) & (3)]

<table>
<thead>
<tr>
<th>Default</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Failure to produce information before prescribed authority within the period allowed u/s 286(6)</td>
<td>Rs. 5,000 per day of continuing failure, from the day immediately following the day on which the period for furnishing the information and document expires.</td>
</tr>
<tr>
<td>(b) Continuing default even after service of penalty order</td>
<td>Rs. 50,000 per day for the period of default beyond the date of service of penalty order.</td>
</tr>
</tbody>
</table>

Penalty for submission of inaccurate information in the CBC report [Section 271GB(4)]

If the reporting entity has provided any inaccurate information in the report, the penalty would be Rs. 5,00,000 if,

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or
(b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

(c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 286(6).

**Non-levy of penalty if reasonable cause for failure is proved [Section 273B]**

Section 273B provides for non-levy of penalty under various sections if the assessee proves that there was reasonable cause for such failure. Section 271GB has been included within the scope of section 273B. Therefore, the entity can offer reasonable cause defence for non-levy of penalties mentioned above.

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**Maintenance and furnishing of Master file: Consequent amendments in the Income-tax Act, 1961**

<table>
<thead>
<tr>
<th>Section</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Proviso to section 92D(1)</td>
<td>A person being constituent of an international group shall, in addition to the information related to the international transaction required under section 92D(1), also keep and maintain such information and document in respect of the international group to be prescribed by way of rules. The rules shall, thereafter, prescribe the information and document as mandated for master file under OECD BEPS Action 13 report;</td>
</tr>
<tr>
<td>(2) 92D(4)</td>
<td>The information and document shall also be furnished to the prescribed authority u/s 286(1) within such period as may be prescribed and the manner of furnishing may also be provided for in the rules</td>
</tr>
<tr>
<td>(3) 271AA(2)</td>
<td>For non-furnishing of the information and document to the prescribed authority, a penalty of Rs. 5 lakh shall be leviable.</td>
</tr>
<tr>
<td>(4) 273B</td>
<td>Reasonable cause defence against levy of penalty shall be available to the entity.</td>
</tr>
</tbody>
</table>

**Meaning of certain terms [Section 286(9)]**

<table>
<thead>
<tr>
<th>Term</th>
<th>Case</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Accounting year</td>
<td>In a case where the parent entity or alternate reporting entity is resident in India; or</td>
<td>A previous year</td>
</tr>
<tr>
<td></td>
<td>In any other case</td>
<td>An annual accounting period, with</td>
</tr>
</tbody>
</table>
| (b) Agreement | (i) an agreement referred to in section 90(1) or section 90A(1); or  
|             | (ii) any agreement as may be notified by the Central Government in this behalf. |
| (c) Alternate reporting entity | Any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the CbC report in the country or territory in which the said constituent entity is resident on behalf of such group. |
| (d) Constituent entity | (i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;  
|             | (ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or  
|             | (iii) any permanent establishment of any separate business entity of the international group included in clause (i) or clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes |
| (e) Group | This includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—  
|           | (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or  
|           | (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident. |
| (f) Consolidated financial statement | The financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity |
| (g) International group | Any group that includes,—  
|          | (i) two or more enterprises which are resident of different countries or territories; or  
|          | (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent |
establishment in other countries or territories;

(h) Parent entity A constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—

(i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or

(ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange, and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in clause (i) or clause (ii), that includes the separate financial statement of the first mentioned constituent entity.

(i) Permanent establishment Meaning assigned to it in clause (iiia) of section 92F i.e., includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

(j) Reporting accounting year The accounting year in respect of which the financial and operational results are required to be reflected in the report to be furnished by the parent entity or the alternate reporting entity in respect of the international group of which it is a constituent, every year, on or before the due date specified under section 139(1).

(k) Reporting entity The constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report in respect of the international group of which it is a constituent, for every reporting accounting year on or before the due date mentioned under section 139(1).

(l) Systemic failure Systemic failure, with respect to a country or territory, means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in section 286(2), but—

(i) in violation of the said agreement, it has suspended automatic exchange; or

(ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019: Clarification regarding definition of the “accounting year” in section 286 of the Act

Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. It provides that every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed.
Several concerns have been expressed that in case of an alternate reporting entity (ARE) resident in India whose ultimate parent entity is not resident in India, the accounting year would always be the accounting year applicable in the country where such ultimate parent entity is resident and cannot be the previous year of the entity resident in India. Accordingly, it has been requested that this unintended anomaly as regards the interpretation of accounting year in case of ARE, resident in India may be removed.

In order to address such concerns and to bring clarity in law, it is proposed to suitably amend section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity.

This amendment is clarificatory in nature.

The amendment will take effect retrospectively from the 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

***************************************************************************
CHAPTER 45. DOUBLE TAXATION AVOIDANCE AGREEMENTS (DTAA)

INTRODUCTION

In the present era of cross-border transactions across the globe, the effect of taxation is one of the important considerations for any trade and investment decision in other countries. One of the most significant results of globalisation is the visible impact of one country’s domestic tax policies on the economy of another country. This has led to the need for continuously assessing the tax regimes of various countries and bringing about necessary reforms.

Where a taxpayer is resident in one country but has a source of income situated in another country it gives rise to possible double taxation. This arises from the two basic rules that enables the country of residence as well as the country where the source of income exists to impose tax namely, (i) the source rule and (ii) the residence rule. The source rule holds that income is to be taxed in the country in which it originates irrespective of whether the income accrues to a resident or a non-resident whereas the residence rule stipulates that the power to tax should rest with the country in which the taxpayer resides. If both rules apply simultaneously to a business entity and it were to suffer tax at both ends, the cost of operating on an international scale would become prohibitive and would deter the process of globalisation. It is from this point of view that Double Taxation Avoidance Agreements (DTAA) become very significant.

DTAAs lay down the rules for taxation of the income by the source country and the residence country. Such rules are laid for various categories of income, for example, interest, dividend, royalties, capital gains, business income etc. Each such category is dealt with by separate article in the DTAA.

Double taxation means taxing the same income twice in the hands of an assessee. In India, a person is taxed on the basis of his residential status. Likewise, it may so happen that he is taxed on this basis or some other basis in another country on the same income. However, it is a universally accepted principle that the same income should not be subjected to tax twice. In order to take care of such situations, the Income-tax Act, 1961 has provided for double taxation relief.

SECTION 90: AGREEMENT WITH FOREIGN COUNTRIES OR SPECIFIED TERRITORIES

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India -

(a) for the granting of relief in respect of income on which have been paid both income-tax under the Income-tax Act and income-tax in that country or specified territory, as the case may be, or

(b) for the avoidance of double taxation of income under this Act and under corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at
obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory) or (Added by Finance Act 2020)

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(e) to promote mutual economic relations, trade and investments.

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in the Income-tax Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of the Income-tax Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Explanation—For the purposes of this section, "specified territory" means any area outside India which may be notified as such by the Central Government.

Explanation—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.
Also Refer Below Explanation along with article 24 of DTAA:
The charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

ANALYSIS
As per section 90(2), the provisions of agreement will apply if they are beneficial to the assessee. If the Income Tax Act is more beneficial to the assessee, then the Income Tax Act shall apply.
The effect of Double Taxation Avoidance Agreements 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 the other country, as per the agreement.

Also, if provisions of Income-tax Act are more beneficial to the assessee than DTAA, then the provisions of Income-tax Act are applicable. For example, if as per DTAA with a foreign country or specified territory; the royalty is to be taxed @ 35% then it will be beneficial to apply section 115A of the Income Tax Act where royalty is taxed @ 10%.
If provisions of DTAA are beneficial, then DTAA will apply. For example, if as per the DTAA with foreign country or specified territory, the royalty is to be taxed @ 10%, then it will be beneficial to apply DTAA instead of section 115A of Income Tax Act since 10% rate of DTAA will apply without surcharge and education cess.

KEY NOTES:
1. If a Foreign Company receives dividend from domestic company and as per the relevant DTAA, such dividend is taxable @ 10% in India, then DTAA shall apply, as the tax rate for Foreign Company is 40%.
2. If the rates of DTAA are applicable then, such rates shall not be increased by surcharge and Health & Education cess.

ILLUSTRATION
Examine the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961.
The double taxation avoidance treaties entered into by the Government of India override the domestic law.
SOLUTION
The statement is correct.
Section 90(2) provides that where a double taxation avoidance treaty is entered into by the Government, the provisions of the Income-tax Act, 1961 would apply to the extent they are more beneficial to the assessee.
In case of any conflict between the provisions of the double taxation avoidance agreement and the Income-tax Act, 1961, the provisions of the DTAA would prevail over the Act in view of the provisions of section 90(2), to the extent they are more beneficial to the assessee [CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 (SC)].
ANALYSIS OF AMENDMENT BY FINANCE ACT. 2009

Earlier, the Central Government was empowered to enter into an agreement only with foreign countries and after the amendment it shall be empowered to enter into such an agreement with any specified territory outside India.

Many of the offshore centers (generally perceived as tax havens) are non-sovereign jurisdictions and the Government is looking to enter into agreement for the exchange of information (AEI) and assistance in collection of taxes (ACT) with these jurisdictions.

It seems that the Government is set to track the unaccounted wealth stashed away by Indians in tax havens, with the proposed double-taxation avoidance treaties, or a Tax Information Exchange Agreement, with what it describes as 'non-sovereign' jurisdictions. The trigger for such a move is to get information on Indians who could be holding illegal accounts in some of these countries.

Section 90 of the Income-tax Act, 1961 - Double taxation agreement - Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries or specified territories - Notified 'specified territories'

NOTIFICATION NO. 22/2010, DATED 8-4-2010

In exercise of the powers conferred by Explanation 2 to section 90 of the Income-tax Act, 1961 the Central Government hereby notifies the following areas outside India as the 'specified territory' for the purposes of the said section, namely —

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Bermuda a British Overseas Territory</td>
</tr>
<tr>
<td>(ii)</td>
<td>British Virgin Islands a British Overseas Territory</td>
</tr>
<tr>
<td>(iii)</td>
<td>Cayman Islands a British Overseas Territory</td>
</tr>
<tr>
<td>(iv)</td>
<td>Gibraltar a British Overseas Territory</td>
</tr>
<tr>
<td>(v)</td>
<td>Guernsey a British Crown Dependency</td>
</tr>
<tr>
<td>(vi)</td>
<td>Isle of Man a British Crown Dependency</td>
</tr>
<tr>
<td>(vii)</td>
<td>Jersey a British Crown Dependency</td>
</tr>
<tr>
<td>(viii)</td>
<td>Netherlands Antilles an Autonomous Part of the Kingdom of Netherlands</td>
</tr>
<tr>
<td>(ix)</td>
<td>Macau a Special Administrative Region of The People's Republic of China</td>
</tr>
<tr>
<td>(x)</td>
<td>Hong Kong a Special Administrative Region of The People's Republic of China</td>
</tr>
<tr>
<td>(xi)</td>
<td>Sint Maarten A part of Kingdom of Netherlands</td>
</tr>
</tbody>
</table>

ILLUSTRATIONS ON AMENDMENTS BY FINANCE ACT, 2012

Illustration 1:
The Government of India has entered into the DTAA with Government of U.S.A. w.e.f. 1.4.1991. The Central Government defined the term not mentioned in DTAA by a notification dated 13.4.2017. Now, as per amendment by Finance Act, 2012 this definition of term given by Central Government is applicable from 1.4.1991 i.e., the date when DTAA was entered.

Illustration 2:
- Tax rate as per section 115A of Income tax Act on royalty is say 10%.
- Tax rate on such royalty is 5% as per DTAA between India and U.S.A.
- Tax rate on such royalty is 30% as per DTAA between India and Germany.
• Now what used to happen is that a German provided know how to an Indian. Tax rate of 10% shall apply.
• Now this German provides knowhow from U.S.A. and receives the payment in U.S.A. and claims that tax rate should be 5%.
• As per Amendment by Finance Act, 2012, the German will have to produce the Tax Residency Certificate of U.S.A. which he cannot produce. Therefore, he will pay tax @ 10%.

SECTION 90A: ADOPTION BY CENTRAL GOVERNMENT OF AGREEMENTS BETWEEN SPECIFIED ASSOCIATIONS FOR DOUBLE TAXATION RELIEF

Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement.

Provisions of section 90A are exactly same as section 90.

Explanation- For the purposes of this section, the expressions-
(a) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be notified as such by the Central Government for the purposes of this section.
(b) "specified territory" means any area outside India which may be notified as such by the Central Government for the purposes of this section.

RULE 21AB: CERTIFICATE FOR CLAIMING RELIEF UNDER AN AGREEMENT REFERRED TO IN SECTION 90 AND 90A.

(1) The certificate referred to in section 90(4) to be obtained by an assessee, not being a resident in India, from the Government of the country or the specified territory shall contain the following particulars, namely:-
   (i) Name of the assessee;
   (ii) Status (individual, company, firm etc.) of the assessee;
   (iii) Nationality (in case of individual);
   (iv) Country or specified territory of incorporation or registration (in case of others);
   (v) Assessee’s tax identification number in the country or specified territory of residence or in case no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory;
   (vi) Residential status for the purposes of tax;
   (vii) Period for which the certificate is applicable; and
   (viii) Address of the applicant for the period for which the certificate is applicable;

(2) The certificate referred to in sub-rule (1) shall be duly verified by the Government of the country or the specified territory of which the assessee, referred to in sub-rule (1), claims to be a resident for the purposes of tax.
(3) An assessee, being a resident in India, shall, for obtaining a certificate of residence for the purposes of an agreement referred to in section 90 and section 90A, make an application in Form No. 10FA to the Assessing Officer.

(4) The Assessing Officer on receipt of an application referred to in sub-rule (3) and being satisfied in this behalf, shall issue a certificate of residence in respect of the assessee in Form No. 10FB.

MEMORANDUM EXPLAINING FINANCE BILL, 2012

MEANING ASSIGNED TO A TERM USED IN DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

Section 90 of the Act empowers the Central Government to enter into an agreement with foreign countries or specified territories for the purpose of granting reliefs particularly in respect of double taxation. Under this power, the Central Government has entered into various treaties commonly known as Double Taxation Avoidance Agreements (DTAA's).

Sub-section (3) of sections 90 of the Act empowered the Central Government to assign a meaning, through notification, to any term used in the Agreement, which was neither defined in the Act nor in the agreement.

Since this assignment of meaning is in respect of a term used in a treaty entered into by the Government with a particular intent and objective as understood during the course of negotiations leading to formalization of treaty, the notification under section 90(3) gives a legal framework for clarifying the intent, and the clarification should normally apply from the date when the agreement which has used such a term came into force.

Therefore, the legislative intent of sub-section (3) to section 90 that whenever any term is assigned a meaning through a notification issued under Section 90(3), it shall have the effect of clarifying the term from the date of coming into force of the agreement in which such term is used, needs to be clarified.

It is proposed to amend Section 90 of the Act to provide that any meaning assigned through notification to a term used in an agreement but not defined in the Act or agreement, shall be effective from the date of coming into force of the agreement. It is also proposed to make similar amendment in Section 90A of the Act.

TAX RESIDENCE CERTIFICATE (TRC) FOR CLAIMING RELIEF UNDER DTAA

Section 90 of the Income Tax Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of:

(i) granting relief in respect of avoidance of double taxation,
(ii) exchange of information and
(iii) recovery of taxes.

In exercise of this power, the Central Government has entered into various Double Taxation Avoidance Agreements (DTAA's) with different countries and have adopted agreements between specified associations for relief of double taxation. The scheme of interplay of treaty and domestic legislation ensures that a taxpayer, who is resident of one of the contracting countries to the treaty, is entitled to claim applicability of beneficial provisions either of treaty or of the domestic law.
It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third-party residents claim unintended treaty benefits. Therefore, it is proposed to amend Section 90 and Section 90A of the Act to make submission of Tax Residency Certificate containing prescribed particulars.

**SECTION 91: COUNTRIES WITH WHICH NO AGREEMENT EXISTS**

If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

*Explanation* - In this section, -

(i) the expression "**Indian income-tax**" means income-tax charged in accordance with the provisions of this Act;

(ii) the expression "**Indian rate of tax**" means the rate determined by dividing the amount of Indian income-tax (after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this section) by the total income;

(iii) the expression "**rate of tax of the said country**" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country (after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation) divided by the whole amount of the income as assessed in the said country;

In simple words, if there is a country with which India does not have a Double Taxation Avoidance Agreement, and the assessee in respect of income arising outside India, pays income tax in foreign country and also in India, then he shall be entitled to deduct the lower of the following amount from Income tax payable by him in India in respect of such doubly taxed income;

(i) Tax on such doubly taxed income at the rates applicable in India which shall be computed as under:

\[
\text{Tax on Total Income in India} \times \text{Such doubly taxed income}
\]

\[
\frac{\text{Total Income in India}}{\text{Total Income in India}}
\]

(ii) Tax on such doubly taxed income at the rates applicable in foreign country which shall be computed as under:

\[
\text{Tax paid in foreign country} \times \text{Such doubly taxed income}
\]

\[
\frac{\text{Total income assessed in foreign country}}{\text{Total income assessed in foreign country}}
\]
**Question 1**
Kalpesh Kumar, a resident individual, is a musician deriving income of Rs. 7,50,000 from concerts performed outside India. Tax of Rs. 1,00,000 was deducted at source in the country where the concerts were performed. India does not have any double tax avoidance agreement with that country. His income in India amounted to Rs. 30,00,000.

Compute tax liability of Kalpesh Kumar for the assessment year 2021-22 assuming he has deposited Rs. 1,50,000 in Public Provident Fund and paid medical insurance premium in respect of his father, resident in India, aged 65 years, Rs. 52,000.

*(Ignore Sec 115BAC)*

**Answer**

**Computation of tax liability of Mr. Kalpesh for A.Y. 2021-22**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Income</td>
<td>30,00,000</td>
</tr>
<tr>
<td>Foreign Income</td>
<td>7,50,000</td>
</tr>
<tr>
<td><strong>Gross Total Income</strong></td>
<td><strong>37,50,000</strong></td>
</tr>
<tr>
<td>Less: Deduction under section 80C</td>
<td></td>
</tr>
<tr>
<td>PPF Contribution</td>
<td>1,50,000</td>
</tr>
<tr>
<td>Deduction under section 80D</td>
<td></td>
</tr>
<tr>
<td>Medical insurance premium of father, being a resident senior citizen, restricted to</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>35,50,000</strong></td>
</tr>
<tr>
<td>Tax on total income</td>
<td>8,77,500</td>
</tr>
<tr>
<td><strong>Add</strong>: Health and Education cess @4%</td>
<td>35,100</td>
</tr>
<tr>
<td><strong>Average rate of tax in India [i.e., Rs. 9,12,600 /Rs. 35,50,000 x 100]</strong></td>
<td>25.71%</td>
</tr>
<tr>
<td><strong>Average rate of tax in foreign country [i.e. Rs. 1,00,000/ Rs. 7,50,000 x 100]</strong></td>
<td>13.333%</td>
</tr>
<tr>
<td>Doubly taxed income</td>
<td>7,50,000</td>
</tr>
<tr>
<td>Deduction under section 91 on Rs. 7,50,000 @13.33% (lower of average Indian tax rate and foreign tax rate)</td>
<td>1,00,000</td>
</tr>
<tr>
<td><strong>Tax payable in India [Rs. 9,12,600 – Rs. 1,00,000]</strong></td>
<td><strong>8,12,600</strong></td>
</tr>
</tbody>
</table>

**Note:** An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:

(a) The assessee is a resident in India during the relevant previous year.
(b) The income accrues or arises to him outside India during that previous year.
(c) Such income is not deemed to accrue or arise in India during the previous year.
(d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.
In this case, Kalpesh Kumar is eligible for deduction under section 91 since all the above conditions are fulfilled.

**Question 2**

The following are the particulars of income earned by Miss Vivitha, a resident Indian aged 25, for the assessment year 2021-22:

<table>
<thead>
<tr>
<th>Income from playing snooker matches in country L</th>
<th>Rs. In lacs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax paid in country L</td>
<td>1.80</td>
</tr>
<tr>
<td>Income from playing snooker tournaments in India</td>
<td>19.20</td>
</tr>
<tr>
<td>Life Insurance Premium paid</td>
<td>1.10</td>
</tr>
<tr>
<td>Medical Insurance Premium paid for her father aged 62 years (paid through credit card)</td>
<td>0.54</td>
</tr>
</tbody>
</table>

Compute her total income and tax liability for the assessment year 2021-22. There is no Double Taxation Avoidance Agreement between India and country L. **(Ignore Sec 115BAC)**

**Answer**

Computation of total income and tax liability of Miss Vivitha for the A.Y. 2021-22

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Income [Income from playing snooker tournaments in India]</td>
<td>19,20,000</td>
<td></td>
</tr>
<tr>
<td>Foreign Income [Income from playing snooker matches in country L]</td>
<td>12,00,000</td>
<td></td>
</tr>
<tr>
<td><strong>Gross Total Income</strong></td>
<td><strong>31,20,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

Less: Deduction under Chapter VIA

**Deduction under section 80C**

Life insurance premium of Rs. 1,10,000 paid during the previous year deduction, is within the overall limit of Rs. 1.5 lakh. Hence, fully allowable as deduction

**Deduction under section 80D**

Medical insurance premium of Rs. 54,000 paid for her father aged 62 years. Since her father is a senior citizen, the deduction is allowable to a maximum of Rs. 50,000 (assuming that her father is also a resident in India). Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduction under section 80C</td>
<td></td>
<td>50,000</td>
</tr>
<tr>
<td>Deduction under section 80D</td>
<td></td>
<td>1,60,000</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>29,60,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Tax on Total Income**

Income-tax | 7,00,500 |
Add: Health and education cess @4% | 28,020 |
| | 7,28,520 |

Average rate of tax in India | 24.61% |
(i.e. \( \text{Rs.} \frac{7,28,520}{29,60,000} \times 100 \))

Average rate of tax in foreign country (i.e. Rs. 1,80,000/ | 15.00% |

45.9
Double Taxation Avoidance Agreements (DTAA)  AJ Education NeXt

<table>
<thead>
<tr>
<th>Rs.12,00,000 ×100)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduction under section 91 on Rs. 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)</td>
</tr>
<tr>
<td>Tax payable in India (Rs. 7,28,520 – Rs. 1,80,000)</td>
</tr>
</tbody>
</table>

Note: Miss Vivitha shall be allowed deduction under section 91, since the following conditions are fulfilled:

(a) She is a resident in India during the relevant previous year.
(b) The income accrues or arises to her outside India during that previous year and such income is not deemed to accrue or arise in India during the previous year.
(c) The income in question has been subjected to income-tax in the foreign country L in her hands and she has paid tax on such income in the foreign country L.
(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and country L where the income has accrued or arisen.

Question 3

Arif is a resident of both India and another foreign country in the previous year 2018-19. He owns immovable properties (including residential house) in both the countries. He earned income of Rs. 50 lacs from rubber estates in the foreign country during the financial year 2018-19. He also sold some house property situated in foreign country resulting in short-term capital gain of Rs. 10 lacs during the year. Arif has no permanent establishment of business in India. However, he has derived rental income of Rs. 6 lacs from property let out in India and he has a house in Lucknow where he stays during his visit to India.

Article 4 of the Double Taxation Avoidance Agreement between India and the foreign country where Arif is a resident, provides that “where an individual is a resident of both the Contracting States, then he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests)”. You are required to examine with reasons whether the business income of Arif arising in foreign country and the capital gains in respect of sale of the property situated in foreign country can be taxed in India. (See after Model Tax Convention)

SOLUTION

Section 90(1) of the Income-tax Act, 1961 empowers the Central Government to enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the Indian law and the corresponding law of that country. Section 90(2) provides that where the Central Government has entered into an agreement with the Government of any other country for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to that assessee.

Arif has residential houses both in India and foreign country. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with foreign country provides that where an individual is a resident of both the countries, he shall be deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he shall be deemed to be resident of that
country, which is the centre of his vital interests i.e. the country with which he has closer personal and economic relations.

Arif owns rubber estates in a foreign country from which he derives business income. However, Arif has no permanent establishment of his business in India. Therefore his personal and economic relations with foreign country are closer, since foreign country is the place where –

**(a)** the property is located and

**(b)** the permanent establishment (PE) has been set-up

Therefore, he shall be deemed to be resident of the foreign country for A.Y. 2019-20.

The fact of the case and issues arising therefrom are similar to that of *CIT vs. P.V.A.L. Kulandagan Chettiar* (2004) 267 ITR 654, where the Supreme Court held that if an assessee is deemed to be a resident of a contracting State where his personal and economic relations are closer, then in such a case, the fact that he is a resident in India to be taxed in terms of sections 4 and 5 would become irrelevant, since the DTAA prevails over sections 4 and 5.

However, as per section 90(4), in order to claim relief under the agreement, Arif has to obtain a certificate [Tax Residency Certificate (TRC)] declaring his residence of the country outside India from the Government of that country. Further, he also has to provide such other documents and information, as may be prescribed.

Therefore, in this case, Arif is not liable to income tax in India for assessment year 2019-20 in respect of business income and capital gains arising in the foreign country provided he furnishes the Tax Residency Certificate and provides such other documents and information as may be prescribed.

**Question 4**

*Mr. Kamesh, an individual resident in India furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year 2020-21. India has not entered into double taxation avoidance agreement with these two countries.*

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from profession carried on in India</td>
<td>7,50,000</td>
</tr>
<tr>
<td>Agricultural income in Country &quot;X&quot; (gross)</td>
<td>50,000</td>
</tr>
<tr>
<td>Dividend received from a company incorporated in Country &quot;Y&quot; (gross)</td>
<td>1,50,000</td>
</tr>
<tr>
<td>Royalty income from a literary book from Country &quot;X&quot; (gross)</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Expenses incurred for earning royalty</td>
<td>50,000</td>
</tr>
<tr>
<td>Business loss in Country &quot;Y&quot; (Proprietary business)</td>
<td>65,000</td>
</tr>
<tr>
<td>Rent from a house situated in Country &quot;Y&quot; (gross)</td>
<td>2,40,000</td>
</tr>
<tr>
<td>Municipal tax in respect of the above house (not allowed as deduction in country &quot;Y&quot;)</td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Note:** Business loss in Country "Y" not eligible for set off against other incomes as per law of that country. The rates of tax in Country "X" and Country "Y" are 10% and 25%, respectively.

Compute total income and tax payable by Mr. Kamesh in India for Assessment Year 2021-22. (Ignore Sec 115BAC)
Answer

**Computation of total income of Mr. Kamesh for A.Y.2021-22**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income from House Property [House situated in country Y]</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Annual Value</td>
<td>2,40,000</td>
<td></td>
</tr>
<tr>
<td>Less: Municipal taxes (assumed as paid in that country)</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Net Annual Value</td>
<td>2,30,000</td>
<td></td>
</tr>
<tr>
<td>Less: Deduction under section 24 – 30% of NAV</td>
<td>69,000</td>
<td>1,61,000</td>
</tr>
<tr>
<td><strong>Profits and Gains of Business or Profession</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from profession carried on in India</td>
<td>7,50,000</td>
<td></td>
</tr>
<tr>
<td>Royalty income from a literary book from Country X (after deducting expenses of Rs. 50,000)</td>
<td>5,50,000</td>
<td></td>
</tr>
<tr>
<td>Less: Business loss in country Y set-off</td>
<td>65,000</td>
<td>12,35,000</td>
</tr>
<tr>
<td><strong>Income from Other Sources</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agricultural income in country X</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>Dividend received from a company in country Y</td>
<td>1,50,000</td>
<td>2,00,000</td>
</tr>
<tr>
<td><strong>Gross Total Income</strong></td>
<td>15,96,000</td>
<td></td>
</tr>
<tr>
<td><strong>Less: Deduction under Chapter VIA</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under section 80QQB – Royalty income of a resident from literary work</td>
<td></td>
<td>3,00,000</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td>12,96,000</td>
<td></td>
</tr>
</tbody>
</table>

**Computation of tax liability of Mr. Kamesh for A.Y.2021-22**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on total income [30% of Rs. 2,96,000 + Rs. 1,12,500]</td>
<td>2,01,300</td>
</tr>
<tr>
<td>Add: Health and Education cess@4%</td>
<td>8,052</td>
</tr>
<tr>
<td><strong>Less: Deduction under section 91 (See Working Note below)</strong></td>
<td></td>
</tr>
<tr>
<td>Tax Payable</td>
<td>69,739</td>
</tr>
<tr>
<td>Tax payable (rounded off)</td>
<td>1,39,613</td>
</tr>
</tbody>
</table>

**Working Note: Calculation of Rebate under section 91**

<table>
<thead>
<tr>
<th><strong>Rs.</strong></th>
<th><strong>Rs.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average rate of tax in India [i.e., Rs. 2,09,352 / Rs. 12,96,000 x 100]</td>
<td>16.154%</td>
</tr>
<tr>
<td>Average rate of tax in country X</td>
<td>10%</td>
</tr>
<tr>
<td>Doubly taxed income pertaining to country X</td>
<td></td>
</tr>
<tr>
<td>Agricultural Income</td>
<td>50,000</td>
</tr>
<tr>
<td>Royalty Income [Rs. 6,00,000 – Rs. 50,000 (Expenses) – Rs. 3,00,000 (deduction under section 80QQB)]</td>
<td>2,50,000</td>
</tr>
<tr>
<td><strong>Doubly taxed income pertaining to country Y</strong></td>
<td>3,00,000</td>
</tr>
<tr>
<td>Deduction under section 91 on Rs. 3,00,000 @10% [being the lower of average Indian tax rate (16.154%) and foreign tax rate (10%)]</td>
<td>30,000</td>
</tr>
<tr>
<td>Average rate of tax in country Y</td>
<td>25%</td>
</tr>
<tr>
<td>Doubly taxed income pertaining to country Y</td>
<td></td>
</tr>
<tr>
<td>Income from house property</td>
<td>1,61,000</td>
</tr>
<tr>
<td>Dividend</td>
<td>1,50,000</td>
</tr>
<tr>
<td>Less: Business loss set-off</td>
<td></td>
</tr>
<tr>
<td>Deduction under section 91 on Rs. 2,46,000 @16.154% (being the lower of average Indian tax rate (16.154%) and foreign tax rate (25%))</td>
<td>39,739</td>
</tr>
<tr>
<td>Total rebate under section 91 (Country X + Country Y)</td>
<td>69,739</td>
</tr>
</tbody>
</table>

**Note:** Mr. Kamesh shall be allowed deduction under section 91, since the following conditions are fulfilled:

(a) He is a resident in India during the relevant previous year (i.e., P.Y.2020-21).

(b) The income in question accrues or arises to him outside India in foreign countries X and Y during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries X and Y in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries X and Y where the income has accrued or arisen.

**********************************************************************
Double Taxation Avoidance Agreements (DTAA)  AJ Education NeXt  
45.13  

Income from house property 1,61,000  ... Y where the income has accrued or aris en. 
**********************************************************************
As per the provisions of Section 80A(2), in computing the total income of the Assessee, there shall be allowed, from the gross total income, deductions as specified u/s 80C to Sec 80U.

However, the aggregate amount of deductions u/s 80C to 80U, shall NOT exceed, the Gross Total Income of the Assessee.

\[
\begin{align*}
\text{Deduction u/s 80C to 80U} & > \text{GTI} \quad \text{(No)} \\
\text{Deduction u/s 80C to 80U} & \leq \text{GTI} \quad \text{(YES)}
\end{align*}
\]

Hence, the total income after deductions, will either be:

(a) Positive (or)

(b) Nil.

It cannot be Negative due to deductions. If the Gross Total Income is Negative (or) Nil, no deduction can be permitted under this chapter.

**Certain Incomes which are NOT ELIGIBLE for any deduction.**

(i) Long Term Capital Gains (LTCG)

(ii) Short Term Capital Gains (STCG) covered u/s 111A.

(iii) Winnings income.

(iv) Incomes of Non Residents specified u/s 115A, 115AB, 115AC, 115ACA, 115AD, 115BBA & 115D etc.

**Section 80C : Deductions w.r.t. Specified payments or Investments.**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Maximum Amount of Deduction u/s 80C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals (Y)</td>
<td>(i) Aggregate of Specified Payments / Investments xx</td>
</tr>
<tr>
<td>HUF (Y)</td>
<td>(OR)</td>
</tr>
<tr>
<td>Any other (N)</td>
<td>(ii) Maximum Amount of deduction u/s 80C Rs. 1,50,000</td>
</tr>
</tbody>
</table>

Subject to Sec 80CCE
**Note 1 : Specified payments / investments**

1) Insurance premium paid to effect (take) or to keep in force (renew), a life Insurance policy taken by:

<table>
<thead>
<tr>
<th>An Individual for</th>
<th>A HUF, for</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>Any child of the individual</td>
</tr>
<tr>
<td></td>
<td>Any Member</td>
</tr>
</tbody>
</table>

* Note 1.1 : Life Insurance premium of the EE paid by the ER is allowed as a deduction u/s 80C for the EE*

* Note 1.2 : Premium paid in respect of any of the above policy, shall be eligible, subject to:

<table>
<thead>
<tr>
<th>Date of Issue of Policy</th>
<th>Amount of Eligible premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) On or after 01.04.2003 but on or before 31.03.2012</td>
<td>Maximum of 20% of Capital sum Assured.</td>
</tr>
<tr>
<td>ii) On or after 01.4.2012, but on or before 31.03.2013.</td>
<td>Maximum of 10% of Capital Sum Assured</td>
</tr>
<tr>
<td>iii) On or after 01.04.2013</td>
<td></td>
</tr>
<tr>
<td>- for any NORMAL Assessee</td>
<td>Maximum 10% of Capital sum Assured.</td>
</tr>
<tr>
<td>- for a person, suffering</td>
<td>Maximum 15% of Capital sum Assured</td>
</tr>
<tr>
<td>Any disability referred to u/s 80U</td>
<td>Any disease referred to u/s 80U</td>
</tr>
<tr>
<td>Any disease as specified in the rules mode u/s 80DDB</td>
<td>Any disease as specified in the rules mode u/s 80DDB</td>
</tr>
</tbody>
</table>

* Note 1.3 : Amount received from any life Insurer

<table>
<thead>
<tr>
<th>As Annuity</th>
<th>As Death Benefit by the Nominees</th>
<th>As a lumpsum on Maturity of the policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable under the head IFOS</td>
<td>Fully Exempt u/s 10(10D)</td>
<td>Fully Exempt u/s 10(10D)</td>
</tr>
</tbody>
</table>

Exemption i.r.o.f. maturity proceeds is granted, only if the amount of Annual premium paid in any of the years, during the term of the policy does not exceed 20% or 10% or 15% as the case may be.
**Note 1.4**: Amount received under the keyman Insurance Policy is taxable under the head PGBP or SALARY or IFOS (as the case may be) i.e. No Exemption u/s 10(10D) is available.

**Note 1.5**: Life Insurance Policy is terminated or it is discontinued within 2 years after its date of commencement or before the premium for 2 years has been paid.

No deduction u/s 80C is available in the year of termination / discontinuation and aggregate deduction granted in the past years, shall be deemed to be the income of the PY in which the policy is terminated / discontinued.

2) Payment in respect of Non-Commutable Deferred Annuity plan, taken by an individual for:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>Spouse</td>
<td>Any child of the individual</td>
</tr>
</tbody>
</table>

3) Any sum deducted from the salary of any Government EE towards Deferred Annuity plan for making provision for / benefit of:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>Spouse</td>
<td>Any child of the individual</td>
</tr>
</tbody>
</table>

Such sum deducted should NOT EXCEED 1/5th of Salary.

4) Payment made by an individual / HUF towards Notified Annuity Plans of LIC, or any other approved insurer.

Jeevan Dhara & Jeevan Akshaya

5) Employees contribution towards.

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ASAF</td>
<td>SPF</td>
<td>RPF</td>
<td>URPF</td>
</tr>
<tr>
<td>(Y)</td>
<td>(Y)</td>
<td>(Y)</td>
<td>(N)</td>
</tr>
</tbody>
</table>

# Note: EE’s contribution to PF should NOT EXCEED 1/5th of salary.
6) Any contribution / Deposit, made into Public provident Fund A/c (PPF) by

<table>
<thead>
<tr>
<th>An Individual for</th>
<th>A HUF, for</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>Any child of the individual</td>
</tr>
<tr>
<td></td>
<td>Any Member</td>
</tr>
</tbody>
</table>

**Note 6.1:** Interest on PPF a/c is fully Exempt u/s 10(11).

7) Contribution / subscription by an Individual / HUF to **National**

<table>
<thead>
<tr>
<th>Savings scheme (NSS)</th>
<th>Savings certificate (NSC)  [Including Accrued Interest thereon] (Refer IFOS)</th>
<th>Housing Bank (NHB) (- Schemes)</th>
<th>Bank for Agricultural &amp; Rural Development (NABARD) (- notified bonds)</th>
</tr>
</thead>
</table>

8) Contribution by an Individual / HUF to unit linked Insurance Plans (ULIP’S) of:

| Units Trust of India (UTI) | LIC Mutual Fund |

**Note 8.1:** If the assessee terminates his participation or ceases to participate because of Non payment of his CONTRIBUTION before making contribution for 5 years.

Deduction u/s 80C shall NOT be allowed in the year of termination and the aggregate amount of deduction allowed in the past years shall also be deemed to be the Income of the PY in which the plan is terminated.

9) Subscription made by an Individual / HUF to any notified deposit scheme of:

| Any public sector company (eg. LIC Housing Finance Limited), engaged in providing Long Term finance for - purchase (Y) - Construction (Y) of Residential HP | Any Authority (eg. MHADA, SRA, MMRDA, etc.) constituted in India for Infrastructural Development of cities / towns/ villages, (OR) for dealing with / satisfying the need for Housing. |

10) Any sum paid by an Individual as Tuition fees, for Full Time Education of any 2 children to any school / college/ university in India.
11) Subscription by an Individual / HUF to notified Units of

| Unit Trust of India (UTI) | Any Mutual fund |

Note 11.1: Equity linked savings scheme [ELSS] has been notified in this regard.

12) Contribution by an Individual to a Notified Pension Fund of

| Unit Trust of India (UTI) | Any Mutual fund |

13) Term Deposit made with any Scheduled Bank in accordance with a scheme framed and notified by the central Government (Minimum 5 years)

Where

| In case the term deposit a/c is jointly held, deduction u/s 80C shall be allowable, only to the 1st holder of the deposit a/c. |
| Term Deposit w.r.t. which a deduction was claimed shall NOT be pledged or kept as security. |

14) Any sum deposited under the Senior Citizen savings Scheme as per the "Senior Citizens Savings Scheme Rules, 2004".

15) Any sum deposited in the Post office Time Deposit Account as per the Post Office Time Deposit Rules 1981 (Minimum 5 years)

Note (applicable for Point No 14 & 15)
If any sum is WITHDRAW (including interest thereon) from the SCSS (or) POTD a/c, before the expiry of 5 years from the DATE OF DEPOSIT, the amount so withdraw shall be deemed to be the Income of the PY in which it is withdrawn.

However, if such amount is received by the Nominee (or) legal heir of the assessee on the death of the assessee then it is NOT Taxable in the hands of such nominee (or) legal heir.

16) Subscription to Equity shares (or) Debentures of any PUBLIC Company engaged in Infrastructure Facility / Power Sector.

Minimum Lock-in Period for the above shares or debentures is 3 years. If they are transferred within 3 years from the date of acquisition, then the amount of deduction
allowed earlier u/s 80C shall be deemed to be the Income of that PY in which the shares / debentures are transferred.

17) Subscription to Notified units of Mutual Funds investing in Approved Public Companies (as stated in Point No 16 above)

18) Any payment made by an Individual or HUF for the purpose of:
   - Purchase (or)
   - Construction
   of a Residential HP, the Income of which is chargeable to tax, under the head IFHP.

**Note 18.1:** Payment should be made towards
   a) Any Installment or part payment of the amount due under any scheme of any development authority or housing board or any other authority engaged in the construction and sale of Residential House Properties.
   b) Any Installment or Part Payment of the amount due to any company (or) Co-operative Society of which the assessee is the shareholder / member towards the cost of the HP allotted to him.
   c) Repayment of Amount borrowed from:
      - Central / State Govt [CG / SG]
      - Any Bank.
      - LIC of India
      - National Housing Bank (NHB)
      - Any Indian Public Company engaged in providing Long term finance for:
        - Purchase (OR) Construction of Residential HP (or) any such Co-Op Society.
        - the Employer (Public Co. public sector Co, university or college affiliated to such university local authority Co-operative society any authority or board or corporation, or any other body established under any law)
   d) Stamp Duty Registration fees, & other expenses for the purpose of transfer of such HP to the Assessee.

**Note 18.2:** Following payments shall NOT QUALIFY for deduction u/s 80C:
   a) Admission fee, cost of share, Initial Deposit, etc payable by the Shareholder / member of the company or Co-Op Society for becoming such shareholder / member.
   b) Cost of any Addition Alteration Repairs Renovation carried out
c) Any expenditure w.r.t which deduction is allowable u/s 24 (i.e. Interest on Housing Loan).

**Note 18.3:** If the residential HP w.r.t which deduction u/s 80C has been claimed is transferred before the expiry of 5 yrs from the date of its Acquisition then NO Deduction shall be allowed in the year of Transfer & the aggregate amount of deduction allowed in the earlier PY’s shall be deemed to be the Income of the PY in which such Residential HP is transferred.

19) Any amount deposited in the name of any girl child in the Sukanya Samriddhi Scheme a/c.

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**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

To enable the **Central Government employees** to have more options of tax saving investments under National Pension System, it is proposed to amend the section 80C so as to provide that any amount paid or deposited by a **Central Government employee** as a contribution to his **Tier-II account of the pension** scheme for a fixed period of **not less than 3 years** shall be eligible for deduction under the said section.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

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**Section 80CCC Deductions w.r.t contributions to certain Pension Funds.**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Maximum Amt of Deduction u/s 80CCC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual (Resident or Non Resident) (Y)</td>
<td>Any other person (No)</td>
</tr>
<tr>
<td></td>
<td>Amt contributed by the assessee (OR)</td>
</tr>
<tr>
<td></td>
<td>xx</td>
</tr>
<tr>
<td></td>
<td>L</td>
</tr>
<tr>
<td></td>
<td>O</td>
</tr>
<tr>
<td></td>
<td>W</td>
</tr>
<tr>
<td></td>
<td>ER</td>
</tr>
<tr>
<td></td>
<td>Maximum amt of deduction u/s 80CCC [Subj to Sec 80CCE]</td>
</tr>
</tbody>
</table>
Contribution must be made in the pension plans / pension Polices / Pension Scheme / Pension fund / Annuity of:

| Life Insurance Corporation of India (LIC) | (OR) | Any other approved Insurance Company |

**Note 1:** Payment towards Pension plan or Policy or Scheme or fund shall be for the Individual himself.

**Note 2:** The contribution must be made out of Taxable Income of the assessee.

**Note 3:** Where the assessee or his nominee surrenders the Annuity before maturity the surrender value including Bonus or Interest (if any), shall be taxable in the hands of the assessee or nominee in the PY in which it is received.

**Note 4:** Where deduction u/s 80CCC is allowed w.r.t. contribution made to Specified pension plans no deduction u/s 80C shall be granted.

**Section 80CCD : Deductions w.r.t Contributions to Notified Pension Schemes (NPS) of Central Government [CG]**

<table>
<thead>
<tr>
<th>Eligible Assessee:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals (Resident &amp; Non Residents)</td>
</tr>
</tbody>
</table>

**Note 1:** In case of a salaried Individual his ER’s contribution toward NPS is also eligible as a deduction u/s 80CCD and the contribution of the ER’ to the EE’s NPS a/c is taxable as a perquisite under the head “salaries” in the hands of the EE.”
AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:
INCREASED DEDUCTION FOR CG CONTRIBUTION:
Under the existing provisions of section 80CCD of the Income-tax Act, in respect of any contribution by the Central Government or any other employer to the account of the employee referred to in the section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government or any other employer, as does not exceed ten per cent of his salary in the previous year. In order to ensure that the Central Government employees get full deduction of the enhanced contribution, it is proposed to increase the limit from ten to fourteen per cent. of contribution made by the Central Government to the account of its employee.

It is to be noted that ER’s contribution to NPS, though eligible for deduction u/s 80CCD(2) in the hands of the EE’, it will NOT be eligible for the benefit of Excess limit u/s 80CCD (1B) and neither will it be covered u/s 80CCE as well.

* **Note 2:** Amount standing to the credit of NPS a/c, for which a deduction is already claimed u/s 80CCD, and accretions to such account shall be taxed as the Income of that PY in which the same is received by the assessee or his nominee on the closure of A/c (or) on opting out of the scheme (or) on receipt of pension from the said scheme.

However, such amount shall NOT be taxed on Receipt Basis, if it is Invested in other annuity plans in the SAME PY.

* **Note 3:** An additional limit of Rs. 50,000 has been inserted by way of Inserting Sec 80CCD(1B) to allow the excess amount of contribution which remains unallowed u/s 80CCD(1) [Subject to Max Rs. 50,000].

* **Note 4:** The Central Government vide Notification no 07/2016 (dated 19.02.2016) has notified “Atal Pension Scheme” as a Notified Pension Scheme.
**Section 80CCE Limit on deductions u/s 80C, 80CCC and 80CCD**

The aggregate amount of deductions u/s 80C, 80CCC and 80CCD (excluding Employer's contribution to NPS) shall not in any case exceed Rs. 1,50,000. [Finance Act 2014 Amendment]

<table>
<thead>
<tr>
<th>Eligible Amt u/s 80C</th>
<th>xx</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Amt u/s 80CCC</td>
<td>xx</td>
</tr>
<tr>
<td>Eligible Amt u/s 80CCD(1) [excl. ER' cont”]</td>
<td>xx</td>
</tr>
<tr>
<td><strong>Total 80C (+) 80CCC (+) 80CCD</strong></td>
<td>xxx</td>
</tr>
<tr>
<td><strong>(OR)</strong></td>
<td>L</td>
</tr>
<tr>
<td><strong>Maximum Amt u/s 80CCE</strong></td>
<td>Rs. 1,50,000</td>
</tr>
</tbody>
</table>

**Section 80D:** Deduction w.r.t. Medical Insurance Premium & / or Preventive Health Check-up.

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
</tr>
<tr>
<td>HUF</td>
</tr>
<tr>
<td>Any other Person</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resident</th>
<th>Non Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Y)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

**Senior Citizen = Resident Individual whose age is 60 years at any time during the PY.**

**AMENDMENT MADE BY FINANCE ACT 2018:**

**Amendment to section 80D**

The following amendments have been made to the scheme of section 80D with effect from the assessment year 2019-20 as follows -

- Section 80D, inter alia, provides that for medical insurance (or preventive health check-up of a senior citizen), deduction of Rs. 30,000 shall be allowed. Further, in the case of super senior citizens, the said section also provides for a deduction of medical expenditure within the overall limits of Rs. 30,000.

The above monetary limits have been extended so as to provide that the deduction of Rs. 50,000 in aggregate shall be allowed to senior citizens in respect of medical insurance or preventive health check-up or medical expenditure.

- In case of single premium health insurance policies having cover of more than one year, deduction under section 80D shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

*Note: Mediclaim premium should be paid other than cash. However, Preventive checkup payment can be made in cash.*
## Provisions of section 80D before and after amendment

<table>
<thead>
<tr>
<th>For whose benefit payment can be made</th>
<th>Deduction in the case of individual</th>
<th>Deduction in the case of HUF</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Medi-claim insurance premium</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>b. Contribution to CGHS/notified scheme</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>c. Preventive health check-up payment</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>Maximum deduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- General deduction [applicable in respect of (a), (b) and (c)]</td>
<td>Rs. 25,000</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>- Additional deduction [applicable only in case of (a) when medi-claim policy is taken on the life of a senior citizen]</td>
<td>Rs. 5,000</td>
<td>Rs. 5,000</td>
</tr>
<tr>
<td>* For the assessment years 2016-17 to 2018-19</td>
<td>Rs. 25,000</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>* From the assessment year 2019-20</td>
<td>Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>B. Medical expenditure on the health of a person who is a super senior citizen (senior citizen from the assessment year 2019-20) if medi-claim insurance is not paid on the health of such person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum deduction in respect of (B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- For the assessment years 2016-17 to 2018-19</td>
<td>Rs. 30,000</td>
<td>Rs. 30,000</td>
</tr>
<tr>
<td>- From the assessment year 2019-20</td>
<td>Rs. 50,000</td>
<td>Rs. 50,000</td>
</tr>
<tr>
<td>C. Maximum deduction in respect of (A) and (B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- For the assessment years 2016-17 to 2018-19</td>
<td>Rs. 30,000</td>
<td>Rs. 30,000</td>
</tr>
<tr>
<td>- From the assessment year 2019-20</td>
<td>Rs. 50,000</td>
<td>Rs. 50,000</td>
</tr>
</tbody>
</table>

### Section 80DD: Deduction w.r.t. Expenditure incurred on Maintenance (including Medical Treatment) of HANDICAP DEPENDENT Relative (HDR)

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Individual</th>
<th>HUF</th>
<th>Any other Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>(N)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(N)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Non Resident</th>
<th>Resident</th>
<th>Non Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>(N)</td>
<td>(Y)</td>
<td>(N)</td>
<td></td>
</tr>
</tbody>
</table>

**Deduction u/s 80DD would be available if the assessee has:**

- Incurred Expenditure on the Medical Treatment of HDR including expenditure on:
- Deposited / Contributed any amount in any Special Deposit Scheme of

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49.11
# Handicap Dependent Relative

- SSPC → Spouse
- SSPC → Siblings (brother(s) / Sister(s))
- SSPC → Parents
- SSPC → Children

**Mental Disability as Specified in this regard.**

# Amount of deduction u/s 80DD

<table>
<thead>
<tr>
<th>(%) of Disability</th>
<th>Nature of Disability</th>
<th>Amount of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Less than 40%</td>
<td>No disability</td>
<td>NIL</td>
</tr>
<tr>
<td>b) ≥ 40% but &lt; 80%</td>
<td>Ordinarily Disabled</td>
<td>Rs.75,000</td>
</tr>
<tr>
<td>c) ≥ 80%</td>
<td>Severely Disabled</td>
<td>Rs.1,25,000</td>
</tr>
</tbody>
</table>

# Notes:

i) Amount of deduction u/s 80DD does NOT depend upon the amount of Expenditure Incurred. Hence, the same has to be ignored. Only a fixed deduction as specified above, depending on the (%) of disability of the HDR, is allowed as a deduction.

ii) Certificate of Disability of the HDR has to be obtained from an Approved Medical Authority in order to claim the deduction u/s 80DD.

iii) If the HDR dies before the assessee, then any amount received by the Assessee from the Special Schemes, shall be taxable in the hands of the assessee as IFOS in the year in which it is so received.

iv) No deduction u/s 80DD shall be granted to the assessee, in respect of expenditure incurred on the HDR, if such HDR is claiming the deduction u/s 80U, under his / her own assessment.
**Section 80U: Deduction in case of a person with DISABILITY**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Any other person</td>
</tr>
<tr>
<td>(Suffering from a disability specified u/s 80DD)</td>
<td>(N)</td>
</tr>
<tr>
<td>Resident</td>
<td>Non-Resident</td>
</tr>
<tr>
<td>(Y)</td>
<td>(N)</td>
</tr>
</tbody>
</table>

Deduction u/s 80U is granted to the assessee if he/she is suffering from any specified disability at any time during the PY.

Certificate as issued by any approved medical authority specifying the nature and % of disability must be OBTAINED and FURNISHED in the prescribed form in order to get deduction u/s 80U.

Amount of Deduction u/s 80U = Amount as specified u/s 80DD.

**Section 80DDB: Deduction w.r.t. expenditure on Treatment of Specified Diseases or Ailments**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>HUF</td>
</tr>
<tr>
<td>Non Resident</td>
<td>Resident</td>
</tr>
<tr>
<td>(N)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

Deduction u/s 80DDB shall be allowed only if the assessee has incurred expenditure on treatment of diseases/ailments as specified under Rule 11DD.

Should be incurred in relation to

<table>
<thead>
<tr>
<th>An Individual on treatment of</th>
<th>A HUF, on treatment of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self</td>
<td>Dependent SSPC</td>
</tr>
<tr>
<td>- Spouse</td>
<td></td>
</tr>
<tr>
<td>- Siblings (Brothers)</td>
<td></td>
</tr>
<tr>
<td>- Sisters</td>
<td>Any member who is dependent wholly (or) mainly on such HUF for support &amp; Maintenance.</td>
</tr>
</tbody>
</table>
## *Amount of Deduction u/s 80DDB*

<table>
<thead>
<tr>
<th>Actual Amt Incurred on Treatment</th>
<th>xx</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>(OR)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Amt as specified u/s 80DDB</td>
<td>Rs.40,000</td>
<td>W</td>
</tr>
<tr>
<td>* [Rs. 1,00,000 if Expense is incurred on treatment of Resident senior Citizen]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower of the above 2 Amts</td>
<td>xxxx</td>
<td></td>
</tr>
<tr>
<td>(−) Amt received as Re-imbursement from the Insurance Co / Employer’</td>
<td>(xx)</td>
<td></td>
</tr>
<tr>
<td>Deduction u/s 80DDB</td>
<td>xxx</td>
<td></td>
</tr>
</tbody>
</table>

### *Note 1*: Certificate for Treatment of Specified disease / ailments shall be obtained by the assessee from a specialist Doctor working in any Government Hospital.

## *Section 80E : Deduction w.r.t interest on Loan taken for Higher Education*

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
</tr>
<tr>
<td>Any other person</td>
</tr>
<tr>
<td>Resident (Y)</td>
</tr>
</tbody>
</table>

Deduction u/s 80E shall be allowed only if the assessee has paid interest on Higher Education Loan, taken for the Education of:

<table>
<thead>
<tr>
<th>Self</th>
<th>Spouse</th>
<th>Any child</th>
<th>A student for whom, the assesses is a legal guardians</th>
</tr>
</thead>
</table>

Such loan should be taken from:

| Any Financial Institution | (OR) | Any Approved Charitable Institution |
### Amount of deduction u/s 80E

<table>
<thead>
<tr>
<th>Principal Amount of Loan repaid</th>
<th>Whole of the Interest Paid on such loan</th>
</tr>
</thead>
<tbody>
<tr>
<td>(N)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

100% of the Deduction u/s 80E is Available w.r.t the initial Year i.e. AY relevant to the PY in which the assessee starts paying the interest on such loan and Immediately succeeding 7 AY’s (OR) until the interest on such loan is paid in full by the assessee.

*Note*: Higher Education means any course of study pursued after passing the senior secondary Examination, or its equivalent, from any School / Board / University, approved by the CG / SG / Local authority / any other authorized authority.

### Section 80EE : Additional Deduction for interest on Loan Borrowed for acq” of SOP (R) HP by an individual

- Amended by FA, 2016

Under Section 80EE, a deduction of upto Rs. 1,00,000 w.r.t Interest paid on loan by an individual for Acquisition of a Residential HP was allowed for AY 2014-15 and AY 2015-16.

As a step towards achieving the Government’s aim of providing “Housing for all”, first-home buyers availing home loans are encouraged by providing an ADDITIONAL DEDUCTION U/S 80EE from AY 2017-18 w.r.t interest on loan taken by an Individual for Acquisition of Residential HP, from any Financial Institution

| A Banking Co. to which the “Banking Regulation Act, 1949” applies | Any bank or Banking Institution referred u/s 51 of the Banking regulation Act, 1941 | A HOUSING finance Co .i.e. A Public Company formed (or) registered in India, with the main object of coming on the Business of providing long term finance, for Construction (or) Purchase of Houses in India for the purpose of Residence. |
**Amt of Dedn u/s 80EE:**

<table>
<thead>
<tr>
<th>Interest on Loan borrowed</th>
<th>Xx</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>(OR)</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Maximum Deduction u/s 80EE</td>
<td>Rs. 50,000</td>
<td>W</td>
</tr>
</tbody>
</table>

**Conditions for Availing dedn u/s 80EE:**

1. The Loan should be sanctioned during the PY 2016-2017.
2. The Assessee should NOT own, any Residential HP, on the date of sanction of loan.
3. Value of loan sanctioned ≤ Rs. 35 lakhs.
4. Value of HP taken ≤ Rs. 50 lakhs.

**Notes**

1. The benefit of deduction u/s 80EE would be available till the Repayment of loan continues.
2. This deduction of Rs. 50,000 is over and above the deduction of upto Rs. 2,00,000 available u/s 24(b), for Interest paid w.r.t. loan borrowed for acquisition of sop (R).

**Illustration**

Mr A purchased a Residential SOP(R) at a cost of Rs. 45 lakhs on 01.06.16 w.r.t. which he took a housing loan of Rs. 35 lakhs, from Bank of India @ 11% p.a. on the same date. Compute the eligible deduction w.r.t. Int on Housing loan for AY 2017 - 2018, under the provisions of the IT Act, 1961, assuming that the entire loan was outstanding on 31.03.2017, and he does not own any other HP.

**Solution :**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income from HP</strong></td>
<td></td>
</tr>
<tr>
<td>Deduction u/s 24(b) : Int on Housing Loan</td>
<td></td>
</tr>
<tr>
<td>Amount of Interest (35L \times 11% \times \frac{10^{cm}}{12^n}) (OR)</td>
<td>3,20,833</td>
</tr>
<tr>
<td>Max amt u/s 24(b)</td>
<td>2,00,000</td>
</tr>
<tr>
<td><strong>Deduction u/c vi-A from GTI</strong></td>
<td></td>
</tr>
<tr>
<td>- Sec 80EE : Amt of Interest [Rs. 3,20,833 (-) Rs. 2,00,000] (OR)</td>
<td>1,20,833</td>
</tr>
<tr>
<td>Max Amt u/s 80EE</td>
<td>50,000</td>
</tr>
</tbody>
</table>
**AMENDMENT MADE BY FINANCE ACT (NO. 2) 2019:**

Deduction in respect of interest on loan taken for certain house property

**[Sec. 80EEA]**

Section 80EEA has been inserted with effect from the assessment year 2020-21. Deduction under this section is available if the following conditions are satisfied:

1. The assessee is an individual.
2. He is not eligible to claim any deduction under section 80EE.
3. He has taken a loan for the purpose of acquisition of residential house property.
4. The loan is sanctioned by a financial institution (i.e., a bank or banking institution or a housing finance company) during April 1, 2019 and March 31, 2021. (FA 2020)
5. The stamp duty value of the residential house property does not exceed Rs. 45 lakhs. The expression “stamp duty value” means value adopted (or assessed or assessable) by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.
6. The assessee does not own any residential house property on the date of sanction of loan.

- **Amount of deduction** - If the above conditions are satisfied, the assessee can claim deduction under section 80EEA. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment year.

- **Same interest is not deductible twice** - If interest is claimed as deduction under section 80EEA, such interest (or such portion of interest) is not again deductible under section 24(b) or under any other provision of the Act for the same or any other assessment year.

---

**Section 80G : Deductions w.r.t. Certain contributions or donations to Notified Institutions.**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Individual</th>
<th>Any other Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Resident</td>
<td>Non Resident</td>
</tr>
<tr>
<td></td>
<td>(Y)</td>
<td>(Y)</td>
</tr>
<tr>
<td></td>
<td>Resident</td>
<td>Non Resident</td>
</tr>
<tr>
<td></td>
<td>(Y)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

---

49.17
# Deduction u/s 80G

## Notified Institutions

<table>
<thead>
<tr>
<th>Donations</th>
<th>Monetary</th>
<th>Non Monetary (in kind)</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to Rs. 2,000</td>
<td>Above Rs. 2,000</td>
<td>Deduction u/s 80G (N)</td>
</tr>
</tbody>
</table>

Can be made by any of the modes:

- Cash (Y)
- Other than cash (Y)
- Cash (N)

<table>
<thead>
<tr>
<th>Deduction u/s 80G (Y)</th>
<th>Deduction u/s 80G (N)</th>
</tr>
</thead>
</table>

## Amount of Deduction u/s 80G

<table>
<thead>
<tr>
<th>Unlimited Deduction</th>
<th>Limited Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) 50% of the Amt of Donation</td>
<td>b) 100% of the Amt of Donation</td>
</tr>
<tr>
<td>c) 50% of the Amt of donation</td>
<td>d) 100% of the Amt of Donation</td>
</tr>
<tr>
<td>Fully Allowed u/s 80G (Y)</td>
<td>Restricted to Maximum 10% of Adjusted Total Income</td>
</tr>
</tbody>
</table>

### Adjusted Total Income

- Gross total Income xx
- (-) LTCG (xx)
- (-) STCG specified u/s 111A (xx)
- (-) All ded’s u/s VI-A (except Sec 80G) (xx)
- Adjusted TI xxx

### a) Donations to the following Institutions / funds are eligible upto 50% of amount donated & allowed fully:

1) Prime Minister’s Drought Relief fund
2) Jawaharlal Nehru Memorial fund
3) Indira Gandhi Memorial Trust
4) Rajiv Gandhi foundation
b) Donations to the following Institutions / funds are eligible upto 100% of amount donated & allowed fully.

1) Prime Ministers
   National Relief fund (or PM CARES FUND)
   Amenia Earthquake Relief fund.

2) Govt / local authority / Institution / Association towards other than promoting FAMILY PLANNING.

3) Fund set up by
   the State of
   Gujarat for relief to victims of Earthquake
   Any state (including Gujarat) for MEDICAL Relief to the Poor.

4) Chief Ministers
   Earthquake Relief fund (Maharashtra)
   Cyclone Relief fund (Andhra Pradesh)
   Relief fund, (or) Lieutenant Governor’s Relief
   Fund (for any state or union Territory)

5) National
   Children’s fund
   Defense fund
   Foundation for Communal Harmony
   Illness Assistance fund
   Sports fund
   Cultural Fund
   Control of Drug Abuse (constituted u/s 7A of the Narcotics Drugs and Psychotropic Substances Act, 1985)
   Blood Transfusion council (or) state Blood Transfusion Council.
   Welfare Trust for Persons with autism cerebral palsey mental retardation & multiple disabilities.

7. Africa (Public contributions - India) Fund.
9. Army / Air Force Central Welfare fund / Naval Benevolent fund
10. Fund for Technology Development & application set up by the Central Government.
11. Clean Ganga fund.
c) Donations to the following Institutions / funds are eligible upto 50% of the Amount donated & Restricted to limit of 10% of ATI
1) Government / local Authority / Approved Institutions for Charitable Purposes
2) Institutions for promoting MINORITY INTEREST
3) Housing Development Authority
4) Temple, Mosque, church, Gurudwara any other palce of public worship, (or) any other place of :
   - Artistic (or)
   - Historic, (or)
   - Archaeological Importance

d) Donations to the following Institutions / funds are eligible upto 100% of the Amt donated & Restricted to limit of 10% of ATI
1) Government / local Authority / Approved Institutions, for promoting FAMILY PLANNING
2) Indian Olympic Association (or) National sports Bodies
   Deduction w.r.t. this contribution, is available. ONLY for Company Assessee & not to any other assessee.

Amendment made by Finance Act 2020: (Applicable from 01.10.2020)
Approval for the purpose of section 80G(5) - All entities which are currently approved for the purpose of section 80G(5) are required to apply for a fresh approval under the amended scheme of section 80G. Likewise, all new entities which want approval under section 80G(5) are required to apply for approval under the amended provisions. The process of approval for the new and existing entities will be completely electronic under which a unique approval number shall be issued to all new and existing entities. The table given below summarises these amendments -

<table>
<thead>
<tr>
<th>Different entities</th>
<th>Time-limit for up-loading approval application [First proviso to sec. 80G(5)]</th>
<th>Time-limit for grant of approval [Third proviso to sec. 80G(5)]</th>
<th>For which date/year approval will be available [Fourth-proviso to sec. 80G(5)]</th>
<th>Validity of approval [Second proviso to sec. 80G(5)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where such entity is approved under section 80G(5)(vi) on or before September 30, 2020</td>
<td>On or before December 31, 2020</td>
<td>Within 3 months calculated from the end of the month in which application is received</td>
<td>From the assessment year from which such entity was earlier granted approval</td>
<td>5 years</td>
</tr>
<tr>
<td>2020</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Where such entity is registered under section 80G(5)(vi) and the period of such approval is due to expire</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At least 6 months prior to the expiry of such approval</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within 6 months calculated from the end of the month in which application is received</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the assessment year immediately following the financial year in which approval application is uploaded</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 years (to be granted after satisfying about the object of the trust and genuineness of its activities)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Where such entity has been provisionally approved under section 80G</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At least 6 months prior to expiry of the period of the provisional approval or within 6 months of commencement of its activities, whichever is earlier</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within 6 months calculated from the end of the month in which application is received</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the first of the assessment years for which it was provisionally approved</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 years (to be granted after satisfying about the object of the trust and genuineness of its activities) (5 year time-limit to be counted from the first year of provisional approval)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>In any other case (including case of fresh approval)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At least 1 month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within 1 month calculated from the end of the month in which application is received</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the assessment year immediately following the financial year in which approval application is received</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provisional approval for a period of 3 years from the assessment year from which approval is sought</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Amendment made by Finance Act 2020**

**Filing of statement of donation by donee to cross-check claim of donation by donor** - With effect from October 1, 2020, an entity which gets donation under section 80G(5)(vi) is required to upload a statement of donation in prescribed form to the prescribed authority. Further, it is required to give a certificate of donation to the donor in prescribed form. The donor will get deduction under section 80G on the basis of statement of donation submitted by the donee-entity. If the donee entity does not submit the statement of donation (or a correction statement to rectify any mistake), it is liable for fee / penalty under section 234G.
Amendment made by Finance Act 2020
With effect from 01.10.2020, section 234G has been inserted. If a person fails to deliver a statement (given below), he shall be liable to pay, by way of fee, Rs.200 for every day during which the failure continues. However, the amount of said fees cannot exceed the amount in respect of which the failure referred therein has occurred. In the following cases, fees are applicable—

1. Where the research association, university, college or other institution or the company fails to deliver a statement of donation or certificate of donation referred to in section 35(1)(ii)/(iia)/(iii) within the time prescribed under section 35(1A).

2. Where the institution/fund fails to deliver—
   (i) A statement of donation within the time prescribed under section 80G(5)(vii).
   (ii) A certificate of donation prescribed under section 80G(5)(ix).

The aforesaid fees shall be paid before delivering statement of donation or before furnishing certificate of donation.

* Section 80GG: Deduction w.r.t. Rent paid for OWN Residence

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td></td>
</tr>
<tr>
<td>Resident</td>
<td>(Y)</td>
</tr>
<tr>
<td>Non Resident</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

Deduction u/s 80 GG shall be granted w.r.t. rent paid by the Individual for his OWN residence provided that he has satisfied the following conditions:

a) The Assessee is NOT in receipt of HOUSE Rent Allowance (HRA)

b) The Assessee does NOT own any residential House either himself, or by his spouse or minor child or by the HUF of which he is the member, at a place where the assessee ordinarily resides (or) carries on his Business / Profession (or) performs his duties of office or employment (and even if he owns at any other place it should NOT be assessed to tax as SOP (R))
**Amount of deduction u/s 80GG:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Formula</th>
<th>Calculation</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>25% of Adjusted Total Income</td>
<td>xx</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>(OR)</td>
<td></td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>Rent in excess of 10% of Adjusted Total Income</td>
<td>xx</td>
<td>W</td>
<td></td>
</tr>
<tr>
<td>(OR)</td>
<td></td>
<td>E</td>
<td></td>
</tr>
<tr>
<td>Maximum deduction u/s 80GG</td>
<td>Rs. 5000 p.m.</td>
<td>R</td>
<td></td>
</tr>
</tbody>
</table>

Amended by FA, 2016.

© Adjusted Total Income shall have the SAME Meaning as under Sec 80G (where Sec 80G, shall be substituted by Sec 80GG)

**Section 80GGA : Deduction w.r.t Certain Specific Donations / Contributions**

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Individual</th>
<th>Any other Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Resident</td>
<td>Non Resident</td>
</tr>
<tr>
<td></td>
<td>(Y)</td>
<td>(Y)</td>
</tr>
<tr>
<td></td>
<td>Non Resident</td>
<td>Resident</td>
</tr>
<tr>
<td></td>
<td>(Y)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

100% of the Donation / Contribution will be allowed as a deduction u/s 80GGA

To claim a deduction u/s 80GGA, the eligible assessee, should NOT HAVE any Business / Professional Income

<table>
<thead>
<tr>
<th>Donation</th>
<th>Donee</th>
</tr>
</thead>
<tbody>
<tr>
<td>for nature of donation eligible for ded u/s 80GGA.</td>
<td></td>
</tr>
<tr>
<td>refer Sec 80G.</td>
<td>Shall be approved u/s</td>
</tr>
<tr>
<td></td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>(or)</td>
</tr>
<tr>
<td></td>
<td>35 CCA</td>
</tr>
<tr>
<td></td>
<td>35 AC</td>
</tr>
</tbody>
</table>

# The assessee shall make donations to approved institutions for:

- Scientific Research or
- Research in Social Sciences or
- Research in Rural Development or
- Conservation of Natural Resources, or
- National urban Poverty Eradication fund, or
- Eligible Project / Scheme.

Amendment made by Finance Act 2020
No deduction shall be allowed under this section in respect of any sum exceeding TWO thousand rupees unless such sum is paid by any mode other than cash.
(From 1st Oct 2020, earlier it was Rs.10,000)

Explanation added by Finance Act 2020: (From 1st Oct 2020)
"Explanation. - For the removal of doubts, it is hereby declared that the claim of the assessee for a deduction in respect of any sum referred to in sub-section (2) in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.".
**Section 80GGB :** Deduction w.r.t Donations / Contributions to Political Parties or Electoral Trusts.

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Company</th>
<th>Any other Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indian</td>
<td>Foreign</td>
</tr>
<tr>
<td></td>
<td>(Y)</td>
<td>(N)</td>
</tr>
</tbody>
</table>

**Mode of Payment**

<table>
<thead>
<tr>
<th>Monetary Donations</th>
<th>Non Monetary Donations (in kind)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Made by</td>
<td>No deduction u/s 80GGB</td>
</tr>
<tr>
<td>Cash</td>
<td>Other than cash</td>
</tr>
<tr>
<td>No ded* u/s 80GGB</td>
<td>Deduction u/s 80GGB ( )</td>
</tr>
</tbody>
</table>

The entire amt of donation / contribution will be allowed as a deduction u/s 80GGB

**Section 80GGC :** Deduction w.r.t Donations / Contributions to Political Parties or Electoral Trusts.

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Local Authority</th>
<th>Artificial judicial persons</th>
<th>Any other Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Y)</td>
</tr>
</tbody>
</table>

49.25
**Not funded by Govt.** | **Funded by Govt** | **Not funded by Govt**  
--- | --- | ---  
(Y) | (N) | (Y)  

All other provisions w.r.t. Mode of payment & Quantum of deduction are same as that of section 80GGB.

### *Section 80JJA : Profits derived from the Business of Collecting / Processing / Treatment of BIO-DEGRADABLE WASTE*

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Engaged in the Collection processing Treatment of Bio Degradable waste in order to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Generate power</td>
</tr>
<tr>
<td>Non Resident</td>
<td>Produce Bio Gas, Bio Fertilizer, Bio pesticide (or) other Biological Agents.</td>
</tr>
<tr>
<td>Resident</td>
<td>Make Palettes (or) Briquettes for fuel or organic Manure</td>
</tr>
<tr>
<td>(Y)</td>
<td>(Y)</td>
</tr>
<tr>
<td>(Y)</td>
<td>(Y)</td>
</tr>
<tr>
<td>(Y)</td>
<td>(Y)</td>
</tr>
</tbody>
</table>

### Quantum of Deduction

Whole of the profits & gains from such activity shall be allowed as a deduction u/s 80JJA, for first 5 Consecutive AY’s beginning from the AY, relevant to the PY, in which the Business Commences.

However, deduction u/s 80JJA will be allowed, ONLY if it is claimed in the Return of Income by the eligible assessee.

### *Section 80JJAA : Deduction in respect of Employment of NEW Employee’s*

- [Amendment made by FA 2016]

### Existing Incentive u/s 80JJAA

Under Section 80JJAA a deduction of 30% of Additional wages, paid to New Regular workmen in the factory is allowed. This section applies to an assessee whose Gross Total Income includes any Profits & Gains derived from the Manufacture of Goods in a factory. The deduction is allowable for 3 AYs (including the AY, relevant to the PY, in which, such Employment is provided).
The workmen should be employed for \( \geq 300 \) days in the PY. Further in case of an Existing Factory, benefits are allowed. ONLY if, there is an Increase of atleast 10% in the total number of workmen employed on the last day of the preceding year.

**# Objective of Substitution of New Section**
In order to extend this Employment Generation Incentive to All Sectors, Section 80JJAA has been substituted.

**# Conditions to claim deduction u/s 80JJAA**
Deduction u/s 80JJAA would be allowed, only subject to fulfillment of the following conditions:

i) The Business should Not be formed by splitting up or reconstruction of an Existing Business.

ii) The Business is Not Acquired by the Assessee by way of Transfer, from any other person, (or) as a result of any Business Re-Organization.

iii) The report of the Accountant, giving the prescribed particulars, has to be furnished before the specified date u/s 44AB. (Amended by Finance Act 2020)

**# Quantum of Deduction**
Accordingly, where the GTI of an Assessee, to whom Sec 44AB applies, includes any profits and gains derived from Business a deduction of an amount equal to 30% of the additional Employee Cost incurred in the course of such business in the PY, would be allowed for 3 AYs (including the AY. Relevant to the PY, in which such employment is provided)

**# Notes**
i) The provisions of this section as they stood immediately prior to the amendment made by finance Act, 2016, shall apply to an assessee eligible to claim any deduction for AY 2016-2017 or earlier AY's.

ii) **Additional Employee Cost**:

<table>
<thead>
<tr>
<th></th>
<th>In case of Existing Business</th>
<th>In case of a New Business</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( \downarrow )</td>
<td>( \downarrow )</td>
</tr>
<tr>
<td>Additional EE Cost = NIL, (if)</td>
<td></td>
<td>Emoluments paid / payable to the EE’s employed during that PY shall be deemed to be the</td>
</tr>
<tr>
<td></td>
<td>( \downarrow )</td>
<td></td>
</tr>
<tr>
<td>There is NO Increase in the NO of EE’s from the</td>
<td>Emoluments are paid otherwise than by an</td>
<td></td>
</tr>
<tr>
<td>(or) Emoluments are paid otherwise than by an</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
TOTAL NO of Employees employed as on the last day of the preceding year.

<table>
<thead>
<tr>
<th>Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account Payee cheque, (or) A/c payee Bank Draft, (or) by use of Electronic Clearing System (ECS) through a Bank Account.</td>
</tr>
<tr>
<td>Additional EE’ cost. This can be paid by cash.</td>
</tr>
</tbody>
</table>

iii) **Additional Employee**

<table>
<thead>
<tr>
<th>Does NOT Include</th>
</tr>
</thead>
<tbody>
<tr>
<td>An EE’ who has been employed during the PY, and whose Emolument has the effect of Increasing the Total No. of EE’s employed by the ER: as on the last day of the preceding year.</td>
</tr>
<tr>
<td>i) An EE’ whose Total Emolument &gt; Rs. 25000 p.m.</td>
</tr>
<tr>
<td>ii) An EE’ employed for &lt; 240 days in the PY. For Apparel Business 240 days will be replaced by 150 days.</td>
</tr>
<tr>
<td>iii) An EE’ who does NOT Participate in Recognition Provident fund.</td>
</tr>
<tr>
<td>iv) An EE’ for whom, the Entire Contribution paid by the Government under the EE’s pension Scheme notified in accordance with the provisions of the &quot;Employees PF and Miscellaneous Provisions Act, 1952&quot;.</td>
</tr>
</tbody>
</table>

iv) **Emolument**

<table>
<thead>
<tr>
<th>Does NOT Include</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any sum paid / payable to an EE’ in lieu of his Emolument by whatever name called.</td>
</tr>
<tr>
<td>i) Any contribution, paid or payable by the ER’ to any pension fund / provident fund / any other fund for the benefit of the EE’ under any law, for the time being in force.</td>
</tr>
</tbody>
</table>
| ii) Any lumpsum payment, paid / payable to an EE’ at the time of super Annuation, or Termination of his service or Voluntary
Retirement such as:
- Gratuity - Severance Pay
- Leave Encashment
- Commutation of pension
- Voluntary Retrenchment Benefits.

AMENDMENT MADE BY FINANCE ACT 2018:
Incentive for employment generation [Sec. 80JJAA]
Section 80JJAA provides a deduction of 30 per cent [in addition to normal deduction of 100 per cent under section 37(1)] in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry.

• Amendment - The following amendments have been made with effect from the assessment year 2019-20 -
1. In order to encourage creation of new employment, the above concession of 150 days has been extended to footwear and leather industry. After the amendment, in the case of business of manufacturing of apparel, footwear or leather products, the minimum number of days of employment in the years of employment shall be 150 days in place of 240 days.
2. Where a new employee is employed during the previous year for a period of less than 240 days (or 150 days, as the case may be) but is employed for a period of 240 days (or 150 days, as the case may be), in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of section 80JJAA shall apply accordingly.

Amendment made by Finance Act 2020:
Deduction under section 80JJAA is not available unless audit report is submitted. With effect from the assessment year 2020-21 audit report in Form No. 10DA is required to be uploaded one month prior to the due date of submission of return of income. If the due date of submission of return of income is October 31 of the assessment year, audit report should be uploaded on or before September 30 of the assessment year. Conversely, if the due date of submission of return of income is November 30 of the assessment year, audit report should be uploaded on or before October 31 of the assessment year.

* Section 80QQB : Deductions w.r.t Royalty Income of Authors

<table>
<thead>
<tr>
<th>Eligible Assessee</th>
<th>Any other person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>(N)</td>
</tr>
<tr>
<td>Resident</td>
<td>Non Resident</td>
</tr>
<tr>
<td>(Y)</td>
<td>(N)</td>
</tr>
</tbody>
</table>
# Conditions to claim deduction u/s 80QQB

i) The assessee should either be:
   - an author (or)
   - a Joint Author

ii) The book authored by him is a work of literary, artistic (or) scientific nature. However, the book shall NOT include:

   - Brochures
   - Commentaries
   - Diaries
   - Journals
   - Textbooks for schools & other publications of similar Nature by whatever name called.

iii) The GTI of the Tax payer shall include the following.

| Royalty / Copyright fees (payable in lumpsum or otherwise) w.r.t. the above book including any NON-REFUND ADVANCE rec^) | Lumpsum Consideration for transfer (or grant) of any Interest, in the Copyright of the Book.
|---|---|

# Amount of Deduction u/s 80QQB

| Income from Royalty | xx |
| (-) Related Expenditure | (xx) | xxx | L |
| (OR) | |
| Maximum amt u/s 80 QQB | Rs. | 3,00,000 |

# Notes

i) Royalty Income earned OUTSIDE India, should be Brought Into India, within 6 months from the end of the PY; (or) the time extended by RBI, to avail deduction u/s 80QQB.

ii) Where the Royalty Income (or the Copyright fees) is NOT a lumpsum consideration, so much of the Income [Before Allowing Related Expenditure] is in excess of 15% of the value of such books SOLD during the relevant PY, shall be ignored.

# Section 80RRB : Deduction w.r.t. Royalty on Patents

The provisions of Sec 80RRB, are similar to those of Sec 80QQB, except the following (including the Amt of Deduction u/s 80RRB)

i) The words author / joint authors, have been replaced with "owner / Co owner".
ii) The Royalty should be derived w.r.t. Registered Parents only. However it does not include any Consideration for sale of product Manufacture with the use of:
- Patented Process, (or)
- Patented Article per se,
for Commercial use.

iii) Any consideration chargeable to tax under the head 'Capital Gains is not Royalty income for the purpose of Section 80RRB.

* Section 80TTA: Deduction w.r.t. Interest on savings Deposit Account:

Deduction u/s 80TTA shall be allowed w.r.t Interest on Deposits in a savings Account maintained with:
- A Banking Company, (or)
- A Co-Operative Bank, (or)
- A Post Office

However, if the aforesaid income, is derived from any deposit in a savings Account, held by or on behalf of a:

Firm (or) AOP (or) BOI

No deduction shall be allowed in respect of such Income in computing the total Income of any partner of the firm (or) any member of the AOP (or) any individual of the BOI.

* Amount of Deduction

Interest on savings Deposit Account xx L
(OR)

Maximum Amt u/s 80TTA Rs. 10,000 W
AMENDMENT MADE BY FINANCE ACT 2018:

Amendment to section 80TTA

Section 80TTA provides for a deduction (up to Rs. 10,000) to an individual/HUF if his income includes any income by way of interest on deposits in a savings bank account (or savings account with post office/co-operative society).

- Amendment - With effect from the assessment year 2019-20, a senior citizen (who can avail of deduction under section 80TTB, which is given below) shall not be eligible for the deduction under section 80TTA.

Deduction in respect of interest on deposits in case of senior citizens
[Sec. 80TTB]

Deduction under section 80TTB is available (from the assessment year 2019-20), if the following conditions are satisfied -

1. The assessee is a senior citizen (i.e., a resident individual who is at least 60 years of age at any time during the previous year).
2. His income includes interest on deposits with a bank/co-operative bank/post office (it may be interest on fixed deposits, interest on savings account or any other interest).

- Amount of deduction - If these conditions are satisfied, the assessee can claim deduction under section 80TTB which is equal to Rs. 50,000 or the amount of aforesaid interest, whichever is lower.

Where the aforesaid income is derived from any deposit in an account held by, or on behalf of a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body.

AMENDMENT MADE BY FINANCE ACT (NO. 2) 2019:

Deduction in respect of interest on loan taken for purchase of electric vehicle
[Sec. 80EEB]

Section 80EEB has been inserted from the assessment year 2020-21. Under this section, deduction is available if the following conditions are satisfied -

1. The assessee is an individual.
2. He has taken a loan for the purpose of purchase of an electric vehicle. For this purpose, “electric vehicle” means -
   - a vehicle which is powered “exclusively” by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle, and
   - it has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.
As the word "exclusive" is used, interest on loan taken for purchase of a "hybrid car" (which derives some of its power from conventional engine) is not eligible for deduction.

3. Loan is taken from a financial institution (i.e. a bank or any deposit taking NBFC or a systematically important non-deposit taking NBFC).

4. Loan is sanctioned during April 1, 2019 and March 31, 2023.

**Amount of deduction** - If the above conditions are satisfied, the assessee can claim deduction under section 80EEB. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment years.

**Some interest is not deductible twice** - If interest is claimed as deduction under section 80EEB, such interest (or such portion of interest) is not again deductible under any other provision of the Act for the same or any other assessment year.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:**

**Amendment to section 80LA**

Under the existing provisions of section 80LA, deduction is available to -

a. a scheduled bank and having an offshore banking unit in a special economic zone; or

b. a foreign bank and having an offshore banking unit in a special economic zone; or

c. a unit of International Financial Services Centre.

These assesses can claim deductions pertaining to (a) any income from the offshore banking unit in a Special Economic Zone; (b) income from the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone; (c) income from any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone. The amount of deduction is 100 per cent of the aforesaid income for first 5 years and 50 per cent for next 5 years.

- **Amendment** - Under the amended version (which is applicable from the assessment year 2020-21). Deduction available to a unit of International Financial Services Centre shall be increased to 100 per cent for any 10 consecutive years. The assessee, at his option, may claim the said deduction for any 10 consecutive assessment years out of 15 years beginning with the year in which the necessary permission is obtained. However MAT will be applicable.
The following is the decision of Bombay High Court in case of Vodafone International Holding:

VODAFONE INTERNATIONAL HOLDINGS B.V. VS. UNION OF INDIA (BOMBAY HIGH COURT)

Hutchison Essar Limited (HEL) is an Indian Company which is the Joint venture of Hutchison Group and Essar Group. HEL is carrying on the business of providing telecommunication services in India.

Hutchison Telecommunication International Limited (HTIL) is a foreign company, registered in Hong Kong. This foreign company has a wholly owned subsidiary company CGP Investments Ltd. (CGP) which is also a foreign company registered in Cayman Islands, Mauritius. The Company CGP holds 51.95% shares in HEL and through its foreign subsidiary companies, CGP also holds 15.05% shares in HEL. Essar Group holds 33% shares in HEL.

A company Vodafone International Holdings B.V. (Foreign Company registered in Netherland) with a view to acquire the controlling interest in HEL purchased the 100% shares in CGP from HTIL. The agreement of sale of shares of CGP took place outside India.

Mainly two issues arise on sale of CGP shares by HTIL to Vodafone. Firstly, whether HTIL by reason of instant transaction, had earned income liable for capital gains tax in India as this income was earned towards sale consideration of transfer to Vodafone of its Indian business/economic interests in India as a group in favour of the Vodafone. Secondly, whether, on payment made by the Vodafone to HTIL on such transaction, Vodafone was liable to deduct tax at source under section 195 from the sale consideration paid to HTIL.

The Income tax department issued a show cause notice under section 201 to Vodafone as to why it should not be treated as an assessee in default for not deducting TDS under section 195 on the payment made to HTIL which is taxable in India in hands of HTIL as capital gains. Vodafone filed a writ petition in Bombay High Court challenging the legal validity of the show cause notice.

The Bombay High Court held as under:

1. The transfer of shares of CGP by HTIL to Vodafone amounts to transfer of controlling interest in Indian Company HEL to Vodafone. The dominant purpose of sale of shares of CGP was to transfer the controlling interest of Indian Company.

2. Vodafone has acquired a source of income in India, HTIL by reason of this transaction has earned capital gains taxable in India as the income was earned towards sale consideration of transfer to Vodafone of its Indian business/economic interests as a group.

3. In the instant case, the subject matter of transfer as contracted between the parties is not actually the shares of a Cayman Island Company, but the assets situated in India.
4. Vodafone was therefore liable to deduct TDS on the payment made to HTIL and therefore show cause notice under section 201 is a valid notice.

BOMBAY HIGH COURT DISMISSED THE WRIT PETITION of Vodafone and the court rejected the argument of Vodafone that what was transferred was only shares of an Cayman Island Company i.e., CGP, and therefore, the argument that no capital gains will arise on sale of shares in CGP was rejected.

The very purpose of entering into agreements between the two foreign companies is to acquire the controlling interest which one foreign company held in the Indian company. This being the dominant purpose of the transaction, the transaction would certainly be subject to municipal laws of India, including the Indian Income Tax Act. It was held that Income of HTIL was deemed to have accrued or arisen in India and therefore, it squarely fell within the ambit of section 9 and hence, chargeable to Income tax under the head capital gains.

VODAFONE INTERNATIONAL HOLDINGS B.V. VS. UNION OF INDIA (SUPREME COURT)

Vodafone filed a review petition in Supreme Court and Supreme Court reversed the Bombay High Court decision. Supreme Court held that Assessing Officer in India had no jurisdiction to tax the transaction which took place outside India and what was transferred was the shares of a foreign company namely CGP of Cayman's Island and not the Indian business.

The Supreme Court reversed the Bombay High Court judgment in the case of Vodafone International Holdings B.V. and held that capital gains arising to Hutchison, Hong Kong, from sale of shares of CGP located in Cayman's Island, is not taxable in India.

The Finance Act, 2012 has retrospectively amended the definition of:
- Transfer under section 2(47)
- Capital asset under section 2(14)
- Deemed accrual of income under section 9

to affirm the judgment of Bombay High Court in the case of Vodafone International Holdings B.V. and to nullify the Supreme Court judgment in the said case.

SECTION 2(14): AMENDMENT IN DEFINITION OF CAPITAL ASSET

Following Explanation has been added to section 2(14) i.e. the definition of capital asset by Finance Act, 2012:

Explanation. —It is hereby clarified that: "property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Therefore, capital asset shall include the rights of Hutchison Hong Kong in Indian Company including right of management and control, e.g., right to appoint directors, right to use Hutch brand in India and non-compete agreement. Therefore, Hutchison Hong Kong has transferred
to Vodafone a capital asset in India, being rights in Indian Company including right of management and control.

**SECTION 2(47): AMENDMENT IN DEFINITION OF TRANSFER**

Following Explanation has been added to section 2(47) by Finance Act, 2012:

It is hereby clarified that:

- "transfer" includes
- 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,
- by way of an agreement (whether entered into in India or outside India) or otherwise,
- notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from
- the transfer of a share or shares of a company registered or incorporated outside India.

Therefore, as per the amendment, the Hutchison Hong Kong has made a transfer to Vodafone of the rights in Indian Company including rights of management and control since it has by transferring the shares of CGP Mauritius:

- disposed of or parted with the rights in Indian company
- created interest of Vodafone in Indian Company by indirect means i.e. transfer of shares of CGP
- by way of agreement
- and such transfer of rights take place by transfer of shares of a company incorporated in Mauritius.

**SECTION 9: AMENDMENT IN CONCEPT OF "INCOME DEEMED TO ACCRUE OR ARISE IN INDIA"**

Section 9 provides that the following income shall be deemed to accrue or arise in India:

All income accruing or arising, whether directly or indirectly,

- through or from any business connection in India, or
- through or from any property in India, or
- through or from any asset or source of income in India, or
- through the transfer of a capital asset situate in India

**Explanation 5** —For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Explanation 5 provides that the shares of CGP Investment Mauritius being the share in a company registered/ incorporated outside India shall be deemed to be situated in India as the shares of CGP derives its value substantially from the business of Indian Company located in India.
1. The Finance Act, 2012 inserted Explanation 5 to section 9. The said explanation reads as under:—

"Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India".

2. A number of representations have been received by the Board stating that the purpose of introduction of Explanation 5 was to clarify the legislative intent regarding the taxation of income accruing or arising through transfer of a capital asset situate in India. Apprehensions have been expressed about the applicability of the Explanation to the transactions not resulting in any transfer, directly or indirectly of assets situated in India.

It has been pointed out that such an extended application of the provisions of the Explanation may result in taxation of dividend income declared by a foreign company outside India. This may cause unintended double taxation and would be contrary to the generally accepted principles of source rule as well as the object and purpose of the amendment made by the Finance Act, 2012.

3. It is clarified that Explanation 5 would be applicable in relation to deeming any income arising outside India from any transaction in respect of any share or interest in a foreign company or entity, which has the effect of transferring, directly or indirectly, the underlying assets located in India, as income accruing or arising in India.

4. Declaration of dividend by such a foreign company outside India does not have the effect of transfer of any underlying assets located in India. It is therefore, clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to section 9(I)(i)of the Act.

Therefore, If CGP investment declares dividend of say Rs 100 crores on its shares and the said dividend is received by Hutchison Hong Kong, then such dividend shall not be deemed to accrue or arise in India in hands of Hutchison Hong Kong.

AMENDMENTS BY FINANCE ACT, 2015

REASONS FOR AMENDMENTS BY FINANCE ACT, 2015

The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, inter alia, included insertion of Explanation 5 in section 9(1)(i). The Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. The existing provisions related to indirect transfers are so widely worded that even if a single share (constituting less than 1% of total shareholding) of a foreign
company having substantial assets in India is transferred outside India, then the gains arising on such a transfer would be taxable in India. That would lead to undue hardship considering the fact that a single shareholder may not be in the position to control the company. In view of this, the Expert Committee under the Chairmanship of Dr. Parthasarathi Shome had recommended that transfer of small shareholdings in a foreign company should not be subject to undue hardship as it does not result in the transfer of a controlling interest in the Indian assets. The Committee recommended threshold exemption to give relief to small shareholders of foreign company. The Committee had also recommended that the law must clarify as to when it can be said that the share or interest derives its value substantially from the assets located in India. In other words, law must define the word 'substantially' used in Explanation 5.

The Committee recommended threshold exemption to give relief to small shareholders of foreign company. The Committee had also recommended that the law must clarify as to when it can be said that the share or interest derives its value substantially from the assets located in India. In other words, law must define the word 'substantially' used in Explanation 5.

The existing provisions provide no tax exemption to indirect transfers taking place as part of intra-group restructuring of foreign companies. The Shome Committee had recommended that as the business reorganization within a group does not result in any real income, indirect transfers as part of intra-group restructuring whether in India or outside should be tax neutral. However, there should be sufficient safeguards by way of continuity of ownership to prevent misuse of such exemption.

THRESHOLD EXEMPTION TO SMALL SHAREHOLDERS OF FOREIGN COMPANY FROM INDIRECT TRANSFER

Finance Act, 2015 has inserted Explanation 7 in section 9(1) with effect from Assessment Year 2016-17. Explanation 7 to section 9(1) provides that no income shall be deemed to accrue or arise to a non-resident from transfer, outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, referred to in the Explanation 5, if the transferor whether individually or along with its associated enterprises,

(a) neither holds the right of control or management,

(b) nor holds voting power or share capital or interest exceeding five per cent of the total voting power or total share capital,

at any time in 12 months preceding the date of transfer, in the foreign company or entity holding the Indian assets.

Clause (a) of Explanation 7 to section 9 provides as under:

- No income shall be deemed to accrue or arise to a non-resident,
- from transfer outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, referred to in the Explanation 5,
- if the transferor (whether individually or along with its associated enterprises),
- at any time in the twelve months preceding the date of transfer,
- neither holds the right of management or control in relation to such company or entity,
- nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest,
- as the case may be, of such company or entity.
Continuing the above case, suppose the shares of CGP Mauritius are held by following shareholders:

1. Hutchison Hong Kong 95%
2. Mr. A 3%
3. Mr. B 2%

If Mr. A/ Mr. B transfers shares of CGP Mauritius to another non-resident on 1-1-2020, then no capital gains shall arise in hands of Mr. A/ Mr. B from transfer of shares of CGP although the shares of CGP derives their value substantially from assets located in India. This is because Mr. A /Mr. B:

(i) do not have the right of control or management of CGP at any time from 1-1-2019 to 31-12-2019
(ii) their voting power does not exceed 5% any time from 1-1-2019 to 31-12-2019.

PROPORTIONAL TAXATION OF GAINS FROM INDIRECT TRANSFERS

In a case where all the assets owned, by a company or, as the case may be, an entity referred to in the Explanation 5, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in, such company or entity, deemed to accrue or arise in India under this clause, shall be only such part of the income as is reasonably attributable to assets located in India and determined in such manner as may be prescribed.

Clause (b) of Explanation 7 to section 9 provides as under:

- In a case where all the assets owned, by a company or, as the case may be, an entity referred to in the Explanation 5, are not located in India,
- the income of the non-resident transferor,
- from transfer outside India of a share of, or interest in, such company or entity,
- deemed to accrue or arise in India under this clause,
- shall be only such part of the income as is reasonably attributable to assets located in India and determined in such manner as may be prescribed.

Suppose CGP Investments Balance Sheet is as under:

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount</th>
<th>Assets</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share Capital</td>
<td>10,000</td>
<td>Investment in Indian Company (Hutch India)</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Investment in Dubai Company</td>
<td>3,000</td>
</tr>
<tr>
<td>Total</td>
<td>10,000</td>
<td>Total</td>
<td>10,000</td>
</tr>
</tbody>
</table>

Suppose Hutchison Hong Kong, holds the above shares of Rs 10,000 crores acquired at face value. Now, Hutchison transfers these shares to Vodafone for Rs 60,000 crores outside India. Now Capital Gains arising to Hutchison Hong Kong in Rs 60,000 crores - Rs 10,000 crores = Rs 50,000 crores

As per clause (b) of Explanation 7 to Section 9, the Capital Gains taxable in India shall be:

Rs 50,000 crore × Rs 7,000 crore/ Rs 10,000 crores = Rs 35,000 crores
MEANING OF "DERIVE ITS VALUE SUBSTANTIALLY"

Explanation 6.—For the purposes of this clause, it is hereby declared that—

(a) the share or interest, referred to in Explanation 5, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if, on the specified date, the value of such assets—
   (i) exceeds the amount of ten crore rupees; and
   (ii) represents at least 50% of the value of all the assets owned by the company or entity, as the case may be;

(b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed.

(c) "accounting period" means each period of twelve months ending with the 31st day of March:

(d) "specified date" means the—
   (i) date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest; or
   (ii) date of transfer, if the book value of the assets of the company or, as the case may be, the entity on the date of transfer exceeds the book value of the assets as on the date referred to in sub-clause (i), by fifteen per cent:

Provided that where a company or an entity, referred to in Explanation 5, regularly adopts a period of twelve months ending on a day other than the 31st day of March for the purpose of—
   (i) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or
   (ii) reporting to persons holding the share or interest,
then, the period of twelve months ending with the other day shall be the accounting period of the company or, as the case may be, the entity:

Provided further that the first accounting period of the company or, as the case may be, the entity shall begin from the date of its registration or incorporation and end with the 31st day of March or such other day, as the case may be, following the date of such registration or incorporation, and the later accounting period shall be the successive periods of twelve months:

Provided also that if the company or the entity ceases to exist before the end of accounting period, as aforesaid, then, the accounting period shall end immediately before the company or, as the case may be, the entity, ceases to exist.
Case -1 CGP Investments

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount</th>
<th>Assets</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share Capital</td>
<td>10,000</td>
<td>Investment in Indian Company (Hutch India)</td>
<td>1,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Investment in Dubai Company</td>
<td>9,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10,000</strong></td>
<td><strong>Total</strong></td>
<td><strong>10,000</strong></td>
</tr>
</tbody>
</table>

Case -2 CGP Investments

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount</th>
<th>Assets</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share Capital</td>
<td>10,000</td>
<td>Investment in Indian Company (Hutch India)</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Investment in Dubai Company</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10,000</strong></td>
<td><strong>Total</strong></td>
<td><strong>10,000</strong></td>
</tr>
</tbody>
</table>

In Case 1, the shares of CGP do not derive its value substantially from assets located in India since:

(i) Although the assets of CGP invested in Indian assets exceed Rs 10 crores but
(ii) 50% of assets of CGP i.e., Rs 5,000 crores are not invested in assets in India.

Therefore, no capital gains shall arise in India if shares of CGP are transferred outside India to another non-resident.

In Case -2, the shares of CGP do derive their values substantially from assets located in India since:

(i) Assets of CGP invested in Indian assets exceeds Rs 10 crores; and
(ii) Investment in Indian assets i.e. Rs 7,000 crores represents at least 50% of assets of CGP i.e., Rs 5,000 crores.

Therefore, capital gain shall arise in India if share of CGP are transferred outside India to another non-resident. However, proportional capital gains shall be taxable as per Explanation 7 to section 9.

EXEMPTION OF CAPITAL GAINS ON BUSINESS RESTRUCTURING I.E. AMALGAMATION AND DEMERGER

Section 47 provides that following transactions shall not be regarded as transfer and hence no capital gains shall arise:

Section 47(viab): any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if—

(A) at least twenty-five per cent 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.
Section 47(vicc): any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if,—

(a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

If Hutchison Hong Kong amalgamates with Hutchman Japan and in the scheme of amalgamation, the shares of CGP Mauritius of Rs 10,000 crores are transferred and in amalgamation scheme the shares of CGP are transferred at Rs 60,000 crores, then the capital gains of Rs 50,000 crores in hands of Hutchison Hong Kong are exempt if:

(i) 25% shareholders of Hutchison Hong Kong continue to remain shareholders of Hutchman Japan and

(ii) Such transfer does not attract tax on capital gain as per Income Tax Laws of Hong Kong

If Hutchison Hong Kong demerges its telecom business to Hutchtimes, Australia and in the demerger the shares of CGP Mauritius are transferred to Hutchtimes Australia at price of Rs 60,000 crores then capital gain of Rs 50,000 crores shall be exempt in hands of Hutchison Hong Kong if:

(i) shareholders holding not less than 75% of value of shares of Hutchison Hong Kong continue to remain shareholder of Hutchtimes Australia and

(ii) such transfer does not attract tax on capital gain as per Income Tax Law of Hong Kong

**REPORTING OBLIGATION ON INDIAN ENTITY**

The Finance Act, 2015 has inserted a new section 285A, with effect from Assessment Year 2016-17, where under there shall be a reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off-shore transactions having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be leviable under new section 271GA inserted by the Finance Act, 2015, with effect from assessment year 2016-17. The penalty shall be—

(a) a sum equal to 2% of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and

(b) a sum of Rs 5,00,000 in any other case.
ANALYSIS OF VODAFONE CASE & ITS EFFECTS:

(i) The definition of capital asset is now amended which provides that the term property used in capital asset includes any rights in relation to an Indian Company. In the Instant case HTIL by transfer of the shares of CGP has transferred the rights of an Indian Company i.e HEL.

(ii) The definition of transfer has been amended which provides that transfer includes:
- Disposing off or parting with an asset or;
- Creating any interest in any manner whatsoever;
- Directly or indirectly, by way of an agreement (whether entered in India or outside) or otherwise;
- Notwithstanding that such transfer of rights has been made through transfer of shares of a company registered outside India.

(iii) Amendment in Sec 9:

Explanation 5:
An asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from assets located in India.

(iv) What is the meaning of the term substantially?
→ As per Explanation 6 to Sec 9(1)(i), a share or interest in a Company or entity registered outside India shall be deemed to derive its value substantially from the assets (tangible or intangible) located in India, if on the specified date, the value of Indian asset:
- Exceeds Amount of Rs. 10 crore and
- Represents at least 50% of the value of all the assets owned by the Company or entity as the case maybe.

Note: The term “value of an asset means”, FMV of an asset without reduction of liabilities determined in prescribed manner as on the specified date. The term specified date would be the date on which the accounting period of the Company or entity ends preceding the date of transfer of the share (or) an ‘interest’. However, in case the BV of the assets of the Company or entity on the date of transfer exceeds by at least 15% as compared to the BV of the asset as on the last B/S date preceding the date of transfer, date of transfer shall be the specified date.
Example: How to determine specified date?

- Suppose the Accounting year of CGP is 31/12/2018. Suppose the BV of the asset as on 31/12/18 is Rs. 100. BV of asset as on 30/6/19 is Rs. 110 now in this case the specified date could be 31/12/18. However, if the BV of asset on the date of transfer is more than 15% as compared to the B/S date, say Rs. 120. Then specified date is date of transfer i.e. 30/6/19.

“IN SHORT COMPARE B.V. as on the Last BS Date & on the Date of TRANSFER. Do not ever compare Fair Market Value of Asset to identify specified date.”

How to apply Explanation 6 to Sec 9(1)(i)- The meaning of the word substantially.

1) Suppose the BV of asset of CGP on 31/12/2018 is Rs. 100 crores & on 30th June it is Rs. 120 crores. Therefore, in the instant case the specified date would be 30/6/19. Now, we have to determine FMV of asset without reduction liabilities as on 30/6/19. Suppose;
   (i) FMV of CGP’s asset = Rs. 120 crores
   (ii) FMV of HEL India = Rs. 400 crores

Suppose CGP holds 20% of HEL’s assets i.e. Rs. 80 crores. In the instant case we can say that, the shares of CGP derive its value substantially from assets located in India as the value of Indian asset exceeds Rs. 10 crores i.e., Rs. 80 crores and it represents at least 50% of all the assets owned by Company i.e. CGP i.e. in this case 66.66%

\[
\frac{80}{120} = 66.67\%
\]

2) Suppose: the value of CGP assets = Rs. 30 crores & value of HEL’s asset = Rs. 40 crores. (Also, CGP holds 30% in HEL)

Now in the instant case the shares of CGP does not derive its value substantially from assets located in India even though such assets exceed Rs. 10 crores i.e., 12 crores but in such case the value of such asset does not represent at least 50% of total assets owned by the Company (It only holds 40%)

\[
12 \div 30 = 40\%
\]

3) Suppose HTIL sold all shares of CGP for Rs. 150 crores on 30/6/19. Compute CG in hands of HTIL.

\[
\text{FMV of CGP asset on 30/6/19} \rightarrow \text{Rs. 120 crores}
\]

\[
\text{FMV of HEL asset} \rightarrow \text{Rs. 400 crores}
\]

HTIL has purchased the shares of CGP on 15/7/18 @ Rs. 50 crores

\[
\begin{align*}
\text{SC} & \rightarrow \quad 150 \text{ Cr} \\
(\text{\(-\text{COA}}) & \rightarrow \quad (50) \text{ Cr} \\
\text{STCG} & \rightarrow \quad 100 \text{ Cr} \\
\text{CG taxable in India} & = \text{CG} \times \frac{\text{FMV of Assets located in India}}{\text{total assets of Cgp}} \\
& = 100 \times \frac{80}{120} = 66.67 \text{ cr}
\end{align*}
\]
4) Is there any minority exemption to the transferor Company?
⇒ As per Explanation 7 to Sec 9(1)(i), no income shall be deemed to accrue or arise to N.R. from transfer outside India of any share or interest in a Company or entity registered outside India if the transferor individually or along with its associate enterprise at any time in 12 months preceding the date of transfer does not hold:
   (i) The right/management/ control in relation to Foreign Company (CGP).
   AND
   (ii) The voting power does not exceed 5% of total voting power.

5) Whether dividend declared by CGP whose share derive its value substantially from asset located in India, will also be taxable by virtue of Explanation 5 to Sec 9(1)(i) -?-?
⇒ On this issue CBDT in circular 4/2015 dated 23/3/15 has clarified that dividend paid by such Foreign Co. i.e. CGP would not be deemed to accrue or arise in India and hence not taxable.

6) Is there any relaxation given by Government of India?
⇒ If Foreign Company like CGP are F.P.I (Foreign portfolio inventors) who are regulated by SEBI then, the income of HTIL will not be taxable in India.

7) What would be the relevant DTAA to be seen?
⇒ To identify the relevant DTAA one has to identify the resident country & source country. In given case resident is of Hongkong & since the income is deemed to accrue or arise in India the source country is India.
   ∴ The relevant DTAA will be India – Hong Kong.

8) Is there any benefit on amalgamation of transferor is HTIL with another Foreign Co?
⇒ Yes, similar to Sec 47(via) the benefit is available u/s 47 (viab) in case of amalgamation of HTIL with another Foreign Company subject to fulfillment of the condition:

9) Post amalgamation of HTIL with Vodafone, the shares of CGP will be transferred from HTIL to Vodafone International holding. Therefore, issue under consideration is what will be the cost of acquisition of shares of CGP in hands of Vodafone?
Ans: Cost to the Previous Owner as per Sec 49.

10) How will the Indian government come to know that shares of Company like CGP are getting transferred outside India.
Refer Page ________.

11) Is there any Finance Act 2020 Amendment?
Ans: The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, inter alia, include insertion of the Explanation 5 in section 9(1)(i) with retrospective effect from the assessment year 1962-63. The Explanation 5 clarifies that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share
or interest derives, directly or indirectly, its value substantially from the assets located in India. However, these provisions are not applicable in the case of any asset or capital asset being investment held by a non-resident, directly or indirectly, in –

- a Foreign Institutional Investor [as referred to in the Explanation (a) to section 115AD (for the assessment years 2012-13 to 2014-15)];
- Category-I or Category II Foreign Portfolio Investor under the SEBI (Foreign Portfolio Investors) Regulations, 2014 (for the assessment year 2015-16 onwards).

SEBI has repealed SEBI (Foreign Portfolio Investors) Regulations, 2014 and notified SEBI (Foreign Portfolio Investors) Regulations, 2019. In view of this, necessary modification has been made in the above provisions with effect from the assessment year 2020-21. After this amendment, an asset or a capital asset held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 has been grandfathered and similar exception is provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.
**Sec 92: Computation of Income in case of International Transaction**

(i) As per Sec 92(1) any *income* arising from *international transaction* shall be computed based on *arms length* price. In common parlance arm's length price means genuine and correct market price. In respect of Income tax, it is determined as per sec 92C.

For Eg: An enterprise in India sells goods and/or provide services to an associated enterprise in USA for Rs. 1,00,000 whereas arms length price is Rs. 3,00,000. Income of Indian Enterprise shall be determine Considering ALP of Rs. 3,00,000.

(ii) The Explanation to Sec 92(1) clarify that it is not only the sale price which shall be determine as per ALP but even the allowance for *any interest or Expenses* arising from international taxation shall be determined *as per ALP.*

For Example:- An Enterprise in India purchased a goods from an Associated enterprises from UK for Rs. 2,00,000. Whereas the arms length price (ALP) is Rs. 70,000. The income of Indian enterprise shall be determined with respect to ALP of Rs. 70,000.

Similarly, an enterprise in India takes a loan from Associate enterprise in UK at 24% p.a. whereas the market rate of interest is 11%. Then in such case the allowance of interest to Indian enterprise shall be on basis of ALP interest of 11%.

(iii) Sec 92(2) provides that if an international Transaction provides that 2 or more enterprises entered into an agreement for *allocation of cost* or Expenses in connection with services provided then such allocation of cost or Expenses shall be on the basis of *arm's length* prices of service provided.

For Eg: An Associated Enterprises in UK Make research and development on New SOAP. It incurs R&D Expenses of Rs. 30 lakhs and Rs. 20 lakhs is allocated to Indian enterprises. Now It will be determined whether Indian Enterprise is deriving proportionate benefit to this R&D Expenditure allocated. The allowance of Rs. 20 lakhs Cost contributed to Indian Enterprises shall be on the basis of Arm’s length prices of service rendered.
The provision of TP as per Sec 92(3) shall not be applicable where computation of income or any Expenses or interest or any cost or Expenses allocated or Re-apportioned has the effect of reducing the income chargeable to Tax or increasing the loss of the assessee to which TP is applied.

Sec 92A: Meaning of Associated Enterprises

(1) Hindustan lever (India) holds 26%
Unilever UK

2 Enterprise shall be deemed to be Associated Enterprise if at any time during the previous year one enterprise hold share carrying not less than 26% of the voting power in another Enterprises. Therefore, Hindustan lever and Unilever UK are associated Enterprises.

(2) Hindustan lever India holds 26%
Unilever UK

Africa lever holds 26%

Now Hindustan lever and Africa lever are also associated enterprise. Further Unilever UK and Hindustan lever are also associated enterprise.

(3) Alstom India holds 5%
Alstom USA

Rs. 52 crore loan Finance By

Total BV of Assets = 100 cr

If a loan is advanced by one Enterprise to Another constituting not less than 51% of the Book value of Total asset of an Enterprise then Both are associated Enterprise.
In current case Alstom USA and Alstom India are Associated enterprises.

(4) Tetra park Austria does not hold any share in Alfa laval India but has **guaranteed** borrowing of **10% of total Borrowing** of Alfa laval India LTD. Both Companies are Associated enterprises.

(5) A LTD and B LTD will be Associated Enterprise if A LTD:

(i) Appoints 7 out of 12 Director/Member of GB of B LTD i.e. **more than half**

(OR)

(ii) Appoint **one Executive** director

(OR)

(iii) **One Executive member** in the governing body (As per the guidance NOTE issued by ICAI the term governing body would refer to that note accordingly).

Therefore, Appointment of Even one person to the post of executive director or member would make the Enterprises as associated enterprises.

\[ GB = \text{Governing Board.} \]

(6) Unilever USA appoints:

(i) 6 out 10 directors in Lipton India & 5 out of 9 director in Brook bond UK.

(ii) An Executive director / EM in Lipton India and an Executive director/ EM in Brook bond UK.

(iii) An Executive director / EM in Lipton India and 5/9 director in Brook bond UK.

(iv) 6 out of 10 directors in Lipton India and an Executive director / EM in Brook bond UK.
In all the above cases Lipton India and Brook bond UK are associated enterprises.

[EM = Executive Member]

7. Telco Manufacture Mercedes Car in India using the know-how of Mercedes Germany. Mercedes Car cannot be manufactured in India without the know-how from Telco.

Telco and Mercedes Germany are associated enterprises as one entity is wholly dependent on the use of know-how, Patents, Copyright, Trademark, Licenses or Franchises or any business or commercial rights of similar nature.

8. Two enterprises shall be said to be associated enterprises if 90% of raw material and consumables required for manufacturing or processing of goods or article carried out by one enterprise is supplied by other enterprise (applicable only for Manufacturer not Trader).

9. Mr X is an owner of proprietorship concern in India. Mr X & his wife holds 51%.

Dubai partnership firm

10. M/s XYZ HUF is carrying on business in India. The member of HUF or relatives of member form an enterprise outside India. Now M/s XYZ HUF and enterprise outside India are associated enterprises.
One enterprise is Firm/AOP/BOI, the other enterprise holds not less than 10% in such Firm etc.

**Sec 92B: International Transaction**

(i) International Transaction means a transaction between two or more associated enterprises one of the two enterprises should be Non-resident. Both can also be non-resident but in this case the income should be accrued in India. Therefore at least one party has to be Non-resident to call transaction as International Transaction.

(ii) The transaction should be in Nature of purchase, sale, lease, Transfer or use of tangible or intangible property. The transaction should be in Nature of provision of service.

(iii) The transaction should be in Nature of Capital financing including any type of Borrowing, lending, guarantee etc.

(iv) The transaction could be in the nature of business restructuring or reorganization between associated Enterprises.

**Deemed International Transaction – Sec 92B(2)**

According to Sec 92B(2) a transaction between X and Z shall be deemed to transaction between associated enterprises if in relation to the transaction there exist a prior agreement between Z (Singapore) and Y (Australia) in relation to that transaction or terms of the relevant transaction are determine between Z and Y.

Further Finance Act 2014 clarify that for the purpose of this Sec such other enterprise i.e. Z may be Resident or Non-resident.
Sec 92C: Computation of Arm’s Length Price

(i) As per Sec 92C the Arm’s length price (ALP) in relation to international transaction or specified domestic transaction shall be determined by the most appropriate prescribed method considering the nature of transaction or class of transaction or class of associated person or function performed by such persons or such other relevant factors. Following are the prescribed method.

(i) Comparable uncontrolled price method
(ii) Resale price Method
(iii) Cost plus method
(iv) Profit split method
(v) Transactional Net Margin Method
(vi) Any such other Method may be prescribed.

(ii) Now Assuming that an Assessee being a Hindustan lever arms length price of Royalty is Rs. 100 lakhs as per assessee. Now during the course of Assessment, the AO on basis of Material, information or documents in this possession is of the opinion:

(a) That the price charged or paid in an IT International Transaction or SDT has not been determined as per this Sec.
(b) Any information or document related to IT or SDT have not been kept according to Sec 92D.
(c) The information or data used in computation of ALP is not reliable or correct.
(d) The assessee has failed to reply within specified time any information or document as required under 92D.

In any of the above cases the AO may proceed to determine the arm’s length price after giving a reasonable opportunity of being heard to assessee.

(iii) Hindustan lever and Unilever are associated enterprises as per 92A and they have entered into a International Transaction in respect to Royalty of Rs. 100 lakhs.

(iv) Now sec 92C empowers the AO to determine the Taxable income of Hindustan lever by Exercising power given in sub-Sec (3) and if AO determine ALP Rs. 40L then the income of in Hindustan lever will be recomputed as 360L after disallowing a royalty of Rs. 60L.
(v) Since it is concept of misreporting of income the AO shall impose a penalty.

(vi) As per first proviso to 92C(4) deduction under 10AA or chapter VIA shall not increase by 60 lakhs i.e. it shall remain as 300 L only.

(vii) As per second proviso to Sec 92C(4). Unilever USA cannot claim that its income should be 40 lakhs instead of 100 lakh and cannot claim refund of Rs. 6 lakhs.

Methods of computation of Arm’s length Price- 92C & its Rules

(1) COMPARABLE UNCONTROLLED PRICE METHOD

Step - 1
Determine the price charged or paid with respect to comparable uncontrolled transaction.

Step - 2
Price at step - 1 is adjusted with respect to functional differences between international transaction and uncontrolled transaction.

Step - 3
Such adjusted price is Arm’s length price.

The transaction of Hindustan lever with Unilever and Tata are comparable subject to following 3 differences

(i) Sale to Unilever is at FOB whereas sale to TATA is at CIF. Freight and Insurance amounts to Rs. 550 / unit

(ii) The sale in TATA is backed by free warranty of 6 month whereas no such warranty is given to Unilever. The Estimation cost of warranty amounts to Rs. 250 / unit.
(iii) Since Unilever places a larger order Hindustan lever has offered a quantity discount of Rs. 20/unit to Unilever.

**Step - 1**

<table>
<thead>
<tr>
<th>Sale price to TATA</th>
<th>3000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less : Step - 2 - Difference to be adjusted for</td>
<td></td>
</tr>
<tr>
<td>- Freight and insurance</td>
<td>550</td>
</tr>
<tr>
<td>- Warranty</td>
<td>250</td>
</tr>
<tr>
<td>- Trade Discount</td>
<td>20</td>
</tr>
<tr>
<td>Arm’s length price for unilever</td>
<td>820</td>
</tr>
</tbody>
</table>

Arm’s length price for 10000 unit x 2180 = 21800000

Price charged to unilever 10000 x 2000 = 20000000

Increased income of Hindustan lever = 1800000

(2) **RESALE PRICE METHOD**

**Step - 1**

Find out the price at which goods and services are obtained from associated Enterprises and are resold to unrelated Enterprises.

**Step - 2**

Such resale price is reduced by normal gross profit in respect of unrelated transaction

**Step - 3**

Then reduce the purchase related expenses

**Step - 4**

Add or less functional difference between international transaction and uncontrolled transaction
Step - 5
The adjusted price arrive at step 4 is an arm’s length price
The Transaction between this Enterprises is subject to following functional difference
(i) Tetra park Austria gives discount of 10/unit to Alfa laval ltd. whereas such discount is not received from ultimate industry.
(ii) Alfa laval ltd has to incur purchase related expenses with respect to freight and custom duty

Step - 1
Resale price of goods purchased from Tetra pek

<table>
<thead>
<tr>
<th>Resale price from tetra pek</th>
<th>3000</th>
</tr>
</thead>
</table>

Step - 2

<table>
<thead>
<tr>
<th>Less: Normal GP margin 12%</th>
<th>360</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: purchases related expenses</td>
<td></td>
</tr>
<tr>
<td>(freight and custom duty)</td>
<td>35</td>
</tr>
<tr>
<td>Less: Quantity Discount allowed by Tetra pek</td>
<td>10</td>
</tr>
</tbody>
</table>

Arm’s length price

- price paid to Tetra pek Austria
  
  (1000 unit x 2900) 29L

- Arm’s length price
  
  (1000 unit x 2595) 2595000

↑ increase income of Alfa LTD 305000

(3) PROFIT SPLIT METHOD
Step - 1
Determine the combine Net profit of the Associated Enterprises (AE).

Step - 2
Determine the relative contribution Made by each AE in earning such combined Net profit (This ratio is evaluated on the basis of functions performed, asset employed, risk assume and reliable external data by unrelated enterprises. This ratio will be provided in the question.)

Step - 3
The combine Net profit as given in Step - 1 is then split among AE in the relative contribution ratio as given in step - 2.

Step - 4
The profit thus apportioned shall be taken into Account to determine the Arm’s length price.

<table>
<thead>
<tr>
<th>Step - 1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined Net profit</td>
<td>$10000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step - 2 &amp; Step - 3</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluation of relative contribution</td>
<td></td>
</tr>
<tr>
<td>Amco India (50%)</td>
<td>5000</td>
</tr>
<tr>
<td>ZMC Singapore (20%)</td>
<td>2000</td>
</tr>
<tr>
<td>Crest USA (30%)</td>
<td>3000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step - 4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cost of Amco India</td>
<td>9500</td>
</tr>
<tr>
<td>Amco India’s Arm’s length price =</td>
<td>14500</td>
</tr>
<tr>
<td>Actual revenue</td>
<td>$12000</td>
</tr>
<tr>
<td>↑ increase Revenue</td>
<td>2500</td>
</tr>
</tbody>
</table>
The transaction of Beta with Alto LTD and C LTD are comparable subject to following differences.

(i) While Beta derive technology support from Alto there is no such support from C LTD.

The value of Technology support received from Alto may be put around 20% of GP (Normal).

(ii) As Alto give business in large volume Beta LTD offer Alto LTD a quantity Discount which may be valued at 10% of Normal GP (Gross profit).

**Step – 1**
Find out direct or indirect cost of production with respect to A.E (Associated Enterprise)

**Step – 2**
Determine the normal gross profit Mark-up which will arise in respect of unrelated transaction

**Step – 3**
The normal GP arise at Step – 2 should be adjusted on account of functional Difference between international transaction and uncontrolled transaction

**Step – 4**
The cost (COP) arrive at Step – 1 Should be increase by GP arrive in Step – 3 and the resulting number will be Arm’s length price

**Step – 1**
Total cost 1,75,000

**Step – 2**
TRANSFER PRICING

GP with respect to C LTD (50%)

Step - 3

Less : Functional difference
- Technological Support from A ltd
  (20% of 50%) 10%
- Quantity Discount to Alto
  (10% of 50%) 5%
Arm' length GP Mark up 35
Arm's length income 2,36,250
(175000+ 35%)
Actual income 2,00,000
↑ increase income 36,250

(5) TRANSACTIONAL NET MARGIN METHOD

Procter & gamble India's Net profit is higher by 2% since it sales are to European country only, where 2% higher margin on sales is there.

Step - 1

Determine the NP margin w.r.t. to AE.

Step - 2

Determine the NP margin w.r.t. to unrelated transaction.

Step - 3

Add / less functional differences between IT (international Transaction) and uncontrolled Transaction

Step - 4

Such NP margin as arrive at Step-3 Shall be taken into Account to arrive at Arm's length price.
Solution:
Now the adjusted Net profit is 23% when it is applied to sales to Hindustan lever it comes to 2300 cr. Addition of 1300 crore shall be made to the income of Hindustan lever.

Sec 92CA: Reference to TPO

(i) If AO considers necessary then he may refer computation of ALP to the transfer pricing officer. (T.P.O) in respect of international transaction (I.T.) or specified Domestic Transaction before doing so AO shall take the previous approval of CIT.

(ii) After the reference is made the T.P.O shall serve a notice to assessee to produce Evidences. The TPO itself shall gathers material for computation of ALP.

(iii) Where any other International Transaction comes to the notice of TPO which had not referred him earlier, can also be considered while computing the ALP.

(iv) Where in respect of International Transaction assessee has not furnish report u/s 92E and such transaction comes notice of TPO then he shall consider that transaction also.

(v) On the Basis of material gathered by TPO and Evidence be produced by assessee the TPO shall compute the ALP. This is done by passing the ORDER in WRITING. The copy of the order shall be sent to AO and assessee. The order of TPO is binding on A.O.

(vi) The TPO shall pass the order 60 days prior to last date on which period of completion of assessment is given under 153 or 153B. 153 speaks about time limit of completion of Regular assessment u/s 143(3), 144, and 147, 153B speaks about time limit of completion of search and seizure assessment. In case of Transfer pricing all the time limit is extended by 12 months if the matter is referred to TPO.

Amendment made by Finance Act 2016
The amended provision provides that where an assessment proceeding are put on stay (hold) by any court or asked for information from foreign authorities then the time available to TPO shall be at least 60 days after the stay (hold) is vacated (release). {Refer Text Book for Illustration}
(vii) The TPO can **rectify the mistake** apparent from record in respect of the order subject to the provision of **Sec 154**.

(viii) After the rectification under **154** the TPO shall send the copy of order to AO to rectify the order of assessment accordingly.

(ix) The transfer pricing officer can exercise the **power to issue summon** or may call for information u/s **133(6)** from assessee or may conduct survey.

### Sec 92CB: Safe Harbour Rule

(i) This Sec empowers CBDT to make safe harbour rule i.e. CBDT shall provide the circumstances under which assessee shall be exempt from transfer pricing provision.

In Exercise of the power the CBDT has notify certain business who are expected to declare minimum percentage of profit. In case of such assessee who declare minimum percentage of profit transfer pricing provision shall not apply.

### Amendment made by Finance Act 2020

Sec 92CB(1) has been extended so as to provide that the determination of the income under sec 9(1)(i) shall also be subject to safe harbor rules.

### Sec 92D: Information and Documents

(i) A person entering into International transaction (IT) or specified domestic transaction (SDT) shall keep and maintain such information and document as may be prescribed.

Prescribed information and document are **not required** to be maintained in a case where the **aggregate value** as recorded in the books of account does **not exceed Rs. 1 crore**.

➤ **Note:** However, the above limit is only for Keeping and maintaining the Information and Documents for the purpose of Transfer Pricing. For applicability of Transfer Pricing there is no monetary Limit. Therefore, the assessee has to justify that ALP is computed as per **92C** and its rules whether or not he maintains the below mentioned Information and Documents. For that purpose, he needs to have some documentation to prove it.
Following are the documents which are prescribed by the CBDT (Rule 10D)

(i) Profile of multinational group which assessee belongs to.
(ii) Ownership structure i.e. shareholding pattern.
(iii) Brief description of the Business of the assessee and its A.E.
(iv) Nature and terms of international transaction.
(v) Financial Estimates made by assessee. Eg. budget, forecast etc.
(vi) Nature and terms of uncontrolled transaction.
(vii) Analysis of comparison between international transaction and uncontrolled transaction.
(viii) Computation of ALP (Arm’s length price) i.e. Actual working, method adopted, reason for adopting most appropriate method and adjustment made.
(ix) Official publication of government to know about standard GP margin etc.
(x) Published accounts i.e. BOA etc.
(xi) Price publication if listed.
(xii) Agreement and contract of international transaction and uncontrolled transaction.

(i) prescribed information and document are required to kept and maintain for a period of 8 year from the end of relevant assessment year.

(iii) The AO or the CIT(A) may require any person who has entered IT or SDT to furnish any information or document within period of 30 days from the date of issue of notice. The assessee can make an application for extension and it may be further extended by another 30 days.

(iv) AMENDMENT MADE BY FINANCE ACT 2016

(i) A person being a constituent Entity of an international group shall also keep or maintain such information or document in respect of international group as may be prescribed.

A constituent entity means an entity which forms part of consolidated financial statement for the purpose of financial reporting.

(ii) Where AO or CIT (A) calls for any information or documents then a constituent entity shall furnish prescribed information and document on or before the date to be prescribed.
Sec 92E: Report from CA

(i) Any assessee entered into IT or SDT (specified Domestic Transaction) during the previous year shall obtain a report from chartered accountant in form 3CEB on or before the specified date. This is the report of all the international transaction with associated enterprise & SDT during the year.

Failure to submit this report shall attract penalty under Sec 271BA of Rs. 1,00,000/-. 

Even if this report is submitted the assessee will be liable to penalty u/s 271AA if some transactions are not reported i.e. Not reported in FORM - 3CEB i.e. 2% of value of unreported transaction

If the above report is not submitted, both the following penalty will be imposed.

(i) penalty u/s 271BA of Rs. 100000. 

(ii) penalty u/s 271AA @ 2% of value of all international transaction i.e. unreported transaction because if report is not submitted then obviously all transaction remain unreported.

---

**PENALTY UNDER TRANSFER PRICING FOR IT & SDT:**

<table>
<thead>
<tr>
<th>271AA</th>
<th>271G</th>
<th>271BA</th>
</tr>
</thead>
<tbody>
<tr>
<td>@ 2% value of Transaction</td>
<td>@ 2% value of Transaction</td>
<td>@ Rs.1,00,000</td>
</tr>
</tbody>
</table>

(1) If Transaction is Not reported in Form 3CEB

(2) fails to comply 92D(1)(2)

(3) Maintains or furnish an incorrect information

(1) Fails to comply 92D(3)

For not submitting Form 3CEB
Note on Penalty u/s Sec 270A:
If an assessee has not reported International Transactions, then it shall be considered as MISREPORTING of Income as per Sec 270A(9). Therefore, assessee shall be liable for Penalty u/s 270A @ 200% of Tax Payable on Under Reported Income (Refer Book 1).
This penalty will be over and above Penalty u/s 271AA, 271G & 271BA.

Sec 92CC & Sec 92CD

(i) Suppose an assessee Hindustan lever makes an application to CBDT for entering into advance pricing agreement on 10/07/2016 for determining the arm’s length price of Royalty payable to Unilever UK. The application has been made to determine ALP for the previous for 31/03/16 to 31/03/20.
- Such agreement must be approved by Central Government and it cannot be entered for more than 5 consecutive previous year as specified in the agreement.

(ii) It may be noted that APA (Advance pricing agreement) cannot be entered for Specified Domestic Transaction.

(iii) Suppose the CBDT sign the agreement on 01/09/2017 for 5 aforesaid years deciding the manner in which ALP has to be determine.

(iv) Now Sec 92C gets overruled and AO cannot determine ALP as he is bound by APA for 5 previous year.

(v) Now Sec 92CA gets overruled and AO cannot refer the case to TPO under 92CA to determine ALP. He has to determine ALP as per APA for 5 consecutive year.

(vi) The APA shall be binding on the assessee, CIT and AO. Therefore, the assessee shall follow APA and there is no question of filling appeal to CIT (A). CIT also cannot revise under sec 263. Even AO cannot re-open the case later on under 147.

(vii) Return is filed but assessment not started:
Suppose for the previous you 31/03/16 the assessee filed return on 30/11/2016 which is not as per APA. Now the assessee shall filed the modified return within 3 month from the end of the month in which APA was entered i.e. on or before 31/12/2017.
(viii) **Return filed and assessment completed (Finance Act (No.2) 2019):**

Suppose for the previous year 31/03/16 the assessment u/s 143(3) was completed on 31/11/2017 without applying APA. The AO shall assess the income again under 143(3) for PY 31/03/17 in accordance with APA.

Let say modified return filed on 31/12/2017, the AO shall \textbf{PASS AN ORDER MODIFYING THE TOTAL INCOME} within one year from the end of financial year in which modified return was filed i.e. 31/03/2019.

(ix) **Return is filed and assessment is Pending:**

If the assessee has filed modified return on 31/12/2017 and the assessment u/s 143(3) is pending on that day, then the assessing officer shall complete the assessment u/s 143(3) as per APA & the period of assessment for AY 16-17 shall be increased by 12 months over and above 153.

Under 153(1) the time limit for completion of assessment under 143(3) is within 12 months from the end of relevant A.Y. The period of assessment for AY 16-17 shall be increased from 31/03/18 to 31/03/19.

(x) **The Advance pricing agreement shall not be binding if there is change in law or facts of agreement.**

(xi) Suppose CBDT find that APA is obtain \textbf{by fraud or misrepresentation of facts} then CBDT can declare the APA as \textbf{void ab-initio}. Let say CBDT declare APA to be void on 31/08/18 then all the provision of this act will apply as if APA was never entered into and the time period under this Act shall increased from 01/09/2017 to 31/08/2018 i.e. 1 year. (Such words also appeared in Advance Ruling & Settlement Commission)

(xii) Therefore, time limit of issue of notice under 149(1) shall increase by one year and time limit for assessment shall also increase by one year.

\textbf{Amendment made by Finance Act 2020:}

The provision of Advance Pricing Agreement/Roll Back Agreement has been extended for determination of income u/s 9(1)(i).

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**Sec 94B: Limitation on Interest deductible**

Q1. What is the applicability of this Sec i.e. the nature of borrower?

Ans: The borrower should be either an \textbf{Indian company} or a \textbf{permanent establishment} of a foreign company.
Q2. What borrower has to do under this Sec?
Ans: The borrower should raise debt from Associated Enterprises, and it should incur interest on it.

DEEMED DEBT:
(i) If a borrower has raised a loan from non-associated enterprise then also this Sec will be applicable if the guarantee is provided by associated enterprise.
(ii) If a borrower has raised a loan from non-associated enterprise then also this Sec will be applicable if the associated enterprise has deposited a matching amount in the account of such non-associated lender.

Above 2 points will be deemed to be debt.

Amendment made by Finance Act 2020:
The provisions of interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India.

Q3. What is the quantum of payment of interest to apply Sec 94B?
Ans: The amount of interest should exceed Rs 1 crore in a previous year. Further the interest should be deductible under PGDP.

Q4. Is there any exception to the borrowers?
Ans: This Sec is not applicable to a borrower engaged in the business of banking and insurance.

Q5. How much interest will be disallowed?
Ans: Lower of the two will be disallowed:
(1) Interest in excess of 30% of EBITDA of borrower in the previous year (this talks about total interest payment made by the company and not only to associated enterprise)

OR

(2) Interest paid / payable to associated enterprise for that previous year.

Two views possible for point (1):
Q6. What will happen with interest which got disallowed in Sec 94B?

Ans: It shall be carried forward to the subsequent AYs for 8 years and it shall be allowed as a deduction in subsequent years, subject to the limit specified in Sec 94B.

Amendment made by Finance Act 2017.

Sec 92CE - Secondary Adjustment in certain International Transaction.

(Applicable from A.Y. 2018-2019)

1) To make a secondary adjustment, primary adjustment has to be made first.

Primary Adjustment may arise in the following situations:

(i) Where adjustment is made by assessee suo motu.
(ii) Where adjustment is made by AO/ Appellate Authority & accepted by Assessee.
(iii) Where adjustment is made by an Advance pricing Agreement on or after 1st April 2017 (Finance Act (No.2) 2019)
(iv) Where adjustment is made due to safe harbour Rules.
(v) Where adjustment is made due to DTAA.

only if primary adjustment is made, secondary adjustment is possible.

2) When secondary Adjustment is not applicable?

i) In case the amount of primary adjustment made in a previous year does not exceed Rs 1 crore or

ii) Primary Adjustment is made in respect of AY 2016 - 17 or earlier years.

Note:

1. If a primary adj is made in PY 15-16 or earlier years, then secondary adj. will never be done even if the amount is not repatriated to India.
2. If a primary adj. is made in PY 16-17, & if the amt. is not repatriated to India within 90 days, then secondary adjustment will be made in PY 17-18.
As per Rule 10CB(1), the amount should be repatriated to India within 90 days from due date of filing of ROI w.r.t (i), (iii), (iv), & (v) given in point 1 above and w.r.t. point no. (ii), the amount should be repatriated to India within 90 days from the date of order of AO/appellate Authority. In case the amount is not repatriated within 90 days, the interest will be calculated as per the following rates:

<table>
<thead>
<tr>
<th>Where IT is denominated in INR</th>
<th>Denominated in Foreign currency</th>
</tr>
</thead>
<tbody>
<tr>
<td>↓</td>
<td>↓</td>
</tr>
<tr>
<td>One-year MCLR of SBI as on 1st April of relevant PY + 3.25%</td>
<td>6-month LIBOR as on 30th Sep of RPY + 3%</td>
</tr>
</tbody>
</table>

**CBDT Notification 76/2019:**

1. While calculating the interest, the period shall be counted from the due date of filing of return u/s 139(1) (in 4 Cases) or date of order (in 1 Case) as the case may be. In short interest will be calculated including the period of 90 days.

2. If international transaction is denominated in foreign currency, then it shall be converted in Rupees as per the TTBR as on the last date of the PY in which International Transaction was undertaken.

**Illustration:**

A Ltd. & X Inc (USA) are Associated Enterprise. During FY 18-19, A Ltd. exported goods of Rs. 100 crores to X Inc. The ALP is Rs. 110 crores. Rs. 10 cr primary adjustment is made by assessee on 30th Nov 2019 while filing ROI. Now, this amount should be repatriated to India within 90 days i.e. till 28/02/2020, in order to avoid secondary adjustment. Assume, it has not been repatriated to India within 90 days, & SBI’s MCLR is 8%, :: interest will be computed as follows:

1/12/19 to 31/3/20 :: 10 cr x 11.25% x 122/366.

The above Interest Income shall be chargeable to tax in the PY 2019-20.
Amendment made by Finance Act (No.2) 2019

1. The **excess money** or part thereof may be **repatriated by any Associated Enterprise who is Non Resident.**

2. The assessee has an **option to pay additional tax @ 18% plus 12% surcharge always & HEC @ 4% (Effective Rate=20.9664%) on excess money.** Once the additional tax is paid by the assessee, then secondary adjustment shall not be made by the assessee from the date of payment of such tax. However, secondary adjustment i.e. computation of interest, shall be made till the date of payment of additional tax (*Sec 92CE(2A)).*

3. The tax so paid shall be the final payment of tax and **no credit shall be allowed for such tax.**

4. The **deduction i.r.o the amount on which such tax has been paid, shall not be allowed** under any provisions of this Act.

---

**Sec 144C: Dispute Resolution Panel**

**Meaning**

Dispute resolution panel is collegium (group) of 3 CIT. As per this Sec AO shall complete the regular assessment, Income Escaping assessment with the help of 3 CIT. This means it will be quality assessment and there are less chances of appeal.

**Eligible assessee**

Following assessee are eligible for dispute resolution panel:

(i) A foreign company or **NR not being a Foreign Company.**

(ii) Any other assessee in whose case **variation arises** due to order of TPO and such variation are **prejudicial to such assessee.**

**Procedure**

(i) The AO shall **forward** the copy of **draft order** to the assessee

(ii) **Within 30 days** from the date of receipt of draft order, the assessee shall.

(a) **file its acceptance** to AO.

(b) **file its objection** to AO and DRP.
If the assessee file his acceptance then AO shall pass the final order within one month from the end of the month from which assessee acceptance is received by the AO (Ignore 153 & 153B as it overrides those Sec).

If the assessee files his objection then the AO shall wait for direction of DRP.

The DRP shall issue direction within 9 months from the end of the month in which the draft order is forwarded to the assessee.

After receiving the direction of DRP the AO shall pass the final order within 1 month from the end of the month in which direction are received by AO.

The DRP shall issue the direction after considering the Draft order, objection filed by assessee, evidence furnished by assessee, report of AO or valuation officer or TPO, records relating to Draft order, Evidence collected by DRP.

Before issuing the direction DRP shall provide an opportunity of being heard to assessee and AO.

The direction of DRP is binding on AO.

If member of DRP is differ in opinion on any point, the point shall be decided according to opinion of majority of the member.

Appeal against the order of such AO shall be file to ITAT.

Sec 92BA: Specified Domestic Transaction

(i) Where the aggregate of following transaction exceeds Rs. 20 crores then provision of Transfer pricing shall be applied.

- Transaction referred in 80 IA, 80 IB, 80 IAB, 80 IAC, 80 ID, and 80 IE ;or
- Transaction referred in 10AA ;or
- Any business transacted between the person referred in Sec 115BAB; or
- Any other transaction as may be prescribed

(ii) Suppose an assessee filed the return as under PGBP:

<table>
<thead>
<tr>
<th>From eligible business</th>
<th>1000 cr</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Non eligible business</td>
<td>250 cr</td>
</tr>
<tr>
<td>Gross Total Income</td>
<td>1250 cr</td>
</tr>
<tr>
<td>Less: Deduction u/s 80-IB (100% of 1000 cr)</td>
<td>(1000 cr)</td>
</tr>
</tbody>
</table>
Total Income | 250 crore
---|---
The assessee has made sales of Rs. 2000 crore to Non Eligible business. AO himself or by referring to TPO determine the ALP of say of 1400 crore. The assessee has overstated the profit of eligible business by 600 crore.
The AO shall compute the Total income as under:

**PGBP**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>From eligible business</td>
<td>1000 cr</td>
</tr>
<tr>
<td>From Non Eligible business</td>
<td>250 cr</td>
</tr>
<tr>
<td><strong>GTI</strong></td>
<td>1250 crore</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction u/s 80 - IB (100% of 400 cr)</td>
<td>(400 crore)</td>
</tr>
<tr>
<td><strong>Total income</strong></td>
<td>850 crore</td>
</tr>
</tbody>
</table>

(iii) The AO shall determine the Arm’s length price as per 92C and its Rules. He can use any of the Six method. Further allowance of Expenses, interest shall be as per Arm's length price.

(iv) The AO can refer case to TPO as per 92CA after prior approval of commissioner to determine ALP. However additional two power given in 92CA is not available to TPO with respect to specified domestic Transaction (SDT)

- 1st power → To raise Mater other than referred.
- 2nd power → To raise matter which are not reported in form 3CEB

(v) The assessee will be required to maintain prescribed information and document as per 92D.

(vi) The assessee has to furnish the report from CA, where in CA certify that transaction has taken place on Arm's length price.

(vii) Any under reported or misreported income will be subject to penalty u/s 270A.

(viii) Further other penalty is 271BA, 271AA, and 271G shall be levied.

(ix) The benefit of Advance Pricing Agreement is not available.

(x) The chapter of TP (Transfer pricing) shall not apply to domestic transaction as well if income get reduced or losses get increased.

(xi) Provision of Sec 92CE & 94B are not applicable for SDT.
Sec 94A: Special measures in respect of transactions with persons located in Notified Jurisdictional Area

1. PRE-CONDITIONS FOR APPLICABILITY:
The Sec is applicable only if the following pre-conditions are fulfilled:
(a) There is a country or territory outside India with whom India does not have effective exchange of information on taxation matters.
(b) Such country/area is specified by notification in the Official Gazette as a Notified Jurisdictional Area (NJA), having regard to the lack of effective exchange of information with such country or territory.
(c) An assessee enters into a transaction where one of the parties to the transaction is a person located in an NJA.

2. "Person located in a notified jurisdictional area" shall include, —
(a) a person who is resident of the NJA;
(b) a person, not being an individual, which is established in the NJA; or
(c) a permanent establishment of a person not falling in clause (a) or clause (b), in the NJA;

3. CONSEQUENCES
   If the aforesaid pre-conditions are fulfilled:
   (a) All the parties to the transaction shall be deemed to be associated enterprises within the meaning of Sec 92A.
   (b) The transaction shall be deemed to be an international transaction within the meaning of Sec 92B.
   (c) The provisions of transfer pricing [except the condition of variation of 3%], shall apply to such transaction and accordingly, the income or expenditure, as the case may be, shall be computed having regards to the Arm's Length Price.
   (d) Deduction of Interest: Any payment made to any financial institution located in an NJA shall be allowed as a deduction only if the assessee furnishes an authorization, in the prescribed form, authorising the CBDT or any other income - tax authority acting on its behalf, to seek relevant information from the said
financial institution. Also, such interest should be allowed on the basis of Arm’s Length Price.

(e) **Deduction of Expenses & Depreciation:** No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in an NJA shall be allowed unless the assessee maintains such other documents and furnishes the information may be prescribed. The deduction shall be allowed on the basis of Arm’s Length Price.

(f) **Receipt**—If the assessee has received or credited any sum from any person located in an NJA, and the assessee does not offer any explanation about the source of such receipt/credit 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.

4. **Notifications of countries With Whom India has a Double Taxation Avoidance Agreement (DTAA).**

   The question that arises is whether a country with whom India has a DTAA can be notified under Sec 94A. A comprehensive DTAA would have an ‘Exchange of Information’ Article putting an obligation on the competent authorities of both the countries to exchange 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.

5. **Capital receipt**

   The Sec 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.

6. **TDS**

   Sec 94A(5) provides that any payment made to a person located in the NJA shall be liable to deduction of tax at the higher of -

   i. the rate or rates in force; or
ii. the rates specified in the relevant provisions of the Act; or
iii. 30%

However, it may be noted that the recipient would be entitled to offer such income to tax at a lower rate. To illustrate, although a payment of royalty or fees for technical services to a person located in NJA (with whom India does not have a DTAA) will be subject to TDS at the aforesaid rates, the recipient will be liable to tax at the rates specified in Sec 115A.

Clarification on removal of Cyprus from the list of notified jurisdictional area under Sec 94A of the Income-tax Act, 1961 - [Circular No. 15/2017, dated 21-04-2017]

Cyprus was specified as a "notified jurisdictional area" (NJA) under Sec 94A of the Income-tax Act, 1961 vide Notification No. 86/2013 dated 01.11.2013. The said Notification No. 86/2013 was subsequently rescinded vide Notification No. 114 dated 14.12.2016 and Notification No. 119 dated 16.12.2016 with effect from the date of issue of the notification.

The CBDT has, vide this Circular, clarified that Notification No 86/2013 has been rescinded with effect from the date of issue of the said notification, thereby, removing Cyprus as a notified jurisdictional area with retrospective effect from 01.11.2013.

Note:
1. For Discussion on Range Concept Refer Page 46.16 in Textbook 2.
2. For Discussion on CBCR Refer Page 46.45 in Textbook 2.
3. For Discussion on Roll Back Provision Refer Page 46.30 in Textbook 2.
The central government may enter into an agreement with government of any country outside India or specified territory outside India for any of the following purpose:

(a) For granting relief in respect of income which is getting tax twice.
(b) avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

(b) For exchange of information, for prevention of evasion of income Tax under this Act or for investigation purpose.
(c) For recovery of Income Tax under this Act.
(d) For promoting mutual economic relations, trade & investment.

(ii) As per sec 90(2) the provision of agreement will apply if they are beneficial to assessee. If income Tax Act is more beneficial then income Tax Act shall apply.

(iii) Effect of DTAA is that:
(a) Income Might be Taxed only in one country.
(b) If income is Taxed in both the country, then Tax paid in one country is allowed as deduction from Tax payable in other country as per the agreement.

(iv) If assessee apply rate of DTAA then such rate shall not be increase by Surcharge and Health & Education cess.

(v) Earlier the Central Government was empowered to Enter into agreement only with foreign country. Many of the off-shore Center outside India are not recognized as a country but are only a small territory. Therefore, the unaccounted wealth of the Indians used to be deposited in those territory and central government was not able to Exchange information with those territories.
as they are not empowered to enter into agreement with non-sovereign jurisdiction (i.e. small territories).

In order to enable the government to enter into an agreement sec 90 of income Tax Act was amended which now empower the central government to enter into an agreement with non-sovereign jurisdiction i.e. Specified Territory to be notified by the Central Government.

For this purpose, central government has issued notification 22/2010 to notify the specified territory with whom the central government can now enter into an agreement.

(vi) In order to fasten the Exchange of information with specified territory outside India sec 90A was inserted which provides that any specified association in India may enter into an agreement with any specified association in the specified territory outside India.

* Specified association mean any institution / association, body etc which has been notified by central government for this purpose.

(vii) The government of India has entered into DTAA with government of USA w.e.f from 1/4/1990. Sec 90(3) empowers the central government to define any term used in the agreement which is neither define in Act nor in the agreement. The Central Government will do it by issuing NOTIFICATION IN OFFICIAL GAZETTE. Therefore, the issue under consideration is if the central government has issued a notification on 13/4/2012 then whether it will applicable from 13/4/2012 or Date of agreement (01/04/1990). This issue needs to be clarified in sec 90.

Therefore, an Explanation was attached to sec 90 which states that definition of term given by Central Government will be applicable from Date of agreement (01/04/1990) and not from date of issue of notification (13/04/2012)

(viii) Tax rate as per 115A as of the Income Tax Act on Royalty is @ 10%.

Tax rate on such Royalty is @ 5% as per DTAA between Indian and USA.

Tax rate on such royalty is @ 30% as per DTAA between India and Germany.

* Now if a German provides know-how to India then Tax rate of @ 10% shall apply.

* Therefore, to evade Tax now this German provides know how from USA and receives the payment in USA and claims that Tax rate should be @ 5%.
As per amendment made by Finance Act 2012 the German has to provide 
residency certificate of USA which he cannot produce. Therefore, he will pay 
Tax @ 10% only.

For this purpose, Central Government has prescribed Rule to 21AB to explain the 
particulars of Tax Residency certificate (TRC).

RULE - 21AB: TRC (Tax Residency Certificate)

The TRC to be obtained by the assessee, not being a resident of India shall 
contain the following particulars namely :-

(i) Name of the assessee
(ii) Status of the assessee
(iii) Nationality in case of individual
(iv) In case of other country or specified territory of incorporation or registration
(v) A unique Identification Number
(vi) Residential status for Tax purpose
(vii) Period of certificate
(viii) Address of the applicant

This certificate will be duly verified by Government or specified territory 
outside India.

(a) An assessee being a resident in India shall make an application in form 10FA to 
obtain this certificate.

(b) The assessing officer on receipt of application and being satisfied shall issue a 
certificate in form 10FB.

Explanation to Sec 90:
A Charge of a tax to a foreign company at a rate higher than Domestic Company 
is not regarded as less favorably levied. (See along with Article 24 of DTAA)

Sec 91 - Unilateral Relief
Refer Illustrations on Page 45.8 of Textbook 2
(i) The definition of capital asset is now amended which provides that the term property used in capital asset includes any rights in relation to an Indian Company. In the Instant case HTIL by transfer of the shares of CGP has transferred the rights of an Indian Company i.e HEL.

(ii) The definition of transfer has been amended which provides that transfer includes:
- Disposing off or parting with an asset or;
- Creating any interest in any manner whatsoever;
- Directly or indirectly, by way of an agreement (whether entered in India or outside) or otherwise,
- Notwithstanding that such transfer of rights has been made through transfer of shares of a company registered outside India.

(iii) Amendment in Sec 9:
Explanation 5:
An asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India,
if the share or interest derives, directly or indirectly, its value substantially from assets located in India.

(iv) What is the meaning of the term substantially?

→ As per Explanation 6 to Sec 9(1)(i), a share or interest in a Company or entity registered outside India shall be deemed to derive its value substantially from the assets (tangible or intangible) located in India, if on the specified date, the value of Indian asset:
   - Exceeds Amount of Rs. 10 crores and
   - Represents at least 50% of the value of all the assets owned by the Company or entity as the case maybe.

Note:
The term “value of an asset” means, FMV of an asset without reduction of liabilities determined in prescribed manner as on the specified date. The term specified date would be the date on which the accounting period of the Company or entity ends preceding the date of transfer of the share (or) an ‘interest’.

However, in case the BV of the assets of the Company or entity on the date of transfer exceeds by atleast 15% as compared to the BV of the asset as on the last B/S date preceding the date of transfer, date of transfer shall be the specified date.

Example: How to determine specified date?

• Suppose the Accounting year of CGP ends on 31/12/18. Suppose the BV of the asset as on 31/12/18 is Rs. 100. BV of asset as on 30/6/19 (Date of Transfer) is Rs. 110. Now in this case the specified date could be 31/12/18. However, if the BV of asset on the date of transfer is more than 15% as compared to the B/S date, say Rs. 120. Then specified date is date of transfer i.e. 30/6/19.

“IN SHORT COMPARE B.V. as on the Last BS Date & on the Date of TRANSFER. Do not ever compare Fair Market Value of Asset to identify specified date.”
How to apply Explanation 6 to Sec 9(1)(i) - i.e How to interpret the meaning of the word substantially

1) Suppose the BV of asset of CGP on 31/12/2018 is Rs. 100 crores & on 30th June it is Rs. 120 crores. Therefore, in the instant case the specified date would be 30/6/19.

Now, we have to determine FMV of asset without reduction liabilities as on 30/6/19. Suppose:

(i) FMV of CGP’s asset = Rs. 120 crores
(ii) FMV of HEL India = Rs. 400 crores

Suppose CGP holds 20% of HEL’s assets i.e. Rs. 80 crores.

In the instant case we can say that, the shares of CGP derive its value substantially from assets located in India as the value of Indian asset exceeds Rs. 10 crores i.e., Rs. 80 crores and it represents atleast 50% of all the assets owned by Company i.e. CGP i.e. in this case 66.66% \((80 + 120)\).

2) Suppose: the value of CGP assets = Rs. 30 crores & value of HEL’s asset = Rs. 40 crores. (Also, CGP holds 30% in HEL)

Now in the instant case the shares of CGP does not derive its value substantially from assets located in India even though such assets exceed Rs. 10 crores i.e., 12 crores but in such case the value of such asset does not represent atleast 50% of total assets owned by the Company \((It\ only\ holds\ 40\%)\) \(12/30*100 = 40\%\)

3) Suppose HTIL sold all shares of CGP for Rs. 150 crores on 30/6/19. Compute CG in hands of HTIL.

FMV of CGP asset on 30/6/19 \(\rightarrow\) Rs. 120 crores

(Without reduction of liabilities)

FMV of HEL asset \(\rightarrow\) Rs. 400 crores

HTIL has purchased the shares of CGP on 15/7/18 @ Rs. 50 crores

\[\begin{align*}
SC & \rightarrow 150\ Cr \\
(\text{COA}) & \rightarrow (50)\ Cr \\
\text{STCG} & \rightarrow 100\ Cr
\end{align*}\]
CG taxable in India = \( CG \times \frac{FMV \text{ of Asset Located in India}}{Total \text{ Asset of CGP}} \)

= \( 100 \times \frac{80}{120} = 66.67 \) Crores

4) Is there any minority exemption to the transferor Company?

⇒ As per Explanation 7 to Sec 9(1)(i), no income shall be deemed to accrue or arise to N.R. from transfer outside India of any share or interest in a Company or entity registered outside India if the transferor individually or along with its associate enterprise at any time in 12 months preceding the date of transfer does not hold:

(i) The right/management/ control in relation to Foreign Company (CGP).

AND

(ii) The voting power does not exceed 5% of total voting power.

5) Whether dividend declared by CGP whose share derive its value substantially from asset located in India, will also be taxable by virtue of Explanation 5 to Sec 9(1)(i)?

⇒ On this issue CBDT in circular 4/2015 dated 23/03/15 has clarified that dividend paid by such Foreign Co. i.e. CGP would not be deemed to accrue or arise in India and hence not taxable.

6) Is there any relaxation given by Government of India?

⇒ If Foreign Company like CGP are F.P.I (Foreign portfolio inventors) who are regulated by SEBI then, the income of HTIL will not be taxable in India.

7) What would be the relevant DTAA to be seen?

⇒ To identify the relevant DTAA one has to identify the resident country & source country. In given case resident is of Hongkong & since the income is deemed to accrue or arise in India the source country is India.

∴ The relevant DTAA will be India - Hongkong.
8) Is there any benefit on amalgamation of transferor i.e HTIL with another Foreign Co?

⇒ Yes, similar to Sec 47(via) the benefit is available u/s 47(viab) in case of amalgamation of HTIL with another Foreign Company, subject to fulfillment of 2 conditions.

9) Post amalgamation of HTIL with Vodafone, the shares of CGP will be transferred from HTIL to Vodafone International holding. Therefore, issue under consideration is what will be the cost of acquisition of shares of CGP in hands of Vodafone?

⇒ Cost to the Previous Owner as per Sec 49.

10) How will the Indian government come to know that shares of Company like CGP are getting transferred outside India.

⇒ The Indian Company (HEL) has to report or else Penalty will be imposed. Refer Page______.

11) Is there any Finance Act 2020 Amendment?

Explanation 5 to Sec 9 is not applicable in the case of any asset or capital asset being investment held by a non-resident, directly or indirectly, in-

- Category-I or Category II Foreign Portfolio Investor under the SEBI (Foreign Portfolio Investors) Regulations, 2014 (for the assessment year 2015-16 onwards).

SEBI has repealed SEBI (Foreign Portfolio Investors) Regulations, 2014 and notified SEBI (Foreign Portfolio Investors) Regulations, 2019. In view of this, necessary modification has been made in the above provisions with effect from the assessment year 2020-21. After this amendment, an asset or a capital asset held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 has been grandfathered and similar exception is provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.
### ADVANCE RULING

**Sec 245N: Definitions**

| (a) | "Advance Ruling" means - | "Applicant" means any person who is a-
| (i) | A determination by the AAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a NR applicant and such determination shall include the determination of any question of law or question of fact specified in the application. | non-resident referred to in a(i),
| (ii) | A determination by the AAR in relation to the tax liability of a NR arising out of a transaction which has been undertaken or is proposed to be undertaken by a Resident applicant with such NR and such determination shall include the determination of any question of law or question of fact specified in the application. | resident referred to in (a)(ii)
| (iia) | A determination by the AAR in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant, and such determination shall include the determination of any question of law or question of fact specified in the application; (Added by a resident referred to in clause (a)(iia) above, as may be notified by Central Government. [Central Government has notified that a resident can move an application for..."
Advance Ruling, in relation to his tax liability arising out of one or more transactions valuing Rs. 100 crore or more in total which have been undertaken or proposed to be undertaken] (Added by Finance Act, 2014)

(iii) A determination by the AAR
- in respect of
- an issue relating to computation of total income
- which is pending before any Income Tax Authority, or ITAT and
- such determination shall include the determination of any question of law or question of fact specified in the application

Public sector company (PSU)

*AAR means Authority for Advance Ruling.

Note:
Sec 245-O: Authority for Advance Rulings

(1) The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.

Sec 245Q: Application for Advance Rulings

Step 1: Make an Application in prescribed form and manner stating the question on which the advance ruling is sought.

Step 2: Application can be withdrawn within 30 days from the date of application.

⇒ Note:

Step 3: Application shall be in quadruplicate and be accompanied by a fee as given below:

<table>
<thead>
<tr>
<th>Category of applicant</th>
<th>Category of case</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>An applicant referred to in sub-clauses (i) or (ii) or (iia) of sec 245N</td>
<td>Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed Rs. 100 crores.</td>
<td>Rs. 2 lacs</td>
</tr>
<tr>
<td></td>
<td>Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 100 crores but does not exceed Rs. 300 crores.</td>
<td>Rs. 5 lacs</td>
</tr>
<tr>
<td></td>
<td>Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 300 crores.</td>
<td>Rs. 10 lacs</td>
</tr>
<tr>
<td>PSU's</td>
<td>In any case.</td>
<td>Rs. 10,000</td>
</tr>
</tbody>
</table>
## Sec 245R: 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 <strong>forward</strong> a copy of application to CIT to ascertain whether the <strong>case is pending or not</strong>, and if necessary, call for the records.</td>
</tr>
<tr>
<td><strong>Step II</strong></td>
<td>AAR may <strong>allow or reject</strong> the application. However, in following <strong>3 cases</strong>, AAR shall <strong>reject</strong> the application: -</td>
</tr>
<tr>
<td>(i)</td>
<td>With regard to NR &amp; R applicant (except PSUs), whether the issue is <strong>pending</strong> before any ITA, ITAT or COURT on the date of application.</td>
</tr>
<tr>
<td>(ii)</td>
<td>With regard to PSUs, when the issue is <strong>pending</strong> before any COURT</td>
</tr>
<tr>
<td>(iii)</td>
<td>Question raised in the application involves determination of FMV of any property</td>
</tr>
<tr>
<td></td>
<td>Question in the application relates to a transaction which is designed prima facie for the avoidance of tax</td>
</tr>
<tr>
<td></td>
<td>This restriction shall not be applicable for the PSU’s</td>
</tr>
<tr>
<td></td>
<td>o <strong>Opportunity</strong> of being heard shall be given to the applicant before order of rejection of application.</td>
</tr>
<tr>
<td></td>
<td>o <strong>Reason</strong> for rejection shall be given in the order</td>
</tr>
<tr>
<td></td>
<td>o <strong>Copy</strong> of order shall be <strong>sent</strong> to the applicant and to the CIT</td>
</tr>
<tr>
<td></td>
<td>o <strong>No appeal</strong> is possible against order of rejection</td>
</tr>
<tr>
<td><strong>Step III</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Step IV</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Step V</strong></td>
<td>AAR shall pronounce its Advance Ruling <strong>with in 6 months</strong> from the date of receipt of application.</td>
</tr>
<tr>
<td><strong>Step VI</strong></td>
<td>A <strong>copy</strong> of the Advance Ruling pronounced by AAR shall be <strong>sent to</strong> applicant and to the CIT.</td>
</tr>
</tbody>
</table>
"The Order of AAR giving its opinion is a final order and no Appeal is possible against such an order"

Sec 245RR: Income Tax Authority or Appellate Authority not to proceed in certain cases

No Income Tax Authority or ITAT shall proceed to decide any issue in respect of which an application has been made by the APPLICANT. It shall wait for the decision of AAR.

Sec 245S: Applicability of Advance Ruling

The Advance Ruling pronounced by AAR is BINDING on -
- the applicant who has sought it
- in respect of transaction in relation to which the ruling had been sought
- AO, CIT, CIT(A) in respect of applicant i.e. it is not binding on ITAT

Note: The Advance Ruling shall be binding unless there is a change in law or facts on the basis of which Advance Ruling has been pronounced.

Sec 245T: Advance Ruling to be void in certain circumstances

- Where the AAR finds that Advance Ruling sought by applicant by fraud or misrepresentation of facts,
- then it may by order declare such ruling to be void-ab-initio.
- and all the provisions of this Act shall apply as if such advance ruling has never been made. {Also, there in Settlement Commission & Advance Pricing Agreement}

ALL THE BEST