CHAPTER 35. CAPITAL GAINS - CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

(i) any distribution of capital assets on the partial or total partition of a Hindu Undivided Family.

(ii) any transfer of a capital asset under a gift, will or an irrevocable trust.

(iii) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company provided that the amalgamated company is an Indian company.

(iv) any transfer of a capital asset by a holding company to its subsidiary company provided that the following conditions are satisfied:
   (a) the holding company or its nominees hold the entire share capital of the subsidiary company and
   (b) the subsidiary company is an Indian company.

(v) any transfer of a capital asset by a subsidiary company to its holding company provided that the following conditions are satisfied:
   (a) the holding company or its nominees hold the entire share capital of the subsidiary company and
   (b) the holding company is an Indian company.

SECTION 49(1): COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION

Where the capital asset became the property of the assessee-

(i) on any distribution of capital assets on the partial or total partition of a Hindu Undivided Family;

(ii) under a gift or will;

(iii) by succession, inheritance or devolution;

(iv) under a transfer to an irrevocable trust;

(v) under a transaction referred to in clause (iii), clause (iv) or clause (v) of section 47

(vi) under a transaction referred to in section 47(xiii), 47(xiiib) or section 47(xiv)

(Inserted by Finance Act, 2012)

then the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner acquired it as increased by the cost of improvements incurred by the previous owner and the assessee.

SECTION 2(42A): PERIOD OF HOLDING

For determining the nature of capital gains in the hands of the assessee who acquired the capital asset by way of a transaction referred to in clause (i) to (v) of section 49(1), the period for which the asset was held by the previous owner shall also be considered.
KEY POINTS:

1. Where the previous owner also acquired the property by way of a transaction referred to in clauses (i) to (v) of section 47, then the cost of acquisition of the asset shall be the cost to the last of the previous owner who acquired it by a mode other than the modes referred to in clauses (i) to (v) of section 47.

2. Option to take FMV as on 1.4.2001 is also available

3. Cost of improvement in the hands of previous owners shall also be considered.

4. Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year the same was first acquired by the previous owner?

**CIT V. MANJULA J. SHAH (BOM.)**

As per Explanation 1 to section 2(42A), in case the capital asset becomes the property of the assessee in the circumstances mentioned in section 49(1), inter alia, by way of gift by the previous owner, then for determining the nature of the capital asset, the aggregate period for which the capital asset is held by the assessee and the previous owner shall be considered.

As per the provisions of section 48, the profit and gains arising on transfer of a long-term capital asset shall be computed by reducing the indexed cost of acquisition from the net sale consideration. The indexed cost of acquisition meant the amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the CII for the year in which the asset was first held by the assessee transferring it i.e., the year in which the asset was gifted to the assessee in case of transfer by the previous owner by way of gift.

In the present case, the assessee had acquired a capital asset by way of gift from the previous owner. The said asset when transferred was a long-term capital asset considering the period of holding by the assessee as well as the previous owner. The assessee computed the long-term capital gain considering the CII of the year in which the asset was first held by the previous owner. The Assessing Officer raised an objection mentioning that as per meaning assigned to the Indexed cost of acquisition, the CII of the year in which the asset is first held by the assessee need to be considered and not the CII of the year in which the asset was first held by the previous owner.

In the present case, the Bombay High Court held that by way of 'deemed holding period fiction' created by the statute, the assessee is deemed to have held the capital asset from the year the asset was held by the previous owner and accordingly the asset is a long term capital asset in the hands of the assessee. Therefore, for determining the indexed cost of acquisition under Section 48, the assessee must be treated to have held the asset from the year the asset was first held by the previous owner and accordingly the CII for the year the asset was first held by the previous owner would be considered for determining the indexed cost of acquisition.

Hence, the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.
SECTION 47A: WITHDRAWAL OF EXEMPTION IN CERTAIN CASES
Where at any time before the expiry of a period of eight years from the date of transfer of a capital asset referred to in Clause (iv) or (v) of section 47 (i.e. Holding company to subsidiary company or subsidiary company to holding company) -

(a) such capital asset is converted by the transferee company into stock in trade of its business, OR

(b) the holding company or its nominees cease to hold the whole of the share capital of the subsidiary company,

then, the amount of capital gains arising from the transfer of such capital asset not charged to tax earlier by virtue of provisions of section 47, shall be charged to tax as the income of the transferor company. The said capital gains shall be charged to tax in the previous year in which the transfer took place.

KEY POINTS:
1. **Section 155(7B):** Where section 47A is attracted, the assessment of the transferor company will be rectified under section 154. For the purposes of section 154, four years shall be counted from the end of the previous year in which the capital asset was converted into Stock-in-trade or in which the holding company or its nominees ceased to hold the whole of the share capital of subsidiary company.

2. **Section 49(3):** Cost of Acquisition: Where section 47A is attracted and capital gains have been charged to tax in the hands of transferor company, then the cost of acquisition of such asset to the transferee company shall be the cost for which such asset was acquired by it (i.e., the price at which the asset was transferred by the transferor company).

FROM THE JUDICIARY
1. **RM. ARUNACHALAM V. CIT (SC)**

Mr. David purchased a house property on 1.1.1986 for Rs. 10,00,000. He took a loan of Rs. 8,00,000 by mortgaging the said property to Mr. Alfred. Mr. David died on 21.1.1995 and his son Mickle inherited the property from him. Mickle discharged the loan of Rs. 8,00,000 to Alfred on 1.1.1998 and cleared the mortgage of the property. Mickle sold the property on 1.1.2016 for Rs. 30,00,000. For the purpose of computation of capital gains he takes the cost of acquisition to be Rs. 18,00,000. The Assessing Officer is of the view that the cost is the cost to the previous owner which is Rs. 10,00,000.

The Supreme Court held that the assessee was justified in taking the cost to be Rs. 18,00,000. Under section 49(1), where the assesseee acquires a property from the previous owner in inheritance, then the cost of acquisition to the assesseee is the cost to the previous owner as increased by cost of improvement incurred by the assesseee and the previous owner. In a mortgage there is a transfer of interest in the property by the mortgagor in favour of mortgagee. When the previous owner had mortgaged the property, then after his death the legal heir inherits only the mortgagor's interest in the property. By discharging the mortgage debt his heir who has inherited the property acquires the interest of the mortgagee in the property. As a result of such payment made for clearing off the mortgage, the interest of the mortgagee is acquired by the heir. The said payment is therefore regarded as cost of
acquisition. Therefore, the cost of acquisition to the legal heir is the aggregate of the cost to the previous owner and the amount paid to clear the mortgage.

2. **V.S.M.R. JAGADISHCHANDRAN V. CIT (SUPREME COURT)**

The assessee purchased a property on 1.1.1986 for Rs. 14,00,000. He mortgaged the property and took a loan of Rs. 9,00,000 against the mortgage. Subsequently, the assessee sold the property for Rs. 30,00,000 on 1.1.2016. The assessee at the time of selling the property cleared the mortgage debt and paid Rs. 9,00,000. The assessee argues that the said Rs. 9,00,000 paid by him to discharge the mortgage debt is the cost of improvement of the property. The assessee argues that by discharging the mortgage debt he has obtained a clear title to the property.

The Supreme Court turned down the arguments of the assessee and held that Rs. 9,00,000 paid to clear the mortgage debt cannot be said to be the cost of acquisition or cost of improvement of the property. This was not the case where the property has been acquired from a previous owner as was the case in RM. Arunachalam v. CIT. Since in the present case the mortgage was created by the assessee himself, there will be no tax treatment of discharge of mortgage debt and the same cannot be said to be cost of acquisition or cost of improvement of the property.

**SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER**

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

(i) any distribution of capital assets on the partial or total partition of a Hindu Undivided Family.

(ii) Omitted.

(iii) any transfer of a capital asset under a gift, will or an irrevocable trust.

(iv) any transfer of a capital asset by a holding company to its subsidiary company provided that the following conditions are satisfied:

   (a) the holding company or its nominees hold the entire share capital of the subsidiary company and

   (b) the subsidiary company is an Indian company.

**KEY POINT:**
This exemption shall not be available if the capital asset is transferred as stock in trade.

(v) any transfer of a capital asset by a subsidiary company to its holding company provided that the following conditions are satisfied:

   (a) the holding company or its nominees hold the entire share capital of the subsidiary company and

   (b) the holding company is an Indian company.

**KEY POINT:**
This exemption shall not be available if the capital asset is transferred as stock in trade.
(vi) any transfer, in a scheme of amalgamation, of a capital asset by amalgamating company to amalgamated company if the amalgamated company is an Indian Company.

(via) any transfer in a scheme of amalgamation, of shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company if the following conditions are satisfied:

(a) at least 25% of the Shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company and

(b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated".

Illustration:
A foreign company Lipton Inc. incorporated in Germany is holding shares in an Indian company Lipton India Ltd. These shares were acquired by Lipton Inc. on 1.1.1993 at Rs. 10 per share [10 lakh shares]. The company Lipton Inc. amalgamates with another foreign company Unilever Pic. On 1.1.2019 and the shares of Lipton India Ltd. are transferred to Unilever Plc. By Lipton Inc. under the Scheme of amalgamation. Under the scheme of amalgamation, the Shares of Lipton India Ltd. were valued at Rs. 300 per share. The Assessing Officer wants to tax the capital gains of Rs. 2,900 lakhs arising in the hands of Lipton Inc. on account of transfer of shares of Lipton India Ltd. The company Unilever Plc. is incorporated in United Kingdom. Advise.

Answer:
There will be no capital gains in hands of Lipton Inc. as per section 47, if:

(a) at least 25% of shareholders of Lipton Inc. continue to be shareholders of Unilever Plc., and

(b) such transfer is not taxable as per the tax laws of Germany.

(vii) Any transfer by a Shareholder, in a scheme of amalgamation, of the shares held by him in the amalgamating company, provided that the following conditions are satisfied:

(a) The transfer is made in consideration of allotment to him of the shares in the amalgamated company except where the shareholder itself is the amalgamated company; and

(b) The amalgamated company is an Indian company.

(Words in bold are added by Finance Act, 2012)

(viia) Any transfer of bonds or Global Depository Receipts referred to in section 115AC, made outside India by a Non Resident to another Non Resident.

(viib) Any transfer made outside India of a capital asset (being rupee denominated bond of an Indian company issued outside India), by a non-resident to another non-resident shall not be regarded as transfer. (Also Refer FIFTH Proviso to Sec 48)

35.5
Explanation- For the purposes of this clause, “Government Security” shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(Added by Finance Act, 2014)

ANALYSIS

In order to encourage listing and trading of Government securities outside India, exemption from capital gains has been granted if:

- Transfer is by one non-resident to another non-resident
- Transfer is made outside India
- Transfer is made through an intermediary dealing in settlement of securities e.g. foreign share broker.
- Transfer is of a Government security carrying periodic payment of interest
- Government security transferred is held as capital asset by the transferor and not as stock-in-trade.

Memorandum Explaining Finance Bill, 2014

TRANSFER OF GOVERNMENT SECURITY BY ONE NON-RESIDENT TO ANOTHER NON-RESIDENT

The existing provision contained in section 47 of the Act provides that certain transactions shall not be considered as transfer for the purpose of charging of capital gains.

With a view to facilitate listing and trading of Government securities outside India, it is proposed to insert clause (viib) in the said section so as to provide that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident shall not be considered as transfer for the purpose of charging capital gains.

(viec) any transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual. (Added by Finance Act, 2016)

ANALYSIS

1. Exemption is available only to an individual.
2. Exemption is available only when such bonds are redeemed.
3. Exemption is not available if such bonds are transferred before maturity.
4. Exemption is not restricted to the original subscriber of the Bonds. Even if such bonds are purchased from market and are redeemed, then also exemption shall be available.

(ix) Any transfer of a capital asset, being any work of art, archaeological, scientific, or art collection, book, manuscript, drawing, painting, photograph or print, to the Government, University, National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government.
(x) Any transfer by way of conversion of bonds, or debentures or debenture stock or deposit certificates of a company into the shares or debentures of that company.

**KEY POINTS:**

1. **Section 49(2A):** The cost of acquisition of the share or debenture so received on conversion shall be the cost of that part of the debenture, bond, debenture stock or deposit certificate, which is so converted.

2. In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in clause (x) of section 47 of the Act, there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.

3. **If preference shares are converted into equity shares, then there is an exchange amounting to transfer,** which will attract capital gains. Exemption under section 47 is not available on such conversion.

**(REFER ILLUSTRATION IN SUMMARY)**

**Illustration:**

Mr. X purchased 400 Convertible bonds of Tisco on 1.01.2011 for Rs. 500 each. Part A of the bond of Rs. 100 each is to be converted into one equity share on 1.01.2018. Part B of the bond of Rs. 400 each is non-convertible and is redeemable in June, 2019. Mr. X is allotted 400 shares of Tisco on 1.01.2018 when the market value of share of share of Tisco is Rs. 350 per share. All shares and bonds are sold on 2.03.2019 for Rs. 430 per share and Rs. 380 per bond.

Discuss the tax implications.

**Answer:**

**Assessment year 2018 – 2019**

No capital gains on conversion of Part A of Bonds into 400 shares, as per section 47.

**Assessment Year 2019 – 2020**

If equity shares are sold on stock exchange, then the long-term capital gains shall be taxable u/s 112A. Assuming that shares are unlisted.

**Capital Gains on shares**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>01.01.2011 to 03.2019 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales price</td>
<td>Rs. 1,72,000</td>
</tr>
<tr>
<td>Cost of Acquisition as per section 49(2A)</td>
<td>Rs. 40,000</td>
</tr>
<tr>
<td>Less: Indexed cost of Acquisition</td>
<td>Rs. 40,000 \times</td>
</tr>
<tr>
<td><strong>Long term Capital Gains</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Capital Gains on Bonds**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>01.01.2011 to 03.2019 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales price</td>
<td>Rs.</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs.</td>
</tr>
<tr>
<td><strong>Long term Capital Gains</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td>Rs.</td>
</tr>
</tbody>
</table>
CAPITAL GAINS EXEMPTION / TAXABILITY ON CONVERSION OF PREFERENCE SHARES INTO EQUITY SHARES

1. Clause (xb) has been inserted in the said section so as to provide that the conversion of preference shares of a company into equity shares of that company shall also not be regarded as transfer.

2. In the case of conversion of preference shares into equity shares, the period of holding of equity shares shall include the period for which the preference shares were held by the assessee (applicable from the assessment year 2018-19).

3. **Cost of acquisition of equity shares** (allotted at the time of conversion of preference shares into equity shares) – Cost of acquisition of preference shares will be treated as acquisition cost of equity shares in such cases (applicable from the assessment year 2018-19).

(xa) any transfer by way of conversion of bonds referred to in section 115AC into shares or debentures of any company.

**KEY POINTS:**

1. **Section 49(2A):** The cost of acquisition of the share or debenture so received on conversion shall be cost of that part of the Bonds which is so converted.

2. **Section 2(42A)** does not define the period of holding in this case. Therefore, the period of holding of Bonds so converted, shall not be taken into account for the purposes of determining the nature of capital gains on the sale of the share/debenture so received on conversion.

**ANALYSIS**

Recently, the Government has allowed established Indian Companies to issue foreign currency exchangeable bonds (FCEB). The Foreign Currency Exchangeable Bonds Scheme, 2008, inter-alia, provides for as follows:

- The bonds are expressed in foreign currency
- The principal and interest in respect of bonds is payable in foreign currency.
- The FCEB can be subscribed by a non-resident in foreign currency.
- The FCEBs are exchangeable into equity shares of another Indian Listed Company, either wholly or partly or on the basis of equity related warrants attached to debt instrument.

The said Bonds have been notified under section 115AC. To give certainty to the taxation of these bonds, clause (xa) has been inserted in section 47, w.e.f. Assessment Year 2009-10, to provide that the conversion of bonds referred to in section 115AC into shares or debentures of any company shall not be treated as a 'transfer' within the meaning of Income tax Act. Further section 49(2) has been amended to provide that the cost of acquisition of the shares received upon conversion of the bond shall be the price at which the corresponding bond was acquired.

The effect of these amendments is that a FCEB holder shall not be taxed upon conversion but shall be liable to capital gains only at the point of transfer of the shares or debentures received upon conversion of FCEB.
(xii) any transfer of a capital asset, **being land** of a sick industrial company made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 where such sick industrial company is being managed by its workers' co-operative.

However, the exemption is applicable if such transfer is made during the period commencing from the previous year in which the said company has become a sick industrial company under section 17(1) of that Act and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

*(Similar to MAT)*

**KEY POINT:**

For the purposes of this clause, "net worth" shall have the meaning assigned to it in section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985.

**Illustration:**

A company became a sick company in the previous year 31.03.2013 as its Equity Share Capital and Free Reserves amounts to **Rs. 100 Lakhs** and Accumulated Losses amount to **Rs. 150 Lakhs**. Now the company generates profit as under:

<table>
<thead>
<tr>
<th>Previous Year</th>
<th>Profit</th>
<th>Accumulated Losses</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.03.2014</td>
<td>10 Lakhs</td>
<td>140 Lakhs</td>
</tr>
<tr>
<td>31.03.2015</td>
<td>15 Lakhs</td>
<td>125 Lakhs</td>
</tr>
<tr>
<td>31.03.2016</td>
<td>10 Lakhs</td>
<td>115 Lakhs</td>
</tr>
<tr>
<td>31.03.2017</td>
<td>12 Lakhs</td>
<td>103 Lakhs</td>
</tr>
<tr>
<td>31.03.2018</td>
<td>10 Lakhs</td>
<td>93 Lakhs</td>
</tr>
<tr>
<td>31.03.2019</td>
<td>13 Lakhs</td>
<td>80 Lakhs</td>
</tr>
</tbody>
</table>

Now, the entire net worth of the company equals to or exceed the accumulated losses in the previous year 31.03.2018. Now, the exemption under section 47 shall be available if;

- **the company transfers land** (if any other asset is transferred, then normal provisions of capital gains shall apply to that asset. Exemption is only for land)
- **the land is transferred during the period beginning from 1.04.2012 and ending on 31.03.2018**
- **the sick industrial company is managed by its workers' co-operative**
- **the land is transferred under a scheme prepared and sanctioned by BIFR.**

(xvii) any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

**Explanation.—**For the purposes of this clause, the expression "special purpose vehicle" shall have the meaning assigned to it in the Explanation to clause (23FC) of section 10.

*(To be discussed in Chapter of Business Trust) (Added by Finance Act, 2014)*

(Also See effects in MAT)
AMENDMENTS MADE BY FINANCE ACT 2015 AND 2016:

(xviii) any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund.

Provided that the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

Explanation. – For the purposes of this clause, -

(a) “consolidating scheme” means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

(b) “consolidated scheme” means the scheme with which the consolidating scheme merges or which is formed as a result of such merger;

(c) “equity oriented fund” shall have the meaning assigned to it in section 10(38);

(d) “mutual fund” means a mutual fund specified under section 10(23D).

(Added by Finance Act, 2015)

ANALYSIS

TRANSFER UNDER CONSOLIDATION SCHEMES OF MUTUAL FUNDS

Section 47(xviii) as introduced by Finance Act, 2015 provides that the following transactions shall not be regarded as transfer for the purpose of section 45 and therefore no Capital Gain shall arise.

Any transfer, by a mutual fund unitholder, of units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of units, in the consolidated scheme of the mutual fund.

However, the consolidation should be of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

Section 49(2AD) as introduced by Finance Act, 2015 provides as under:

Where the capital asset, being a unit or units in a consolidated scheme of a mutual fund, became the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.

Section 2(42A) which deals with period of holding has been amended by Finance Act, 2015 and provides as under:

In the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, there shall be included the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee.
Example :-
Mr. X acquired the following units :-

(i) Reliance Top Bank Equity Fund → 3000 units @ rate of Rs. 10 / units (acquired on 01.02.2018)
(ii) Reliance FMCG Equity Fund → 1000 units @ of Rs. 20 / unit (Acquired on 01.01.2017)
(iii) Reliance Blue chip Equity Fund → 2000 units @ of Rs. 30 / units. (Acquired on 01.01.2018)

Reliance Top Bank Equity Fund and Reliance FMCG Fund, merge with Reliance Blue chip Equity Fund on 30.06.2018 and Mr. X is allotted 2800 units of Reliance Blue chip Equity Fund, in exchange of 3000 units of Reliance Top Bank Equity Fund. He is also allotted 800 units of Reliance Blue chip Equity Fund in exchange of 1000 units of Reliance FMCG equity Fund. He sells 5,600 units of Reliance Blue chip Equity Fund on 04.01.2019 at Rs. 50 / unit.

No CG in the hands of Mr. X as per amendment made by FA 2015 in Sec 47 on merger of schemes of MUTUAL FUNDS.

(I) **Sec. 47 (xviii)** is introduced by FA 2015 which exempts capital Gains in the hands of Mr. X on :-

1. Exchange of units of Reliance Top Banks Eq. Fund with units of Reliance Blue Chip Equity Fund, in the scheme of consolidation.
2. Exchange of units of Reliance FMCG Equity Fund, with units of Reliance Blue Chip Equity Fund, in the scheme of consolidation.


**Capital Gains of 2800 units of Reliance Blue Chip Eq. Fund**

<table>
<thead>
<tr>
<th>POH : 01/02/2018 to 03.01.2019 (Short term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration (2800 units (x) Rs. 50 / unit)</td>
</tr>
<tr>
<td>(-) Cost of Acquisition (3000 units (x) Rs. 10 / unit)</td>
</tr>
<tr>
<td>Short term Capital Gain</td>
</tr>
</tbody>
</table>

(II) **Capital Gains on 800 units of Reliance Blue Chip Equity Fund**

<table>
<thead>
<tr>
<th>POH : 01.01.17 to 03.01.2019 (12 months &lt;) L T.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration (800 units @ Rs. 50 / unit)</td>
</tr>
<tr>
<td>(-) Cost of Acquisition (1000 units @ Rs. 20 / unit)</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
</tr>
</tbody>
</table>

(III) **Capital Gains on sale of 2000 original units of Reliance Blue Chip:**

<table>
<thead>
<tr>
<th>POH : 01.01.17 to 03.01.2019 (12 months &lt;) L T.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration (2000 units @ Rs. 50 / unit)</td>
</tr>
<tr>
<td>(-) Cost of Acquisition (2,000 units @ Rs. 30 / unit)</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
</tr>
</tbody>
</table>
(xix) any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of the mutual fund.

Explanation. – For the purposes of this clause, -

(a) “consolidating plan” means the plan of a mutual fund which merges under the process of consolidation of the plans of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

(b) “consolidated plan” means the plan with which the consolidating plan merges or which is formed as a result of such merger;

(c) “mutual fund” means a mutual fund specified under section 10(23D).

(Added by Finance Act, 2016)

ANALYSIS

TRANSFER UNDER CONSOLIDATION PLANS OF MUTUAL FUNDS

Section 47(xix) as introduced by Finance Act, 2016 provides that the following transactions shall not be regarded as transfer for the purpose of section 45 and therefore no Capital Gain shall arise.

Any transfer, by a mutual fund unitholder, of units, held by him in the consolidating plan of a mutual fund, made in consideration of the allotment to him of units, in the consolidated plan of the mutual fund.

Section 49(2AF) as introduced by Finance Act, 2016 provides as under:

Where the capital asset, being a unit or units in a consolidated plan of a mutual fund, became the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating plan of the mutual fund.

Section 2(42A) which deals with period of holding has been amended by Finance Act, 2016 and provides as under:

In the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, there shall be included the period for which the unit or units in the consolidating plan of the mutual fund were held by the assessee.
AMENDMENT MADE BY FINANCE ACT 2018:
AMENDMENT TO SECTION 47
Section 47(viiab) has been amended (with effect from the assessment year 2019-20) to provide that transactions in the following assets, by a non-resident on a recognized stock exchange located in any International Financial Services Centre shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—

a. bond or Global Depository Receipt, as referred to in section 115AC(1); or
b. rupee denominated bond of an Indian company; or
c. derivative.
d. such other securities as may be notified by Central Government.

( Finance Act (No.2) 2019 ) ( Point (d) is amendment )

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019
Exemption of certain income received by a specified fund [Sec. 10(4D)]
Clause (4D) has been inserted with effect from the assessment year 2020-21. It is applicable if the following conditions are satisfied –

1. Income is accrued or arises to, or received by a specified fund. For this purpose, "specified fund" means a fund which satisfies the following conditions -
   - It is a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate.
   - It has a certificate of registration as a Category III Alternative Investment Fund and is regulated under SEBI (Alternative Investment Fund) Regulations, 2012.
   - It is located in any International Financial Services Centre.
   - All units of fund are held by non-residents.
2. Income arises as a result of transfer of capital asset referred to in section 47(viiab).
3. Income arises as a result of transfer of a capital asset on a recognized foreign exchange located in any International Financial Services Centre.
4. Consideration for transfer is paid or payable in convertible foreign exchange.

If the above conditions are satisfied, exemption will be available under section 10(4D) to the extent such income is accrued or arises or received in respect of units held by non-resident.
SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

(xiii) where a firm is succeeded by a company in the business carried on by it as a result of which the firm sells or otherwise transfers any capital asset to the company:

Provided that -

(a) all the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company;

(b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession;

(c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and

(d) the aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

KEY NOTE:
If the company also allots shares to the wife or relatives or friends of partners and conditions of section 47(xiii) are satisfied, then also exemption is available.

(xiv) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset to the company:

Provided that -

(a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession becomes the assets and liabilities of the company;

(b) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power in the company and his shareholding continues to so remain as such for a period of 5 years from the date of the succession; and
(c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

KEY NOTE:
If the company also allots shares to the wife or relatives or friends of the proprietor and conditions of section 47(xiv) are satisfied, then also exemption is available.

SECTION 49(1): COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION
Where the capital asset became the property of the assessee by way of transaction referred to in clause (xiii) or clause (xiv) of section 47, then the cost of acquisition of the capital asset shall be deemed to be the cost for which the previous owner acquired it as increased by the cost of improvements incurred by the previous owner and the assessee.

SECTION 2(42A): PERIOD OF HOLDING
For determining the nature of capital gains in the hands of the assessee who acquired the capital asset by way of a transaction referred to in clause (xiii) and clause (xiv) of section 47, the period for which the asset was held by the previous owner shall also be considered.

SECTION 47A: WITHDRAWAL OF EXEMPTION IN CERTAIN CASES
Where any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of the proviso to clause (xiii) or the proviso to clause (xiv), as the case may be, are not complied with.

ANALYSIS OF SECTION 47(xiii) AND SECTION 47A
- Exemption is from long term as well as short term capital gains including those chargeable under section 50.
- The same business should be carried on by the company after succession. The company may add on any other line of business.
- The transfer can be made to an existing company. The partners should hold at least 50% of the total equity capital of the company upon allotment of shares to them and their shareholding should continue to be such for a period of five years from the date of succession.
- Partner include minor partner admitted to the benefits of the partnership.
- Allotment of shares should be in the ratio of capitals of the partners and not profit sharing ratio. The capitals shall include aggregate of all capital accounts, i.e., fixed capital as well as current capital account and will include the share of profits in the firm upto the date of succession.
• Exemption is not possible if any of the partners have a negative capital since conditions of exemption cannot be fulfilled. In such a case, this partner will have to convert his capital into positive before the succession takes place.
• Business profits are not exempt. Therefore the profit on sale of stock in trade by the firm to the company shall be taxable in the hands of the firm as business profits. The firm should transfer the stock in trade to the Company at cost. Supreme Court judgement in Sakthi Trading Co. shall apply.
• Exemption u/s 47(xiii) is applicable for a partnership carrying on a business. Exemption is not applicable if it is carrying on profession.
• Section 49(1) and section 2(42A) shall apply.

SECTION 72A: SET-OFF AND CARRY FORWARD OF LOSSES
Where there has been re-organisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, then, notwithstanding anything contained in any other provisions of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the previous year in which business re-organisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

However, if any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor company, shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

KEY NOTES:
1. "Accumulated loss" means so such of the loss of the predecessor firm or the proprietary concern, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern would have been entitled to carry forward and set off under the provisions of section 72 if the re-organisation of business had not taken place;

2. "Unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern, as the case may be, under the provisions of this Act, if the re-organisation of business had not taken place."
CHAPTER 37. CONVERSION OF COMPANY INTO LIMITED LIABILITY PARTNERSHIP (LLP)

SECTION 47(xiiiib): CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

Any transfer of a capital asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of the Limited Liability Partnership Act, 2008:

Provided that—

(a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than 50% at any time during the period of five years from the date of conversion;

(e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees;

(ea) the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees;

(f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.
SECTION 49(1): COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION
Where the capital asset became the property of the assessee by way of transaction referred to in clause (xiiiib) of section 47, then the cost of acquisition of the capital asset shall be deemed to be the cost for which the previous owner acquired it as increased by the cost of improvements incurred by the previous owner and the assessee.

SECTION 2(42A): PERIOD OF HOLDING
For determining the nature of capital gains in the hands of the assessee who acquired the capital asset by way of a transaction referred to in clause (xiiiib) of section 47, the period for which the asset was held by the previous owner shall also be considered.

SECTION 47A: WITHDRAWAL OF EXEMPTION IN CERTAIN CASES
Where any of the conditions laid down in the proviso to clause (xiiiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.

SECTION 115JAA: MAT CREDIT
In case of conversion of a company into a limited liability partnership under the Limited Liability Partnership Act, 2008, the provisions of section 115JAA shall not apply to the successor limited liability partnership. Therefore, the MAT credit available in hands of company shall not be allowed to the LLP.

SECTION 72A: SET-OFF AND CARRY FORWARD OF LOSSES
Where there has been re-organisation of business, whereby, a company is succeeded by a Limited Liability Partnership (LLP) fulfilling the conditions laid down in clause (xiiiib) of section 47, then, notwithstanding anything contained in any other provisions of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor LLP for the previous year in which business re-organisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
However, if any of the conditions laid down in the proviso to clause (xiiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor LLP, shall be deemed to be the income of the LLP chargeable to tax in the year in which such conditions are not complied with.
KEY NOTES:
1. "Accumulated loss" means so much of the loss of the company before conversion into LLP, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor company would have been entitled to carry forward and set off under the provisions of section 72 if the conversion had not taken place;

2. "Unabsorbed depreciation" means so much of the allowance for depreciation of the company before conversion into LLP, which remains to be allowed and which would have been allowed to the Company, under the provisions of this Act, if the conversion had not taken place."

ANALYSIS
1. All assets and liabilities of the Company should be transferred to LLP. It is not necessary that transfer should take place at book value.

2. All capital gains whether short term or long term are exempt. Even the STCG on transfer of depreciable asset under section 50 are exempt.

3. Section 50C shall not apply on sale of land and building by Company to LLP.

4. All shareholders, whether equity or preference shareholders should become partners of LLP. Exemption is not available if even a single equity/ preference shareholder does not become partner of LLP.

5. Profit on sale of stock-in-trade shall be taxable in hands of company if stock-in-trade is sold to LLP at higher than its cost price.

6. New Partner may be added in LLP. The only condition is that the capital contribution and profit sharing ratio in LLP of the shareholders should be in proportion of their shareholding in the erstwhile company.
CHAPTER 38. CONVERSION OF STOCK EXCHANGE INTO A COMPANY

SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

(xiii) any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company:

Provided that -
(a) all the assets and liabilities of the association of persons or body of individuals relating to the business immediately before the succession become the assets and liabilities of the company;
(b) the corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme of demutualisation or corporatisation which is approved by SEBI.

(xiiia) any transfer of a capital asset being a membership right held by a member of a recognized stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India.

SECTION 55: COST OF ACQUISITION

"cost of acquisition" in relation to a capital asset, being equity share or shares allotted to a shareholder of a recognised stock exchange in India under a scheme for demutualisation or corporatisation approved by SEBI, shall be the cost of acquisition of his original membership of the exchange.

Provided that the cost of a capital asset being trading or clearing rights of the recognized stock exchange acquired by a shareholders who has been allotted equity share or shares under such scheme of demutualisation or corporatisation, shall be deemed to be nil.

SECTION 2(42A): PERIOD OF HOLDING

In determining the period for which any capital asset is held by the assessee:
(i) in the case of a capital asset, being trading or clearing rights of a recognized stock exchange in India acquired by a person pursuant to demutualisation or corporatisation of the recognized stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which the person was a member of the recognized stock exchange in India immediately prior to such demutualisation or corporatisation;
(ii) in the case of a capital asset, being equity share or shares in a company allotted pursuant to demutualisation or corporatisation of a recognized stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which
the person was a member of the recognized stock exchange in India immediately prior to such demutualisation or corporatisation.

Illustration:
Mr. Harshal Mehta became the member of BSE on 04.01.1972. He has a membership card of BSE issued on 04.01.1972 acquired for Rs. 5,00,000 (FMV of membership card as on 01.04.2001 is Rs. 14,00,000). BSE is converted into a Company namely BSE Ltd on 20.06.2019 and Mr. Harshal Mehta is allotted 100 equity shares of BSE Ltd and trading and clearing rights of BSE Ltd in exchange of his membership Cards. He sells on 3.01.2020, the following:

a. 100 Equity Shares of BSE Ltd for Rs. 60,00,000.
b. Trading & clearing Rights for Rs. 30,00,000.

Discuss the tax implication.

A. For AY 20 – 21 :-
There is transfer by Mr. Harshal Mehta on 20.06.2019. When he transfers his membership card and receives in lieu thereof, equity shares of BSE Ltd and trading and clearing rights, then no capital Gain will arise on such transfer as per Sec. 47 (xiiia).

CG on 100 shares of BSE Ltd :-

<table>
<thead>
<tr>
<th>Period of holding \ Cost of Acquisition</th>
<th>Sales price</th>
<th>(-) Cost of Acquisition</th>
<th>LTCG (Subject to Indexation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>04.01.1972 to 02.01.2020 (Long term)</td>
<td>60,00,000</td>
<td>(5,00,000)</td>
<td>55,00,000</td>
</tr>
</tbody>
</table>

**Capital Gain on Trading Rights :-**

<table>
<thead>
<tr>
<th>Period of Holding \ Cost of Acquisition</th>
<th>Sales price</th>
<th>(-) cost of Acquisition</th>
<th>LTCG</th>
</tr>
</thead>
<tbody>
<tr>
<td>04.01.1972 to 02.01.2020 (Long Term)</td>
<td>30,00,000</td>
<td>(NIL)</td>
<td>30,00,000</td>
</tr>
</tbody>
</table>

* It may be noted that the option to take COA to be FMV as on 01.04.2001 is not available. ( Earlier such option was not available in respect of Self-Generated Assets (whether purchased or self-generated).
CHAPTER 39. FORFEITURE OF ADVANCE MONEY

SECTION 51: ADVANCE MONEY FORFEITED

Where any capital asset was on any previous occasion the subject matter of negotiations for its transfer, and any advance money or other money received is Forfeited by the assessee, then the amount so Forfeited shall be deducted from

(a) the cost for which the asset was acquired or
(b) the fair market value or (i.e., FMV as on 1.4.2001 where the asset was acquired before 1.4.2001)
(c) the written down value (in case of depreciable assets)

as the case may be, in computing the cost of acquisition.

Provided that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

ANALYSIS

1. Definition of income as given in section 2(24) has been amended by Finance Act, 2014 to include:
   "any sum of money referred to in section 56(2)(ix)."

2. Sub-clause (ix) has been added to section 56(2) by Finance Act, 2014 which provides that the following shall be taxable as income from other sources:
   "any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—
   (a) such sum is forfeited; and
   (b) the negotiations do not result in transfer of such capital asset."

3. The amendments are effective from Assessment Year 2015-16 i.e. Previous Year starting from 1-4-2014.

4. Any advance or other money forfeited before 1-4-2014 shall be dealt with as per section 51, i.e., reduced from actual cost, WDV, etc.

5. Any advance or other money forfeited on or after 1-4-2014 shall be treated as "Income from other Sources" and shall not be reduced from actual cost of the asset.

Issue - Amount forfeited not indexed

Mr. X acquired a land on 1.1.2008 for Rs. 2,00,000. He entered into an agreement to sell the land with Mr. Y on 1.1.2009 and received Rs. 50,000 as advance money. Mr. Y could not honour the agreement and therefore Mr. X forfeited Rs. 50,000 on 30.6.2009. Mr. X sells, the land on 1.1.2020 for Rs. 15,00,000 to Mr. Z. Compute the capital gains.
Solution:

Assessment Year 2020-2021

Capital gain on Land

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>1.1.2008 to 31.12.2019</th>
<th>(Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>Rs. 15,00,000</td>
<td></td>
</tr>
<tr>
<td>Cost of Acquisition (As per Section 51)</td>
<td>Rs. 1,50,000</td>
<td></td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>1,50,000 ×</td>
<td></td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DEFAULT BY SELLER

K.R. SRINATH v. ACIT[2004] (Mad.)

Giving up of right to claim specific performance by conveyance of immovable property is relinquishment of capital asset within meaning of Act.

FACTS OF THE CASE:
The assessee had entered into an agreement to purchase certain property. Both parties reserved the right to specific performance of the agreement. Nearly four years thereafter, again another agreement was entered into in the nature of deed of cancellation, by which the assessee agreed for termination of the earlier agreement and allowed the owner of the land to sell the said property to any person at any price of his choice. As a consideration for this, the assessee was paid a sum of Rs. 6,00,000 apart from being refunded the advance of Rs. 40,000. The question that arose for consideration was as to whether the amount of Rs. 6,00,000 received by the assessee from the vendor could be treated as capital gains in the hands of the assessee.

DECISION:

Held that the assessee had a right to insist on specific performance. He gave up the right readily and received a sum. There could be no doubt that by termination of the earlier agreement and by allowing the vendor to sell the said property to any person at any price, the assessee had given up or relinquished his right of specific performance and as consideration for relinquishing that right, the assessee was paid a sum of Rs. 6,00,000. The right, title and interest acquired under the agreement of sale clearly fell within the definition of 'capital asset' in section 2(14) instead of assigning the right to third party/parties, the assessee relinquished those rights. The definition of transfer in section 2(47) is wide enough to include relinquishment of an asset. With regard to the contention that there was no cost of acquisition incurred by the assessee for obtaining the rights under the agreement, and consequently, there could be no capital gains assessable, it was to be noted that at the time of agreement of sale, the assessee paid Rs 40,000. That payment was made pursuant to the agreement. Only by paying the said amount the assessee acquired the right to get the sale deed executed in his favour. The contention of the assessee that there was no cost of acquisition and so there could be no assessment of capital gain on the transfer of the capital asset fell to the ground. Thus, the sum received by the assessee was chargeable to capital gains tax.
SECTION 47: TRANSACTION NOT REGARDED AS TRANSFER

The following transaction will not be regarded as transfer for the purposes of section 45 and therefore, no capital gains will arise:

(xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

SECTION 10(43): INCOME EXEMPT FROM TAX

Any amount received by an individual as a loan, either in lump sum or in installment, in a transaction of reverse mortgage referred to in clause (xvi) of section 47 is exempt from tax.

ANALYSIS

Concept of Reverse Mortgage

Concept of reverse mortgage is introduced recently in India. Under the reverse mortgage scheme, senior citizen who holds the house property, but lacks a regular source of income can put his property under mortgage with bank.

Conceptually, Reverse Mortgage seeks to monetize the house as an asset. The scheme involves the Senior Citizen borrower mortgaging the house property to a bank, who then makes periodic payments to the borrower during the latter's lifetime. The Senior Citizen borrower is not required to service the loan during his lifetime and therefore does not make monthly repayments of principal and interest to the bank. On the borrower's death or on the borrower leaving the house property permanently, the loan is repaid along with accumulated interest, through sale of the house property. The borrower/heir can also repay or prepay the loan with accumulated interest and have the mortgage released without restoring to sale of the property.

Scheme in Nutshell

Conceptually, Reverse Mortgage Scheme inter-alia involves the following:

- Senior citizen borrower mortgages the house property to a lender.
- The lender makes the periodic/lump sum payments to the borrower during the latter's life time.
• The borrower is not required to service the loan during his life time and therefore, does not make monthly repayments of principal and interest to the lender.

• On the borrowers death or on the borrower leaving the house property permanently, the loan is repaid along with the accumulated interest, through sale of the house property.

• The borrower/ heir(s) can also repay or prepay the loan with accumulated interest and have the mortgage released without restoring to sale of the property.

Finance Act, 2008 exclude the transfer of capital asset in a transaction of reverse mortgage to give relief to the senior citizens who mortgaged property for their survival.

Further, Finance Act, 2008 also clarifies that the amount received as loan shall not be treated an income of the senior citizen. Although, loan is a capital receipt, but to clarify the position of the senior citizen and promote the scheme of reverse mortgage, it has been provided that such income shall be exempt from tax in the hands of the senior citizen.

**Eg :-** Mr. A purchased a HP in 1974 for Rs. 2,00,000 and its FMV on 01.04.2001 was Rs. 5,00,000. Mr. A has mortgaged the property to a bank in a reverse mortgage scheme and has received a loan of Rs. 40,00,000 on the property. Interest thereon amounted to Rs. 10,00,000 and total loan & interest is Rs. 50,00,000.

**Case 1 :-** If Mr. A discharges the loan of Rs. 50,00,000 and sells the property for Rs. 90,00,000 on 1.1.2020. Capital Gains in hands of Mr. A in A.Y. 2020 – 21 shall be as follows :-

| Sale price | 90,00,000 |
| (-) COA | (5,00,000) |
| LTG (Subject to Indexation) | 85,00,000 |

As per judgement of V.S.M.R. Jagadishchandran repayment of loan cannot be deducted.

**Case 2 :-** Mr. A dies and his Son Mr. B discharges the loan of Rs. 50,00,000 and sells the property on 01.01.2020 for Rs. 90,00,000. Here, the case of R.M. Arunachalam shall apply and CG in the hands of Mr. B in AY 2020 – 21 shall be

| Sale price | 90,00,000 |
| COA {Indexation} | (5,00,000) |
| COA {Indexation} | (50,00,000) |
| LTG (Subject to Indexation) | 35,00,000 |
CHAPTER 41. CAPITAL GAINS EXEMPT UNDER SECTION 10, 111A & 112A

SECTION 10(37)

• Agricultural Land situated in rural area is not a capital asset and no capital gains shall arise on transfer of agricultural land situated in rural area. In case the agricultural land situated in rural area is transferred by way of compulsory acquisition under any law or under a transfer the consideration for which is determined or approved by Central Government or Reserve Bank of India, no capital gains shall arise.

• Agricultural land situated in urban area is a capital asset. Section 10(37) exempt the capital gains arising from transfer of agricultural land situated in urban area if the following conditions are cumulatively satisfied:
  o Assessee is an individual or Hindu Undivided Family.
  o Assessee transfers the agricultural land situated in urban area.
  o Such land is held as capital asset and is not held as stock-in-trade.
  o Such land was being used for agricultural purposes by such HUF or individual or a parent of the individual during the period of two years immediately preceding the date of transfer.
  o The transfer takes place by way of compulsory acquisition under any law or the transfer is the one for which the consideration is determined or approved by the Central Government or the RBI.
  o The compensation or consideration for the transfer is received by the assessee on or after 1.04.2004.
  o Capital gains whether long term or short-term are exempt.
  o Capital gains computed with reference to the original compensation as well as the capital gains computed with reference to enhanced compensation are exempt.

• **Exemption under section 10(37) is NOT AVAILABLE WHERE:**
  (i) such agricultural land in urban area is sold and the consideration is not determined or approved by the Central Government or RBI.
  (ii) such agricultural land was used for agricultural purposes for less than two years immediately preceding the date of transfer by the HUF, individual or a parent of individual.
  (iii) Such agricultural land was not used for agricultural purposes by the HUF, individual or parent of individual.

• The objective of introducing section 10(37) is to mitigate the hardship faced by farmers on account of capital gains arising on compulsory acquisition of their agricultural land, which falls in urban area.
Illustration 1
Mr. Kumar has an agricultural land costing Rs. 6 lakh in Lucknow on 1.4.2002 and has been using it for agricultural purposes till 1.8.2011 when the Government took over compulsory acquisition of this land. A compensation of Rs. 10 lakh was settled. The compensation was received by Mr. Kumar on 1.7.2018. Compute the amount of capital gains taxable in the hands of Mr. Kumar.
Solution
In the given problem, compulsory acquisition of an urban agricultural land has taken place and the compensation is received after 1.4.2004. This land had also been used for at least 2 years by the assessee himself for agricultural purposes. Thus, as per section 10(37), entire capital gains arising on such compulsory acquisition will be fully exempt and nothing is taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e. A.Y.2019-20.

Illustration 2
Will your answer be any different if Mr. Kumar had by his own will sold this land to his friend Mr. Sharma? Examine.
Solution
As per section 10(37), exemption is available if compulsory acquisition of urban agricultural land takes place. Since the sale is out of own will and desire, the provisions of this section are not attracted and the capital gains arising on such sale will be taxable in the hands of Mr. Kumar.

Illustration 3
Will your answer be different if Mr. Kumar had not used this land for agricultural activities? Examine and compute the amount of capital gains taxable in the hands of Mr. Kumar, if any.
Solution
As per section 10(37), exemption is available only when such land has been used for agricultural purposes during the preceding two years by such individual or a parent of his or by such HUF. Since the assessee has not used it for agricultural activities, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e., A.Y. 2019-20.

Computation of capital gains

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales consideration</td>
<td>12,00,000</td>
</tr>
<tr>
<td>Less: Cost of acquisition (Rs. 6,00,000 × 184/105)</td>
<td>10,51,428</td>
</tr>
<tr>
<td>Long term capital Gains</td>
<td>1,48,572</td>
</tr>
</tbody>
</table>

Illustration 4
Will your answer be different if the land belonged to ABC Ltd. and not Mr. Kumar and compensation on compulsory acquisition was received by the company? Examine.
Solution
Section 10(37) exempts capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition. If the land belongs to ABC Ltd., a company, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of ABC Ltd.

AMENDMENT MADE BY FINANCE ACT 2017

TAX INCENTIVE FOR THE DEVELOPMENT OF CAPITAL OF ANDHRA PRADESH
The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In the Land Pooling Scheme of the Andhra Pradesh Government, an owner of the plot gets a Land Pooling Ownership Certificate (LPOC) at the time of handing over of possession of his land to the Government. He may retain LPOC or he can transfer it to anybody. If he retains it, he will get a reconstituted plot of land (commercial and/or residential) in the developed city in lieu of LPOC. He may retain the plot of land or transfer it.

Amendment - The existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of LPOC or reconstituted plot or land.

With a view to provide tax exemption, clause (37A) has been inserted in section 10 and section 49 has been amended.

- **Section 10(37A)** - Clause (37A) has been inserted with effect from the assessment year 2015-16. Exemption under section 10(37A) is applicable if the following conditions are satisfied -
  1. The taxpayer (land owner) is an individual/HUF.
  2. He owns land or building or both on June 2, 2014.
  3. Such land is transferred under the land pooling scheme covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 and the rules, regulations and Schemes made under the said Act.

Exemption - If the above conditions are satisfied, capital gains arising from the following transfer shall not be chargeable to tax by virtue of section 10(37A) -

1. Capital gain on transfer of land or building or both, under land pooling scheme.
2. Capital gain on transfer of LPOC (which is received in lieu of land transferred under the scheme).
3. Capital gain on transfer of reconstituted plot or land by said taxpayer within 2 years from the end of the financial year in which the possession of such plot or land was handed over to him.

- **Section 49** - Section 49 has been amended (with effect from the assessment year 2018-19) so as to provide that where reconstituted plot or land, received under land pooling scheme, is transferred after the expiry of 2 years from the end of the financial year in which the possession
of such plot or land was handed over to the said assessee, the cost of acquisition of such plot or land shall be deemed to be its stamp duty value on the last day of the second financial year after the end of financial year in which the possession of such asset was handed over to the assessee.

**Illustration**

X owns a plot of land which is situated near Vijaywada on June 2, 2014 (cost of acquisition: Rs. 20,000, year of acquisition: 1993-94). This plot of land is transferred under land pooling scheme of the Andhra Pradesh Government on July 6, 2015. The appropriate authority issues Land Pooling Ownership Certificate (LPOC). Find out the tax consequences under the following situations -

1. Capital gain which arises on transfer of land under Land Pooling Scheme during the previous year 2015-16.
2. Suppose, X transfers LPOC on November 1, 2015 for Rs. 20,00,000.
3. Suppose, X does not transfer LPOC. Andhra Pradesh Government gives a reconstituted plot of land of 200 square meter. Letter of possession is given on March 3, 2018. Actual possession of reconstituted plot is handed over to X on April 20, 2018. X transfers plot of land on March 27, 2021 for Rs. 97,00,000. Stamp duty value of the plot is Rs. 98,00,000 on March 27, 2021 and Rs. 98,50,000 on March 31, 2021.

4. X does not transfer plot of land up to March 31, 2021. Plot of land is transferred on April 5, 2021 for Rs. 99,00,000.

   1. Capital gain arising on transfer of land under Land Pooling Scheme is exempt under section 10(37A).
   2. Capital gain which arises on transfer of LPOC is exempt under section 10(37A).
   3. X takes possession of reconstitution plot of land on April 20, 2018 (i.e., during the financial year 2018-19). If the plot of land is transferred at any time before the expiry of 2 years from the end of the financial year 2018-19, full capital gain exemption will be available under section 10(37A). The 2 year time-limit expires on March 31, 2021. In this case, plot of land is transferred on or before March 31, 2021. Consequently, capital gain exemption is available under section 10(37A) for the previous year 2020-21.

4. Plot of land is transferred on April 5, 2021. Exemption under section 10(37A) is not available. Capital gain will be calculated as follows -
   - Full value of consideration: Rs. 99,00,000 (assuming that stamp duty value on the date of transfer is lesser).
   - Cost of acquisition: Rs. 98,50,000 (being stamp duty value on March 31, 2021).
   - Period of holding: April 20, 2018 to April 5, 2021 (no special provision is made to determine period of holding from March 31, 2021).
   - Status of capital asset: Long-term.
   - Indexation benefit: It will be available from the previous year 2018-19 (no special provision is made to give indexation benefit from the previous year 2020-21 in which the 2 year time-limit expires).
AMENDMENT MADE BY FINANCE ACT 2018:

TAX ON LONG-TERM CAPITAL GAINS IN CERTAIN CASES [SEC. 112A]

Section 10(38), inter alia, provides for exemption from tax on the income arising from the transfer of a long-term capital asset (being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust) subject to certain conditions. The exemption under section 10(38) will not be available if equity shares/units are transferred on or after April 1, 2018. Tax on long-term capital gain (which arises on transfer of listed equity shares or units of equity oriented mutual funds on or after April 1, 2018) will be calculated as per special provisions proposed in section 112A. If section 112A is not applicable, then tax will be calculated under the existing provisions of section 112.

Conditions for invoking section 112A - Section 112A is applicable (with effect from the assessment year 2019-20) only if the following conditions are satisfied -

| Condition 1 | The total income includes any income chargeable under the head "Capital gains". |
| Condition 2 | The capital gains arise from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust. |
| Condition 3 | In the case of equity shares - In a case where the long-term capital asset is equity share in a company, securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset. However, the Board has clarified that the requirement of STT payment at the time of acquisition is applicable only when shares are acquired after October 1, 2004. In the case of units of equity oriented fund or unit of business trust - In a case where the long-term capital asset is unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset. |

• **Transactions in any International Financial Service Centre not subject to Condition 3**

Condition 3 given above is not applicable in the case of a transfer undertaken on a recognised stock exchange located in any International Financial Service Centre. However, this concession- is available only when the consideration for such transfer is received or receivable in foreign currency.

• **Condition 3 not applicable in a few notified cases –**

Refer Annexure to this Chapter.

• **Equity oriented fund** - For the above purpose, equity oriented fund means a fund set-up under a scheme of a mutual fund specified under section 10(23D) and, —

  a. in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange, —
- a minimum of 90 per cent of the total proceeds of such fund is invested in the units of such other fund; and
- such other fund also invests a minimum of 90 per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and

b. in any other case, a minimum of 65 per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.

The percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

**Tax computation under section 112A** - If three conditions given above are satisfied, tax on long-term capital gain (mentioned in Condition 2) will be calculated on the basis of parameters given below -

**LONG-TERM CAPITAL GAIN IN EXCESS OF RS. 1 LAKH TAXABLE AT 10 PER CENT**

If long-term capital gain (mentioned in Condition 2) does not exceed Rs. 1 lakh, it is not chargeable to tax. If such gain exceeds Rs. 1 lakh, the amount in excess of Rs. 1 lakh will be taxable at the rate of 10 per cent (+ SC + 4 per cent HEC). The rate of 10 per cent is applicable whether the assessee is a corporate-assessee or a non-corporate assessee.

**BENEFIT OF EXEMPTION LIMIT IN SOME CASES** –

Proviso to section 112A(2) gives exemption limit benefit. This benefit is available only in the case of a resident individual or a resident HUF (maybe ordinarily resident or not ordinarily resident). Moreover, this benefit is available only if the total income (as reduced by long-term capital gain mentioned in Condition 2) is less than the exemption limit. (Also Refer Sec 112/111A)

Example- Z (50 years) is a resident individual. For the assessment year 2019-20, he has following income -

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long-term capital gain on transfer of equity shares (three conditions given above are satisfied) (capital gain is computed within the parameters given under section 112A)</td>
<td>1,25,00,000</td>
</tr>
<tr>
<td>Other income</td>
<td>60,000</td>
</tr>
<tr>
<td>Net income (or taxable income or total income)</td>
<td>1,25,60,000</td>
</tr>
</tbody>
</table>

In this case, net income (as reduced by long-term capital gain) is Rs. 60,000. Exemption limit is Rs. 2,50,000. Z is unable to fully utilise his exemption limit. Unutilised exemption limit is Rs. 1,90,000 which will be deducted from capital gain of Rs. 1,25,00,000. In other words, out of long-term capital gain of Rs. 1,25,00,000, amount chargeable to tax under section 112A is Rs. 1,23,10,000. Tax will be calculated as follows –

41.6
### Capital Gains Exempt Under Section 10

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on long-term capital gain under section 112A [10% of (long-term capital gain exceeding Rs. 1,00,000)]</td>
<td>Rs. 12,21,000</td>
</tr>
<tr>
<td>Tax on other income</td>
<td>Nil</td>
</tr>
<tr>
<td>Add: Surcharge @ 15%</td>
<td>Rs. 1,83,150</td>
</tr>
<tr>
<td>Tax and surcharge</td>
<td>Rs. 14,04,150</td>
</tr>
<tr>
<td>Add- Health and education cess @ 4%</td>
<td>Rs. 56,166</td>
</tr>
<tr>
<td>Tax liability (rounded off)</td>
<td>Rs. 14,60,320</td>
</tr>
</tbody>
</table>

#### MODE OF COMPUTATION OF COST OF ACQUISITION

- If tax is payable under section 112A, cost of acquisition of equity shares/units shall be calculated according to the provisions given under section 55(2)(ac). This provision is applicable only in respect of equity shares /units acquired by the assessee before February 1, 2018. Cost of acquisition shall be calculated as follows –

**Step 1** - Find out actual cost of acquisition of equity shares/units.

**Step 2** - Find out -
- fair market value of such asset on **January 31, 2018**; or
- full value of consideration received/occurring as a result of transfer of equity shares/units, whichever is less.

Cost of acquisition shall be deemed to be amount computed in **Step 1 or Step 2**, whichever is higher.

- Fair market value on **January 31, 2018**- Fair market value on **January 31, 2018** shall be calculated as follows -

1. **Quoted shares/quoted units** - In a case where equity share/unit is listed on any recognised stock exchange, the highest price of share/unit quoted on such exchange on **January 31, 2018** is taken as fair market value; Where, however, there is no trading in such share/unit on such exchange on **January 31, 2018**, the highest price of such share/unit on such exchange on a date immediately preceding **January 31, 2018** when such share/unit was traded on such exchange shall be the fair market value.

2. **Units not listed** - In a case where a unit is not listed on a recognised stock exchange, the net asset value (NAV) of such unit as on **January 31, 2018** is taken as fair market value.

3. **Shares (not listed on January 31, 2018) but listed on the date of transfer** - In a case, where equity share is listed on a recognised stock exchange at the time of transfer (but not listed on January 31, 2018), fair market value on January 31, 2018 will be calculated (after giving indexation benefit in a limited mode up to the previous year 2017-18) as follows-

\[
\text{Cost of acquisition} \times \frac{\text{Cost inflation index (CII) of 2017-18 (ie., 272)}}{\text{CII for the year in which the shares were first held by the assessee (or previous owner in a few cases) or 2001-02 whichever is later}}
\]
• Provisions illustrated - To have better understanding, the following cases may be considered –

**Case 1** - Consider the following situations (1,000 shares are transacted at Bombay Stock Exchange but value of 1 equity share is given below) -

<table>
<thead>
<tr>
<th>Step 1 - Cost of acquisition on September 20, 2017</th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
<th>Situation 3 Rs.</th>
<th>Situation 4 Rs.</th>
<th>Situation 5 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>410</td>
<td>710</td>
<td>900</td>
<td>800</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 2 - Fair market value as per highest quotation on January 31, 2018</th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
<th>Situation 3 Rs.</th>
<th>Situation 4 Rs.</th>
<th>Situation 5 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) Selling price on October 15, 2018</td>
<td>730</td>
<td>780</td>
<td>300</td>
<td>1,000</td>
<td>100</td>
</tr>
<tr>
<td>(c)</td>
<td>760</td>
<td>650</td>
<td>910</td>
<td>825</td>
<td>400</td>
</tr>
<tr>
<td>(d) Lower of (b) or (c)</td>
<td>730</td>
<td>650</td>
<td>300</td>
<td>825</td>
<td>100</td>
</tr>
</tbody>
</table>

Cost of acquisition for the purpose of section 112A [(a) or (a), whichever is higher] (e) 730 710 900 825 100

Long-term capital gain under section 112A [(c)-(e)] 30 (-)60 10 Nil 300

**Case 2** - In the following cases, shares are listed after January 31, 2018 (assume that shares are listed for the first time in March 2018 or April 2018) -

<table>
<thead>
<tr>
<th>Date of acquisition of 1,000 shares</th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2003</td>
<td>60,000</td>
<td>38,000</td>
</tr>
<tr>
<td>June 1, 1995</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fair market value on April 1, 2001
Sale consideration of 1,000 shares on June 7, 2018 (transacted at BSE and STT @ 0.1% of Rs. 30,000 is paid)

Cost of acquisition and capital gain will be calculated as follows -

<table>
<thead>
<tr>
<th>Cost of acquisition (actual cost or fair market value on April 1, 2001, whichever is higher, in Situation 2)</th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) 60,000</td>
<td>40,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 2 - Fair market value on January 31, 2018</th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling price on June 7, 2018</td>
<td>1,49,725</td>
<td>1,08,800</td>
</tr>
<tr>
<td>[lower of (b) or (c)]</td>
<td>30,00,000</td>
<td>30,00,000</td>
</tr>
<tr>
<td>(d)</td>
<td>1,49,725</td>
<td>1,08,800</td>
</tr>
</tbody>
</table>

Cost of acquisition for the purpose of section 112A [(a) or (a), whichever is higher] (e) 1,49,725 1,08,800

Long-term capital gain under section 112A [(c) - (e)] 28,50,275 28,91,200

OTHER POINTS - For computation of tax under section 112A, the following points should be kept in view:

1. Indexation benefit (barring the case given above) is not available when tax is payable under section 112A.
2. Mode of computation of capital gain in foreign currency in the case of a non-resident (specified by first proviso to section 48) is not applicable when tax is payable under section 112A.
3. Deductions under sections 80C to 80U are not available from long-term capital gain (mentioned in Condition 2).
4. Rebate under section 87A is not available from income-tax on long-term capital gain mentioned in Condition 2. However, the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.

ANNEXURE:

Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply [Notification No. 60/2018, dated 01-10-2018]

The Finance Act, 2018 has withdrawn exemption under section 10(38) and has inserted new section 112A in the Income-tax Act, 1961, to provide that long-term capital gains arising from transfer of a capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10% of such capital gains exceeding one lakh rupees. The said section, inter alia, provides that the provisions of the section shall apply to the capital gains arising from a transfer of long-term capital asset, being an equity share in a company, only if securities transaction tax (STT) has been paid on acquisition and transfer of such capital asset.

However, to provide for the applicability of the concessional tax regime under section 112A to genuine cases where the STT could not have been paid, it has also been provided in section 112A(4) that the Central Government may specify, by notification, the nature of acquisitions in respect of which the requirement of payment of STT shall not apply in the case of acquisition of equity share in a company.

In view of the above, the Central Government has, vide notification No. 60/2018, dated 1st October, 2018, notified that the condition of chargeability of STT shall not apply to the acquisition of equity shares entered into

- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to STT, other than the following transactions.

In effect, only in respect of the following transactions mentioned in column (2), the requirement of paying STT at the time of acquisition for availing the benefit of concessional rate of tax under section 112A would apply. In may be noted that the exceptions are listed in column (3) against the transaction. The requirement of payment of STT at the time of acquisition for availing benefit of concessional tax rate under section 112A will not apply to acquisition transactions mentioned in column (3).
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transaction</td>
<td>Non-applicability of condition of chargeability of STT</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognized stock exchange of India is made through a preferential issue</td>
<td>Where acquisition of listed equity share in a company –</td>
</tr>
<tr>
<td></td>
<td>- (i) has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iv) is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India</td>
<td>Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:</td>
</tr>
<tr>
<td></td>
<td>- (i) acquisition through an issue of share by a company other than through preferential the issue referred to in (a);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) acquisition by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iv) acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines,1999;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(v) acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(vi) acquisition in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(vii) acquisition from the Government;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(viii) acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a</td>
<td></td>
</tr>
</tbody>
</table>
### Q1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?

**Ans 1.** Long term capital gains mean gains arising from the transfer of long-term capital asset.

---

| (ix) | acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3) (Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Distribution of capital assets on dissolution of firm/ AOPs/ BOIs) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)] |
|-----------------------------------------------|
| (c) | acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognized stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognized stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 and the rules made thereunder; |

Subsequent to insertion of section 112A, the CBDT has issued clarification F. No. 370149/20/2018-TPL dated 04.02.2018 in the form of a Question and Answer format to clarify certain issues raised in different fora on various issues relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:
It provides for a new long-term capital gains tax regime for the following assets–

i. Equity Shares in a company listed on a recognised stock exchange;

ii. Unit of an equity oriented fund; and

iii. Unit of a business trust.

The new tax regime applies to the above assets, if–

a. the assets are held for a minimum period of twelve months from the date of acquisition; and

b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q2. **What is the point of chargeability of the tax?**

**Ans 2.** The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in clause (47) of section 2 of the Act.

Q3. **What is the method for calculation of long-term capital gains?**

**Ans 3.** The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

Q4. **How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?**

**Ans 4.** The cost of acquisition for the long-term capital asset acquired on or before 31st of January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31st of January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

Q5. **Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 4.**

**Ans 5.** The computation of long-term capital gains in different scenarios is illustrated as under

**Scenario 1** — An equity share is acquired on 1st of January, 2017 at Rs.100, its fair market value is Rs.200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at Rs.250. As the actual cost of acquisition is less than the fair market value as on 31st of January, 2018, the fair market value of Rs.200 will be taken as the cost of acquisition and the long-term capital gain will be Rs.50 (Rs.250 – Rs.200).

**Scenario 2** — An equity share is acquired on 1st of January, 2017 at Rs.100, its fair market value is Rs.200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at Rs.150. In this case, the actual cost of acquisition is less than the fair market value as on 31st of January, 2018. However, the sale value is also less than
the fair market value as on 31st of January, 2018. Accordingly, the sale value of Rs.150 will be taken as the cost of acquisition and the long-term capital gain will be NIL (Rs.150 – Rs.150).

**Scenario 3**— An equity share is acquired on 1st of January, 2017 at Rs.100, its fair market value is Rs.50 on 31st of January, 2018 and it is sold on 1st of April, 2018 at Rs.150. In this case, the fair market value as on 31st of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of Rs.100 will be taken as actual cost of acquisition and the long-term capital gain will be Rs.50 (Rs.150 – Rs.100).

**Scenario 4**— An equity share is acquired on 1st of January, 2017 at Rs.100, its fair market value is Rs.200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at Rs.50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of Rs.100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be Rs.50 (Rs.50 – Rs.100) in this case.

Q6. **Whether the cost of acquisition will be inflation indexed?**

**Ans 6.** Third proviso to section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.

Q7. **What will be the tax treatment of transfer made on or after 1st April 2018?**

**Ans 7.** The long-term capital gains exceeding Rs.1 Lakh arising from transfer of these assets made on after 1st April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31st January, 2018.

Q8. **What is the date from which the holding period will be counted?**

**Ans 8.** The holding period will be counted from the date of acquisition.

Q9. **Whether tax will be deducted at source in case of gains by resident tax payer?**

**Ans 9.** No. There will be no deduction of tax at source from the payment of long-term capital gains to a resident tax payer.

Q10. **What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?**

**Ans 10.** The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt.
Q11. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?

Ans 11. The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt.

Q12. What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?

Ans 12. Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

**TAX ON SHORT TERM CAPITAL GAINS**

**SECTION 111A: TAX ON SHORT-TERM CAPITAL GAINS IN CERTAIN CASES**

(1) Where the total income of an assessee includes any income chargeable under the head "Capital gains" arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or unit of a business trust and-

(a) the transaction of sale of such equity share or unit is entered into on or after 1.10.2004 and

(b) such transaction is chargeable to securities transaction tax,

the tax payable by the assessee on the total income shall be the aggregate of-

(i) the amount of income-tax calculated on such short-term capital gains at the rate of fifteen per cent; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee;

Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as to reduced falls short of the maximum amount which is not chargeable to income-tax, and the tax on the balance of such short-term capital gains shall be computed at the rate of fifteen percent. (Also Refer Sec 112A & Sec 112)
(2) Where the gross total income of an assessee includes any short term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains. [Deduction under section 80C, 80D, 80G, etc. shall not be allowed]

**Explanation** - For the purposes of this section, the expression "equity oriented fund" shall have the meaning assigned to it in section 112A.

**ANALYSIS OF SECTION 111 A**

Section 111A shall be applicable if all the following conditions are fulfilled:

- The gains arise from transfer of a capital asset;
- The capital asset is either an equity share in a company or a unit of an "Equity Oriented Fund" or **unit of a business trust**.
- the asset is a short term capital asset;
- the transaction of sale is entered into on or after 1.10.2004.
- such transaction is chargeable to Securities Transaction Tax (STT);

**KEY NOTES:**

- Section 111A is applicable to all assessees including Foreign Institutional Investors and Non-Residents.

- **Section 111A is applicable to an investor who holds the equity shares/units of Equity Oriented Fund or unit of a business trust as capital assets and not as stock-in-trade.** Hence, assessees claiming benefits of section 111A will have to establish that they were holding the equity shares/unit of Equity Oriented Fund/unit of a business trust as capital asset and not as stock-in-trade. However, as per amendment by Finance Act, 2014, for FIs these will be considered as capital assets and they are not required to prove that the securities are held by them as capital assets.

- Section 111A is not applicable to securities other than equity shares and units of equity oriented funds and **unit of a business trust**. Thus, it does not cover other types of securities such as preference shares, debentures, deep discount bonds, units of debt Mutual Fund, etc.

- **Securities transaction tax applies to the following:**
  (i) sale of Equity shares in a company where the transaction of such sale is entered into in a recognized stock exchange.
  (ii) sale of unit of an equity oriented fund or unit of a business trust where the transaction of such sale is entered into in a recognized stock exchange.
  (iii) Sale of unlisted equity shares by any holder of such shares under an offer for sale to the public included in an initial Public offer and where such shares are subsequently listed on a recognised stock exchange.
  (iv) Sale of unlisted units of a business trust by any holder of such units which were acquired in consideration of a transfer referred to in clause
(xvii) of section 47 of the Income Tax Act 1961 under an offer for sale to the public included in an initial offer and where such units are subsequently listed on a recognised stock exchange.

(v) sale of unit of an equity oriented fund to the Mutual Fund.

(vi) However, as per Finance Act, 2016 the exemption is available if such sale transaction takes place on a recognised stock exchange located in IFSC provided the consideration is paid or payable in foreign currency. Such transaction is not chargeable to securities transaction tax.

• Section 111A is applicable only if the sale transaction is chargeable to STT. In respect of equity shares, STT is payable only in respect of transactions on a recognized stock exchange in India. Also as per Finance Act 2012, STT is also payable on sale of unlisted equity shares under an offer for sale to public included in public offer. Hence, section 111A shall not be applicable to capital gains arising pursuant to buyback, open offer for sale, sale of rights entitlement, delisted shares, negotiated deals, etc.

SECURITIES TRANSACTION TAX (STT)
AMENDMENT BY FINANCE ACT, 2012

Securities Transaction Tax shall be levied on the sale of unlisted equity shares by any holder of such shares under an offer for sale to the public included in an initial Public offer and where such shares are subsequently listed on a recognised stock exchange.

Balance Sheet of Tulip Ltd.

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount (Rs.)</th>
<th>Assets</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 Crores Equity shares of Rs. 10 each Reserve &amp; Surplus</td>
<td>500 2,000</td>
<td>Net Assets</td>
<td>2,500</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,500 TOTAL</td>
<td>2,500</td>
<td></td>
</tr>
</tbody>
</table>

Company Tulip Ltd. comes out with a public issue of 30 crores shares at an issue price of Rs. 50 (Rs. 10 plus Rs. 40 premium). The terms of issue are:

(a) Fresh issue of 20 crore shares @ Rs. 50 each

(b) Promoters will offer 10 crore shares to the public @ Rs. 50 each. In other words, in the public offer, promoters will offer their 10 crore shares to the public at a price of Rs. 50 each and these 10 crore shares will form part of the public issue.

After the public issue all 70 crore shares will be listed on the stock exchange.

Now as per the Finance Act, 2012, Securities Transaction Tax shall be payable by the promoters since there is:

- a sale of unlisted equity shares (10 crore shares)
- by the holder of such shares i.e. promoters
- under an offer for sale to the public
- included in the initial public offer
- and such shares are subsequently listed on recognised stock exchange.

As per Finance Act, 2012 the seller i.e. promoters shall pay STT @ 0.20% of sale price i.e. @ 0.20% on 500 crores (10 crores shares @ Rs. 50 each)

As per Finance Act, 2012, the Lead Merchant Banker appointed by the Company shall collect STT from seller i.e. promoters and deposit with the Government.

**KEY NOTES:**

1. As per section 111A, the Short Term Capital Gains on the above sale shall be taxable @ 15%.
2. As per section 112A, the LTCG on above sale shall be taxable @ 10 % after giving exemption of Rs 1,00,000 from LTCG.
CHAPTER 42.
EXEMPTION UNDER SECTION 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA & 54GB.

(JUST DO FROM COLOURED SUMMARY)

JUDICIAL DECISIONS

1. CIT v. T.N. Aravinda Reddy (SC)
   Where a property is owned by more than one person and the other co-owner or co-owners release his or their respective share or interest in the property in favour of one of the co-owners, it can be said that the property has been purchased by the release. Such release also fulfils the condition of section 54 as to purchase so far as release assessee is concerned.

2. CIT v. Narasimhan (PV) (Mad)
   The assessee sold his residential property and invested the capital gain within the stipulated time in the construction of a new floor on another house owned by him by demolishing the existing floor, it was held that he was entitled to exemption under section 54.

3. CIT v. J.R. Subramanya Bhatt (Kar)
   The construction of the new house may start before the date of transfer, but it should be completed within 3 years from the date of transfer of the original house.

4. CIT v Shahzada Begum (AP)
   If the assessee has paid the full consideration and obtained the possession of the house within the specified period, he is eligible for exemption, even if, the sale deed has not been registered in his favour.

5. CIT v. Kamal Wahal (2013) (Delhi)
   The assessee sold a capital asset and invested the sale proceeds in purchase of a new house in the name of his wife. He claimed deduction under section 54 in respect of the new residential house purchased by him in the name of his wife.
   The Delhi High Court observed that the assessee had not purchased the new house in the name of a stranger or somebody who is unconnected with him, but had purchased it in the name of his wife. The entire investment for purchase of new residential house had come out of the sale proceeds of the capital asset (of the assessee) and there was no contribution from his wife.
   The assessee is entitled to claim exemption under section 54 in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.
6. Would the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property, qualify for exemption under section 54?

**CARYAMA SUNDARAM V. CIT [2018] (MAD)**

**Facts of the Case:** The assessee sold a residential house property for a consideration of Rs.12.5 crores on January 15th, 2010. Long-term capital gains arising to the assessee on sale of such property was Rs.10.48 crore. In May, 2007, the assessee had purchased a property with a superstructure thereon for a total consideration of Rs.15.96 crores and after demolishing the existing superstructure, the assessee constructed a residential house at a cost of Rs.18.74 crores. For the A.Y.2010-11, the assessee had claimed exemption of the entire long-term capital gains of Rs.10.48 crore under section 54, since it was lower than the cost of construction of Rs.34.70 crores.

**Assessing Officer’s view:** The Assessing Officer opined that only that part of the construction expenditure incurred after the sale of the original asset was eligible for exemption under section 54. Based on records, the Assessing Officer calculated the cost of construction incurred after the sale of the original asset, amounting to Rs.1.15 crores and accordingly, allowed exemption only to that extent. The Commissioner (Appeals) upheld the view of the Assessing Officer.

**High Court’s Observations:**
1. According to section 54, capital gains exemption is available in respect of the cost of new residential house purchased or constructed. Section 54(1) is specific and clear in that it mentions cost of new residential house and not just the cost of construction of the new residential house.
2. The cost of the new residential house would necessarily include the cost of the land, materials used in the construction, labour and any other cost relatable to the acquisition or construction of the residential house. Also, in this case, the assessee’s construction of new house is within the timeline stipulated in section 54(1).
3. Section 54 does not lay down that construction could not have commenced prior to the date of transfer of the asset that resulted in capital gains. Also, section 54(1) does not contemplate that the same money received from the sale of a residential house should be used in the acquisition of new residential house.
4. This is apparent as section 54 also provides exemption in respect of property purchased one year prior to the transfer of residential house property, which gave rise to the capital gains.

**High Court’s Decision:**
The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemption under section 54. As capital gains arising on transfer of previously owned house property of the assessee is less than the cost of the new residential house in this case, the entire capital gains would be exempt under section 54.
The exemption under section 54EE is also available in respect of capital gains on transfer of other long term capital assets and the exemption under section 54EC is available in respect of capital gains on transfer of capital asset being land or building or both.
CHAPTER XIIDA: LEVY OF ADDITIONAL INCOME TAX ON DISTRIBUTED INCOME OF A DOMESTIC COMPANY ON ACCOUNT OF BUY BACK OF UNLISTED/LISTED SHARES

<table>
<thead>
<tr>
<th>IMPLICATION</th>
<th>BUY BACK OF SHARES LISTED SHARES</th>
<th>UNLISTED SHARES / LISTED SHARES { FA 2019}</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the hands of shareholders</td>
<td>Taxable as CAPITAL GAINS u/s 46A</td>
<td>Exempt as per Section 10(34A)</td>
</tr>
<tr>
<td>In the hands of company</td>
<td>No implication</td>
<td></td>
</tr>
</tbody>
</table>

Additional distribution tax u/s 115QA @ 23.296% i.e. (20% + 12%SC + 4%Health & EC) On DISTRIBUTED INCOME (Computed as shown in Note below)

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019: TAX ON INCOME DISTRIBUTED TO SHAREHOLDER IN CASE OF LISTED COMPANIES

Section 115QA of the Act provides for the levy of additional Income-tax at the rate of twenty per cent. of the distributed income on account of buy-back of unlisted shares by the company. As additional income-tax has been levied at the level of company, the consequential income arising in the hands of shareholders has been exempted from tax under clause (34A) of section 10 of the Act.

This section was introduced as an anti-abuse provision to check the practice of unlisted companies resorting to buy-back of shares instead of payment of dividends. This practice of widespread abuse was noted, in the past, amongst unlisted companies where the taxpayers preferred it for tax avoidance, as tax rate for capitals gains was lower than the rate of Dividend Distribution Tax (DDT). However, instances of similar tax arbitrage have now come to notice in case of listed shares as well, whereby the listed companies are also indulging in such practice of resorting to buy-back of shares, instead of payment of dividends.

In order to curb such tax avoidance practice adopted by the listed companies, the existing anti abuse provision under Section 115QA of the Act, pertaining to buy-back of shares from shareholders by companies not listed on a recognised stock exchange, is proposed to be extended to all companies including companies listed on recognised stock exchange. Thus, any buy back of shares from a shareholder by a company listed on recognised stock exchange, on or after 5th July 2019, shall also be covered by the provision of section 115QA of the Act. Accordingly, it is also proposed to extend exemption under clause (34A) of section 10 of the Act to shareholders of the listed company on account of buy-back of shares on which additional income-tax has been paid by the company.

These amendments will take effect from 5th July, 2019.
**Note: Amendment made by Income Tax Amendment Ordinance, 2019**
If the public announcement for the Buy back of Listed Shares was made before 5th July 2019 then the amendment made by Finance Act 2019 shall not be applicable,

Note:

| Amount paid | XXX |
| Less: Amount received on issue of shares, determined in the manner as may be prescribed | (XXX) |
| DISTRIBUTED INCOME subject to additional Income Tax | XXX |

The CBDT has now notified the final rules for determining the amount received for issue of shares under 12 different situations. These rules are effective from 1 June, 2016.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Situation</th>
<th>Amount received by the company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Shares issued upon subscription by any person</td>
<td>The amount, including premium, actually received by the company.</td>
</tr>
<tr>
<td>2.</td>
<td>Where the company has, prior to the buy-back of shares, returned any sum out of the sum received on issue of shares</td>
<td>The amount received by the company as reduced by the sum so returned. It is clarified that amount on which tax has been paid u/s 115-O of the Act such amount shall not be reduced to arrive at the amount received.</td>
</tr>
</tbody>
</table>
| 3.      | Shares issued under ESOP or as sweat equity shares | The fair market value (FMV) of the share as determined by the merchant banker on the specified date to the extent credited to the share capital and share premium account by the company.
“Specified date” means, (i) the date of exercising of the option; or (ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising. |
| 4.      | Shares are issued under a scheme of amalgamation, in lieu of the share or shares of an amalgamating company | The amount received by the amalgamating company in respect of such shares issued shall be deemed to be the amount received by the amalgamated company in respect of the shares so issued. |
| 5.      | Shares issued under a scheme of demerger | The amount which bears to the amount received by the demerged company in respect of the original shares, determined in accordance with this rule, the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. |
| 6.      | In respect of original shares of a demerged company | The amount received by such demerged company in respect of the original shares, as reduced by the amount derived under Sr. No. 5 above. |
| 7.      | Shares issued or allotted as part of consideration | The amount received by the company for issue of such share shall be determined as under: |

43.2
for acquisition of any asset or settlement of any liability  

| **Amount received** = \( \frac{A}{B} \)  
| ---  
| Where,  
| \( A \) = an amount being lower of the following:  
| a) the amount which bears to the FMV of the asset or liability, as determined by a merchant banker, the same proportion as the part of consideration being paid by issue of shares bears the total consideration;  
| b) the amount of consideration for acquisition of the asset or settlement of liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company  
| \( B \) = No. of shares issued by the company as part of consideration  

8. Shares issued or allotted on succession or conversion, as the case may be, of a firm into the company or succession of sole proprietary concern by the company  

| Amount received by the company for issue of shares shall be determined as under:  
| **Amount received** = \( \frac{A - B}{C} \)  
| Where,  
| \( A \) = Book Value of the assets in the balance sheet less amount of tax paid as TDS/TCS/Advance tax payment as reduced by tax refunds and amount shown in the balance sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset (Revaluation reserve, if any needs to be ignored).  
| \( B \) = BV of liabilities shown in the balance-sheet excluding:  
| a) Capital, by whatever name called, of the proprietor or partners of the firm;  
| b) Reserves & surpluses, by whatever including balance in P&L account;  
| c) Provision for taxation (other than amount of tax paid as TDS/TCS Advance tax payment, as reduced by tax refunds if any, to the extent of the excess over the tax payable with reference to the book profits, in accordance with the law applicable thereto);  
| d) Amount representing provisions made for meeting liabilities, other than ascertained liabilities; and  
| e) Amount representing contingent liabilities.  
| \( C \) = No. of shares issued on conversion/succession.  

9. Shares are issued or allotted without any consideration on the basis of existing shareholding  

| NIL  

10. Shares issued pursuant to conversion of preference shares or bond or debenture, debenture-stock or  

| The amount received in respect of such instrument so converted.  

43.3
### Question:

AK Pvt. Ltd. had 5 shareholders. The details of share subscription by 5 shareholders are as under:-

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Shareholder</th>
<th>Mode of subscription</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr. Anil</td>
<td>Purchased</td>
<td>Rs. 10,000 (50 shares FV Rs. 10/share)</td>
</tr>
<tr>
<td>2</td>
<td>Mr. Sunil</td>
<td>ESOPs (Amount credited by the company was Rs. 200/share)</td>
<td>Rs. 2000 (30 shares of FV of Rs. 10 each. FMV of shares= Rs. 3000)</td>
</tr>
<tr>
<td>3</td>
<td>Mr. Kamal</td>
<td>Converted his 20 preference shares into 10 equity shares</td>
<td>Preference shares were acquired for Rs. 2500 (FMV of equity share 3000 on date of conversion. FV of equity share = Rs. 10/share, FV of preference share = Rs. 100/share)</td>
</tr>
<tr>
<td>4</td>
<td>Mr. Roy</td>
<td>5 Bonus shares</td>
<td>FV of share= Rs. 10/share</td>
</tr>
<tr>
<td>5</td>
<td>Mr. Prakash</td>
<td>Purchase</td>
<td>300 shares for Rs. 2000 (FV of share Rs. 10 each)</td>
</tr>
</tbody>
</table>

The company bought back all the above shares for consideration of Rs. 100/share. Determine the buyback tax liability u/s 115QA.

### Solution:

Buyback tax u/s 115QA is levied @ 20% on distributed income (+12% SC + 4% H & EC) i.e. 23.296%

Distributed Income= Consideration paid on buy-back of shares (-) Amount received for issue of shares

The amount received shall be determined as under:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Particulars</th>
<th>Amount (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr. Anil</td>
<td>10000</td>
</tr>
<tr>
<td></td>
<td>Amount received would include share premium</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Mr. Sunil</td>
<td>3000</td>
</tr>
<tr>
<td></td>
<td>For shares purchased under ESOPs, FMV or amount credited by the company; whichever is lower shall be taken- 3000 or 6000</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Mr. Kamal</td>
<td>2500</td>
</tr>
<tr>
<td></td>
<td>For shares acquired on conversion of preference shares, amount received for acquiring preference shares shall be considered</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Name</td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-----------------</td>
<td>-------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Mr. Roy</td>
<td>For bonus shares, amount received would be Zero (0)</td>
</tr>
<tr>
<td>5</td>
<td>Mr. Prakash</td>
<td>Amount received even though shares issued at discount</td>
</tr>
</tbody>
</table>

| TOTAL AMOUNT RECEIVED                  | 17500 – (i) |

Shares bought back = 50 + 30 + 10 + 5 + 300 = 395
Consideration paid by company for buyback = 395* 100 = 39500 –(i)
Amount on which buyback tax would be charged = (ii)-(i)

= 39500-17500
= 22000

Buyback Tax = 22000* 23.296% = Rs. 5,125

*************************************************************************
CHAPTER 37
NON TAXABLE TRANSFER

Sec 47:- Non Taxable Transfers

(1) Any distribution of capital Asset by HUF (on partition)
(2) Any transfer of Capital Asset under gift, will or irrevocable trust
(3) Any transfer, in a scheme of amalgamation.
(4) Any transfer by Holding to subsidiary, provided following conditions are satisfied:-
   (a) The Holding Co. Hold the entire share capital of the Co. AND
   (b) The subsidiary Co. Is an Indian Co.
(5) Any transfer by S. Co. to H. Co., provided following conditions are satisfied :-
   (a) The H. Co. Holds the entire share cap of the S. Co. AND
   (b) The H. Co. Is an Indian Co. etc.
(6) Any Transfer in case of successions covered u/s 47(xiii)(iv)(xiiib).

Sec 47A: - Withdrawal of Exemption in certain cases
Where at any time before expiry of 8 years from date of transfer referred in clause (iv) or (v) of Sec 47 [i.e. H to S (or) S to H]
(1) Such Capital Asset is converted by transfer into stock in-trade OR
(2) Holding Co. ceases to hold the whole of share capital of subsidiary Co.

Sec 155(7B): - Rectification
Where Sec 47A is attracted, the assessment order of the transferor Co. will be rectified and the time limit of 4 years shall be counted from the end of PY in which the capital Asset was converted into SIT or in which the holding Co. ceases to hold whole of the share capital of sub. Co. The CG shall be charged in the PY in which transfer took place.

Sec 49(1):- Cost to previous owner
Where Capital Asset became property of Assessee by above means, the COA shall be deemed to be the cost for which the previous owner acquired it, as increased by COI incurred by previous owner and Assessee.
For determining the nature of capital Asset, the period for which the Asset was held by previous owner should also be clubbed. For Eg :- If Mr A has purchased a land of Rs. 1,00,000 on 01.04.2005 and subsequently it is gifted to Mr B on 01.04.2014 and such land is sold by Mr. B on 01.04.2019 then period of holding will be counted from 01.04.2005 to 31.03.2019. [Explanation to Sec 2(42A)]

Where the previous owner also acquired the property by way of gift etc, then COA of the Asset shall be the cost to last previous owner who acquired it by a mode other than gift etc.

Option to take FMV as on 01.04.2001 is available.

From the Judiciary: -

Whether indexation benefit in respect of gifted asset shall apply from the year in which the asset was first held by assessee or from the year the same was first acquired by previous owner?

It was held by Bombay High court in case of Manjula J. Shah that for determining the indexed COA u/s 48 the assessee must be treated to have held the asset from the year as was first held by previous owner and accordingly cost inflation index for the year the asset was first held by the previous owner would be considered for determining indexed cost of Acquisition.

R.M Arunachalam (SC) /Aditya Kumar Jajodia (Calcutta) [2018]

(a) It was held that when the previous owner had mortgaged the property, then after his death, the legal heir inherits only the mortgager’s interest in the property. Therefore, by discharging the mortgaged debt, the assessee acquires the property.

(b) Therefore, the COA to the legal heir is the aggregate of the cost to the previous owner and amount paid to clear the mortgage.

V.S.M.R. Jagadishchandran (SC)

Facts of the case:- The Assessee purchased a property on 01.01.1985 for Rs. 14,00,000. He mortgaged the property and took a loan of Rs. 9,00,000 against the mortgage. Subsequently the assessee sold the property for Rs. 30,00,000 on
01.01.2006. The assessee at the time of selling the property cleared the mortgaged debt and paid Rs. 9,00,000.

The issue under consideration is: - The Assessee argues that the said Rs. 9,00,000 paid by him to discharge the mortgaged debt is the cost of improvement to the property. The assessee argues that by discharging the mortgaged debt, he has obtained a clear title to the property.

**Judgement :-**

1. The SC turned down the arguments of the assessee and held that Rs. 9,00,000 paid to clear the mortgaged debt cannot be said to be COA or COI of the property.

2. The SC further held that the facts of the instant case are not similar to R.M Arunachalam.

**Conclusion:-** In the present case, the mortgage was created by assessee himself and therefore same cannot be said to be additional cost to the assessee.

**Taxation of Amalgamation**

Q. What do you mean by the term 'Amalgamation'?

Ans. As per Sec 2(1B), amalgamation in relation to companies means the merger of one or more companies with another company or merger of two or more companies to form one company in such a manner that:

1. All property of amalgamating Co. immediately before amalgamation becomes property of Amalgamated Co.

2. All Liabilities of Amalgamating Co. immediately before Amalgamation becomes liability of Amalgamated Co.

3. Shareholders holding not less than 75% in value of shares in Amalgamating Co. become shareholders of Amalgamated Co.
Taxation of Shareholders

(1) As per Sec 47, there will be no transfer and hence no CG when a shareholder, in the scheme of amalgamation transfers the shares held by him in the Amalgamating Co. if following conditions are satisfied:

(a) The transfer is made in consideration of allotment of shares in Amalgamated Co. except where the shareholders itself is the Amalgamated Co.

(2) The Amalgamated Co. is an Indian Co.

(3) As per Sec 2(42A), for determining the nature of capital Asset, the period for which the shares were held in Amalgamating Co. shall also be included.

Taxation of Amalgamating Company

(1) As per Sec 47 there will be no Capital Gains on transfer of Capital Asset by amalgamating Co. to amalgamated Co. if amalgamated Co. is Indian Co.

Amalgamation of Foreign Companies Holding Indian Company Shares

(1) There will be no capital Gains on transfer of shares held in an Indian Co. by amalgamating foreign Co. to amalgamated foreign Co. if following conditions are satisfied:

(a) At least 25% of shareholders of Amalgamating foreign Co. continue to remain shareholders of Amalgamated foreign Co.
(b) Such transfer does not attract Capital Gains in the country in which Amalgamating Co. is incorporated. (Also Refer Vodafone Case later on)

Sec 72A: - Provision Relating to carry forward and set off of Accumulated losses and unabsorbed Depreciation in Amalgamation, Demerger, etc.

Conditions to be satisfied by Amalgamating Company:

1. The Amalgamating Co. should have been engaged in the business for 3 years or more prior to the date of amalgamation.

   Example:- Amalgamation takes place on 01.07.2019 then Amalgamating Co. should have started the business on or before 01.07.2016.

2. The Amalgamating Co. should hold at least 75% of the Book value of fixed Assets which it held two years prior to date of Amalgamation.

   Example:

   Suppose the amalgamation takes place on 01.07.2019. Two years back, i.e., on 01.07.2017, the amalgamating Co. had the following BV of assets:

<table>
<thead>
<tr>
<th>Fixed Assets</th>
<th>BV (Rs.) [01.07.2017]</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>40</td>
</tr>
<tr>
<td>B</td>
<td>30</td>
</tr>
<tr>
<td>C</td>
<td>15</td>
</tr>
<tr>
<td>D</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>100</td>
</tr>
</tbody>
</table>
Suppose after 2 yrs, i.e., 01.07.2019, i.e., on the date of amalgamation, the amalgamating Co. held the following assets:

<table>
<thead>
<tr>
<th>Fixed Assets</th>
<th>BV (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>30</td>
</tr>
<tr>
<td>B</td>
<td>20</td>
</tr>
<tr>
<td>C</td>
<td>10</td>
</tr>
<tr>
<td>E</td>
<td>10</td>
</tr>
</tbody>
</table>

In order to c/f the losses of the amalgamating Co., at least 75% of the BV of the assets which it held 2 yrs prior to amalgamation, should be there on the DOA. Two years back Co. had BV of Rs 100 out of that, the Co. should hold at least those assets which were 75% of the total BV, on 01.07.2019. Subsequent BVs are not relevant. In the instant case, on the DOA, the Co. holds 85% of the BV of the assets which it held 2 yrs back.

**Conditions to be satisfied by Amalgamated Company:**

1. The Amalgamated Co. should **continue the business** of amalgamating Co. for the period of **5 years** from the date of Amalgamation.
2. The Amalgamated Co. should fulfil the **prescribed conditions** in case there is an Amalgamation of **industrial Undertaking**.

The prescribed conditions are as follows:-

The Amalgamated Co. shall **achieve** the level of production of **at least 50% of installed capacity** before the end of **4 years** from the date of amalgamation and continue to **maintain** said minimum level of production till the end of **5 years** from the date of Amalgamation.

However, the central Govt **on an application** made by an Amalgamated Co. **may relax** the condition of achieving the level of production or period during which the same is to be achieved or both in suitable cases having regard to the genuine efforts made by Amalgamated Co. to attain the prescribed level of production and circumstances preventing such efforts from achieving the same.
(3) The Amalgamated Co. holds continuously for a minimum period of 5 years from the date of Amalgamation atleast 75% of BV of FA of amalgamating Co. acquired in scheme of Amalgamation.

If, all the above conditions are fulfilled then the accumulated losses and unabsorbed depreciation shall be deemed to be of amalgamated Co. for the PY in which amalgamation was effected i.e. such accumulated losses can be carried forward for another 8 years.

Sec 72A:- Deemed Income

In case where any of the above conditions are not complied with, set off loss or allowance of depreciation made in any PY in the hands of A’ted Co. shall be deemed to be the income of the A’ted Co. chargeable to tax in the year in which such conditions are not complied with.

For the purpose of this Sec Accumulated losses means

Such losses of amalgamating Co. under the head PGBP (not being a speculation loss) which the Amalgamating Co. would have been entitled to c/f and set off u/s 72 if Amalgamation had not taken place.

⇒ Notes:

1. Sec 72A is applicable only for Carry Forward & Set off of losses and not for claiming exemptions u/s 47.
2. Sec 72A is also applicable in cases mentioned in Sec 47(xiii)/47(xiiib) & 47(xiv) (See Later on)

Taxation of Amalgamated Company

(1) As per Sec 49(1) where the capital asset became the property of amalgamated Co. then COA = Cost of which amalgamating Co. acquired it (+) COI by (Amalgamating + Amalgamated Co.)

(2) Option to take fair market value as on 01.04.2001 is available with Amalgamated Company.

(3) Period of Holding of Amalgamated Co. will be clubbed.
(4) **Sec 35:** - Expenditure on scientific Research

Where an Amalgamating Co. transfers any scientific Research Asset to an Indian Co. then provision of **Sec 35** shall be applicable to Amalgamated Co. and consequently :-

(a) Such transfer shall not be treated as transfer.

(b) Unabsorbed capital expenditure on scientific Research can be c/f by Amalgamated Co.

(c) If such asset is sold by Amalgamated Co, then provision of **Sec 41(3)** (deemed income) and explanation 1 to **Sec 43(1)** shall apply.

(5) **Telecom License Fee paid:** - Sec 35ABB/ABA

Where a telecom license is transferred by A'ting Co. to A'ted Co. then :-

(a) such transfer is not taxable.

(b) Deduction u/s 35ABB/ABA shall be allowable to A'ted Co

(c) The provisions relating to surplus or deficiency shall apply to A'ted Co. when the license is transferred by amalgamated Co.

(6) **Treatment of preliminary Expenses:** - Sec 35D

In case of Amalgamation, remaining 1/5\(^{th}\) deduction shall be allowable to Amalgamated Co. (i.e. till 5\(^{th}\) year).

(7) **Sec 35DD:** - Treatment of Amalgamation Expense

Deduction of such expense will be allowable in five equal instalments if the amalgamated Co. is an Indian Co.

(8) **Treatment of capital Expenditure on Family planning:** - Sec 36(1)(ix)

Where the Asset representing capital expenditure on family planning is transferred is the scheme of amalgamation then such transfer shall not be regarded as taxable transfer.

Unamortised capital expenditure shall be allowable in the hands of amalgamated Co. for balance years.

If such assets are sold then capital gains have to be paid by amalgamated Co.
(9) **Sec 35DDA:- Amortisation of VRS Expenses**

In case of amalgamation balance deduction will be allowable in the hands of amalgamated Co.

(10) **Sec 35E:- Taxation of Mines**

Such deduction is amortised over 10 PY, therefore in between if there is an amalgamation then deduction would be allowable in the hands of amalgamated Co. for balance years.

(11) **Sec 36(1)(vii):- Bad Debts**

As per Supreme Court in the case of T. Veerabhadra Rao K. Koteshwara Rao bad debts shall be allowed in the hand of amalgamated Co. if the goods are sold by Amalgamating Co.

(12) **Sec 41(1):- Recovery of Expenses**

Expenses allowed as deduction in the hands of A’ting Co. shall be taxable if recovered by amalgamated company.

(13) **Sec 41(4):- Recovery of Bad Debts**

As per Supreme Court judgement of P. K. Kaimal recovery of bad debts by amalgamated Co. is not taxable.

(14) **Proviso to Sec 32(1)**

Apportionment of depreciation between A’ted Co. and A’ting Co. (PGBP).

(15) **Explanation 7 to Sec 43(1) and Explanation 2 to Sec 43(6):-**

In the scheme of amalgamation the Assets will enter the block at the value which was appearing as on 1st day of the year of amalgamation OR if the asset is acquired in the current year only then it will enter at actual cost.

**Note for Point no 5,6,7,8,9 & 10:**

In the above 6 cases, in the year of Amalgamation the entire deduction pertaining to the year of amalgamation shall be given to amalgamated company. It
shall not be bifurcated between amalgamating & amalgamated company. (Also Refer Sec 44DB later)

**Exempt u/s 47(viic): Sovereign Gold Bonds**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Transferred before Redemption</th>
<th>Transferred on Redemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Individuals</td>
<td>Taxable. Therefore, Indexation is available.</td>
<td>Exempt.</td>
</tr>
<tr>
<td>By Others</td>
<td>Taxable. Therefore, Indexation is available.</td>
<td>Taxable. Therefore, Indexation is available.</td>
</tr>
</tbody>
</table>

**Exempt u/s 47(viib): Transfer of Govt Securities by NR:**

As per Sec 47(viib) any transfer of Capital Asset, being a Government security, carrying a **periodic payment** of interest made outside India through an **intermediary**, dealing in settlement of Securities by:-

Non - Resident  
To  
Exempt (√)  
Non - Resident

**Exempt u/s 47(ix): Transfer of Painting, etc to Govt/University, etc.**

Any transfer of capital Asset being any work of art, archaeological, scientific or art collection, Book, manuscript, drawings, paintings, photography or print to **Government, University**, or National Museum or National Art Gallery or Archives (National) or other Notified Institution, or any such other public museum, as may be notified by the Central Government.

**Exempt u/s 47(x): Conversion of Bonds to Equity Shares:**

Any transfer by way of **“Conversion”** of Bonds or debentures or debenture stock or deposit certificate of a company” into the shares or debentures of that company.
As per Sec 49(2A), the **cost of acquisition** of the shares or debentures so received, on conversion shall be case of that part of debentures bonds, debentures stock or deposit certificate which is so converted.

**Exempt u/s 47(xb):**

As per Sec 47 (xb), conversion of preference shares of a Co. into equity shares of that Company, is exempt (Earlier conversion of bonds or debentures into shares were exempt).

The POH shall be **clubbed**.

**COA of Equity shares = COA of Preference shares**

**Exempt u/s 47(xii): Sick Companies**

Any transfer of capital Asset, **being land of a sick INDUSTRIAL COMPANY**, made under a scheme prepared and sanctioned **u/s 17** of the sick Industrial Companies Act, 1985.

**Sec 47(xvi) :- Reverse Mortgage**

Sec 47(xvi) excludes the **transfer of capital Asset** in a transaction of **Reverse mortgage** to give relief to those people who mortgage property for their survival.

**Amount received** as loan shall not be treated as income of senior citizen.

Although loan is a capital receipt but to clarify the position of senior citizen and promote the scheme of reverse mortgage it has been provided that such income shall be exempt **u/s 10(43)**.

**Exempt u/s 47(xviii)/(xix):**

Transfer under consolidation **Schemes/Plans of Mutual Funds:-**

**Sec 47(xviii)/(xix) provides that the following transactions shall NOT be regarded as TRANSFER for the purpose of Sec 45:**

(1) Any transfer by a **mutual fund unit Holder** of a unit or units held by him, in the **consolidating Scheme/Plan** of a mutual fund, made in consideration of the allotment to him of units in the **consolidated Scheme/Plan** of the Mutual Fund.
(2) However, the consolidation, should be of, two or more schemes of equity oriented fund or two or more schemes of a fund, other than Equity oriented Fund {This condition is only applicable for 47(xviii)}

(3) Sec 49 provides that where the Capital Asset being a unit / units of in a consolidated scheme/plan became the property of the assessee, then the COA of the asset, shall be deemed to be the COA of the unit / units in the consolidating scheme/plan of the mutual fund.

(4) As per Sec 2(42A), the period of Holding shall be clubbed, to determine the nature of Capital Asset.

Exempt u/s 47(viia):
Any transfer outside India of a Rupee denominated bond of an Indian Company issued outside India by a NR to another NR, then it is exempt.
If the same bond is transferred by a NR on redemption to the Indian Co, then it is taxable. However, the gain arising due to currency exchange will not be subject to tax. (Refer 5th Proviso to sec 48)

Amendment made by Finance Act 2018:
Sec 47(viib) has been amended to provide that transactions in the following assets, by a non-resident on a recognized stock exchange located in any International Financial Services Centre shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—
a. bond or Global Depository Receipt, as referred to in Sec 115AC(1); or
b. rupee denominated bond of an Indian company; or
c. derivative.

AMENDMENT MADE BY FINANCE ACT(NO.2) 2019:
Amendment No-1:
Few more securities will be added in this Sec which the Central Government will notify.
Sec47(xiii):- Conversion of Proprietorship / Firm into Company

As per Sec 47(xiii) no capital Gains shall arise where a firm is succeeded by a company in the business carried on by it as a result of which a firm transfers any capital asset to the company.

The above benefit is available subject to following conditions:

(a) All Assets and Liabilities of the firm relating to business immediately before the succession is transferred to the successor company.

(b) All the partners of the firm immediately before the succession becomes the shareholders of the Co. in the same proportion in which their Capital account stood in the books of the firm.

(c) The partners of the firm do not receive any consideration other than by way of allotment of shares in the Co.

(d) The aggregate of the shareholding in the company by the partners of the firm is not less than 50% of total voting power in the company and their shareholding continues to be as such for the period of 5 years from the date of succession.

* Sec47(xiv):- Conversion of Sole Proprietor into COMPANY

* All the provisions of Sec 47(xiii) shall be applicable except condition (b).

* SEC72A IS APPLICABLE IN THIS CASE.

Sec 47A:- Withdrawal in certain cases

Where any of the conditions laid down in the proviso of clause (xiii) and / or clause (xiv) of Sec 47 are not complied with, then CG on transfer of capital Asset shall be deemed to be chargeable in the hands of successor company in the PY in which such requirements are not complied with.

Notes:-

(1) Exemption u/s 47 is applicable if a Business is succeeded. Exemption is not applicable if PROFESSION is succeeded.
(2) Exemption is **not possible** if any of the partners have **NEGATIVE capital** since conditions of exemptions cannot be fulfilled. In this case the partner will have to convert his capital into positive before succession takes place.

(3) **Business Profits are not exempt.** Profit on sale of S.I.T by the firm to the company shall be taxable in the hands of the firm as business profit. The firm should transfer the SIT to the Co. which will be valued at cost or market value whichever is lower as per the SC judgement of **SAKTHI TRADING.**

(4) Partner **includes minor partners** admitted for the benefits of the partnership.

**ALL THE BEST**
CHAPTER 39
CONVERSION OF UNLISTED/PRIVATE COMPANY INTO LLP

Sec 47(xiiiib):– Conversion of Unlisted Company or Private Company into LLP.

Any transfer of capital Asset by a private Company or an unlisted Company to a LLP or any transfer of shares held in the Company by a shareholder as a result of conversion of Company into LLP is exempt subject to following conditions:-

(a) All Assets & Liabilities of the Company immediately before conversion become assets & Liabilities of LLP.

(b) All the shareholders of the Co. immediately before the conversion become the partners of LLP and their Capital Contribution & Profit-Sharing Ratio in the LLP are in the same proportion as their shareholding on the date of conversion.

(c) The shareholder of the Company does not receive any consideration other than by way of share of profit.

(d) The Aggregate of profit-sharing Ratio of the shareholders of the Company in LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion.

(e) The total sales / Turnover of the Company in any of the three PY’s preceeding the PY’s in which the conversion takes place does not exceed Rs. 60,00,000.

(ea) Inserted by Finance Act, 2016.

The total value of Assets as appearing in BOA’s of Company in any of the three PY’s preceding the PY in which the conversion takes place does not exceed Rs. 5,00,00,000.

(f) No amount is paid to any partner out of balance of accumulated profit standing in the accounts of the Company on the date of conversion for the period of 3 years from the date of conversion.

As per Sec 49(1) COA and COI will be cost to previous owner.

For determining the nature of Capital Asset, POH will be clubbed.
Sec 47A: Withdrawal in certain cases
Where any of the conditions laid down in Sec 47(xiii) are not complied with, then capital Gain exempted shall be deemed to be chargeable in the PY in which requirements are not complied with.

Sec 115JAA: MAT Credit
In case of conversion of Co. into LLP, MAT Credit available in the hands of Co. shall not be allowed to LLP.
Sec 72A shall apply in this case.

ALL THE BEST
Any transfer of capital Asset to a company in the course of corporatisation of a recognised stock Exchange in India as a result of which AOP or BOI is succeeded by such company is exempt subject to following conditions:-

(1) All assets and Liabilities of AOP or BOI immediately before succession become the assets and liabilities of the Company.

(2) The corporatisation is approved by SEBI.

As per Sec 47 (xiii) any transfer of Capital Asset being a membership right held by a member of a RSE in India for acquisition of SHARES and Trading and / or clearing rights in that recognised stock exchange (that company) is exempt, if it is in accordance with the scheme approved by SEBI.

Sec 55:- Cost of Acquisition

(1) The COA being an equity share allotted to a shareholder under a scheme of demutualisation or corporisation, shall be COA of his original membership of the exchange. (Ignore FMV on 1.4.2001 just like Self-Generated Assets)

(2) However, the cost of capital asset being Trading or clearing Right acquired by a shareholder under such scheme shall be nil.

Sec 2(42A):- Period of Holding

In case of Capital Asset being trading or clearing rights as well as equity shares in the company, the nature of capital asset shall be determined by clubbing the earlier period.

PGBP:- Explanation 12 TO SEC 43(1)

The actual cost of the Asset acquired in above scheme shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation.

ALL THE BEST
Sec 51 v/s Sec 56(2)(ix):- Forfeiture of Advance Money Received

1. As per Sec 51, where any advance money is forfeited by the Assessee before 1.04.2014 as a subject matter of negotiation, then the amount so forfeited shall be deducted from COA or FMV as on 1/04/2001 or WDV as the case may be.

2. Amount forfeited by previous owner is not to be deducted under Sec 51.

3. Any advance forfeited on or after 01/04/2014 shall be treated as IFOS and shall not be reduced from COA.

K.R. Shrinath (Madras HC)

Facts of the Case:-

The assessee had entered into an agreement to purchase certain property and both parties are obligated to such agreement. After some time, another agreement was entered in the nature of cancellation of deed by which the buyer allowed the owner to sell the said property to any other person. As against this the buyer got a sum of Rs. 6,00,000 apart from being refunded advance of Rs. 40,000. Whether Rs. 6,00,000 received by Assessee is taxable under CG?

Judgement:-

1. It was held that the Assessee gave up the right and received a sum and therefore there could be no doubt that termination of such earlier agreement and allowing the vendor to sell the property to any person, the assessee has relinquished his right of specific performance which clearly fell within the definition of capital Asset u/s 2(14).

2. Further definition of transfer in 2(47) is wide enough to include the relinquishment of the Asset.

3. Assessee paid Rs. 40,000 at the time of agreement and only by paying such amount the assessee had acquired the right to get the sale deed executed in his favour. Therefore Rs.40,000 is the COA.

Applying the supra (above), ratio decendi (principle) it was held that sum received by assessee is Chargeable to CG tax.

ALL THE BEST
Sec 10(37): Compulsory Acquisition of Urban Agricultural Land

Sec 10(37) exempt the capital gains arising from transfer of agricultural land situated in urban area if the following conditions are cumulatively satisfied:

(a) Assessee is an individual or Hindu Undivided Family.
(b) Assessee transfers the agricultural land situated in urban area.
(c) Such land is held as capital asset and is not held as stock-in-trade.
(d) Such land was being used for agricultural purposes by such HUF or individual or parents of the individual during the period of two years immediately preceding the date of transfer.
(e) The transfer takes place by way of compulsory acquisition under any law.
(f) Capital gains computed with reference to the original compensation as well as the capital gains computed with reference to enhanced compensation are exempt.

Note:
If the above Urban Agricultural Land is sold by the assessee and not compulsorily acquired by CG, then the assessee can claim exemptions of Capital Gains u/s 54B by investing in another agriculture land within 2 years. (Refer Page_________)

Sec 10(37A): Exemption for Formation of New Capital City for Andhra Pradesh

Exemption is applicable if the following conditions are satisfied -

1. The taxpayer (land owner) is an individual/HUF.
2. He owns land or building or both on June 2, 2014.
3. Such land is transferred under the land pooling scheme.

Exemption - If the above conditions are satisfied, capital gains arising from the following transfer shall not be chargeable to tax by virtue of Sec 10(37A) -

1. Capital gain on transfer of land or building or both, under land pooling scheme.
2. Capital gain on transfer of LPOC (which is received in lieu of land transferred under the scheme).
3. Capital gain on transfer of reconstituted plot or land by said taxpayer within 2 years from the end of the financial year in which the possession of such plot or land was handed over to him.
**Sec 49** - Where reconstituted plot of land is transferred after the expiry of 2 years from the end of the financial year in which the possession of land was handed over to the said assessee, the **COA of such land shall be deemed to be its stamp duty value on the last day of the 2nd FY after the end of FY in which the possession of such asset was handed over to the assessee.**

**Sec 112A: LTCG on Transfer of Equity Shares/Units of Equity Oriented Fund/ Units of Business Trust.**

**Sec 112A** is applicable (with effect from the assessment year 2019-20) only if the following conditions are satisfied -

<table>
<thead>
<tr>
<th>Condition - 1:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The capital gains arise from the transfer of a long-term equity share in a company or a unit of an equity-oriented fund or a unit of a business trust.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition - 2:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In the case of equity shares</strong> - STT has been paid on acquisition and transfer of such capital asset. The requirement of STT payment at the time of acquisition is applicable only when shares are acquired on or after October 1, 2004.</td>
</tr>
<tr>
<td><strong>In the case of units of equity oriented fund or unit of business trust</strong> - In a case where the long-term capital asset is unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid only on transfer of such capital asset.</td>
</tr>
</tbody>
</table>

**Transactions in any IFSC not subject to Condition 3** -

Condition 2 given above is **not applicable** in the case of a transfer undertaken on a recognised stock exchange located in any International Financial Service Centre. However, this concession- is available only when the consideration for such transfer is received or receivable in foreign currency.

**Condition 2 not applicable in a few notified cases**
**Long-term capital gain in excess of Rs. 1 lakh taxable at 10 %**

If long-term capital gain does not exceed Rs. 1 lakh, it is not chargeable to tax. If exceeds Rs. 1 lakh, the amount in excess of Rs. 1 lakh will be taxable at the rate of 10 per cent (+ SC + 4 percent HEC).

**Benefit of Exemption Limit in some cases** -

This benefit is available only for Resident individual or HUF. Moreover, this benefit is available only if the total income (as reduced by LTCG from above) is less than the exemption limit. (This benefit is also available for sec 111A & 112)

**Mode of Computation of Cost of Acquisition**

If tax is payable under Sec 112A, COA of equity shares/units shall be calculated as per Sec 55(2)(ac). This provision is applicable only in respect of equity shares /units acquired by the assessee before February 1, 2018. COA shall be calculated as follows -

**Step 1** - Find out actual cost of acquisition of equity shares/units.

**Step 2** - Find out -

- fair market value of such asset on January 31, 2018; or
- full value of consideration received/occurring as a result of transfer of equity shares/units, whichever is less.

Cost of acquisition shall be deemed to be amount computed in Step 1 or Step 2, whichever is higher.

**How to compute FMV as on 31st January 2018:**

1. **Quoted shares/quoted units** - Highest price of share/unit quoted on such exchange on January 31, 2018 is taken as FMV: Where, however, there is no trading in such share/unit on such exchange on 31.01.2018 the highest price of such share/unit on such exchange on a date immediately preceding January 31, 2018 when such share/unit was traded on such exchange shall be the FMV.

2. **Units not listed** - In a case where a unit is not listed on a recognised stock exchange, the net asset value (NAV) of such unit as on January 31, 2018 is taken as FMV.
3. **Shares (not listed on January 31, 2018) but listed on the date of transfer**- In a case, where equity share is listed on a recognised stock exchange at the time of transfer (but not listed on January 31, 2018), FMV on 31.01.2018 will be calculated (after giving indexation benefit in a limited mode up to the PY 2017-18) as follows-

\[
\text{Cost of acquisition} \times \text{Cost inflation index (CII) of 2017-18 (ie., 272)}
\]

CII for the year in which the shares were first held by the assessee (or previous owner in a few cases) or 2001-02 whichever is later.

**Other points** - For computation of tax under **Sec 112A**, the following points should be kept in view -

1. **Indexation benefit is not available** when tax is payable under **Sec 112A**.
2. **First proviso to Sec 48 is not applicable** when tax is payable under **Sec 112A**.
3. **Deductions under Secs 80C to 80U are not available**.
4. **Rebate under Sec 87A is not available from income-tax on long-term capital gain mentioned in Condition 2. However, the rebate under Sec 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.**
5. **The losses u/s 112A can be carried forward and set off.**

**Sec 111A: STCG on Equity Shares etc.**

**Sec 111A** shall be applicable if all the following conditions are fulfilled:

- The gains arise from transfer of a capital asset;
- The capital asset is either an equity share in a company or a unit of an "Equity Oriented Fund" or unit of a business trust.
- the asset is a short term capital asset;
- the transaction of sale is entered into on or after 1.10.2004.
- such SALE transaction is chargeable to Securities Transaction Tax (STT);

➤ **Note:** Unlike sec 112A there is no need to pay STT on purchase to take the benefit of this Sec.
### Exemptions u/s 54 to 54GB

<table>
<thead>
<tr>
<th>Sec</th>
<th>Asset transferred</th>
<th>Asst to be purchased</th>
<th>Time limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec 54 (LT)</td>
<td>Residential H.P. (FA 2019)</td>
<td>Residential H.P.</td>
<td>1B 2A 3A</td>
</tr>
<tr>
<td>Sec 54B (ST / LT)</td>
<td>Urban Agricultural Land [used for Agri purpose for at least 2 yrs either by Assessee or parents]</td>
<td>Any Agricultural land (Rural / Urban)</td>
<td>2A P</td>
</tr>
<tr>
<td>Sec 54D (ST / LT)</td>
<td>Industrial L &amp; B (used for Industrial purpose at least 2 yrs by Assessee) (Compulsorily Acquired)</td>
<td>Industrial L &amp; B Bldg- ST √ Land -LT or ST</td>
<td>3A P C</td>
</tr>
<tr>
<td>Sec 54EC</td>
<td>Any LTCA being Land or Building. (FA 2018)</td>
<td>Bonds of NHAI / RECL/Or Any Bond to be notified (Power Finance Corporation Ltd/ Indian Railway Finance Corporation Ltd)</td>
<td>6 Months from date of transfer</td>
</tr>
</tbody>
</table>

Note: 5

- P: Permanent
- C: Capital
- 6 Months from date of transfer
### EXEMPTIONS U/S 54 TO 54GB

<table>
<thead>
<tr>
<th>Sec 54F</th>
<th>Any LTCA except Residential property</th>
<th>Residential House Prop.</th>
<th>1B P</th>
<th>2A P</th>
<th>3A C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec 54G (ST/LT)</td>
<td>L/ B / P &amp; M except furniture (from urban Area)</td>
<td>L/B/P &amp; M except furniture (in Rural Area)</td>
<td>1B</td>
<td>3A</td>
<td></td>
</tr>
<tr>
<td>Sec 54GA (ST/LT) Shifting to SEZ</td>
<td>L/ B / P &amp; M except furniture (from urban Area)</td>
<td>L/B/P &amp; M except furniture (in SEZ)</td>
<td>1B</td>
<td>3A</td>
<td></td>
</tr>
</tbody>
</table>

**Note for Sec 54B:**

If this asset is compulsorily acquired, then entire CG is exempt u/s 10(37).

<table>
<thead>
<tr>
<th>Scheme of deposit note 1</th>
<th>AMT OF EXEMPTION Note 2</th>
<th>LOCK IN PERIOD Note 3</th>
<th>ELIGIBLE ASSESSEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refer Note 1</td>
<td>Note 2</td>
<td>Note 3</td>
<td>Individual /HUF</td>
</tr>
<tr>
<td>same (except 2 yrs)</td>
<td>Same</td>
<td>Same</td>
<td>Individual /HUF</td>
</tr>
<tr>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>All Assessee</td>
</tr>
<tr>
<td>N.a.</td>
<td>Note 4</td>
<td>Same</td>
<td>All Assessee</td>
</tr>
<tr>
<td>same</td>
<td>Different</td>
<td>Same</td>
<td>Individual / HUF</td>
</tr>
<tr>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>All Assessee</td>
</tr>
<tr>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>All Assessee</td>
</tr>
</tbody>
</table>

**Make diagram here for Exemptions u/s 54 to 54GA:**
Note: 1 Scheme of Deposit: (Not Applicable for Sec 54EC & 54EE)

1) If the new asset is not acquired up to the due date of filing of return, then assesssee should deposit the desired amt in 'Capital Gain A/C scheme" (Special A/c opened in certain bank.) The amt should be deposited on or before the due date of filing the return.

2) If the deposited amount is not utilized within the prescribed time, then unutilized amt shall be taxable as 'capital Gains' in the PY in which 3 years from the date of transfer of original asset expires. This time limit of 3 yrs is 2 yrs in respect of sec 54B

3) Any amount withdrawn by legal heir on death of assessee is exempt in the hands of the legal heir.

Note 2: Amount of Exemption:

1) Under all Secs [except 54 GB & 54F] lower of:
   a) Amt of Capital Gains or;
   b) Cost of New Asset

2) Under Sec 54F / GB {Also Refer Sec 115F in NR Chapter, NRI Provisions}
   i) If the net consideration is fully utilized, then capital Gains is fully Exempt.
   ii) If Net consideration is partly utilized, then Capital Gain is partly exempt as follows: -
       
       Amt of Exemption = \( \frac{CG \times \text{Cost of New Asset}}{\text{Net sale Consideration}} \)

Note 3 : Lock in Period

The new asset should not be transferred within 3 years (5 years in case of 54EC) from date of acquisition / construction. If the new asset is transferred within 3/5 years, then exemption allowed earlier shall be withdrawn as follows:-
### Computation of capital Gains

**i) Under Secs 54/54B/54D/54G/54GA:**

- **[On transfer of new assets within 3 years] FVOC** (SP of New Asset)
- **Less:** Transfer Expenses
- **Less:** Reduced COA
  - (Cost of New Asset - Exemption claimed earlier)
- **Less:** COI
  - CG

**ii) Under Secs 54EC/EE / F / GB:**

- **(on Transfer of New Asset within 3 yrs) FVOC,** (SP of New Asset)
- **(-) Transfer Expenses**
  - NSC
- **(-) Full COA (Only COA of new asset)**
- **(-) COI**
  - CG
- **Add: LTCG exemption withdrawn**
  - CG

**Hint to Remember:**

- Follow **Reduced Cost Approach** where old asset and new asset are SAME.
- Follow **Full Cost Approach** where old asset and new asset are different.

**Note 4: Exemption Limit u/s 54EC/EE**

Amount of exemption u/s 54EC/EE should not exceed Rs 50 lacs in totality.
Note 5: 54 & 54F

i) Under Sec 54 the assessee is changing the house and u/s 54F the assessee is arranging the house but under both the Sec the assessee should purchase or construct only 1 Residential house.

If the assessee purchase or construct more than 1 house, then exemption is allowed only in respect of cost of 1 new house i.e. the one which has higher cost. However, if the assessee purchases or constructs more than 1 house which are adjacent to each other intended to be used as single residence, then exemption is allowed in respect of cost of all such houses.

{Also refer recent case law lecture for many more case law on exemptions}

Finance Act (No.1) 2019 - Amendment in Sec 54:
Where the amount of Capital Gains does not exceed Rs.2 cr, the assessee may, at his option, purchase or construct TWO residential houses in India.
This option is available just once in a life time.

ii) The assessee sold his residential house property and invested the capital gains within the stipulated time in construction of a new floor on another house owned by him by demolishing the existing floor, it was held that he was entitled to exemption u/s 54.

iii) Construction of new house may start before the date of transfer, but it should be completed within 3 years from the date of transfer of original house.

iv) If the assessee has paid full consideration and obtained the possession of house within specified period then he is eligible for exemption, even if sale deed has not been registered under his favour.

v) The assessee sold a capital asset and invested the sale proceeds in purchase of new house in the name of his wife. The DELHI HIGH COURT observed that assessee had not purchased the new house in the name of stranger of or somebody who is unconnected to him. The entire investment for purchase of new residential house had come out from the sale proceeds of the capital asset and there was no contribution from his wife the assessee is therefore entitled to claim exemption u/s 54 in respect of utilization of sale proceed of capital assets
for investment in residential house property in the name of his wife. (Kamal Wahal)

**Note 6: For Sec 54F**

On the date of transfer of LTCA the assessee shall not own more than 1 residential house i.e. he should have either 1 house or NO house.

**Note 7: For Sec 54EC/EE and Sec 54F**

Under Sec 54EC/EE and Sec 54F exemption is allowed for transfer for any LTCA. This means the asset should be long term. Accordingly, if a depreciable asset held for more than 36 months is sold, then it is a transfer of LTCA and it is eligible for exemption u/s 54EC/EE & 54F even though the resulting gain is always STCG

Nature of gain is not relevant. Nature of Asset is Relevant. (ACE BUILDERS LTD)

**Amendment made by Finance Act 2018:**

**Amendment to Sec 54EC**

The following amendments have been made to the scheme of Sec 54EC -

1. **Sec 54EC** requires that NHAI/REC/notified bonds should not be transferred (or should not be converted into money or loan or advance should not be taken on security of these bonds) within 3 years from the date of acquisition. This time-limit has been extended to 5 years (if investment in these bonds is made on or after April 1, 2018).

**Inserted by FA 2016. (Same as 54EC TO GREAT EXTENT EXCEPT T/L)**

**Sec 54EE:** Investment in units of Specified funds i.e. to finance START UPS.

This exemption is available from AY 2017 - 18 subject to following conditions.

1) The assessee [i.e. any entity has transferred any LTCA (not like 54EC)]

2) The assessee has to **invest** the capital Gains in long term specified assets to be notified by Central Government to finance Start ups, issued before 01.04.2019.
3) Such **investment** can be made at **any time within 6 months** from the date of transfer.

4) The amount of investment which is allowed as exemption in totality is **Rs. 50L**.

5) The benefit of depositing in scheme is not available here.

6) The long-term capital asset i.e. notified asset should **not be transferred** (not even loan or advance is **taken on security** of such assets) **within 3 years** from the date of acquisition. However if it is transferred or a loan is taken **within 3 years**, then the amount of exemption given earlier will be revoked and it shall be chargeable to tax in the year in which such specified assets are transferred or loan is taken [FOR 54EC THE TIME LIMIT IS 5 YEARS AS AMENDED BY FINANCE ACT 2018]

**Sec 54GB:** Capital Gain on Transfer of Residential Property exempt in certain cases.

1) **What kind of entity covered?**
   It applies to **individual or HUF** (Resident or Non Resident)

2) **Which capital gains are covered?**
   **LTCG** arising from transfer of **a residential property** (a house or a plot of land) owned by the assessee in India or outside India.

3) **What assessee has to do for claiming exemption u/s 54GB?**
The assessee has before the due date of furnishing return of income u/s 139(1) utilized the net consideration for subscription in EQUITY shares of an "Eligible Co" [Pref shares cannot be subscribed]

4) Who is an eligible company?
Eligible Co. means which fulfil all the following conditions.

i) It should be incorporated in India during the period commencing from 1st April of the PY in which capital Gain arises and ending on the due date of return u/s 139(1). Therefore, if the assessee sells residential plot of land on 30/06/2019 then Co. should be incorporated during the period 1/04/2019 to 31/07/2020 assuming that 31/07/2020 is the due date of filing of return.

ii) It is an eligible business i.e. eligible start up u/s 80-IAC.

iii) It is a company in which assessee has more than 25% equity capital after subscription of shares in the Co. [Finance Act (No.2) 2019]

5) What eligible Co. has to do?
The company has to utilise the amount subscribed by the assessee by way of equity shares for purchase of 'New asset', within 1 year from the date of subscription of equity shares by the assessee. The amount received by company by issue of shares from the assessee to the extent it is not utilized by the company for purchase of new asset before the due date of filing of return by an assessee u/s 139(1) shall be deposited by the company, before, the said due date in 'Capital Gain A/c scheme'.

6) What do we mean by the term 'New Asset'?
The term New Asset means new Plant & Machinery but does not include:

i) Any machinery or plant which was used either within or outside India.

ii) Any machinery or plant installed in office or premise on residential accommodation incl accommodation in the nature of guest house.

iii) Any office appliances including computer or computer software.

iv) Any Vehicle

v) Any machinery or plant the whole of actual cost is allowed as deduction earlier.
However, in case of eligible start up, being a technology driven start up, the new Asset shall include computer or computer software.

7) Amount of capital gain exempt? (Same as Sec 54F)
   a) If net sale consideration > cost of new asset then,
      \[
      \text{LTCG} \times \frac{\text{Cost of New Asset}}{\text{NSC}}
      \]
   b) If NSC ≤ Cost of New asset then, entire LTCG is Exempt.

8) What do use mean by term cost of new asset?
   The amount utilized by the company for purchase of new asset up to the date of filing of return together with the amount deposited in CGAS shall be deemed to be the cost of new asset.

9) what is the effect of not utilizing the amount from CGAS within prescribed time?
   The amount deposited in CGAS is to be utilized by eligible company for purchase of new assets within 1 yr from the date of subscription of Equity shares by assessee. If the company does not utilize wholly or partly the amt so deposited in CGAS for purchase of new asset within the said period of 1 year, then unutilised portion shall be deemed income of the year in which 1 year expires.

10) What is the lock in period of Equity shares and New assets purchased by the Company?
    The equity shares and the new assets should not be sold or otherwise by assessee and Eligible Company for a period of 5 years from date of subscription and date of purchase of new asset respectively. Otherwise capital gains exempt earlier will be deemed income.
    The lock in period for Computer or Computer Software shall be 3 years.
    The benefit of this Sec shall be extended till 31st March 2021.

ALL THE BEST
1. It is not available in case of BLOCK of Asset.

2. It is not available in case of SLUMP SALE.

3. It is not available for Bonds & Debentures. However, in case of Capital Indexed Bonds & Sovereign Gold Bonds Indexation is available.

4. It is not available for NR in case of First Proviso to Sec 48.

5. It is not available in case of LTCG u/s Sec 112A.

6. It is not available for NR in case of Sec 115AB, 115AC, 115AD & 115C to 115-I etc.

ALL THE BEST
Q. What is demerger?

As per Sec 2(19AA), demerger in relation to a company means transfer by a demerged company of its one or more undertakings to any resulting company in accordance with companies Act, 2013 and fulfils the following conditions:

1. All properties of the undertaking i.e. demerged undertaking shall become the properties of the resulting company. Property will include all assets but shall not include Miscellaneous Expenses i.e. Preliminary Expenses or Deferred Revenue Expense.

2. All liabilities should be transferred to resulting company. Liabilities shall include:
   (a) Specific liability for demerged unit.
   (b) In case of general liability, the following equation has to be followed:

   \[
   \text{General Liability} \times \frac{x}{\text{Value of Assets transferred in Demerger}} \leq \text{Total Value of Assets before Demerger}
   \]

Note: Exclude Revaluation and Deferred Revenue Exp / Preliminary Expenses from Numerator as well as Denominator.

3. The Properties and the liability of the undertaking transferred by demerged company are transferred at the values appearing in the books of accounts immediately before demerger.

Amendment made by Finance Act (No.2) 2019:
Facilitating demerger of Ind-AS compliant companies

The requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where the property and liabilities of the undertakings received by it are recorded at a value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.
The Resulting company issues its shares to the shareholders of Demerged company on a proportionate basis.

Shareholders holding not less than 75% of Value in shares in the demerged company should become the shareholders of Resulting company.

The transfer of undertaking is on a going concern basis.

Q. Balance Sheet of ABB Ltd before demerger as on 01/04/2019 (In Lacs)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Capital</td>
<td>30</td>
<td>Cement division</td>
<td></td>
</tr>
<tr>
<td>G/R</td>
<td>11</td>
<td>FA after depreciation</td>
<td>15</td>
</tr>
<tr>
<td>Revaluation Reserves</td>
<td></td>
<td>Debtors</td>
<td>2</td>
</tr>
<tr>
<td>On FA of cement Div</td>
<td>1.5</td>
<td>Stock</td>
<td>3</td>
</tr>
<tr>
<td>On FA of Power Div</td>
<td>0.5</td>
<td>Investment (MV- Rs. 5.5 lacs)</td>
<td>2.5</td>
</tr>
<tr>
<td>Shares premium</td>
<td>2.5</td>
<td>Power Division</td>
<td></td>
</tr>
<tr>
<td>Workmen Comp. Res.</td>
<td>1.5</td>
<td>FA after depreciation</td>
<td>20</td>
</tr>
<tr>
<td>Loan of Power Div</td>
<td>6.165</td>
<td>Debtors</td>
<td>4</td>
</tr>
<tr>
<td>Loan of Cement Div</td>
<td>3.835</td>
<td>Stock</td>
<td>5</td>
</tr>
<tr>
<td>General loan</td>
<td>2</td>
<td>Investment (MV - 2.5 lacs)</td>
<td>3.5</td>
</tr>
<tr>
<td>Current liabilities</td>
<td></td>
<td>Head Office</td>
<td></td>
</tr>
<tr>
<td>Power Division</td>
<td>3</td>
<td>FA after dep&quot;</td>
<td>5</td>
</tr>
<tr>
<td>Cement Division</td>
<td>2.5</td>
<td>Investment</td>
<td>3</td>
</tr>
<tr>
<td>General</td>
<td>1.5</td>
<td>(ABB Power Alstom Ltd)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Misc. Exp.</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>66</td>
<td></td>
<td>66</td>
</tr>
</tbody>
</table>
The Equity share Capital of ABB Ltd is held as under:

- ABB Germany - 51%
- Indian Public - 39%
- LIC - 10%

Balance sheet of ABB Power Alstom Ltd before Demerger

<table>
<thead>
<tr>
<th>Share Capital</th>
<th>300,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>300,000</td>
</tr>
</tbody>
</table>

100% shares of ABB Power Alstom Ltd (Resulting Co.) are held by ABB Ltd (Demerged Co.)

Now ABB Ltd wants to hive off its power division to a new company ABB Power Alstom Ltd.

The following assets is to be transferred:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Fixed Assets (20 lacs - 50K)</td>
<td>19.5</td>
</tr>
<tr>
<td>2) Debtors</td>
<td>4</td>
</tr>
<tr>
<td>3) Stock</td>
<td>5</td>
</tr>
<tr>
<td>4) Investment (ignoring market value)</td>
<td>3.5</td>
</tr>
<tr>
<td><strong>Total book value of assets transferred</strong></td>
<td><strong>32</strong></td>
</tr>
</tbody>
</table>

Following liabilities are to be transferred:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Loan of Power Division</td>
<td>616,500</td>
</tr>
<tr>
<td>2) Current liabilities of Power Div</td>
<td>300,000</td>
</tr>
<tr>
<td>3) General Loan</td>
<td>104,900</td>
</tr>
<tr>
<td>4) General Current Liabilities</td>
<td>78,600</td>
</tr>
<tr>
<td><strong>Total book value of liabilities transferred</strong></td>
<td><strong>11,00,000</strong></td>
</tr>
</tbody>
</table>

Net BV of Assets transferred = 21,00,000

Now shares in ABB Power Alstom Ltd will be allotted in the following ratio:

<table>
<thead>
<tr>
<th>Description</th>
<th>%</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABB Germany</td>
<td>51%</td>
<td>Rs. 10,71,000 - 10,71,000 sh</td>
</tr>
<tr>
<td>Indian Company</td>
<td>39%</td>
<td>Rs. 819,000 - 819,000 sh</td>
</tr>
<tr>
<td>LIC</td>
<td>10%</td>
<td>Rs. 210,000 - 210,000 sh</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>Rs. 21,00,000</td>
</tr>
</tbody>
</table>

@ Rs. 10/sh
Tax implications under Demerger:

1) As per Sec 47, no capital gains shall be chargeable in the hands of demerged company while transferring the assets to the resulting Indian company pursuant to the scheme of demerger.

\[
\begin{align*}
\text{ABB} & \quad \text{Assets} \quad \text{ABB} \\
\downarrow \text{exempt u/s 47} & \quad \text{Power}
\end{align*}
\]

2) As per Sec 47 there will be no capital gains in the hands of shareholders of demerged company when they receive in exchange of shares of demerged company, reduced shares of demerged company and new shares of resulting company.

\[
\begin{align*}
\text{Shareholder} & \quad \text{Reduction in share} \quad \rightarrow \text{Relinquishment of right capital} \\
\downarrow & \quad \text{New shares. exempt u/s 47}
\end{align*}
\]

3) As per Sec 49(1), the COA of Capital Assets acquired by resulting company from demerged company shall be the same as in the hands of demerged company. Further, the POH of Previous owner shall be clubbed.

What will be the COA of reduced shares of demerged company and new shares of resulting company?

(1) Sec 49(2C): COA of Resulting Company’s shares:

<table>
<thead>
<tr>
<th>COA of shares held by assessee in Demerged Co. (x)</th>
<th>Net BV of Assets transferred in Demerger</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net worth of demerged company before demerger</td>
<td></td>
</tr>
</tbody>
</table>

* Net worth for the purpose of this sec includes paid up capital (+) General Reserves ONLY.
(2) **Sec 49(2D): COA of Demerged CO’s shares:**

\[ \text{COA of original shares} \times \frac{21}{41} \]

Illustration:

Mr. X acquired shares of ABB Ltd as under:

1. **(1)** 600 shares of Rs. 10 each purchased on 01/01/2000 for Rs. 50 each (FMV as on 01/04/2001 - Rs. 120)
2. **(2)** 1200 shares of Rs. 10 each purchased on 01/01/2006 for Rs. 100 each

The demerger takes place on 01/04/2019 and as a result of demerger:

1. **(1)** Paid up Value of ABB Ltd i.e. demerged company gets reduced to Rs. 3 / share
2. **(2)** The shareholders got 21 shares of ABB Power Alstom Ltd for every 30 shares of ABB Ltd.

Now all the shares are sold on 30/06/2019.

Determine the COA of all 4 categories of shares

Solution: Now, period of holding of shares

1. **(1)** 600 shares of ABB Ltd
2. **(2)** 420 Sh. of ABB Power Alstom Ltd
3. **(3)** 1200 shares of ABB Ltd
4. **(4)** 840 Sh. of ABB Power Alstom Ltd

   a) **COA of 420 shares of ABB Power Alstom Ltd**

      (Resulting Company)
      \[ = 600 \times 120 \times \frac{21}{41} = Rs. 36,878 /- \]

   b) **COA of 600 shares of ABB Ltd**

      \[ = 72000 - 36878 = Rs. 35,122 /- \]

   c) **COA of 840 shares of ABB Power Alstom Ltd**

      \[ = 1200 \times 100 \times \frac{21}{41} = Rs. 61,463/- \]

   d) **COA of 1200 shares of ABB Ltd**

      \[ = 120,000 - 61463 = Rs. 58,537/- \]

ALL THE BEST
Special provisions for computing deductions in case of business re-organisation of Cooperative Banks [Sec 44DB]

1) The deduction u/s 32, 35D, 35DD or 35DDA, in case where amalgamation or demerger of a Cooperative Bank has taken place shall be determined in the following manner:

2) Deduction allowable to amalgamating or demerged Co - Op Bank will be equal to

\[ \frac{B}{A \times C} \]

A = amount of deduction allowable to amalgamating / demerged Coop bank as if amalgamation / demerger had not taken place.

B = No. of days comprised beginning with 1st day of FY and ending on the day immediately preceding the date of amalgamation / demerger.

C = the total no. of days in a FY in which amalgamation / demerger took place.

3) Deduction allowable to amalgamated / resulting Coop Bank will be balance amount.

4) The balance amount of deduction can be taken by amalgamated / resulting Cooperative Bank for balance number of years. (It is important to note that in case of amalgamation of companies, deduction of depreciation is governed by proviso to sec 32 and deduction in respect of 35D, 35DD, 35DDA is allowed to amalgamated company in the year of amalgamation and not bifurcated like 44DB.)

5) As per Sec 72AB, the accumulated losses (only Sec 72) pertaining to amalgamating or demerged Co - Op Bank can be carried forward by Amalgamated / Resulting Co - Op Bank for balance number of years. (It is important to note that u/s 72A such accumulated losses were allowed to be carried forward by Amalgamated company / Resulting company for another 8 years. However, unabsorbed depreciation can be c/f by amalgamated / resulting Co - Op Bank without any time limit.

ALL THE BEST
The ESOPs are taxable as perquisites in the hands of the employees. There are three stages in ESOP:

1. **Stage 1** - When the employee joins the company, he is offered shares under ESOP.
2. **Stage 2** - After completing a time period of service, say 3 years, the employee can exercise the options to get ESOP (i.e. acceptance of ESOP).
3. **Stage 3** - The company allots ESOPs.

It may be noted that,

1. Perquisite shall be **taxable** in the hands of the employee only when shares are **allotted** to him under ESOP. The perquisite is not taxable when employee exercises his option to ESOP. *(Taxability is deferred now for Eligible Startup Employees)*

2. **Value of Taxable Perquisite on the date of allotment** shall be as follows:

   - FMV of Shares on date of Exercising ESOP: $XXX$
   - Less: Amt Paid by Employee: $XXX$
   - Taxable Value charged when shares are allotted: $XXX$

---

**Amendment made by Finance Act 2020**

Currently the tax on perquisite is required to be paid at the time of exercising of option which may lead to cash flow problem as this benefit of ESOP is in kind.

In order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up employer, it is proposed to amend Sec 192 of the Act, and insert sub-Sec (1C) therein to clarify that for the purpose of deducting or paying tax, a person, being an eligible start-up referred to in Sec 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-Sec (2) of Sec 17 of the Act, in any previous year relevant to the assessment year 2021-22 or subsequent assessment year, deduct or pay, as the case may be, tax on such
income within fourteen days:

(i) after the expiry of forty eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the assessee; or

(iii) from the date of which the assessee ceases to be the employee of the person;

whichever is the earliest on the basis of rates in force of the financial year in which the said specified security or sweat equity share is allotted or transferred.

Note: Similar amendments have been carried out in sec 191 (for assessee to pay the tax direct in case of no TDS) and in sec 156 (for notice of demand) and in sec 140A (for calculating self-assessment).

Note: Therefore, ESOP will be chargeable in the PY in which shares are allotted, but the taxability is deferred as above for Eligible Starup Employees. For others employees it will be chargeable in the PY in which shares are allotted.

3) Whenever such shares are subsequently sold by the employee then as per Sec 49(2AA) the Cost of acquisition of such shares will be the FMV which has been taken into account for computing taxable perquisite.

The period of holding shall be counted from the date of allotment of such shares for computing CG. {Explanation to Sec 2(42A)}.
**Chapter XIIdA: Levy of Additional Income Tax on Distributed Income of a Domestic Co. on Account of Buy Back of Unlisted/Listed Shares**

<table>
<thead>
<tr>
<th>IMPLICATION</th>
<th>BUY-BACK-OF SHARES LISTED SHARES</th>
<th>UNLISTED SHARES/LISTED SHARES (If announcement made on or after 5th July 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the hands of shareholders</td>
<td>Taxable as CAPITAL GAINS u/s 46A</td>
<td>Exempt as per Sec 10(34A)</td>
</tr>
<tr>
<td>In the hands of company</td>
<td>No-implication</td>
<td>Additional distribution tax u/s 115QA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>@ 23.296% i.e. (20% + 12%SC + 4%Health &amp; EC) On DISTRIBUTED INCOME</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Computed as shown in Note below)</td>
</tr>
</tbody>
</table>

**Amendment made by Finance Act (No.2) 2019:**

Now the provision of Sec 115QA shall also be made applicable for Listed Shares. So, after FA 2019 the treatment for Listed as well as Unlisted Shares are same. Note: However, if the public announcement of Buy Back of Listed Shares is made before 5th July 2019 then the provision of sec 115QA shall not apply. {Amendment as per the ordinance passed on 20th September 2019}

**Note:**

<table>
<thead>
<tr>
<th>Amount paid to shareholders on buyback</th>
<th>XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: Amount received on issue of shares, determined in the manner as may be prescribed (Refer Text Book Page________)</td>
<td>(XXX)</td>
</tr>
<tr>
<td>DISTRIBUTED INCOME subject to additional Income Tax</td>
<td>XXX</td>
</tr>
</tbody>
</table>

ALL THE BEST

CA AARISH KHAN
Sec 115BBD: Tax on certain Dividends received from Foreign Companies

Following conditions must be fulfilled for application of Sec 115BBD:

1. Benefit of Sec 115BBD is available only to the Indian Company.
2. Indian Company must hold at least 26% in nominal value of the equity share capital of the Specified foreign company.
3. Dividend received under sec 2(22)(e) shall not be covered.
4. No other expense/allowance shall be claimed by the Indian Company in respect of dividend received.
5. “Specified Foreign Company” means a foreign company in which Indian company holds 26% or more equity share capital.
6. If the above the conditions are fulfilled, then Dividend Income received by Indian Company will be taxable at 15%.

How Dividend Income will be taxed?

Amendment made by Finance Act 2020

Earlier the incidence of tax was on the payer company and not on the recipient, where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should, therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of company was re-introduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.
In view of above, it is proposed to carry out amendments so that dividend income is taxable in the hands of shareholders at the applicable rate and the domestic company is not required to pay any DDT.

Will there be any deduction from Dividend Income?
As per Sec 57 no deduction shall be allowed from dividend income, other than deduction on account of interest expense and in any previous year such deduction shall not exceed twenty per cent of the dividend income included in the total income for that year without deduction under sec 57.

Whether TDS will be deducted on dividend payment?
Ans
Yes. As per Sec 194 the Principal Officer of Indian Company while making the payment/distribution of dividend (including all deemed dividends & Preference Dividend) to Resident shareholders by any mode shall deduct tax @ 10%.

Proviso's:
No deduction of tax if the shareholder is individual and following conditions are fulfilled:
(i) The dividend is paid by any mode other than Cash AND;
(ii) The amount of dividend does not exceed Rs. 5,000 during the FY.

Further no TDS shall be deducted if paid to LIC, GIC or any other Insurer.

MAKE CHART HERE:
Sec 80M newly inserted by Finance Act 2020:
With effect from the assessment year 2021-22, dividend received by a shareholder from a domestic company is taxable in the hands of the shareholder. To avoid cascading affect, sec 80M has been inserted with effect from the assessment year 2021-22.

- CONDITIONS - The following conditions should be satisfied -

1. Assessee is a domestic company (i.e., investor company).
2. Income of the assessee includes dividend from domestic companies, foreign companies or business trusts.
3. Dividend is distributed by the investor company to its own shareholders before the due date [i.e., the date one month prior to the date for furnishing return of income under sec 139(1)].

- DEDUCTION - Deduction under sec 80M is -
  a. Aggregate dividend income (as per section 8) of the investor company during the previous year from domestic or foreign company / companies or business trust(s) [it includes final dividend, interim dividend and even deemed dividend under sec 2(22)(a) / (b) / (c) / (d) / (e)];
  b. Dividend distributed by the investor company to its own shareholders before the due date [i.e., the date one month prior to the date for furnishing return of income under sec 139(1) for the previous year for which dividend income is taxable in the hands of investor company], whichever is less.

- Mere declaration of dividend is not sufficient - For the purpose of (b) (supra), dividend distributed on or before the "due date" is taken into consideration. Mere declaration of dividend is not sufficient.

- Double deduction not possible - Where any deduction in respect of the amount of dividend distributed by the domestic company, has been allowed under section 80M in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.
• **Basis of charge of dividend income [Sec. 8]** - Dividend income is taxable in the hands of recipient as follows -

Normal dividend - Normal dividend declared at annual general meeting is deemed to be the income of the previous year of a shareholder in which it is declared. For instance, by virtue of dividend declared by X Ltd. on June 17, 2020. A Ltd. is entitled to receive Rs. 3,00,000 as dividend. Rs. 3,00,000 will be included in the income of previous year 2020-21 and accordingly taxable in the hands of A Ltd. (subject to deduction under section 80M) for the assessment year 2021-22.

Deemed dividend - Deemed dividend under section 2(22) is treated as the income of the previous year in which it is so distributed or paid.

Interim dividend - Interim dividend is deemed to be income of the previous year in which the amount of such dividend is unconditionally made available by the company to a shareholder.

Make Chart Here:
### Sec 2(22)(a): Distribution of Assets by company.

1. Dividend includes any distribution of assets by company to its shareholders to the extent company possesses accumulated profits, whether capitalised or not.

2. Fair Market Value of the asset on the date of distribution will be considered to compute deemed dividend.

<table>
<thead>
<tr>
<th>Balance Sheet</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Capital</td>
<td>250,000</td>
<td>Cash</td>
<td>300,000</td>
</tr>
<tr>
<td>(includes bonus)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shares of Rs. 50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issued out of reserves)</td>
<td></td>
<td>Assets</td>
<td>200,000</td>
</tr>
<tr>
<td>Reserves</td>
<td>250,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Company distributes assets of Rs. 200,000 to shareholders. The FMV of the assets on the date of distribution is as follows:

<table>
<thead>
<tr>
<th>Case</th>
<th>MV of Assets</th>
<th>Deemed dividend u/s 2(22)(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case - I</td>
<td>Rs. 150,000</td>
<td>Rs. 150,000</td>
</tr>
<tr>
<td>Case - II</td>
<td>Rs. 250,000</td>
<td>Rs. 250,000</td>
</tr>
<tr>
<td>Case - III</td>
<td>Rs. 300,000</td>
<td>Rs. 300,000</td>
</tr>
<tr>
<td>Case - IV</td>
<td>Rs. 400,000</td>
<td>Rs. 300,000</td>
</tr>
</tbody>
</table>

The deemed Dividend will be taxable in the hands of Shareholders.

**Sec 2(22)(b):**

**Dividend includes:**

1. Any distribution to its SHs by way of debentures or debenture stock or deposit certificate with or without interest.

2. Any Distribution of bonus shares to its preference shareholders (not to equity shareholders) to the extent to which company possesses accumulated profits whether capitalised or not.

**Q1**

<table>
<thead>
<tr>
<th>Balance Sheet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Capital 150,000</td>
</tr>
<tr>
<td>(includes bonus Shares of Rs. 50,000)</td>
</tr>
<tr>
<td>Pref. Sh. Capital 100,000</td>
</tr>
<tr>
<td>Reserves 300,000</td>
</tr>
</tbody>
</table>

The company issued bonus shares to all shareholders in the ratio of 1:1.

**Ans:** Bonus shares allotted to equity shareholders does not amount to deemed dividend u/s 2(22)(b). Whereas bonus shares allotted to preference SH's amount to deemed dividend.

**: Deemed dividend = Rs. 100,000**

The deemed Dividend will be taxable in the hands of Shareholders.
**Sec 2(22)(d): Reduction of Capital on Distribution**

Dividend includes *any distribution* to its shareholders *on reduction of its capital* to the extent to which the company possesses accumulated profit whether capitalised or not.

1. **Balance Sheet**

<table>
<thead>
<tr>
<th>Equity Capital</th>
<th>200,000</th>
<th>Assets</th>
<th>300,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(includes bonus)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shares of Rs. 50,000</td>
<td></td>
<td>P/L (Dr Balance)</td>
<td>100,000</td>
</tr>
<tr>
<td>issued out of reserves</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creditors</td>
<td>200,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The company reduces share capital by Rs. 100,000 by setting off the debit balance of P/L A/C.

**Ans:** There is no deemed dividend *u/s 2(22)(d)*. Since the company has no accumulated profits and there is not distribution of assets to SHs.

2. **Balance Sheet**

<table>
<thead>
<tr>
<th>Equity Capital</th>
<th>200,000</th>
<th>Cash</th>
<th>250,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(includes bonus shares</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of Rs. 50,000 issued</td>
<td></td>
<td>P/L (Dr Balance)</td>
<td>150,000</td>
</tr>
<tr>
<td>out of reserves)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reserves</td>
<td>200,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The company reduces the share capital by Rs. 150,000 by giving cash to the shareholders.

→ Rs. 100,000 is the deemed dividend *u/s 2(22)(d)* and the same shall be liable to tax in the hands of Shareholders.
### Sec 2(22)(c): Liquidation of Companies

<table>
<thead>
<tr>
<th>Company</th>
<th>Shareholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Company sells the assets &amp; distributes money to SHs then Company is liable for CG.</td>
<td>If Co. distributes assets then such transfer of CA is exempt u/s 46(1). However, such distribution of assets on liquidation amounts to deemed dividend u/s 2(22)(c). [to the extent Company possesses accumulated profits]</td>
</tr>
</tbody>
</table>

- **Step 1** - Amt received in money (+) FMV of assets received.
- **Step 2** - Amount assessed as DD u/s 2(2)(c).
- **Step 3** - Step 1(-) Step (2)
- **Step 4** - CG = FVC XXX
  - (-) Exp (XX)
  - NVC XXX
  - of shares
  - (-) COA/ICOA (XX)
  - LTCG/STCG XX

**Note:**

The *period subsequent* to the date on which company goes into liquidation shall not be considered to determine the period of holding.

**Q.** What will be the COA of the assets received by the shareholders on liquidation?

As per **Sec 55**, the COA of such assets will be *FMV* of the asset on the date of distribution.

### Sec 2(22)(e): Loans and Advances by a Closely held Company Deemed as Dividend.

1) Dividend includes *any loan* or advance given by a closely held company to a shareholder (beneficial owner) *not holding less than 10% of voting power*, then it shall be deemed as dividend in the hands of the shareholder.

2) Dividend includes *any loan* or advance given by a closely held company *to Any concern* in which such shareholder is a member or a partner and in which he has substantial interest (20%), then it is deemed as dividend in the hands of the concern.
The above dividends will be taxable to the extent the company possesses accumulated profits.

Making Chart here

Notes:

1) The following conditions are to be satisfied on the date on which loan or advance is given to shareholder of the concern by a closely held company in order to attract Sec 2(22)(e):

(a) Beneficial owner of shares holding 10% or more voting power.
(b) Member or Partner in the concern.

2) Concern means HUF / Firm / Company / AOP / BOI.

3) A person shall be deemed to have substantial interest in a concern if he is at anytime during the PY, beneficiary entitled to not less than 20% of income of such concern.

4) Accumulated profits shall be considered up to the date on which loan / advance is given to shareholder / concern.

5) The fact that the loan was repaid will not make any difference in applicability of sec 2(22)(e).

6) For the purpose of sec 2(22)(e), Accumulated profits gets reduced by the amount of deemed dividend even if no adjustment is made in the Books of Accounts.

As per sec 2(22), dividend shall not include the following:

1) Any dividend paid by a company which is set off by the company against the loan which has been deemed as dividend u/s 2(22)(e).
**Case 1:** On 01/04/2020, Co gives a loan of Rs. 1,00,000 to SH Mr. X (25%) which is deemed dividend u/s 2(22)(e). On 30/04/2020, Co. declares dividend - Mr X - Rs. 10,000 which is adjusted against the loan of Rs. 100,000.

**Ans:** Rs. 100,000 is deemed dividend u/s 2(22)(e) w.r.t Mr. X for AY 2021 - 22. The actual dividend of Rs. 10,000 which has been set off against loan shall not be considered as dividend for the Shareholder. Even though the company will pay dividend of Rs. 40,000 to all SH's, Mr X will not pay tax on Rs. 10,000/-

**Case 2:** The Company on 01/04/2020 gives a loan of Rs. 1,00,000 to Mr. X who holds 25% shares. The company declares dividends on 30/04/2020. Dividend of Rs. 10,000 is paid to Mr. X.

**Ans:** Rs. 100,000 is deemed dividend w.r.t Mr. X for AY 2021 - 22. The actual dividend of Rs. 10,000 will be taxable in the hands of shareholder.

**Illustration:**

As per Sec 2(22), any advance or loan made to a shareholder or a concern in the ordinary course of business where money lending is substantial part of the company.

**Illustration:**

A company is in the business of money lending as well as manufacturing. More than 50% of the PGBP comprises of Income from Money lending business. The company has accumulated profits of Rs. 200,000 on 01/04/2020 and it gives a loan of Rs. 100,000 to shareholder who holds 15% shares in the company. In the following cases:

1. At no interest.
2. At 4% interest whereas normally company lends to other borrowers @ 18% pa.
3. At 18% p.a.

**Ans:** In case (1) and (2), Rs. 100,000 will be deemed dividend u/s 2(22)(e) w.r.t Mr. X for AY 2021 - 22.

In case (3) there is no deemed dividend w.r.t Mr. X as the money is lend by the company in the ordinary course of business and money lending forms substantial part of the business of the company.

ALL THE BEST
CHAPTER 60 – PAST QUESTIONS

Note: These are past exam questions taken from the study material of ICAI as updated by Finance Act 2019. As and when the New Finance Act 2020 as well as new ICAI Study Material will be released I will provide you a complete Question Bank with solutions (HARD COPY) as updated by Finance Act 2020. Till then a student can refer these questions for their practice purpose. Once you will get the New Question Bank, there after ignore this chapter from here.

Questions on Capital Gains:

Question 101
Hari has acquired a residential house property in Delhi on 15th April, 2002 for Rs. 9,00,000 and decided to sell the same on 3rd May, 2005 to Ms. Pari and an advance of Rs. 25,000 was taken from her. The balance money was not paid by Ms. Pari and Hari has forfeited the entire advance sum. On 3rd June, 2019, he has sold this house to Mr. Suri for Rs. 40,00,000. In the meantime, on 4th April, 2019, he had purchased a residential house in Delhi for Rs. 8,00,000, where he was staying with his family on rent for the last 5 years and paid the full amount as per the purchase agreement. However, Hari does not possess any legal title till 31st March, 2020, as such transfer was not registered with the registration authority.

Hari has purchased another old house in Chennai on 14th October, 2019 from Mr. X, an Indian resident, by paying Rs. 5,00,000 and the purchase was registered with the appropriate authority.

Determine the taxable capital gain arising from above transactions in the hands of Hari for Assessment Year 2020-21.

Answer

Computation of taxable capital gain of Mr. Hari for the A.Y.2020-21

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale proceeds</td>
<td>40,00,000</td>
</tr>
<tr>
<td>Less: Indexed cost of acquisition (See Note 1)</td>
<td>24,08,333</td>
</tr>
<tr>
<td>Long Term Capital Gain</td>
<td>15,91,667</td>
</tr>
<tr>
<td>Less: Exemption under section 54 in respect of investment in house at Delhi (See Note 2)</td>
<td>8,00,000</td>
</tr>
<tr>
<td>Exemption under section 54 in respect of investment in house at Chennai (See Note 3)</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Taxable long-term capital gain</td>
<td>2,91,667</td>
</tr>
</tbody>
</table>

Notes:
1. **Computation of indexed cost of acquisition**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of acquisition</td>
<td>9,00,000</td>
</tr>
<tr>
<td>Less: Advance taken and forfeited</td>
<td>25,000</td>
</tr>
<tr>
<td>Cost for the purpose of Indexation</td>
<td>8,75,000</td>
</tr>
<tr>
<td>Indexed cost of acquisition (Rs. 8,75,000 × 289/105)</td>
<td>24,08,333</td>
</tr>
</tbody>
</table>
Note: Advance received and forfeited on or after 01.04.2014 is taxable under section 56(2)(ix). Such amount would not be reduced to compute indexed cost of acquisition while determining capital gains on sale of such property.

However, in this case, since the advance was received and forfeited in the year 2004, such advance has to be reduced for calculating indexed cost of acquisition for the purpose of arriving at capital gains.

2. In order to avail exemption of capital gains under section 54, a residential house should be purchased within 1 year before or 2 years after the date of transfer or constructed within a period of 3 years after the date of transfer. In this case, Hari has purchased the residential house in Delhi within one year before the date of transfer and paid the full amount as per the purchase agreement, though he does not possess any legal title till 31.3.2020 since the transfer was not registered with the registration authority. However, for the purpose of claiming exemption under section 54, holding of legal title is not necessary. If the taxpayer pays the full consideration in terms of the purchase agreement within the stipulated period, the exemption under section 54 would be available. It was so held in Balraj v. CIT(2002) 254 ITR 22 (Del.) and CIT v. Shahzada Begum (1988) 173 ITR 397 (A.P.).

3. As per section 54, since the amount of capital gain does not exceeds Rs. 2 crore, Mr. Hari can claim exemption thereunder in respect of investment made in two residential houses situated in India.

However, if Mr. Hari exercises the option to claim exemption in respect of two residential houses in Delhi and Chennai in P.Y. 2019-20, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

Question 102

The proprietary firm of "Mr. Amolak" a practicing Chartered Accountant, was converted into partnership on 01.09.2019 when his son joined him in the firm for 50% share. All the assets and liabilities of the erstwhile proprietary firm were transferred into the newly constituted partnership firm.

"Mr. Amolak" was credited and paid an amount of Rs. 5 lacs in his account from the firm. Explain as to chargeability of this amount of Rs. 5 lacs in the hands of "Mr. Amolak" when it stands paid for:

(i) transfer of business into partnership;
(ii) goodwill by the incoming partner.

Answer

(i) If the amount was paid for transfer of business / profession to partnership

As per section 45(3), the profits and gains arising from the transfer of a capital asset by a person to the firm in which he becomes a partner shall be chargeable to tax as the income of the previous year which such transfer takes place. The amount recorded in the books of account of the firm would be deemed to be the full value of consideration received or accruing as a result of transfer of the capital asset.

Since in this case, consideration of Rs. 5 lacs is received for such transfer, profit or gain accrues to the transferor for the purposes of section 45. The amount of Rs. 5 lacs would be the full value of consideration received as a result of transfer and the capital gains resulting from this transfer would be chargeable to tax.
(ii) If the amount is paid by the incoming partner for Goodwill

The Supreme Court, in *CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294*, observed that the income chargeable to capital gains tax is to be computed by deducting from the full value of consideration “the cost of acquisition of the capital asset”. If it is not possible to ascertain the cost of acquisition, then, transfer of such asset is not chargeable to tax.

Section 55(2)(a) provides that the cost of acquisition of certain self-generated assets, including goodwill of a business, is Nil. Therefore, in respect of these self-generated assets covered under section 55(2)(a), the decision of the Supreme Court in *B.C. Srinivasa Setty’s case* would not apply. However, in respect of other self-generated assets, including goodwill of profession, the decision of the Supreme Court in *B.C. Srinivasa Setty’s case*, would continue to be applicable.

In effect, in case of self-generated assets not covered under section 55(2)(a), since the cost is not ascertainable, there would be no capital gains tax liability.

Therefore, in this case, since the consideration of Rs. 5 lakhs is paid towards goodwill of a profession, whose cost is NOT to be taken as ‘Nil’ since it is not covered under section 55(2)(a), the liability to capital gains tax will not arise.

**Question 103**

Mr. Ganesh sold his residential house in Mumbai and purchased two residential flats adjacent to each other on the same day vide two separate registered sale deeds from two different persons. The builder had certified that he had effected necessary modification to make it one residential apartment. Mr. Ganesh sought exemption under section 54 in respect of the investment made in purchase of the two residential flats. The Assessing Officer, however, gave exemption under section 54 to the extent of purchase of one residential flat only contending that sub-section (1) of section 54 clearly restricts the benefit of exemption to purchase one residential house only and the two flats cannot be treated as one residential unit since –

(i) the flats were purchased through different sale deeds; and
(ii) it was found by the Inspector that, before its sale to the assessee, the residential flats were in occupation of two different tenants.

Examine the correctness of the contention of the Assessing Officer.

**Answer**

This issue came up before the Karnataka High Court in *CIT v. D. Ananda Basappa (2009) 309 ITR 329*. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one residential house.

Applying the ratio of the above decision to the case on hand, Mr. Ganesh is entitled to exemption under section 54 in respect of purchase of two flats to form **one residential house**. Therefore, the contention of the Assessing Officer is not correct.
Question 104

Vijay, an individual, owned three residential houses which were let out. Besides, he and his four brothers co-owned a residential house in equal shares. He sold one residential house owned by him during the previous year relevant to the assessment year 2020-21. Within a month from the date of such sale, the four brothers executed a release deed in respect of their shares in the co-owned residential house in favour of Vijay for a monetary consideration.

Vijay utilised the entire long-term capital gain arising out of the sale of the residential house for payment of the said consideration to his four brothers. Vijay is not using the house, in respect of which his brothers executed a release deed, for his own residential purposes, but has let it out to another person, who is using it for his residential purposes. Is Vijay eligible for exemption under section 54 of the Income-tax Act, 1961 for the assessment year 2020-21 in respect of the long-term capital gain arising from the sale of his residential house, which he utilised for acquiring the shares of his brothers in the co-owned residential house? Will the non-use of the new house for his own residential purposes disentitle him to exemption?

Answer

The long-term capital gain arising on sale of residential house would be exempt under section 54 if it is utilized, *inter alia*, for purchase of one residential house situated in India within one year before or two years after the date of transfer. Release by the other co-owners of their share in co-owned property in favour of Vijay would amount to “purchase” by Vijay for the purpose of claiming exemption under section 54 *[CIT v. T.N. Arvinda Reddy (1979) 120 ITR 46 (SC)]*. Since such purchase is within the stipulated time of two years from the date of transfer of asset, Vijay is eligible for exemption under section 54. As Vijay has utilised the entire long-term capital gain arising out of the sale of the residential house for payment of consideration to the other co-owners who have released their share in his favour, he can claim full exemption under section 54.

There is no requirement in section 54 that the new house should be used by the assessee for his own residence. The condition stipulated is that the new house should be utilised for residential purposes and its income is chargeable under the head “Income from house property”. This requirement would be satisfied even when the new house is let out for residential purposes.

Question 105

Xavier had taken a loan under registered mortgage deed against the house, which was purchased by him on 26.05.2002 for Rs. 5 lacs. The said property was inherited by his son Abraham in financial year 2009-10 as per Will.

For obtaining a clear title thereof, Abraham paid the outstanding amount of loan on 12.02.2010 of Rs. 15 lacs. The said house property was sold by Abraham on 16.03.2020 for Rs. 50 lacs. Examine with reasons the amount chargeable to capital gains for A.Y. 2020-21


Answer

The cost of inherited property to Mr. Abraham shall be the cost to the previous owner as per provisions of section 49(1)(iiiia) and therefore, Rs. 5 lacs, being the cost to his father (amount paid by his father on 26.5.2001 for acquiring the property) shall be the cost to Mr. Abraham, who is the new owner. Payment of outstanding loan of the predecessor by the successor for obtaining a clear title of the property by release of Mortgage Deed shall be
the cost of acquisition of the successor under section 48 read with section 55(2) of the Act as held by the Apex Court in case of RM. Arunachalam v. CIT [1997] 227 ITR 222.

Computation of Taxable Capital Gain for the A.Y. 2020-21

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration of house property</td>
<td>50,00,000</td>
</tr>
<tr>
<td><strong>Less: Indexed cost of acquisition (See Note below)</strong></td>
<td></td>
</tr>
<tr>
<td>(i) Cost to previous owner (Rs. 5,00,000 × 289 / 148)</td>
<td>9,76,351</td>
</tr>
<tr>
<td>(ii) Loan amount paid by Mr. Abraham (Benefit of CII is available since the loan amount was paid in the financial year 2009-10) (Rs. 15,00,000 × 289/148)</td>
<td>29,29,054</td>
</tr>
<tr>
<td>Capital gains</td>
<td>10,94,595</td>
</tr>
</tbody>
</table>

**Note:** Since the property was acquired by Mr. Abraham through inheritance, the cost of acquisition will be cost to the previous owner.

As per the definition of indexation cost of acquisition under clause (iii) of *Explanation* below section 48, indexation benefit will be available only from the previous year in which Abraham first held the asset i.e. P.Y. 2009-10.

However, as per the view expressed by Bombay High Court, in the case of *CIT v. Manjula J. Shah* (2013) 355 ITR 474, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would be Rs. 43,05,244 (Rs. 13,76,190 + Rs. 29,29,054) and long term capital gain would be Rs. 6,94,756.

**Question 106**

*Gama Ltd*, located within the corporation limits decided in December, 2019 decided to shift its industrial undertaking to non-urban area. The company sold some of the assets and acquired new assets in the process of shifting. The relevant details are as follows:

<table>
<thead>
<tr>
<th>(Rs. in lacs)</th>
<th>Particulars</th>
<th>Land</th>
<th>Building</th>
<th>Plant &amp; Machinery</th>
<th>Furniture</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Sale proceeds (sale effected in March, 2019)</td>
<td>8</td>
<td>18</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>(ii)</td>
<td>Indexed cost of acquisition</td>
<td>4</td>
<td>10</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>(iii)</td>
<td>Cost of acquisition in terms of section 50</td>
<td>--</td>
<td>4</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>(iv)</td>
<td>Cost of new assets purchased in July, 2020 for the purpose of business in the new place</td>
<td>4</td>
<td>7</td>
<td>17</td>
<td>2</td>
</tr>
</tbody>
</table>

Compute the capital gains of *Gama Ltd* for the assessment year 2020-21.

**Answer**

Section 54G deals with deduction in respect of any capital gain that may arise from the transfer of an industrial undertaking situated in an urban area in the course of or in consequence of shifting to a non-urban area.
If the assessee purchases new machinery or plant or acquires a building or land or constructs a new building or shifts the original asset and transfers the establishment to the new area, within 1 year before or 3 years after the date on which the transfer takes place, then, instead of the capital gain being charged to tax, it shall be dealt with as under:

1. If the capital gain is greater than the cost of the new asset, the difference between the capital gain and the cost of the new asset shall be chargeable as income ‘under section 45’.
2. If the total gain is equal to or less than the cost of the new asset, section 45 is not to be applied.

The capital assets referred to in section 54G are machinery or plant or land or building or any rights in building or land. Capital gain arising on transfer of furniture does not qualify for exemption under section 54G. No exemption is therefore available under section 54G in respect of investment of Rs. 2 lacs in acquiring furniture.

The first step therefore is to determine the capital gain arising out of the transfer and thereafter apply the provisions of section 54G.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Land</td>
<td>8,00,000</td>
</tr>
<tr>
<td>Sale proceeds (Non-depreciable asset)</td>
<td></td>
</tr>
<tr>
<td>Indexed cost of acquisition</td>
<td>4,00,000</td>
</tr>
<tr>
<td>Long term capital gain</td>
<td>4,00,000</td>
</tr>
<tr>
<td>Cost of new assets purchased within three year after the date of transfer (under section 54G)</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Taxable Long term capital gain</td>
<td>1,00,000</td>
</tr>
<tr>
<td>(b) Building</td>
<td>18,00,000</td>
</tr>
<tr>
<td>Sale proceeds (depreciable assets)</td>
<td></td>
</tr>
<tr>
<td>W.D.V. is deemed as cost of acquisition under section 50</td>
<td>4,00,000</td>
</tr>
<tr>
<td>Short term capital gain</td>
<td>14,00,000</td>
</tr>
<tr>
<td>(c) Plant &amp; machinery</td>
<td>16,00,000</td>
</tr>
<tr>
<td>Sale proceeds (depreciable asset)</td>
<td></td>
</tr>
<tr>
<td>WDV is deemed cost under section 50</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Short term capital gain</td>
<td>11,00,000</td>
</tr>
<tr>
<td>(d) Furniture</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Sale proceeds (depreciable asset)</td>
<td></td>
</tr>
<tr>
<td>WDV is deemed cost under section 50</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Short term capital gain (A)</td>
<td>1,00,000</td>
</tr>
</tbody>
</table>

**Summary**

| Short term capital gain : Building | 14,00,000 |
| Short term capital gain : Plant & machinery | 11,00,000 |
| Total short term capital gain | 25,00,000 |

*Less: Section 54G [New assets purchased] (See Note below)*

| Net short term capital gain (B) | 25,00,000 |
| Total short term capital gain (A)+(B) = Rs. 1 lac | Nil |

**Note** – Total exemption available under section 54G is Rs. 28 lacs (Rs. 4 lacs + Rs. 7 lacs + Rs. 17 lacs). The exemption should first be exhausted against short term capital gain as the incidence of tax in case of short-term capital gain is more than in case of long term capital gain. Therefore, Rs. 25 lacs is exhausted against short term capital gain and the balance of Rs. 3 lacs against long term capital gain.

The taxable capital gains would be:
Question 107

The assessee was a company carrying on business of manufacture and sale of art-silk cloth. It purchased machinery worth Rs. 4 lacs on 1.5.2008 and insured it with United India Assurance Ltd against fire, flood, earthquake etc., The written down value of the asset as on 01.04.2019 was Rs. 2,08,800. The insurance policy contained a reinstatement clause requiring the insurance company to pay the value of the machinery, as on the date of fire etc., in case of destruction of loss. A fire broke out in August, 2019 causing extensive damage to the machinery of the assessee rendering them totally useless. The assessee company received a sum of Rs. 6 lacs from the insurance company on 15th March, 2020. Discuss the issues arising on account on the transactions and their tax treatment.

(Cost inflation index for financial year 2008-09 and 2019-20 are 137 and 289 respectively)

Answer

As per section 45(1A), where any person receives any money or other assets under an insurance from an insurer on account of damage to or destruction of capital asset, then, any profits and gains arising from the receipt of such money or other assets, shall be chargeable to income tax under the head “Capital Gains” and shall be deemed to be the income of such person of the previous year in which such money or asset was received.

For the purpose of section 48, the money received or the market value of the asset shall be deemed to be the full value of the consideration accruing as a result of the transfer of such capital asset. Since the asset was destroyed and the money from the insurance company was received in the previous year, there will be a liability to capital gains in respect of the insurance moneys received by the assessee.

Under section 45(1A) any profits and gains arising from receipt of insurance moneys is chargeable under the head “Capital gains”. For the purpose of section 48, the moneys received shall be deemed to be the full value of the consideration accruing or arising.

Under section 50 the capital gains in respect of depreciable assets had to be computed in the following manner (assuming it was the only asset in the block).

The computation of capital gain and tax implication is given below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of the consideration</td>
<td>Rs. 6,00,000</td>
</tr>
<tr>
<td>Less: Written down value as on April 1st, 2018</td>
<td>Rs. 2,08,800</td>
</tr>
<tr>
<td>Short term capital gains</td>
<td>Rs. 3,91,200</td>
</tr>
</tbody>
</table>

Question 108

Tani purchased a land at a cost of Rs. 35 lakhs in the financial year 2004-05 and held the same as her capital asset till 31st May, 2018. Tani started her real estate business on 1st June, 2018 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was Rs. 210 lakhs.

She constructed 15 flats of equal size, quality and dimension. Cost of construction of each flat is Rs. 10 lakhs. Construction was completed in January, 2020. She sold 10 flats at Rs. 30 lakhs per flat between January, 2020 and March, 2020. The remaining 5 flats were held in stock as on 31st March, 2020.
She invested Rs. 50 lakhs in bonds issued by National Highway Authority of India on 31st March, 2020 and another Rs. 50 lakhs in bonds of Rural Electrification Corporation Ltd. in April, 2020.

Compute the amount of chargeable capital gain and business income in the hands of Tani arising from the above transactions for Assessment Year 2020-21 indicating clearly the reasons for treatment for each item.


Answer

### Computation of capital gains and business income of Tani for A.Y. 2020-21

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital Gains</strong></td>
<td></td>
</tr>
<tr>
<td>Fair market value of land on the date of conversion deemed as the full value</td>
<td>2,10,00,000</td>
</tr>
<tr>
<td>of consideration for the purposes of section 45(2)</td>
<td></td>
</tr>
<tr>
<td>Less: Indexed cost of acquisition [Rs. 35,00,000 × 280/113]</td>
<td>86,72,566</td>
</tr>
<tr>
<td></td>
<td>1,23,27,434</td>
</tr>
<tr>
<td>Proportionate capital gains arising during A.Y.2019-20 [Rs. 1,23,27,434 ×</td>
<td></td>
</tr>
<tr>
<td>2/3]</td>
<td>82,18,289</td>
</tr>
<tr>
<td>Less: Exemption under section 54EC</td>
<td>50,00,000</td>
</tr>
<tr>
<td><strong>Capital gains chargeable to tax for A.Y.2020-21</strong></td>
<td>32,18,289</td>
</tr>
<tr>
<td><strong>Business Income</strong></td>
<td></td>
</tr>
<tr>
<td>Sale price of flats [10 × Rs. 30 lakhs]</td>
<td>3,00,00,000</td>
</tr>
<tr>
<td>Less: Cost of flats</td>
<td></td>
</tr>
<tr>
<td>Fair market value of land on the date of conversion [Rs. 210 lacs × 2/3]</td>
<td>1,40,00,000</td>
</tr>
<tr>
<td>Cost of construction of flats [10 × Rs. 10 lakhs]</td>
<td>1,00,00,000</td>
</tr>
<tr>
<td><strong>Business income chargeable to tax for A.Y.2020-21</strong></td>
<td>60,00,000</td>
</tr>
</tbody>
</table>

**Notes:**

1. The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade.

2. However, as per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.

3. The indexation benefit for computing indexed cost of acquisition would, however, be available only up to the year of conversion of capital asset to stock-in-trade and not up to the year of sale of stock-in-trade.

4. For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.

   In this case, since only 2/3rd of the stock-in-trade (10 flats out of 15 flats) is sold in the P.Y.2019-20, only proportionate capital gains (i.e., 2/3rd) would be chargeable in the A.Y.2020-21.

5. On sale of such stock-in-trade, business income would arise. The business income chargeable to tax would be computed after deducting the fair market value on the date of conversion of the capital asset into stock-in-trade and cost of construction of flats from the price at which the stock-in-trade is sold.
(6) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months is to be reckoned from the date of sale of stock-in-trade for the purpose of exemption under section 54EC [CBDT Circular No.791 dated 2.6.2000]. In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for exemption under section 54EC. With respect to long-term capital gains arising in any financial year, the maximum deduction under section 54EC would be Rs. 50 lakhs, whether the investment in bonds of NHAI or RECL are made in the same financial year or next financial year or partly in the same financial year and partly in the next financial year.

Therefore, even though investment of Rs. 50 lakhs has been made in bonds of NHAI during the P.Y.2019-20 and investment of Rs. 50 lakhs has been made in bonds of RECL during the P.Y.2020-21, both within the stipulated six month period, the maximum deduction allowable for A.Y.2020-21, in respect of long-term capital gain arising on sale of long-term capital asset(s) during the P.Y.2019-20, is only Rs. 50 lakhs.

**Question 109**

X. Limited has transferred its Unit N to Y. Limited by way of slump sale on November 30, 2019. The summarised Balance Sheet of X. Limited as on that date is given below:

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Rs. (in lakhs)</th>
<th>Assets</th>
<th>Rs. (in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up capital</td>
<td>1,700</td>
<td>Fixed Assets:</td>
<td></td>
</tr>
<tr>
<td>Reserve &amp; surplus</td>
<td>620</td>
<td>Unit L</td>
<td>150</td>
</tr>
<tr>
<td>Liabilities:</td>
<td></td>
<td>Unit M</td>
<td>150</td>
</tr>
<tr>
<td>Unit L</td>
<td>40</td>
<td>Unit N</td>
<td>550</td>
</tr>
<tr>
<td>Unit M</td>
<td>110</td>
<td>Other Assets:</td>
<td></td>
</tr>
<tr>
<td>Unit N</td>
<td>90</td>
<td>Unit L</td>
<td>520</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unit M</td>
<td>800</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unit N</td>
<td>390</td>
</tr>
<tr>
<td>Total</td>
<td>2,560</td>
<td>Total</td>
<td>2,560</td>
</tr>
</tbody>
</table>

Using the further information given below, compute the capital gain arising from slump sale of Unit N and tax on such capital gain.

(i) Lump sum consideration on transfer of Unit N is Rs. 880 lakhs.

(ii) Fixed assets of Unit N include land which was purchased at Rs. 60 lakhs in August 2007 and revalued at Rs. 90 lakhs as on March 31, 2019.

(iii) Other fixed assets are reflected at Rs. 460 lakhs (i.e. Rs. 550 lakhs less value of land) which represents written down value of those assets as per books. The written down value of these assets under section 43(6) of the Income-tax Act, 1961 is Rs. 410 lakhs.

(iv) Unit N was set up by X. Limited in July, 2007.

(v) Cost inflation index for financial year 2006-07 and financial year 2019-20 are 129 and 289, respectively.

**Answer**

**Computation of capital gain on slump sale of Unit N under section 50B**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs. (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration for the slump sale of Unit N</td>
<td>880</td>
</tr>
<tr>
<td><strong>Less: Net worth of Unit N (Refer Note 1 below)</strong></td>
<td>770</td>
</tr>
<tr>
<td><strong>Long term capital gain arising on slump sale</strong></td>
<td><strong>110</strong></td>
</tr>
</tbody>
</table>
Computation of tax liability of X Ltd. on slump sale of Unit N

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs. (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on capital gains @ 20%</td>
<td>22.00</td>
</tr>
<tr>
<td>Add: Surcharge @ 7%</td>
<td>1.54</td>
</tr>
<tr>
<td>Add: Education cess @ 4%</td>
<td>0.94</td>
</tr>
<tr>
<td><strong>Total tax liability on capital gain arising on slump sale of Unit N</strong></td>
<td><strong>24.48</strong></td>
</tr>
</tbody>
</table>

Notes:
1. The net worth of an undertaking transferred by way of slump sale shall be deemed to the cost of acquisition and cost of improvement for the purposes of section 48 and 49 [Section 50B(2)].

Computation of net worth of Unit N

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs. (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Book value of non-depreciable assets:</td>
<td></td>
</tr>
<tr>
<td>(i) Land (Revaluation is to be ignored for computing net worth)</td>
<td>60</td>
</tr>
<tr>
<td>(ii) Other assets</td>
<td>390</td>
</tr>
<tr>
<td>(B) Written down value of depreciable assets under section 43(6)</td>
<td>410</td>
</tr>
<tr>
<td>Aggregate value of total assets</td>
<td>860</td>
</tr>
<tr>
<td>Less: Value of liabilities of Unit N</td>
<td>90</td>
</tr>
<tr>
<td><strong>Net worth of Unit N</strong></td>
<td><strong>770</strong></td>
</tr>
</tbody>
</table>

2. Since Unit N is held for more than 36 months, the capital gains of Rs. 110 lacs arising on transfer of such unit would be a long term capital gain taxable under section 112. However, indexation benefit is not available in the case of a slump sale.

**Question 110**

SS(P) Ltd., an Indian company having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to RV(P) Ltd., an Indian company, by way of demerger. The net worth of SS(P) Ltd. immediately before demerger was Rs. 40 crores. The net book value of assets transferred to RV(P) Ltd. was Rs. 10 crores. The demerger was made in January 2020. In the scheme of demerger, it was fixed that for each equity share of Rs. 10 each (fully paid up) of SS(P) Ltd., two equity shares of Rs. 10 each (fully paid up) were to be issued.

One Mr. N.K. held 25,000 equity shares in SS(P) Ltd. which were acquired in the financial year 2004-05 for Rs. 6,00,000. Mr. N.K. received 50,000 equity shares from RV(P) Ltd. consequent to demerger in January 2020. He sold all the shares of RV(P) Ltd. for Rs. 8,00,000 in March, 2020. In this background you are requested to answer the following:

(i) Does the transaction of demerger attract any income tax liability in the hands of SS(P) Ltd. and RV(P) Ltd.?
(ii) Compute the capital gain that could arise in the hands of Mr. N.K. on receipt of shares of RV(P) Ltd.
(iii) Compute the capital gain that could arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.
(iv) Will the sale of shares by Mr. N.K. affect the tax benefits availed by SS(P) Ltd. and/or RV(P) Ltd.?
(v) Is Mr. N.K. eligible to avail any tax exemption under any of the provisions of the Income-tax Act, 1961 on the sale of shares of RV(P) Ltd.? If so, mention in brief.

60.10
Note: Financial Year Cost inflation index
2004-05 113
2019-20 289

Answer
(i) No, the transaction of demerger would not attract any income-tax liability in the hands of SS(P) or RV(P) Ltd.
As per section 47(vib), any transfer in a demerger, of a capital asset, by the demerged company to the resulting company would not be regarded as “transfer” for levy of capital gains tax if the resulting company is an Indian company.
Hence, capital gains tax liability would not be attracted in the hands of SS(P) Ltd., the demerged company, in this case, since RV(P) Ltd. is an Indian company
(ii) There would be no capital gains liability in the hands of Mr. N.K. on receipt of shares of RV (P) Ltd., since as per section 47(vid), any issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company will not be regarded as “transfer” for levy of capital gains tax, if the issue is made in consideration of demerger of the undertaking.
(iii) Yes, capital gains would arise in the hands of Mr. N.K. on sale of shares of RV (P) Ltd.
Sale consideration 8,00,000
Less: Indexed cost of acquisition of shares of RV (P) Ltd.
Cost of acquisition of shares of RV(P) Ltd. as per section 49(2C):
Cost of acquisition of shares of SS(P) Ltd. × Net book value of assets transferred in a demerger
Net worth of the demerged company immediately before demerger
Rs.6,00,000 × \(\frac{10 \text{ crore}}{40 \text{ crore}}\) = Rs.1,50,000
Indexed cost of acquisition of shares of RV (P) Ltd. [Rs. 1,50,000 × 289/113] Rs.3,83,628
Long-term capital gain (since period of holding of shares in demerged company is also to be considered) Rs.4,16,372
(iv) No, sale of shares by Mr. N.K. would not affect the tax benefits availed by SS(P) Ltd. or RV (P) Ltd.
One of the conditions to be satisfied is that the shareholders holding not less than three-fourths in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger. It is presumed that the condition is satisfied in this case.
There is no stipulation that they continue to remain shareholders for any period of time thereafter.
(v) Since the resultant capital gain on sale of shares of RV(P) Ltd. is a long-term capital gain (on account of the period of holding of shares in demerged company being considered by virtue of section 2(42A)(g)), Mr. N.K. can avail exemption –
(1) under section 54EE, by investing the long-term capital gain units of specified fund, within a period of 6 months from the date of transfer.
(2) under section 54F by investing the entire net consideration in purchase (within one year before and two years after the date of transfer) or construction (within three years after the date of transfer) of one residential house in India. If part of the net consideration is invested, only proportionate exemption would be available.
Question 111

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for Rs. 385 lacs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2020, being the date on which software unit has been transferred, is given hereunder –

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Rs. (in lacs)</th>
<th>Assets</th>
<th>Rs. (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Share Capital</td>
<td>300</td>
<td>Fixed Assets</td>
<td></td>
</tr>
<tr>
<td>General Reserve</td>
<td>150</td>
<td>Hardware unit</td>
<td>170</td>
</tr>
<tr>
<td>Share Premium</td>
<td>50</td>
<td>Software unit</td>
<td>200</td>
</tr>
<tr>
<td>Revaluation Reserve</td>
<td>120</td>
<td>Debtors</td>
<td></td>
</tr>
<tr>
<td>Current Liabilities</td>
<td></td>
<td>Hardware unit</td>
<td>140</td>
</tr>
<tr>
<td>Hardware unit</td>
<td>40</td>
<td>Software unit</td>
<td>110</td>
</tr>
<tr>
<td>Software unit</td>
<td>90</td>
<td>Inventories</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hardware unit</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Software unit</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td><strong>750</strong></td>
<td><strong>750</strong></td>
<td></td>
</tr>
</tbody>
</table>

Following additional information are furnished by the management:
(i) The Software unit is in existence since May, 2015.
(ii) Fixed assets of software unit includes land which was purchased at Rs. 40 lacs in the year 2008 and revalued at Rs. 60 lacs as on March 31, 2020.
(iii) Fixed assets of software unit mirrored at Rs. 140 lacs (Rs. 200 lacs minus land value Rs. 60 lacs) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act, 1961 is Rs. 90 lacs.

(a) Ascertain the tax liability, which would arise from slump sale to PQR Limited.
(b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

Answer
(a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertaining of tax liability of PQR Limited from slump sale of software unit

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.(in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration for slump sale of Software Unit</td>
<td>385</td>
</tr>
<tr>
<td>Less: Cost of acquisition being the net worth of Software Unit</td>
<td>185</td>
</tr>
<tr>
<td><strong>Long term capital gains arising on slump sale</strong></td>
<td><strong>200</strong></td>
</tr>
</tbody>
</table>

(The capital gains is long-term as the Software Unit is held for more than 36 months before the slump sale.)
than 36 months)

<table>
<thead>
<tr>
<th>Tax liability on LTCG</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Under section 112 @ 20% on Rs. 200 lacs</td>
<td>40.00</td>
</tr>
<tr>
<td>Add: Surcharge@ 7%</td>
<td>2.80</td>
</tr>
<tr>
<td>Add: Health and Education cess@4%</td>
<td>1.712</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>44.512</strong></td>
</tr>
</tbody>
</table>

Working Note:

Computations of net worth of Software Unit

<table>
<thead>
<tr>
<th></th>
<th>Rs. (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Book value of non-depreciable assets</td>
<td></td>
</tr>
<tr>
<td>(i) Land (Revaluation not to be considered)</td>
<td>40</td>
</tr>
<tr>
<td>(ii) Debtors</td>
<td>110</td>
</tr>
<tr>
<td>(iii) Inventories</td>
<td>35</td>
</tr>
<tr>
<td>(2) Written down value of depreciable assets under section 43(6)</td>
<td></td>
</tr>
<tr>
<td>(See Note below)</td>
<td>90</td>
</tr>
<tr>
<td>Aggregate value of total assets</td>
<td>275</td>
</tr>
<tr>
<td>Less: Current liabilities of software unit</td>
<td>90</td>
</tr>
<tr>
<td><strong>Net worth of software unit</strong></td>
<td><strong>185</strong></td>
</tr>
</tbody>
</table>

Note: For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) Tax advice

(i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence, PQR Limited should try to acquire the remaining 26% equity shares in S Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head “Capital Gains” of the previous year in which such transfer took place.

(ii) Alternatively, if acquisition of 26% share is not feasible, PQR Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.
Questions on Non Resident Taxation:

Question 112

JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of Rs. 1 crore and Rs. 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of Rs. 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.

Answer

The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per the Explanation below section 9(2), the fee of Rs. 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.

Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of Rs. 1 crore (as it is for rendering services outside India) is not correct.

Question 113

Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of Income-tax Act, 1961:

(i) A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.

(ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.

(iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.

(iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2019, with an Indian Company and was in receipt of interest on 8% debentures for Rs. 20 lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Mumbai during previous year 2019-20.

Answer

(i) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as
“engineering fee”) are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India [Aeg Aktiengesellschaft v. CIT (2004) 267 ITR 209 (Kar.)].

As per Explanation to section 9, where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

(ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression “business” includes not only trade and manufacture; it includes, within its scope, “profession” as well. Therefore, the existence of professional connection amounts to existence of “business connection” under section 9(1)(i). It was so held by the Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295.

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

(iii) As per section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. “Royalty” means consideration for, inter alia, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India in the hands of Mr. A.

(iv) Rs. 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to Sai Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Sai Engineering by virtue of section 9(1)(v). Hence, it is taxable in India.

Note – Since the question specifically requires the candidates to examine the taxability of the above transactions under section 9, the provisions of double taxation avoidance agreement, if any, applicable in the above cases, have not been taken into consideration.

Question 114
M/s. Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2019-20 (April, 2019 to March, 2020) and collected charges of Rs. 125 lakhs for carriage of passengers and cargo out of which Rs. 65 lakhs were received in New York in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were Rs. 195 lakhs. Compute the income chargeable to tax of the foreign airlines.
Answer

As per section 44BBA, in case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

In the present case, the income chargeable to tax of M/s Global Airlines applying the provisions of section 44BBA are as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Fare booked from India to outside India whether received in India or not (Rs.)</th>
<th>Fare booked from New York to Mumbai (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fare</td>
<td>60,00,000</td>
<td>65,00,000</td>
</tr>
<tr>
<td></td>
<td>(1,25,00,000 – 65,00,000)</td>
<td></td>
</tr>
<tr>
<td>Deemed income @5% u/s 44BBA</td>
<td>3,00,000 (60,00,000 × 5%)</td>
<td>Nil (since the amount not received in India)</td>
</tr>
</tbody>
</table>

Question 115

J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.3.2020 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2020-21. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2020-21.

Answer

As per section 9(1)(iii), salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax, even though he was a non-resident for A.Y. 202-21.

As per section 10(7), all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax. Therefore, the allowances and perquisites received by J are exempt as per section 10(7).

Question 116

Mr. Soham, an Indian Citizen, left India on 20-04-2017 for the first time to setup a software firm in Singapore. On 10-04-2019, he entered into an agreement with LK Limited, an Indian Company, for the transfer of technical documents and designs to setup an automobile factory in Faridabad. He reached India along with his team to render the requisite services on 15-05-2019 and was able to complete his assignment on 20-08-2019. He left for Singapore on 21-08-2019. He charged Rs. 50 lakhs for his services from LK Limited.
Determine the residential status of Mr. Soham for the Assessment Year 2020-21 and examine whether the fees charged from LK Limited would be chargeable to tax as per the Income-tax Act, 1961.

Answer

Determination of residential status of Mr. Soham

As per section 6(1), an individual is said to be resident in India in any previous year if he satisfies the conditions:—

(i) He has been in India during the previous year for a total period of 182 days or more, or

(ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year or an Indian citizen, who being outside India, comes on a visit to India in any previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. Soham is an Indian citizen who left India to set up a software firm in Singapore on 20.04.2017. Therefore, he is an Indian citizen living in Singapore, who comes on a visit to India in any previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. Soham, a non-resident, charges fees from LK Ltd., an Indian company, for transfer of technical documents and designs to set up an automobile factory in Faridabad. He renders the requisite services in India for which he stays in India for 99 days during the P.Y.2019-20.

Section 9(1)(vi) defines “royalty” to mean consideration for transfer of all or any rights in respect of, inter alia, a design and also for the rendering of services in connection with such activity. Transfer of rights in the above definition includes transfer of right for use or right to use a computer software also. Therefore, the fees received by Mr. Soham for transfer of technical documents and designs and rendering of requisite services in relation thereto would fall within the meaning of “royalty”.

As per section 9(1)(vi), income by way of royalty payable by a person who is a resident (in this case, LK Limited, an Indian company) would be deemed to accrue or arise in India in the hands of the non-resident (Mr. Soham, in this case), except where such royalty is payable in respect of any right or property or information used or for services utilized for the purpose of a business carried on by such person outside India or for the purposes of making or earning income from any source outside India.

In this case, since the royalty is payable by LK Limited, an Indian company, to Mr. Soham, a non-resident, in respect of services utilized for a business in India (namely, for setting up
an automobile factory in Faridabad), the same is deemed to accrue or arise in India and is hence, taxable in India in the hands of Mr. Soham, a non-resident for the A.Y. 2020-21.

**Question 117**

*Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara?*

**Answer**

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, *inter alia*, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of “fees for technical services”.

The *Explanation* below section 9(2) clarifies that income by way of, *inter alia*, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

**Question 118**

*Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircrafts for the year ended 31.3.2020:

(i) Rs. 2 crores in India on account of carriage of passengers from Chennai.
(ii) Rs. 1 crore in India on account of carriage of goods from Chennai.
(iii) Rs. 3 crores in India on account of carriage of passengers from Singapore.
(iv) Rs. 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by Mr. Q for the purposes of the business during the year ending 31.3.2020 was Rs. 6.75 Crores.*

Compute the income of Mr. Q chargeable to tax in India under the head “Profits and gains of business or profession” for the assessment year 2020-21.

What would be your answer in case the business was carried on by a foreign company, Q Airlines (P) Ltd?

**Answer**

Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -
(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount received in India on account of carriage of passengers from Chennai</td>
<td>2,00,00,000</td>
</tr>
<tr>
<td>Amount received in India on account of carriage of goods from Chennai</td>
<td>1,00,00,000</td>
</tr>
<tr>
<td>Amount received in India on account of carriage of passengers from Singapore</td>
<td>3,00,00,000</td>
</tr>
<tr>
<td>Amount received in Singapore on account of carriage of passengers from Chennai</td>
<td>1,00,00,000</td>
</tr>
<tr>
<td></td>
<td>7,00,00,000</td>
</tr>
</tbody>
</table>

Income from business under section 44BBA at 5% of Rs. 7,00,00,000 is Rs. 35,00,000, which is the income of Mr. Q chargeable to tax in India under the head “Profits and gains of business or profession” for the A.Y. 2020-21.

In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the answer would be the same since section 44BBA does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

**Question 119**

The net result of the business carried on by a branch of foreign company in India for the year ended 31.03.2020 was a loss of Rs. 100 lakhs after charge of head office expenses of Rs. 200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the assessment year 202-21.

**Answer**

Section 44C restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

For the purpose of computing the adjusted total income, the head office expenses of Rs. 200 Lakhs charged to the profit and loss account have to be added back.

The amount of income to be declared by the assessee for A.Y. 2020-21 will be as under:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss for the year ended 31.03.2020</td>
<td>(100 lakhs)</td>
</tr>
<tr>
<td>Add: Amount of head office expenses to be considered separately as per section 44C</td>
<td>200 lakhs</td>
</tr>
<tr>
<td>Adjusted total income</td>
<td>100 lakhs</td>
</tr>
<tr>
<td>Less: Head Office expenses allowable under section 44C is the lower of</td>
<td></td>
</tr>
<tr>
<td>(i) Rs. 5 lakhs, being 5% of Rs. 100 lakhs, or</td>
<td></td>
</tr>
<tr>
<td>(ii) Rs. 200 lakhs.</td>
<td></td>
</tr>
<tr>
<td><strong>Income to be declared in return</strong></td>
<td><strong>95 lakhs</strong></td>
</tr>
</tbody>
</table>
Question 120

Mr. A, a non-resident Indian remits US $ 40,000 to India on 16.09.2005. The amount is partly utilised on 3.10.2005 for purchasing 10,000 equity shares in A Ltd, an Indian Company, at the rate of Rs. 12 per share. These shares are sold for Rs. 48 per share on 30.03.2020. Fair Market value of these shares on 31.01.2018 was Rs. 35 per share. The telegraphic transfer buying and selling rate of US dollars adopted by the State Bank of India is as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Buying Rate (1 US $)</th>
<th>Selling Rate (1 US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.09.2005</td>
<td>18</td>
<td>20</td>
</tr>
<tr>
<td>3.10.2005</td>
<td>19</td>
<td>21</td>
</tr>
<tr>
<td>30.3.2020</td>
<td>59</td>
<td>61</td>
</tr>
</tbody>
</table>

Compute Capital gain chargeable to tax for the A.Y. 2020-21 on the assumption that –
(a) These shares have not been sold through a recognised stock exchange
(b) These shares have been purchased and sold through a recognised stock exchange.

Answer
(a) Where the shares are not sold through recognised stock exchange

<table>
<thead>
<tr>
<th>Particulars</th>
<th>US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration (Rs. 4,80,000/60)</td>
<td>8000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition (1,20,000/20)</td>
<td>6000</td>
</tr>
<tr>
<td><strong>Long term capital gain</strong></td>
<td>2000</td>
</tr>
</tbody>
</table>

Long-term capital gain converted into $ 2000 x Rs. 59 = Rs. 1,18,000

(b) Where the shares are purchased and sold through a recognised stock exchange

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration</td>
<td>4,80,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td></td>
</tr>
<tr>
<td>Higher of the following</td>
<td></td>
</tr>
<tr>
<td>Cost of acquisition of assets</td>
<td>1,20,000</td>
</tr>
<tr>
<td>Lower of Fair market value as on 31.1.2018 and Full value of consideration (i.e., lower of Rs. 3,50,000 and Rs. 4,80,000)</td>
<td>3,50,000 3,50,000</td>
</tr>
<tr>
<td><strong>Long term capital gain</strong></td>
<td>1,30,000</td>
</tr>
</tbody>
</table>

Long term capital gains upto Rs. 1,00,000 would be exempt. Long term capital gains exceeding Rs. 1,00,000, i.e., Rs. 30,000 is taxable @10% under section 112A.

Question 121

A non-resident Indian acquired shares in an Indian company, A Ltd., on 1.1.2009 for Rs. 1,00,000 in foreign currency. These shares are sold by him on 1.1.2019 for Rs. 3,00,000. He invests Rs. 3,00,000 in shares on 31.03.2019 and these shares are sold by him on 30.06.2019 for Rs. 3,50,000. Discuss the tax implications. Ignore the effect of first proviso to section 48.
Answer

Computation of Long term Capital Gain for Assessment Year 2019-20

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Long term capital gain</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Less: Exemption under section 115F</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Exempt long-term capital gain</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Capital Gain for Assessment year 2020-21:

1. LTCG of Rs. 2,00,000 which was exempt in A.Y. 2018-19 becomes taxable this year.
2. STCG of Rs. 50,000 is also taxable this year.

Question 122

Mr. John, a non-resident Indian, purchased unlisted shares of an Indian Company at a cost of Rs. 70,000 on 01.07.20010 in foreign currency. Mr. John sold the said shares for a consideration of Rs. 2,50,000 on 01.08.2019 and the expenditure incurred wholly or exclusively in connection with the transfer is Rs. 10,000. Compute the taxable capital gain if he deposited in specified assets Rs. 1,50,000 out of sale consideration. Ignore the effect of first proviso to section 48.

Answer

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration</td>
<td>2,50,000</td>
</tr>
<tr>
<td>Less: Transfer Expenses</td>
<td>10,000</td>
</tr>
<tr>
<td>Net Consideration</td>
<td>2,40,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>70,000</td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td>1,70,000</td>
</tr>
<tr>
<td>Less: Exemption u/s 115F</td>
<td>1,06,250*</td>
</tr>
<tr>
<td><strong>Taxable long-term capital gain</strong></td>
<td><strong>63,750</strong></td>
</tr>
</tbody>
</table>

*1,70,000 × 1,50,000

2,40,000 = Rs. 1,06,250

Question 123

During the financial year 2019-20, Nadal, a tennis professional and a non-Indian citizen participated in India in a Tennis Tournament and won prize money of Rs. 15 lacs. He contributed articles on the tournament in a local newspaper for which he was paid Rs. 1 lac. He was also paid Rs. 5,00,000 by a Soft Drink company for appearance in a T.V. advertisement. Although his expenses in India were met by the sponsors, he had to incur Rs. 3,00,000 towards his travel costs to India. He was a non-resident for tax purposes in India.

What would be his tax liability in India for A.Y. 2020-21? Is he required to file his return of income?
Answer

Under section 115BBA, all the three items of receipts in India viz. prize money of Rs. 15 lakhs, amount received from newspaper of Rs. 1 lakh and amount received towards TV advertisement of Rs. 5 lakhs - are chargeable to tax. No expenditure is allowable against such receipts. The rate of tax chargeable under section 115BBA is 20%, plus health and education cess @4%. The total tax liability works out to Rs. 4,36,800 being 20.8% of Rs. 21 lakhs. Thus, Nadal will be liable to tax on the income earned in India.

He is not required to file his return of income if -

(a) his total income during the previous year consists only of income arising under section 115BBA; and

(b) the tax deductible at source under the provisions of Chapter XVII-B have been deducted from such incomes.

Question 124

Smith, a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2020. He received Rs. 5 lakhs for participation in matches in India. He also received Rs. 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he received Rs. 10,000. When he stayed in India, he also won a prize of Rs. 20,000 from horse racing in Mumbai. He has no other income in India during the year.

(i) Compute tax liability of Smith for Assessment Year 2020-21.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for Assessment Year 2020-21?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer?

Answer

(i) Computation of tax liability of Smith for the A.Y.2020-21

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income taxable under section 115BBA</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from participation in matches in India</td>
<td>5,00,000</td>
<td></td>
</tr>
<tr>
<td>Advertisement of product on TV</td>
<td>1,00,000</td>
<td></td>
</tr>
<tr>
<td>Contribution of articles in newspaper</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td><strong>Income taxable under section 115BB</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from horse races</td>
<td>20,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total income</strong></td>
<td>6,30,000</td>
<td></td>
</tr>
<tr>
<td>Tax@ 20% under section 115BBA on Rs. 6,10,000</td>
<td>1,22,000</td>
<td></td>
</tr>
<tr>
<td>Tax@ 30% under section 115BB on income of Rs. 20,000 from horse races</td>
<td>6,000</td>
<td></td>
</tr>
<tr>
<td>Add: Health and Education cess@4%</td>
<td>5,120</td>
<td></td>
</tr>
<tr>
<td><strong>Total tax liability of Smith for the A.Y.2019-20</strong></td>
<td>1,33,120</td>
<td></td>
</tr>
</tbody>
</table>

(ii) Yes, the above income is subject to tax deduction at source.
Income referred to in section 115BBA (i.e., Rs. 6,10,000, in this case) is subject to tax deduction at source@ 20% under section 194E.

Income referred to in section 115BB (i.e., Rs. 20,000, in this case) is subject to tax deduction at source@30% under section 194BB.

Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess@4%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2020-21.

(iv) The Calcutta High Court in *Indcom v. CIT (TDS)(2011) 335 ITR 485* has held that ‘match referee’ would not fall within the meaning of “sportsmen” to attract the provisions of section 115BBA. Therefore, although the payments made to non-resident ‘match referee’ are “income” which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax@30% under section 115BB on winnings of Rs. 20,000 from horse races</td>
<td>6,000</td>
</tr>
<tr>
<td><strong>Tax on Rs. 6,10,000 at the rates in force</strong></td>
<td></td>
</tr>
<tr>
<td>Upto Rs. 2,50,000</td>
<td>Nil</td>
</tr>
<tr>
<td>2,50,000 – 5,00,000 @5%</td>
<td>12,500</td>
</tr>
<tr>
<td>5,00,000 – 6,10,000 @ 20%</td>
<td>22,000</td>
</tr>
<tr>
<td><strong>Add:</strong> Health and Education cess@4%</td>
<td>1,620</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>42,120</td>
</tr>
</tbody>
</table>

************************************************************************}

60.23
QUESTIONS ON TRANSFER PRICING:

Question 125
Examine the consequences that would follow if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in taxable income. What are the remedies available to the assessee to dispute such adjustment?

Answer
In case the Assessing Officer makes adjustment to arm’s length price in an international transaction which results in increase in taxable income of the assessee, the following consequences shall follow:-
(1) No deduction under section 10AA or Chapter VI-A shall be allowed from the income so increased.
(2) No corresponding adjustment would be made to the total income of the other associated enterprise (in respect of payment made by the assessee from which tax has been deducted or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm’s length price so recomputed.

The remedies available to the assessee to dispute such an adjustment are:-
(1) In case the assessee is an eligible assessee under section 144C, he can file his objections to the variation made in the income within 30 days [of the receipt of draft order by him] to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.
(2) In any other case, he can file an appeal under section 246A to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.
(3) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within one year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in section 264 should be fulfilled.

Question 126
I. Limited, an Indian Company supplied billets to its holding company, U. Limited, UK during the previous year 2019-20. I. Limited also supplied the same product to another UK based company, V. Limited, an unrelated entity. The transactions with U. Limited are priced at Euro 500 per MT (FOB), whereas the transactions with V. Limited are priced at Euro 700 per MT (CIF). Insurance and Freight amounts to Euro 200 per MT. Compute the arm's length price for the transaction with U. Limited.

Answer
In this case, I. Limited, the Indian company, supplied billets to its foreign holding company, U. Limited. Since the foreign company, U. Limited, is the holding company of I. Limited, I. Limited and U. Limited are the associated enterprises within the meaning of section 92A.
As I. Limited supplies similar product to an unrelated entity, V. Limited, UK, the transactions between I. Limited and V. Limited can be considered as comparable uncontrolled transactions for the purpose of determining the arm’s length price of the transactions between I. Limited and U. Limited. Comparable Uncontrolled Price (CUP) method of determination of arm’s length price (ALP) would be applicable in this case. Transactions with U. Limited are on FOB basis, whereas transactions with V. Limited are on CIF basis. This difference has to be adjusted before comparing the prices.

<table>
<thead>
<tr>
<th>Amount (in Euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price per MT of billets to V. Limited</td>
</tr>
<tr>
<td>Less: Cost of insurance and freight per M.T.</td>
</tr>
<tr>
<td>Adjusted Price per M.T.</td>
</tr>
</tbody>
</table>

Since the adjusted price for V. Limited, UK and the price fixed for U. Limited are the same, the arm’s length price is Euro 500 per MT. Since the sale price to related party (i.e., U. Limited) and unrelated party (i.e., V. Limited) is the same, the transaction with related party U. Limited has also been carried out at arm’s length price.

**Question 127**

X Ltd., operating in India, is the dealer for the goods manufactured by Yen Ltd. of Japan. Yen Ltd. owns 55% shares of X Ltd. and out of 7 directors of the company, 4 were appointed by them. The Assessing Officer, after verification of transactions of Rs. 300 lacs of X Ltd. for the relevant year and by noticing that the company had failed to maintain the requisite records and had also not obtained the accountants report, adjusted its income by making an addition of Rs. 30,00,000 to the declared income and also issued a show cause notice to levy various penalties. X Ltd seeks your expert opinion.

**Answer**

The facts of the case indicate that X Ltd. and Yen Ltd. of Japan are associated enterprises since Yen Ltd. holds 55% shares of X Ltd. and has appointed more than half of the board of directors of X Ltd. Since Yen Ltd. is a non-resident, any transaction between X Ltd. and Yen Ltd. would fall within the meaning of “international transaction” under section 92B. Therefore, the income arising from such transactions have to be computed having regard to the arm’s length price.

The action of the Assessing Officer in making addition to the declared income and issuing show cause notice to levy various penalties is correct since X Ltd. had committed defaults, as listed hereunder, in respect of which penalty, as briefed hereunder, is imposable -

(i) Failure to report any international transaction or any transaction, deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X applies, would attract penalty @ 200% of the amount of tax payable since it is a case of misreporting of income referred under section 270A(9) read with section 270A(8).

(ii) Failure to maintain the requisite records as required under section 92D in relation to international transaction makes it liable for penalty under section 271AA which will be 2% of the value of each international transaction.

(iii) Failure to furnish report from an accountant as required under section 92E makes it liable for penalty under section 271BA i.e., a fixed penalty of Rs. 1 Lac.
The Assessing Officer shall give an opportunity of hearing to the assessee with a notice as to why the arm’s length price should not be determined on the basis of material or information or document in the possession of the Assessing Officer.

**Note:** It is assumed that X Ltd. has not entered into an APA and has also not opted to be subject to Safe Harbour Rules.

**Question 128**

Anush Motors Ltd., an Indian company declared income of **Rs. 300 crores** computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended on 31.3.2020:

(i) 10,000 cars sold to Rida Ltd. which holds 30% shares in Anush Motors Ltd. at a price which is less by $ 200 each car than the price charged from Shingto Ltd.

(ii) Royalty of $ 1,20,00,000 was paid to Kyoto Ltd. for use of technical know-how in the manufacturing of car. However, Kyoto Ltd. had provided the same know-how to another Indian company for $ 90,00,000.

(iii) Loan of Euro 1000 crores carrying interest @ 10% p.a. advanced by Dorf Ltd., a German company, was outstanding on 31.3.2020. The total book value of assets of Anush Motors Ltd. on the date was **Rs. 90,000 crores**. The said German company had also advanced a loan of similar amount to another Indian company @ 9% p.a. Total interest paid for the year was EURO 100 crores.

Explain in brief the provisions of the Act affecting all these transactions and compute the income of the company chargeable to tax for A.Y.2020-21 keeping in mind that the value of 1$ and of 1 EURO was **Rs. 63** and **Rs. 84**, respectively, throughout the year.

**Answer**

Any income arising from an international transaction, where two or more “associated enterprises” enter into a mutual agreement or arrangement, shall be computed having regard to arm’s length price as per the provisions of Chapter X of the Act.

Section 92A defines an “associated enterprise” and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that “Anush Motors Ltd.” is associated with :

(i) Rida Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.;

(ii) Kyoto Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;

(iii) Dorf Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Anush Motors Ltd.

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax for the A.Y. 2020-21.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs. (in crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X</td>
<td>300.00</td>
</tr>
<tr>
<td>Add: Difference on account of adjustment in the value of international</td>
<td></td>
</tr>
</tbody>
</table>

60.26
transactions:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Difference in price of car @ $ 200 each for 10,000 cars ($ 200 \times 10,000 \times \text{Rs. 63})</td>
<td>12.6</td>
</tr>
<tr>
<td>(ii) Difference for excess payment of royalty of $ 30,00,000 ($ 30,00,000 \times \text{Rs. 63}) [See Note below]</td>
<td>18.90</td>
</tr>
<tr>
<td>(iii) Difference for excess interest paid on loan of EURO 1000 crores (\text{Rs. } 84 \times 1000 \times 1/100)</td>
<td>840.00</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>1,171.50</strong></td>
</tr>
</tbody>
</table>

The difference for excess payment of royalty has been added back presuming that the manufacture of cars by Anush Motors Ltd is wholly dependent on the use of know-how owned by Kyoto Ltd.

*Note*: It is presumed that Anush Motors Ltd. has not entered into an Advance Pricing Agreement or opted to be subject to Safe Harbour Rules.

**Question 129**

*What is the legislative objective of bringing into existence the provisions relating to transfer pricing in relation to international transactions? Examine.*

**Answer**

The presence of multinational enterprises in India and their ability to allocate profits in different jurisdictions by controlling prices in intra-group transactions prompted the Government to set up an Expert Group to examine the issues relating to transfer pricing.

There is a possibility that two or more entities belonging to the same multinational group can fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue. The increasing participation of multinational groups in economic activities in India has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, which may lead to erosion of tax revenue. Therefore, transfer pricing provisions have been brought in by the Finance Act, 2001 with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

**Question 130**

*XE Ltd. is an Indian Company in which Zilla Inc., a US company, has 28% shareholding and voting power. Following transactions were effected between these two companies during the financial year 2019-20.*

(i) *XE Ltd. sold 1,00,000 pieces of T-shirts at $ 2 per T-Shirt to Zilla Inc. The identical T-Shirts were sold to unrelated party namely Kennedy Inc., at $ 3 per T-Shirt.*

(ii) *XE Ltd. borrowed $ 2,00,000 from a foreign lender based on the guarantee of Zilla Inc. For this, XE Ltd. paid $ 10,000 as guarantee fee to Zilla Inc. To an unrelated party for the same amount of loan, Zilla Inc. collected $ 7000 as guarantee fee.*
(iii) XE Ltd. paid $15,000 to Zilla Inc. for getting various potential customers details to improve its business. Zilla Inc. provided the same service to unrelated parties for $10,000.

Assume the rate of exchange as 1 $ = Rs. 64

XE Ltd. is located in a Special Economic (SEZ) and its income before transfer pricing adjustments for the year ended 31st March, 2020 was Rs. 1,200 lakhs.

Compute the adjustments to be made to the total income of XE Ltd. State whether it can claim deduction under section 10AA for the income enhanced by applying transfer pricing provisions.

Answer

XE Ltd, the Indian company and Zilla Inc., the US company are deemed to be associated enterprises as per section 92A(2)(a), since Zilla Inc. holds shares carrying not less than 26% of the voting power in XE Ltd.

As per Explanation to section 92B, the transactions entered into between these two companies for sale of product, lending or guarantee and provision of services relating to market research are included within the meaning of “international transaction”.

Accordingly, transfer pricing provisions would be attracted and the income arising from such international transactions have to be computed having regard to the arm’s length price. In this case, from the information given, the arm’s length price has to be determined taking the comparable uncontrolled price method to be the most appropriate method.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.in lakhs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount by which total income of XE Ltd. is enhanced on account of adjustment in the value of international transactions:</td>
<td></td>
</tr>
<tr>
<td>(i) Difference in price of T-Shirt @ $ 1 each for 1,00,000 pieces sold to Zilla Inc. ($ 1 x 1,00,000 x Rs. 64)</td>
<td>64.00</td>
</tr>
<tr>
<td>(ii) Difference for excess payment of guarantee fee to Zilla Inc. for loan borrowed from foreign lender ($ 3,000 x Rs. 64)</td>
<td>1.92</td>
</tr>
<tr>
<td>(iii) Difference for excess payment for services to Zilla Inc. ($ 5,000 x Rs. 64)</td>
<td>3.20</td>
</tr>
<tr>
<td></td>
<td><strong>69.12</strong></td>
</tr>
</tbody>
</table>

XE Ltd. cannot claim deduction under section 10AA in respect of Rs. 69.12 lakhs, being the amount of income by which the total income is enhanced by virtue of the first proviso to section 92C(4)

Question 131

Examine the correctness or otherwise of the following with reference to the provisions of the Income-tax Act, 1961

(i) Transfer pricing rules shall have no implication where income is computed on the basis of book profits.

(ii) Assessing Officer can complete the assessment of income from international transaction in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of assessee.
Answer
(i) The statement is correct.
For the purpose of computing book profit for levy of minimum alternate tax, the net profit shown in the profit and loss account prepared in accordance with the Companies Act can be increased/decreased only by the additions and deductions specified in Explanation 1 to section 115JB.
No other adjustments can be made to arrive at the book profit for levy of MAT, except where:
(a) it is discovered that the profit and loss account is not drawn up in accordance with the relevant Schedule of the Companies Act
(b) incorrect accounting policies and/or accounting standards have been adopted for preparing such accounts; and
(c) the method and rate of depreciation adopted is not correct.
Therefore, transfer pricing adjustments cannot be made while computing book profit for levy of MAT.
(ii) The statement is not correct.
Section 92CA(4) provides that on receipt of the order of the Transfer Pricing Officer determining the arm’s length price of an international transaction, the Assessing Officer shall proceed to compute the total income in conformity with the arm’s length price determined by the Transfer Pricing Officer.
The order of the Transfer Pricing Officer is binding on the Assessing Officer. Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer by accepting the contention raised by the assessee.

Question 132
A Ltd., an Indian company, provides technical services to a company, XYZ Inc., located in a NJA for a consideration of Rs. 40 lakhs in October, 2019. It charges Rs. 42 lakhs for similar services rendered to PQR Inc., which is not located in a NJA. PQR Inc. is not an associated enterprise of A Ltd.
Discuss the tax implications under section 94A read with section 92C in respect of the above transaction of provision of technical services by A Ltd. to XYZ Inc.

Answer
Since XYZ Inc. is located in a NJA, the transaction of provision of technical services by the Indian company, A Ltd., would be deemed to be an international transaction and XYZ Inc. and A Ltd. would be deemed to be associated enterprises. Therefore, the provisions of transfer pricing would be attracted in this case.
The price of Rs. 42 lakhs charged for similar services from PQR Inc, being an independent entity located in a non-NJA country, can be taken into consideration for determining the arm’s length price (ALP) under Comparable Uncontrolled Price (CUP) Method.
Since the ALP is more than the transfer price, the ALP of Rs. 42 lakhs would be considered as the income arising from the international transaction between A Ltd. and XYZ Inc.
Question 133

Mr. X, a non-resident individual, is due to receive interest of Rs. 5 lakhs during March 2020 from a notified infrastructure debt fund eligible for exemption under section 10(47). He incurred expenditure amounting to Rs. 10,000 for earning such income. Assuming that Mr. X is a resident of a NJA, discuss the tax implications under section 94A, read with sections 115A and 194LB.

Answer

The interest income received by Mr. X, a non-resident, from a notified infrastructure debt fund would be subject to a concessional tax rate of 5% under section 115A on the gross amount of such interest income. Therefore, the tax liability of Mr. X in respect of such income would be Rs. 26,000 (being 5% of Rs. 5 lakhs plus health and education cess@4%).

Under section 194LB, tax is deductible @5% (plus health and education cess@4%) on interest paid by such fund to a non-resident. However, since X is a resident of a NJA, tax would be deductible@30% (plus health and education cess@4%) as per section 94A, and not @5% specified under section 194LB. This is on account of the provisions of section 94A(5), which provides that “Notwithstanding anything contained in any other provision of this Act, where a person located in a NJA is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates, namely–

(a) at the rate or rates in force;
(b) at the rate specified in the relevant provision of the Act;
(c) at the rate of thirty per cent.”

Mr. X can, however, claim refund of excess tax deducted along with interest.
Questions on Sec 10AA:
Note: If a unit is set up on or after 01.04.2020, then deduction u/s 10AA is not available.

Question 134
A company has unit in SEZ and qualifies for exemption u/s 10AA and PY 31/3/2021 is the third year of operation. The following information is given to you:

<table>
<thead>
<tr>
<th>P &amp; L A/c of unit A 31/3/21</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>200L</td>
</tr>
<tr>
<td>Admin Exps</td>
<td>150L</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>NP</td>
<td>225L</td>
</tr>
<tr>
<td></td>
<td>575L</td>
</tr>
</tbody>
</table>

Expenses of Rs. 5L are disallowable u/s 43B and foreign exchange received into India by 30th Sept 2021 amounts to 400L. Export of Rs. 500L includes insurance and freight of Rs. 50L. Export realization of Rs. 400L includes insurance and freight of Rs. 40L. Compute the Total Income of the assessee.

Answer:

**Income under the head PGBP**

**Deduction u/s 10AA**

1) Export T/O = 400L (Realisation) – 40L (Insurance & freight)
   = 360 L
   
The FOB value of exports realization has to be included in export T/O further insurance & freight shall be excluded.

2) Total T/O = F.O.B value of Export + Domestic sales.
   = 450 + 40 = 490L
   (500 – 50)
   (225 + 5)

3) Profits of Business = 230L – 10L – 20L – 5L
   = 195L
   
   As per the Supreme Court judgement of ‘Liberty India’ CCS, Duty drawback and profit on sale of import license are not profits derived from eligible undertaking therefore it shall be excluded.

   Deduction u/s 10AA = 195L × \( \frac{360L}{490L} \)
   = 143.26L
**Question 135**

X Ltd has an undertaking (X unit) in SEZ and another undertaking (unit Y) in free trade zone for manufacturing of computer software. It furnishes the following particulars of its 2nd year of operation ending on 31/3/2021

<table>
<thead>
<tr>
<th></th>
<th>Unit X (in lacs)</th>
<th>Unit Y (in lacs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total sales</td>
<td>180</td>
<td>120</td>
</tr>
<tr>
<td>Export sales (inclusive of onsite development of software outside India) by unit X</td>
<td>120</td>
<td>10</td>
</tr>
<tr>
<td>Profit earned (after claim of Bad debts u/s – 36 (1) (vii) in unit X)</td>
<td>63</td>
<td>36</td>
</tr>
</tbody>
</table>

Plant & Mach used in the business has been depreciated at 15% on SLM and dep of Rs. 9L debited in P&L in the proportion of sales during the year 31.03.2021. Rs. 100L were realized out of Export sales in time and balance Rs. 20L becomes irrecoverable due to bankruptcy of one of the foreign buyers of unit X.

**Answer:**

Depreciation of 2nd year on SLM at 15% is 9L

Actual cost of plant & Machinery = 60L = \[ \frac{9L}{0.15} \]

Dep u/s 32 will be calculated as follows :-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Unit x</th>
<th>Unit y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit earned</td>
<td>63L</td>
<td>36L</td>
</tr>
<tr>
<td><strong>Add</strong>: Dep debited to P/L</td>
<td>5.4L</td>
<td>3.6L</td>
</tr>
<tr>
<td>(9L in the ratio 3:2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Less</strong>: Dep u/s 32</td>
<td>(4.59)</td>
<td>(3.06)</td>
</tr>
<tr>
<td>(7.65L in the ratio of 3:2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance</td>
<td>63.81</td>
<td>36.54</td>
</tr>
<tr>
<td><strong>Less</strong>: Ded u/s 10AA</td>
<td>(35.45)</td>
<td>–</td>
</tr>
<tr>
<td>[ \frac{63.81 \times \frac{100}{180}} ]</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NET INCOME</strong></td>
<td>28.36</td>
<td>36.54</td>
</tr>
</tbody>
</table>

**Question 136**

ABC LLP in India is engaged in development of software and providing IT enabled services through 2 units, one of which is located in SEZ in Chennai. The particulars relating to PY 20–21 furnished by the assessee are as follows :-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Unit x</th>
<th>Unit y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total T/O</td>
<td>SEZ unit</td>
<td>120L</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>100L</td>
</tr>
<tr>
<td>Export T/O</td>
<td>SEZ unit</td>
<td>100L</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>60L</td>
</tr>
</tbody>
</table>
Profit : SEZ unit 50L  
Other 40L

The assessee has no other income during the year.

I) Compute the tax payable by LLP for AY 21 – 22

II) Will the amount of tax payable change if ABC is not an LLP but an individual.

Answer:

(i) Computation of Total Income & Tax liability of ABC LLP as per normal provisions of the Act.

Business Income (before deduction) = 50L + 40L = 90L

Less: Deduction u/s 10AA

= 50 L x \(\frac{100}{120}\) = (41.67) L

Total Income = 48.33 L

Tax on Total Income @ 31.2% = 15.07896 L

Computation of A.T.I & ‘AMT’ liability as per sec 115JC

T.I as per Normal provisions = 48.33 L

Add: Deduction u/s 10AA

ATI = 41.67 L

Tax @ 19.24% = ________

Since the tax payable as per the normal provisions of the Act is less than the Alternate Minimum Tax, the Adjusted Total Income shall be deemed to be Total Income of the LLP and tax payable shall be ________.

(ii)
Question on Sec 56(2)(x) / Sec 43CA, Sec 50C & Sec 49:

**Question 137**

Mr. Harish entered into an agreement to sell a building and land appurtenant thereto to Mr. Kushal on 1.1.2020 for Rs. 50 Lakhs. Mr. Kushal made an advance payment through Account Payee cheque of Rs. 5 lakhs on 1.1.2020. The stamp duty value on the date of agreement was Rs. 58 Lakhs. Mr. Harish purchased this property on 1.1.2018 for Rs. 10 Lakh.

Mr. Kushal makes the balance payment of Rs. 45 lakhs on 30.6.2020 and gets the property registered in his name on that date when the stamp duty value has been increased to Rs. 70 Lakhs. Possession of the property was also handed over to him on 30.6.2020.

Mr. Kushal sold the property on 31.12.2020 for Rs. 100 lakhs.

Examine the taxability of the transaction in the hands of Mr. Harish and Mr. Kushal, if:

(i) Both Mr. Harish and Mr. Kushal treat it as capital asset.
(ii) Both Mr. Harish and Mr. Kushal treat it as stock in trade.
(iii) Mr. Harish treats it as capital asset but Mr. Kushal treats it as stock in trade.
(iv) Mr. Harish treats it as stock in trade but Mr. Kushal treats it as capital asset.

**Answer:**

**Case -1: Both Mr. Harish and Mr. Kushal treat it as capital asset**

**In the hands of Mr. Harish**

**Assessment Year 2021-22**

**Income under the Head Capital Gains**

<table>
<thead>
<tr>
<th>Period of Holding</th>
<th>Sale Consideration (As per section 50C)</th>
<th>Long Term Capital Gain</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.1.2018 to 29.6.2020</td>
<td>Rs. 48 Lakhs</td>
</tr>
<tr>
<td></td>
<td>Less: Cost of Acquisition (Subject to indexation)</td>
<td>Rs. 10 Lakhs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**In the hands of Mr. Kushal**

**Assessment Year 2021-22**

**Income from Other Sources**

Income from other sources [Section 56(2)(x)] Rs. 8 Lakhs

Cost of Acquisition as per section 49(4) shall be Rs. 58 Lakhs.

**Income under the Head Capital Gains**

<table>
<thead>
<tr>
<th>Period of Holding</th>
<th>Sale Consideration</th>
<th>Short Term Capital Gain</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.6.2020 to 30.12.2020</td>
<td>Rs. 100 Lakhs</td>
<td>Rs. 42 Lakhs</td>
</tr>
</tbody>
</table>
Case -2: Both Mr. Harish and Mr. Kushal treat it as stock-in-trade

*In the hands of Mr. Harish*

**Assessment Year 2021-22**

<table>
<thead>
<tr>
<th>Income under the Head PGBP</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration (As per section 43CA)</td>
<td>Rs. 58 Lakhs</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs. 10 Lakhs</td>
</tr>
<tr>
<td>PGBP</td>
<td>Rs. 48 Lakhs</td>
</tr>
</tbody>
</table>

*In the hands of Mr. Kushal*

**Assessment Year 2021-22**

**Income from Other Sources**

Income from other sources [Section 56(2)(x)] shall be taken as Nil since he purchased it as stock-in-trade and not as capital asset.

Cost of stock shall be Rs. 50 Lakhs.

<table>
<thead>
<tr>
<th>Income under the Head PGBP</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration</td>
<td>100 Lakhs</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>50 Lakhs</td>
</tr>
<tr>
<td>PGBP</td>
<td>50 Lakhs</td>
</tr>
</tbody>
</table>

Case 3: Mr. Harish treats it as capital asset but Mr. Kushal treats it as stock in trade.

*In the hands of Mr. Harish*

**Assessment Year 2021-22**

**Income under the Head Capital Gains**

| Period of Holding | 1.1.2018 to 29.6.2020 | Long Term Term |
|-------------------|------------------------|
| Sale Consideration (As per section 50C) | Rs. 58 Lakhs |
| Less: Cost of Acquisition( Subject to Indexation) | Rs. 10 Lakhs |
| Long Term Capital Gain | Rs. 48 Lakhs |

*In the hands of Mr. Kushal*

**Assessment Year 2021-22**

**Income from Other Sources**

Income from other sources [Section 56(2)(x)] shall be taken as Nil since he purchased it as stock-in-trade and not as capital asset.

Cost of stock shall be Rs. 50 Lakh.

<table>
<thead>
<tr>
<th>Income under the Head PGBP</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration</td>
<td>100 Lakhs</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>50 Lakhs</td>
</tr>
<tr>
<td>PGBP</td>
<td>50 Lakhs</td>
</tr>
</tbody>
</table>
Case 4: Mr. Harish treats it as stock in trade but Mr. Kushal treats it as capital asset.

**In the hands of Mr. Harish**

**Assessment Year 2021-22**

**Income under the Head PGBP**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration (As per section 43CA)</td>
<td>Rs. 58 Lakh</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs. 10 Lakh</td>
</tr>
<tr>
<td><strong>PGBP</strong></td>
<td>Rs. 48 Lakh</td>
</tr>
</tbody>
</table>

**In the hands of Mr. Kushal**

**Assessment Year 2021-22**

**Income from Other Sources**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from other sources [Section 56(2)(x)]</td>
<td>Rs. 8 Lakh</td>
</tr>
<tr>
<td>Cost of Acquisition as per section 49(4)</td>
<td>Rs. 58 Lakh</td>
</tr>
</tbody>
</table>

**Income under the Head Capital Gains**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of Holding</td>
<td>30.6.2020 to 30.12.2020</td>
</tr>
<tr>
<td>Sale Consideration</td>
<td>Rs. 100 Lakh</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs. 58 Lakh</td>
</tr>
<tr>
<td><strong>Short Term Capital Gain</strong></td>
<td>Rs. 42 Lakh</td>
</tr>
</tbody>
</table>
Question on Business Trust:

Question 138

ABC Realty Trust, a Business Trust registered under SEBI (Real Estate Investment Trust) Regulations, 2014 provides the following particulars of its income for PY 2020-21:

(i) Rental income of Rs. 3 crores from directly owned real estate assets.
(ii) STCG - Rs. 1.5 crore on sale of listed shares of XYZ Ltd, an Indian company in which ABC Realty Trust holds controlling interest through holding 60% of shareholding of XYZ Ltd.
(iii) STCG - Rs. 2 crores on sale of development properties.
(iv) Interest of Rs. 1 crore received from investment in unlisted debentures of real estate companies

Other Information:
ABC business trust has distributed Rs. 10 crores to its unitholders in PY 2020 - 21. Discuss the tax implications including TDS implication both in the hands of ABC and its unitholders.

Solution:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>REIT</th>
<th>Investor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rental Income of crores</td>
<td>Any income of REIT by letting any real estate asset owned by it is exempt. The REIT shall deduct TDS @ 10% if the investor is resident or u/s 195 if the investor is a non-resident.</td>
<td>Such rental income when distributed it will be taxable in the hands of the investor in the proportion of 3/11.</td>
</tr>
<tr>
<td>2. STCG of Rs. 1.5 crore</td>
<td>ABC Realty Trust is liable to tax @ 15% u/s 111A</td>
<td>Such income is exempt in the hands of the unitholders.</td>
</tr>
<tr>
<td>3. STCG of Rs. 2 crores</td>
<td>Such STCG of Rs. 2 crores will be taxable at maximum marginal rate @ 42.744%</td>
<td>Such income will be exempt in the hands of the unitholder.</td>
</tr>
<tr>
<td>4. Interest of Rs. 1 crore</td>
<td>Such interest will be taxable at MMR i.e. 42.744%</td>
<td>Such income is exempt in the hands of the unitholders.</td>
</tr>
</tbody>
</table>
Questions on Finance Act 2019 Amendments:

Question 139

X is resident in India. He transfers the following assets to his friend Y (a non-resident Indian or foreign citizen currently located in USA) or to Y Ltd. (a foreign company) –

1. Gift of Rs. 9 lakhs by NEFT transfer from X's bank account (SBI, Mumbai) to Y's bank account in California.
2. Gift of Rs. 10 lakhs to Y (this money is gifted to Y in India by an account-payee cheque when Y visited India on a short trip).
3. Gift of Rs. 11 lakhs to Y (X has a bank account in Citibank, New York. Permission of RBI has taken for this purpose. This gift is transferred from Citibank, New York account of X to the account of Y in Deutsche Bank, New Jersey).
4. Gift of house property situated in Pune (stamp duty value: Rs. 45 lakh).
5. Gift of house property situated in New Jersey (market value: Rs. 2.70 crore).
6. Shares in Reliance Industries Ltd. (market value as per stock exchange quotation: Rs. 20 lakh).
7. Shares in a US company, not having any tangible/intangible assets in India (market value: Rs. 18 lakh).
8. Shares in Malaysian company (market value: Rs. 900 crores, more than 95 per cent assets located in India) (market value of shares gifted: Rs. 10.5 crore).
9. Jewellery (market value: Rs. 30 lakh) (it is given as gift to Y when he visited India).
10. Diamonds (market value: Rs. 10 lakh) (given as gift outside India from X’s locker in a foreign bank).
11. Tagore painting (market value: Rs. 6 crore) (it is given as gift to Y when he visited India).
12. Raja Ravi Verma painting (market value: Rs. 2 crore) (taken from India by X when he visited USA and given as a gift on birthday of Y in California).
13. Computer and car (market value: Rs. 8 lakh) (given as gift to Y when he visited India).
14. Gift of Rs. 11 lakhs by electronic transfer from Indian bank account of X to Y’s bank account in USA (gift given on the occasion of marriage of Y).
15. Transfer of a plot of land in Nagpur to Y (stamp duty value: Rs. 62.8 lakh, sale consideration: Rs.60 lakh).

In these cases, amount taxable in India in the hands of Y will be as follows -

<table>
<thead>
<tr>
<th>Assets</th>
<th>If transfer takes place before July 5, 2019</th>
<th>If transfer takes place on or after July 5, 2019</th>
<th>Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gift of Rs. 9 lakhs by way of NEFT to foreign bank</td>
<td>Not taxable</td>
<td>Taxable</td>
<td>9(1)(viii), 56(2)(x)</td>
</tr>
<tr>
<td>Gift of Rs. 10 lakhs in India</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Gift of Rs. 11 lakhs by bank transfer in New Jersey</td>
<td>Not taxable</td>
<td>Taxable</td>
<td>9(1)(viii), 56(2)(x)</td>
</tr>
<tr>
<td>Pune property</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>New Jersey property</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5</td>
</tr>
<tr>
<td>Shares in Reliance</td>
<td>Taxable</td>
<td>Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>Shares in US company</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>Shares in a Malaysian company</td>
<td>Taxable</td>
<td>Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Jewellery</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Diamonds</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Tagore painting</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Raja Ravi Verma painting</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Computer and car</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Marriage gift</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Transfer of Nagpur land (stamp duty value does not exceed 10% of sale consideration)</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
</tbody>
</table>

Subject to provisions of relevant Double Taxation Avoidance agreement.

**Question 140**

X, an individual, takes a loan of Rs. 25 lakh on April 10, 2019 from SBI to purchase an electric car. Car will be delivered during April-May 2020. Interest liability (before subsidy) for the previous years 2019-20 and 2020-21 is Rs. 2,10,000 and Rs. 1,90,000 respectively. One-time interest subsidy of Rs. 70,000 is given by the Maharashtra Government on March 1, 2020. The following situations are considered –

**Situation 1** - X is a salaried employee. His annual salary income (before standard deduction) is Rs. 40,50,000. Every year, X is entitled to deduction under sections 80C and 80D of Rs. 1,70,000.

**Situation 2** - X is a businessman. His annual business income is Rs. 15,00,000. Electric vehicle will be used by him for personal purposes. Every year, X is entitled to deduction under sections 80C and 80G of Rs. 2,40,000.

**Situation 3** - X is a businessman. His annual business income is Rs. 15,00,000 (before interest and expenditure pertaining to vehicle). Electric vehicle will be used by him for business purposes. Maintenance expenditure pertaining to electronic vehicle (including depreciation) for the previous year 2020-21 is Rs. 3,10,000. Every year X is entitled to deduction under sections 80C and 80CCD of Rs. 2,00,000.

**Situation 4** - X is a retired private sector employee. He does not have any pension income. His taxable rental and interest income is Rs. 8,00,000 per annum. Electric vehicle will be used by him for personal purposes. Every year X is entitled to deduction under sections 80C of Rs. 1,50,000.

*Interest payable is deductible up to Rs. 1,530,000 under section 80EEB. Subsidy received should be deducted to find out “interest payable”. However, there is no specific provision in section 80EEB. Interest payable on loan (after State Government's subsidy) is Rs. 1,40,000 and Rs. 2,90,000. Income of X will be calculated as follows –

(Rs. In lakh)
Situation 1 | Situation 2 | Situation 3 | Situation 4
--- | --- | --- | ---
**Assessment years** | 2020-21 | 2021-22 | 2020-21 | 2021-22 | 2020-21 | 2021-22 | 2020-21 | 2021-22

Salary | 40.00 | 40.00 | - | - | - | - | - | -
Business income | - | - | 15.00 | 15.00 | 15.00 | 15.00 | - | -
Less: Vehicle maintenance | - | - | - | - | - | - | (-)3.10 | -
Less: Interest on loan under section 36 | - | - | - | - | - | - | (-)1.90 | -
Interest / rent | - | - | - | - | - | - | 8.00 | 8.00
**Gross total income** | 40.00 | 40.00 | 15.00 | 15.00 | 15.00 | 15.00 | 10.00 | 8.00
Less: Deduction under sections 80C, 80CCD, 80D and 80G | 1.70 | 1.70 | 2.40 | 2.40 | 2.00 | 2.00 | 1.50 | 1.50
Less: Deduction under section 80EEB | 1.40 | 1.50 | 1.40 | 1.50 | 1.40 | - | 1.40 | 1.50
**Net income** | 36.90 | 36.80 | 11.20 | 11.10 | 11.60 | 8.00 | 5.10 | 5.00

**Question 141**

X takes an insurance policy on September 1, 2015 (single insurance premium paid at the time of taking policy: Rs. 40 lakh, sum assured: Rs. 50 lakh, amount payable by insurance company on maturity along with bonus: Rs. 55 lakh). Suppose date of maturity (and payment by insurance company) is August 20, 2019 (Situation 1) or September 1, 2019 (Situation 2).

- Annual insurance premium is more than 10% of sum assured. Consequently, exemption under section 10(10D) is not available to X. Payment by insurance company is subject to TDS provisions of section 194DA as follows -

**Situation 1** - Date of payment is August 20, 2019. Provisions of section 194DA, before the aforesaid amendment, are applicable. Insurance company will deduct tax at the rate of 1% of Rs. 55 lakh.

**Situation 2** - Date of payment is September 1, 2019. Section 194DA is applicable (after the aforesaid amendment). Tax will be deducted by the insurance company as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount payable by insurance company</td>
<td>Rs. 55,00,000</td>
</tr>
<tr>
<td>Long-term capital gain of X (which is &quot;income comprised&quot; in payment of Rs. 55 lakh by insurance company)</td>
<td>Rs. 9,33,071</td>
</tr>
<tr>
<td>Tax deductible by insurance company under section 194DA (5% of Rs. 9,33,071)</td>
<td>Rs. 46,654</td>
</tr>
</tbody>
</table>
Question: 142
Note: Sec 194M was applicable w.e.f 01.09.2019.

X is an individual. He makes the following payments to a resident consultant (or to a resident contractor for a work contract or to a resident by way of commission/brokerage). Amount of payment is Rs. 27,00,000 on August 10, 2019 and Rs. 26,00,000 on November 22, 2019. The following situations are examined -

**Situation 1** - X is a businessman. His books of account are audited every year under section 44AB. Payment to consultant (or contractor or broker) is for business purposes.

**Situation 2** - X is a businessman. His books are not audited in the immediately preceding financial year (as turnover is lower than the threshold limit of Rs. 1 crore). Payment to consultant (or contractor or broker) is for business purposes.

**Situation 3** - Payment to consultant (or contractor) is for personal purposes [not deductible under section 37(1)].

**Situation 4** - X is a non-resident Indian (or foreign citizen). He does not have any income in India. Payment to consultant (or contractor) is for personal purposes.

**Situation 5** - X is a farmer. His entire income is exempt under section 10(7). Payment to consultant (or contractor) is for personal purposes.

**Answer:**

**Situation 1** - Tax is deductible under section 194J (if the recipient is consultant) or under section 194C (if recipient is a contractor) or under section 194H (if recipient is a broker). Consequently, TDS provisions of section 194M are not applicable. If it is payment to a consultant, amount of TDS under section 194J is 10% of Rs. 27,00,000 on August 10, 2019 and 10% of Rs. 26,00,000 on November 22, 2019.

**Situation 2** - Provisions of sections 194C, 194H and 194J are not applicable. Aggregate payment to the recipient during the financial year 2019-20 is Rs. 53,00,000 (more than the threshold of Rs. 50,00,000 under section 194M). Tax is deductible under section 194M. Payment of Rs. 27,00,000 is made prior to September 1, 2019 (i.e., before the application of section 194M). Therefore, tax deduction is not required at the time of payment of Rs. 27,00,000 on August 10, 2019. However, payment on November 22, 2019 is subject to TDS under section 194M (amount of TDS will be Rs. 1,30,000, being 5% of Rs. 26,00,000).

**Situation 3** - It is payment to a consultant or contractor. Payment is for personal purposes. Tax is not deductible under section 194C or 194J. Consequently, tax is deductible under section 194M. No tax deduction at the time of payment of Rs. 27,00,000 on August 10, 2019. Tax of Rs. 1,30,000 will be deducted by X at the time of payment of Rs. 26,00,000 on November 22, 2019.

**Situation 4** - Even if X is non-resident (not having income in India), TDS provisions of section 194M are applicable (as given above, no TDS on August 10, 2019 and Rs. 1,30,000 will be deducted on November 22, 2019).

**Situation 5** - Even if income of X is exempt under section 10(7), TDS provisions of section 194M (as given above) are applicable.
**Question: 143**

**E1** The following information is given by X and Y for the previous year 2019-20 -

<table>
<thead>
<tr>
<th></th>
<th>X Rs.</th>
<th>Y Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration of a residential house property situated in Kolkata</td>
<td>3,30,00,000</td>
<td>9,40,00,000</td>
</tr>
<tr>
<td>Stamp duty value on the date of transfer</td>
<td>3,50,00,000</td>
<td>9,50,00,000</td>
</tr>
<tr>
<td>Cost of acquisition in 1996-97</td>
<td>28,00,000</td>
<td>1,60,00,000</td>
</tr>
<tr>
<td>Fair market value on April 1, 2001</td>
<td>29,00,000</td>
<td>2,30,00,000</td>
</tr>
<tr>
<td>Cost of improvement incurred in 2002-03</td>
<td>40,000</td>
<td>50,00,000</td>
</tr>
<tr>
<td>Expenditure on transfer borne by transferor</td>
<td>40,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Purchase of residential house property in Cochin on December 1, 2019</td>
<td>60,70,000</td>
<td>20,10,000</td>
</tr>
<tr>
<td>Purchase of another residential house property in Mumbai on July 10, 2020</td>
<td>2,02,00,000</td>
<td>1,20,00,000</td>
</tr>
</tbody>
</table>

**Answer:**

**Computation of capital gain** -

<table>
<thead>
<tr>
<th></th>
<th>X Rs.</th>
<th>Y Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration (stamp duty value is taken if it exceeds 105% of sale consideration)</td>
<td>3,50,00,000</td>
<td>9,40,00,000</td>
</tr>
</tbody>
</table>

**Less:**

Indexed cost of acquisition (it is assumed that CII of 2019-20 is 290)

- In the case of X (Rs. 29,00,000 × 290 ÷ 100) | 84,10,000 |
- In the case of Y (Rs. 2,30,00,000 × 290 ÷ 100) | - 6,67,00,000 |

Indexed cost of improvement (it is assumed that CII of 2019-20 is 290)

- In the case of X (Rs. 40,00,000 × 290 ÷ 105) | 1,10,476  |
- In the case of Y (Rs. 50,00,000 × 290 ÷ 105) | - 1,38,09,524 |

Expenditure on transfer | 40,000     | 50,000     |

Long-term capital gain before exemption | 2,64,39,52  | 1,34,40,476 |

**Less: Exemption under section 54**

- In the case of X (as long-term capital gain exceeds Rs. 2 crore, X can avail section 54 exemption only for investment in one residential house property) | 2,02,00,000 |
- In the case of Y (as long-term capital gain does not exceed Rs. 2 crore, Y can claim section 54 exemption for investment in two residential house properties) (Rs. 20,10,000 + Rs. 1,20,00,000, subject to maximum of long-term capital gain of Rs. 1,34,40,476) | - 1,34,40,476 |

Income under the head "Capital gains" | 62,39,524  | Nil        |

**E2** Y transfers a residential house property located in Mumbai for Rs. 18 crores (stamp duty value on the date of transfer is Rs 18.90 crore) on April 6, 2019. This property was purchased in 1998-99. Indexed cost of acquisition is Rs. 8.75 crore. Cost of improvement incurred during 1999-2000 is Rs. 18 lakhs. Expenditure on transfer is Rs. 6 lakhs. However, it is reimbursed.
by the purchaser. To get the benefit of Exemption under section 54, Y deposits Rs. 8 crores in Capital Gain Deposit Account Scheme with SBI on July 1, 2020. On the same day, he invests Rs. 50 lakhs in REC bonds for claiming exemption under section 54EC. By withdrawing from the deposit account, he purchases/constructs the following house properties –
- On April 3, 2021, purchase of a residential house property in Delhi for Rs. 3.2 crore.
- On December 20, 2021, construction of another residential house property in Ahmedabad (investment in construction including cost of land: Rs. 3.5 crore).

Discuss tax consequences of these transactions.

**Answer:**

**Assessment year 2020-21** -

<table>
<thead>
<tr>
<th><strong>Rs. in crore</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration (stamp duty value is not taken, as it does not exceed 105% of actual sale consideration)</td>
</tr>
<tr>
<td>Less:</td>
</tr>
<tr>
<td>Indexed cost of acquisition</td>
</tr>
<tr>
<td>Indexed cost of improvement (improvement expenditure incurred prior to April 1, 2001, not to be considered)</td>
</tr>
<tr>
<td>Expenditure on transfer (not deductible, as borne by purchaser)</td>
</tr>
<tr>
<td>Long-term capital gain</td>
</tr>
<tr>
<td>Less:</td>
</tr>
<tr>
<td>Exemption under section 54 (amount deposited in Capital Gain Deposit Account Scheme)</td>
</tr>
<tr>
<td>Exemption under section 54EC (not available, investment made after 6 months from the date of transfer)</td>
</tr>
<tr>
<td>Long-term capital gain</td>
</tr>
</tbody>
</table>

**Assessment year 2023-24** - As the amount of capital gain (before any exemption) is more than Rs. 2 crores, the assessee can purchase/construct one residential house property in India. He has deposited Rs. 8 crores in Capital Gain Deposit Account Scheme to claim exemption under section 54 for the assessment year 2020-21. Deposit account can be utilised for purchase/construction of one residential house within the specified time-limit (i.e., for purchase: within 2 years from the date of transfer, for construction: within 3 years from the date of transfer). Y has purchased one residential house and constructed another house by withdrawing from the deposit account. Even if the two houses are purchased/constructed within the specified time-limit, only one of them is qualified for exemption under section 54 (the amount of original capital gain being more than Rs. 2 crore). Non-utilisation/misutilisation of deposit account attracts reversal of section 54 exemption. Such reversal is applicable after the expiry of 3 years from the date of transfer of house property. The 3-year time-limit expires on April 5, 2022. Consequently, the following amount will be chargeable to long-term capital gain for the previous year 2022-23 (i.e., assessment year 2023-24) -

<table>
<thead>
<tr>
<th><strong>Rs. in crore</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount deposited in deposit account</td>
</tr>
<tr>
<td>Less:</td>
</tr>
<tr>
<td>Withdrawal for construction of Ahmedabad property</td>
</tr>
<tr>
<td>Withdrawal for purchase of Delhi property (second house is not eligible for exemption under section 54)</td>
</tr>
<tr>
<td>Notional long-term capital gain chargeable to tax for assessment year</td>
</tr>
</tbody>
</table>

*******************************************************************************
QUESTIONS ON AMENDMENTS MADE BY FINANCE ACT 2020

Questions on Residential Status already covered in the Chapter of Non Resident Taxation. Refer Page_________

Questions on Amendments in the Chapter of Charitable Trusts:

Question:144

E1 X Charitable Trust operates from Kolkata. It derives income from properties held wholly for charitable purposes. It has registration for the purpose of claiming exemption under sections 11 and 12 since 2009.
- X Charitable Trust is required to upload a fresh registration application on or before December 31, 2020. Within 3 months from the end of the month in which registration application is uploaded, the Principal CIT/CIT will give registration for 5 years. Suppose, it uploads the application for registration on November 17, 2020, the Principal CIT/CIT will give the approval on or before February 28, 2021. The Principal CIT/CIT will not make any enquiry about the genuineness or activities of the trust or the compliance of such requirements of any other law (for the time being in force) as are material for the purpose of achieving objects of X Charitable Trust. If the application for fresh registration is not uploaded by December 31, 2020, the existing registration of X Charitable Trust will expire.

E2 Y Charitable Trust is in operation since 2014 (i.e., with effect from September 6, 2014). But it does not have registration for section 11 exemption until September 30, 2020. It wants to claim exemption under sections 11 and 12 from the assessment year 2022-23 and for this purpose it applies for provisional registration under section 12AB on January 10, 2022.
- In this case, provisional registration will be given on or before February 28, 2022 (i.e., within one month from the end of the month in which registration application is uploaded). Provisional registration will be valid for 3 years commencing from the assessment year 2022-23 (i.e., previous years 2021-22, 2022-23 and 2023-24). Law requires that it should apply for regular registration under section 12AB within –
  (a) 6 months prior to the expiry of period of provisional registration (i.e., on or before September 30, 2023), or
  (b) 6 months of commencement of its activities (i.e., on or before March 5, 2015), whichever is earlier.

Earlier date is March 5, 2015. However, this new provision comes into operation from October 1, 2020. Even section 12AB has been inserted with effect from October 1, 2020. One fails to understand as to how Y Charitable Trust, in this case, can apply for regular registration under section 12AB on March 5, 2015.
Questions on Amendments in the Chapter of Tax Audit u/s 44AB:

Question:145
The following information is noted from the records of XY & Co. (a partnership firm, engaged in manufacturing and trading of goods) for the previous year ending March 31, 2020 –

<table>
<thead>
<tr>
<th></th>
<th>Receipts</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cash</td>
<td>Other</td>
</tr>
<tr>
<td>Sale / purchase of car</td>
<td>0</td>
<td>2.5</td>
</tr>
<tr>
<td>Sale / purchase of machine</td>
<td>0.65</td>
<td>70</td>
</tr>
<tr>
<td>Sale / purchase of land</td>
<td>2</td>
<td>80</td>
</tr>
<tr>
<td>Purchase of raw material</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Purchase of finished goods</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Sale of goods</td>
<td>12.5</td>
<td>290</td>
</tr>
<tr>
<td>Income-tax refund</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Other receipts / other payments</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>23.15</td>
<td>467.5</td>
</tr>
</tbody>
</table>

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

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

Revised turnover limit of Rs. 5 crore is applicable if the two conditions given above are satisfied. Receipts in cash is less than 5% of total receipts. However, cash payment is more than 5% of total payment. Consequently, XY & Co. cannot avail the benefit of revised turnover limit. As turnover of XY & Co. is more than Rs. 1 crore, tax audit is required under section 44AB for the assessment year 2020-21.
**Questions on Amendments in the Chapter of 56(2)(x):**

**Question: 146**

X purchases a residential house property on May 1, 2020. The data pertaining to stamp duty value and purchase consideration paid by X is given below-

<table>
<thead>
<tr>
<th>Situations</th>
<th>Purchase consideration</th>
<th>110% of purchase consideration [110% of (1)]</th>
<th>Stamp duty value</th>
<th>Whether stamp duty value exceeds 110% of purchase consideration [whether (3) exceeds (2)]</th>
<th>Stamp duty value minus purchase consideration [(3) – (1)]</th>
<th>Amount taxable in the hands of X under section 56(2)(x) [(3) – (1), if it is positive and if (4) is more than Rs. 50,000]</th>
<th>Cost of acquisition in the hands of X for calculating capital gain (in future) [(3) if (5) is positive, otherwise (1)]</th>
<th>Full value of consideration in the hands of transferor under section 50C [(3) if (5) is positive, otherwise (1)]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Situation 1</strong></td>
<td>25,00,000</td>
<td>27,50,000</td>
<td>29,00,000</td>
<td>Yes</td>
<td>4,00,000</td>
<td>4,00,000</td>
<td>29,00,000</td>
<td>29,00,000</td>
</tr>
<tr>
<td><strong>Situation 2</strong></td>
<td>3,50,000</td>
<td>3,85,000</td>
<td>4,00,000</td>
<td>Yes</td>
<td>50,000</td>
<td>Nil</td>
<td>3,50,000</td>
<td>3,50,000</td>
</tr>
<tr>
<td><strong>Situation 3</strong></td>
<td>80,000</td>
<td>88,000</td>
<td>90,000</td>
<td>Yes</td>
<td>10,000</td>
<td>Nil</td>
<td>80,000</td>
<td>80,000</td>
</tr>
<tr>
<td><strong>Situation 4</strong></td>
<td>1,10,00,000</td>
<td>1,21,00,000</td>
<td>1,20,00,000</td>
<td>No</td>
<td>10,000</td>
<td>Nil</td>
<td>1,10,00,000</td>
<td>1,10,00,000</td>
</tr>
</tbody>
</table>

60.47
### Questions on Amendments in the Chapter of Dividend Income on Shares & Units:

#### Question: 147
For the previous year 2020-21, X gives the following information –

<table>
<thead>
<tr>
<th></th>
<th>Dividend from domestic companies</th>
<th>Interest on units of different mutual funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income (net of TDS under section 194/194K)</td>
<td>45,000</td>
<td>67,500</td>
</tr>
<tr>
<td>Expenditure on collection of dividend income / units of mutual fund</td>
<td>2,500</td>
<td>3,400</td>
</tr>
<tr>
<td>Interest on capital borrowed for investment in shares / units of mutual fund (from which dividend is received during the previous year)</td>
<td>8,000</td>
<td>1,500</td>
</tr>
<tr>
<td>Interest on capital borrowed for investment in shares / units of mutual fund (from which no dividend is received during the previous year)</td>
<td>21,000</td>
<td>2,000</td>
</tr>
</tbody>
</table>

X wants to know income under the head “Income from other sources”.

#### Answer:

**Computation of income of X under the head “Income from other sources” –**

<table>
<thead>
<tr>
<th></th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend on shares of domestic companies (Rs. 45,000 ÷ 0.9)</td>
<td>50,000</td>
</tr>
<tr>
<td>Gross income from mutual fund units (Rs. 67,500 ÷ 0.9)</td>
<td>75,000</td>
</tr>
<tr>
<td>Dividend on shares / interest on units (not yielded any dividend / interest during the previous year)</td>
<td>Nil</td>
</tr>
<tr>
<td>Gross income</td>
<td>1,25,000</td>
</tr>
<tr>
<td>Expenditure on collection (not deductible by virtue of proviso to section 57)</td>
<td>Nil</td>
</tr>
<tr>
<td>Interest expenditure [aggregate expenditure: Rs. 32,500 (i.e., Rs. 8,000 + Rs. 21,000* + Rs. 1,500 + Rs. 2,000*), not to exceed 20% of Rs. 1,25,000]</td>
<td>25,000</td>
</tr>
<tr>
<td>Income under the head “Income from house property”</td>
<td>1,00,000</td>
</tr>
</tbody>
</table>

**Question: 148**
The following information is given by 3 assesses for the previous year 2020-21 (i.e., assessment year 2021-22) (only Z Ltd. has international transactions or specified domestic transactions) –

<table>
<thead>
<tr>
<th>Name of the domestic company</th>
<th>X Ltd. Rs.</th>
<th>Y Ltd. Rs.</th>
<th>Z Ltd. Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business income</td>
<td>(a) (-) 1,00,000</td>
<td>(–) 2,00,000</td>
<td>(–) 3,00,000</td>
</tr>
<tr>
<td>Dividend from foreign companies located in Country P</td>
<td>(b) 40,000</td>
<td>60,000</td>
<td>15,00,000</td>
</tr>
<tr>
<td>Dividend from domestic companies</td>
<td>(c) 1,80,000</td>
<td>13,90,000</td>
<td>17,00,000</td>
</tr>
<tr>
<td>Interest on mutual fund units (operating from India)</td>
<td>(d) 20,000</td>
<td>30,000</td>
<td>8,50,000</td>
</tr>
<tr>
<td>Interest on capital borrowed for investment in shares in foreign companies</td>
<td>(e) 16,000</td>
<td>1,70,000</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Interest on capital borrowed for investment in shares in domestic companies</td>
<td>(f) 27,000</td>
<td>2,28,000</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Interest on capital borrowed for investment in units of mutual fund</td>
<td>(g) 35,000</td>
<td>1,000</td>
<td>1,90,000</td>
</tr>
<tr>
<td>Collection charges pertaining to dividend / interest on units</td>
<td>(h) 3,110</td>
<td>6,961</td>
<td>29,450</td>
</tr>
<tr>
<td>Dividend (including preference shares dividend) distributed by X Ltd., Y Ltd. And Z Ltd. -</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– On May 28, 2020 (i.e., final dividend for the financial year 2019-20)</td>
<td>(i) Nil</td>
<td>8,90,000</td>
<td>50,000</td>
</tr>
<tr>
<td>– On December 8, 2020 (i.e., interim dividend for the financial year 2020-21)</td>
<td>(j) Nil</td>
<td>9,000</td>
<td>60,000</td>
</tr>
<tr>
<td>– On April 8, 2021 (i.e., final dividend for the financial year 2020-21)</td>
<td>(k) 90,000</td>
<td>80,000</td>
<td>10,80,000</td>
</tr>
<tr>
<td>– On October 18, 2021 (i.e., interim dividend for the financial year 2021-22)</td>
<td>(l) 90,000</td>
<td>1,10,000</td>
<td>15,90,000</td>
</tr>
</tbody>
</table>

India has ADT agreement with Country P. As per the agreement, dividend income of a domestic company from Country P is taxable in India (and not in Country P). X Ltd., Y Ltd. And Z Ltd. want to know taxable income for the assessment year 2021-22.

**Answer:**
In this case, one has to find out aggregate gross income from dividend and interest. From such aggregate amount, interest on amount borrowed for investment in shares / units is deductible under section 57, subject to maximum of 20 per cent of such income. Moreover, for the purpose of deduction under section 80M, one separately requires the amount of dividend income (net of interest liability deductible under section 57). Interest on units is not deductible under section 80M.
<table>
<thead>
<tr>
<th>Computation of income under the head “Income from other sources” -</th>
<th>X Ltd. Rs.</th>
<th>Y Ltd. Rs.</th>
<th>Z Ltd. Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividend from domestic and foreign companies ([(b) + (c)])</td>
<td>(m) 2,20,000</td>
<td>14,50,000</td>
<td>32,00,000</td>
</tr>
<tr>
<td>Interest on units [(i.e., (d))]\</td>
<td>(n) 20,000</td>
<td>30,000</td>
<td>8,50,000</td>
</tr>
<tr>
<td>Aggregate of dividend and interest</td>
<td>(o) 2,40,000</td>
<td>14,80,000</td>
<td>40,50,000</td>
</tr>
</tbody>
</table>

**Less: Deduction under section 57 -**

<table>
<thead>
<tr>
<th>Collection charges</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest on borrowed capital</td>
<td>(p) Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Dividend and interest income under the head “Income from other sources”</td>
<td>(r) 1,92,000</td>
<td>11,84,000</td>
<td>33,60,000</td>
</tr>
</tbody>
</table>

**Income from dividend (if separately calculated)** -

<table>
<thead>
<tr>
<th>Dividend from domestic and foreign companies</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(s) 2,20,000</td>
<td>14,50,000</td>
<td>32,00,000</td>
<td></td>
</tr>
</tbody>
</table>

**Less: Deduction under section 57 (interest deductible up to a maximum of 20% of dividend income)**

<table>
<thead>
<tr>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(t) 43,000</td>
<td>2,90,000</td>
<td>5,00,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from dividend</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(u) 1,77,000</td>
<td>11,60,000</td>
<td>27,00,000</td>
<td></td>
</tr>
</tbody>
</table>

**Income from units -**

<table>
<thead>
<tr>
<th>Income from units ([(r) – (u)])</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(v) 15,000</td>
<td>24,000</td>
<td>6,60,000</td>
<td></td>
</tr>
</tbody>
</table>

**Adjustment of business loss -**

<table>
<thead>
<tr>
<th>Income from units</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(v) 15,000</td>
<td>24,000</td>
<td>6,60,000</td>
<td></td>
</tr>
</tbody>
</table>

**Less: Business loss \[(i.e., (a), but subject to maximum of (v))\]**

<table>
<thead>
<tr>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(w) (-)15,000</td>
<td>(-)24,000</td>
<td>(-)3,00,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from units (after adjustment of loss)</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(x) Nil</td>
<td>Nil</td>
<td>3,60,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from dividends</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(u) 1,77,000</td>
<td>11,60,000</td>
<td>27,00,000</td>
<td></td>
</tr>
</tbody>
</table>

**Less: Business loss \[(i.e., (a) – (w))]\**

<table>
<thead>
<tr>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(y) (-)85,000</td>
<td>(-)1,76,000</td>
<td>Nil</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from dividend (after adjustment of loss)</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(z) 92,000</td>
<td>9,84,000</td>
<td>27,00,000</td>
<td></td>
</tr>
</tbody>
</table>

**Computation of income -**

<table>
<thead>
<tr>
<th>Income from dividend</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(z) 92,000</td>
<td>9,84,000</td>
<td>27,00,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from units</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(x) Nil</td>
<td>Nil</td>
<td>3,60,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gross total income</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>92,000</td>
<td>9,84,000</td>
<td>30,60,000</td>
<td></td>
</tr>
</tbody>
</table>

**Less: Deduction under section 80M \[(i.e., (i) + (j) + (k) + (l), in the case of Z Ltd.), subject to maximum of (z))]\**

<table>
<thead>
<tr>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>90,000</td>
<td>9,79,000</td>
<td>27,00,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net income</th>
<th>X Ltd.</th>
<th>Y Ltd.</th>
<th>Z Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000</td>
<td>5,000</td>
<td>3,60,000</td>
<td></td>
</tr>
</tbody>
</table>

Dividend paid by Z Ltd. during April 1, 2020 and October 31, 2021 is Rs. 27,80,000 \[(i.e., (i) + (j) + (k) + (l))]\). However, deduction admissible for the previous year 2020-21 is limited to
Rs.27,00,000 [i.e., (z)]. The balance of Rs. 80,000 can be utilized for claiming deduction under section 80M for the previous year 2021-22.

Questions on Amendments in the Chapter of ESOP:

Question: 149
X (28 years) is a software consultant. Currently, he is employed by A Ltd. (being an eligible start-up referred to in section 80-IAC). Salary of X for the previous year 2020-21 is as follows –

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary (basic salary + taxable allowance)</td>
<td>85,00,000</td>
</tr>
<tr>
<td>Taxable perquisites</td>
<td>10,00,000</td>
</tr>
<tr>
<td>Leave travel concession [Rs. 1,65,600, exempt under section 10(5)]</td>
<td>Nil</td>
</tr>
<tr>
<td>Allotment of shares on December 12, 2020 under ESOP (6,000 shares are allotted at the pre-determined price of Rs. 10 per share, fair market value on the date of exercise of option on November 30, 2020 is Rs. 7,400 per share) [(Rs. 7,400 – Rs. 10) × 6,000 shares]</td>
<td>4,43,40,000</td>
</tr>
<tr>
<td>Gross salary</td>
<td>5,38,40,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Standard deduction</td>
<td>50,000</td>
</tr>
<tr>
<td>Income under the head “Salaries”</td>
<td>5,37,90,000</td>
</tr>
<tr>
<td>Any other income</td>
<td>Nil</td>
</tr>
<tr>
<td>Gross total income</td>
<td>5,37,90,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction under sections 80C, 80D, 80E and 80G</td>
<td>2,30,000</td>
</tr>
<tr>
<td>Net income</td>
<td>5,35,60,000</td>
</tr>
<tr>
<td>Tax on net income (IT at normal rates + SC: 37% + HEC: 4%)</td>
<td>2,26,26,536</td>
</tr>
</tbody>
</table>

Out of ESOP, X transfers 1,000 shares on September 6, 2023 through Bombay Stock Exchange at the rate of Rs. 9,700 per share. Further, he transfers 2,000 shares on April 15, 2027 at the rate of 11,000 per share through National Stock Exchange. X wants to continue with A Ltd. till March 2030. A Ltd. and X want to know tax consequences of the information given above pertaining to TDS liability of A Ltd. and personal tax liability of X for different assessment years.

Answer:

The following calculations are given on the assumption that income-tax provisions (which are applicable for the assessment year 2021-22) will be applicable in the subsequent assessment years as well.

*Tax to be deducted at source by A Ltd. under section 192 during the financial year 2020-21*

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (as calculated above)</td>
<td>5,35,60,000</td>
</tr>
<tr>
<td>Tax on net income [It is calculated under the existing tax regime]</td>
<td>2,26,26,536</td>
</tr>
<tr>
<td>Average rate of tax (Rs. 2,26,26,536 ÷ Rs. 5,35,60,000 × 100)</td>
<td>42.25%</td>
</tr>
<tr>
<td>Tax to be deferred as per section 192(1C) [42.25% of Rs. 4,43,40,000]</td>
<td>1,87,31,528</td>
</tr>
<tr>
<td>Tax to be deducted under section 192 by A Ltd. during the financial year 2020-21 (Rs. 2,26,26,536 – Rs. 1,87,31,528)</td>
<td>38,95,009</td>
</tr>
</tbody>
</table>

*Tax to be paid by X as self-assessment tax or advance tax for the assessment year 2021-22 –*
Nil.

**Capital gain tax on transfer of 1,000 shares during the financial year 2023-24**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross sale proceeds (Rs. 9,700 × 1,000 shares)</td>
<td>97,00,000</td>
</tr>
<tr>
<td><strong>Less</strong>: Cost of acquisition under section 49(2AA) [i.e., fair market value on the date of exercise of option on November 30, 2020: Rs. 7,400 × 1,000 shares]</td>
<td>74,00,000</td>
</tr>
<tr>
<td>Long-term capital gain chargeable to tax under section 112A</td>
<td>23,00,000</td>
</tr>
<tr>
<td>Tax on capital gain to be paid by X by way of advance tax during the financial year 2023-24 [10% of Rs. 22,00,000 + applicable surcharge: 15% (it is assumed that taxable income of X for the previous year 2023-24 is above Rs. 1 crore but not more than Rs. 2 crores + HEC)]</td>
<td>2,63,120</td>
</tr>
</tbody>
</table>

**Tax to be deducted by A Ltd. under section 192(1C) on or before September 20, 2023 (i.e., date of transfer of 1000 shares by X on September 6, 2023 + 14 days)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of perquisite attributable to allotment of 1,000 shares to X during the financial year 2020-21 (Rs. 4,43,40,000 × 1,000 shares ÷ 6,000 shares)</td>
<td>73,90,000</td>
</tr>
<tr>
<td>Tax to be deducted @ 42.25% (as calculated above)</td>
<td>31,22,275</td>
</tr>
</tbody>
</table>

**Tax to be deducted by A Ltd. under section 192(1C) on or before April 14, 2026 [being March 31, 2022 (i.e., last day of the assessment year 2021-22 relevant to the previous year 2020-21 in which ESOP was allotted) + 48 months + 14 days] –**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of perquisite attributable to allotment of 6,000 shares to X during the financial year 2020-21</td>
<td>4,43,40,000</td>
</tr>
<tr>
<td><strong>Less</strong>: Value of perquisite pertaining to 1,000 shares (tax on these shares was deducted on September 20, 2023)</td>
<td>73,90,000</td>
</tr>
<tr>
<td>Balance</td>
<td>3,69,50,000</td>
</tr>
<tr>
<td>Tax on balance @ 42.25%</td>
<td>1,56,11,375</td>
</tr>
</tbody>
</table>

**Capital gain tax on transfer of 2,000 shares during the financial year 2027-28**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross sale proceeds (Rs. 11,000 × 2,000 shares)</td>
<td>2,20,00,000</td>
</tr>
<tr>
<td><strong>Less</strong>: Cost of acquisition under section 49(2AA) [i.e., fair market value on the date of exercise of option on November 30, 2020: Rs. 7,400 × 2,000 shares]</td>
<td>1,48,00,000</td>
</tr>
<tr>
<td>Long-term capital gain chargeable to tax under section 112A</td>
<td>72,00,000</td>
</tr>
<tr>
<td>Tax on capital gain to be paid by X by way of advance tax during the financial year 2027-28 [10% of Rs.71,00,000 + applicable surcharge: 15% (it is assumed that taxable income of X for the previous year 2027-28 is above Rs. 1 crore but not more than Rs. 2 crore + HEC)]</td>
<td>8,49,160</td>
</tr>
</tbody>
</table>
Questions on Amendments in the Chapter of TDS:

Question: 150
X Ltd., Y, Z and C Ltd. (e-commerce participants) supply goods in India through Amazon (a Singapore based website) owned by Amazon Ltd. Amazon Ltd. wants to know tax to be deducted under section 194-O in the following different situations –

**Situation 1** – During the financial year 2020-21, X Ltd. sells goods of Rs. 44 lakh through Amazon Ltd. Amazon Ltd. transfers Rs. 37.4 lakh (i.e., gross sales excluding GST: Rs. 44 lakh minus commission: 15 per cent) through RTGS on March 31, 2021.

**Situation 2** – The above payment is made by Amazon Ltd. in 3 instalments – Rs. 19.55 lakh on January 1, 2021, Rs. 7.65 lakh on March 1, 2021 and the balance of Rs. 10.2 lakh is transferred to the account of X Ltd. (in the books of Amazon Ltd.) on March 31, 2021 (actual payment is made through RTGS on May 18, 2021).

**Situation 3** – In Situation 2, assume that e-commerce participant is not X Ltd. But X, an individual.

**Situation 4** – During the financial year 2020-21, Y (an individual, e-commerce participant) supplies services (aggregate value of which is Rs. 4.5 lakh) through Amazon Ltd. Y has furnished his PAN to Amazon Ltd.

**Situation 5** – During the financial year 2020-21, Z (an individual, e-commerce participant) supplies goods (aggregate value of which is Rs. 5 lakh) through Amazon Ltd. Z has furnished his PAN to Amazon Ltd.

**Situation 6** – C Ltd. is an e-commerce participant. It supplies goods in India through Amazon Ltd. (i.e., e-commerce operator). During the financial year 2020-21, C Ltd. sells goods of Rs. 60 lakh through Amazon Ltd., out of which Rs. 20 lakh is directly received by C Ltd. And Rs. 40 lakh is received first by Amazon Ltd. and later on it is remitted to C Ltd. On March 31, 2021. Commission of C Ltd. in the two cases is 15 per cent. C Ltd. gets the payment directly from the customers as follows –

(a) *First payment of Rs. 18 lakh* – It is received by C Ltd. On October 6, 2020.

(b) *Second payment of Rs. 2 lakh* – Received by C Ltd. on January 10, 2021.

Amount of Rs. 40 lakh is remitted by Amazon Ltd. (after deducting 15 per cent of Rs. 60 lakh as commission) to C Ltd. on March 31, 2021.

Answer:
Gross payment (before deducting commission) is subject to TDS under section 194-O at the rate of 1% (in non-PAN cases, tax is deductible at the rate of 5%). However, if there is any GST indicated separately in the invoice, it shall be excluded for the purpose of TDS – Circular No. 23/2017 dated July 19, 2017. Tax is deductible under section 194-O in different situations as follows –

**Situation 1** – Tax is deductible at the rate of 1% of Rs. 44 lakh (excluding GST) on March 31, 2021.

**Situation 2** – One has to find out gross payment pertaining to Rs. 19.55 lakh, Rs. 7.65 lakh and Rs. 10.2 lakh (after excluding GST). In this situation, tax is deductible as follows –

---

60.53
<table>
<thead>
<tr>
<th>Date of payment to e-commerce participant and date of TDS</th>
<th>Net amount of payment Rs.</th>
<th>Gross amount (i.e., net amount + 0.85)</th>
<th>Amount of TDS Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2021</td>
<td>19,50,000</td>
<td>23,00,000</td>
<td>23,000</td>
</tr>
<tr>
<td>March 1, 2021</td>
<td>7,65,000</td>
<td>9,00,000</td>
<td>9,000</td>
</tr>
<tr>
<td>March 31, 2021</td>
<td>10,20,000</td>
<td>12,00,000</td>
<td>12,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37,40,000</strong></td>
<td><strong>44,00,000</strong></td>
<td><strong>44,000</strong></td>
</tr>
</tbody>
</table>

**Situation 3** e-Commerce participant is an individual. However, gross amount of sale through Amazon Ltd. during the year exceeds Rs. 5 lakh. Consequently, tax is deductible by Amazon Ltd. as discussed in Situation 2.

**Situation 4** – e-Commerce participant is Y (an individual). Gross amount of sales through e-commerce operator does not exceed Rs. 5 lakh. Consequently, tax is not deductible under section 194-O.

**Situation 5** – e-Commerce participant is Z (an individual). Gross amount of sales through e-commerce operator does not exceed Rs. 5 lakh. Consequently, tax is not deductible under section 194-O.

**Situation 6** – Even if the payment of Rs. 20 lakh is received directly by C Ltd. (e-commerce participant), tax will be deducted by Amazon Ltd. on the entire Rs. 60 lakh (after deducting GST). Schedule for tax deduction under section 194-O is as follows –

- **Payment of Rs. 18 lakh** – It is received by C Ltd. on October 6, 2020. Date of tax deduction by Amazon Ltd. is October 6, 2020 (amount of TDS is Rs. 18,000, being 1% of Rs. 18 lakh).
- **Payment of Rs. 2 lakh** – It is received by C Ltd. on January 10, 2021. Date of tax deduction by Amazon Ltd. is January 10, 2021 (amount of TDS is Rs. 2,000, being 1% of Rs. 2 lakh).
- **Amount of Rs. 40 lakh** – Net amount of payment is Rs. 31 lakh (i.e., Rs. 40 lakh – commission which is 15% of Rs. 60 lakh). Tax is deductible by Amazon Ltd. on March 31, 2021 is Rs. 40,000 (being 1% of Rs. 40 lakh).

**Note:** All the above TDS rates u/s 194-O will be reduced by 25% due to COVID-19 relief between 14.05.2020 to 31.03.2021.

**Question: 151**

In the above case study, the e-commerce participants are required to pay commission on sales to e-commerce operator. e-Commerce participants want to know whether they have TDS liability under section 194H or under any other section.

**Answer:**

If tax is deducted under section 194-O (or not deducted because e-commerce participant is an individual and his gross sales / services through an e-commerce operator during the financial year does not exceed Rs. 5 lakh), then tax is not deductible under any other provision under the Act (including section 194H).
Question: 152
A Ltd., B Ltd., C Ltd., D Ltd. and E Ltd. want to know the amount of tax collection at source in the different cases given below –

1. On October 30, 2020, X wants to transfer Rs. 10 lakh to USA through A Ltd. (an authorized foreign exchange dealer). The money will be transferred under LRS of RBI.
2. On October 5, 2020, Y wants to transfer Rs. 3 lakh to Canada through B Ltd. (an authorized foreign exchange dealer). Further, on December 1, 2020, he wants to transfer Rs. 6 lakh to Germany through B Ltd.
3. On October 1, 2020, Z wants to transfer Rs. 4 lakh to Singapore through C Ltd. (an authorized foreign exchange dealer). Further, on January 1, 2021, he wants to transfer Rs. 6 lakh to Japan through D Ltd. (another authorized foreign exchange dealer).
4. On September 10, 2020, S Ltd. transfers Rs. 8 lakh to Canada through E Ltd. (an authorized foreign exchange dealer). Further, on March 1, 2021, S Ltd. transfers Rs. 6.5 lakh to USA through E Ltd.

In none of the cases given above, remittance is out of loan obtained from a financial institution for the purpose of pursuing any education.

Answer:
Under section 206C(1G), an authorised dealer who receives an amount (or aggregate of amounts) of Rs. 7 lakh (or more) in a financial year for remittance out of India under the Liberalised Remittance Scheme (LRS) of RBI, is required to collect tax at source. TCS rate is 5% (a non-PAN / Aadhaar, it is 10%). If, however, tax is deducted by the remitter of money under any provision of the Act, TCS provisions of section 206C(1G) are not applicable. TCS requirement in the given cases is as follows –

1. Tax will be collected at source by A Ltd. at the rate of 5% of Rs. 3 lakh on October 30, 2020.
2. On October 5, 2020, B Ltd. (the authorized dealer) does not know whether the total remittance by Y through it will exceed Rs. 7 lakh. Consequently, TCS is not required on October 5, 2020. However, on December 1, 2020, the aggregate amount transferred by Y through B Ltd. during the financial year 2020-21, exceeds Rs. 7 lakh. Consequently, TCS at the rate of 5 per cent will be collected on Rs. 2 lakh on December 1, 2020.
3. C Ltd. (authorized dealer) receives Rs. 4 lakh from Z for remittance to Singapore on October 1, 2020. As the amount does not exceed the threshold limit of Rs. 7 lakh, TCS is not required by C Ltd. from payment received from Z. Moreover D Ltd. (another authorized dealer) receives Rs. 6 lakh from Z for remittance to Japan. As the amount of remittance by Z through D Ltd. does not exceed Rs. 7 lakh, TCS is not required even by D Ltd.
4. The provisions of tax collection at source under section 206C(1G) by authorized dealer are not applicable in case of remittance before October 1, 2020. Therefore, remittance of Rs. 8 lakh on September 10, 2020 is not subject to TCS. However, on remittance of Rs. 6.5 lakh on March 1, 2021, TCS provisions of section 206C(1G) are applicable (as the aggregate remittance by S Ltd. through E Ltd. during the financial year 2020-21 is more than Rs. 7 lakh). TCS on March 1, 2021 will be 5% of Rs. 6.5 lakh.

Note: There is no reduction in TCS rate u/s 206C(1G) due to COVID-19 relief.
Question: 153

G Ltd. and H Ltd. want to know their TCS obligation under section 206C(1G) in the cases given below –

1. X takes an education loan from HDFC Bank for his son’s MBA course in George Washington University. Out of the sanctioned loan, Rs. 40 lakh is remitted by X through G Ltd. (an authorized agent) on December 16, 2020.

2. Y’s son wants to complete his PHD from the London School of Economics. Total cost of education (including boarding and lodging) is Rs. 1.45 crore. Y takes a loan of Rs. 80 lakh from PNB and the balance amount is financed out of his past savings. On March 1, 2021, he remits Rs. 1 crore through H Ltd. (an authorized agent) as follows –
   – Rs. 55 lakh is remitted out of loan sanctioned by PNB; and
   – Rs. 45 lakh is remitted out of past savings of Y.

Answer:

1. G Ltd. will collect tax at source at the rate of 0.5% of Rs. 33 lakh within the parameters of section 206C(1G).

2. H Ltd. will collect tax at source under section 206C(1G) as follows –

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remittance of Rs. 55 lakh out of education loan (0.5% of Rs. 48,00,000)</td>
<td>24,000</td>
</tr>
<tr>
<td>Remittance of Rs. 45 lakh out of sources other than education loan (5% of Rs. 38,00,000)</td>
<td>1,90,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,14,000</strong></td>
</tr>
</tbody>
</table>

Note: There is no reduction in TCS rate u/s 206C(1G) due to COVID-19 relief.

Question: 154

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

Answer:

There is no threshold limit under section 206C(1G)(b). Consequently, tax is collected by A Ltd. on each and every transaction at the rate of 5% at the time of receipt of money from buyers of the packages. In non-PAN/Aadhaar cases the rate shall be 10%. If, however, tax is deductible (and actually deducted) by the buyer of an overseas package (or by the remitter under LSR Scheme of RBI) under any provision of the Act, TCS provisions of section 206C(1G) are not applicable in the case of such buyer/remitter.
**Question: 155**
The following information is given pertaining to sale of goods. TCS liability under section 206C(1H) is given in the last column.

<table>
<thead>
<tr>
<th>Seller</th>
<th>Turnover of seller during financial year 2020-21</th>
<th>Turnover of the seller in financial year 2019-20</th>
<th>Buyer</th>
<th>Consideration for sale of goods (excluding exports) during -</th>
<th>Requirement of TCS under section 206C(1H)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>April 1, 2020 and September 30, 2020</td>
<td>October 1, 2020 and March 31, 2021</td>
</tr>
<tr>
<td>P</td>
<td>Rs. 12 crore</td>
<td>Rs. 10 crore</td>
<td>A Ltd.</td>
<td>Rs. 30 lakh</td>
<td>Rs. 40 lakh</td>
</tr>
<tr>
<td>Q</td>
<td>Rs. 9 crore</td>
<td>Rs. 10.001 crore</td>
<td>B Ltd.</td>
<td>Rs. 40 lakh</td>
<td>Rs. 10.1 lakh</td>
</tr>
<tr>
<td>R</td>
<td>Rs. 8 crore</td>
<td>Rs. 15 crore</td>
<td>C Ltd.</td>
<td>Rs. 25 lakh</td>
<td>Rs. 35 lakh</td>
</tr>
<tr>
<td>S Ltd.</td>
<td>More than Rs. 10 crore</td>
<td>More than Rs. 10 crore</td>
<td>Local authority</td>
<td>Rs. 2 crore</td>
<td>Rs. 3 crore</td>
</tr>
<tr>
<td>T Ltd.</td>
<td>Rs. 7 crore</td>
<td>Rs. 17 crore</td>
<td>D Ltd.</td>
<td>Rs. 1.7 crore</td>
<td>Rs. 40 lakh</td>
</tr>
<tr>
<td>Local authority</td>
<td>More than Rs. 10 crore</td>
<td>More than Rs. 10 crore</td>
<td>E Ltd.</td>
<td>Rs. 10 lakh</td>
<td>Rs. 4.9 crore</td>
</tr>
</tbody>
</table>

Note: All the above TDS rates u/s 194-O will be reduced by 25% due to COVID-19 relief between 14.05.2020 to 31.03.2021.

**Question: 156**
In the above cases study, the data pertains to supply of services (not sale of goods). P, Q, R, S Ltd. and local authority want to know TCS liability under section 206C(1H).

**Answer:**
TCS provisions of Sec 206C(1H) are not applicable in the case of provisions of services. It is applicable only in case of sale of goods (if other conditions are satisfied).