



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### AMENDMENTS

#### Rate of Income Tax

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

###### *In case of Super Senior citizen*

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

*Super Senior Citizen* means an individual who is resident in India and is of at least 80 years of age at any time during the relevant previous year (i.e. any resident person, male or female, born before 02-04-1941).

###### *In case of Senior citizen*

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

*Senior Citizen* means an individual who is resident in India and is of at least 60 years of age at any time during the relevant previous year. (i.e., a resident person, male or female, born on or after 02-04-1941 but before 02-04-1961)

##### **In case of other Individual<sup>1</sup> / HUF / Association of Persons / Body of Individuals / Artificial Juridical Person**

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

<sup>1</sup>. born on or after 02-04-1961 or non-resident individual

#### **Rebate u/s 87A**

Applicable to: Resident Individual

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

Quantum of Rebate: Lower of the following:

- 100% of tax liability as computed above; or
- ₹ 12,500/-

#### **Surcharge on tax after rebate u/s 87A**

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



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

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

\* Where the total income includes dividend, any income chargeable u/s 111A and 112A, the surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, surcharge higher than 15% is applicable only on tax on income other than dividend, income covered u/s 111A and 112A.

Marginal Relief: Available

### Health & Education Cess

Applicable on: All assessee

Rate of cess: 4% of Tax liability after Surcharge

An Individual / HUF can opt for alternative tax regime u/s 115BAC. The provision relating to sec. 115BAC will be discussed in subsequent chapter.

### Firm or Limited Liability Partnership (LLP)

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

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

Marginal Relief: Available

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

### Company

Company	Rate
In the case of a domestic company	
- Where its total turnover or gross receipts during the previous year 2018-19 does not exceed ₹ 400 crore	25%
- In any other case	30%
In the case of a foreign company	40%

### Surcharge

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



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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

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

In few cases and subject to certain conditions, companies are liable to be taxed at different rate.

### Definition of the term —“Liable to tax”

The Act currently does not define the term “liable to tax” though this term is used in sec. 6, in sec. 10(23FE) and various agreements entered into u/s 90 or 90A. Hence, sec. 2(29A) has been inserted to provide its definition. The term “liable to tax” in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

### Residential Status

An individual is said to be a resident in India, if he satisfies *any one* of the following conditions -

- He is in India in the previous year for a period of *182 days or more* [Sec. 6(1)(a)]; or
- He is in India for a period of 60 days or more during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year [Sec. 6(1)(c)]

However, in case (among other) of an individual being an Indian citizen or a person of Indian origin comes on a visit to India during the previous year, the period of 60 days referred to in (ii) criteria has been extended to 182 days. Now the said exception has been amended as follow:

- In case of an Indian citizen or a person of Indian origin comes on a visit to India during the previous year, modified *condition (ii) of sec. 6(1)* is applicable:

Case	Modified condition (ii) of sec. 6(1)
His total income, other than the income from foreign sources <sup>1</sup> , <b>exceeds</b> ₹ 15 lakhs during the previous year	He is in India for a period of <b>120 days</b> or more (but less than 182 days) during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year
His total income, other than the income from foreign sources, <b>does not exceed</b> ₹ 15 lakhs during the previous year	He is in India for a period of <b>182 days</b> or more during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year

<sup>1</sup> "Income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.

### Deemed resident in India [Sec. 6(1A)]

An individual shall be deemed to be resident in India, if the following conditions are satisfied:

- He is a citizen of India
- His total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year;
- He is not satisfying any of the basic conditions given u/s 6(1) [i.e., 182 days or 60 days + 365 days]; and



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- d. He is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

### Taxpoint:

- However, if such individual has satisfied either of the basic conditions, then he shall be treated as resident in India u/s 6(1).
- Further note that the exception is not applicable in case of foreign citizen even if he is a person of Indian origin.
- If these conditions are satisfied, then such individual shall be deemed as resident irrespective of number of days of his stay in India.

In case of NRIs and foreign nationals who was stranded in India due to Covid 19, the Government has assured that their stay in the country during the period will not be counted for the purpose of determining their residency status for taxation purpose.

### **Resident and not ordinarily resident**

- A.** An individual shall be deemed to be resident but not ordinarily resident in India, if following conditions are satisfied:
- a. He is a citizen of India
  - b. His total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year; and
  - c. He is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.
  - d. He is deemed to be resident in India u/s 6(1A).
- B.** An individual shall be deemed to be resident but not ordinarily resident in India, if following conditions are satisfied:
- a. He is an Indian citizen or a person of Indian origin.
  - b. He comes on a visit to India during the previous year
  - c. His total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year
  - d. He is in India for a period of 120 days or more (but less than 182 days) during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year

### **Deferring Significant Economic Presence (SEP) proposal, Extending source rule, Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI [Sec. 9(1)(i)]**

Sec. 9(1)(i) creates a legal fiction that following incomes shall be deemed to accrue or arise in India.

“all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.”



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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Finance Act, 2018, inter alia, inserted Explanation 2A to said clause so as to clarify that the “significant economic presence” (SEP) of a non-resident in India shall constitute "business connection" in India and SEP for this purpose, shall mean:

- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

Said Explanation further provided that the transactions or activities shall constitute significant economic presence in India, whether or not, the agreement for such transactions or activities is entered in India; or the non-resident has a residence or place of business in India; or the non-resident renders services in India. It was also provided that only so much of income as is attributable to the transactions or activities mentioned at para 2(a) and (b) shall be deemed to accrue or arise in India.

Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules. However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23. Certain drafting changes have also been made while deferring the proposal.

The current SEP provisions shall be omitted from assessment year 2021-22 and the new provisions will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

Further, as per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue. Hence, it is amended the source rule to clarify this position.

This amendment will apply in relation to the assessment year 2021-22 and subsequent assessment years. However, for attribution of income related to SEP transaction or activities the amendment will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

Further, the Finance Act, 2012, inter alia, had inserted Explanation 5 to clarify that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Second proviso to said Explanation, inserted through the Finance Act, 2017, provides that the Explanation shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014]

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014. The difference between these two regulations pertinent in the present context is that the SEBI has done away with the broad basing criteria for the purposes of categorization of portfolios and has reduced the categories from three to two. In view of the same, necessary modification has been made in the proviso so inserted. Hence, it is amended so as to provide that the exception from said Explanation 5 provided to an asset or a capital asset, held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations,



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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2014 may be grandfathered. Further, similar exception may be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

### **Amendment to sec. 9(1)(vi)**

Sec. 9(1)(vi) deems certain income by way of royalty to accrue or arise in India. Explanation 2 defines the term “royalty” to, inter alia, mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.

Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering similar concession to Indian resident.

Hence, the definition of royalty has been amended so as not to exclude consideration for the sale, distribution or exhibition of cinematographic films from its meaning.

### **Modification in conditions for offshore funds’ exemption from “business connection” [Sec. 9A]**

Sec. 9A provides for a special regime in respect of offshore funds by providing them exemption from creating a “business connection” in India on fulfilment of certain conditions. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit u/s 9A is available subject to the certain conditions. Sec. 9A(3) provides the conditions for eligibility of the fund.

One of the conditions for eligibility of the fund requires that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund. Representations have been made in this regard stating that this condition is difficult to comply with in the initial years for the reason that eligible fund manager, who is resident in India, is required to invest his money as “skin in the game” to create reputation to attract investment.

One other condition for eligibility of the fund requires that the monthly average of the corpus of the fund shall not be less than ₹ 100 crore rupees except where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than ₹ 100 crore rupees at the end of a period of 6 months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later. This condition does not apply in a case where the fund has been wound up. Representations have been made in this regard stating that as per this condition, the period for fulfilling the requirement of monthly average of the corpus of one hundred crore rupees ranges from six months to eighteen months, in so far as the fund established or incorporated on last day of the financial year would get 6 months and the fund established or incorporated on first day of the financial year would get 18 months. It has been stated that this results in anomaly as certain funds due to its date of establishment and incorporation get favoured or discriminated against.

Accordingly, sec. 9A has been amended to relax these two conditions so as to provide that:

(i) for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to ₹ 25 crore rupees shall not be accounted for; and



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

(ii) if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at ₹ 100 crore rupees shall be fulfilled within 12 months from the last day of the month of its establishment or incorporation.

### Income Exempt from Tax

#### Interest on Rupee Denominated Bond [Sec. 10(4C)]

Interest payable to a non-resident, not being a company, or to a foreign company, is exempt if following conditions are satisfied:

- a) Interest is payable by any Indian company or business trust.
- b) Such interest is payable in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in sec. 194LC(2)(ia).
- c) Such bond has been issued during 17-09-2018 and 31-03-2019.

#### Income received by specified fund [Sec. 10(4D)]

- ✳ Any income accrued or arisen to, or received by a specified fund as a result of transfer of capital asset referred to in sec. 47(viiab), on a recognised stock exchange located in any International Financial Services Centre; **and**
- ✳ Where the consideration for such transaction is paid or payable in convertible foreign exchange or as a result of transfer of securities (other than shares in a company resident in India) or any income from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) **and**
- ✳ Where such income otherwise does not accrue or arise in India or any income from a securitisation trust which is chargeable under the head "Profits and gains of business or profession"
  - to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) computed in the prescribed manner
- *Specified fund* means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate:
  - i. which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992;
  - ii. which is located in any International Financial Services Centre;
  - iii. of which all the units are held by non-residents other than units held by a sponsor or manager;

#### Income from specified fund [Sec. 10(23FBC)]

Any income accruing or arising to, or received by, a unit holder from a specified fund or on transfer of units in a specified fund is exempt.

- ✳ "Specified fund" shall have the same meaning as assigned to it sec. 10(4D)
- ✳ "Unit" means beneficial interest of an investor in the fund and shall include shares or partnership interests

#### Income of Business Trust [Sec 10(23FC)]



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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Any income of a business trust by way of

- a) interest received or receivable from a special purpose vehicle; or
  - b) dividend received or receivable from a special purpose vehicle
- “Special purpose vehicle” means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration

### **Distributed Income to unit holder of a Business Trust [Sec 10(23FD)]**

Any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in 10(23FC)(a) [i.e., proportionate interest income] or 10(23FC)(b) [i.e., proportionate dividend income where the special purpose vehicle has exercised the option u/s 115BAA] or 10(23FCA) [i.e., proportionate rental income]

**Taxpoint:** Such income is taxable in hands of unitholders.

### **Income to wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund [Sec 10(23FE)]**

Any income of the specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, if the investment:

- i. is made on or after 01-04-2020 but on or before 31-03-2024;
- ii. is held for at least 3 years; and
- iii. is in:
  - a. a business trust referred to in sec. 2(13A)(i); or
  - b. a company or enterprise or an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility or other specified business; or
  - c. a Category-I or Category-II Alternative Investment Fund regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, having 100% investment in one or more of the company or enterprise or entity referred above

### **Taxpoint**

- Where any income has not been included in the total income of the specified person due to the provisions of this clause, and subsequently during any previous year the specified person fails to satisfy any of the conditions of this clause so that the said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.
- "Specified person" means:
- a. a wholly owned subsidiary of the Abu Dhabi Investment Authority which—
    - i. is a resident of the United Arab Emirates; and





## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- ii. makes investment, directly or indirectly, out of the fund owned by the Government of the Abu Dhabi;
- b. a sovereign wealth fund which satisfies the following conditions, namely:—
  - i. it is wholly owned and controlled, directly or indirectly, by the Government of a foreign country;
  - ii. it is set up and regulated under the law of such foreign country;
  - iii. the earnings of the said fund are credited either to the account of the Government of that foreign country or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person;
  - iv. the asset of the said fund vests in the Government of such foreign country upon dissolution;
  - v. it does not undertake any commercial activity whether within or outside India; and
  - vi. it is notified by the Central Government and fulfils conditions specified in such notification
- c. a pension fund, which:
  - i. is created or established under the law of a foreign country including the laws made by any of its political constituents being a province, State or local body, by whatever name called;
  - ii. is not liable to tax in such foreign country;
  - iii. satisfies such other conditions as may be prescribed; and
  - iv. is notified by the Central Government.

### **Income of Indian Strategic Petroleum Reserves Limited [Sec. 10(48C)]**

Any income accruing or arising to the Indian Strategic Petroleum Reserves Ltd., being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the Central Government in this behalf is exempt.

However, nothing contained in this clause shall apply to an arrangement, if the crude oil is not replenished in the storage facility within 3 years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

### **Amendment in sec. 10(23C)**

Any income of Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) is also exempted u/s 10(23C). Few Procedural and other amendments have also been made in sec. 10(23C).

Exemption u/s 10(34), 10(35) and 10(45) is not available.

## Charitable and Religious Trust

### **Exemption under different clauses of sec. 10**

- ☛ Where a trust or an institution has been granted registration and the said registration is in force for any previous year, then, no exemption u/s 10 [other than sec.10(1), 10(23C) and 10(46)] is available to such trust or institution.
- ☛ Registration shall become inoperative from:



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

- a. the date on which such trust or institution is approved u/s 10(23C) or is notified u/s 10(46), or
  - b. 01-10-2020
- whichever is later:

- ☛ The trust or institution, whose registration has become inoperative, may apply to get its registration operative u/s 12AB subject to the condition that on doing so, the approval u/s 10(23C) or notification u/s 10(46) shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses of section 10.

### **Corpus Donation to other trust [Explanation 2 Sec. 11(1)]**

Any amount credited or paid to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sec. 10(23C)(iv) or (v) or (vi) or (via) or other registered trust or institution, being contribution with a specific direction that they shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.

### **Registration of Trust [Sec.12A & 12AB]**

The person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution u/s 12AB:

S.No.	Case	Time limit
i	Where the trust or institution is already registered	Within 3 months from the 1st day of April, 2021
ii	Where the trust or institution is registered u/s 12AB and the period of the said registration is due to expire	At least 6 months prior to expiry of the said period
iii	Where the trust or institution has been provisionally registered	At least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier
iv	Where registration of the trust or institution has become inoperative due to sec. 11(7)	At least 6 months prior to the commencement of the assessment year from which the said registration is sought to be made operative
v	Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration	Within a period of 30 days from the date of the said adoption or modification
vi	In any other case	At least 1 month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought

### **Taxpoint**



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- Where registration has been granted to the trust or institution, then, the provisions of sec. 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year.
- No action u/s 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.
- However, aforesaid benefits are not available in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time

### **Procedure for Registration [Sec.12AB]**

On receipt of an application u/s 12A, the Principal Commissioner or Commissioner shall:

In case of existing trust covered in S. No. i of the above table	Pass an order within 3 months from the end of the month in which the application was received, in writing registering the trust or institution for a period of 5 years and send a copy of such order to the trust or institution.
Cases covered in S. No. ii to v of the above table	<p>a. call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about:</p> <p>A. the genuineness of activities of the trust or institution; and</p> <p>B. the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;</p> <p>b. after satisfying himself about the objects of the trust or institution and the genuineness of its activities and compliance of the requirements:</p> <p>A. pass an order, within 6 months from the end of the month in which the application was received, in writing registering the trust or institution for a period of 5 years; or</p> <p>B. if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;</p> <p>and send a copy of such order to the trust or institution.</p>
Cases covered in S. No. vi of the above table	Pass an order, within 1 month from the end of the month in which the application was received, in writing provisionally registering the trust or institution for a period of 3 years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.

***Taxpoint:** A refusal-order shall not be passed unless the applicant has been given a reasonable opportunity of being heard.*



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### Cancellation of Registration

In the following situation, the Principal Commissioner or Commissioner shall pass an order *in writing* cancelling the registration of such trust after giving a reasonable opportunity of being heard:

Case 1	Case 2
<p>Where a trust or an institution has been granted registration and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are -</p> <ul style="list-style-type: none"><li>• not genuine; or</li><li>• not being carried out in accordance with the objects of the trust or institution.</li></ul>	<p>Where registration of a trust or an institution has been granted and subsequently, it is noticed that:</p> <ul style="list-style-type: none"><li>• the activities of the trust or the institution are being carried out in a manner that the provisions of sec. 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sec. 13(1); or</li><li>• the trust or institution has not complied with the requirement of any other law and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.</li></ul>

### Salaries

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding 12% of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding ₹ 1,50,000 is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and 10% of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

The provision of sec. 17(2)(vii) has been amended to provide a combined upper limit of ₹ 7,50,000 in respect of employer's contribution in a year to NPS, superannuation fund and recognised provident fund and any excess contribution shall be taxable. Consequently, any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

### Exemption for LTC Cash Scheme

Special cash package equivalent in lieu of Leave Travel Concession Fare for Central Government Employees during the Block 2018-21 [Office Memorandum F.No. 12(2)/2020-EII(A) dated 12/10/2020]

1. In view of Covid 19 pandemic and resultant nationwide lockdown as well as disruption of transport and hospitality sector, as also the need for observing social distancing, a number of Central Government employees are not in a position to avail themselves of LTC for travel to any place in India or their Hometowns in the current Block of 2018-21.
2. With a view to compensate and incentivise consumption by Central Government employees thereby giving a boost to consumption expenditure, it has been decided that cash equivalent of LTC, comprising Leave Encashment and LTC fare of the entitled LTC may be paid by way of



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

reimbursement, if an employee opts for this in lieu of one LTC in the Block of 2018-21 subject to the following conditions:-

- The employee spends the money of a larger sum than the entitlement on account of LTC on actual expenditure.
- Cash equivalent of full leave encashment will be allowed, provided the employee spends an equal sum. This will be counted towards the number of leave encashment on LTC available to an employee.
- The deemed LTC fare for this purpose is given below :-

Category of employees	Deemed LTC fare per person (Round Trip)
Employees who are entitled to business class of airfare	Rs. 36,000
Employees who are entitled to economy class of airfare	Rs. 20,000
Employees who are entitled to Rail fare of any class	Rs. 6,000

- The cash equivalent may be allowed if the employee spends a sum **3 times** of the value of the fare given above.
- The amount both on account of leave encashment and fare shall be admissible if the employee spends
  - an amount equal to the value of leave encashment and;
  - an amount 3 times of the cash equivalent of deemed fare, as given above on purchase of such items / availing of such services which carry a GST rate of not less than 12% from GST registered vendors / service providers through digital mode and obtains a voucher indicating the GST number and the amount of GST paid.
- The admissible payment shall be restricted to the full value of the package [leave encashment as admissible for LTC and deemed fare] or depending upon the spending as per following example:

### Example

Pay of an employee: ₹ 1,38,500 and has family of 4 eligible for economy class air travel.

Leave Encashment =  $(₹ 1,38,500 \times 1.17) / 30 = ₹ 54,015$

Fare Value =  $₹ 20,000 \times 4 = ₹ 80,000$

Total Value = ₹ 1,34,015

Amount to be spend for full cash benefit =  $₹ 54,015 + ₹ 2,40,000$  (i.e., 3 times of air fare) = ₹ 2,94,015

(a) Share of Leave Encashment in total =  $(₹ 54,015 \times 100) / ₹ 2,94,015 = 18\%$

(b) Share of fare in total =  $(₹ 80,000 \times 100) / ₹ 2,94,015 = 27\%$

Thus, if an employee spends ₹ 2,94,015 or above, he will be allowed cash amount of ₹ 1,34,015

If the employee spends ₹ 2,40,000 only, then he may be allowed 18% on account of leave encashment (i.e., ₹ 43,200) and 27% on account of fare value (i.e., ₹ 64,800). The total amount payable shall be ₹ 1,08,000.

- While TDS is applicable in the case of leave encashment, since the cash reimbursement of LTC fare is in lieu of deemed actual travel, the same shall be allowed exemption on the lines of existing income-tax exemption available to LTC fare. The legislative amendment to the provisions of the Income-Tax Act, 1961 for this purpose shall be proposed in the due course. Hence, TDS shall not be required to be deducted on the reimbursement of deemed LTC fare.
3. Head of the Departments / DDOs may make reimbursement under this package as per the details given above on receipt of invoices of purchases made / services availed during the period post the issuance of this order from the employees who are desirous to avail this package. **It may be**



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

**noted that in order to avail this package an employee should opt for both leave encashment and LTC fare.**

4. An amount upto 100% of leave encashment and 50% of the value of deemed fare may be paid as advance into the bank account of the employee which shall be settled based on production of receipts towards purchase and availing of goods and services as given in Para 2(e). The claims under this package (with or without advance) are to be made and settled within the current financial year. Non-utilization / under-utilization of advance is to be accounted for by the DDOs in accordance with the extant provisions relating to LTC advance i.e. immediate recovery of full advance in the case of non-utilisation and recovery of unutilized portion of the advance with penal interest.
5. These orders will take effect from the date of issuance of this Office Memorandum and will be in force during the current financial year till 31<sup>st</sup> March, 2021.

### **Deemed LTC fare to non-Central Government employees [Press Release dated 29/10/2020]**

The payment of cash allowance, subject to maximum of ₹ 36,000 per person as Deemed LTC fare per person (Round Trip) to non-Central Government employees, shall be allowed income-tax exemption subject to fulfilment of following conditions:

- a. The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21.
- b. The employee spends a sum equals to 3 times of the value of the deemed LTC fare on purchase of goods / services which carry a GST rate of not less than 12% from GST registered vendors / service providers ('the specified expenditure') through digital mode during the period from the 12th of October, 2020 to 31st of March, 2021 ('specified period') and obtains a voucher indicating the GST number and the amount of GST paid.
- c. An employee who spends less than 3 times of the deemed LTC fare on specified expenditure during the specified period shall not be entitled to receive full amount of deemed LTC fare and the related income-tax exemption and the amount of both shall be reduced proportionately as explained in following example:

#### **Example**

Deemed LTC Fare : ₹ 20,000 x 4 = ₹ 80,000

Amount to be spent : ₹ 80,000 x 3 = ₹ 2,40,000

Thus, if an employee spends ₹ 2,40,000 or above on specified expenditure, he shall be entitled for full deemed LTC fare and the related income-tax exemption. However, if the employee spends ₹ 1,80,000 only, then he shall be entitled for 75% (i.e. ₹ 60,000) of deemed LTC fare and the related income-tax exemption. In case the employee already received ₹ 80,000 from employer in advance, he has to refund ₹ 20,000 to the employer as he could spend only 75% of the required amount.

The DDOs shall allow income-tax exemption subject to fulfilment of the above conditions after obtaining copies of invoices of specified expenditure incurred during the specified period. Further, as this exemption is in lieu of the exemption provided for LTC fare, an employee who has exercised an option to pay income tax under concessional tax regime u/s 115BAC shall not be entitled for this exemption.

## Profits and Gains of Business or Profession

### **Depreciation on Goodwill**



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- Goodwill of a business or profession will not be considered as a depreciable asset and no depreciation to be allowed even in respect of purchased goodwill.
- Block of assets shall not include Goodwill for purposes of depreciation.
- If Goodwill is forming part of the block of asset as on AY beginning on 1 April 2020 and depreciation has been claimed, WDV and short-term capital gain to be computed in a manner to be prescribed.
- Cost of acquisition for Goodwill acquired under certain modes of acquisition shall be the purchase price of the previous owner.
- If Goodwill is purchased, such purchase price would be the cost of acquisition. However, depreciation obtained prior to AY 2021-22 shall be reduced from the purchase price of the Goodwill

### **Payment by employer of employee's contribution to provident fund, etc. [Sec. 36(1)(va) & 43B]**

It has been clarified that the provision of sec. 43B does not apply for the purpose of determining due date u/s 36(1)(va). In other words, for the purpose of employee's contribution to provident fund, etc., payment should be made within the due date prescribed under the respective Act. Section 43B has also been amended on the same line.

### **Tax Audit [Sec. 44AB]**

U/s 44AB, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds ₹ 1 crore in any previous year. Similarly, in case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds ₹ 50 lakhs in any previous year.

In order to reduce compliance burden on small and medium enterprises, it is amended to increase the threshold limit for a person carrying on business from ₹ 1 crore to ₹ 5 crore in cases where,-

- a. aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt; and
- b. aggregate of all payments in cash during the previous year does not exceed 5% of such payment.

In order to incentivise non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, the provision has been amended to increase the threshold from ₹ 5 crore to ₹ 10 crore in cases listed above.

Further, it is amended that the tax audit report shall be furnished by the said assessee at least one month prior to the due date of filing of return of income.

Similarly, audit report required to be filed u/s 10, 10A, 12A, 32AB, 33AB, 33ABA, 35D, 35E, 44AB, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 92F, 115JB, 115JC and 115VW of the Act are required to be furnished at least one month prior to the due date of filing of return of income.

### **Option to avail deduction u/s 35AD**

The deduction under this section is optional in nature. For claiming deduction under this section, assessee is required to claim the same.



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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### **Amendment in definition of Speculative transaction [Sec. 43(5)]**

Section 43(5) has been amended so as to substitute “recognized stock exchange” for “recognized association”.

### **Upward revision of tolerance limit under section 43CA**

Section 43CA is applicable in cases where stamp duty value is more than 110% (earlier 105%) of actual consideration

In order to boost demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a rate substantially lower than the circle rate and giving benefit to the home buyers, it has been amended to increase the safe harbour from 10% to 20% u/s 43CA for the period from 12th November, 2020 to 30th June, 2021 in respect of only primary sale of residential units of value up to ₹ 2 crore. Consequential relief by increasing the safe harbour from 10% to 20% shall also be allowed to buyers of these residential units u/s 56(2)(x) of the Act for the said period. Therefore, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

### **Amendment to sec. 35**

Procedure for getting approval of various research entity and other entity u/s 35 has also been modified. Deduction u/s 35 shall be allowed only if a statement is furnished by the research entity who shall be required to furnish a statement in respect of such receipt and in the event of failure to do so, fee and penalty shall be levied

### **Amendment to sec. 44ADA**

Provision of sec. 44ADA has been amended to provide that the provision shall apply to an assessee, being an individual, HUF or partnership firm, not being an LLP.

### **Tax neutral conversion of Urban Cooperative Bank into Banking Company**

Sec. 44DB provides for computing deductions in the case of business re-organization of cooperative banks. Further, the said section, inter alia, provides that where such business reorganization of co-operative banks takes place, the deductions u/s 32, 35D, 35DD and 35DDA will be apportioned between the predecessor co-operative bank and the successor co-operative bank in the proportion of the number of days before and after the date of business reorganization. Further transfer of a capital asset by the predecessor co-operative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization u/s 47, is also not regarded as transfer.

The Reserve Bank of India (RBI) has permitted voluntary transition of primary co-operative bank [urban co-operative banks (UCB)] into a banking company by way of transfer of Assets and Liabilities vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.





## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

It is amended to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available u/s 44DB shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company.

Further it is also amended that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer u/s 47 of the Act. Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.

### Capital Gains

#### **Capital Asset viz a viz Policy under ULIP [Sec. 45(1B)]**

Where -

any person receives at any time during any previous year any amount under a unit linked insurance policy (including bonus on such policy), to which exemption u/s 10(10D) does not apply on account of following reasons:

- the exemption u/s 10(10D) shall not apply with respect to any ULIP issued on or after the 01-02-2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds ₹ 2,50,000.
- the exemption u/s 10(10D) shall not apply if premium is payable by a person for more than one ULIPs, issued on or after 01-02-2021, if aggregate premium whereof exceeds ₹ 2,50,000, for any of the previous years during the term of any of the policy.

then, any profits or gains arising from receipt of such amount by such person shall be chargeable under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such amount was received and the income taxable shall be calculated in such manner as may be prescribed.

#### **Rationalisation of provision of transfer of capital asset to partner on dissolution or reconstitution**

Profits or gains arising from the receipt of money or other asset by a partner of a firm/member of AOP/BOI at the time of its dissolution or reconstitution shall be chargeable to income-tax as income of firm/AOP/BOI under the head 'capital gains'.

#### **Rationalisation of the provisions of sec. 49 and 2(42A) in respect of segregated portfolios**

Section 49 provides for cost of acquisition for the capital asset which became the property of the assessee under certain situations. Further, sec. 2(42A) provides the definition of the term "short-term capital asset". It also provides for determination of period of holding of the capital asset held by the assessee.

SEBI has, vide circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unit holders in the affected scheme as on the day of the credit event shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold same number of units in two schemes –the main scheme and segregated scheme.



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

In view of the above, section 2(42A) has been amended to provide that in the case of a capital asset, being a unit or units in a segregated portfolio, referred to in sec. 49(2AG), there shall be included the period for which the original unit or units in the main portfolio were held by the assessee.

Further, a new sub-section (2AG) has been inserted in section 49 to provide that the cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

Further, it is also provided that the cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived.

### **Rationalization of provision relating to slump sale [Sec. 50B]**

In relation to capital assets being an undertaking or division transferred by way of slump sale,—

- the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sec. 48 and 49 and no regard shall be given to the provisions contained in the second proviso to sec. 48;
- fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset

Further, while computing networth, value of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, shall be nil

Further, for the purpose of this, all types of "transfer" as defined in sec. 2(47) are included within its scope.

### **Upward revision of tolerance limit under section 50C and 56(2)(x)**

Section 50C is applicable in cases where stamp duty value is more than 110% (earlier 105%) of actual consideration. Similar amendment has also been made in section 56(2)(x).

### **Computation of cost of acquisition [Sec. 55(2)]**

The existing provisions of sec. 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01-04-2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 01-04-2001 or the actual cost of the asset as cost of acquisition.

Now it is amended to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 01-04-2001 shall not exceed the stamp duty value of such asset as on 01-04-2001 where such stamp duty value is available.

## **Income from Other Sources**

### **Dividend**

Section 115-O provides that, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends shall be charged to additional income-tax @ 15%. The tax so paid by the company (called DDT) was treated as the final



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in section 115-O is exempt in the hands of shareholders u/s 10(34). In case of business trust, specific exemption was provided u/s 115-O(7), subject to certain conditions. Similarly, exemption was provided for distributed profits of a unit of an International Financial Service Centre, on fulfilment of certain conditions, u/s 115-O(8).

Similarly, u/s 115R, specified companies and Mutual Funds were liable to pay additional income-tax at the specified rate on any amount of income distributed by them to its unit holders. Such income was then exempt in the hands of unit holders u/s 10(35).

### Amendment

Now, dividend or income from units shall be taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. Further, it is also provided that the deduction for expense u/s 57 shall be maximum 20% of the dividend or income from units. Therefore, following amendments has been made:

- Dividend distribution tax has been abolished.
- Exemption u/s 10(34) or 10(35) is not applicable to any income, by way of dividend, received.
- Provision of sec. 115R is not applicable on the income distributed after 31-03-2020
- Sec. 10(23FC)(v) has been amended to provide that all dividends received or receivable by business trust from a special purpose vehicle is exempt.
- Sec. 10(23FD) has been amended so as to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust.
- Sec. 115UA(3) has been amended so that distributed income of the nature as referred to in sec. 10(23FC) or 10(23FCA) shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus, dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder.
- Reference of section 115-O in various sections like section 10(23D), section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C has been removed.
- Section 80M has been inserted to remove the cascading affect of tax on dividend provided set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return.
- Provision of sec. 115BBDA is not applicable on dividend declared, distributed or paid by a domestic company after 31-03-2020.
- Sec. 57 has been amended to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year. Further, such deduction shall not exceed 20% of the dividend income or income from units included in the total income for that year without this deduction
- Section 194 has been amended so as to include dividend for tax deduction.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### Set off and Carry Forward of Losses

#### **Facilitating strategic disinvestment of public sector company**

Sec. 2(19AA) defines that “demerger”, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

Sec. 72A provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. Sub-section (1) provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbed depreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

Aforesaid provisions of these 2 sections has been relaxed for public sector companies in order to facilitate strategic disinvestment by the Government. Accordingly, following amendments has been made:

a. sec. 2(19AA) has been amended to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if

- such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- the resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and
- fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

b. Sec. 72(1) has been amended:

- to provide that the provision of sec. 72A(1) shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.
- to provide that the provision of sec. 72A(1) shall also apply in case of amalgamation of an erstwhile public sector company with one or more company or companies, if
  - o the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
  - o the amalgamation is carried out within 5 years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

c. Further, it is provided that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation (referred above), which is deemed to be loss or, as the case



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment;

- d. "Control" shall have the same meaning as assigned to in sec. 2(27) of the Companies Act, 2013;
- e. "Erstwhile public sector company" means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.
- f. "Strategic disinvestment" shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

### **Carry forward & set-off of accumulated loss in scheme of amalgamation of Banking Company or General Insurance Companies (Sec. 72AA)**

**Situation:** In case of amalgamation of:

- a) one or more banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government u/s 45(7) of the Banking Regulation Act, 1949; or
- b) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or similar provisions of 1980 Act; or
- c) one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government u/s 16 of the General Insurance Business (Nationalisation) Act, 1972

**Treatment:** The accumulated loss and the unabsorbed depreciation of amalgamating concern shall be deemed to be the loss of amalgamated concern for the previous year in which the scheme of amalgamation was brought into force.

**Notes:**

1. 'Accumulated loss' means so much of the loss under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating company, would have been entitled to carry forward and set-off u/s 72 if the amalgamation had not taken place.
2. Unabsorbed depreciation means so much of the allowance for depreciation of the amalgamating company, which remains to be allowed and which would have been allowed to such company if amalgamation had not taken place.

### **Deductions**

#### **Extending time limit for sanctioning of loan for affordable housing for availing deduction u/s 80EEA**

The existing provisions of sec. 80EEA provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to ₹ 1,50,000 and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 01-04-2019 to 31-03-2020.

In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by the financial institution has been extended to 31-03-2021.



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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### **Deduction u/s 80G**

- Donation given to Prime Minister Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) is eligible for 100% deduction u/s 80G.
- The process for approval for the new and existing entities has been amended.
- Deduction u/s 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied

### **Deduction u/s 80GGA**

Similar to sec. 80G, deduction of cash donation u/s 80GGA shall be restricted to ₹ 2,000/- only.

### **Deduction u/s 80-IAC**

The existing provisions of sec. 80-IAC provide for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive assessment years out of 7 years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 01-04-2016 but before 01-04-2021 and the total turnover of its business does not exceed ₹ 25 crore.

In order to further rationalise the provisions relating to start-ups, it is amended to provide that:

- a. the deduction shall be available to an eligible start-up for a period of 3 consecutive assessment years out of 10 years beginning from the year in which it is incorporated.
- b. the deduction shall be available to an eligible start-up, if the total turnover of its business does not exceed ₹ 100 crore in any of the previous years beginning from the year in which it is incorporated.

### **Deduction u/s 80-IBA**

In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority has been extended to 31-03-2021.

### **Deduction in respect of inter-corporate dividend [Sec. 80M]**

#### **Applicable to**

Domestic Company

#### **Conditions to be satisfied**

- a. **Dividend Income**: Gross total income of the assessee includes any income by way of dividends from any other domestic company or a foreign company or a business trust.
- b. **Dividend Distribution**: Assessee distributes dividend among its shareholder within due date
  - *Due date* means the date one month prior to the due date for furnishing the return of income.

#### **Quantum of Deduction**

Minimum of the following:

- (a) Dividend so received by the assessee; or
- (b) Dividend distributed by the assessee within due date

#### **Other Points**



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

**No Double Deduction:** Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

### Double Taxation Avoidance Agreement

#### **Agreement with foreign countries [Sec. 90] [Bilateral Relief]**

Sec. 90 empowers the Central Government to enter into agreement with foreign countries or specified territories (commonly known as DTAAs) for,-

- a. granting relief in respect of —
  - i. income on which tax has been paid both, in India and that foreign country or territory, or
  - ii. income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.
- b. avoidance of double taxation of income under the laws of both, India and that foreign country or territory,
- c. exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
- d. recovery of income-tax under the laws of both India and that foreign country or territory.

Sec. 90A contains provision similar to sec. 90 so as to empower the Central Government to adopt and implement an agreement between a specified association in India and any specified association in specified territory outside India for granting relief, avoidance of double taxation, exchange of information and recovery of income-tax.

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI) along with representatives of many countries, which has since been ratified. India has since deposited the Instrument of Ratification to OECD, Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI has entered into force for India on 01-10-2019 and its provisions will be applicable on India's DTAAs from FY 2020-21 onwards.

The MLI is an outcome of the G20-OECD project to tackle Base Erosion and Profit Shifting (the BEPS Project), i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The MLI will modify India's DTAAs to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out. The MLI will be applied alongside existing DTAAs, modifying their application in order to implement the BEPS measures.

Article 6 of MLI provides for modification of the Covered Tax Agreement to include the following preamble text:

*“Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),”*

In order to achieve this, sec. 90(1) has been amended so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, inter alia, the avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

Similar amendment has also been made in sec. 90A

### Safe Harbour Rules and Advance Pricing Agreement

Sec. 92CB empowers the CBDT for making safe harbour rules (SHR) to which the determination of the arm's length price (ALP) u/s 92C or sec. 92CA. "Safe Harbour" means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee. This section was inserted in the Act to reduce the number of transfer pricing audits and prolonged disputes especially in case of relatively smaller assessees. Besides reduction of disputes, the SHR provides certainty as well.

Further, sec. 92CC empowers the Board to enter into an advance pricing agreement (APA) with any person, determining the ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person. APA provides tax certainty in determination of ALP for five future years as well as for four earlier years (Rollback).

The attribution of profits to the PE of a non-resident u/s 9(1)(i) in accordance with rule 10 also results in avoidable disputes in a number of cases. In order to provide certainty, the attribution of income in case of a non-resident person to the PE has been covered under the provisions of the SHR and the APA.

Similarly, amended provision of sec. 92CC provides that the Board with the approval of the Central Government, may enter into an advance pricing agreement with any person, for determining:

- a. arm's length price or specify the manner in which the arm's length price shall be determined in relation to the international transaction entered into by the person;
- b. income referred to in sec. 9(1)(i), or specifying the manner in which the said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.

### Thin Capitalisation

Sec. 94B, inter alia, provides that deductible interest or similar expenses exceeding ₹ 1 crore of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides implicit or explicit guarantee in respect of that loan.

Provision of sec. 94B has been amended so as to provide that provisions of interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India.

### Non Resident

#### **Tax on dividends, royalty and technical service fees in the case of foreign companies [Sec. 115A]**

While, the existing provisions of sec. 115A provide relief to non-residents from filing of return of income where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief has not been extended to non-residents whose total income consists only of the income by way of royalty or fee for technical services (FTS).

Now the provision has been amended in order to provide that a non-resident, shall not be required to file return of income if, -





## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

- i. his or its total income consists of income as referred to in sec. 115A; and
- ii. the TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates u/s 115A.

Reference of sec. 115-O has been removed from sec. 115A, 115AC, 115ACA, 115AD and 115C.

### **Amendment to sec. 115AD**

The provision is also applicable to specified fund u/s 10(4D). Income [to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India)] received in respect of securities shall be taxable @ 10%.

## **Company Assessment**

### **Modification of concessional tax schemes for domestic companies u/s 115BAA and 115BAB**

Sec. 115BAA and 115BAB provides an option to domestic companies to be taxed at concessional tax rates provided they do not avail specified deductions and incentives. Some of the deductions prohibited are deductions under any provisions of Chapter VI-A under the heading “C. Deduction in respect of certain incomes” other than the provisions of sec. 80JJAA (and deduction u/s 80LA in case of sec. 115BAA).

Now the provisions of sec. 115BAA and sec. 115BAB has been amended to allow deduction u/s 80M.

### **Rationalisation of provisions of Minimum Alternate Tax (MAT)**

Sec. 115JB provides for MAT at the rate of 15% of its book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the 15% of book profit. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the provisions of the Companies Act, 2013.

Representations were received that the computation of book profit u/s 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment u/s 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer u/s 92CC. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA). Hence it is amended:

(i) to provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of sec. 154 shall apply so far as possible and the period of 4 years specified in sec. 154(7) shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer. The provision is applicable only if the assessee has not utilised the credit of tax paid under this section in any subsequent



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

assessment year u/s 115JAA. Further, no interest shall be payable to such assessee on the refund arising on account of the provisions.

(ii) to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of sec. 115JB, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

### Business Trust

#### Modification of definition [Sec. 2(13A)]

Sec. 2(13A) has been amended to modify the definition of “business trust” so as to do away with the requirement of the units of business trust to be listed on a recognised stock exchange.

Further, dividend income distributed by a special purpose vehicle to business trust shall be taxable in the hands of the unitholders.

### Alternate Minimum Tax

The provisions of sec. 115JC shall not apply to a person who has exercised the option referred to in sec. 115BAC or sec. 115BAD.

Further, the provision is not applicable to the specified fund referred to in clause (c) of the Explanation to sec. 10(4D).

### Alternative Tax Regime for Individual / HUF [Sec. 115BAC]

#### Applicable to

Individual / HUF

#### Conditions

- a. Total income of the assessee shall be computed:
- Without any exemption or deduction under following provisions

Deduction not available under following section	Details
10(5)	Leave Travel Concession
10(13A)	House Rent Allowance
10(14)	Special Allowances <b>Exception:</b> Few prescribed allowances
10(17)	Allowance to MPs/MLAs
10(32)	Exemption in respect of clubbing of minor child
10AA	Special Economic Zone
16	Deduction under the head Salaries - Standard Deduction, Deduction for Entertainment allowance and Deduction for professional tax
24(b) in respect of self occupied property	Interest on borrowed capital <i>Taxpoint: Deduction is available in respect of other properties like let out, deemed to be let out</i>



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

32(1)(iia)	Additional Depreciation
32AD	Investment Allowance
33AB	Tea / Coffee / Rubber Development Allowance
33ABA	Site Restoration Fund
35(2AA) or 35(1)(ii) / (iia) / (iii)	Scientific Research through outside institution
35AD	Capital Expenditure in respect of specified business
35CCC	Agriculture Extension Project
57(iia)	Standard deduction in respect of family pension
Deduction under chapter VIA	<b>Exception:</b> Deduction in respect of contribution to NPS u/s 80CCD(2); deduction u/s 80JJAA and deduction u/s 80LA is available

- ii. without set off of any loss:
    - a. carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred above;
    - b. under the head "Income from house property" with any other head of income;
  - iii. by claiming the depreciation, if any, u/s 32 [except additional depreciation], determined in prescribed manner; and
  - iv. without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.
- b. The assessee is required to exercise the option (in prescribed manner) to avail the benefit of this section.

### **Rate of Tax**

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

Total income	Rate of tax
Upto ₹ 2,50,000	Nil
From ₹ 2,50,001 to ₹ 5,00,000	5%
From ₹ 5,00,001 to ₹ 7,50,000	10%
From ₹ 7,50,001 to ₹ 10,00,000	15%
From ₹ 10,00,001 to ₹ 12,50,000	20%
From ₹ 12,50,001 to ₹ 15,00,000	25%
Above ₹ 15,00,000	30%

### **Taxpoint**

- If a person opts for this regime, ₹ 2,50,000 shall be considered as basic exemption limit irrespective of his age. In other words, for all category of individual i.e, senior citizen, super senior citizen and others, basic exemption limit is ₹ 2,50,000
- Rebate u/s 87A is available
- Computed tax is further increased by applicable surcharge, if any, and health and education cess
- If any income is taxable at special rate u/s 110 to sec. 115BBG (except sec. 115BAC), such income shall be taxable at that special rate of tax.

### **Other Points**

- **Full effect of loss and depreciation:** The loss and depreciation referred above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. Where there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year 2021-22, corresponding adjustment shall be made to the written down value of such block of assets as on 01-04-2020 in the prescribed manner (if the option is exercised for a previous year relevant to the assessment year 2021-22).
- **Exercise of option:** The provision of this section shall not apply unless option is exercised in the prescribed manner by the person:



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

Where the person has income from business or profession	Within the due date specified u/s 139(1) for furnishing the returns of income for any previous year relevant to the assessment year <b>and</b> such option <b>once</b> exercised shall apply to subsequent assessment years
Where the person not having aforesaid income	Alongwith the return of income to be furnished u/s 139(1) for a previous year relevant to the assessment year

- **Withdrawal of option:** In case person having income from business or profession, option once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option. However, if such person ceases to have any income from business or profession in which case, he may exercise the option for that assessment year.

Where the person fails to satisfy the conditions in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and other provisions of this Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year.

Further where the option was exercised by a person having income from business or profession, in the event of failure to satisfy the conditions, it shall become invalid for subsequent assessment years also and other provisions of this Act shall apply for those years accordingly.

- **Alternate Minimum Tax:** In case, the person has opted for this scheme, the provision of alternate minimum tax (AMT) u/s 115JC is not applicable. Consequently, any credit of AMT cannot be adjusted against tax liability computed u/s 115BAC.

### Alternative Tax Regime for Resident Co-operative Society [Sec. 115BAD]

#### Applicable to

Resident Co-operative Society

#### Conditions

- b. Total income of the assessee shall be computed:  
v. Without any exemption or deduction under following provisions

Deduction not available under following section	Details
10AA	Special Economic Zone
32(1)(iia)	Additional Depreciation
32AD	Investment Allowance
33AB	Tea / Coffee / Rubber Development Allowance
33ABA	Site Restoration Fund
35(2AA) or 35(1)(ii) / (iia) / (iii)	Scientific Research through outside institution
35AD	Capital Expenditure in respect of specified business
35CCC	Agriculture Extension Project
Deduction under chapter VIA	<b>Exception:</b> Deduction u/s 80JJAA and deduction u/s 80LA is available

- vi. without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred above;
- vii. by claiming the depreciation, if any, u/s 32 [except additional depreciation], determined in prescribed manner.

#### Rate of Tax

22% (+SC @ 10% + HEC)

**Taxpoint:** If any income is taxable at special rate u/s 110 to sec. 115BBG (except sec. 115BAD), such income shall be taxable at that special rate of tax.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

### Other Points

- **Full effect of loss and depreciation:** The loss and depreciation referred above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. Where there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year 2021-22, corresponding adjustment shall be made to the written down value of such block of assets as on 01-04-2020 in the prescribed manner (if the option is exercised for a previous year relevant to the assessment year 2021-22).
- **Exercise of option:** The provision of this section shall not apply unless option is exercised within the due date specified u/s 139(1) for furnishing the returns of income for any previous year relevant to the assessment year **and** such option **once** exercised shall apply to subsequent assessment years. Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.  
Where the person fails to satisfy the conditions in computing its income in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
- **Alternate Minimum Tax:** In case, the person has opted for this scheme, the provision of alternate minimum tax (AMT) u/s 115JC is not applicable. Consequently, any credit of AMT cannot be adjusted against tax liability computed u/s 115BAD.

### Amendment to sec. 115TD

W.e.f. 01-10-2020, sec. 115TD has been amended to insert the reference of sec. 12AB in it.

### Survey u/s 133A

Under the existing provisions of sec. 133A, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

The proviso to sec.133(6) has been amended to provide that:

- No action under this section shall be taken by an income-tax authority without the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner
  - The income-tax authority being a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer or Inspector (in some circumstances) who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS).

### Power to call for information by prescribed income-tax authority [Sec. 133C]

The provision has been amended to provide that where any information or document has been received in response to a notice, the income-tax authority may process and utilise such information and document in accordance with the scheme notified u/s 135A.

### Return of Income & Assessment

### Due date of filing return of income [Exp. 2 to sec. 139(1)]



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

Following amendments has been made in due date for filing return of income u/s 139(1):

- a. the due date for an assessee referred to in Explanation 2(a) of sec. 139(1) shall be 31<sup>st</sup> October of the assessment year (as against 30th September)
- b. the distinction between a working and a non-working partner of a firm with respect to the due date of filing return of income has been removed.

### **Extending due date for filing return of income in some cases, reducing time to file belated return and to revise original return and also to remove difficulty in cases of defective returns**

Sec. 139 contains provisions in respect of the filing of return of income for different persons or class of persons. The said section also provides the due dates for filing of original, belated and revised returns of income for different classes of assessee.

Sub-section (1) provides for the filing of original return of income for an assessment year. The Explanation 2 of the said section specifies the due-dates for filing of original return for different class of persons. It provides that the due date for filing of original return of income for the partner of a firm whose accounts are required to be audited shall be 31st day of October of the assessment year.

Sec. 5A provides for taxation of spouses governed by Portuguese Civil Code. On account of this provision any income earned by a partner of a firm whose accounts are required to be audited shall be apportioned between the spouses and included in their total income, if the section 5A applies to them.

Since the total income of a partner can be determined after the books of accounts of such firm have been finalised, the due dates of partners are already aligned with the due date of the firm. Thus, the due date for filing of original return of income of such partner is 31st October of the assessment year. However, this relaxation is not there for spouse of such partner to whom sec. 5A applies. Therefore, it is amended that the due date for the filing of original return of income be extended to 31st October of the assessment year in case of spouse of a partner of a firm whose accounts are required to be audited, if the provisions of section 5A applies to them.

Further, in the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic transaction, as per sec. 92E, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalised, it is provided that the due date of such partner be extended to 30th November of the assessment year.

Sub-sections (4) and (5) contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier. With the massive technological upgrade in the Department where the processes under the Act are moving towards becoming faceless and jurisdiction-less, the time taken to conduct and complete such processes has greatly reduced. Therefore, it is provided that the last date for filing of belated or revised returns of income, as the case may be, be reduced by 3 months. Thus, the belated return or revised return could now be filed 3 months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Sub-section (9) lays down the procedure for curing a defective return. It provides that in case a return of income is found to be defective, the Assessing Officer will intimate the defect to the assessee and give



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

him a period of 15 days or more to rectify the said defect and if the defect is not rectified within the said period, the return shall be treated as an invalid return and the assessee will be considered to have never filed a return of income. The Explanation to the sub-section lists the conditions in which a certain return of income shall be considered to be defective. Representations have been received that the aforesaid conditions create difficulties for both the taxpayer and the Department, as a large number of returns become defective by application of the said conditions. This has resulted in a number of grievances. It has been represented that the conditions given in the said Explanation may be relaxed in genuine cases. Therefore, the Board, vide notification, may provide that any of the above conditions shall not apply for a class of assessee or shall apply with such modifications, as maybe specified in such notification.

### **Extension of time limits of certain compliances to provide relief to taxpayers in view of the severe pandemic [Circular 9/2021 dt. 20/05/2021]**

The Central Board of Direct Taxes, in exercise of its power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) provides relaxation in respect of the following compliances:

1. The Statement of Financial Transactions (SFT) for the Financial Year 2020-21, required to be furnished on or before 31/05/2021 under Rule 114E of the Income-tax Rules, 1962 (hereinafter referred to as “the Rules”) and various notifications issued thereunder, may be furnished on or before 30/06/2021;
2. The Statement of Reportable Account for the calendar year 2020, required to be furnished on or before 31/05/2021 under Rule 114G of the Rules, may be furnished on or before 30/06/2021;
3. The Statement of Deduction of Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31/05/2021 under Rule 31A of the Rules, may be furnished on or before 30/06/2021;
4. The Certificate of Tax Deducted at Source in Form No 16, required to be furnished to the employee by 15/06/2021 under Rule 31 of the Rules, may be furnished on or before 15/07/2021;
5. The TDS/TCS Book Adjustment Statement in Form No 24G for the month of May 2021, required to be furnished on or before 15/06/2021 under Rule 30 and Rule 37CA of the Rules, may be furnished on or before 30/06/2021;
6. The Statement of Deduction of Tax from contributions paid by the trustees of an approved superannuation fund for the Financial Year 2020-21, required to be sent on or before 31/05/2021 under Rule 33 of the Rules, may be sent on or before 30/06/2021;
7. The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64D for the Previous Year 2020-21, required to be furnished on or before 15/06/2021 under Rule 12CB of the Rules, may be furnished on or before 30/06/2021;
8. The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64C for the Previous Year 2020-21, required to be furnished on or before 30/06/2021 under Rule 12CB of the Rules, may be furnished on or before 15/07/2021;
9. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31/07/2021 under sub-section (1) of section 139 of the Act, is extended to 30/09/2021;
10. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which is 30/09/2021, is extended to 31/10/2021;
11. The due date of furnishing Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, which is 31/10/2021, is extended to 30/11/2021;



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

12. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31/10/2021 under sub-section (1) of section 139 of the Act, is extended to 30/11/2021;
13. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 30/11/2021 under sub-section (1) of section 139 of the Act, is extended to 31/12/2021;
14. The due date of furnishing of belated/ revised Return of Income for the Assessment Year 2021-22, which is 31/12/2021 under sub-section (4)/ sub-section (5) of section 139 of the Act, is extended to 31/01/2022.

Clarification 1: it is clarified that the extension of the dates as referred to in clauses (9), (12) and (13) above shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds ₹ 1,00,000.

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under this Circular) provided in that Act, shall be deemed to be the advance tax.

### **Further Extension of time lines for filing of Income-tax returns and various reports of audit for the Assessment Year 2021-22 [Circular 17/2021 dt. 09/09/2021]**

On consideration of difficulties reported by the taxpayers and other stakeholders in electronic filing of Income-tax returns and various reports of audit under the provisions of Income-tax Act, 1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, provides relaxation in respect of the following compliances:

- i. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 31/07/2021 under sub-section (1) of section 139 of the Act, as extended to 30/09/2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 31/12/2021;
- ii. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which is 30/09/2021, as extended to 31/10/2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 15/01/2022;
- iii. The due date of furnishing Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, which is 31/10/2021, as extended to 30/11/2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 31/01/2022;
- iv. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31/10/2021 under sub-section (1) of section 139 of the Act, as extended to 30/11/2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 15/02/2022;
- v. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 30/11/2021 under sub-section (1) of section 139 of the Act, as extended to 31/12/2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 28/02/2022;
- vi. The due date of furnishing of belated/ revised Return of Income for the Assessment Year 2021-22, which is 31/12/2021 under sub-section (4)/ sub-section (5) of section 139 of the Act, as extended to 31/01/2022, vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended to 31/03/2022;

Clarification 1: It is clarified that the extension of the dates as referred to in clauses (9), (12) and (13) of Circular No. 9/2021 dated 20/05/2021 and as referred to in clauses (1), (4) and (5) of this Circular shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds ₹ 1,00,000.





## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in Sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No. 9/2021 dated 20/05/2021 and this Circular) provided in that Act, shall be deemed to be the advance tax.

### **Relaxation for certain category of senior citizen from filing return of income-tax**

Sec. 139(1) provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance for them, relaxation from filing the return of income, has been provided if the following conditions are satisfied:-

- (i) The senior citizen is resident in India and of the age of 75 or more during the previous year;
- (ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;
- (iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
- (iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable u/s 87A, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

### **Verification of the return of income and appearance of authorized representative [Sec. 140 and Sec. 288]**

Sec. 140 provides that in case of company the return is required to be verified by the managing director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

Now the sec. 140 has been amended so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.

Similar amendment has also been made in sec. 288

### **Rationalisation of the provision relating to processing of returned income and issuance of notice u/s 143(2)**



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

Provisions of sec. 143 has been amended to reduce the time limit for sending intimation from one year to 9 months from the end of the financial year in which the return was furnished.

Consequently, the time limit for service of notice u/s 143(2) has also been reduced from 6 months to 3 months from the end of the financial year in which the return is furnished.

### **New scheme for assessment [Sec. 143(3A)]**

- The scope of section has been extended to assessment u/s 144
- Further, it has also been provided that Central Government may issue any direction upto 31-03-2021.

### **Dispute Resolution Panel [Sec. 144C]**

Sec. 144C provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made u/s 92CA(3), the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP.

The provision has been amended to:-

- A. include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of sec. 144C;
- B. expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

Further, it has been provided that the Central Government may make a scheme for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

- a. eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

The Central Government may, for the purpose of giving effect to the scheme, direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

Similar provision has been inserted in sec. 92CA for the purpose of determination of arm's length price.

### **Reduction of time limit for completing assessment**

Sec. 153 contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. It provides that the time-limit for passing an assessment order u/s 143 or 144 shall be 21 months from the end of the assessment year in which the income was first assessable. However, this time limit had earlier been curtailed in order to improve the efficacy and efficiency of the Department to give effect to computerization of processes under the Act. As a result, the time limit for completion of assessment proceedings u/s 143 or 144 was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

Since then, the assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The assessment procedure is now conducted in a completely faceless and jurisdiction-less way where all internal and external communication is made electronically and different aspects of the assessment procedure like verification, scrutiny of books of accounts etc. are carried on by different units. The person-to-person interface between the taxpayer and the Department has been eliminated. This team-based approach for assessment with a dynamic jurisdiction is technologically driven and very efficient. Thus, the time required for completion of assessment procedure needs to be further reduced.

The benefits of shorter time period for scrutiny proceedings are manifold. On the one hand, it reduces the compliance burden on the taxpayers who find it easier to explain matters pertaining to a recent previous year which also improve the ease of doing business. On the other hand, it enhances the ability of the Department to detect and bring to tax any leakages of revenue as the instances of tax evasion come to the notice of the Department within a shorter span of time.

Hence, it has been amended that the time limit for completion of assessment proceedings may be reduced further by 3 months. Thus, the time for completing of assessment is 9 months from the end of the assessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

### TDS and TCS

#### **Deferring TDS or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups [Sec. 156, 191 and 192]**

ESOPs have been a significant component of the compensation for the employees of start-ups, as it allows the founders and start-ups to employ highly talented employees at a relatively low salary amount with balance being made up via ESOPs. ESOPs are taxed as perquisites u/s 17(2) read with Rule 3(8)(iii) of the Rules. The taxation of ESOPs is split into two components:

- i. Tax on perquisite as income from salary at the time of exercise.
- ii. Tax on income from capital gain at the time of sale.

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, sec. 192 has been amended 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 sec. 17(2)(vi), in any previous year, deduct or pay, as the case may be, tax on such income within 14 days:

- a. after the expiry of 48 months from the end of the relevant assessment year; or
- b. from the date of the sale of such specified security or sweat equity share by the assessee; or
- c. 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 .

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).



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### **TDS on Dividends [Sec. 194]**

**Who is responsible to deduct tax:** The principal officer of a *domestic company* paying dividend u/s 2(22) to any *resident shareholder*.

**Note:** In the following cases, tax is not required to be deducted:

- A. No deduction shall be made if dividend is paid to an insurance company
- B. No deduction shall be made in the case of a shareholder, being an individual, if:
  - a. the dividend is paid by the company by any mode other than cash; and
  - b. the amount of such dividend or the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed ₹ 5,000;

**When tax shall be deducted:** At the time of payment

**Rate of TDS:** 10% (No surcharge, health and education cess) on dividend considered u/s 2(22) [From 14-05-2020 to 31-03-2021: 7.5%]

**Exemption or relaxation from the provision:**

- When the recipient applies to the Assessing Officer in Form No. 13 and gets a certificate authorizing the payer to deduct tax at lower rate or deduct no tax
- When a declaration in Form 15G (in duplicate) is furnished by the assessee to the payer

### **Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt**

Sec. 194 provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers. Second proviso to sec. 194 has been amended to provide that the provisions of this section shall also not apply to such income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

### **Enlarging the scope for tax deduction on interest income u/s 194A**

Sec. 194A governs tax deduction on interest other than interest on securities. It provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.

In order to extend the scope of this section to interest paid by large co-operative society, it is amended to provide that a co-operative society referred to in sub section (3)(v) or (viiia) shall be liable to deduct income-tax, if-

- a. the total sales, gross receipts or turnover of the co-operative society exceeds ₹ 50 crore during the financial year immediately preceding the financial year in which the interest is credited or paid; and
- b. the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than ₹ 50,000 in case of payee being a senior citizen and ₹ 40,000, in any other case.



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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Further, an individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid shall also be liable to deduct tax. Similar amended has also been made in sec. 194C, 194H, 194-I and 194J.

### **Amending definition of “work” in sec. 194C**

Sec. 194C of the Act provides for the deduction of tax on payments made to contractors. The section provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of such credit or at the time of payment whichever is earlier deduct an amount equal to 1% in case payment is made to an individual or an HUF and 2% in other cases. In the said section “work” includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. However, it excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

Now the definition of “work” has been amended to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the ‘work’. Associate means a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee u/s 40A(2)(b).

### **Reducing the rate of TDS on fees for technical services (other than professional services) u/s 194J**

Sec. 194J provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which tax is deductible u/s 192, to a director), or royalty or any sum referred to in sec. 28(va), shall, at the time of payment or credit of such sum to the account of the payee, deduct an amount equal to 10% as income-tax.

Sec. 194C provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of payment or credit of such sum deduct an amount equal to 1% in case payment is made to an individual or a HUF and 2% in other cases.

It is noticed that there are large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax u/s 194C, while the tax officers claim that tax should have been deducted u/s 194J of the Act.

Therefore to reduce litigation, it has been amended to reduce rate for TDS in sec. 194J in case of fees for technical services (other than professional services) to 2% from existing 10%. The TDS rate in other cases u/s 194J would remain same at 10%.

### **TDS on income in respect of units [Sec. 194K]**

**Who is responsible to deduct tax:** Any person responsible for paying to a resident any income in respect of:

- a. units of a Mutual Fund specified u/s 10(23D); or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- b. units from the Administrator of the specified undertaking; or  
c. units from the specified company

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:** 10% [From 14-05-2020 to 31-03-2021: 7.5%]

**When TDS cannot be made:** In the following cases tax shall not be deducted:

- a. If the aggregate amounts of income credited or paid during the financial year to the payee does not exceed ₹ 5,000  
b. If the income is of the nature of capital gains.

**Exemption or relaxation from the provision**

- When the recipient applies to the Assessing Officer in Form 13 and gets a certificate authorizing the payer to deduct tax at lower rate or deduct no tax;
- When a declaration in Form 15G (in duplicate) is furnished by the assessee to the payer

### **TDS on certain income from units of a Business Trust [Sec. 194LBA]**

**Who is responsible to deduct tax:** Any business trust distributing income referred to in sec. 115UA [being of the nature referred to in sec. 10(23FC) or 10(23FCA)] to its unit holder

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:**

Payee	Rate of TDS	
	Payment referred to in sec. 10(23FC)	Payment referred to in sec. 10(23FCA)
If payment is made to a resident unit holder	10%*	10%*
If payment is made to a unit holder being non-resident (not being a company)	Dividend income: 10% Other Income: 5%	30% + SC + Health & Education Cess
If payment is made to a unit holder being a foreign company	Dividend income: 10% Other Income: 5%	40% + SC + Health & Education Cess

\* From 14-05-2020 to 31-03-2021: 7.5%

### **Other Point**

The provision is not applicable in respect of income of the nature referred to in sec. 10(23FC)(b) [i.e., dividend], if the special purpose vehicle has not exercised the option u/s 115BAA.

### **TDS on interest to non-resident [Sec. 194LC]**

**Who is responsible to deduct tax:** Any Indian company or a business trust<sup>4</sup> responsible for paying income by way of interest to a non-resident or a foreign company. Such interest is payable in respect of

1. in respect of monies borrowed by it in foreign currency from a source outside India:
  - a. under a loan agreement at any time on or after 01-07-2012 but before 01-07-2023; or
  - b. by way of issue of long-term infrastructure bonds at any time 01-07-2012 but before 01-10-2014; or
  - c. by way of issue of any long-term bond including long-term infrastructure bond at 01-10-2014 but before 01-07-2023,
 as approved by the Central Government in this behalf; or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

2. in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before 01-07-2023; or
3. in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after 01-04-2020 but before 01-07-2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and
4. to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:** 5% (+ SC + Health & Education Cess) [in case of interest mentioned in point 3 above rate of TDS is 4%]

**Note:** W.e.f. 01-06-2013, *the provisions of section 206AA (i.e. rate of TDS will be 20% in absence of PAN) shall not apply in respect of payment of interest, on long-term bonds including long term infrastructure bonds (being referred to in sec. 194LC) to a non-resident, not being a company, or to a foreign company*

### **Income by way of interest on certain bonds, Govt. securities [Sec. 194LD]**

**Who is responsible to deduct tax:** Any person who is responsible for paying interest (at the rate notified by the Central Government) to a person being a Foreign Institutional Investor or a Qualified Foreign Investor<sup>1</sup>. Such interest shall be payable:

- a. on or after 01-06-2013 but before 01-07-2023 in respect of the investment made by the payee in:
  - i. a rupee denominated bond of an Indian company [provided rate of interest shall not exceed the notified rate]; or
  - ii. a Government security;
- b. on or after 01-04-2020 but before 01-07-2023 in respect of the investment made by the payee in municipal debt securities.

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:** 5% (+ SC + Health & Education Cess)

### **Extension of Scope of sec. 194N**

**Who is responsible to deduct tax:** Every person, being,—

- i. a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);
- ii. a co-operative society engaged in carrying on the business of banking; or
- iii. a post office,

who is responsible for paying cash (in aggregate) in excess of ₹ 1 crore (₹ 20 lakh in case of defaulter) during the previous year, to any person from one or more accounts maintained by the recipient with it.

**When tax shall be deducted:** At the time of payment

**Rate of TDS:**

<sup>1</sup> "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

Case	Rate
In case of defaulter	
- Aggregate payment exceeds ₹ 20 lakh but does not exceed ₹ 1 crore	2%
- Aggregate payment exceeds ₹ 1 crore	5%
In any other case	2%

*Defaulter means the recipient who has not filed the returns of income for all of the 3 assessment years relevant to the 3 previous years, for which the time limit to file return of income u/s 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made to him*

### **Exception**

The provision is not applicable if payment is made to:

- the Government;
- any banking company or co-operative society engaged in carrying on the business of banking or a post office;
- any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934;
- any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India.
- Other notified person

**Other Point:** Tax deducted u/s 194N is not considered as deemed receipt of income.

## **TDS on payment of certain sums by e-commerce operator to e-commerce participant [194-Q]**

**Who is responsible to deduct tax:** Where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall deduct tax.

**Note:** If following conditions are satisfied, TDS shall not be deducted:

- e-commerce participant is an individual or Hindu undivided family.
- The gross amount of such sale or services or both during the previous year does not exceed ₹ 5,00,000
- Such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:** 1% [From 14-05-2020 to 31-03-2021: 0.75%] of the gross amount of such sales or services or both [if e-commerce participant does not intimate his PAN to e-commerce operator, then rate of TDS is 5%]

*Taxpoint: Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator,*





## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16**

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*shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of tax*

### **Other Points**

- A transaction in respect of which tax has been deducted by the e-commerce operator (or which is not liable to deduction due to threshold limit), shall not be liable to TDS under any other provisions. However, any amount received is or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services, other provision relating to TDS, if any, is applicable.
- "Electronic commerce" means the supply of goods or services or both, including digital products, over digital or electronic network;
- "e-Commerce operator" means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- "e-Commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce;
- "Services" includes "fees for technical services" and fees for "professional services", as defined in sec. 194J

### **Exemption or relaxation from the provision**

When the recipient applies to the Assessing Officer in Form 13 and gets a certificate authorising the payer to deduct tax at lower rate or deduct no tax [Refer sec. 197]

## **TDS on income in respect of units of non-residents [Sec. 196A]**

**Who is responsible to deduct tax:** Any person responsible for paying any income in respect of units of a Mutual Fund specified u/s 10(23D) or of the Unit Trust of India to a foreign company or to any non corporate non resident assessee.

**When tax shall be deducted:** At the time of payment or crediting the payee, whichever is earlier.

**Rate of TDS:** 20% + SC + HEC

### **Exemption or relaxation from the provision:**

Tax shall not be deducted from any income payable in respect of units of the Unit Trust of India to a non-resident Indian or a non-resident HUF, if the following conditions are satisfied –

- The units have been acquired from the Unit Trust of India out of the funds in a Non-resident (External) Account maintained with any bank in India; or
- The units have been acquired from the Unit Trust of India by remittance of funds in foreign currency

### **Other Points**

"Non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".

## **Lower deduction in certain cases for a limited period [Sec. 197B]**

In case the provisions of sections 193, 194, 194A, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194-I, 194-IA, 194-IB, 194-IC, 194J, 194K, 194LA, 194LBA(1), 194LBB(i), 194LBC(1), 194M and 194-O require deduction of tax at source during the period commencing from 14-05-2020 to 31-03-2021, then the deduction of tax shall be made at the rate being the 3/4<sup>th</sup> of the rate specified in these sections.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### Scope of TCS Provision Extended (Sec. 206C)

A. Every person -

- c. being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;
- d. being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package

shall collect from the buyer at the time of

- Debiting the amount payable by the buyer; or
  - Receipt of such amount from the said buyer
- whichever is earlier,

#### Taxpoint

- *Authorised dealer* means a person authorised by the Reserve Bank of India u/s 10(1) of the Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security;
- *Overseas tour programme package* means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

#### Exception

- i. The authorised dealer shall not collect the sum, if aggregate of the amounts being remitted by a buyer is less than ₹ 7,00,000 in a financial year and is for a purpose other than purchase of overseas tour program package.

**Taxpoint:** *If remittance is more than ₹ 7,00,000 (say ₹ 8,00,000), then tax shall be collected on excess amount (i.e. ₹ 1,00,000).*

- ii. The authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller.
- iii. The provision is not applicable, if the buyer is:
  - a. liable to deduct tax at source under any other provision of this Act and has deducted such amount;
  - b. the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to sec. 10(20) or any other notified person

B. Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding ₹ 50,00,000 in any previous year shall at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1% of the sale consideration exceeding ₹ 50,00,000.

#### Exception

- The provision is not applicable in case of goods being exported out of India or motor vehicle or any goods covered in point 3 above.
- If the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, tax shall be collected @ 1%



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- The provisions shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

**Taxpoint:** For the purposes of this:

- a. *Buyer* means a person who purchases any goods, but does not include:
- the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
  - a local authority; or
  - a person importing goods into India or any other notified person
- b. *Seller* means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 10 crore during the financial year immediately preceding the financial year in which the sale of goods is carried out, but does not include notified person

### **Rate of TCS**

<i>Particulars</i>	<b>Rate as a % of the amount payable by the buyer or licensee or lessee*</b>
1. Alcoholic liquor for human consumption	1%
2. Tendu leaves	5% [From 14-05-2020 to 31-03-2021: 3.75%]
3. Timber obtained under a forest lease	2.5% [From 14-05-2020 to 31-03-2021: 1.875%]
4. Timber obtained by any mode other than under a forest lease	2.5% [From 14-05-2020 to 31-03-2021: 1.875%]
5. Any other forest produce (not being timber or tendu leaves)	2.5% [From 14-05-2020 to 31-03-2021: 1.875%]
6. Scrap	1% [From 14-05-2020 to 31-03-2021: 0.75%]
7. Specified minerals	1% [From 14-05-2020 to 31-03-2021: 0.75%]
8. Motor car value of which exceeds ₹ 10 lakh	1% [From 14-05-2020 to 31-03-2021: 0.75%]
9. Parking lot, toll plaza, mining and quarrying	2% [From 14-05-2020 to 31-03-2021: 1.50%]
10. In case of aforesaid point A	
a) if the amount being remitted out is a loan obtained from any financial institution as defined in sec. 80E, for the purpose of pursuing any education	0.5%
b) In other case	5%
11. In case of aforesaid point B	0.1% [From 14-05-2020 to 31-03-2021: 0.075%]

### **Requirement to furnish PAN by collectee [Sec. 206CC]**

- ❖ Any person paying any sum, on which tax is collectible at source shall furnish his PAN to the person responsible for collecting such tax, failing which tax shall be collected at the higher of the following rates:
- at twice of the specified TCS rate; or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

ii. at the rate of 5%.

- ❖ Where the PAN provided is invalid or does not belong to the collectee, it shall be deemed that the collectee has not furnished his PAN to the collector.

### **Exception**

- The provisions of higher rate shall not be applicable to a non-resident who does not have permanent establishment in India.
- In case of point B, if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, tax shall be collected @ 1%

### **Meaning of "person responsible for paying" [Sec. 204]**

For the purpose of TDS, meaning of person responsible for paying is provided u/s 204. The provision has been amended so as to provide that in the case of a person not resident in India, the person himself or any person authorised by such person or the agent of such person in India including any person treated as an agent u/s 163 shall be considered as person responsible for paying.

## Interest and Fee

### **Advance tax instalment for dividend income**

Sec. 234C provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax instalments as per sec. 208. The assessee is liable to pay a simple interest at the rate of 1% per month for a period of 3 months on the amount of shortfall calculated with respect to the due dates for advance tax instalments.

The first proviso provides for the relaxation that if the shortfall in the advance tax instalment or the failure to pay the same on time is on account of the income listed therein, no interest u/s 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments. These exclusions are: –

- (a) the amount of capital gains; or
- (b) income of the nature referred to in sec. 2(24)(ix) [i.e., winning from lottery etc.]; or
- (c) income under the head “Profits and gains of business or profession” in cases where the income accrues or arises under the said head for the first time; or
- (d) income of the nature referred to in sec. 115BBDA(1)

Aforesaid relaxation is to insulate the taxpayers from payment of interest u/s 234C in cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of the income. Therefore, after considering various representations favourably, it is amended to include dividend income in the above exclusion but not deemed dividend u/s 2(22)(e).

### **Fee for default relating to statement or certificate [Sec. 234G]**

Where:

- a. the research association, university, college or other institution or company referred to in 35(1)(ii) or (iii) or (iia) fails to deliver a statement within the time prescribed u/s 35(1A); or
- b. the institution or fund fails to deliver a statement within the time prescribed u/s 80G(5)(viii) or fails to furnish a certificate u/s 80G(5)(ix)



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

it shall be liable to pay fee @ ₹ 200 for every day during which the failure continues.

**Maximum Fee:** The amount of fee shall not exceed the amount in respect of which the failure referred to therein has occurred.

**Taxpoint:** Such fee shall be paid before delivering the statement or before furnishing such certificate.

### Appeal and Revision

#### **Provision for e-appeal [Sec. 250]**

The Central Government may make a scheme for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by:

- eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;
- optimising utilisation of the resources through economies of scale and functional specialisation;
- introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

The Central Government may, for the purposes of giving effect to the scheme, direct (within 31-03-2022) that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations.

#### **Stay of tax demand by ITAT [Sec. 254(2A)]**

The existing provisions, inter-alia, provides that the ITAT may, after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal). Further, it is provided that where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed. However, if such appeal is not so disposed of within the period allowed (extended period), the order of stay shall stand vacated after the expiry of such period, even if the delay in disposing of the appeal is not attributable to the assessee.

It is amended to provide that the Tribunal, after considering the merits, may pass an order of stay in any proceedings for a period not exceeding 180 days (provided the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable or furnishes security of equal amount in respect thereof) from the date of such order and the Tribunal shall dispose of the appeal within the said period of stay specified in that order.

However, no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

Further if such appeal is not so disposed of within the period allowed (original and extended), the order of stay shall stand vacated after the expiry of such period (i.e., 365 days), even if the delay in disposing of the appeal is not attributable to the assessee.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

### **Revision u/s 263**

An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner:

- a) the order is passed without making inquiries or verification which should have been made;
- b) the order is passed allowing any relief without inquiring into the claim;
- c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person

### **Revision u/s 264**

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner can pass the order u/s 264.

## Penalty and Prosecution

### **Penalty for false entry, etc., in books of account [Sec. 271AAD]**

If during any proceeding under this Act, it is found that in the books of account maintained by any person there is:

- a. a false entry; or
- b. an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

- a sum equal to the aggregate amount of such false or omitted entry shall be levied as penalty

Further, similar penalty may also be levied on any other person, who causes the assessee in any manner to make a false entry or omits any entry

"False entry" includes use or intention to use—

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

### **Penalty for failure to furnish statements, etc [Sec. 271K]**

Penalty of ₹ 10,000 (which may extend to ₹ 1,00,000) shall be levied where:

- a. the research association, university, college or other institution or company referred to in sec. 35(1)(ii) or (iii) or (ia) fails to deliver a statement within the time prescribed u/s 35(1A)(i), or furnish a certificate prescribed u/s 35(1A)(ii); or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

b. the institution or fund, if it fails to deliver a statement within the time prescribed u/s 80G(5)(viii) or furnish a certificate prescribed u/s 80G(5)(ix)

### **e-Penalty [Sec. 274(2A)]**

The Central Government may make a scheme, for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by:

- a. eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

The Central Government may, for the purposes of giving effect to the scheme, direct (within 31-03-2022) that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

## Equalisation Levy

### **Charge of equalisation levy on e-commerce supply of services [Sec. 165A]**

Equalisation levy shall be charged @ 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

- a. to a person resident in India; or
- b. to a non-resident in the specified circumstances; or
  - "Specified circumstances" mean—
    - i. sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
    - ii. sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India
- c. to a person who buys such goods or services or both using internet protocol address located in India.

### **Exception**

The equalisation levy shall not be charged:

- a. where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;
- b. where the equalisation levy is leviable u/s 165 [i.e. A supra]; or
- c. sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than ₹ 2 crore during the previous year.

### **Collection and recovery of equalisation levy on e-commerce supply or services [Sec. 166A]**

The equalisation levy u/s 165A shall be paid by every e-commerce operator to the credit of the Central Government quarterly as per following time schedule:



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

Date of ending of the quarter of financial	Due date of payment
30 <sup>th</sup> June	7 <sup>th</sup> July
30 <sup>th</sup> September	7 <sup>th</sup> October
31 <sup>st</sup> December	7 <sup>th</sup> January
31 <sup>st</sup> March	31 <sup>st</sup> March

### **Consequential Exemption [Sec. 10(50)]**

Any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after 01-04-2021 and chargeable to equalisation levy under that Chapter shall be exempt.

### **Rationalisation of the provisions of Equalisation Levy**

U/s 165A of Finance Act, 2016, equalisation levy is to be levied at the rate of 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated, by it-

- (i) to a person resident in India; or
- (ii) to a non-resident in the specified circumstances; or
- (iii) to a person who buys such goods or services or both, using in-ternet protocol address located in India.

For this purpose, E-commerce supply or service is defined as to mean:-

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

Sec. 10(50) provides for the exemption for the income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after 01-04-2021 and chargeable to equalisation levy under that Chapter.

It is seen that there is need for some clarification to correctly reflect the intention of various provisions concerning this levy. Hence, it is proposed to carry out the following amendments in the Finance Act, 2016:-

- consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government u/s 90 or 90A.
- for the purposes of defining e-commerce supply or service, “online sale of goods” and “online provision of services” shall include one or more of the following activities taking place online:
  - (a) Acceptance of offer for sale;





## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

- (b) Placing the purchase order;
- (c) Acceptance of the Purchase order;
- (d) Payment of consideration; or
- (e) Supply of goods or provision of services, partly or wholly

Sec. 165A of the Finance Act, 2016 has been amended to provide that consideration received or receivable from e-commerce supply or services shall include:

- (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
- (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

It is also amended in the section 10(50) to:

- (i) provide that sec. 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.
- (ii) clarify that exemption u/s 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government u/s 90 or 90A.

### Faceless Regime

#### **Faceless jurisdiction of income-tax authorities [Sec. 130]**

The Central Government may notify a scheme for the purposes of:

- a. exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in sec. 120; or
  - b. vesting the jurisdiction with the Assessing Officer as referred to in sec. 124; or
  - c. exercise of power to transfer cases u/s 127; or
  - d. exercise of jurisdiction in case of change of incumbency as referred to in sec. 129,
- so as to impart greater efficiency, transparency and accountability by—
- i. eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
  - ii. optimising utilisation of the resources through economies of scale and functional specialisation;
  - iii. introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

#### **Taxpoint**

The Central Government may, for the purpose of giving effect to the scheme, direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

#### **Faceless inquiry or Valuation [Sec. 142B]**

- ✳ The Central Government may notify a scheme for the purposes of issuing notice u/s 142(1) or making inquiry before assessment u/s 142(2), or directing the assessee to get his accounts audited u/s 142(2A)



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

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or estimating the value of any asset, property or investment by a Valuation Officer u/s 142A, so as to impart greater efficiency, transparency and accountability by:

- a. eliminating the interface between the income-tax authority or Valuation Officer and the assessee or any person to the extent technologically feasible;
  - b. optimising utilisation of the resources through economies of scale and functional specialisation;
  - c. introducing a team-based issuance of notice or making of enquiries or issuance of directions or valuation with dynamic jurisdiction.
- ✳ The Central Government may direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

### **Faceless Assessment [Sec. 144B]**

Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment u/s 143(3) or u/s 144, in the specified cases, shall be made in a faceless manner as per the following procedure:

- ii. the National Faceless Assessment Centre shall serve a notice on the assessee u/s 143(2);
- iii. The assessee may, within 15 days from the date of receipt of notice (as referred above), file his response to the National Faceless Assessment Centre.
- iv. Where the assessee:
  - a. has furnished his return of income u/s 139 or in response to a notice issued u/s 142(1) or u/s 148(1), and a notice u/s 143(2) has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or
  - b. has not furnished his return of income in response to a notice issued u/s 142(1) by the Assessing Officer; or
  - c. has not furnished his return of income u/s 148(1) and a notice u/s 142(1) has been issued by the Assessing Officer,the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section.
- v. The National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit in any one Regional Faceless Assessment Centre through an automated allocation system;
- vi. Where a case is assigned to the assessment unit, it may make a request to the National Faceless Assessment Centre for—
  - a. obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;
  - b. conducting of certain enquiry or verification by verification unit; and
  - c. seeking technical assistance from the technical unit;
- ii. Where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit;
- iii. The assessee or any other person, as the case may be, shall file his response to the notice referred above, within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre;



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

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- iv. Where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;
- v. Where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;
- vi. The National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request to the concerned assessment unit;
- vii. Where the assessee fails to comply with the notice referred to in (vi) or notice issued u/s 142(1) or with a direction issued u/s 142(2A), the National Faceless Assessment Centre shall serve upon such assessee a notice u/s 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;
- viii. The assessee shall, within the time specified in the aforesaid notice or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre;
- ix. However, if the assessee fails to file response to the notice within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;
- x. The assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;
- xi. The assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;
- xii. The National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to—
  - a. finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or
  - b. provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or
  - c. assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;
- xiii. The review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to—
  - a. concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- b. suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;
- xiv. The National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in (a) or (b) of clause (xvi);
- xv. The National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;
- xvi. The assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;
- xvii. The National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in (a) or (b) of clause (xvi);
- xviii. The assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down (b) of (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;
- xix. The National Faceless Assessment Centre shall,—
  - a. Where no response to the show-cause notice is received:
    - A. in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or final draft assessment order to such assessee; or
    - B. in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
  - b. in any other case, send the response received from the assessee to the assessment unit;
- xx. The assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;
- xxi. The National Faceless Assessment Centre shall, upon receiving the revised draft assessment order:
  - a. in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and—
    - A. in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;
    - B. in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
  - b. in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;
- xxii. The procedure laid down in (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in (b) of (xxv);



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- xxiii. Where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per (A) of (a) of (xxiii) or (xxv), such assessee shall, within the period specified in sec. 144C(2), file his acceptance of the variations to the National Faceless Assessment Centre;
- xxiv. The National Faceless Assessment Centre shall,—
- upon receipt of acceptance as per clause (xxvii); or
  - if no objections are received from the eligible assessee within the period specified in sec. 144C(2)
- finalise the assessment within the time allowed u/s 144C(4) and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
- xxv. Where the eligible assessee files his objections with the Dispute Resolution Panel, the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel u/s 144C(5), forward such directions to the concerned assessment unit;
- xxvi. The assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel u/s 144C(5), prepare a draft assessment order in accordance with sec. 144C(13) and send a copy of such order to the National Faceless Assessment Centre;
- xxvii. The National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in (xxx), finalise the assessment within the time allowed u/s 144C(13) and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
- xxviii. The National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

### **Taxpoint**

- ✿ The faceless assessment shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.
- ✿ The Board may, for the purposes of faceless assessment, set up the following Centres and units and specify their respective jurisdiction, namely:
  - a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make faceless assessment;
  - Regional Faceless Assessment Centres, as it may deem necessary, to facilitate the conduct of faceless assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make faceless assessment;
  - assessment units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment;
  - verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- books of accounts, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification;
- v. technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this section; and
  - vi. review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed, if any, and such other functions as may be required for the purposes of review.
- ✿ The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—
    - a. Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be
    - b. Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;
    - c. such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.
  - ✿ All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre.
  - ✿ All communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode. However, the provisions shall not apply to the enquiry or verification conducted by the verification unit in the specified circumstances.
  - ✿ For the purposes of faceless assessment—
    - i. an electronic record shall be authenticated by—
      - a. the National Faceless Assessment Centre by affixing its digital signature;
      - b. assessee or any other person, by affixing his digital signature if he is required to furnish his return of income under digital signature, and in any other case, by affixing his digital signature or under electronic verification code in the prescribed manner;
    - ii. Every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—
      - a. placing an authenticated copy thereof in the assessee's registered account; or
      - b. sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
      - c. uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert;



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- iii. Every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;
- iv. The assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;
- v. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000
- vi. A person shall not be required to appear either personally or through authorised representative in connection with any proceedings before the income-tax authority at the National Faceless Assessment Centre or Regional Faceless Assessment Centre or any unit
- vii. In a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;
- viii. The Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in (vii) if he is of the opinion that the request is covered by the specified circumstances
- ix. Where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;
- x. Subject to certain exception, any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey u/s 133A) shall be conducted by an income-tax authority in any unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board;
- xi. The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;
- xii. The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:—
  - a. service of the notice, order or any other communication;
  - b. receipt of any information or documents from the person in response to the notice, order or any other communication;



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- c. issue of acknowledgement of the response furnished by the person;
  - d. provision of "e-proceeding" facility including login account facility, tracking status of assessment, display of relevant details, and facility of download;
  - e. accessing, verification and authentication of information and response including documents submitted during the assessment proceedings;
  - f. receipt, storage and retrieval of information or documents in a centralised manner;
  - g. general administration and grievance redressal mechanism in the respective Centres and units.
  - h. circumstances which are required to be specified for applicability of various provision of this section.
- ✿ The Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.
  - ✿ Assessment made u/s 143(3) or 144 in the cases referred to (other than the cases transferred on or after 01-04-2021), shall be non-est if such assessment is not made in accordance with the procedure laid down under this section.

### **Definitions**

- ✿ "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;
- ✿ "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;
- ✿ "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered e-mail address of the assessee with his e-mail service provider;
- ✿ "designated portal" means the web portal designated as such by the Principal Chief Commissioner or Principal Director General, in charge of the National Faceless Assessment Centre;
- ✿ "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;
- ✿ "eligible assessee" shall have the same meaning as assigned to in sec. 114C(15)(b);
- ✿ "e-mail" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;
- ✿ "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;
- ✿ "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an e-mail at his registered e-mail address, so as to alert him regarding delivery of an electronic communication;
- ✿ "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;
- ✿ "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—





## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

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- i. the e-mail address available in the electronic filing account of the addressee registered in designated portal; or
  - ii. the e-mail address available in the last income-tax return furnished by the addressee; or
  - iii. the e-mail address available in the Permanent Account Number database relating to the addressee; or
  - iv. in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or
  - v. in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or
  - vi. any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority.
- ✳ "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;
- ✳ "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

### **Faceless assessment of income escaping assessment [Sec. 151A]**

The Central Government may make a scheme for the purposes of assessment, reassessment or re-computation u/s 147 or issuance of notice u/s 148 or sanction for issue of such notice u/s 151, so as to impart greater efficiency, transparency and accountability by—

- a. eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

**Taxpoint:** The Central Government may, for the purpose of giving effect to the scheme, direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

### **Faceless rectification, amendments and issuance of notice or intimation [Sec. 157A]**

The Central Government may make a scheme, for the purposes of rectification of any mistake apparent from record u/s 154 or other amendments u/s 155 or issue of notice of demand u/s 156, or intimation of loss u/s 157, so as to impart greater efficiency, transparency and accountability by—

- a. eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a team-based rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of loss, with dynamic jurisdiction.

**Taxpoint:** The Central Government may, for the purpose of giving effect to the scheme, direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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### **Faceless revision of orders [Sec. 264A]**

The Central Government may make a scheme, for the purposes of revision of orders u/s 263 or 264, so as to impart greater efficiency, transparency and accountability by:

- a. eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a team-based revision of orders, with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, direct (within 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

Similarly, scheme may also be made by the Central Government for the purposes of giving effect to an order u/s 250, 254, 260, 262, 263 or 264. [Sec. 264B]

### **Faceless approval or registration [Sec. 293D]**

The Central Government may make a scheme, for the purposes of granting approval or registration, as the case may be, by income-tax authority under any provision of the Act, so as to impart greater efficiency, transparency and accountability by:

- a. eliminating the interface between the income-tax authorities and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a team-based grant of approval or registration, with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, direct (within 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

### **Faceless collection and recovery of tax [Sec. 231]**

✳ The Central Government may make a scheme for the purposes of issuance of certificate for deduction of income-tax at any lower rates or no deduction of income-tax u/s 197, or deeming a person to be an assessee in default u/s 201(1) or u/s 206C(6A), issuance of certificate for lower collection of tax u/s 206C(9) or passing of order or amended order u/s 210(3) or 210(4), or reduction or waiver of the amount of interest paid or payable by an assessee u/s 220(2A), or extending the time for payment or allowing payment by instalment u/s 220(3), or treating the assessee as not being in default u/s 220(6) or 220(7), or levy of penalty u/s 221, or drawing of certificate by the Tax Recovery Officer u/s 222, or jurisdiction of Tax Recovery Officer u/s 223, or stay of proceedings in pursuance of certificate and amendment or cancellation thereof by the Tax Recovery Officer u/s 225, or other modes of recovery u/s 226 or issuance of tax clearance certificate u/s 230 so as to impart greater efficiency, transparency and accountability by:

- a. eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- b. optimising utilisation of the resources through economies of scale and functional specialisation;
- c. introducing a team-based issuance of certificate for deduction or collection of income-tax at lower rate, or for no deduction, or for deeming a person to be an assessee in default, or for passing of an order or amended order, or extending the time for payment, or allowing payment by instalment, or



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

reduction or waiver of interest, or for treating the assessee as not being in default, or for levy of penalty or for drawing of certificate or stay of proceedings in pursuance of certificate and amendment or cancellation thereof, by, or jurisdiction of, Tax Recovery Officer or other modes of recovery or issuance of tax clearance certificate, with dynamic jurisdiction.

- ✱ The Central Government may, for the purpose of giving effect to the scheme, direct (within 31-03-2022) that any of the provisions shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified.

### Misc Provisions

#### Amendment to Sec. 295

Sec. 295 has been amended so as to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of,-

- (i) operations carried out in India by a non-resident; and
- (ii) transaction or activities of a non-resident.

#### Allowing deduction for amount disallowed u/s 43B, to insurance companies on payment basis [Rule 5 of First Schedule]

Sec. 44 provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Act. Sec. 43B provides for allowance of certain deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee, only in the previous year in which such sum is actually paid.

Rule 5 of the said Schedule provides for computation of profits and gains of other insurance business. It states that profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the rule made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 or the regulations made thereunder, subject to the condition that any expenditure debited to the profit and loss account which is not admissible under the provisions of sec. 30 to 43B shall be added back; any gain or loss on realisation of investment shall be added or deducted, as the case may be, if the same is not credited or debited to the profit and loss account; any provision for diminution in the value of investment debited to the profit and loss account shall be added back. Thus, there is no specific provision, in this rule, in the case of other insurance companies, to allow deduction for any payment of certain expenses specified in sec. 43B if they are paid in subsequent previous year. There is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made.

Therefore, it is amended by inserting a proviso in the said rule 5 so as to provide that any sum payable by the assessee which is added back u/s 43B shall be allowed as deduction in computing the income under the rule in the previous year in which such sum is actually paid.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### Dispute Management

- The Authority for Advance Rulings (AAR) to be discontinued and the Central Government to constitute one or more Board for Advance Rulings. Board of Advance Ruling will be comprised of two members, each being an officer not below the rank of Chief Commissioner. Ruling of the Board for Advance Rulings will not be binding on the Department or the taxpayer and it would be appealable before the High Court. Consequential amendments are made in other AAR related provisions.
- Faceless ITAT scheme to be introduced on the same lines as the faceless appeal scheme.
- Income Tax Settlement Commission to be discontinued and an Interim Board to be constituted for pending cases. [These amendments will take effect from 1st February, 2021.]
- Reference to Principal Chief Commissioner or Chief Commissioner has been inserted u/s 263 w.e.f. 01-11-2020

### Provisional attachment in Fake Invoice cases

Section 281B contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue.

This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months. Further, the said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment. The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time. The powers under this section can only be exercised by the Assessing Officer.

Section 271AAD of the Act was inserted vide the Finance Act, 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts. It is an anti-abuse provision. Upon initiation of such penalty proceedings, it is highly likely that the taxpayer may also evade the payment of such penalty, if imposed. Hence, in order to protect the interest of revenue, the provision of sec. 281B has been amended to enable the Assessing Officer to exercise the powers under this section during the pendency of proceedings for imposition of penalty u/s 271AAD, if the amount or aggregate of amounts of penalty imposable is likely to exceed ₹ 2 crore.

### Other Amendments

- Time limit for linking Aadhar with PAN has been extended to 31-03-2021
- Interest on tax or levy, the due date of payment falls during 20-03-2020 and 29-06-2020, has been reduced to 9% p.a. provided such tax or levy is paid on or before 30-06-2020
- Due date of filing TDS return for the first two quarters of financial year 2020-21 has been extended to 31-03-2021.



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

### Other Circulars

#### **Residential status of certain individuals under Income-tax Act, 1961 [Circular 2/2021 dated 03-03-2021]**

Section 6 contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a non-resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.

#### **2. Relaxation for Previous Year 2019-20**

Considering the COVID-19 pandemic and the resultant overstay of an individual who had come to India on a visit before 22-03-2020, circular no 11 of 2020 dated 08-05-2020 was issued by the Board u/s 119 to avoid genuine hardship in such cases. It was clarified that for the purpose of determining the residential status u/s 6 during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22-03-2020 and:

- (a) has been unable to leave India on or before 31-03-2020, his period of stay in India from 22-03-2020 to 31-03-2020 shall not be taken into account; or
- (b) has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 01-03-2020 and has departed on an evacuation flight before 31-03-2020 or has been unable to leave India on or before 31-03-2020, his period of stay from the beginning of his quarantine to his date of departure or 31-03-2020, as the case may be, shall not be taken into account; or
- (c) has departed on an evacuation flight before 31-03-2020, his period of stay in India from 22-03-2020 to his date of departure shall not be taken into account.

#### **3. Residential Status for Previous year 2020-21**

The Board has received various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights. The matter has been examined by the Board and following facts have emerged: –

##### **I. Short stay will not result in Indian residency**

There may be a situation where a person, who was a non-resident during the previous year 2019-20, gets stranded in India by reason of the COVID-19 pandemic for some time during the previous year 2020-21. In such situations, there are less chances that the person would acquire residence status in India during the PY 2020-21 only for this reason as explained below: –

- A. A citizen of India or a person of Indian origin may become resident in India only in one of the following situations: –



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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- (i) if his total income from Indian sources (i.e., other than the income from foreign sources) does not exceed ₹ 15,00,000 in the PY 2020-21 and he stays in India for 182 days or more during the PY 2020-21; or
- (ii) if his total income from Indian sources (i.e., other than the income from foreign sources) exceed ₹ 15,00,000 in PY 2020-21
- (a) he stays during PY 2020-21 for 182 days or more; or
  - (b) he stays during the PY 2020-21 for 120, days or more and also stays for 365 days or more in preceding four previous years.

B. An Individual who is not citizen of India or a person of Indian origin may become resident in India only in one of the following situations: –

- (i) if he stays during PY 2020-21 for 182 days or more; or
- (ii) if he stays during the PY 2020-21 for 60 days or more and also stays for 365 days or more in preceding four previous years.

Thus, generally, a person will become resident in India for the PY 2020-21 only if he stayed in India for 182 days or more unless he is covered by the exceptions discussed above.

### II. Possibilities of dual non-residency in case of general relaxation

Most of the countries have the condition of stay for 182 days or more for determining residency. Thus, a person in most situations will be resident in only one country since there are 365 days in a year. In fact, if general relaxation for the stay period of 182 days is provided, there may be cases of double non-residency. In such situation, a person may not become a tax resident in any country in PY 2020-21 even after staying for more than 182 days or more in India resulting in double non-taxation and end up not paying tax in any country.

### III. Tie breaker rule as per Double Taxation Avoidance Agreement (DTAA)

As discussed above, a person may become resident in India in some cases even if he stays for less than 182 days in India. In that situation, there may be a case of dual residency. However, due to applicability of Double Taxation Avoidance Agreement (DTAA), such person will become resident of only one country as per the “tiebreaker rule” in the DTAA. For example, the Indo-USA DTAA contains following tiebreaker rule in Article 4(2):

*“Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States., then his status’ shall be determined as follows:*

*(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);*



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16

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*(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;*

*(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.*

*(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.*

Thus, as per the provisions of the Indo-USA DTAA, a person can become resident of two countries only in the following case:

- (a) he has a permanent home available to him in both countries or in none of the two countries; and
- (b) centre of vital interests cannot be determined; and
- (c) he has a habitual abode in both States or in neither of them; and
- (d) he is a national of both States or of neither of them.

Even in such situations when all the above (a) to (d) are applicable (which may be a very rare situation), the Indo-USA DTAA provides a resolution mechanism through Mutual Agreement Procedure.

It is also relevant to note that even in cases where an individual became resident in India due to exceptional circumstances, he would most likely become not ordinarily resident in India and hence his foreign sourced income shall not be taxable in India unless it is derived from business controlled in or profession set up in India.

#### **IV. Employment income taxable only subject to conditions as per DTAA**

Further, Article related to employment income in the DTAA with different countries governs the taxation of employment income. For example, Article 16 of the Indo-USA DTAA provides following for taxation of employment income:

##### *“DEPENDENT PERSONAL SERVICES*

*1. Subject- to the provisions of Articles 17 (Directors’ Fees), 18 (income Earned by Entertainers. and Athletes), 19 (Remuneration and Pensions in respect of Government Service), 20 (Private Pensions, Annuities, Alimony and Child Support), 21 (Payments received by Students and Apprentices) and 22 (Payments received by Professors, Teachers and Research Scholars), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall he taxable only in that State unless the employment is exercised in the other Contracting State. if the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.*



## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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2. *Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if*

*(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year;*

*(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and*

*(c) the remuneration is not borne by a permanent establishment or a fixed base or a trade or business which the employer has in the other State.*

3. *Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operating in international traffic by an enterprise of a Contracting State may be taxed in that State.”*

The DTAA distributes the taxation rights between the employee’s jurisdiction of residence and the place where the employment is exercised. Salaries, wages and other similar remuneration are taxable only in the country in which the employee is resident unless the employment is exercised in the other country. Generally, as per the DTAAs, such other country (the source jurisdiction) has taxation rights only if the employee is present in that country for more than 183 days or the employer is a resident of the source jurisdiction, or the employer has a permanent establishment in the source jurisdiction that bears the remuneration. Accordingly, if a USA resident under employment of a USA corporation has got stranded in India and performs employment from India, its salary will not be taxable in India unless he is present in India for 183 days or more during the PY 2020-21 or if the salary is borne by Indian permanent establishment of such USA corporation.

### **V. Credit for the taxes paid in other country:**

Further, a resident person in India shall be entitled to claim credit of the taxes paid in any other country in accordance with the rule 128 of the Income-tax Rules, 1962.

### **VI. International Experience**

#### **A. The Organisation for Economic Co-operation and Development (OECD)**

The Organisation for Economic Co-operation and Development (OECD) in its OECD Policy Responses to Coronavirus (COVID-19), [ OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis, Version 3 April 2020 has provided following guidance on this matter:

*“28. Despite the complexity of the rules, and their application to a wide range of potentially affected individuals, it is unlikely that the COVID-19 situation will affect the treaty residence position.*





## SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16

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30. Two main situations could be imagined:

1. A person is temporarily away from their home (perhaps on holiday, perhaps to work for a few weeks) and gets stranded in the host country by reason of the COVID-19 crisis and attains domestic law residence there,

2. A person is working in a country (the “current home country”) and has acquired residence status there, but they temporarily return to their “previous home country” because of the COVID-19 situation. They may either never have lost their status as resident of their previous home country under its domestic legislation, or they may regain residence status on their return.

31. In the first scenario, it is unlikely that the person would acquire residence status in the country where the person is temporarily because of extraordinary circumstances, There are however rules in domestic legislation deeming a person to be a resident if he or she is present in the country, for a certain number of days, But even if the person becomes a resident under such rules, if a tax treaty is applicable, the person would not be a resident of that country for purposes of the tax treaty. Such a temporary dislocation should therefore have no tax implications.

32. In the second scenario, it is again unlikely that the person would regain residence status for being temporarily and exceptionally in the previous home country, But even if the person is or becomes a resident under such rules, if a tax treaty is applicable, the person would not become a resident of that country under the tax treaty due to such temporary dislocation.”

Thus, it has been recognised by the OECD that DTAAs contain the necessary provisions to deal with the cases of dual residency arising due to COVID-19 situations.

### **B. Relief by other countries:**

A study of the measures taken by different countries reveals that there is mix response some of the countries have provided relief for certain number of days subject to the satisfaction of prescribed conditions whereas some of the countries have not provided any relief. For example, USA have provided relief up to a maximum of 60 days subject to the satisfaction of certain conditions and furnishing of information in specified Form. Similarly, UK has provided relief of 60 days in exceptional circumstances depending on fact and circumstances of each case. Similarly, Australia issued guidelines for allowing relief by examining facts and circumstances. Germany has clarified that in the absence of a risk of double taxation, there is basically no factual inequity if the right to tax is transferred from one contracting state to another due to changed facts.

### **4. Conclusion**

Thus, it can be seen that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAAs, there does not appear a possibility of



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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the double taxation of the income for FY 2020-21, As explained above, the possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAAAs. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine that□

- (1) whether any relaxation is required to be provided in this matter; and
- (ii) if required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

Therefore, if any individual is facing double taxation even after taking into consideration the relief provided by the respective DTAAAs, he may furnish the information in Form —NR annexed to this circular by 31st March, 2021. This form shall be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation).

### **Extension of time lines related to certain compliances by the Taxpayers under the Income-tax Act 1961 [Circular 8/2021 dated 30-04-2021]**

In view of severe pandemic, the Board, in exercise of its powers u/s 119, provides following relaxation in respect of Income-tax compliances by the taxpayers:

1. Appeal to Commissioner (Appeals) under Chapter XX of the Income-tax Act,1961 for which the last date of filing under that Section is 1st April 2021 or thereafter, may be filed within the time provided under that Section or by 31st May 2021, whichever is later;
2. Objections to Dispute Resolution Panel (DRP) under Section 144C of the Income-tax Act,1961, for which the last date of filing under that Section is 1st April 2021 or thereafter, may be filed within the time provided under that Section or by 31st May 2021, whichever is later;
3. Income-tax return in response to notice under Section 148 of the Income-tax Act,1961, for which the last date of filing of return of income under the said notice is 1st April 2021 or thereafter, may be filed within the time allowed under that notice or by 31st May 2021, whichever is later;
4. Filing of belated return under sub-section (4) and revised return under sub-section (5) of Section 139 of the Income-tax Act,1961 for Assessment Year 2020-21, which was required to be filed on or before 31st March 2021, may be filed on or before 31st May 2021;
5. Payment of tax deducted under Section 194-IA, Section 194-IB and Section 194M of the Income-tax Act,1961 and filing of challan-cum-statement for such tax deducted, which are required to be paid and furnished by 30th April 2021 under Rule 30 of the Income-tax Rules, 1962, may be paid and furnished on or before 31st May 2021;
6. Statement in Form No. 61, containing particulars of declarations received in Form No.60, which is due to be furnished on or before 30th April 2021, may be furnished on or before 31st May 2021.

### **Clarification regarding the limitation time for filing of appeals before the CIT (A) under the Income Tax Act, 1961 [Circular 10/2021 dated 25-05-2021]**



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS PAPER 16**

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1. The Central Board of Direct Taxes has issued Circular No. 8 of 2021 on 30th April 2021 providing various relaxations till 31st May 2021 including extending the time for filing the appeals before CIT(Appeals). At the same time, the Hon'ble Supreme Court vide order dated 27th April 2021 in *Suo Motu Writ Petition (Civil) NO.3 of 2020* restored the order dated 23rd March 2020 and in continuation of the order dated 8th March 2021 directed that the period(s) of limitation, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

2. The Central Board of Direct Taxes clarifies that if different relaxations are available to the taxpayers for particular compliance, the taxpayer is entitled to the relaxation which is more beneficial to him. Thus, for the purpose of counting the period(s) of limitation for filing of appeals before the CIT(Appeals) under the Act, the taxpayer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* vide order dated 27th April 2021.

### **Extension of time limits of certain compliances to provide relief to taxpayers in view of the severe pandemic [Circular 12/2021 dated 25-06-2021]**

On consideration of genuine hardship being faced by the taxpayers in making various compliances under the Income-tax Act, 1961 (hereinafter referred to as "the Act") in view of severe pandemic, the Board, in exercise of its power u/s 119, provides relaxation in respect of the following compliances as under:

- 1) Objections to Dispute Resolution Panel (DRP) and Assessing Officer under section 144C of the Act, for which the last date of filing under that Section is 01/06/2021 or thereafter, may be filed within the time provided in that Section or by 31/08/2021, whichever is later;
- 2) The Statement of Deduction of Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31/05/2021 under Rule 31A of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules"), as extended to 30/06/2021 vide Circular No. 9 of 2021, may be furnished on or before 15/07/2021;
- 3) The Certificate of Tax Deducted at Source in Form No.16, required to be furnished to the employee by 15/06/2021 under Rule 31 of the Rules, as extended to 15/07/2021 vide Circular No. 9 of 2021, may be furnished on or before 31/07/2021;
- 4) The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64D for the Previous Year 2020-21, required to be furnished on or before 15th June, 2021 under Rule 12CB of the Rules, as extended to 30th June, 2021 vide Circular No.9 of 2021, may be furnished on or before 15th July, 2021;
- 5) The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64C for the Previous Year 2020-21, required to be furnished on or before 30/06/2021 under Rule 12CB of the Rules, as extended to 15/07/2021 vide Circular No. 9 of 2021, may be furnished on or before 31/07/2021;
- 6) The application under Section 10(23C), 12AB, 35(1)(ii)/ (ia)/ (iii) and 80G of the Act in Form No. 10A/ Form No. 10AB, for registration/ provisional registration/ intimation/ approval/ provisional



## **SUPPLEMENTARY JUNE & DECEMBER 2021 EXAMINATIONS\_PAPER 16**

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approval of Trusts/ Institutions/ Research Associations etc. required to be made on or before 30/06/2021, may be made on or before 31/08/2021;

7) The compliances to be made by the taxpayers such as investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purpose of claiming any exemption under the provisions contained in Section 54 to 54GB of the Act, for which the last date of such compliance falls between 01/04/2021 to 29/09/2021 (both days inclusive), may be completed on or before 30/09/2021;

8) The Quarterly Statement in Form No. 15CC to be furnished by authorized dealer in respect of remittances made for the quarter ending on 30/06/2021, required to be furnished on or before 15/07/2021 under Rule 37BB of the Rules, may be furnished on or before 31/07/2021;

9) The Equalization Levy Statement in Form No. 1 for the Financial Year 2020--21, which is required to be filed on or before 30/06/2021, may be furnished on or before 31/07/2021;

10) The Annual Statement required to be furnished under sub-section (5) of section 9A of the Act by the eligible investment fund in Form No. 3CEK for the Financial Year 2020-21, which is required to be filed on or before 29/06/2021, may be furnished on or before 31/07/2021;

11) Uploading of the declarations received from recipients in Form No. 15G/15H during the quarter ending on 30th June, 2021, which is required to be uploaded on or before 15/07/2021, may be uploaded by 31/08/2021;

12) Exercising of option u/s 245M(1) in Form No. 34BB which is required to be exercised on or before 27/06/2021 may be exercised on or before 31/07/2021.