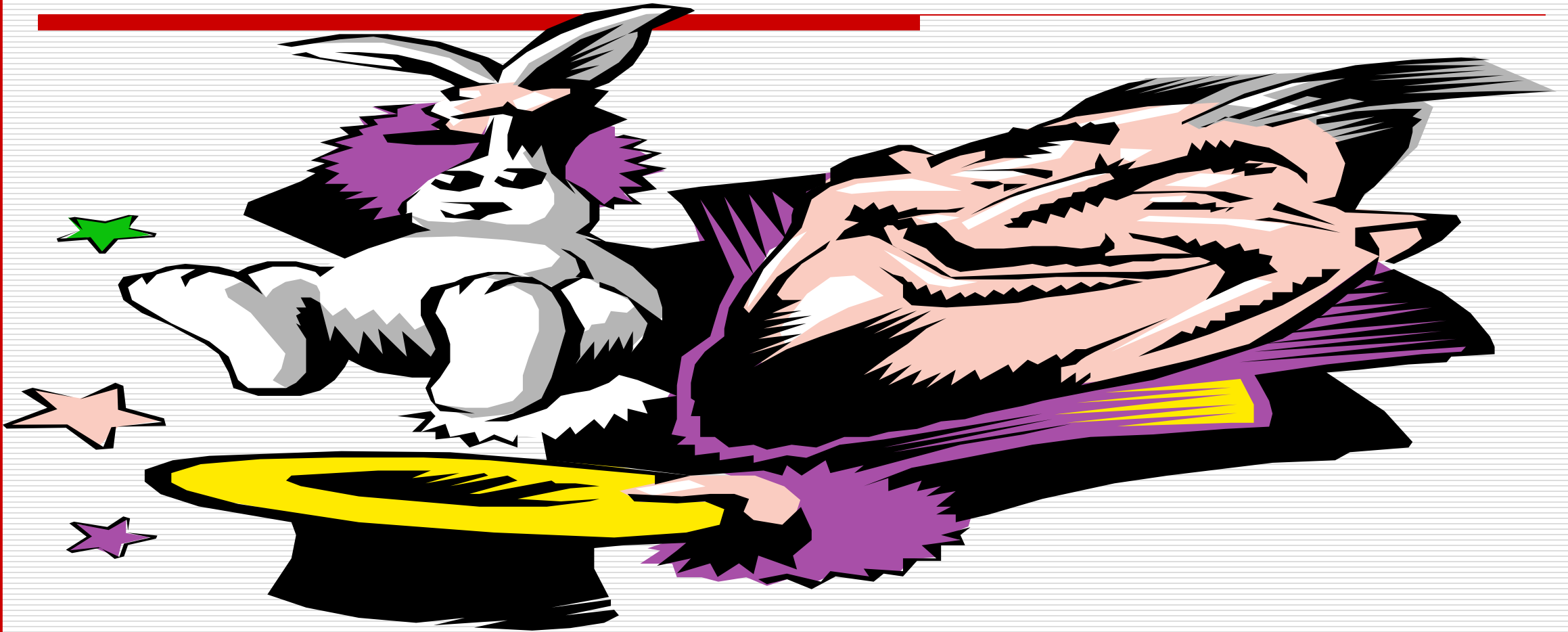


Filing of Return of Income - ITR -7 – Few relevant provisions under IT Act, 1961



What is Assessment Procedure ?

- Every Person, who is earning, which is chargeable to tax, has to furnish his return of income to the Income Tax Department. ... The process of examination of the return by the Income Tax Department .
- Is called "Assessment"

- Assessment simply means determination of Tax
- It is Procedure for determining of Tax Liability and **Recovery of Tax**
- This is determined as per Taxation law existing in that particular Assessment Year



How Much did you earn ?

File your ROI

CMA Niranjan Swain, Advocate & Tax
Consultant. Reached at
nswain2008@gmail.com

Checking your ITR by Dept

8/8/2021

Various Sections under which ITR is filled

- ➡ 139 (1) - Normal Return
- ➡ 139 (3) – Return of Loss
- ➡ 139 (4) – Belated Return
- ➡ 139 (5) – Revised Return
- ➡ 142(1) – Directions by AO to file the ROI
- ➡ 148 – Re-assessment of Income U/s 147
- ➡ 153 A/C – Assessment under Search and requisition -Now covered under sec.147





Assessee / Tax Payer



IT - DEPARTMENT

Various Sections of Assessment under Income Tax Act



140 (A) - Self Assessment



143 (1)- Summary Assessment



143 (3) - Regular Assessment

→ Limited Scrutiny
→ Complete Scrutiny



144 – Best Judgement



147 - Re- Assessment



153 (A)/ 153(C) Block Assessment

Who can file return of Income

| Section | Different Situations |
|--------------|---|
| 139(4A) | A person in receipt of income derived from property held under a trust for charitable or religious purposes is required to submit return of income if its income (without giving exemption under section 11 or 12) exceeds exemption Limit. |
| 139(4B) | Chief executive officer of every political party is required to submit income-tax return if income of the political party (without giving exemption under section 13A) exceeds exemption limit. |
| 139(4C) | If total income (without claiming any exemption given below) of the assessee (who is qualified to claim exemption under section 10 / 23) exceeds the exemption limit - |
| 139(4D) | Any university/college/other institution referred to in section 35(1)(ii)/ (iii) is required to submit return of income (return has to be submitted whether there is income or loss. Such return has to be submitted even if it is not required by any other provision) |
| 139(4E)/(4F) | These sub-sections cover submission of return by business trust/investment fund. – ITR -5 |

Sources of Income in case Company

□ Meaning of “beneficial owner” and “beneficiary” in respect of an asset for the purpose of section 139:

Beneficial Owner



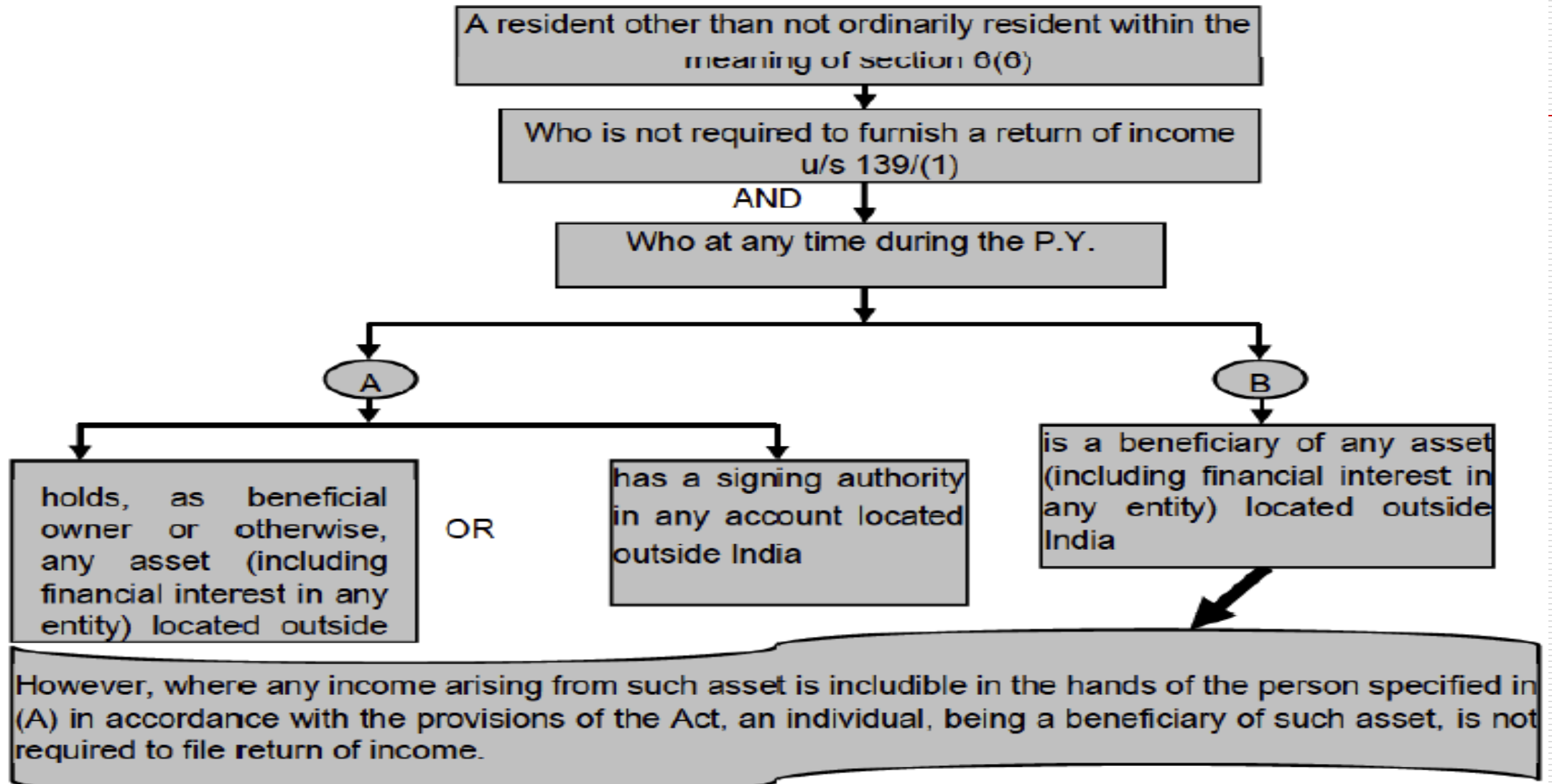
An individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

Beneficiary



An individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person, other than such beneficiary.

Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)



Mandatory Filing of return – 139(4C)

| | Institution/Association etc. | Applicable section |
|-----|---|---------------------------|
| (a) | Research association | 10(21) |
| (b) | News agency | 10(22B) |
| (c) | Association or institution | 10(23A) |
| (d) | Fund for the welfare of employees or their dependents | 10(23AAA) |
| (e) | Institution | 10(23B) |
| (f) | Fund or institution | 10(23C)(iv) |
| (g) | Trust or institution | 10(23C)(v) |
| (h) | University or other educational institution | 10(23C)(vi)/(iiiad) |
| (i) | Hospital or other medical institution | 10(23C)(via)/(iii ae) |
| (j) | Mutual Fund | 10(23D) |
| (k) | Securitisation Trust | 10(23DA) |
| (l) | Investor Protection Fund | 10(23EC)/(ED) |
| (m) | Core Settlement Guarantee Fund | 10(23EE) |
| (n) | Venture Capital Company/Venture Capital Fund | 10(23FB) |
| (o) | Trade Union | 10(24)(b) |
| (p) | Board or Authority as referred | 10(29A) |
| (q) | Body or Authority or Board or Trust | 10(46) |
| (r) | Infrastructure Debt Fund | 10(47) |

Forms prescribed for AY 2021-22

| | |
|---------|--|
| ITR – 6 | It is applicable to a company, other than a company claiming exemption under section 11 (exemption under section 11 can be claimed by charitable/religious trust). |
| ITR – 7 | It is applicable to a persons including companies who are required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D) (<i>i.e.</i> , trusts, political parties, institutions, colleges.). |
| ITR – V | It is the acknowledgement of filing the return of income. |

No documents to be attached along with the return of income

ITR return forms are attachment less forms and, hence, the taxpayer is not required to attach any document (like proof of investment, TDS certificates, etc.) along with the return of income (whether filed manually or filed electronically). However, these documents should be retained by the taxpayer and should be produced before the tax authorities when demanded in situations like assessment, inquiry, etc.

As discussed above, no documents are to be attached along with the return of income, however, in case of a taxpayer who is required to furnish a report of audit under section 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(vii), 10A, 10AA, 12A(1)(b), 44AB, 44DA, 50B, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E, 115JB or 115VW or to give a notice under section 11(2)(a) shall furnish it electronically on or before the date of filing the return of income.

Applicable & Non Applicable of ITR-7

Form ITR – 7 can be used by persons including companies who are required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D) (i.e., trusts, political parties, institutions, colleges, etc.).

Non-applicability of ITR – 7

Form ITR – 7 cannot be used by a person who is not required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D) (i.e., trusts, political parties, institutions, colleges, etc.).

Annual Information Statement FORM 26AS

-
- ❑ CBDT vide Notification dated May 28, 2020 has amended Form 26AS vide Sec 285BB of IT Act, 1961 r.w.r.114-I of IT Rules, 1962 w.e.f. 01.06.2020.
 - ❑ New Form 26AS is an Annual Information Statement or AIS which will provide a complete profile of the taxpayer for a particular year.
 - ❑ Form 26AS will provide the following information about the Tax payer:
 - ❖ 1. Mobile no., e-mail id, date of birth/ incorporation and Aadhar no.
 - ❖ 2. Information relating to tax deducted or collected at source.
 - ❖ 3. Information relating to specified financial transaction (Information of property and share transactions etc.)
 - ❖ 4. Information relating to payment of taxes
 - ❖ 5. Information relating to demand and refund.

Annual Information Statement FORM 26AS

- ☐ 6. Information relating to pending proceedings.
- ☐ 7. Information relating to completed proceedings.
- ☐ 8. Information received by IT Department from any other country under the treaty/exchange of information about income or assets of the taxpayer located outside India.
- ☐ 9. Further an enabling provision has been notified empowering the CBDT to authorize DG Systems or any other officer to upload in this form, information received from any other officer, authority under any law. Thus any adverse action initiated or taken or found or order passed under any other law such as custom, GST, Benami Law etc. including information about Turnover, import, export etc. may be made a part of Form 26AS.
- ☐ **Note** : Form 26 AS also shows current status of PAN (active/inactive/deleted).

Transactions under Statement Transactions (SFT) Code which will get captured in New Form 26AS include—

| Sr. No | Nature of Transaction | Monetary Threshold of Transaction |
|--------|--|---|
| 1. | Cash Payment or issuance of DD or Pay orders or any other Bank instruments | In excess of Rs.10 Lacs in a F.Y. |
| 2. | Purchase of pre-paid instruments in cash | Payment in cash aggregating to 10 lacs or more |
| 3. | Cash deposit/ withdrawal in current account | aggregating to 50 lacs or more |
| 4. | Cash deposit in one or more accounts other than current account and time deposit | aggregating to 10 lacs or more |
| 5. | Payment for credit card | aggregating to 10 lacs or more |
| 6. | Payment for credit card | Made by any person of an amount aggregating to 1 lac or more in cash or 10 lacs or more by any other mode |
| 7. | Purchase of debentures | aggregating to 10 lacs or more |

Transactions under Statement Transactions (SFT) Code which will get captured in New Form 26AS include—

| Sr. No | Nature of Transaction | Monetary Threshold of Transaction |
|--------|---|--|
| 8. | Purchase of shares (including share application money) | aggregating to 10 lacs Or more |
| 9. | Buy back of shares | aggregating to 10 lacs Or more |
| 10. | Purchase of mutual fund units | aggregating to 10 lacs or more |
| 11. | Purchase of foreign currency | aggregating to 10 lacs Or more |
| 12. | Purchase or sale of immovable property | 30 Lacs (individual transaction) |
| 13. | Cash payment for goods and services | 2 Lacs (individual transaction) |
| 14. | Cash deposits during specified period (9th Nov to 31st Dec, 2016) | (a) Rs. 12.5 Lacs or more in one or more current account of a person, or (b) Rs. 2.5 lacs or more in one or more account other than current account of a person |

Usefulness of Tax Credit Statements (Form 26AS)

- ❖ View of all financial transaction involving TDS/TCS/SFT during the relevant FY at one place.
- ❖ Give details of No/Lower deductions claimed by the taxpayer.
- ❖ Helps in claim of other taxes paid by the taxpayer and computation of income at the time of filing of return of income.
- ❖ Helps in seamless processing of Income Tax Return and speedy issue of refunds.
- ❖ Verification of refunds encashed during the financial year.
- ❖ Verification of C IN in non-TDS payments.
- ❖ Helps taxpayer to view the tax demand created by the IT Department for necessary follow up.
- ❖ Facility to verify the TDS certificate (Form 16A) after entering the unique seven character TDS certificate number.
- ❖ Status of PAN.
- ❖ Comprehensive view of TDS defaults relating to all the TANs associated with a PAN.
- ❖ Helps in compliance of Section 40(a)(ia) of IT Act and preparation of Audit Reports in Form 3CD.

Other details as specified in 1st page of this Brochure will help the taxpayer in filing of his ITR

- ☐ The reasons for not finding your tax-credits in 26AS can be
- ☐ (1) Tax collected by deductor not deposited in govt account.
- ☐ (2) TDS Return not filed by deductor.
- ☐ (3) Statement of tax deduction not filed with TDS Return.
- ☐ (4) Statement of tax deduction filed with wrong PAN which is not yours.

How to view your form 26AS?

☐ Tax Credit Statement (Form 26AS) can be viewed/accessed in three ways :

❖ **I. View Tax Credit From <https://www.incometaxindia.gov.in>**

Registered Taxpayers by login the portal viz <https://incometaxindiaefiling.gov.in> can view 26AS by login using username and password.

❖ **II. View Tax Credit (Form 26AS) from bank site through net banking facility**

The facility is available to a PAN holder having net banking account with any of authorized banks*. View of Tax Credit Statement (Form 26AS) is available only if the PAN is mapped to that particular account. The facility is available free of cost.

☐ Note: This option does not require any separate registration as the KYC of the taxpayer has already been done by the concerned bank.

How to view your form 26AS?

❑ **III. View Tax Credit from <https://www.tdscpc.gov.in> For Resident Taxpayers:**

❖ A resident taxpayer first need to register on TRACES (<https://tdscpc.gov.in>). Then Form 26AS can be viewed by clicking on 'View Tax Credit Statement (Form 26AS)' after login as "Taxpayer" and filling in required details like password and relevant assessment year.

❑ **For Non-Resident Taxpayers:**

❖ An NRI taxpayer can view tax credit from https://www.nri_services.tdscpc.gov.in. NRI taxpayers first need to register at TRACES Portal. A request can be raised to view/download Form 26AS by clicking on 'View Tax Credit Statement (Form 26AS)' after login as "Taxpayer and filling in required details like password and relevant assessment year.

❑ Form 26AS statement can be downloaded either as PDF/text/excel file or can be viewed as HTML.

View Tax Credit Statement (Form 26AS)

- ❑ Perform the following steps to view or download the Form-26AS from e-Filing portal:
 1. Logon to 'e-Filing' Portal www.incometaxindiaefiling.gov.in
 2. Go to the 'My Account' menu, click 'View Form 26AS (Tax Credit)' link.
 3. Read the disclaimer, click 'Confirm' and the user will be redirected to TDS-CPC Portal.
 4. In the TDS-CPC Portal, Agree the acceptance of usage. Click 'Proceed'.
 5. Click 'View Tax Credit (Form 26AS)'
 6. Select the 'Assessment Year' and 'View type' (HTML, Text or PDF)
 7. Click 'View / Download'

Note: For voluminous records, a request for downloading Form 26AS as text file, needs to be submitted at TRACES by the user.

Follow up with deductor to –

- ❖ Ensure that correct PAN has been intimated to the deductor.
- ❖ Ensure that the deductor has deposited tax deducted. Regular view of 26AS by the tax payer helps in timely follow up with the deductors.
- ❖ Taxpayer can use “View TDS/TCS credit” facility using the link <https://www.tdscpc.gov.in/app/tapn/tdscscredit.xhtml> to know whether the deductor/ collector has filed quarterly TDS/TCS statement provided the PAN and the count on records present.

Precautions to be taken while filing the return of income

Following is the list of few important steps/points/precautions to be kept in mind while filing the return of income:

- The first and foremost precaution is to file the return of income on or before the due date. Taxpayers should avoid the practice of filing belated return. Following are the consequences of delay in filing the return of income :
 - Loss (other than house property loss) cannot be carried forward.
 - Levy of interest under section 234A.
 - Levy of fee under section 234F*
 - Exemptions under sections 10A, 10B, are not available.

Precaution to be taken while filing return of Income

- Deduction under Part-C of Chapter VI-A shall not be available.

* Fee as per section 234F is required to be paid if return is furnished after due date. Fee for default in furnishing return of income will be as follows:

- a) Rs. 5000 if return is furnished on or before the 31st day of December of the assessment year;
- b) Rs. 10,000 in any other case

However, late filing fee shall not exceed Rs. 1000 if the total income of an assessee does not exceed Rs. 5 lakh.

The Finance Act, 2021 has revised the fee for default in furnishing return of income. W.e.f., Assessment Year 2021-22, fee for default in furnishing return of income shall be Rs. 5,000 if return has been furnished after the due date prescribed under section 139(1). However, it shall be Rs. 1,000 if the total income of an assessee does not exceed Rs. 5 lakh.

- Taxpayer should download Form 26AS and should confirm actual TDS/TCS/Tax paid. If any discrepancy is observed then suitable action should be taken to reconcile it.
- Compile and carefully study the documents to be used while filing the return of income like bank statement/passbook, interest certificate, investment proofs for which deductions is to be claimed, books of account and balance sheet and P/L A/c (if applicable), etc. No documents are to be attached along with the return of income.
- The taxpayer should identify the correct return form applicable in his case.
- Carefully provide all the information in the return form.
- Confirm the calculation of total income, deductions (if any), interest (if any), tax liability/refund, etc.
- If any tax is payable as per the return of income, then the same should be paid before filing the return of income.
- Ensure that other details like PAN, address, e-mail address, bank account details, etc., are correct.
- After filling all the details in the return of income and after confirmation of all the details, one can proceed with filing the return of income.
- In case return is filed electronically without digital signature do not forget to post the acknowledgement of filing the return of income at CPC Bengaluru (as discussed earlier).

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|---------|-------------------------------------|--------------------|---------------------|----------------|----------------|
| 1 | Statement of Financial Transactions | 2020-21 | 114E | 31st May 2021 | 30th June 2021 |
| 2 | Statement of reportable account | Calendar year 2020 | 114G | 31st May 2021 | 30th June 2021 |
| 3 | TDS returns | Jan to March 2021 | 31A | 31st May 2021 | 30th June 2021 |
| 4 | Form 16 wrt Tds salary returns | 2020-21 | 31 | 15th June 2021 | 15th July 2021 |
| 5 | TDS/TCS book adjustment Form 24G | May-21 | 30 & 37CA | 15th June 2021 | 30th June 2021 |

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|----------------|--|-----------------------|----------------------------|-----------------------|------------------------|
| 6 | Tax Deduction statement by trustees of approved superannuation fund | 2020-21 | 33 | 31st May 2021 | 30th June 2021 |
| 7 | Statement of Income paid or credited by investment fund in Form 64D | 2020-21 | 12CB | 15th June 2021 | 30th June 2021 |
| 8 | Statement of Income paid or credited by investment fund in Form 64C | 2020-21 | 12CB | 30th June 2021 | 15th July 2021 |
| 9 | Income tax returns for non-audit cases | 2020-21 | Section 139(1) | 31st July 2021 | 30th Sept. 2021 |

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|----------------|---|-----------------------|------------------------------|--------------------------|-----------------------|
| 10 | Audit report | 2020-21 | Income Tax Act | 30th Sept. 2021 | 31st Oct. 2021 |
| 11 | Audit report for international transaction or specified domestic transaction | 2020-21 | Section 92E | 31st October 2021 | 30th Nov. 2021 |
| 12 | Income tax returns for audit/ company cases | 2020-21 | Section 139(1) | 31st Oct. 2021 | 30th Nov. 2021 |
| 13 | Income tax returns with due date 30th November 2021 | 2020-21 | Section 139(1) | 30th Nov. 2021 | 31st Dec. 2021 |
| 14 | Belated/ Revised income tax returns | 2020-21 | Section 139(4) 139(5) | 31st Dec. 2021 | 31st Jan. 2022 |

Self-Assessment - Section 140A

- Where any tax is payable after deducting
 - ❖ relief, rebate, advance payment of tax or tax deducted or collected at source or MAT or AMT credit, relief u/s 89,
 - ❖ Interest
 - u/s 234A delay in filing return
 - u/s 234B - delay in in payment of advance tax
 - u/s 234 C - deferment of advance tax
 - Late fee u/s 234F

Self-Assessment Tax Payable- Section 140A

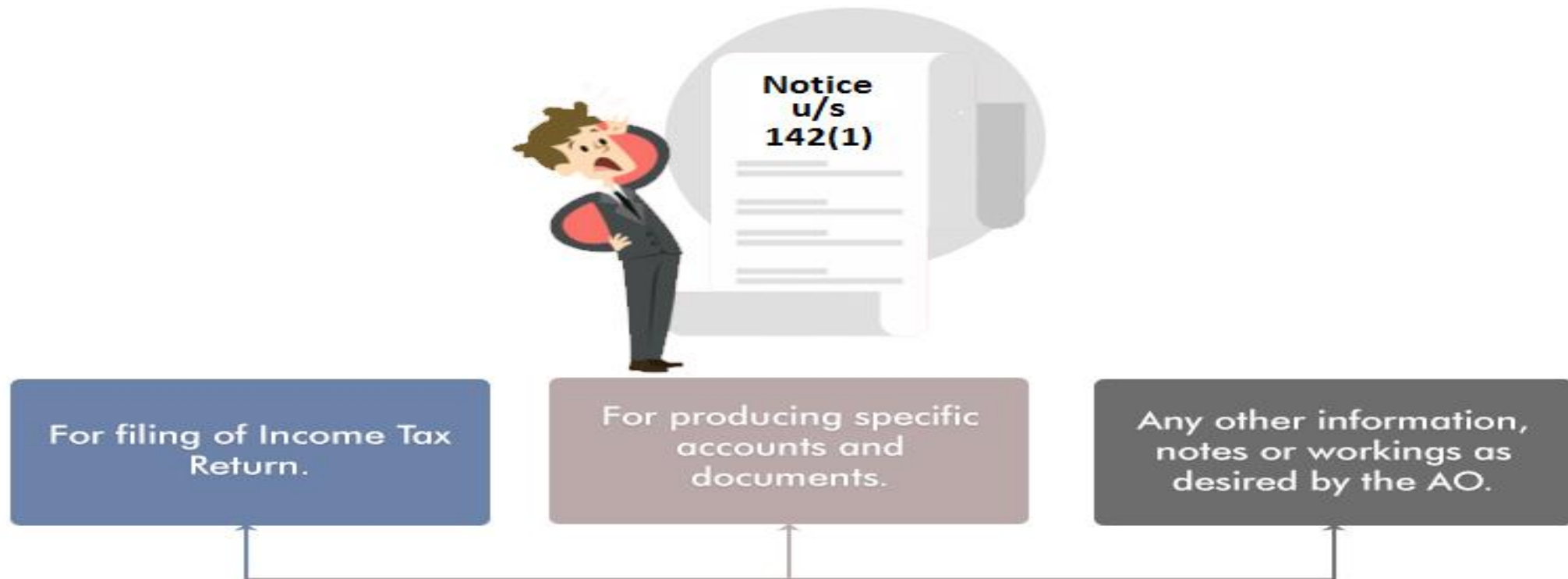
| | | |
|--|------|------|
| Find out income-tax, surcharge and health and education cess as per return of income | | XXXX |
| <i>Add:</i> Interest and fee— | | |
| Interest under section 234A for late submissions of return of income* | XXXX | |
| Interest under section 234B for non-payment or short payment of advance tax* | XXXX | |
| Interest under section 234C for non-payment or short payment of different instalments of advance tax* | XXXX | |
| Fee under section 234F for late submission of return of income | XXXX | XXXX |
| Total tax, interest and fee | | XXXX |
| <i>Less:</i> Advance tax, tax deducted at source, tax collected at source, MAT credit under section 115JAA, alternate minimum tax credit under section 115JD and relief under section 90/90A/91A | | XXXX |
| Self-assessment tax payable under section 140A | | XXXX |

Self-Assessment - Section 140A

- ❑ **In case of payment of shortfall of tax**
 - ❖ first be adjusted towards fee and
 - ❖ thereafter towards interest payable and
 - ❖ the balance, if any, shall be adjusted towards tax payable.

- ❑ After assessment, any amount paid under this section shall be deemed to have been **paid towards such assessment.**
- ❑ If an assessee fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to **be an assessee in default.**
- ❑ A return furnished without paying self-assessment tax & interest, if any, shall be treated as **defective return.**

INQUIRY BEFORE ASSESSMENT



INQUIRY BEFORE ASSESSMENT

- ❑ Issue of notice to the assessee [Sec. 142(1)]
- ❑ For making assessment, the Assessing Officer may serve a notice on any person -
 - ❖ • who has not submitted a return within time limit allowed u/s 139; or
 - ❖ • before the end of relevant assessment year
- ❑ Such notice may require the Assessee to submit the Return of Income [Sec. 142(1)(i)]:

Tax Point: In case assessee has not furnished the return of income, it is not mandatory for the AO to issue notice u/s 142(1)(i) if he wishes to make best judgment assessment.

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Conducting Inquiry: B

Before issue of Notice, AO shall conduct enquiries, if required.

- ❖ Prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment
- ❖ AO cannot conduct an enquiry on any information which has not been obtained through RMS of the CBDT or the objection raised by the CAG.

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Granting an opportunity of being heard

❖ AO shall provide an opportunity of being heard to the Assessee (prior approval of specified authority),

❖ Notice to Show Cause to be issued to Assessee within time not being less than 7 days but not exceeding 30 days from the date on which such notice is issued (may be extended).

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Pass an order:

- ❖ Material available on record & reply of the assessee, the AO shall decide, whether or not it is a fit case to issue a notice under new Section 148.
- ❖ AO shall pass Order within 1 month from end of the month in which the reply of the assessee is received / where no such reply is furnished, within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires.
- ❖ Serve a copy of such order along with such notice on the assessee.
- ❖ Copy of the order passed by the AO under Section 148A shall be supplied along with the copy of the notice issued u/s 148.

Scheme of Taxation of Trust

- ❑ The exemptions available under section 11 are subject to the conditions specified in sections 11, 12, 12A, 12AB (procedure for fresh registration) and 13 of the Act.
- ❑ The organization must be solely existing for the public benefit. Such organization can be either religious or charitable in nature.
- ❑ Section 2(15) of the Income-tax Act defines **charitable purpose for the purpose of the Act** and includes relief of the poor education, medical relief and the advancement of any other object of general public utility, Yoga, any other object of general public utility.
- ❑ Section 11 provides that the Income from trust property (subject to provision of sections 60 to 63 of the Income-tax Act, 1961) shall be subject to exemption as provided in clauses (a), (b), (c) and (d) of sub-section (1) of section 11. **Hence, initially, one needs to compute income of an organisation which is subject to exemption.**

Scheme of Taxation of Trust

- ❑ Section 11(l)(a) begins with the words *income derived from property* held under trust wholly for charitable or religious purposes...'. The word 'wholly' refers to the object and not to the property held under trust. The trust should be wholly for charitable or religious purposes, but it is not necessary that the property should be wholly with the trust.

- ❑ It may be noted that section 11(1)(a) uses the words "income derived from property held under trust **wholly** for charitable or religious purposes...". This section does not distinguish between a private and public religious trust, therefore, as far as section 11 is concerned there is no difference between a public and private religious trust.

Scheme of Taxation of Trust

- ❑ Income shall be exempt to the extent applied for wholly for charitable or religious purposes in India and this exemption is also available to the income accumulated up to 15% of the income. [Section 11(1)(a)]
- ❑ If the organisation was created prior to 1-4-1962, then the exemption will be available even if it is partly for religious or charitable purposes. The income to the extent applied for religious or charitable purposes is exempt under section 11(1)(b) and the same condition of 85% application would apply.

Scheme of Taxation of Trust

- ❑ U/s 11(1)(c) income of charitable or religious organizations is required to be applied in India only, unless the organization is specifically permitted to work outside India or works for notified purposes which tend to promote international welfare in which India is interested.
- ❑ Organizations created before 1-4-1952 can apply income outside India also. Organizations created on or after 1-4-1952 can apply income outside India for charitable purposes which tend to promote international welfare in which India is interested.
- ❑ These organizations will get exemption under section 11 only if the CBDT has permitted or notified such activity for charitable purposes outside India.

Scheme of Taxation of Trust

- ❑ U/s 11(l)(d) income in the form of voluntary contribution with a specific direction that they shall form part of corpus shall be exempt.
- ❑ The Finance Act, 2021 provides that the corpus donation shall be exempt only if invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus.
- ❑ Thus, the corpus donation received by an organization will not be treated as exempt income unless it is invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.

Scheme of Taxation of Trust

- ❑ To cover the shortfall in application of 85%, Clause 2 of *Explanation* to section 11(1) provides for the option to apply the shortfall in application in subsequent year or in the year of receipt (subject to condition) and section 11(2) provides for accumulation of any part of income for specific purpose for five years, subject to certain conditions.
- ❑ Under section 11(1B) and section 11(3), income shall be subjected to tax if the conditions for option or accumulation as mentioned in previous para are not complied with.

Scheme of Taxation of Trust

- ❑ *Explanation 2* to section 11(1) provides for disallowances of application amount regarding corpus grant, violation of TDS provisions and payment exceeding INR 10,000 otherwise than by account payee cheque.
- ❑ Capital gains are also required to be applied for charitable and religious purposes and therefore, it will amount to depletion of the corpus of the organisation. In order to overcome this disadvantage, the Income-tax Act has brought section 11(1A). Section 11(1A) provides for exemption of capital gain if these are utilised for acquiring another capital asset.

Scheme of Taxation of Trust

1. Section 11(4) provides that “property held under trust” shall include a business undertaking so held and section 11(4A) provides exemption of income from incidental business activities on specified conditions.
2. Section 11(5) together with Rule 17C provides for the modes where investment by a trust can be made.
3. Section 11(6) of the Income Tax Act provides that depreciation shall not be allowed while computing income subject to application against those assets which have been treated as application in earlier years.
4. Section 11(7) provides that exemption under section 10 shall not be available except income referred to in section 10(23C), 10(46) and section 10(1).

Scheme of Taxation of Trust

- ❑ The proviso to section 11(7) further provides that an organisation registered under section 12AB cannot simultaneously have approval under section 10(23C) or notified u/s 10(46).
- ❑ By amendment in Section 11, it is clarified that the registration u/s 12AA/12AB shall be inoperative from the date on which the trust or institution has been approved under clause (23C) of section 10 or is notified under clause (46) of the Income-tax Act.

Scheme of Taxation of Trust

- ❑ Section 12(1) provides that any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall, for the purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes.
- ❑ However, contribution received with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in income for the purposes of section 11. In other words, voluntary contributions other than those towards corpus specific direction are deemed as income.

Scheme of Taxation of Trust

- ❑ Section 12A(1) provides conditions for applicability of sections 11 and 12.
- ❖ provisions of sections 11 and 12 shall not be applicable unless the conditions as specified in sub-section (1) of section 12A are fulfilled.
- ❖ Conditions include registration under section 12AA/12AB, obtaining and furnishing the return, submission of return etc.

Scheme of Taxation of Trust

- ❑ Proviso to sub-section (2) of section 12A provides for the benefit of registration even for earlier years once the registration is granted.
- ❑ Section 12AB provides the process of registration as well as situation and process of cancellation of registration.
- ❑ Section 13 of the Act specifies the circumstances under which the benefits under sections 11 and 12 would not be available to an organisation.
- ❑ Section 13 has been enacted as an exception to section 11, and therefore, the benefits which are otherwise available under sections 11 and 12, will not be available under the circumstances stated in section 13.

Computation of Income Available for Application

- ❑ 1. Compute income from trust property which shall be eligible for exemption
- ❑ 2. Then amount applied for charitable/ religious purposes should be determined and can be claimed as exemption.

Computation of Income available for application/exemption:

- ❖ As per Circular No. 5-P(LXX-6), dated June 19, 1968, the income from trust property shall be computed in commercial sense and not as per normal computation of income.
- ❖ Exempt income [other than section 10(7)- payment made outside India, 10(23C) and 10(46)] will not be excluded but shall form part of income subject to application.
- ❖ Fund raising expenses or expenses incurred to earn income should be deducted while computing the income as a charge against income.
- ❖ Depreciation will not be considered as charge against income w.e.f. 1-4- 2015 (assessment year 2015-16) if the asset has been claimed as application.
- ❖ Exempt portion of anonymous donation shall form part of income subject to application.

Computation of Income of Trust - Application of Income:

- ❑ The amount of application for charitable/religious purpose shall include –
 - ❖ **Revenue & capital nature of application:** It is permissible to claim both revenue & capital nature of application provided it is used for charitable/religious purposes.
 - ❖ **Repayment of Loan:** If the expenses are incurred out of loan, then there is no application out of income in the year of expenses being incurred but in such cases repayment of loan shall be considered as application in the year in which loan is repaid.
 - ❖ **The Finance Act, 2021** provides that an application from loans and borrowings shall not be considered as an application for charitable or religious purposes, However, when such loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as an application in the previous year in which it is repaid and to the extent, it is repaid.

Computation of Income of Trust - Application of Income:

The amount of application for charitable/religious purpose shall include –

- Therefore, application from loans and borrowings shall not be considered as an application for charitable or religious purposes for the purposes of the Third Proviso of Section 10(23C) and clauses (a) and (b) of section 11(1).

- However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as an application in the previous year in which it is repaid to the extent of such repayment.

Computation of Income of Trust - Application of Income:

❑ **Inter charity donation other than towards corpus.**

- ❖ Inter charity donation other than towards corpus fund shall be considered as application for the purpose of section 11 & ensured that used on similar objects.
- ❖ Inter charity donation can be for specified purposes as per the objects of the donor trust and to the donee trust having similar objects.
- ❖ In case unrestricted or voluntary contribution are given as inter charity donation, then it is desirable that the objects of the donee organisation are also dominantly similar with the donor organisation.

Computation of Income of Trust - Application of Income:

❑ **Administrative expenses:**

- ❖ Administrative expenses are normally related to both earning of income as well as for application of income and therefore, in certain cases, the tax department has taken the view that administrative expenses should be deducted while computing the income instead of treating these expenses as application of income for charitable & religious purpose.
- ❖ However, all the administrative expenses should be allowed as application of income so long as these expenses are not directly attributable to earning income.

Computation of Income of Trust - Application of Income:

☐ Activity outside India:

- ❖ Organisations created before 1-4-1952 can apply income outside India also.
- ❖ Organisations created on or after 1-4-1952 can apply income outside India for charitable purposes which tend to promote international welfare in which India is interested.
- ❖ Organisations will not get exemption unless CBDT specifically permits to work outside India or notifies the purposes which tend to promote international welfare in which India is interested.

☐ Specific disallowances of application amount:

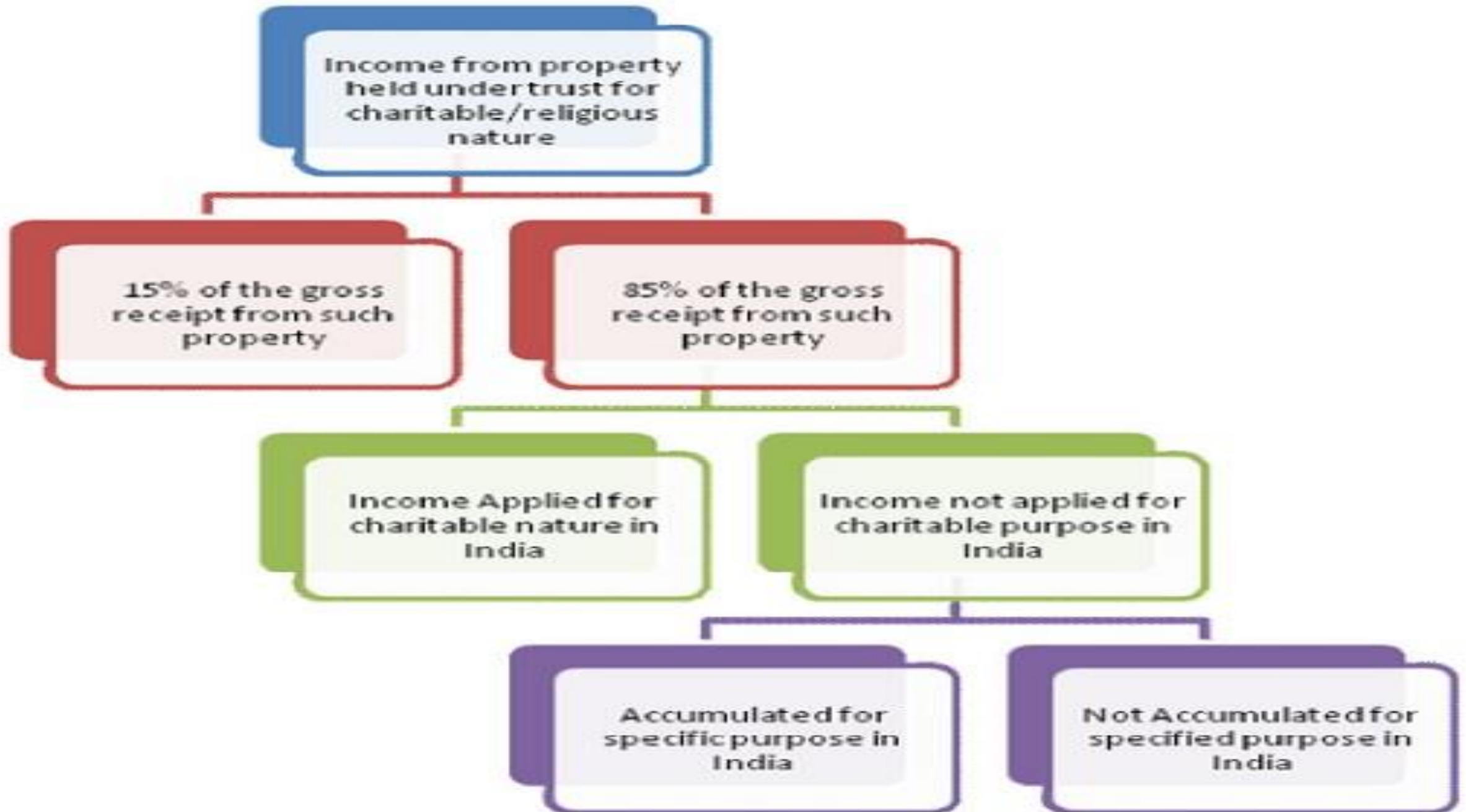
- ❖ Amount of application shall be reduced by 30% of the corresponding amount applied for because of non-compliance of TDS provisions or by the full amount if the corresponding payment in excess of INR 10,000 is made in cash.

Computation of Income of Trust - Application of Income:

❑ Specific disallowances of application amount:

❖ **Inter-charity donation** – Corpus grant to other trust registered under section 12AA shall not to be considered as application [w.e.f. A.Y. 2018-19].

❖ Finance Act, 2020 also provides that any corpus donation made by trust or institution registered under section 12AA to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or subclause (vi) or sub-clause (via) of section 10(23C) shall not be treated as an application of income.



| Particulars | Taxability |
|---|--|
| 15% of gross receipts from such trust property | Exempt |
| 85% of gross receipt from such trust property | |
| i. Income Applied for Charitable Purposes in India | Exempt (Sec11(1))to the extent to which applied for the following purposes: 1. Purchase of capital asset. 2. Repayment of loan for purchase of capital asset .3. Revenue Expenditure. 4. Donation to trust registered u/s 12AA or u/s 10(23C) |
| Income deemed to be applied for charitable purpose in India: In case whole or part of income is not received during that year in which it is derived | -Exempt in case : a. Income is applied for charitable purpose in India in the year of receipt or in the immediate succeeding year. b. Assessee submits a declaration to the Assessing Officer on or before the due date of filling of return as per section 139(1) that such income shall be applied for such purpose in the year of receipt or succeeding year. |

| Particulars | Taxability |
|-------------------|---|
| In any other case | <p>-Exempt in case :</p> <p>a. Such income is applied in above mentioned charitable purposes in the immediately succeeding year.</p> <p>b. Assessee submits a declaration to the Assessing Officer on or before the due date of filling of return as per section 139(1) that such income shall be applied for such purpose in the immediate succeeding year.</p> |

| Particulars | Taxability |
|---|--|
| <p>II. Income not applied for charitable / religious purpose in India Accumulated for specific purpose in India</p> <p>Q) What are the modes in which income shall be accumulated for specific purpose (sec 11(5))??</p> <p>A) 1. Investment in government saving certificate/ UTI</p> <p>2. Deposit in post office savings bank/scheduled bank.</p> <p>3. Investment in immovable property.</p> <p>4. Deposit with or investment in bonds of a public co. having main object of providing long term finance for urban infrastructure/industrial development/ residential house, in India</p> | <p>♠ Exempt (sec 11(2)) in case accumulated for specific purpose in India subjected to the following conditions:</p> <p>A) Assessee gives notice to Assessing officer specifying purpose and period (cannot exceed 5 years) of accumulation before assessment is complete.</p> <p>B) Accumulated amount is deposited /invested in specified form.</p> <p>♠ Withdrawal of Exemption in the following cases (sec11(3)): (NEXT PPT)</p> |

Withdrawal of Exemption in the following cases (sec11(3))

| Particulars | Year of Withdrawal |
|---|---|
| Applied for purpose other than the purpose for which it is accumulated or set apart | Income of previous year in which so applied |
| Ceases to be invested in the forms specified u/s11(5) | Income of previous year in which it so ceases |
| If not utilised till 5 years or immediately succeeding year | Income of previous year immediately following expiry of 5 th year. |
| Donated to trust registered u/s 12AA or 10(23C) | Income of previous year in which income is so donated |

| Particulars | Taxability |
|---|--|
| | |
| Not accumulated for specific purpose in India | Taxable in case income is not applied for charitable/religious purpose in India and is also not accumulated for specific purpose in India. |

-

- ☐ The amount can be accumulated by investing in the following securities:
- ☐ (i) investment in savings certificates under the Small Savings Schemes of Government;
- ☐ (ii) deposit in any account with the Post Office Savings Bank;
- ☐ (iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking.
- ☐ (iv) investment in units of the Unit Trust of India
- ☐ (v) investment in any security for money created and issued by the Central Government or a State Government;
- ☐ (vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- ☐ (vii) investment or deposit in any public sector company;
- ☐ (viii) investment in Gold Sovereign Bonds issued by RBI;
- ☐ (ix) investment in immovable property.

Section 13: Section 11 not to apply in certain cases:

- ☐ 1. Entire income from the property held under a trust for private religious purposes which does not ensure for the benefit of the public.
- ☐ 2. Entire income of a charitable trust or institution created or established for the benefit of any particular religious community or caste.
- ☐ 3. Entire income of the following charitable/religious trust:-
 - ☐ a) where any part of the income of such trust is used for the benefit of any person specified under sec 13(3) or
 - ☐ b) Where any property of the trust is used for the benefit of any person specified under sec 13(3)
- ☐ 4. Entire income of a charitable /religious trust whose funds are not invested in modes specified under section 11(5).

Income without the Benefit of Section 11 and Directly Subject to Tax

- ❑ It may be noted that income which is not subject to exemption benefit is subject to tax. Following income falls under this category:
- ❑ **Sec.13(7) provides that Anonymous donation in excess of the exemption limit:** Exemptions available u/s 11 are not available to taxable portion of anonymous donations and they are to be taxed as per the provisions of sec. 115BBC (30%).
- ❑ **Income u/s 11(1B) of the Income-tax Act, 1961:** where an option has been exercised to spend in subsequent year or in the year of receipt and where the income is not so applied in the year of receipt or in the year immediately following the year of receipt, then the amount not so applied shall be treated as income in the hands of the organisation in the year following the previous year in which the income is received and shall be charged to tax without the benefit of section 11.

Income without the Benefit of Section 11 and Directly Subject to Tax

- ❑ It may be noted that income which is not subject to exemption benefit is subject to tax. Following income falls under this category:
- ❑ **Income u/s 11(3) of IT Act, 1961:** The benefit of exemption, allowed to an assessee-trust for accumulation u/s 11(2) of its income in excess of 15% is subject to certain conditions and will be forfeited if such conditions are not complied with by the assessee and the amount of exemption allowed will be deemed to be the income of the assessee trust.
- ❑ **Value of services (being medical & educational) to a specified person:** Section 12(2) provides for the taxability of value of any Medical or Educational Services provided to Interested Persons by a Charitable Trust or Institution running a Hospital or Medical or Educational Institution.

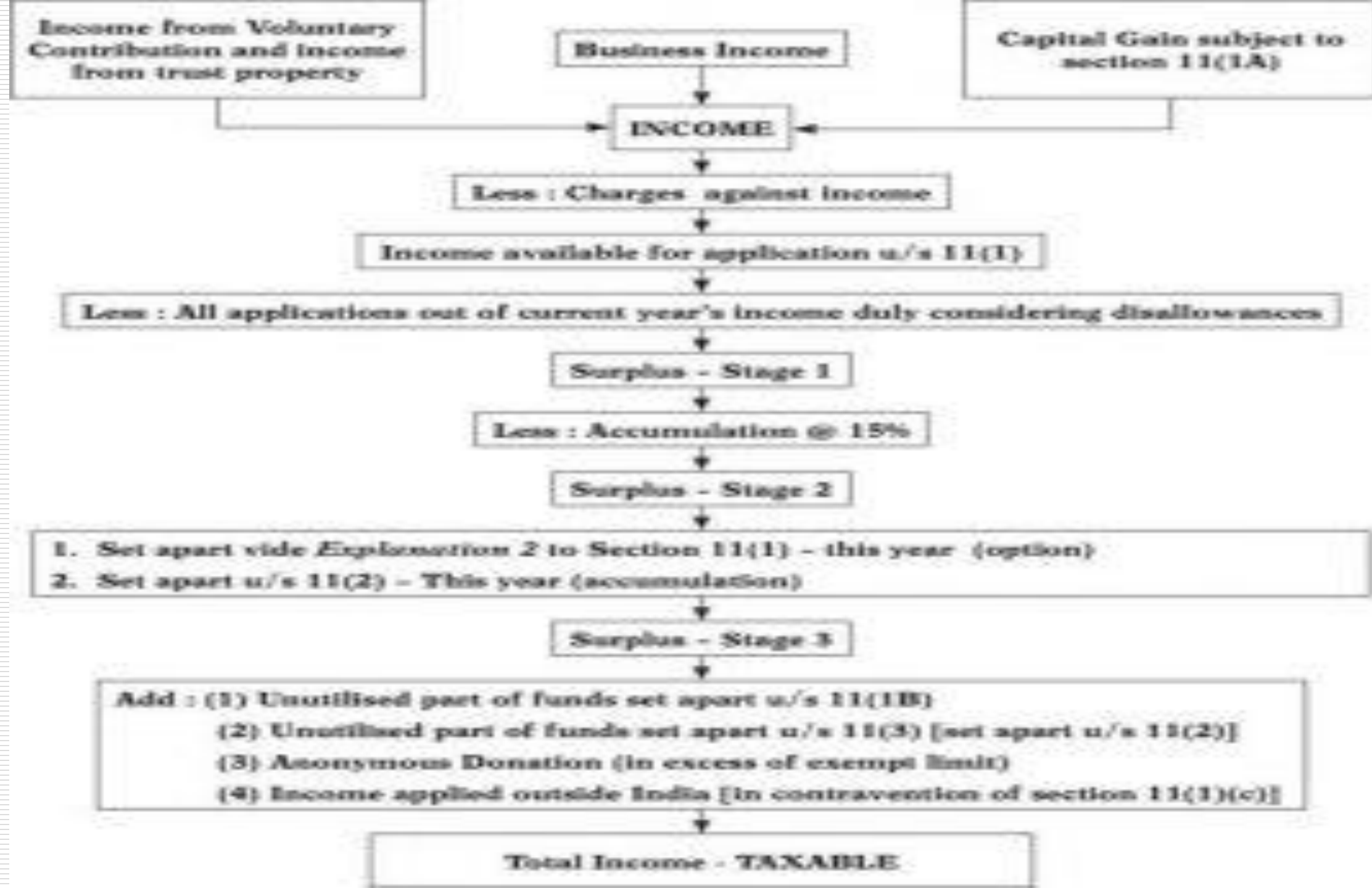
❑ Income without the Benefit of Section 11 and Directly Subject to Tax It may be noted that income which is not subject to exemption benefit is subject to tax. **Following income falls under this category:**

Medical or educational services to interested persons under section 12(1):

- ❖ If a charitable or religious trust is running a hospital or a medical institution, or an educational institution and it provides medical or educational services to interested persons (that is, the author of the trust, trustee, substantial contributor contributing more than X 50,000 during the year, or any relative of such persons), the value of medical/educational services is deemed to be the income of the trust or institution, derived from property held under trust.
- ❖ The value of such services is chargeable to tax during the previous year in which such services are rendered.
- ❖ The exemption of section 11 does not apply to the value of such services.

❑ Amount of income applied outside India in contravention of section 11(1)(c):

- ❖ It may be noted that if an organisation incurs expenditure outside India in contravention of section 11(1)(c), then the entire exemption will not be lost.
- ❖ Income to the extent not applied in India will not be eligible for exemption under section 11 and shall be subject to tax.



| RETURN U/S | EXEMPTION CLAIMED U/S | FORMS TO BE FURNISHED ON OR BEFORE THE DUE DATE OF FILING RETURN OF INCOME |
|------------------------|---|--|
| Section 139(4A) | Section 11 | <ul style="list-style-type: none"> ▪ Audit Report in Form 10B to be e-filed. ▪ Form 9A to claim exemption under clause 2 of explanation to section 11(1) (Deemed Application) ▪ Form 10 to claim exemption under section 11(2) (Accumulation) |
| Section 139(4B) | Section 13A and 13B | For Electoral Trust (Sec. 13B) Audit Report in Form 10BC to be filed with the Jurisdictional Commissioner before due date for filing of the return |
| Section 139(4C) | Section 10(21), 10(22B), 10(23A), 10(23B), 10(23C)(iiiab), 10(23C)(iiiac), 10(23C)(iiiad), 10(23C)(iii ae), 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10(23D), 10(23DA), 10(23FB), 10(24), 10(46), 10(47), 10(23AAA), 10(23EC), 10(23ED), 10(23EE) and 10(29A) | For claim of exemption u/s 10(23C)(iv)/(v)/(vi)/(via), Audit Report in Form 10BB to be e-filed. |
| Section 139(4D) | Section 10(21) read with section 35(1) | |

■

PENALTIES RELATED TO RETURNS OF INCOME

Penalty for default in making payment of Self Assessment Tax

As per section 140A(1) any tax due (after allowing credit for TDS, advance tax, etc.) along with interest and fee* should be paid before filing the return of income. Tax paid as per section 140A(1) is called 'self assessment tax'.

As per section 140A(3), if a person fails to pay either wholly or partly self assessment tax or, interest, or fee* then he will be treated as assessee in default in respect of unpaid amount. As per section 221(1), if a taxpayer is treated as an assessee in default, then he shall be held liable to pay penalty of such amount as the Assessing Officer may impose and in the case of a continuing default, such further amount or amounts as the assessing officer may, from time to time, direct. However, the total amount of penalty cannot exceed the amount of tax in arrears.

Before charging penalty under section 221(1), the tax authority shall give the taxpayer a reasonable opportunity of being heard. No penalty is levied if the taxpayer proves to the satisfaction of the tax authorities that the default was for good and sufficient reason.

Note: An assessee shall not cease to be liable to any penalty under section 221(1) merely by reason of the fact that he paid the tax before the levy of such penalty.

Self-Assessment Tax Payable- Section 140A

| | | |
|--|------|------|
| Find out income-tax, surcharge and health and education cess as per return of income | | XXXX |
| <i>Add:</i> Interest and fee— | | |
| Interest under section 234A for late submissions of return of income* | XXXX | |
| Interest under section 234B for non-payment or short payment of advance tax* | XXXX | |
| Interest under section 234C for non-payment or short payment of different instalments of advance tax* | XXXX | |
| Fee under section 234F for late submission of return of income | XXXX | XXXX |
| Total tax, interest and fee | | XXXX |
| <i>Less:</i> Advance tax, tax deducted at source, tax collected at source, MAT credit under section 115JAA, alternate minimum tax credit under section 115JD and relief under section 90/90A/91A | | XXXX |
| Self-assessment tax payable under section 140A | | XXXX |

Late Fee for filing Return of Income

*W.e.f. assessment year 2018-19, if assessee failed to furnish return of income within due date as prescribed under section 139(1) then as per section 234F, he will be required to pay fee of:-

- a) Rs. 5000 if return is furnished on or before 31 December of assessment year.
- b) Rs. 10,000 in any other case.

However, if total income of the person does not exceeds Rs. 5 lakh then fee payable shall be Rs. 1000.

Note:

The Finance Act, 2021 has revised the fee for default in furnishing return of income. W.e.f., Assessment Year 2021-22, fee for default in furnishing return of income shall be Rs. 5,000 if return has been furnished after the due date prescribed under section 139(1). However, it shall be Rs. 1,000 if the total income of an assessee does not exceed Rs. 5 lakh.

Penalty for default in making payment of Tax

As per section 220(1), when a demand notice under section 156 has been issued to the taxpayer for payment of tax (other than notice for payment of advance tax), then such amount shall be paid within a period of 30 days of the service of the notice at the place and to the person mentioned in the notice. In certain cases, the above period of 30 days can be reduced by the tax authorities with the previous approval of designated authorities. If the taxpayer makes default in payment of any tax due from him, then apart from other penal provisions, he is treated as an assessee in default.

As per section 221(1), if a taxpayer is treated as an assessee in default, then he shall be liable to pay penalty of such an amount as the Assessing Officer may impose. However, penalty cannot exceed the amount of tax in arrears. Thus, penalty under section 221(1) is a general penalty and can be levied in all the cases in which the taxpayer is treated as an assessee in default.

Before charging penalty as discussed above, the tax authorities shall give the taxpayer a reasonable opportunity of being heard. No penalty is levied if the taxpayer proves to the satisfaction of the tax authorities that the default was for good and sufficient reason.

Note: An assessee shall not cease to be liable to any penalty under section 221(1) merely by reason of the fact that he paid the tax before the levy of such penalty.

Penalty for failure to comply with notice issued under section 142(1) or 143(2) or direction for audit under section 142(2A)

Penalty under section 272A is levied if a taxpayer fails to comply with notice issued to him under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A). Before understanding the penalty provisions of section 272A we shall take a brief overview of provisions of section 142(1), 142(2A) and section 143(2).

Under section 142(1), the Assessing Officer can issue notice asking the taxpayer

- to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require or
- to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

**Penalty for failure to comply with notice issued
under section 142(1) or 143(2) or direction for audit under section 142(2A)**

Section 142(2A) deals with special audit. As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied, then the Assessing Officer can direct the taxpayer to get his accounts audited or re-audited from a chartered accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Section 143(2) deals with the provisions relating to the issuance of notice before conducting a scrutiny assessment under section 143(3).

If the taxpayer fails to comply with notice issued to him under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A), then as per section 272A he shall be liable for a penalty of Rs. 10,000 for each failure.

Penalty for underreporting and misreporting of income

Many times a taxpayer may try to reduce his tax liability by underreporting or misreporting of income. In such a case, by virtue of Section 270A, the taxpayer will be held liable for penalty. The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However, in a case where under-reporting of income results from misreporting of income, the taxpayer shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income.

Underreporting of income

A person shall be considered to have under-reported his income in the following cases:

| Cases | Income assessed under normal Provisions | Income assessed under MAT/AMT Provisions |
|---|--|--|
| Return of Income is filed | Income assessed is greater than the income determined in the return processed u/s. 143(1)(a) | The deemed total income assessed or reassessed as per the provisions of sec. 115JB/115JC, is greater than the deemed total income determined in the return processed under sec 143(1)(a) |
| No Return of Income is filed or return is filed for the first time under section 148. | The income assessed is greater than the <u>maximum exemption limit</u> | The deemed total income assessed as per the provisions of sec. 115JB/115JC, is greater than the <u>maximum exemption limit</u> . |
| Case of Reassessment | The income reassessed is greater than the income assessed or reassessed immediately before such reassessment | The deemed total income reassessed as per the provisions of sec. 115JB/115JC, is greater than the deemed total income assessed or reassessed immediately before such reassessment. |
| Loss Assessed | The income assessed or reassessed has the effect of reducing the loss or converting such loss into income. | The income assessed or reassessed has the effect of reducing the loss or converting such loss into income. |

Misreporting of Income

The following cases will be considered as misreporting of income:

1. Misrepresentation or suppression of facts;
2. Failure to record investments in the books of account;
3. Claim of expenditure not substantiated by any evidence;
4. Recording of any false entry in the books of account;
5. Failure to record any receipt in books of account having a bearing on total income;
and
6. Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Example: Misreporting of Income

- ❑ If a closely held company issues its shares at a price higher than its fair market value (FMV) then it shall be liable to pay tax on difference between the FMV and issue price of the shares as per section 56(2)(viib) of the Income-tax Act. Such tax is called as 'Angel Tax' in common parlance. However, the Department for Promotion of Industry and Internal Trade (DPIIT) has issued a Notification No. 127(E), dated 19-02-2019 whereby an eligible start-up shall be exempted from levy of Angel tax if it satisfies the conditions mentioned in such notification.
- ❑ With a view to ensure compliance to the conditions specified in the notification, the Finance (No. 2) Act, 2019 reiterates that in case of failure to comply with the conditions specified in the notification, the consideration received from issue of shares as exceeding the fair market value of such shares, shall be deemed to be income of the company chargeable to tax for the previous year in which such failure takes place. Further, it shall be deemed that the company has misreported the said income and, **consequently, a penalty of an amount equal to 200% of tax payable on the underreported income (i.e., difference between issue price and fair market value of shares) shall be levied as per section 270A.**

Penalty for failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA

For the purpose of Income-tax Act, a taxpayer is required to maintain the books of account as provided in section 44AA. If the taxpayer fails to maintain books of account as per the provisions of section 44AA, then he shall be liable to pay penalty under section 271A. Penalty under section 271A is Rs. 25,000.

Penalty for failure to keep and maintain information and document etc. in respect of international transaction or specified domestic transaction

Section 92D provides that every person entering into an international transaction or specified domestic transaction shall keep and maintain such information and documents as may be prescribed in this regard under rule 10D. Further a person, being a constituent entity of an international group, shall also keep and maintain such information and documents in respect of an international group as may be prescribed. The Income-tax Authority may require the taxpayer to produce these documents. On such demand by the Income-tax Authority, the taxpayer has to provide these documents within a period of 30 days or such extended period as may be allowed by the tax authorities. These documents should be maintained for a period of 8 years from the end of the relevant assessment year.

Penalty for failure to keep and maintain information and document etc. in respect of international transaction or specified domestic transaction

The provisions relating to penalty for failure to keep and maintain information and documents in respect of international transaction or specified domestic transaction are given in section 271AA. Penalty under section 271AA is attracted in the case of any of the following failures:

- 1) If a person fails to keep and maintain information and documents in respect of international transaction or specified domestic transaction as provided in section 92D read with rule 10D.
- 2) If a person fails to report the international transaction or specified domestic transaction which he is required to do so.
- 3) If a person maintains or furnishes an incorrect information or document in respect of international transaction or specified domestic transaction.

Penalty will be a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by the taxpayer.

If any person, being a constituent entity of international group fails to furnish information and documents in respect of international group [as referred to in Section 92D], it may be liable to pay penalty of Rs 5,00,000.

Penalty in case of search

To unearth the undisclosed income, tax authorities generally conduct search at the premises of the taxpayer. Section 132 provides the circumstances in which the tax authorities can initiate a search. If a search has been initiated and any undisclosed income is unearthed in the search, then penalty can be levied under section 271AAB.

The quantum of penalty under section 271AAB shall be as follows:

Where search has been initiated on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the president (i.e., 16-12-2016)-

- a) 30% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income
- b) 60% of undisclosed income of the specified previous year if it is not covered by above provisions

Penalty for 'false entry' in the books of account

The Finance Act 2020 has introduced a new section 271AAD under the Act to provide for a levy of penalty on a person, if during any proceedings under the Act, it is found that in the books of accounts maintained by him there is:

- a) A false entry; or
- b) Any entry relevant for computation of total income of such person has been omitted to evade tax liability.

The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry.

It is also provided that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amount of such false entries or omitted entry.

Penalty for 'false entry' in the books of account

For the purpose of section 271AAD, the false entries to include use or intention to use:

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence;
- b) 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
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Consequences of default in submission of statement/certificate prescribed under section 35/Section 80G

The Finance Act, 2020 has amended section 35 of the Income-tax Act to provide that deduction available under this section shall be available to the research association, university, college or other institution or the company only if the assessee delivers a statement of donations, as prescribed by the board, and also furnishes certificate of the amount of donation to the donors.

Similar amendment has also been made in Section 80G to provide that entities receiving donation shall be required to file a statement of the donation received and shall issue a certificate to donor.

In order to ensure compliance with the provision, the Finance Act, 2020 has inserted a new section 234G which provides for levy of fee of Rs. 200 per day if taxpayer fails to submit such statement or certificate within prescribed time. However, the fee shall not exceed the amount in respect of which the failure has occurred. Such fees shall be paid before submitting such statement or before furnishing of certificate, as the case may be.

Consequently, a new section 271K has been inserted in the Act which empowers the Assessing Officer to levy a penalty of Rs. 10,000 to Rs. 1 lakh, if assessee fails to furnish the statement or fails to furnish a certificate.

Penalty in case of income from undisclosed sources

The Assessing Officer may make addition to the income of an assessee under section 68, section 69, section 69A, section 69B, section 69C or section 69D if assessee fails to explain the nature and source of his income.

Section 271AAC of the Income-tax Act (inserted with effect from Assessment Year 2017-18 vide Taxation Laws (Second Amendment) Act, 2016) empowers AO to levy penalty at the rate of 10% of the tax payable under section 115BBE if any addition is made under section 68, section 69, section 69A, section 69B, section 69C, section 69D. However, no penalty shall be levied if such income is disclosed in the return of income and tax on such income is paid under Section 115BBE on or before the end of the relevant previous year.

Failure to get accounts audited or furnish a report of audit as required under section 44AB

Section 44AB prescribes when the accounts of the taxpayer are to be audited. If a taxpayer, in spite of the requirement of section 44AB, fails to get his accounts audited, then he can be held liable for penalty under section 271B. Penalty under section 271B will be levied for failure to get the accounts audited or failure to furnish a report of audit as required under section 44AB. Penalty shall be one-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, whichever is less.

Penalty for failure to furnish a report from an accountant as required by section 92E

Section 92E provides that every person entering into an international transaction or specified domestic transaction shall obtain a report from a chartered accountant in the prescribed form and shall furnish the same on or before the date prescribed in this regard. If a taxpayer fails to do so, then he shall be liable to pay penalty under section 271BA. Penalty under section 271BA for failure to furnish a report from a chartered accountant as required by section 92E is Rs. 1,00,000.

Taking or accepting certain loans or deposits or specified sum in contravention of provisions of section 269SS

Section 269SS provides that no person shall take or accept loan or deposit or specified sum exceeding Rs. 20,000 by any mode other than account payee cheque or account payee demand draft or use of electricity clearing system through a bank account or through such other electronic modes as may be prescribed.

Specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Contravention of the provisions of section 269SS will attract penalty under section 271D. Penalty under section 271D shall be levied of an amount equal to loan or deposit taken or accepted.

Penalty on receipt of an amount of Rs. 2 lakh or more in cash

Section 269ST (as inserted by the Finance Act, 2017 with effect from 1/4/2017) provides that no person shall receive an amount of Rs. 2,00,000 or more,—

- (a) in aggregate from a person in a day;
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, or through such other electronic mode as may be prescribed.

However, the said restriction shall not apply to Government, any banking company, post office savings bank, co-operative bank or a person notified by the Central Government.

Section 271DA provides for levy of penalty on a person who receives a sum in contravention of the provisions of section 269ST. The penalty shall be equal to the amount of such receipt. However, the penalty shall not be levied if the person proves that there were good and sufficient reasons for such contravention.

Penalty for not providing facility for accepting payment through prescribed electronic modes of payment

The Finance (No. 2) Act, 2019 has inserted a new Section 269SU in Income-tax Act with effect from November 1, 2019. The section provides that every person engaged in business should mandatorily provide the facility for accepting payment through prescribed electronic mode, if the gross receipts from such business exceeds Rs. 50 crore during the immediately preceding previous year.

Consequential penal provisions have been inserted in Section 271DB, which provides for penalty of Rs. 5,000 rupees for every day of default in case the person does not accept payment through notified digital modes. The section also provides for immunity from penalty in case person proves that there is a good and sufficient reasons for such default.

Repaying loans or deposits or specified advance in contravention of provisions of section 269T

Section 269T provides that no person shall repay any loan or deposit **or specified advance** exceeding Rs. 20,000 by any mode other than account payee cheque or account payee demand draft in the name of the person who has made the loan or deposit or paid the specified advance or by use of electricity clearing system through a bank account or through such other electronic mode as may be.

“Specified advance” means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not transfer takes place.

Contravention of the provisions of section 269T will attract penalty under section 271E. Penalty under section 271E shall be a sum equal to loan or deposit or specified advance so repaid.

Failure to furnish statement of financial transaction or reportable account (previously called as 'Annual Information Return (AIR)') as required under section 285BA(1)

Non-furnishing of statement of financial transaction or reportable account will attract penalty under section 271FA. Penalty shall be levied of Rs. 500 per day of default.

However, section 285BA(5) empower the tax authorities to issue a notice to the person directing him to file the statement within a period not exceeding 30 days from the date of service of such notice and in such a case person shall furnish the statement within the time specified in the notice. If person fails to file the statement within the specified time, then a penalty of Rs. 1,000 per day shall be levied from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

Penalty for furnishing inaccurate statement of financial transaction or reportable account

As per section 271FAA, if a person who is required to furnish statement of financial transaction or reportable account under section 285BA, provides inaccurate information in the statement, and where:

- a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed* under section 285BA(7) or is deliberate on the part of that person;
- b) the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;
- c) the person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days as specified under section 285BA(6), then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

Failure to co-operate with the tax authorities

Many times the tax authorities requires any information from a person, in such a case, the tax authorities may request such person to answer questions raised by them or may require the person to sign the statements or may issue him a summon for his attendance.

Failure to comply with these directions or notices can attract penalty under section 272A(1) Tax authorities also issues notice under Section 142(1)/Section 143(2) or issues direction for special audit under Section 142(2A). In other words, penalty under section 272A(1) shall be levied if a person refused or fails to:

- Answer questions
- Sign statement
- Attend office to give evidence or produce books of account, etc., in compliance with summons under section 131(1)
- Comply with notice under Section 142(1)/Section 143(2) or fails to comply with direction issued under Section 142(2A)

Penalty leviable under section 272A(1) is Rs. 10,000 for each failure/default.

Immunity From Penalty And Other Proceedings

- ❑ Section 273A(4) confers powers on the Principal Commissioner or Commissioner to either waive or reduce any penalty payable by the assessee under this Act or to stay or compound any proceedings for recovery of amount.
- ❑ The immunity under this section can be granted only if the authority is satisfied that
 - ❖ 1. Genuine hardship is caused to the assessee
 - ❖ 2. The taxpayer has co-operated in any inquiry relating to the assessment or any proceeding with regards to the recovery of any amount due from him.
- ❑ If the penalty amount exceeds Rs. 1,00,000 then prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required