PG CM S4-03 (DSC) (Accounting)

TWO YEAR MASTER'S DEGREE COURSE

(CBCS in Accordance with NEP 2020)

SEMESTER - IV

TAXATION

COMMERCE

Maniram Dewan School of Management

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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MASTER OF COMMERCE

TAXATION

DETAILED SYLLABUS

CONTENT

		Page No.
UNIT 1 :	**INTRODUCTION**	**9 - 27**
	Basic Concepts of Income Tax; Incomes which do not form part of total income; Meaning of Person; Meaning of Assessment Year and Previous Year; Tax Avoidance; Tax Evasion	
UNIT 2 :	**HEADS OF INCOME**	**28 - 41**
	Heads of Income; Salaries; Income from House Property; Profits and Gains of Business and Profession; Capital Gains; Income from Other Sources	
UNIT 3 :	**COMPUTATION OF TAX LIABILITY**	**42 - 98**
	Computation of Income from Salary; Computation of Income from House Property; Computation of Income from Capital Gains; Computation of Total Income and Tax Liability; Aggregation of Income; Set-off and Carry Forward of Losses; Deductions from Gross Total Income	
UNIT 4 :	**WEALTH TAX**	**99 - 117**
	Important terms and Definitions used in Wealth Tax Act, 1957; Basis of Charge; Assets Exempted from Wealth Tax; Computation of Wealth Tax Liability	
UNIT-5 :	**TAX PLANNING-1**	**118 - 133**
	Meaning and Concept of Tax Planning; Tax Planning for setting up of a new business; Tax Planning for Financial Management Decision	

UNIT-6 : TAX PLANNING-2 **134 - 140**

Tax Planning for Managerial Decision; Tax Planning for Employees' Remuneration; Tax Planning for Distribution of Assets at the Time of Liquidation

UNIT 7 : TAX MANAGEMENT **141 - 155**

Meaning and Concept of Tax Management; Tax Management regarding Tax Deducted at Source; Tax Management regarding Advance Payment of Tax; Tax Management regarding Assessment Procedure; Tax Planning for Individuals

UNIT 8 : TAX ADMINISTRATION **156 - 172**

Income Tax Authorities; Appointment and Powers of Various Income Tax Authorities; Appeals; Penalties

UNIT - 9 : GOODS AND SERVICE TAX **173 - 203**

Meaning and Concept Goods and Service Tax ; Legislative History of GST in India; Taxes Subsumed by GST; Goods and Services Network (GSTN); Commodities kept outside the scope of GST; Digital Signature (DSC) and E-signature (E-sign) for GST; Types of GST; Definition of important terms used in the GST Act.

UNIT - 10 : REGISTRATION UNDER GST ACT **204-217**

Advantages of Registration; Persons Liable for Registration (Section 22); Persons not liable for registration (Section 23); Compulsory Registration under the GST (Section 24); Procedure for registration under GST Law; Deemed Registration; Registration Number under GST Law; Amendment of registration under GST Law; Cancellation of Registration under GST Law; Revocation of Cancellation of Registration under GST Law

UNIT - 11 : LEVY AND COLLECTION OF TAX **218-233**

Rates of GST; Scope of Supply; Activities to be treated as supplies even without consideration; Activities or transactions not treated as supply of goods or services under the GST Act; Composition Levy; Levy under Reverse Charge Mechanism; Power to grant exemption from tax; Time and value of supply of goods and services

UNIT - 12 : INPUT TAX CREDIT **234-248**

Meaning of Input Tax Credit; Eligibility and Conditions for Taking Input Tax Credit; Apportionment of Credit and Blocked Credits; Availability of Credit in special circumstances; Input Tax Credit in Respect of Inputs and Capital Goods Sent for Job Work; Manner of Distribution of Credit by Input Service Distributor; Manner of Recovery of Credit Distributed in Excess

UNIT - 13 : TAX INVOICE, CREDIT AND DEBIT NOTES **249-264**

Tax Invoice; Time Limit for Issue of Tax Invoice; Manner of Issue of Tax Invoice; Prohibition of Unauthorized Collection of Tax; Amount of Tax to be reflected in Tax Invoice and Other Documents; Credit Note; Debit Note; E-Way Bill; Bill of Supply; Receipt Voucher; Refund Voucher; Payment Voucher

UNIT - 14 : ACCOUNTS AND RECORDS UNDER GST **265-278**

Maintenance of Records and Accounts; Period of Retention of Records and Accounts; Payment of Tax, Interest, Penalty and Other Amounts; Interest on Delayed Payment of Tax; Tax Deduction at Source; Collection of Tax at Source; Transfer of Input Tax Credit

UNIT - 15 : RETURNS UNDER GST **279-294**

Furnishing of Details of Supplies; Furnishing of Details of Inward Supplies; Furnishing of Returns; First Return; Claim of Input Tax Credit and Provisional Acceptance Thereof; Matching; Annual Return; Notice to Defaulters; Levy of Late Fee; Goods and Service Tax Practitioners; Assessment; Audit by Tax Authorities

COURSE INTRODUCTION

'Taxation' is the forth Course of 4th Semester under Accounting Specialization and overall the Fifteenth Course of M.Com. Programme. Taxation is an imposition of compulsory levies on individuals or entities by governments. Taxation occurs when a government or other authority requires that a fee to be paid by citizens and corporations, to that authority. Paying taxes to governments or officials has been a funding of civilization since ancient times.

This course which starts with the unit discussing the concept of tax especially income tax. The course has a total of fifteen units that deal with introduction to income tax, Heads of Income, Computation of Tax Liability, Wealth Tax, Tax Planning, Tax Management, Tax Administration, Goods and Services Tax, Registration, Levy and Collection of Tax, Input Tax Credit, Tax Invoice, Credit and Debit Notes, Accounts Records Under GST and Returns.

Each unit of the course includes some along-side boxes to help you know some of the difficult, unseen terms. Some "EXERCISES" have been included to help you apply your own thoughts. You may find some boxes marked with: "LET US KNOW". These boxes will provide you with some additional interesting and relevant information. Again, you will get "CHECK YOUR PROGRESS" questions. These have been designed to self-check your progress of study. It will be helpful for you if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with "ANSWERS TO CHECK YOUR PROGRESS" given at the end of each unit. At the end of each section, you will get "CHECK YOUR PROGRESS" questions to check yourselves.

UNIT DISTRIBUTIONS

This course encompusses with the following fifteen units:

Unit 1 : Introduction

Unit 2 : Heads of Income

Unit 3 : Computation of Tax Liability

Unit 4 : Wealth Tax

Unit 5 : Tax Planning -1

Unit 6 : Tax Planning -2

Unit 7 : Tax Management

Unit 8 : Tax Administration

Unit-9 : Goods and Service Tax

Unit-10 : Registration Under GST Act

Unit-11 : Levy and Collection of Tax

Unit-12 : Input Tax Credit

Unit-13 : Tax Invoice, Credit and Debit Notes

Unit-14 : Accounts and Records under GST

Unit-15 : Returns under GST

UNIT 1 : INTRODUCTION

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Basic Concepts of Income Tax

- 1.3.1 Income
- 1.3.2 Agricultural Income
- 1.3.3 Gross Total Income
- 1.3.4 Total Income

1.4 Incomes which do not form part of total income

1.5 Meaning of Person

1.6 Meaning of Assessment Year and Previous Year

1.7 Tax Avoidance

1.8 Tax Evasion

1.9 Let Us Sum Up

1.10 Further Reading

1.11 Answers To Check Your Progress

1.12 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will able to :

- define the various terms viz. income, agricultural income, gross total income, total income
- illustrate the meaning of person, assessment year and previous year for income tax purpose
- explain the meaning of tax avoidance and tax evasion

1.2 INTRODUCTION

The collections from taxes constitute a major source of revenue for government in order to run the nation. The government generates tax revenue through levy of taxes on income, wealth, manufacturing and trading of goods and services, export and import etc. and utilizes the fund to perform various

functions viz. maintenance of law and order; safeguard the security of the country from foreign aggression, implementation of various programmes for socio-economic development of the nation etc. Only the Government has the authority to levy and collect taxes. The Constitution of India has given the power to both Central and the State Government to level and collect taxes.

Taxation refers to the practice of generating revenue through levy and collection of taxes from the public for incurring public expenditures. Taxation is an age old practice, however, it has passed through different stages with passage of time, and tax's functions and objectives also have changed from the ancient communities to medieval societies to modern societies also. Hence the taxation system has evolved with the evolution of the functions of the modern state.

In India, taxation has been in force in one form or another from ancient times. We find references of variety of tax measures in both Manu Smriti and Arthasastra. Chanakya has described about the system of tax administration in the Mauryan Empire.

In the present time, taxation is not just a medium of generating revenue for the government to meet the public expenditures, but it has evolved as a tool for redistribution of income and wealth in the society. It also serves as a means of economic development and plays a significant role in stabilization of income. Taxation assists in reducing the economic problems which a country may face, like unemployment, inflation, and depression.

1.3 BASIC CONCEPTS OF INCOME TAX

On classification of taxes on the basis of levy, we find two types of taxes- **direct taxes** and **indirect taxes**. Income Tax is a major constituent of Direct Taxes levied and collected by the Government in India. The introduction of Income tax can be traced back to 1860. It was introduced for the first time in 1860. In 1918, a new Income Tax Act was passed and again it was replaced by another Act in 1922. This Act remained in force up to the assessment year 1961-62 with numerous amendments. The present Income Tax Act came into existence in 1961 after the report of the Direct Taxes Administration Enquiry Committee in 1959. The Income Tax Act, 1961 has been brought into force with effect from 1st

April, 1962. It applies to the whole of India and Sikkim (including Jammu and Kashmir). Since 1962 several amendments of far-reaching consequences have been made in the Income Tax Act by the Union.

An income tax is a tax levied on the income of a person. Various income tax systems exist, with varying degrees of tax incidence. The tax is levied on the income of companies is called a corporate tax. On the other hand, individual income taxes often tax the total income of the individual (with some deductions permitted), while corporate income taxes often tax net income (the difference between gross receipts, expenses, and additional write-offs). The following are different concepts that related to the income tax :

1.3.1 Income

Income Tax is charged on the income earned by an assessee during the financial year. Section 2(24) of the Income Tax Act, 1961 has defined the term “Income” providing an inclusive list of incomes for the purpose of the Act. Any receipt which comes within the scope of Section 2(24) is considered as income and the receiver is taxed on that amount. Income, in common parlance, means a periodical monetary receipt/ return coming in with some sort of regularity and from definite source. Income tax, as the word itself signifies, is a tax on income. But the Act does not adequately define the term ‘income’. Its meaning is more or less similar to the layman’s understanding of its being equal to money or money’s worth periodically received from a definite source. It may be taken to denote anything which comes in and that too, from some outside source. Income may be received in cash or in kind which is equivalent to cash. Wherever an assessee earns an income, he/she is taxed on such income.

1.3.2 Agricultural Income

Section 2(1A) of the Income Tax Act, 1961 has defined Agricultural Income as follows :

Agricultural Income means :

(a) Any rent or revenue derived from land which is situated in India and is used for agricultural purposes.

(b) Any income derived from such land by agriculture operations including processing of agricultural produce so as to render it fit for the market or sale of such produce.

(c) Any income attributable to a farm house subject to satisfaction of certain conditions specified in this regard in section 2(1A). Also, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

The above definition of agricultural income is very wide and covers the income of not only the cultivators but also the land holders who might have rented out the lands. Agricultural income may be received in cash or in kind. In reference to taxability to agricultural income, Section 10(1) of the Income Tax Act, 1961 provides that agricultural income is not to be included in the total income of the assesse. Thus, agricultural income is exempt from the levy of tax. The reason for totally exempting agricultural income from the scope of Income Tax is that under the Constitution, the Central Government has no power to levy a tax on agricultural income.

1.3.3 Gross Total Income

For the purpose of assessment of tax, it is necessary to conceptualize the terms 'Gross Total Income' and 'Total Income'. Gross Total Income means the total income computed in accordance with the provisions of the Income Tax Act, before making any deduction available under Sections 80C to 80U depending on the category of assessee.

Gross total income is computed in the following manner :

First taxable income under all heads of income is computed. On the other hand, if there are losses from some sources, such losses are set-off against incomes under other heads, wherever permissible under the law. Thereafter, carried forward losses, unabsorbed depreciation, etc. are set-off according to the provisions of the Income Tax Act. The final figure of taxable income under each head is then aggregated. The resultant sum is known as 'Gross Total Income'.

1.3.4 Total Income

Total income [Sec. 2(45)] means the total amount of income referred in Section 5 of the Income Tax Act, computed in the manner laid down in the Act. Under Section 5, different incomes of an assessee are included in his/her total income on the basis of his residential status. The computation of these incomes is done according to the provisions of different sections of the Act under the heads of Salaries, Income from House Property, Profits and Gains of Business or Profession, Capital Gains and Income from other Sources.

In other words, total income means the amount left after making the deductions under Section 80C to 80U from the gross total income.

1.4 INCOME WHICH DO NOT FORM OF TOTAL INCOME

In the foregoing paragraph you have found that income tax is levied on incomes earned during the assessment year. You have also learnt that tax is imposed on the basis of the residential status of the assessee. But it is not that an assessee is required to pay tax on all the incomes. Some incomes are exempt from income tax under the various provisions of the Income Tax Act. Such incomes are called Exempted Incomes or Tax Free Incomes. Exempted Incomes or Tax-free incomes are covered under Section 10 of the Income Tax Act. In order to claim exemption under this section, it is the duty of the assessee to prove that an item of receipt falls within the exempted category.

The important incomes which are exempted from income tax are listed below :

1. Agricultural income,
2. Income received by a member of the Hindu Undivided Family either out of the income of the H.U.F. or out of the income of the estate belonging to the H.U.F.
3. Share of income of a partner in the total income of the firm, which is separately assessed to tax.
4. The following types of interest received by a non-resident-
   (i) Interest on such securities or bonds as the Central Government may specify in this behalf.

(ii) Interest on deposits standing in a Non-Resident (External) Account in any bank in India.

(iii) Interest on certain notified savings certificates, such as National Savings Certificate.

5. Income of a foreign company by way of fees for technical services received in pursuance of an agreement entered into with the Central Government for providing services in India or outside India in projects connected with security of India.
6. Death-cum Retirement Gratuity is exempt from tax subject to the conditions and extent stated in that section.
7. Commuted pension is exempt from tax subject to the conditions and extent stated in that section.
8. Encashment earned leave received by an employee is exempt from tax subject to the conditions and extent stated in that section.
9. Retrenchment compensation received by an employee is exempt from tax subject to the conditions and extent stated in that section.
10. Compensation received by any victim of Bhopal Gas Leak Disaster.
11. Any lump sum received by an employee who has completed 10 years of service or completed 45 years of age on voluntary retirement.
12. Any sum received under a life insurance policy including the sum allocated by way of bonus on such policy except the amount received under an insurance policy, if the premium payable does not exceed 20% of the actual capital sum assured.
13. Refund from the statutory provident fund received by an employee.
14. Refund or payment from a recognised provident fund received by an employee with certain conditions.
15. House rent allowance received by an employee subject to certain limit and subject to the conditions and extent stated in that section.
16. Special allowances are exempt from tax subject to the conditions and extent stated in that section.
17. Interest, premium or bonus on certain specified securities and deposits subject to the conditions and extent stated in that section or as defined by the Central Government.

18. Scholarship granted to meet the cost of education.
19. Daily allowances received by MPs, MLAs and MLCs and other allowances received by MPs.
20. Literary, scientific and artistic work and other awards instituted by the Central Government or by any State Government.
21. Pension received by an individual who has been in the service of the Central or State Government and has been awarded ''Param Vir Chakra'' or ''Maha Vir Chakra'' or ''Vir Chakra'' or such other gallantry award as the Central Government may, by notification in the official gazette, specify in this behalf, and
    (ii) family pension received by any member of the family of such individual as referred to in clause(i), will be exempt from tax with effect from 1-4-2000.
22. As per Section 10 (19) of the Income Tax Act, family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para military forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions as prescribed with effect from 1-4-2005.
23. As per Section 10 (19A) of the Income Tax Act, the annual value of any one place in the occupation of former ruler of an Indian State is exempt from tax.
24. As per Section 10 (20) of the Income Tax Act, income of a local authority which is chargeable under the head (i) Income from House Property or (ii) Capital Gains or (iii) Income from Other Sources or (iv) income from a business carried on by it which accrues or arises from the supply of commodities or services (not being water or electricity) within its jurisdiction or from the supply of water or electricity within or outside its jurisdiction is fully exempt from tax.
25. From the assessment year 1999-2000, under Section 10 (23C), the income of an educational institution existing for educational purposes, and not for the purpose of earning profits, is exempt from tax.
26. The income of hospitals and other medical institutions existing solely for

philanthropic purposes, and not for purposes of profit, is exempt from tax under Section 10 (23C).

27. As per Section 10 (23A) of the Income Tax Act, income of professional institutes like the Indian Medical Association is exempt from tax.
28. As per Section 10 (23BBA) of the Income Tax Act, income of any authority established for the administration of any public religious or charitable trusts or endowments (including mutts, temples, wakfs, churches, gurudwaras) is exempt from Income Tax.
29. As per Section 10 (23D) of the Income Tax Act, income of a notified mutual fund set up by a public sector bank or a public sector financial institution or authorised by the Securities and Exchange Board of India or the Reserve Bank of India, such as the State Bank of India Mutual Fund, Canara Bank Mutual Fund, the Punjab National Bank Mutual Fund the LIC Mutual Fund and the General Insurance Corporation Mutual Fund, etc. is exempt from tax.
30. As per Section 10 (23AAB) of the Income Tax Act, any income of a fund set up by the LIC on or after 1.8.1996 under pension fund scheme to which contribution is made by any person for receiving pension from such fund, and which is approved by the Controller of Insurance, is exempt from tax.
31. As per Section 10 (26) of the Income Tax Act, any income of a member of a scheduled tribe residing in any area specified in this behalf, if it is earned from any source in that area or income received by way of dividend or interest on securities, even if it arises from a source in areas not specified above, is exempt from tax.
32. As per section 13A of the Income Tax Act, any income of political parties, duly registered, falling under the head ''Income from house property'' or ''Income from other sources'' or voluntary contributions received by them from any persons are exempt from income tax subject to the fulfilment of the following conditions:
    (a) The political party is registered, with the Election Commission of India.
    (b) It should keep and maintain proper books of account and other documents as would enable the assessing officer to properly deduce income.

(c) Its accounts should be audited by a qualified chartered accountant.

(d) It should keep proper records of persons, as to their names and addresses, who have made voluntary contributions exceeding Rs. 20,000.

33. Income of certain specified national charitable funds, such as the Prime Minister's National Relief Fund, the Prime Minister's Fund (Promotion of Folk Art), the Prime Minister's Aid to Students Fund, the National Foundation for Communal Harmony or any other charitable fund notified by the Government of India is exempt from tax.
34. Income of trade unions, registered under the Trade Unions Act of 1926, viz., income from house property, and income from other sources is exempt from tax.
35. As per Section 10 (32) of the Income Tax Act, if the income of an individual includes the income of his minor child, he can claim exemption upto Rs. 1,500 in respect of each minor child's income, provided the income of the minor child included in the income of the individual exceeds Rs. 1,500.
36. The income of notified news agency set up in India solely for collection and distribution of news is exempt from income tax, provided the following conditions are satisfied:
    (i) The news agency applies its income solely for collection and distribution of news.
    (ii) It does not distribute its income in any manner among its members.
37. Income of housing authorities like State Housing Boards or other statutory authorities set up for the purpose of meeting the need for housing accommodation or for the purpose of planning and development of cities, towns and villages is exempt from tax.
38. Any income derived by a statutory marketing authority from the letting of godowns or warehouses for storage, processing or for facilitating the marketing of commodities is exempt from tax.
39. Income of Khadi and Village Industries Board set up under the State or Provincial Act is exempt from tax.
40. As per Section 10 (21) of the Income Tax Act, any income of an approved scientific research association is exempt from tax, provided its income is

applied solely for its purpose.

41. Any income of a venture capital company or venture capital fund set up to raise funds of investment in venture capital undertakings is exempt from tax under Section 10 (23B) of the Income Tax Act with effect from the assessment year 2000-01.
42. Any income of a corporation established by the Central or State Government for promoting the interest of the members of the minority community as notified is exempt from tax.
43. Any income of a corporation established by government or a body wholly financed by the government for promoting the interests of the members of Scheduled Castes or Scheduled Tribes or Other Backward Classes or any of them is exempt from tax.
44. As per Section 10 (23G) of the Income Tax Act, income by way of dividends, interest or long-term capital gains of any Infrastructure Capital Fund or Infrastructure Capital Company is exempt from tax.
45. As per Section 10 (30) of the Income Tax Act, if an assessee engaged in the business of growing and manufacturing tea in India, receives any subsidy from the Tea Board under a notified scheme for replantation or replacement for tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea in India is exempt from tax.
46. As per Section 10 (31) of the Income Tax Act, subsidy received by an assessee engaged in the business of growing and manufacturing rubber, coffee, cardamom or such other plantation crops as may be notified by the central Government is exempt from tax, provided the subsidy is received from the concerned Board, it (i.e., the subsidy) is used for re-plantation or replacement of rubber plants, coffee plants or cardamom plants or for rejuvenation or consolidation of areas, and the assessee furnishes to the assessing officer, along with the return of income, a certificate from the concerned Board stating the amount of subsidy received during the previous year.
47. As per Section 10 (34) of the Income Tax Act, dividend income referred to in Section 115-0 of the Income Tax Act, received from a domestic company (i.e., Indian Company) which has declared, distributed or paid the

dividend on or after 1.4.2003 is exempt from tax with effect from the assessment year 2004- 05.

48. As per Section 10 (35) of the Income Tax Act, income received from the units of Unit Trust of India, and the income received from the units of mutual funds specified under Section 10 (23D) of the Income Tax Act are exempt from tax with effect from the assessment year 2004-05.
49. As per Section 10 (38) of the Income Tax Act, long term capital gains on transfer of equity shares or units of equity oriented mutual fund is not chargeable to tax from the assessment year 2005-06 if such transaction is covered by Securities Transaction Tax.



CHECK YOUR PROGRESS

Q 1: Income is defined under section…….of the Income Tax Act, 1961

Q 2: Define the terms :

a) Total Income b) Income Tax

a) ……

……

……

b) .....

……

……

1.5 MEANING OF PERSON

In the context of income tax the term 'persons' has a special meaning. The meaning of the term 'person' has been incorporated in the Income Tax Act 1961 in Section 2(31). It has first categorised, the term 'persons' in the following way :

(i) An Individual;

(ii) A Hindu Undivided Family (HUF);

(iii) A Company;

(iv) A Firm;

(v) An Association of Persons (AOP) or a Body of Individuals (BOI), whether incorporated or not;

(vi) A Local Authority;

(vii) Every Artificial Juridical Person not falling within any of the preceding sub-clauses.

Let us explain these below :

(i) An Individual means a human being. The individual may be a man, woman or a minor child. The income of a minor is included in the income of parent who has higher income after deduction of Rs. 1,500 for each child. The assessment of lunatic or idiot or minor whose income is taxable in his own hands is done in accordance with the provisions of Section 160.

(ii) Hindu Undivided Family (HUF): 'Hindu Undivided Family' has not been defined under the Income-Tax Act and therefore, the definition given under the Hindu Law is accepted under the Income-Tax Act. As per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and unmarried daughters.

(iii) Company: Section 2(17) defines company in the following way:

a) any Indian company,

b) any body corporate incorporated under the laws of a foreign country,

c) any institution, association or a body which is assessed or was assessable a company ,

d) any institution, association or a body, which is declared by general or special order of the Central Board of Direct Taxes to be company.

(iv) A firm: A firm is a taxable entity separate and distinct from its partners.

Association of Persons: This term is also not defined in Income Tax Act. In ordinary sense, an association of persons means two or more persons who join for a common purpose with a view to earn an income without

forming a partnership firm. They may be assessed as an Association of Persons (AOP).

(v) Body of Individuals (BOI): Body of Individuals means a group of persons who carry on some activity with the objective of earning some income. It shall consist of individuals only. Entities like companies or firms cannot be members of a body of individuals. Income-tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI.

(vi) A Local Authority: The term local authority means any authority formed under any law for the local management of any area. They include:

(a) Panchayat as referred to in clause (d) of Article 243 of the Constitution; or

(b) Municipality as referred to in Article 243P of the Constitution; or

(c) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local funds; or

(d) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924.

(vii) Artificial Juridical Persons: Artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law. Such artificial juridical persons cannot be sued directly in a court of law but they can be sued through persons managing them. For example, Lord Jagannath Madir, Tirupati Mandir etc. Such places of worship have their income from subscriptions, donations, offerings, etc. Such incomes are taxable under the Income Tax Act. However, under the Income Tax Act, they have been provided exemption from payment of tax under separate provisions of the Act, if certain conditions mentioned therein are satisfied.

In addition to the above, all other artificial persons, with a juristic personality, if they do not fall within any of the preceding categories mentioned above will also fall under this category of persons. For example; Krishna Kanta Handique State Open University, Gauhati University, etc.



CHECK YOUR PROGRESS

Q 3: Choose the most appropriate answer from the given option.

Any rent or revenue derived from land may be treated as agricultural income if-

a) It is derived from land

b) The land is situated in India

c) The land is used for agricultural purposes

d) All the above conditions are satisfied.

1.6 MEANING OF ASSESSMENT YEAR AND PREVIOUS YEAR

It is essential to know the meaning of time period for income tax purpose. In India, the Government maintains its accounts for a period of 12 months from 1st April to 31st March every year. This period from 1st April to 31st March each year is known as financial year. The financial year for a non-government entity and non- corporate entity may be a different one.

According to Section 2(9), 'Assessment year'' means the period of 12 months commencing on the 1st day of April every year end with 31st March next year.

In so far as income tax is concerned, income earned in a particular financial year (beginning from 1st April of a year and ending on 31st March of the subsequent year) is taxable in the next financial year.

Previous year is the particular financial year in which the income is earned. It is also known as income year. According to Section 3 of the Income Tax Act, ''Previous Year'' means the financial year immediately preceding the assessment year. The next financial year in which the said income is taxable is known as the assessment year. It should be noted that the previous year may not always be a period of 12 months. In the case of a business or profession newly set up, or a source of income newly coming into existence, in

the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year

When a person earns income in the previous year (suppose Financial Year 2019-20) the same will be charged to tax in the Assessment Year 2020-21 (i.e. from 01.04.2020 to 31.03.21). The rate at which income is taxable in a particular assessment year will be the rate as existing on 1st April of that Assessment Year.

1.7 TAX AVOIDANCE

Tax avoidance is a method of taking advantage of the loopholes in the tax law of the country to avoid paying taxes. It minimizes tax liability using complex and often critical provisions of the Act. Tax avoidance uses legal means to avoid taxes but is not encouraged because it is an exploitation of the legal provision of the tax law which was not intended or considered while framing the law. Suggestions from the tax experts and taxpayers and continuous evaluation of the various provisions of the Income Tax Act may help in the removal of such loopholes and may thus reduce the incidences of tax avoidance. One can consider their residential status in some safe tax havens where tax rates are low or where special incentives are given for certain activities which are not available in the assessee's own place of residence, in order to avoid paying taxes. In addition, they may also change their business structure or establish an offshore company in tax havens, etc.

Having considered the meaning of each of the above methods of reducing tax liability we may now consider the differences between each one of them.

Tax Avoidance vs. Tax Planning :

(i) Tax planning contributes to the nation building by investing in certain activities which are normally not ventured into. On the other hand, tax avoidance is simply paying less tax or not paying tax at all without any contribution to the society.

(ii) While tax planning is perfectly legal and encouraged by the government, tax avoidance is somewhat legal but not always encouraged.

(iii) Tax planning is not risky at all while tax avoidance involves a lot of risk.

(iv) Tax planning is using the exemptions and reliefs specifically provided in the Act which is meant to be used to reduce tax liability but tax avoidance is using the unintended, hidden and often unspecified tax provisions to reduce tax liability.

1.8 TAX EVASION

Tax Evasion is another method of evading taxes used by assessees. This method is resorted to with the motive of defrauding. Tax is evaded by concealing income, by showing lesser income and other providing false and incomplete information to the taxing authorities. Tax evasion is always done intentionally by maintaining different sets of books of accounts, carrying on transactions in cash with no invoices, carrying on transactions in a dummy name, preparing false invoices, paying lesser taxes than what is being assessed, etc.

Tax evasion may be resorted to with an intention of defrauding. It may also be resorted because of high rates of tax, absence of taxpayer- friendly tax policies and absence of adequate tax incentives. Tax evasion is mostly adopted by people having black money. They conceal their income and as a result evade taxes.

It results in loss of revenue to the state exchequer. It is one of the reasons for the rise in inflation. Tax evasion is considered a civil offence in the country, i.e., illegal and immoral. It is a growing menace in the country as more and more people are stashing money abroad in tax havens and thus avoiding paying of taxes. Assets are kept hidden and undeclared so that tax can be evaded. This menace can be stopped by having a strict and efficient tax system in the nation so that tax evaders can be easily located and can be penalized for such illegal action.

Tax Avoidance vs. Tax Evasion:

1. While in tax avoidance one discloses all material facts, under tax evasion there is often incomplete or false information being disclosed by the assessee.

2. Tax avoidance is reducing of tax liability by using the loopholes in the Act, while tax evasion is evading of taxes by fraudulent means like misrepresenting or concealing information or not paying tax at all.

3. Tax avoidance exploits the tax laws but is not considered illegal always as it works within the ambit of law although it is not intended by the law makers nor encouraged, while tax evasion is definitely illegal as it uses illegal methods to reduce tax liability and evade taxes which the tax payer legally owes.



CHECK YOUR PROGRESS

Q 4: Determine the category of 'Persons' of the following cases :

(i) KKHSOU : ……

(ii) Reserve Bank Of India : ……

(iii) Mr. Ram : ……

(iv) M/s Ram & Co. : ……

(v) Reliance Industries Ltd.: ……

(vi) Guwahati Municipal Corporation:

(vii) DHSK Commerce College : ……



1.9 LET US SUM UP

In this unit we have discussed the following :

- The present Income Tax Act came into existence in 1961.
- The tax is levied on the income of companies is called a corporate tax.
- The receiver is taxed on that amount which comes within the scope of Section 2(24) of Income Tax Act.
- An assessee means a person by whom any tax or any other sum of money is payable under Income Tax Act.
- Artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law.
- Assessment year means the period of 12 months commencing on

the 1st day of April every year end with 31st March next year.

- Gross Total Income means the total income computed in accordance with the provisions of the Income Tax Act, before making any deduction available under Sections 80C to 80U depending on the category of assessee.
- To "Charge" means to levy tax.



1.10 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.



1.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: 2 (24)

Ans to Q No 2:

(a) Total Income: Total income means the amount left after making the deductions under Section 80C to 80U from the gross total income

(b) Income Tax: Income tax is an annual tax levied in every assessment year at the prescribed rates, on every person, in respect of his/her total income for the relevant previous year.

Ans to Q No 3: (d) All the above conditions are satisfied.

Ans to Q No 4:

(i) Artificial Juridical Person

(ii) Artificial Juridical Person

(iii) Individual

(iv) Firm.

(v) Company

(vi) Artificial Juridical Person

(vii) Artificial Juridical Person



1.12 MODEL QUESTIONS

Q 1 : Differentiate between Tax Evasion and Tax Avoidance.

Q 2 : Define Income, Gross Total Income and Total Income.

Q 3 : What is 'Previous Year' under the Income Tax Act, 1961 ?

Q 4 : Define Person as per Income Tax Act?

Q 5 : Write a short note on financial year.

Q 6 : A Company has set up its business on 15th April, 2021, though it commenced its operations from 4th May, 2022. What would be its first previous year?

Q 7 : Define Agricultural Income as per Income Tax Act.

Q 8 : Write short note:

a) Tax Avoidance

b) Tax Evasion

c) Assessment Year

d) Income which do not form part of the Total Income.

e) Previous Year.

Q 9 : Ascertain the period of previous year and assessment year in the following cases:

(i) Ajay has been running a business from 2020. State the previous year for the assessment year 2022-23.

(ii) Ashok started a business on 1st May 2021. Determine the previous year for the assessment year 2022-23.

Q 10 : Give four examples of "Exempted Incomes".

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UNIT 2 : HEADS OF INCOME

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Heads of Income

2.4 Salaries

2.5 Income from House Property

2.6 Profits and Gains of Business and Profession

2.7 Capital Gains

2.8 Income from Other Sources

2.9 Let Us Sum Up

2.10 Further Reading

2.11 Answers To Check Your Progress

2.12 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the different heads of income
- classify income under different heads

2.2 INTRODUCTION

In Unit 1 we have discussed about the basic concepts of Income and Income Tax and certain important definitions used therein. In this Unit we shall discuss about the heads of income as per Income Tax Act.

A person may earn income from various sources viz. salary, business, profession, etc. 'Income' of a person for the purpose of charging of income tax and computation of total income, has been classified into five major heads. This classification of income into various heads is very important for income tax purposes. It is important to note here that an item of income will be liable to tax only if it can be classified under one of these heads of income as prescribed under the Income Tax Act. The Income Tax Act specifies the manner of

computation of income separately in respect of each head of income, and those provisions will have to be applied for computing the income under each heads of income.

2.3 HEADS OF INCOME

According to Sec.14 of the Income Tax Act, incomes earned by a person from various sources shall be classified under the following five heads:

1. Salaries;
2. Income from house property;
3. Profits and gains of business or profession;
4. Capital gains;
5. Income from other sources.

For computation of income, all taxable income should fall under any of the five heads of income as mentioned above. If any type of income does not become part of any one of the above mentioned first four heads, it should be part of the fifth head, i.e. Income from other sources, which may be termed as the residual head. Further, income chargeable under a particular head cannot be charged under any other head.

2.4 SALARIES

Income from salaries is described in Sections 15 to 17 of the Income Tax Act. The meaning of the term 'salary' for purposes of Income tax is much wider than what is normally understood. Every payment made by an employer to his employee for service rendered would be chargeable to tax as income from salaries. The term 'salary' for the purposes of Income Tax Act will include both monetary payments (e.g. basic salary, bonus, commission, allowances etc.) as well as non-monetary facilities (e.g. housing accommodation, medical facility, interest free loans etc).

Before learning the provisions, it is essential to understand the important concepts relating to Salaries.

(1) Employer-employee relationship : Before an income can become chargeable under the head 'salaries', it is vital that there should exist

between the payer and the payee, the relationship of an employer and an employee.

(2) **Full-time or Part time employment:** It does not matter whether the employee is a fulltime employee or a part-time one. Once the relationship of employer and employee exists, the income is to be charged under the head "Salaries". If, for example, an employee works with more than one employer, salaries received from all the employers should be clubbed and brought to charge for the relevant Previous Years.

(3) **Foregoing or sacrificing of salary:** Once salary accrues, the subsequent waiver by the employee does not absolve him from liability to Income- tax. Such waiver is only an application and hence, chargeable to tax.

(4) **Surrender of salary:** However, if an employee surrenders his salary to the Central Government u/s 2 of the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would be exempt while computing his taxable income.

(5) **Salary paid tax-free:** This, in other words, means that the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer. This means both the salary and the tax paid thereon will be taxable in the hands of the employee.

(6) **Voluntary Payments:** Whether the payment from an employer is based on a contract or not, it constitutes salary in the hands of the employee. However, many employers give personal gifts and testimonials to the employees. For example, employees who complete 20 years of service may be given a wrist watch. The question arises whether the value of the watch can be taxed in the hands of the employee. Courts have taken the view that such gifts are not taxable. However, in these cases it is important that such gifts must be given to employees pursuant to a scheme applicable to employees in general. If gifts are given purely on a selective basis they will become

chargeable in the hands of the recipient.

(7) **Place of accrual of Salary:** According to section 9(1)(ii), salary earned in India is deemed to accrue or arise in India even if it is paid outside India or it is paid or payable after the contract of employment in India comes to an end.

If an employee is paid pension abroad in respect of services rendered in India, the same will be deemed to accrue in India. Similarly, leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.

The basis of charge of Salary has been defined in Section 15 of Income Tax Act and according to it the following forms of salary shall be charged to tax under the head ''Income from Salaries''.

(i) Salary is taxable on due or receipt basis whichever is earlier,

(ii) Salary received in advance,

(iii) Salary from present and former employer and

(iv) Arrears of salary.



CHECK YOUR PROGRESS

Q 1: Mention the various heads of income as per Income Tax Act?

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2.5 INCOME FROM HOUSE PROPERTY

Income from house property is described in Sections 22 to 27 of the Income Tax Act. Section 22 of the Income Tax Act provides:

''The annual value of property consisting of any building or land appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax, shall be chargeable to income tax under the head 'Income from House Property''.

The annual value of property consisting of any building or land appurtenant thereto is chargeable to tax under the head ''Income from House Property''.

An income from house property is chargeable to tax under the head ''Income from House Property'' if the following three conditions are satisfied:

(i) The property should consist of any building or land appurtenant thereto.

(ii) The property should belong to the assessee.

(iii) The property should not be used by the owner for carrying on his business or profession.

2.6 PROFITS AND GAINS OF BUSINESS AND PROFESSION

Income from profits and gains of business and profession is described in Sections 28 to 44D of the Income Tax Act.

The term business is different than profession as explained below —

Business : According to Section 2(13) of the Income-tax Act, the term 'Business' means any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. In simple language, business means any economic activity carried on with the objective of making profits.

Profession : Profession is an occupation for earning a livelihood or for gains, requiring either purely intellectual skill or manual skill controlled by intellectual skill. In other words, profession refers to all such human activities which require intellectual skill and technical expertise. Activities of doctors, architects, chartered accountants, lawyers, engineers, tax consultants, etc. are some of the examples of profession. Profession includes vocation also.

Section 28 specifies the various items of income chargeable to tax as income under the head 'profits and gains of business or profession', which are as follows :

(a) The profits and gains of any business or profession carried on by the assessee at any time during the previous year.

(b) Any compensation or other payment due to or received by any person, managing (i) the affairs of an Indian company, or (ii) the affairs in India of any other company or (iii) holding an agency in India of the

business of any person, for the termination of his office or agency or for the modification of the terms of office or agency under any law in force.

(c) Any income derived by a trade, professional or similar association from specific services rendered to its members.

(d) Profits on sale of a licence granted under the Imports (Control) Order, 19551 made under the Imports and Exports (Control) Act, 1947

(e) Cash assistance against exports received or receivable by a person under any scheme of the Government of India.

(f) Any customs duty or excise duty drawback (i.e., refund) repaid or repayable to any person against exports under the relevant rules.

(g) The value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is taxable under this head. For example, if a patient, in addition to the payment of medical fees, also makes a gift to a doctor who has treated him, the market value of the gift is taxable under this head as the professional income of the doctor.

(h) Any interest, salary, commission, bonus or remuneration, by whatever name called, due to or received by a partner from his firm is also treated as the business income of the partner.

(i) Any sum whether received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any business or profession; or for not sharing any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

(j) Any sum received by the assessee, as an employer, under a Keyman insurance policy including the sum allocated by way of bonus on such policy will be taxable as income from business.

(k) Fair market value of inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

(l) Any sum received or receivable, in cash or kind, on account of any capital asset (in respect of which whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD) being demolished, destroyed, discarded or transferred.

(m) Deemed business profits are taxable under this head.

It is to be noted that the income tax law is not concerned with the legality or illegality of the business. So, profits from illegal businesses, such as illicit trafficking in drugs, illicit trafficking in liquors, smuggling, etc. are taxable under this head. Further, profits or gains of business and profession should be computed by taking into consideration the various allowable deductions in respect of expenditures and losses. The deductions in respect of certain expenditures and losses have been expressly provided in Sections 30 to 37 of the Income Tax Act. Besides the expenditures and losses expressly allowed under above stated sections, there are also certain other expenditure and losses, incurred by the assessee in the course of his business or profession, which are also allowed as deductions, while computing his income from profits and gains of business and profession, on the ground of ordinary commercial principles, unless they are expressly disallowed under any other provisions of the Income Tax Act.



CHECK YOUR PROGRESS

Q 2: Mention the conditions for an income to be chargeable under the head ''Income from House Property''.

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2.7 CAPITAL GAINS

Income from Capital Gains is described in sections 45 to 55A of the Income Tax Act. Section 45 (1) of the Income Tax Act defines the term ''Capital gains'' as profits or gains arising from the transfer of a 'capital asset' effected in the previous year are chargeable to tax under the head ''Capital Gains''. The capital

gains are chargeable to tax only when the following conditions are satisfied :

1. There is capital asset – short-term or long-term.
2. There is the transfer of that capital asset by the assessee.
3. The transfer of the capital asset is affected during the previous year.
4. There arises profit or gain on the transfer of the capital asset.
5. The profit or gain on the transfer of capital asset is not exempt from tax under Sections 54, 54B, 54D, 54EC, 54F, 54G and 54GA of the Income Tax Act.

Capital gains are of two types. They are :

(i) Short-term capital gains; and

(ii) Long-term capital gains.

i) Short-term capital gains : Short-term capital gains are capital gains arising from the transfer of short-term capital assets. Short-term capital assets are those capital assets which are held by the transferor for a period of not more than 36 months immediately preceeding the date of its transfer. If the capital asset is in the form of shares, debentures in a company, etc. the period will be for not more than 12 months immediately preceeding the date of its transfer. Short -term capital gains is taxable like any other income and is included in the total income of the assessee for determination of tax liability.

(ii) Long-term capital gains : Long-term capital *gains* are capital gains arising from the transfer of long-term capital assets. In other words, long-term capital gains are the capital gains that arise from the transfer of a capital asset which has been held by the assessee for more than 36 months *(or for more than 12 months, if the capital asset is shares, debentures in a company, units of UTI etc.)* immediately preceeding the date of transfer.

2.8 INCOME FROM OTHER SOURCES

Any income, profits or gains includible in the total income of an assessee, which cannot be included under any of the preceding heads of income, four heads of income viz., income from salaries, income from house property, profits and gains of business or profession and capital gains, are

chargeable under the head 'Income from other sources'. Thus, Income from other sources is a residuary head of income and brings within its scope all the taxable income, profits or gains of an assessee which fall outside the scope of any other head. These are incorporated in Section 56 to 59 of the Act.

Incomes Chargeable Under the Head Income from Other Sources:

The various incomes chargeable under the head ''Income from Other Sources'' can be grouped under two categories, viz., (i) specified or specific incomes as per Section 56(2) of the Income Tax Act and (2) the other incomes as per Section 56(1) of the Income Tax Act.

Specified or Specific Incomes:

The various specified incomes, as per Section 56(2) of the Income Tax Act, are:

(1) Dividend on shares of companies.

(2) Any winnings from lotteries, cross word puzzles, races including horse races, card games and any other games of the nature of gambling or betting. Such winnings are chargeable to tax at a flat rate of 30% under section 115BB.

(3) Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [Section 56(2)(viib)]

(4) Interest received on compensation/ enhanced compensation deemed to be income in the year of receipt and taxable under the head "Income from Other Sources" [Sections 56(2)(viii)]

(5) Advance forfeited due to failure of negotiations for transfer of a capital asset to be taxable as "Income from other sources" [Section 56(2)(ix)]

(6) Any sum of money or value of property received without consideration or for inadequate consideration to be subject to tax in the hands of the recipient [Section 56(2)(x)]

(7) Any compensation or any other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto shall be chargeable to tax under this head.

(8) Any sum received by an employer-assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees

(9) Income from interest on securities, if such income (i.e., the interest on securities) is not taxed under the head ‘‘Income from Business or Profession.’’

(10) Any income from letting on hire machinery, plant or furniture, if such income is not taxed under the head ‘‘Income from Business or Profession’’.

(11) Any income from letting of building on hire along with machinery or plant or furniture fitted thereto, if the letting of the building cannot be separated from the letting of machinery or plant or furniture, and if such income is not taxed under the head ‘‘Income from Business or Profession.’’

(12) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy is chargeable under the head “Income from other sources” if such income is not chargeable under the head “Profits and gains if business or profession” or under the head “Salaries” i.e. if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken.

(13) Any income chargeable to tax under the Act, but not falling under any other head of income shall be chargeable to tax under the head “Income from other sources” e.g. Salary received by an MPs/MLAs will not be chargeable to income-tax under the head ‘Salary’ but will be chargeable as “Income from other sources” under section 56.

Other Incomes :

The other incomes, as per Section 56(1) of the Income Tax Act, are:

(1) Dividends on shares of co-operative societies.

(2) Interest on securities issued by co-operative societies.

(3) Interest on bank deposits.

(4) Interest on deposits with companies and others.

(5) Interest on advances given to others.

(6) Interest received on securities issued by a foreign government or by a foreign company.

(7) Interest received by an employee on his own contribution to unrecognised provident fund.

(8) Any fees, commission or remuneration received by an employee from a person other than his employer.

(9) Any annuity received under a will, trust deed or contract.

(10) Income of a sub-tenant from sub-letting the whole or part of house property.

(11) Royalty received by the owner of mines and copyrights.

(12) Directors' fees.

(13) Gratuity received by a director of a company who is not an employee of the company.

(14) Commission received by a director of a company for underwriting shares of a new issue.

(15) Commission received by a director of a company for giving guarantee to a bank.

(16) Rent of land not appurtenant to (i.e., not connected with) any building.

(17) Income from markets, ferries, fisheries, etc.

(18) Agricultural income derived from land situated in a foreign country.

(19) Income from leasehold property (i.e., property acquired on lease).

(20) Ground rent received.

(21) Any salary or pension received from a foreign Government.

(22) Income from undisclosed sources.

(23) Income from private tuition, remuneration for confidential work such as evaluation of answer script, remuneration as scrutinizer, as head examiner etc. received by a school, college or university teacher.

(24) Salary of M.P., M.L.A. or M.L.C.

(25) Pension received by the dependent family members of the deceased employee.



CHECK YOUR PROGRESS

Q 3 : Define Capital Gains.

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.....

Q 4: Mention any four specified incomes, as per Section 56(2) of the Income Tax Act.

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2.9 LET US SUM UP

In this unit we have discussed the following:

- 'Income' of an assessee for the purpose of charging of income tax and computation of total income, has been classified into five major heads-
  a. Income from Salaries
  b. Income from House Property
  c. Profits and Gains of Business and Profession
  d. Capital Gains
  e. Income from Other Sources.
- Salary is the amount paid by an employer to his employee in consideration of his services.
- The annual value of property consisting of any building or land appurtenant thereto is chargeable to tax under the head ''Income from House Property''.
- Income from profits and gains of business and profession is described in Sections 28 to 44D of the Income Tax Act.
- Income from Capital Gains is described in sections 45 to 55A of the Income Tax Act.

- Income from other sources is a residuary head of income incorporated in Section 56 to 59 of the Income Tax Act.



2.10 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes,Capital Publishing Company, G S Road, Guwahati.

2) V K Singhania, K Singhania, Taxmann.



2.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: There are five heads of income for the purpose of charging of income tax. These heads are: Income from Salaries, Income from House Property, Profits and Gains of Business or Profession, Capital Gains and Income from Other Sources.

Ans to Q No 2: An income from house property is chargeable to tax under the head ‘‘Income from House Property’’ if the following three conditions are satisfied:

(iv) The property should consist of any building or land appurtenant thereto.

(v) The property should belong to the assessee.

(vi) The property should not be used by the owner for carrying on his business or profession.

Ans to Q No 3: Section 45 (1) of the Income Tax Act defines the term ‘‘Capital gains’’ as profits or gains arising from the transfer of a ‘capital asset’ effected in the previous year are chargeable to tax under the head ‘‘Capital Gains’’

Ans to Q No 4: Specified Incomes :

(1) Dividend on shares of companies.

(2) Any winnings from lotteries, cross word puzzies, races including horse races, card games and any other games of the nature of gambling or betting.



2.12 MODEL QUESTIONS

Q 1: Fill in the blanks with appropriate word/words:

(i) Receipts from lottery are taxable under the head.

(ii) Capital asset can be both term and term.

(iii) Profit made from the sale of export licences comes under the head income.

(iv) The Income Tax Law is not concerned about the of the business income.

(v) Indexation of the cost of capital asset is required to be done in case of.

Q 2: State True or False—

(i) The property used by the owner for carrying on his business or profession is chargeable to tax under the head ''Income from House Property''.

(ii) Income of Khadi and Village Industries Board set up under the State or Provincial Act is exempt from tax.

(iii) If any salary is paid in advance, it is also included in the total income of that person for that previous year.

(iv) Refund from the statutory provident fund received by an employee is taxable.

Q 3 : State the various heads of 'income' as per Income-tax Act.

Q 4 : Write short notes :

a) Business b) Profession c) Capital gains

Q 5 : Mention five income which are chargeable to tax under the head 'Profits and gains of Business or Profession.

Q 6 : What do you mean by Short term and Long term capital gains?

Q 7 : Give four examples of "Incomes from other sources".

Q 8 : Give four examples of "Exempted Incomes".

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UNIT 3: COMPUTATION OF TAX LIABILITY

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Computation of Income from Salary

3.4 Computation of Income from House Property

3.5 Computation of Income from Capital Gains

3.6 Computation of Total Income and Tax Liability

3.7 Aggregation of Income

3.8 Set-off and Carry Forward of Losses

3.9 Deductions from Gross Total Income

3.10 Let Us Sum Up

3.11 Further Reading

3.12 Answers To Check Your Progress

3.13 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will able to -

- explain the meaning of salary
- discuss the features, basis of salary
- discuss about the allowances to employees
- explain the deduction u/s. 80C.

3.2 INTRODUCTION

In the previous unit, we discussed about the various heads of income that has been classified as per the Income Tax Act, 1961. In this unit, we shall discuss computation of income from each head and arrive at Gross Total Income of an assessee. We shall further

3.3 COMPUTATION OF INCOME FROM SALARY

For computation of 'Income from Salaries' the first step is to calculate the gross salary. In our previous unit we learned that 'salary' for the purposes of Income-tax Act, 1961 will include both monetary payments (e.g. basic salary, bonus, commission, allowances etc.) as well as non-monetary facilities (e.g. housing accommodation, medical facility, interest free loans etc.). The following components of Salary, inter alia, are considered while calculating the gross salary :

(a) Basic pay/wages;

(b) Allowances

(c) Annuity;

(d) Pension;

(e) Gratuity;

(f) Fees, commission, perquisites;

(g) Profits in lieu of or in addition to salary and wages;

(h) Sum received by encashment of leave not availed;

(i) The annual accretion to the balance at the credit of an employee participating in a recognized provident fund to the extent to which it is chargeable to tax under Rule 6 of part A of the Fourth Schedule;

(j) Transferred balance in a recognized provident fund to the extent it is taxable vide rule 11(4) of part A of the Fourth Schedule;

(k) Contribution by Central Govt. under pension scheme referred to in Section 80CCD;

(l) Income-tax paid by the employer on behalf of the employee when the salary is paid as 'tax-free'.

Among the above receipts, there are certain incomes, which are either fully exempted or exempted up to a certain limit.

Let us have a detailed discussion of a few important components of Salary:

A. Allowances to Employees

Allowances are usually paid to employees for meeting specific expenses viz. house rent, expenses on uniform, conveyance etc. Under the Income-tax Act,

1961, allowance is taxable on due or receipt basis, whichever is earlier. For income tax purpose, allowances are classified into the following types:

(A) Fully Exempted Allowances

(B) Partly Taxable Allowances

(C) Fully Taxable Allowances

Allowances		
Fully Exempt	**Partly Taxable**	**Fully Taxable**
(i) Allowances to High Court Judges (ii) Allowance paid by the United Nations Organization (iii) Compensatory Allowance received by a judge (iv) Sumptuary allowance granted to High Court or Supreme Court Judges (v) Allowance granted to Government Employeesoutside India.	(i) House Rent Allowance [u/s10(13A)] (ii) Special Allowances [u/s 10(14)]	(i) Entertainment Allowance (ii) Dearness Allowance (iii) Overtime Allowance (iv) Fixed Medical Allowance (v) City Compensatory Allowance (to meet increased cost of living in cities) (vi) Interim Allowance (vii) Servant Allowance (viii) Project Allowance (ix) Tiffin/Lunch/Dinner Allowance (x) Any other cash allowance (xi) Warden Allowance (xii) Non-practicing Allowance (xiii) Transport allowance to employee other than blind/ deaf and dumb/ orthopedicallyhandicapped employee

In case of allowances which are partly taxable, the exempted portion of the allowance has to be deducted from that specific allowance received from the employer before computing gross salary.

Let us have a detailed understanding of the partly taxable allowances :

(1) House rent allowance [Section 10(13A)]: House Rent Allowance (HRA) is a special allowance specifically granted to an employee by his employer towards payment of rent for residence of the employee. HRA granted to an employee is exempt to the extent of least of the following:

Metro Cities (Delhi, Mumbai, Kolkata & Chennai)	Other Cities
1) HRA actually received for the relevant period	1) HRA actually received for the relevant period
2) Rent paid in excess of 10% of salary for the relevant period	2) Rent paid in excess of 10% of salary for the relevant period
3) 50% of salary for the relevant period	3) 40% of salary for the relevant period

Notes :

a. Salary for this purpose means basic salary, dearness allowance, if provided in terms of employment and commission as a fixed percentage of turnover.

b. Exemption is not available to an assessee who lives in his own house, or in a house for which he has not incurred the expenditure of rent.

c. Relevant period means the period during which the said accommodation was occupied by the assessee during the previous year.

Illustration 3.1

Mr. Santosh Deka, staying at Delhi, receives ₹12,500 monthly as basic salary; ₹1,500 p.m as DA provided in terms of employment & 4% as commission on turnover achieved by him. He is paid HRA of ₹1,800 p.m. Turnover achieved by him for the year is ₹15 Lacs. House rent paid by him is ₹2,500 p.m. He received advance salary of ₹ 50,000 in March 2022 relating to the period April to July 2022. Find taxable HRA for AY 2022-23.

Solution 3.1:

Computation of Taxable House Rent Allowance of Mr. Santosh Deka for A.Y. 2022-23

Particulars	₹	₹
Actual House Rent allowance (1800 x 12 months)		21600
Less: Least of the following is Exempt u/s. 10 (13A):		
1. Excess of rent paid over 10% of the salary (30,000 – 22,800)	7,200	
2. 50% of salary (50% of 2,28,000)	1,14,000	
3. Actual HRA received	21600	7,200
Taxable HRA		**14,400**

Note:

1) Salary for HRA = Basic Salary + Dearness Allowance (Retirement Benefits) + Commission (% of TO) = (12,500 x 12 months) + (1,500 x 12 months) + 4% on 15,00,000 = 2,28,000.

2) Though advance Salary is taxable in AY 2022-23 on receipt basis, it shall not be considered in computing Salary for the purpose of calculating exemption u/s 10(13A)

Illustration 3.2

Miss. Asha Baruah has the following receipts from Goswami Pvt. Ltd.:

(1) Basic pay ₹ 40,000 p.m.

(2) Dearness allowance (D.A.) ₹ 6,000 p.m. (forming part of retirement benefits)

(3) Commission ₹ 50,000 p.a.

(4) Motor car for personal use (expenses met by the employer) ₹ 1,500 p.m.

(5) House Rent allowance ₹ 15,000 p.m.

Calculate taxable HRA of Miss. Asha Baruah assuming that she paid a rent of ₹ 16,000 p.m. for her accommodation at Guwahati.

Solution 3.2 :

Computation of Taxable House Rent Allowance of Miss Asha Baruah

Particulars	₹	₹
Actual House Rent allowance (₹ 15,000 x 12 months)		1,80,000
Less: Least of the following is Exempt u/s. 10 (13A) :		
1. Excess of rent paid over 10% of the salary (1,92,000 – 55,200)	1,36,800	
2. 40% of salary (40% of 5,52,000)	2,02,800	
3. Actual HRA received	1,80,000	1,36,800
Taxable HRA		**43,200**

Note:

1) Salary for HRA = Basic Salary + Dearness Allowance (Retirement Benefits)
= (40,000 x 12 months) + (6,000 x 12 months) = 5,52,000.

2) Special allowances to meet expenses relating to duties or personal expenses [Section 10(14)]:

This clause provides for exemption (as per Rule 2BB) in respect of the following :

(i) Special allowances or benefit, not being in the nature of a perquisite, specifically granted to meet expenses incurred wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit **[Section 10(14)(i)]**

For the allowances under this category, **there is no limit on the amount which the employee can receive from the employer**, but whatever amount is received should be fully utilized for the purpose for which it was given to him. Following allowances are specified u/s 10(14)(i):

a) Travelling Allowance

b) Daily Allowance

c) Conveyance Allowance

d) Helper Allowance

e) Research Allowance

f) Uniform Allowance

(ii) Special allowances granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living. **[Section 10(14)(ii)]**

For the allowances under this category, **there is a limit on the amount which the employee can receive from the employer.** Any amount received by the employee in excess of these specified limits will be taxable in his hands as income from salary for the year. Following allowances are specified u/s 10(14)(ii):

Sl. No.	Name of Allowance	Extent to which allowanceis exempt
1.	Any Special Compensatory Allowance in the nature of **Special Compensatory (Hilly Areas) Allowance** or High Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance	₹ 800 or ₹ 300 per month depending upon the specified locations ₹ 7,000 per month in Siachen area of Jammu and Kashmir
2.	Any Special Compensatory Allowance in the nature of **Border Area Allowance or** remote localityallowance or difficult area allowance or disturbed area allowance	₹ 1,300 or ₹ 1,100 or ₹ 1,050 or ₹ 750 or ₹ 300 or ₹ 200 per month depending upon the specified locations
3.	**Special Compensatory (Tribal Areas/ Schedule Areas/Agency Areas) Allowance [Specified States**	₹ 200 per month
4.	Any allowance granted to an employee **working in any transport system** to meet his personal expenditure during his duty performed in the course of running such transport from one place toanother, provided that such employee is not in receipt of daily allowance	70% of such allowance uptoa maximum of ₹ 10,000 permonth
5.	**Children Education Allowance**	₹ 100 per month per child upto a maximum of two children
6.	Any allowance granted to an employee to meet the **hostel expenditure** on his child	₹ 300 per month per child upto a maximum of two children
7.	**Compensatory Field Area Allowance [Specified areas in Specified States]**	₹ 2,600 per month
8.	**Compensatory Modified Field Area Allowance [Specified areas in Specified States]**	₹ 1,000 per month
9.	**Children Education Allowance**	₹ 100 per month per child upto a maximum of two children
10.	Any special allowance in the nature of **counter insurgency allowance** granted to the members of the armed forces operating in areas away from their permanent locations.	₹ 3,900 per month

Sl. No.	Name of Allowance	Extent to which allowanceis exempt
11.	Any **transport allowance** granted to an employee who is blind or deaf and dumb or orthopedicallyhandicapped with disability of the lower extremities of the body, to meet his expenditure for commutingbetween his residence and place of duty	₹ 3,200 per month.
12.	**Underground Allowance** granted to an employee who is working in uncongenial, unnatural climate in underground mines.	₹ 800 per month
13.	Any special allowance in the nature of **high Altitude allowance** granted to the member of the armed forces operating in high altitude areas For altitude of 9,000 to 15,000 feet For above 15,000 feet	 ₹ 1,060 per month ₹ 1,600 per month
14.	Any special allowance in the natureof **special compensatory highlyactive field area allowance** granted to the member of the armed forces	₹ 4,200 per month
15.	Any special allowance in the natureof **Island (duty) allowance** grantedto the member of the armed forces in **Andaman & Nicobar and Lakshadweep Group of Islands**	₹ 3,250 per month

Illustration: 3.3 Mr. Hemanta Baruah is an employee of Chakrapani Pvt. Ltd. and having three children who are studying in schools and residing in school hostel. During the previous year 2021-22, in addition to his Basic salary and D.A., he received the following allowances from his employer:

(a) Children Education Allowance ₹ 700 per month for each child.

(b) Hostel expenditure allowance ₹ 500 per month for each child.

(c) Transport Allowance ₹1,800 per month

(d) Tribal area allowance ₹ 500 per month

Mr. Hemanta Baruah actually paid ₹1,000 per month for each child for tuition fees. He also paid ₹ 2,000 per month as hostel expenditure for each of his children. Compute his taxable allowances.

Solution 3.3 :

Taxable allowances in the hands of Mr. Hemanta Baruah is computed as under -

i) Children Education Allowance :

Exemption available only for two children : ₹100 per month per children

= ₹ 100 x 12 x 2 = ₹ 2,400

Children Education Allowance received ₹ 700 per month for each three children

= ₹ 700 x 12 x 3 = ₹ 25, 200

Hence (₹ 25, 200 - ₹ 2,400) = ₹ 22,800 is taxable Children Education Allowance.

ii) Children Hostel Allowance:

Exemption available only for two children : ₹ 300 per month per children

= ₹ 300 x 12 x 2 = ₹ 7,200

Children Hostel Allowance received ₹ 500 per month for each child for three children = ₹ 500 x 12 x 3 = ₹ 18,000

Hence, (₹ 18, 000 - ₹ 7,200) = ₹ 10,800 is taxable Children Hostel Allowance

iii) Transport Allowance:

Transport Allowance received = (₹ 1,800 p.m. × 12 months) = ₹ 21,600

Hence, ₹ 21600 is taxable Transport Allowance

iv) Tribal Area Allowance :

Exemption Available ₹ 200 per month = ₹ 200 x 12 = ₹ 2,400

Tribal Area Allowance received 500 p.m. = ₹ 500 x 12 = ₹ 6,000

Hence, (₹ 6, 000 - ₹ 2,400) = ₹ 3,600 is taxable Children Hostel Allowance

B. Pension

Pension is generally paid by the Government or a Company to the employer for his past service and it is payable after the retirement.

Pension is of two types: commuted and uncommuted.

- **Uncommuted Pension :** Uncommuted pension refers to pension received periodically. It is fully taxable in the hands of both government and nongovernment employees.
- **Commuted Pension :** Commutation means inter-change. Commuted pension means lump sum amount taken by commuting the whole or part

of the pension. Many persons convert their future right to receive pension into a lumpsum amount receivable immediately.

The payment received in respect of commuted pension is exempt u/s 10(10A), subject to the conditions specified therein. Its treatment is discussed below:

(a) Employees of the Central Government/ local authorities/ Statutory Corporation/ members of the Civil Services/ Defence Services: Any commuted pension received is fully exempt from tax.

(b) Other Employees: Any commuted pension received is exempt from tax to the extent of the following:

If the employee is in receipt of gratuity also,

Exemption = 1/3rd of the amount of pension which he would have received had he commuted the whole of the pension.

$$= \left[\frac{1}{3} x \frac{\text{commuted pension received}}{\text{commutation \%}} x100\% \right]$$

If the employee does not receive any gratuity

Exemption = ½ of the amount of pension which he would have received had he commuted the whole of the pension.

$$= \left[\frac{1}{2} x \frac{\text{commuted pension received}}{\text{commutation \%}} x100\% \right]$$

$$\left[\frac{1}{3} x \frac{\text{commuted pension received}}{\text{commutation \%}} x100\% \right]$$

Notes:

1 Judges of the Supreme Court and High Court will be entitled to exemption of the entire commuted portion.

2. Any commuted pension received by an individual out of annuity plan of the Life Insurance Corporation of India (LIC) from a fund set up by that Corporation will be exempted.

Illustration 3.5

Mr. Jitu Duwarah who retired on 1.10.2021 is receiving ₹ 10,000 p.m. as pension. On 1.3.2022, he commuted 60% of his pension and received ₹ 4,00,000 as commuted pension. You are required to compute his taxable pension assuming:

(a) He is a government employee.

(b) He is a private sector employee and received gratuity of ₹ 10,00,000 at the time of retirement.

(c) He is a private sector employee and did not receive any gratuity at the time of retirement.

Solution 3.5

(a) He is a government employee

Uncommuted pension received (October – March)		₹ 44,000
[(₹ 10,000 × 4 months) + (40% of ₹ 10,000 × 1 months)]		
Commuted pension received	₹ 4,00,000	
Less: Exempt u/s 10(10A)	₹ 4,00,000	NIL
Taxable pension		**₹ 44,000**

(b) He is a private sector employee and received gratuity ₹ 5,00,000 at the time of retirement

Uncommuted pension received (October – March)		₹ 44,000
[(₹ 10,000 × 4 months) + (40% of ₹ 10,000 × 1 months)]		
Commuted pension received	₹ 4,00,000	
Less: Exempt u/s 10(10A)		
$\left(\frac{1}{3} x \frac{4,00,000}{60\%} x 100\%\right)$	₹ 2,22,222	₹ 1,77,778
Taxable pension		**₹ 2,21,778**

(c) He is a private sector employee and did not receive any gratuity at the time of retirement

Uncommuted pension received (October – March)		₹ 44,000
[(10,000 × 4 months) + (40% of 10,000 × 1 months)]		
Commuted pension received	4,00,000	
Less: Exempt u/s 10(10A)		

$\left(\frac{1}{2} x \frac{4,00,000}{60\%} x 100\%\right)$ ₹ 3,33,333 ₹ 67,777

Taxable pension ₹ **11,0,677**

B. Gratuity

Gratuity is a voluntary payment made by an employer in appreciation of services rendered by the employee. Now-a-days gratuity has become a normal payment applicable to all employees. In fact, Payment of Gratuity Act, 1972 is a statutory recognition of the concept of gratuity. Almost all employers enter into an agreement with employees to pay gratuity. Gratuity received during the period of service is fully taxable

Exemption in respect of Gratuity [Section 10(10)]

Its treatment is discussed below :

1. Retirement gratuity received under the Pension Code or Regulations applicable to members of the Defence Service is fully exempt from tax.
2. **Employees of Central Government/ Members of Civil Services/ local authority employees:** Any death cum retirement gratuity is fully exempt from tax under section 10(10)(i).
3. **Other employees :**

(i) Covered by the Payment of Gratuity Act, 1972

Any death-cum-retirement gratuity is exempt from tax to the extent of least of the following:

(a) ₹ 20,00,000

(b) Gratuity actually received

(c) 15 days' salary based on last drawn salary for each completed year of service or part thereof in excess of 6 months

Note: Salary for this purpose means basic salary and dearness allowance. No. of days in a month for this purpose, shall be taken as 26.

(ii) **Not covered by the Payment of Gratuity Act, 1972**

Any death cum retirement gratuity received by an employee on his retirement or his becoming incapacitated prior to such retirement or on his termination or any gratuity received by his widow, children or dependents on his death is

exempt from tax to the extent of least of the following :

(a) ₹ 20,00,000

(b) Gratuity actually received

(c) Half month's salary (based on last 10 months' average salary immediately preceding the month of retirement or death) for each completed year of service (fraction to be ignored)

Note : Salary for this purpose means basic salary and dearness allowance, if provided in the terms of employment for retirement benefits, forming part of salary and commission which is expressed as a fixed percentage of turnover.

Illustration 3.6

Mr. Utpal Dutta retired on 01.10.2021 after completion of 25 years of service and received gratuity of 20,00,000. At the time of retirement, his salary was:

Basic Salary : ₹ 50,000 p.m.

Dearness Allowance : ₹ 10,000 p.m. (60% of which is for retirement benefits)

Commission: 1% of turnover (turnover in the last 12 months was ₹ 1,20,00,000)

Bonus : ₹ 25,000 p.a.

Compute his taxable gratuity assuming :

(a) He is private sector employee and covered by the Payment of Gratuity Act, 1972.

(b) He is private sector employee and not covered by Payment of Gratuity Act, 1972.

(c) He is a Government employee

Solution 3.6:

(a) He is covered by the Payment of Gratuity Act 1972

Gratuity received at the time of retirement	₹ 20,00,000
Less: Exemption under section 10 (10)	
Least of the following :	
i. Gratuity received	₹ 20,00,000
ii. Statutory limit	₹ 20,00,000

iii. 15 days' salary based on last drawn salary for each completed year of service or part thereof in excess of 6 months

$$\left(\frac{15}{26} \text{ x last drawn salary x years of service}\right)$$

$$\left(\frac{15}{26} \text{ x } [50,000 \text{ x } 10,0000]\right) \text{ x } 26 \qquad \underline{₹\ 9,00,000}$$

Taxable Gratuity ₹ **11,00,000**

(b) He is not covered by the Payment of Gratuity Act 1972

Gratuity received at the time of retirement ₹ 20,00,000

Less: Exemption under section 10(10)

Least of the following:

i. Gratuity received ₹ 20,00,000

ii. Statutory limit ₹ 20,00,000

iii. Half month's salary based on average salary of last 10 months preceding the month of retirement for each completed year of service.

i.e. 1 2 ×Average salary × years of service

$$= \frac{1}{2} \text{ x } \left[\frac{(50,000 \text{ x } 10) + (10,000 \text{x} 60\% \text{x} 10) + 1\% \text{x} 1,20,00,000 \text{x} \frac{10}{12}}{10}\right] \text{ x } 25 \qquad \underline{₹\ 8,25,000} \qquad \underline{₹\ 8,25,000}$$

Taxable Gratuity ₹ **11,75,000**

(b) He is a government employee

Gratuity received at the time of retirement ₹ 20,00,000

Less: Exemption under section 10(10) ₹ 20,00,000

Taxable gratuity **Nil**

C. Provident Fund

Provident fund scheme is a scheme intended to give substantial benefits to an employee at the time of his retirement. For Income Tax purpose, provident funds are categorized into 4 categories :

i) Recognized Provident Fund

ii) Unrecognized Provident Fund

iii) Statutory Provident Fund

iv) Public Provident Fund

Under this scheme, a specified sum is deducted from the salary of the employee as his contribution towards the fund. The employer also generally contributes the same amount out of his pocket, to the fund. The contributions of the employer and the employee are invested in approved securities. Interest earned thereon is also credited to the account of the employee. Thus, the credit balance in a provident fund account of an employee consists of the following:

(i) employee's contribution

(ii) interest on employee's contribution

(iii) employer's contribution

(iv) interest on employer's contribution.

The accumulated balance is paid to the employee at the time of his retirement or resignation. In the case of death of the employee, the same is paid to his legal heirs. The provident fund represents an important source of small savings available to the Government. Hence, the Income-tax Act, 1961 gives certain deductions on savings in a provident fund account.

Tax Treatment of various components of the balance in Provident Fund Account *Returns Under GST*

Note: Salary for this purpose means basic salary and dearness allowance - if

Particulars	Recognised PF	Unrecognised PF	Statutory PF	Public PF
Employer's Contribution	Contributionin excess of12% of salaryis taxable as"salary" u/ s17(1)	Not taxable atthe time ofcontribution	Fully exempt	N.A. (as there isonly assessee's own contribution)
Employee's Contribution	Eligible for deduction u/s 80C	Not eligible fordeduction	Eligible for deduction u/s 80C	Eligible for deduction u/s 80C
Interest Credited on Employer's Contribution	Amount inexcess of 9.5% p.a. is taxable as" salary" u/s17(1)	Not taxable at the time of credit of interest	Fully exempt	N.A

Particulars	Recognised PF	Unrecognised PF	Statutory PF	Public PF
Interest Credited on Employee's Contribution	Amount inexcess of 9.5% p.a. is taxable as" salary" u/s17(1)	Not taxable at the time of credit of interest	Exempt upto certain limit of contribution	Fully exempt
Amount withdrawn on retirement/ termination	Exempt u/ s10(12)subject to certain conditions detailed in the chart below	Employee's contributionis nottaxable.· Interest on Employee's contributionis taxable under 'Income from Other Sources'. • Employer's contribution and interest thereon is taxable as "Profit in lieu of salary" u/ s 17(3).	Exempt u/s 10 (11)	Fully exempt u/s 10(11)

provided in the terms of employment for retirement benefits and commission as a percentage of turnover.

D. Deductions from Salaries

The income chargeable under the head 'Salaries' is computed after making the following three deductions :

1. **Standard Deduction :**
   A standard deduction of 50,000 or the amount of salary, whichever is lower, is to be provided to the employees.
2. **Entertainment allowance :**
   Deduction in respect of entertainment allowance is available in case of Government employees only. Entertainment allowance received is included in the salary and thereafter the deduction is to be made from gross salary. The amount of deduction will be lower of:

(i) One-fifth of his basic salary or

(ii) ₹ 5,000 or

(iii) Entertainment allowance received.

Amount actually spent by the employee towards entertainment out of the entertainment allowance received by him is not a relevant consideration at all.

3. **Professional tax on employment :**

Professional tax or taxes on employment levied by a State under Article 276 of the Constitution is allowed as deduction only when it is actually paid by the employee during the previous year. The total amount by way of professional tax payable in respect of any one person shall not exceed ₹ 2,500 per annum. However, the amount paid during the previous year can be more than ₹ 2,500 as the employee may have paid the professional tax of an earlier year during the previous year. If professional tax is reimbursed or directly paid by the employer on behalf of the employee, the amount so paid is first included as salary income and then allowed as a deduction u/s 16.

Illustration 3.4: Mrs Swati Deka, working in a private company in Guwahati, furnishes the following particulars of her income for the previous year 2021-22:

		₹
(i)	Basic salary	20,000 p.m.
(ii)	Dearness allowance	4,000 p.m.
	(60% of which forms part of salary for retirement benefits)	
(iii)	Lunch Allowance	500 p.m.
(iv)	Medical Allowance	500 p.m.
(v)	City Compensatory Allowance	300 p.m.
(vi)	House Rent Allowance	3,000 p.m.

Mrs Swati Deka resides in her own house at Guwahati.

Compute the gross income from salary of Mrs Swati Deka for the Assessment year 2022-23.

Solution 3.4:

Computation of gross income from salary of Mrs Swati Deka for the Assessment Year 2022-23 :

	₹
Basic Salary @ ₹ 20,000 p.m.	2, 40,000
Dearness Allowance @ ₹ 4,000 p.m.	48,000
Lunch Allowance @ ₹ 500 p.m.	6,000
Medical Allowance @ ₹ 500 p.m.	6,000
City Compensatory Allowance @ ₹ 300 p.m.	3,600
House Rent Allowance @ ₹ 3,000 p.m.	36,000
Gross income from salary	**3, 39,600**

Note : *House Rent Allowance received by* Mrs Swati Deka *is fully taxable as she resides in her own house.*

Illustration 3.5: Following details are furnished by Anuj Bora, an Indian citizen for the year ending 31-3-2022.

	₹
Salary (net of tax, rent of house provided by employer and	
Anuj Bora's contribution to Provident Fund)	2, 46,000
Anuj Bora's contribution to Provident Fund	39,000
Employer's contribution to Provident Fund	
Rent of residential accommodation provided by employer	39,000
and deducted out of salary	12,000
Professional Tax deducted at source	3,000
Interest credited to Provident Fund @ 8% per annum	32,000
Leave Travel Allowance received	10,000
Actual expenses incurred on Leave Travel	
Rent free house provided to employee :	1,000
Rent paid on house in Mumbai	72,000
Bonus equal to two month salary (paid separately, not included in the net salary)	
Remote Locality Allowance @ ₹ 1,000 p.m. [Notified to be exempted upto ₹ 200 p.m.]	
Running Allowances	₹ 2,000 p.m.

Children Education Allowance for 3 children @ ₹ 500 p.m. each (one of his children is living in hostel)

Entertainment Allowances	₹ 500 p.m.
Amount contributed to PPF	₹ 50,000
Purchase of NSC VIII issue	₹ 30,000

Solution :

Computation of Taxable Income from Salary of* Anuj Bora, *for the Assessment Year 2022-23 relevant to the previous year 2021-22.

	₹	₹
Net Salary received	2, 46,000	
Add: Professional Tax deducted at source	3,000	
Add: Contribution to P. F.	39,000	
Add: Rent of residential house provided by employer and deducted out of salary	12,000	
Gross Salary		3, 00,000
Employer's contribution to Provident Fund		39000
Less: Exempted up to 12% of salary [12% of 3, 00,000]		36,000
3,000		
Leave travel allowance (Note 2)		9,000
Bonus equal to two month salary [3, 00,000 x 2/12]		50,000
Remote Locality Allowance @ ₹ 1,000 p.m.	12,000	
Less: Notified to be exempted up to 200 p.m.	2,400	9,600
Running Allowance ₹ 2,000 p.m.	24,000	
Less: Exempted up to 70%	16,800	7,200
Children Education Allowance for 3 children @ ₹ 500 p.m. each	18,000	
Less: Exempted [100x12x2]	2,400	15,600
Entertainment Allowance ₹ 500 per month		6,000
Perquisite in respect of accommodation provided at concessional rate [See note 1]		46,530
Income from Salary		**4,46,930**
(ia) Standard Deduction		50,000
Deduction u/s 16(iii) Professional Tax paid		3,000

Net Income from salary		**3,93,930**
Deduction u/s 80C: Own contribution to RPF	39,000	
Purchase of NSC VIII issue	30,000	
Amount deposited in PPF	50,000	
Deduction u/s 80C		1,19,000
Total Income		**2,74,930**



CHECK YOUR PROGRESS

Q 1 : Mention two allowances which are fully exempt from tax.

……

Q 2 : State the amount of Standard deduction that can availed while calculating income from salaries.

……

3.4 COMPUTATION OF INCOME FROM HOUSE PROPERTY

The process of computation of income under the head “Income from house property” starts with the determination of annual value of the property. The concept of annual value and the method of determination is laid down in section 23. The annual value of any property comprising of buildings or lands appurtenant thereto of which the assessee is the owner is chargeable to tax under the head “Income from house property”.

The Income from House Property can be computed in the following manner.

A. Gross Annual Value (GAV)	xxxxxxx
B. Less: Municipal tax paid.	(xxxxxx)
C. Net Annual Value (NAV) [A – B]	Xxxxxxx
D. Less: Deduction u/s 24	
Section 24(a): Standard deduction (30% of NAV)	(xxxxxx)
Section 24(b): Interest on borrowed Capital	(xxxxxx)
Income from House Property	Xxxxxxx

From the above table, it could be understood that computation of Income from House Property is a step by step process, and determination of Gross Annual Value (GAV) is the first step in the process of computation of House Property income :

A. Determination of Gross Annual Value (GAV) of the House Property

1) Where the property is let out throughout the previous year [Section 23(1)(a)/(b)], the GAV would be calculated as under :

Particulars	Amount
Computation of GAV **Step 1** Compute Expected Rent (ER) ER = Higher of Municipal Value (MV) and Fair Rent (FR), but restricted to Standard Rent (SR) **Step 2** Compute Actual rent received/receivable Actual rent received/receivable *less* unrealized rent as per Rule 4 **Step 3** Compare ER and Actual rent received/receivable **Step 4** Higher of ER and Actual rent received/ receivable is **Gross Annual Value (GAV)**	

2) Where let out property is vacant for part of the year [Section 23(1)(c)], the GAV would be calculated as under :

Particulars	Amount
Computation of GAV **Step 1** Compute Expected Rent (ER) ER = Higher of Municipal Value (MV) and Fair Rent (FR), but restricted to Standard Rent (SR) **Step 2** Compute Actual rent received/receivable Actual rent received/receivable *less* unrealized rent as per Rule 4 **Step 3** Compare ER and Actual rent received/ receivable computed for the let-out period	

Particulars		Amount
Step 4	If Actual rent is lower than ER owing to vacancy, then Actual rent is the **Gross Annual Value (GAV)** If Actual rent is lower than ER due to other reasons, then ER is the **Gross Annual Value (GAV)** However, in spite of vacancy, if the Actual rent is higher than the ER, then Actual rent is the **Gross Annual Value (GAV)**	

3) In case of self-occupied property or unoccupied property [Section 23(2)], the GAV would be **NIL** :

   a) provided no other benefit is derived by the owner from such property.

      The expression **"Unoccupied property"** refers to a property which cannot be occupied by the owner by reason of his employment, business or profession at a different place and he resides at such other place in a building not belonging to him.

   (b) The benefit of "Nil" Annual Value is available only for upto two self-occupied or unoccupied house properties i.e. for either one house property or two house properties.

   (c) The benefit of "Nil" Annual Value in respect of upto **two** self-occupied house properties is available only to an individual/ HUF.

   (c) No deduction for municipal taxes is allowed in respect of such property/properties as annual value means value determined after deduction of municipal taxes.

4) Where a house property is let-out for part of the year and self- occupied for part of the year [Section 23(3)]

Particulars	Amount
Computation of GAV **Step 1** Compute Expected Rent (ER) for the whole year ER = Higher of Municipal Value (MV) and Fair Rent (FR), but restricted to Standard Rent (SR) **Step 2** Compute Actual rent received/receivable Actual rent received/receivable *less* unrealized rent as per Rule 4 **Step 3** Compare ER for the whole year with Actual rent received/ receivable computed for the let-out period **Step 4** Higher of ER for the whole year and Actual rent received/receivable is **Gross Annual Value (GAV)**	

5) In case of deemed to be let out property [Section 23(4)], the Expected Rent (ER) shall be taken as the GAV

   ER = Higher of Municipal Value (MV) and Fair Rent (FR), but restricted to Standard Rent (SR)

6) In case of a house property held as stock-in-trade [Section 23(5)], the GAV would be **NIL**

B. Municipal Taxes

Municipal Taxes are allowable as deduction from the GAV subject to the following two conditions :

(a) It should be borne by the assessee (owner); and

(b) It should be actually paid during the previous year.

If property taxes levied by a local authority for a particular previous year are not paid during that year, no deduction shall be allowed in the computation of income from house property for that year.

However, if in any subsequent year, the arrears are paid, then, the amount so paid is allowed as deduction in computation of income from house property for that year.

Thus, we find that irrespective of the previous year in which the liability to pay such taxes arises according to the method of accounting regularly employed by the owner, the deduction in respect of such taxes will be allowed only in the year of actual payment by the owner.

In respect of self-occupied/unoccupied house property/properties for which GAV is "Nil", deduction of municipal taxes paid is not allowable.

C. Deductions from Annual Value u/s 24

There are two deductions which can be made from annual value. They are –

(i) 30% of NAV; and

(ii) Interest on borrowed capital

(i) 30% of NAV is allowed as deduction under section 24(a)

This is a flat deduction and is allowed irrespective of the actual expenditure incurred. However, the assessee will not be entitled to deduction of30%, in case of self-occupied properties where the annual value itself is nil.

(ii) Interest on borrowed capital is allowed as deduction u/s 24(b)

Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction.

Interest payable on a fresh loan taken to repay the original loan raised earlier for the aforesaid purposes is also admissible as a deduction.

Interest for pre-construction period :

Pre-construction period is the period prior to the previous year in which property is acquired or construction is completed.

Interest payable on borrowed capital for the period prior to the previous year in which the property has been acquired or constructed (Pre- construction interest) as reduced by any part thereof allowed as deduction under any other provision of the Act, can be claimed as deduction over a period of 5 years in equal annual installments commencing from the year of acquisition or completion of construction.

Interest for the year in which construction is completed/ property is acquired :

Interest relating to the year of completion of construction/ acquisition of property can be fully claimed in that year irrespective of the date of completion/ acquisition.

Deduction in respect of self-occupied or unoccupied property where annual value is nil

In this case, the assessee will be allowed a deduction on account of interest **(including 1/5th of the accumulated interest of pre-construction period)** upto a maximum limit of ₹ 2,00,000 as under-

Loan borrowed before 1.4.99 : Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital before 1.4.99	Actual interest payable in aggregate for **one or two self-occupied properties**, subject to maximum of ₹ **30,000**.
Loan borrowed on or after 1.4.99: (i) Where the property is acquired or constructed with capital borrowed on or after1.4.99 and such acquisition or construction is completed within 5 years from the end of the financial year in which the capital was borrowed.	Actual interest payable in aggregate for **one or two self-occupied properties**, subject to maximum of ₹ **2,00,000**, if certificate mentioned in (2) below is obtained.
(ii) Where the property is repaired, renewed or reconstructed with capital borrowed on or after 1.4.99.	Actual interest payable in aggregate for **one or two self-occupied properties**, subject to a maximum of ₹**30,000**.

Important points :

(1) The ceiling limit would not apply to let-out/deemed let-out property: The ceiling prescribed for self-occupied property as above in respect of interest on loan borrowed does not apply to a let out/ deemed let-out property.

(2) Interest allowable on accrual basis: Deduction under section 24(b) for interest is available on accrual basis. Therefore interest accrued but not paid during the year can also be claimed as deduction.

(3) Unpaid purchase price would be considered as capital borrowed: Where a buyer enters into an arrangement with a seller to pay the sale price in installments along with interest due thereon, the seller becomes the lender in relation to the unpaid purchase price and the buyer becomes the borrower. In such a case, unpaid purchase price can be treated as capital borrowed for acquiring property and interest paid thereon can be allowed as deduction under section 24.

(4) Interest on unpaid interest is not deductible.

Provision for arrears of rent and unrealized rent received subsequently [Sec 25A]

(i) As per section 25A(1), the amount of rent received in arrears from a tenant or the amount of unrealised rent realised subsequently from a tenant by an assessee shall be deemed to be income from house property in the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head “Income from house property”, whether the assessee is the owner of the property or not in that financial year.

(ii) Section 25A(2) provides a deduction of 30% of arrears of rent or unrealised rent realised subsequently by the assessee.

Deemed Ownership [Sec 27]

As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for the purposes of section 22 to 26.

(i) Transfer to a spouse [Section 27(i)] – In case of transfer of house property by an individual to his or her spouse otherwise than for adequate consideration, the transferor is deemed to be the owner of the transferred property.

Exception *– In case of transfer to spouse in connection with an agreement to live apart, the transferor will not be deemed to be the owner. The transferee will be the owner of the house property.*

(ii) Transfer to a minor child [Section 27(i)] – In case of transfer of house property by an individual to his or her minor child otherwise than for adequate consideration, the transferor would be deemed to be owner of the house property transferred.

Exception *– In case of transfer to a minor married daughter, the transferor is not deemed to be the owner.*

Note - Where cash is transferred to spouse/minor child and the transferee acquires property out of such cash, then, the transferor shall not be treated as deemed owner of the property. However, clubbing provisions will be attracted.

(iii) Holder of an impartible estate [Section 27(ii)] – The impartible estate is a property which is not legally divisible. The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

After enactment of the Hindu Succession Act, 1956, all the properties comprised in an impartible estate by custom is to be assessed in the status of a HUF. However, section 27(ii) will continue to be applicable in relation to impartible estates by grant or covenant.

(iv) Member of a co-operative society etc. [Section 27(iii)] – A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/ company/ association, shall be deemed to be owner of that building or part thereof allotted to him although the co-operative society/ company/ association is the legal owner of that building.

(v) Person in possession of a property [Section 27(iiia)] – A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in

section 53A of the Transfer of Property Act shall be the deemed owner of that house property. This would include cases where the –

(1) possession of property has been handed over to the buyer

(2) sale consideration has been paid or promised to be paid to the seller by the buyer

(3) sale deed has not been executed in favour of the buyer, although certain other documents like power of attorney/ agreement to sell/ will etc. have been executed.

In all the above cases, the buyer would be deemed to be the owner of the property although it is not registered in his name.

(vi) Person having right in a property for a period not less than 12 years [Section 27(iiib)] – A person who acquires any rights in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(f) i.e. transfer by way of lease for not less than 12 years, shall be deemed to be the owner of that building or part thereof.

Exception *– In case the person acquiring any rights by way of lease from month to month or for a period not exceeding one year, such person will not be deemed to be the owner.*

Illustration :

Mr. Rajkhowa is a co-owner of a house property along with his brother holding equal share in the property.

Particulars	₹
Municipal value of the property	1,60,000
Fair rent	1,50,000
Standard rent under the Rent Control Act	1,70,000
Rent received	15,000 p.m.

The loan for the construction of this property is jointly taken and the interest charged by the bank is Rs 25,000, out of which Rs. 21,000 has been paid. Interest on the unpaid interest is Rs. 450. To repay this loan, Rajkhowa and his brother have taken a fresh loan and interest charged on this loan is Rs. 5,000.

The municipal taxes of Rs. 5,100 have been paid by the tenant.

Compute the income from this property chargeable in the hands of Mr. Rajkhowa for the A.Y. 2022-23.

Solution:

Computation of income from house property of Mr. Rajkhowa for A.Y. 2022-23

Particulars	Rs	Rs
Gross Annual Value **(See Note I below)**		1,80,000
Less: Municipal taxes – paid by the tenant, hence not deductible		Nil
Net Annual Value (NAV)		1,80,000
Less: Deductions under section 24		
(i) 30% of NAV	54,000	
(ii) Interest on housing loan **(See Note II below)**		
- Interest on loan taken from bank	25,000	
- Interest on fresh loan to repay old loan for this property	5,000	84,000
Income from house property		**96,000**
50% share taxable in the hands of Mr. Rajkhowa **(See Note III below)**		**48,000**

Notes:

I. Computation of Gross Annual Value (GAV)

GAV is the higher of Expected rent and actual rent received. Expected rent is the higher of municipal value and fair rent, but restricted to standard rent.

Particulars	Rs	Rs	Rs	Rs
(a) Municipal value	1,60,000			
(b) Fair rent	1,50,000			
(c) Higher of (a) and (b)		1,60,000		
(d) Standard rent		1,70,000		
(e) Expected rent			1,60,000	
[lower of (c)				

Particulars	Rs	Rs	Rs	Rs
and (d)]				
(f) Actual rent			1,80,000	
[Rs 15,000 x 12]				
(g) Gross Annual Value				
[higher of (e)and (f)]				1,80,000

2. Interest on housing loan is allowable as a deduction under section 24 on accrual basis. Further, interest on fresh loan taken to repay old loan is also allowable as deduction. However, interest on unpaid interest is not allowable as deduction under section 24.

3. Section 26 provides that where a house property is owned by two or more persons whose shares are definite and ascertainable, the share of each such person in the income of house property, as computed in accordance with sections 22 to 25, shall be included in his respective total income. Therefore, 50% of the total income from the house property is taxable in the hands of Mr. Raman since he is an equal owner of the property.

3.5 COMPUTATION OF INCOME FROM CAPITAL GAINS

The income chargeable under the head 'capital gains' shall be computed by deducting the following items from the full value of the consideration received or accruing as a result of the transfer of the capital asset:

(1) Expenditure incurred wholly and exclusively in connection with such transfer.

(2) The cost of acquisition and cost of any improvement thereto.

Under section 48, for computation of long-term capital gains, the cost of acquisition and cost of improvement will be increased by applying the cost inflation index (CII). Once the cost inflation index is applied to the cost of acquisition and cost of improvement, it becomes indexed cost of acquisition and indexed cost of improvement.

This means an amount which bears to the cost of acquisition, the same proportion as CII for the year in which the asset is transferred bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is later.

Similarly, indexed cost of any improvement means an amount which bears to the cost of improvement, the same proportion as CII for the year in which the asset is transferred bears to the CII for the year in which the improvement to the asset took place.

The cost inflation indices for the financial years so far have been notified as under:

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280
2019-20	289
2020-21	301
2021-22	317

No deduction shall, however, be allowed in computing the income chargeable under the head "Capital Gains" in respect of any amount paid on account of securities transaction tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.

Where the total income of an assessee includes long-term capital gains, tax is payable by the assessee @20% on such long- term capital gains. The treatment of long-term capital gains in the hands of different types of assessees are as follows -

Tax on long-term capital gains [Section 112]

	Person	Rate of tax	Particulars	
1.	**Resident persons, other than companies** Resident Individuals and HUF Resident AOPs andBOIs Resident Firms andLLPs	20% 20% 20%	Unexhausted basic exemption limit **can** be exhausted against LTCG taxable u/s 112 Unexhausted basic exemption limit **cannot** be adjusted against LTCG taxable u/s 112	In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable at the lower of the following rates – (1) 10% without indexation benefit; and (2) 20% with indexation benefit.
2.	**Domestic companies**	20%		
3.	**Non-corporate non- residents and foreign companies**	20% 10%	Capital assets, other than unlisted securities or shares of closely held companies Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation)	

The provisions of section 112 make it clear that the deductions under Chapter VIA cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

Tax on short-term capital gains on transfer of equity shares and units of equity oriented fund [including ULIP issued on or after 1.2.2021, the receipt of which is not exempt u/s 10(10D) due to the reason of premium/aggregate amount of premium payable (in a case where premium is payable by such person for more than one such ULIP) in any of the P.Y. during the term of the policy exceeding Rs 2,50,000] on which STT is chargeable

- Any short-term capital gains on transfer of equity shares or units of an equity oriented fund shall be liable to tax @15%, if securities transaction tax has been paid on such sale.
- In case of resident individuals and HUF, the short-term capital gain shall be reduced by the unexhausted basic exemption limit and the balance shall be taxed at 15%.
- No deduction under Chapter VI-A can be claimed in respect of such short-term capital gain.
- Short-term capital gains arising from transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even when STT is not paid in respect of such transaction.

Sections 54 to 54F states the various exemptions available under the head income from Capital Gains, which are discussed below:

Exemption of Capital Gains [Sections 54 to 54F]

Particulars	**Section 54**	**Section 54B**	**Section 54D**	**Section 54EC**	**Section 54F**
Eligible	Individual/HUF	Individual/HUF	Any assessee	Any assessee	Individual/HUF
Asset transferred	Residential House (LTCA	Urban Agricultural Land	Land & building forming part of an industrial undertaking	Land or building or both (LTCA	Any LTCA other than Residential House.

Particulars	Section 54	Section 54B	Section 54D	Section 54EC	Section 54F
Other Conditions	Income from such house should be chargeable under the head "Income from house property"	Land should be used for agricultural purposes by assessee or his parents or HUF for 2 years immediately preceding the date of transfer	Land & building have been used for business of undertaking for at least 2 years immediately preceding the date of transfer. The transfer should be by way of compulsory acquisition of the industrial undertaking	-	Assessee should not own more than one residential house on the date of transfer. He should not purchase within 2 years or construct within 3 years after the date of transfer, another residential house
4	**Qualifying asset i.e., asset in which capital gains has to be invested**	One Residential House situated in India/Two residential houses in India, at the option of the assessee, where capital gains does not exceed Rs. 2 crore	Land for being used for agricultural purpose (Urban/ Rural)	Land or Building or right in land or building	Bonds of NHAI or RECL or any other bond notified by C.G. (Redeemable after 5 years)	One Residential House situated in India
5	**Time limit for purchase/ construction**	Purchase within 1 year before or 2 years after the date of transfer **(or)** construct within 3 years after the date of transfer	Purchase within a period of 2 years after the date of transfer	Purchase/ construct within 3 years after the date of transfer, for shifting or re-establishing the existing under taking or setting up a new industrial undertaking.	Purchase within a period of 6 months after the date of transfer	Purchase within 1 year before or 2 years after the date of transfer **(or)** Construct within 3 years after the date of transfer

6	**Amount of Exemption**	Cost of new Residential House or two houses, as the case may be or Capital Gain, whichever is lower, is exempt	Cost of new Agricultural Land or Capital Gain, whichever is lower, is exempt	Cost of new asset or Capital Gain, whichever is lower.	Capital Gain or amount invested in specified bonds, which - ever is lower. Maximum permissible investment out of capital gains arising in any financial year is Rs 50 lakhs, whether such investment is made in the current FY or subsequent FY or both.	Cost of new Residential House ? Net sale consideration

Section 48 defines the mode of computation of Capital Gains as follows :

Computation of long-term capital gains	
Full value of consideration received or accruing as a result of transfer	X
Less: Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale)	X
(Note: Deduction on account of STT paid will not be allowed)	XX
Net Sale Consideration	
***Less*:** Indexed cost of acquisition and indexed cost of improvement	XXXX
Less: Exemption under sections 54/54B/54D/54EC/54F	XX
Long-term capital gains	**XX**
Notes: (i) Deduction on account of securities transaction tax paid will not be allowed. (ii) Indexed Cost of Acquisition = Cost of acquisition × (CII for the year in which the asset is transferred / CII for the year in which the asset was first held by the assessee or 2001-02, whichever is later)	

(iii) Indexed Cost of Improvement = Cost of improvement × (CII for the year in which the asset is transferred / CII for the year in which the improvement took place) (iv) Benefit of indexation will, however, not be available in respect of long term capital gains from transfer of bonds or debentures other than capital indexed bonds issued by the Government and sovereign gold bonds issued by RBI and in respect of long-term capital gains chargeable to tax under section 112A.	
Computation of short-term capital gains	
Full value of consideration received or accruing as a result of transfer	xxx
Less: Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale) *(Note: Deduction on account of STT paid will not be allowed)*	xxx
Net Sale Consideration	**XXX**
Less**:** Cost of acquisition and cost of improvement	XXX
Less: Exemption under sections 54B/54D	XXX
Short-term capital gains	**XXX**

Illustration :

Mrs. Das purchased 100 equity shares of M/s Baruah Co. Ltd. on 01-04-2005 at rate of Rs. 1,000 per share in public issue of the company by paying securities transaction tax.

Company allotted bonus shares in the ratio of 1:1 on 01.12.2020. She has also received dividend of Rs 10 per share on 01.05.2021.

She has sold all the shares on 01.10.2021 at the rate of Rs. 4,000 per share through a recognized stock exchange and paid brokerage of 1% and securities transaction tax of 0.02%.

Compute her total income and tax liability for Assessment Year 2022-23, assuming that she is having no income other than given above. Fair market value of shares of M/s Baruah Co. Ltd. on 31.1.2018 is Rs 2,000.

Solution :

Computation of total income and tax liability of Mrs. Das for A.Y. 2022-23

Particular	Rs.
Long term capital gains on sale of original shares	4,00,000
Gross sale consideration (100 x ₹ 4,000)	4,000
Net sale consideration	3,96,000
Less: Cost of acquisition (100 x ₹ 2,000) **(Refer Note 2)**	2,00,000
Long term capital gains	**1,96,000**
Short term capital gains on sale of bonus shares	
Gross sale consideration (100 x ₹ 4,000)	4,00,000
Less: Brokerage@1%	4,000
Net sale consideration	3,96,000
Less: Cost of acquisition of bonus shares	NIL
Short term capital gains	**3,96,000**
Income from other sources	
Dividend received from M/s Goodmoney Co. Ltd. is taxable in the hands of shareholders [200 shares x 10 per share]	2,000
Total Income	**5,94,000**

Tax Liability	
Tax on dividend	Nil
15% of (Rs. 3,96,000-Rs. 2,98,000, being unexhausted basic exemption limit)	14,700
10% of (Rs. 1,96,000 – Rs. 1,00,000)	9,600
	24,300
Add: Health and education cess @4%	972
Tax payable	**25,272**
Tax payable (rounded off)	**25,270**

Notes:

(1) Long-term capital gains exceeding Rs. 1 lakh on sale of original shares through a recognized stock exchange (STT paid at the time of

acquisition and sale) is taxable under section 112A at a concessional rate of 10%, without indexation benefit.

(2) Cost of acquisition of such equity shares acquired before 1.2.2018 is higher of

- Cost of acquisition i.e., Rs 1,000 per share and
- lower of

Fair market value of such asset i.e., Rs 2,000 per share and

Full value of consideration i.e., Rs 4,000 per share.

So, the cost of acquisition of original share is Rs 2,000 per share.

(3) Since bonus shares are held for less than 12 months before sale, the gain arising there from is a short-term capital gain chargeable to tax@15% as per section 111A after adjusting the unexhausted basic exemption limit (Rs 3,00,000 less Rs 2,000, being the amount of dividend). Since Mr. Mithun is over 60 years of age, he is entitled for a higher basic exemption limit of Rs 3,00,000 for A.Y. 2022-23.

(4) Brokerage paid is allowable since it is an expenditure incurred wholly and exclusively in connection with the transfer. Hence, it qualifies for deduction under section 48(i).

(5) Cost of bonus shares will be Nil as such shares are allotted after 1.04.2001.

(6) Securities transaction tax is not allowable as deduction.

3.6 COMPUTATION OF TOTAL INCOME AND TAX LIABILITY

Income-tax is levied on an assessee's total income. Such total income has to be computed as per the provisions contained in the Income-tax Act, 1961. The Total Income of an individual is arrived at after making deductions under Chapter VI-A from the Gross Total Income. As we have learnt earlier, Gross Total Income is the aggregate of the income computed under the 5 heads of income, after giving effect to the provisions for clubbing of income and set-off and carry forward & set-off of losses.

The procedure for computation of total income for the purpose of levy of income-tax is detailed hereunder –

Step 1 – Determination of residential status

The residential status of a person has to be determined to ascertain which income is to be included in computing the total income.

Step 2 – Classification of income under different heads

The income of a person should be identified and grouped under the respective head of income.

Step 3 – Computation of income under each head

Income is to be computed in accordance with the provisions governing a particular head of income.

Step 4 – Clubbing of income of spouse, minor child etc.

An individual in a higher tax bracket may have a tendency to divert his income to another person who is not subject to tax or who is in a lower tax bracket.

In order to prevent evasion of income-tax by such means, clubbing provisions have been incorporated in the Income-tax Act, 1961, under which income arising to certain persons (like spouse, son's wife etc.) have to be included in the income of the person who has diverted his income to such persons for the purpose of computing tax liability.

Further, income of a minor child, not being a minor child suffering from any disability of the nature specified in section 80U (other than income derived from exercise of special skills/talent or manual work done by him) is includible in the hands of the parent whose total income is higher before including minor's income. Such income will be included in the hands of the parent after providing for deduction of up to Rs 1,500 under section 10(32).

Step 5 – Set-off or carry forward and set-off of losses

Set-off of loss from one source against income from another source within the same head of income is permissible, subject to certain exceptions,

like long-term capital loss cannot be set-off against short- term capital gains though short-term capital loss can be set-off against long-term capital gains. Likewise, set-off of loss from one head (say, loss from house property) against income from another head (say, Salaries) is also permissible, subject to certain exceptions, like business loss cannot be set-off against salary income; loss under the head "Capital Gains" cannot be set-off against any other head of income.

Also, loss under the head house property can be set-off against income under any other head only to the extent of Rs 2 lakhs.

Step 6 – Computation of Gross Total Income

The income computed under each head, after giving effect to the clubbing provisions and provisions for set-off and carry forward and set-off of losses, have to be aggregated to arrive at the gross total income.

Step 7 – Deductions from Gross Total Income

Certain deductions are allowable from gross total income to arrive at the total income. These deductions contained in Chapter VI-A

Step 8 – Total income

The gross total income as reduced by the above deductions under Chapter VI-A is the total income.

Total income = GTI – Deductions under Chapter VI-A

It should be rounded off to the nearest multiple of Rs 10. Tax is calculated on the total income of the assessee.

Step 9 – Application of the rates of tax on the total income

The rates of tax are specified in the Finance Act.

Step 10 – Rebate under section 87A (where total income d" ₹ 5,00,000)/ Surcharge (where total income > ₹ 50,00,000)

Step 11– Health and Education cess (HEC) on Income-tax

The income-tax is to be increased by health and education cess@4% on income-tax plus surcharge/ minus rebate under section 87A, wherever applicable. This cess is payable by all assessees who are liable to pay income-tax irrespective of their level of total income.

3.7 AGGREGATION OF INCOME

In certain cases, some amounts are deemed as income in the hands of the assessee though they are actually not in the nature of income. These cases are contained in sections 68, 69, 69A, 69B, 69C and 69D. The Assessing Officer may require the assessee to furnish explanation in such cases. If the assessee does not offer any explanation or the explanation offered by the assessee is not satisfactory, the amounts referred to in these sections would be deemed to be the income of the assessee. Such amounts have to be aggregated with the assessee's income.

3.8 SET-OFF AND CARRY FORWARD OF LOSSES

Specific provisions have been made in the Income-tax Act, 1961 for the set-off and carry forward of losses. In simple words, "Set-off" means adjustment of losses against the profits from another source/head of income in the same assessment year. If losses cannot be set-off in the same year due to inadequacy of eligible profits, then such losses are carried forward to the next assessment year for adjustment against the eligible profits of that year. The maximum period for which different losses can be carried forward for set-off has been provided in the Act.

Set-off of Losses

i. **Inter-source set-off of losses:** Under this section, the losses incurred by the assessee in respect of one source shall be set-off against income from any other source under the same head of income, since the income under each head is to be computed by grouping together the net result of the activities of all the sources covered by that head. In simpler terms, loss from one source of income can be adjusted against income from another source, both the sources being under the same head.

ii. **Inter-head set-off of losses:** Loss under one head of income can be adjusted or set off against income under another head. However, the following points should be considered:

   a. **Loss under any head other than capital gains:** Where the net result of the computation under any head of income (other than "Capital

Gains") is a loss, the assessee can set-off such loss against his income assessable for that assessment year under any other head, including "Capital Gains".

b. **Loss under the head "Profits and gains from business or profession**:

Where the net result of the computation under the head "Profits and gains of business or profession" is a loss, such loss cannot be set off against income under the head "Salaries".

c. **Loss under the head "Capital Gains":** Where the net result of computation under the head 'Capital Gains' is a loss, such capital loss cannot be set-off against income under any other head.

d. **Loss under the head "Income from house property":** Where the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the amount of such loss exceeding Rs 2 lakhs would not be allowable to be set-off against income under the other head. In other words, the maximum loss from house property which can be set-off against income from any other head is Rs 2 lakhs.

e. **Speculation loss, loss from the activity of owning and maintaining race horses and losses from specified business referred to in section 35AD** cannot be set off against income under any other head.

Carry Forward of Lossess

Under the Act, the assessee has the right to carry forward the loss from business and profession in cases where such loss cannot be set-off due to the absence or inadequacy of income under any other head in the same year. The loss so carried forward can be set-off against the profits of subsequent previous years.

Section 72 covers the carry forward and set-off of losses arising from a business or profession.

Conditions

The assessee's right to carry forward business losses under this section is, however, subject to the following conditions :

(i) The loss should have been incurred in business, profession or vocation.

(ii) The loss should not be in the nature of a loss in the business of speculation.

(iii) Loss from one business can be carried forward & set-off against the income from any other business: The loss may be carried forward and set- off against the income from business or profession though not necessarily against the profits and gains of the same business or profession in which the loss was incurred.

However, a loss carried forward cannot, under any circumstances, be set-off against the income from any head other than "Profits and gains of business or profession".

(iv) Person who incurred the loss alone is entitled to carry forward & set-off the loss: The loss can be carried forward and set off only against the profits of the assessee who incurred the loss. That is, only the person who has incurred the loss is entitled to carry forward & set off the same.

Consequently, the successor of a business cannot carry forward & set off the losses of his predecessor except in the case of succession by inheritance.

(v) Maximum period for carry forward & set-off of losses : A business loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

3.9 DEDUCTIONS FROM GROSS TOTAL INCOME

Chapter VI-A contains deductions from gross total income. The important point to be noted here is that if there is no gross total income, then

no deductions will be permissible. Chapter VI-A contains deductions in respect of certain payments, deductions in respect of certain incomes, deductions in respect of other income and other deductions.

Section 80A(1) provides that in computing the total income of an assessee, there shall be allowed from his gross total income, the deductions specified in sections 80C to 80U.

Deduction in respect of certain Incomes :

Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing benefit of deductions under any provision of Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".

80-IA Deductions in respect of profits and gains from undertakings or enterprises engaged in infrastructure development/ operation/maintenance, generation/ transmission/ distribution of power etc.

80-IAB Deduction in respect of profits and gains derived by an undertaking or enterprise engaged in development of SEZ

80-IAC Deduction in respect of profits and gains derived by an eligible start-up from an eligible business

80-IB Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings

80-IBA Deduction in respect of profits and gains from housing projects/rental housing Projects

80-IE Deduction in respect of profits and gains from manufacture or production of eligible article or thing, substantial expansion to manufacture or produce any eligible article or thing or carrying on of eligible business in North-Eastern States

80JJA Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste

80JJAA Deduction in respect of employment of new employees

80LA Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre

80M Deduction in respect of certain inter-corporate dividends

80P Deduction in respect of income of co-operative societies

The various deductions in respect of certain payments, deductions in respect of other income and other deductions have been tabulated below:

Deductions in respect of Payments			
Section	**Eligible Assessee**	**Eligible Payments**	**Permissible Deduction**
80C	Individual or HUF	**Contribution to PPF, Payment of LIC premium, etc.** Sums paid or deposited in the previous year by way of - Life insurance premium - Contribution to PPF/ SPF/ RPF and approved superannuation fund - Repayment of housing loan taken from Govt., bank, LIC, specified employer etc. - Tuition fees to any Indian university, college, school for full-time education of any two children - Term deposit for a fixed period of not less than 5 years with schedule bank - Subscription to notified bonds of NABARD - Five year post office time deposit - Senior Citizen's Savings Scheme Account etc. - Contribution by Central Govt. employee to additional account (Tier II A/c) of NPS referred to u/s 80CCD	Sum paid or deposited, subject to a maximum of Rs. 1,50,000

Section	Eligible Assessee	Eligible Payments	Permissible Deduction
80CCC	Individual	**Contribution to certain pension funds** Any amount paid or deposited to keep in force a contract for any annuity plan of LIC of India or any other insurer for receiving pension from the fund.	Amount paid or deposited, subject to a maximum of Rs. 1,50,000
80CCD	Individuals employed by the Central Governme nt or any other employer; Any other individual assessee.	**Contribution to Pension Scheme of Central Government** An individual employed by the Central Government on or after 1.1.2004 or any other employer or any other assessee, being an individual, who has paid or deposited any amount in his account under a notified pension scheme [to his individual pension account [Tier I A/c] under National Pension Scheme & Atal Pension Yojana]	**Employee's Contribution/ Individual' Contribution** In case of a salaried individual, deduction of own contribution under section 80CCD(1) is restricted to 10% of his salary. In any other case, deduction under section 80CCD(1) is restricted to 20% of gross total income. Further, additional deduction of upto Rs. 50,000 is available under section 80CCD(1B). **Employer's Contribution** The entire employer's contribution would be included in the salary of the employee. The deduction of employer's contribution under section 80CCD(2) would be restricted to 14% of salary, where the employer is the Central Government; and 10%, in case of any other employer.

Note - As per section 80CCE, maximum permissible deduction u/s 80C, 80CCC & 80CCD(1) is Rs. 1,50,000. However, the limit Rs. 1.50 lakh under section 80CCE

does not apply to deduction under section 80CCD(2) and 80CCD(1B).

Section	Eligible Assessee	Eligible Payments	Permissible Deduction
80D	Individual and HUF	**Medical Insurance Premium** (1) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health of -	Maximum Rs. 25,000 (Rs. 50,000, in case the individual or his or her spouse is a senior citizen)
		in case of an individual: self, spouse and dependent children	Maximum Rs. 25,000 (Rs. 50,000, in case either or both of the parents are senior citizen(s))
		in case of HUF: family member	
		(2) In case of an individual, contribution, otherwise than by way of cash, to CGHS or any other scheme as notified by Central Government.	Amount paid subject to a cap of Rs. 50,000 (in case one parent is a senior citizen, in respect of whom insurance premium is paid, and the other is a senior citizen on whom medical expenditure is incurred, the total deduction cannot exceed Rs. 50,000)
		(3) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health of parents, whether or not dependent on the individual. **Notes:** (i) Any amount paid, otherwise than by way of cash, on account of medical expenditure incurred on the health of the assessee or his family member or his parent, who is a senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.	Amount paid subject to a cap of Rs. 5,000, in aggregate (subject to the overall individual limits of Rs. 25,000/ Rs. 50,000, as the case may be)
		(ii) Payment, including cash payment, for preventive health check up of himself, spouse, dependent children and parents.	

Section	Eligible Assessee	Eligible Payments	Permissible Deduction
80DD	Resident Individual or HUF	**Maintenance including medical treatment of a dependant disabled** Any amount incurred for the medical treatment (including nursing), training and rehabilitation of a dependent disabled **and / or** Any amount paid or deposited under the scheme framed in this behalf by the LIC or any other insurer or Administrator or Specified Company and approved by Board. **Meaning of Dependant** **(1) In case of** — **(2) Dependant** An individual — Spouse, children, parents, brothers, sisters A HUF — Any member Persons mentioned in column (2) should be wholly or mainly dependant on the person mentioned in corresponding column (1) for support and maintenance. Such persons should not have claimed deduction under section 80U in computing total income of that year.	Flat deduction of Rs. 75,000. In case of severe disability (i.e. person with 80% or more disability) the flat deduction shall be Rs. 1,25,000.
80DDB	Resident Individual or HUF	**Deduction for medical treatment of specified diseases or ailments** Amount paid for specified diseases or ailment	Actual sum paid or Rs. 40,000 (Rs. 1,00,000, if the payment is for medical treatment of a senior citizen), whichever is less, minus

Section	Eligible Assessee	Eligible Payments			Permissible Deduction
			Assessee An individual	**Amount spent** For himself or his dependant being spouse, children, parents, brothers or sisters wholly or mainly dependant on the individual for support and maintenance	the amount received from the insurance company or reimbursed by the employer.
			A HUF	For any member	
80E	Individual	**Interest on loan taken for higher education** Interest on loan taken from any financial institution or approved charitable institution. Such loan is taken for pursuing his higher education or higher education of his or her relative i.e., spouse or children of the individual or the student for whom the individual is the legal guardian.			The deduction is available for interest payment in the initial assessment year (year of commencement of interest payment) and seven assessment years immediately succeeding the initial assessment year (or) until the interest is paid in full by the assessee, whichever is earlier.
80EE	Individual	**Deduction for interest on loan borrowed from any financial institution [bank/ housing finance company (HFC)] for acquisition of residential house property**			Deduction of upto Rs. 50,000 would be allowed in respect of interest on loan taken from a financial institution (FI). **Conditions :** Loan should be sanctioned during P.Y.2016-17 Loan sanctioned d" Rs. 35 lakhs Value of house d" Rs. 50 lakhs The assessee should not own any residential house on the date of

Section	Eligible Assessee	Eligible Payments	Permissible Deduction
80EEA	Individual	**Deduction in respect of interest payable on loan taken from a FI (bank or HFC) for acquisition of residential house property** (In case the property is self-occupied, the deduction would be over and above the deduction of Rs. 2 lakhs under section 24) For example, if the interest payable is, say, Rs. 3,80,000 on loan taken from FI for acquisition of residential house, Rs. 2 lakh can be claimed as deduction u/s 24(b) and Rs. 1.50 lakhs as deduction u/s 80EEA. Even though for let-out property, there is no limit u/s 24, by virtue of section 71(3A), set-off of loss from house property against any other head of income is restricted to u/s 80EEA, subject to fulfillment of prescribed conditions.	Deduction of upto Rs. 1,50,000 would be allowed in respect of interest payable on loan taken from a FI for acquisition of house property. **Conditions:** o Loan should be sanctioned by a FI during the period between **1st April 2019 to 31st March 2022.** o Stamp Duty Value of house ? Rs. 45 lakhs o The individual should not own any residential house on the date of sanction of loan. o The individual should not be eligible to claim deduction u/s 80EE.
80EEB	Individual	**Deduction in respect of interest payable on loan taken from a FI (bank or certain NBFCs) for purchase of electric vehicle**	Deduction of upto Rs. 1,50,000 would be allowed in respect of interest payable on loan taken for purchase of electric vehicle. Loan should be sanctioned by a FI during the period from 1.4.2019 to 31.3.2023

<table>
<tr><th>Section</th><th>Eligible Assessee</th><th colspan="2">Eligible Payments</th><th>Permissible Deduction</th></tr>
<tr><td>80G</td><td>All assessees</td><td colspan="3">Donations to certain funds, charitable institutions etc.
There are four categories of deductions -</td></tr>
<tr><td></td><td></td><td></td><td>Category</td><td>Donee</td></tr>
<tr><td></td><td></td><td>(I)</td><td>100% deduction of amount donated, without any qualifying limit</td><td>Prime Minister's National Relief Fund, National Children's Fund, Swachh Bharat Kosh, National Defence Fund, PM CARES Fund etc.</td></tr>
<tr><td></td><td></td><td>(II)</td><td>50% deduction of amount donated, without any qualifying limit</td><td>Prime Minister's Drought Relief Fund, Jawaharlal Nehru Memorial Fund, Indira Gandhi Memorial Trust, Rajiv Gandhi Foundation.</td></tr>
<tr><td></td><td></td><td>(III)</td><td>100% deduction of amount donated, subject to qualifying limit</td><td>Government or local authority, institution for promotion of family planning etc.</td></tr>
<tr><td></td><td></td><td>(IV)</td><td>50% deduction of amount donated, subject to qualifying limit.</td><td>Government or any local authority to be used for charitable purpose, other than promotion of family planning, notified temple, church, gurudwara, mosque etc.</td></tr>
<tr><td></td><td></td><td colspan="3">Calculation of Qualifying limit for Category III & IV donations :
Step 1: Compute adjusted total income, i.e., the gross total income as reduced by the following:
1. Deductions under Chapter VI-A, except u/s 80G
2. Short term capital gains taxable u/s 111A
3. Long term capital gains taxable u/s 112& 112A
Step 2: Calculate 10% of adjusted total income.
Step 3: Calculate the actual donation, which is subject to qualifying limit</td></tr>
</table>

Section	Eligible Assessee	Eligible Payments	Permissible Deduction
		Step 4: Lower of Step 2 or Step 3 is the maximum permissible deduction. **Step 5:** The said deduction is adjusted first against donations qualifying for 100% deduction (i.e., Category III donations). Thereafter, 50% of balance qualifies for deduction under section 80G. **Note -** No deduction shall be allowed for donation in excess of Rs. 2,000, if paid in cash.	
80GG	Individual not in receipt of house rent allowance	**Rent paid for residential accommodation**	Least of the following is allowable as deduction: (1) 25% of total income; (2) Rent paid - 10% of total income (3) Rs. 5,000 p.m. No deduction if any residential accommodation is owned by the assessee/his spouse/minor child/HUF at the place where he ordinarily resides or performs the duties of or carries on his business or profession.
80GGB	Indian company	**Contributions to political parties** Any sum contributed by it to a registered political party or an electoral trust.	Actual contribution (otherwise than by way of cash)
80GGC	Any person, other than local authority and an artificial juridical person funded by the Government.	**Contributions to political parties** Amount contributed to a registered political party or an electoral trust.	Actual contribution (otherwise than by way of cash)

Deductions in respect of Certain Incomes			
As per section 80AC, furnishing return of income on or before due date is mandatory for claiming deduction in respect of certain incomes.			
Section	**Eligible Assessee**	**Eligible Income**	**Permissible Deduction**
80JJAA	An assessee to whom section 44AB applies, whose Gross total income includes profits and gains derived from business	Deduction in respect of employment of new employees	30% of additional employee cost incurred in the previous year. Deduction is allowable for 3 assessment years including assessment year relevant to the previous year in which such employment is provided.
80QQB	Resident individual, being an author	**Royalty income, etc., of authors of certain books other than text books** Consideration for assignment or grant of any of his interests in the copyright of any book, being a work of literary, artistic or scientific nature or royalty or copyright fee received as lumpsum or otherwise.	Income derived in the exercise of profession or Rs.3,00,000,cwhichevercis less. In respect of royalty or copyright fee received otherwise than by way of lumpsum, income to be restricted to 15% of value of books sold during the relevant previous year.
80RRB	Resident individual, being a patentee	**Royalty on patents** Any income by way of royalty on patents registered on or after 1.4.2003	Whole of such income or Rs. 3,00,000, whichever is less.
Deductions in respect of Other Income			
Section	**Eligible Assessee**	**Eligible Income**	**Permissible Deduction**
80TTA	Individual or a HUF, other than a resident senior citizen	**Interest on deposits in savings account** Interest on deposits in a savings account with a bank, a co-operative society or a post office (not being time deposits, which are repayable on expiry of fixed periods)	Actual interest subject to a maximum of Rs. 10,000.

Section	Eligible Assessee	Eligible Income	Permissible Deduction
80TTB	Resident senior citizen (i.e. an individual of the age of 60 years or more at any time during the previous year)	**Interest on deposits** Interest on deposits (both fixed deposits and saving accounts) with banking company, co-operative society engaged in the business of banking or a post office.	Actual interest or Rs. 50,000, whichever is less.
Other Deductions			
Section	**Eligible Assessee**	**Condition for Deduction**	**Permissible Deduction**
80U	Resident Individual	**Deduction in case of a person with disability** Any person, who is certified by the medical authority to be a person with disability.	Flat deduction of Rs. 75,000, in case of a person with disability. Flat deduction of Rs. 1,25,000, in case of a person with severe disability (80% or more disability).



CHECK YOUR PROGRESS

Q 3: State the maxiumum amount of deduction that can be availed u/s 80C.

Ans:…….....……

Q 4: State the deductions from Annual Value u/s 24 with reference to Income from House Property.

Ans:…….....……



3.10 LET US SUM UP

In this unit we have discussed the following :

- For income tax purpose, allowances are classified into as fully exempted allowances, partly exempted allowances i.e. partly taxable allowances and fully taxable allowances.
- Professional tax or taxes on employment levied by a State under Article 276 of the Constitution is allowed as deduction only when it is actually paid by the employee during the previous year.
- The annual value of any property comprising of buildings or lands appurtenant thereto of which the assessee is the owner is chargeable to tax under the head "Income from house property".
- Deductions available from Annual Value u/s 24 are:
  (i) 30% of NAV; and
  (ii) Interest on borrowed capital
- Gross Total Income is the aggregate of the income computed under the 5 heads of income, after giving effect to the provisions for clubbing of income and set-off and carry forward & set-off of losses.
- The Total Income of an individual is arrived at after making deductions under Chapter VI-A from the Gross Total Income.
- Chapter VI-A contains deductions in respect of certain payments, deductions in respect of certain incomes, deductions in respect of other income and other deductions.



3.11 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes, Capital Publishing Company, G S Road, Guwahati;

2) V K Singhania, K Singhania, Taxmann.

3.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) Allowances to High Court Judges

(ii) Allowance paid by the United Nations Organisation

Ans to Q No 2: Rs. 50,000.

Ans to Q No 3: Rs. 1,50,000

Ans to Q No 4: Deductions available from Annual Value u/s 24 are:

(i) 30% of NAV; and

(ii) Interest on borrowed capital

3.13 MODEL QUESTIONS

Q 1 : Write a brief note on computation of Income from Salaries.

Q 2 : Write briefly about the taxability of allowances received by an employee while calculating Income from Salaries.

Q 3 : Discuss the various deductions that could be availed while calculating Income from Salaries.

Q 4 : Write a brief note on computation of Income from House Property.

Q 5 : Write a brief note on computation of Income from Capital Gains.

Q 6 : Discuss the various exemptions available from Capital Gains u/s 54 to 54F of the Income Tax Act.

Q 7 : Explain the procedure of computation of total income under Income Tax Act.

Q 8 : Discuss the various deductions specified in Chapter VI A of the Income Tax Act.

Q 9 : Mr. Ramen, an employee of ABC Co., Tezpur, furnishes the following particulars of his income for the previous year 2021-22:

		₹
(i)	Basic salary	15,000 p.m.
(ii)	Dearness allowance (60% of which forms part of salary for retirement benefits)	5,000 p.m.
(iii)	Medical Allowance	300 p.m.
(iv)	City Compensatory Allowance	300 p.m.
(v)	House Rent Allowance	5,000 p.m.
(vi)	Children Education Allowance	500 p. m.

Mr. Ramen resided in his own house at Tezpur.

Compute the gross income from salary of Mr. Ramen for the Assessment year 2022-23.

Q 10 : Match the following :

a. Dearness allowance	i. Professional tax
b. Allowances to a High Court Judge	ii. Section 80CCD
c. Uncommuted pension	iii. Fully Taxable
d. Contribution made by the Central Government under pension scheme	iv. Keyman Insurance Policy
e. Amount received from insurance	v. Not Taxable company with bonus
d. Allowable deduction under Section 16	vi. Fully Taxable

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UNIT 4 WEALTH TAX

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Important terms and Definitions used in Wealth Tax Act, 1957

4.4 Basis of Charge

4.5 Assets Exempted from Wealth Tax

4.6 Computation of Wealth Tax Liability

4.7 Let Us Sum Up

4.8 Further Reading

4.9 Answers To Check Your Progress

4.10 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define the important terms used in Wealth Tax Act
- Understand the charging of Wealth Tax
- Identify the various items of assets included in wealth
- Describe the deemed assets, exempted assets, deductible debts
- Compute Net Wealth and Wealth Tax Liability

4.2 INTRODUCTION

The Wealth Tax Act came into force on April 1, 1957 and it extends to whole of India including the State of Jammu and Kashmir. The Wealth tax is a direct tax, which is charged on the net wealth of the assessee. The levy of wealth tax was introduced in India following a suggestion made by Dr. Kaldor in his report on Indian tax reforms. The Central Government has been empowered by Entry 86 of the Union List of the Seventh Schedule of the Constitution of India to levy taxes on the capital value of the assets except on

agricultural land. In this Unit, we shall learn about important terms and definitions, chargeability, relevant provisions relating to calculation of net wealth and computation of wealth tax liability.

4.3 IMPORTANT TERMS AND DEFINITIONS USED IN WEALTH TAX ACT, 1957

The Wealth Tax is governed by the provisions specified in the Wealth Tax Act, 1957. Legislative provisions are incorporated in the Act using certain terms and definitions. In order to have better understanding of the Wealth Tax, let us go through the various terms and definitions used in the Act.

i) "**Assessee**" means a person by whom wealth-tax or any other sum of money is payable under this Act, and includes—

(1) every person in respect of whom any proceeding under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(2) every person who is deemed to be an assessee under this Act;

(3) every person who is deemed to be an assessee in default under this Act;

ii) The term "**assets**" include the followings:

1) Any **building or land appurtenant thereto** u/s 2 (ea) (i) is treated as an asset and it includes:

a) Commercial building

b) Residential building

c) Any guest house

d) A farmhouse situated within 25 kilometers from the local limits of a local authority

However following buildings are not treated as assets

a) A house meant for residential purposes is allotted by a company to an employee or an officer or a whole time director, having a gross annual salary of less than Rs.5lakhs

b) Any house for residential or commercial purposes, which forms part of stock-in-trade

c) Any house occupied by assessee for the purposes of his own business or profession

d) Any residential property that has been let out for a minimum period of 300 days in the previous year

e) Any property in the nature of commercial establishments or complexes

2) **Motor Cars** Sec.2 (ea) (ii)

Any motorcar is an asset except the following

a) Motor cars used by the assessee in the business of running them on hire

b) Motor cars held as stock- in- trade

3) **Jewellery, Bullion, Utensils Of Gold, Silver etc.** Sec. 2(ea) (iii)

Jewellery, bullion furniture, utensils or any other article made wholly or partly of gold, silver, platinum, or any other precious metal of any alloy containing one or more of such precious metals are treated as an asset

For this purpose, the term jewellery includes

a) Ornaments made of gold, silver, platinum or any other precious metal of any alloy containing one or more of such precious metals, whether or not containing any precious or semi precious stone, whether or not set in any furniture, utensils, or other articles or worked or sewn into any wearing apparel.

b) Precious or semi precious stones, whether or not set in any furniture, utensils or other articles or worked or sewn into any wearing apparel

However, the term jewelry shall not include the Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 notified by the Central Government However, if any of the above stated assets are held by the assessee as stock-in-trade, then it is not treated as an asset

4) **Yachts, Boats and Aircrafts** [Sec 2(ea) (iv)]

Yachts, boats and aircrafts are treated as "assets" excluding yachts boats and aircrafts used by assessee for commercial purposes.

5) **Urban Land** [Sec 2(ea) (v)]

Urban land is treated as an "asset" and urban land means land situated a) in any area which is comprised within the jurisdiction of local authority and which has a population of not less than ten thousand according to the last preceding figures of census of which the relevant figures have been published before the valuation date; or b) is any area within such distance, not being more than 8 kilometer from the local limits of the local authority as the central government may, having regard to the extent, and scope for urbanization of that area and other relevant considerations, specified in this behalf by notification in the official gazette. However land is not treated as "asset" in the following cases:

a) Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated;

b) Land occupied by any building which has been constructed with approval of the appropriate authority;

c) Any unused land held by the assessee for industrial purposes for a period of two years from the date of acquisition by him

d) Land held by an assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.

6) **Cash-in-hand** [Sec 2(ea) (vi)]

Following is treated as an "assets":

a) In case of any individual and HUF, cash in hand on the last moment of the valuation date in excess of ₹ 50,000 shall be treated as "asset"

b) In case of any other person any amount not recorded in the books of accounts shall be treated as "asset".

iii) "**Deemed assets**" represent those assets, which belong to some other person but for the purpose of calculation of wealth tax, these are included in the wealth of the assessee (transferor), it is because at time an individual may transfer his assets without adequate consideration to persons in whom he may be interested.

Deemed Assets u/s 4(i) are as follows .

1) Assets transferred to spouse [Sec. 4(1) (a) (ii)]

If the assessee has transferred an asset to his/her spouse without adequate consideration or in connection with in an agreement to live apart, then value of such asset in included in the wealth of assessee provided their relationship exists both on the date of transfer and on the date of valuation.

2) Assets held by minor child [Sec. 4 (1) (a) (ii)]

The value of assets held by minor child including step child and adopted child, excluding a married daughter, a handicapped child, illegitimate child and grand child of an individual is included in the wealth of a parent.

If marriage of parents subsists, then in the wealth of that parent whose net wealth is more.

If marriage of parents does not subsist, then in the wealth of that parent who maintains the minor child in the previous year.

However there are certain exceptions to it.

(i) Assets acquired by the minor child out of his income arising on account of his manual work or activities involving application of his specialized knowledge and experience shall not be included in the net wealth of a parent.

(ii) Assets held by a disabled minor child shall not be included in the wealth of the parent.

In these cases, net wealth of the child shall be determined separately and assessed in his hands.

3) Assets transferred to a person or to AOP's [Sec. 4 (1) (a) (iii)]
If an individual transfers his assets to another person or AOP's without adequate consideration, directly or indirectly, for the immediate or deferred benefit of the individual or his spouse then these assets are included in the wealth of the individual provided their relationship exists on valuation date.

4) **Revocable transfer of asset** [Sec. 4(1) (a) (iv)]
Revocable transfer means a transfer which can be revoked at any time by the transferor. Thus, if an individual has transferred any assets to another person or AOP under revocable transfer then value of such assets is included in the wealth of the individual.

5) **Assets transferred to son's wife** [Sec. 4(1) (a) (v)]
If an individual transferred an asset to his son's wife directly or indirectly after 31-05-1973 without adequate consideration then the value of such assets is included in the net wealth of the individual.

6) **Assets transferred to a person/AOP for the benefit of son's wife** [Sec. 4(1) (a) (vi)]
If an assessee has transferred his asset to another person or AOP directly or indirectly after 31-05-1993 without adequate consideration for the immediate or deferred benefit of his son's wife then value of such assets shall be included in wealth of the individual.

7) **Interest in a Firm or AOP** [Sec. 4(1) (b)]
If the assessee is a partner in a firm or a member of an AOP (not being a co-operative housing society), then value of his interest in the assets of firm or association shall be included in his net wealth. Where a Karta of H.U.F. is a partner in a firm, his interest in the firm's assets is includible in the net wealth of the H.U.F.

8) **Converted Property** [Sec. 4(1A)]
If an individual who is a member of an HUF converts his individual property after 31-12-1969 into Joint family property either by throwing it into the common stock or by making gifts of separate property or

through act of impressing such separate property with the character of property belonging to family without adequate consideration, such properly is called converted property. In this case value of the converted property or any part of it held by the family on valuation date is included in the net wealth of the individual.

However in case the converted property becomes the subject matter of partition among the members, then the part of the property received by the individual and his spouse is includible in his net wealth.

9) Transfer by means of book entry [Sec.4 (5A)]

Where a person makes a gift of money to another person by means of entries in the books of account maintained by the donor or an individual or HUF or firm or AOP or body of individuals with which the done has business or other relationship. Then value of such gift is includible in the net wealth of donor unless the donor satisfies the Assessing officer that the money was actually delivered to the done at the time of making the entries.

10) Impartible Estate [Sec. 4(6)]

Impartible estate of an H.U.F. is that estate which by special law or custom descend to one member of the family though it is a Joint property belonging equality to all, Value of impartible estate is included in the net wealth of such holder, so far wealth tax purposes. He is the deemed owner of the impartible estate.

11) House from a Co-operative Housing society etc. [Sec. 4(7)]

If the assessee is a member of a co-operative Housing Society, company or AOP's and he is allotted a building a part thereof or leased under a house building scheme of the society, company or association, as the case may be then he is the deemed owner of that building part thereof and hence value of such building shall be included in his net wealth.

12) Building in part performance of a contract [Sec. 4(8) (a)]

If a person is allowed to take or retain possession of any building in part performance of a contract of the nature referred u/s 53 A of Transfer of Property Act, 1882 then he is the deemed owner of that building or part thereof and hence value of such building shall be included in his net wealth.

13) Building on lease [Sec. 4(8) (b)]

If an assessee acquires any right by way of lease with respect to a building by virtue of any transaction to a building by virtue of any transaction referred to in clause (f) of Sec. 269 U A. shall be the deemed owner of the building or part thereof and its value shall be included in his net wealth, however it excludes any right by way of a lease from month to month of for a period not exceeding 1 year.

iv) "**Net wealth**" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee [on the valuation date which have been incurred in relation to the said assets.

v) "**Valuation date**" is 31st March immediately preceding the assessment year. Thus, for assessment year 1st April 2013 to 31st March2014 valuation date is 31st March 2013. Valuation date is very important because :

a) It is the tax base for the charge of wealth tax

b) The residential status of an assessee is determined with reference to the year ending on valuation date

c) The value of an asset is determined on valuation date.

d) The wealth as on the last moment of the valuation date is taken to be the net wealth for Taxation purposes

vi) "**Debt owed**" means debt owed by the assessee on the valuation date and which have been incurred in relation to the assets which are included

in the net wealth. In the computation of net wealth, from the total of all assets value of debts owed by an assessee is deductible provided following conditions are satisfied

i) Debt is owed by assessee on valuation date

ii) Debt should have been incurred in relation to acquisition or creation of any asset, which is taxable for Wealth Tax in the hands of assessee.

ACTIVITY 4.1

Define six key words relating to assets forming part of wealth._____



CHECK YOUR PROGRESS

Q 1 : The Wealth Tax Act came into force on

Q 2 : Define the terms-

a) Net Wealth b) Valuation Date

a) ……..

……

……

b) .....……

……

……

4.4 BASIS OF CHARGE

Subject to the other provisions contained in this Act, Wealth Tax is charged for every assessment year in respect of the net wealth of the corresponding valuation date of every individual, Hindu Undivided Family, and company, @1% of the amount by which net wealth exceeds Rs.30 lakhs.

Surcharge and Education Cess are not levied on wealth tax. By virtue of section 45, no wealth tax is chargeable in respect of net wealth of the following persons:

a) Any Company registered U/s 25 of the Companies Act, 1956;
b) Any Co-operative society;
c) Any social club;
d) A political party as defined U/s 13A of the Income Tax Act;
e) A mutual fund specified U/s 10(23D);
f) A Reserve bank of India incorporated under Reserve Bank of India Act, 1934.

4.5 ASSETS EXEMPTED FROM WEALTH TAX

As per the provisions of the Wealth Tax Act, 1957, the following assets are exempt from wealth tax

1) Property held under trust [Sec. 5(i)]

Any property held under trust or other legal obligations by the assessee for any public purpose of a charitable or religious nature in India is exempt.

2) Interest in the coparcener property [Sec. 5(ii)]

If the assessee is a member of H.U.F., he is not liable to pay tax on his share in the joint property, so long as the property remains joint and he continues as the member of that family.

3) One building in the occupation of former Ruler [Sec. 5(iii)]

Any one building which is in the occupation of a Ruler and which has been declared as his official residence by the Central Govt .is totally exempt from tax. However, the exemption is available only to the Ruler during his life time.

4) Jewellery in possession of a former Rule [Sec. 5(iv)]

Jewellery in possession of a former Ruler not being his personal property which has been recognized by the Central Govt. as his heirloom, before commencement of Wealth Tax Act or by the board after that shall be exempt. However this exemption is subject to fulfillment of certain conditions like keeping of jewellery in India, in its original shape, allowing authorized person to examine the jewellery as and when necessary

5) Assets of Indian repatriate [Sec. 5 (v)]

Indian repatriate means a person of Indian origin or a citizen of India who was residing in a foreign country and on leaving such country assessee has returned to India with the intention of permanently residing therein. In this case his following assets shall be exempt for 7 successive assessment years, commencing with the assessment year following the date of his return to India.

(i) Money brought by him in India.

(ii) Assets brought by him in India.

(iii) Any balance in Non-Resident External Accounts in India on the date of his return

(iv) Assets acquired by him out of money in his Non-resident External Account or by sending money from foreign country within 1 year immediately preceding the date of his return to India.

(v) Any assets acquired by him out of money brought in by him in India or out of the balance in NRE account after his arrival in India.

6) House [Sec 5 (vi)]

One house or part of a house or a plot of land belonging to an individual or HUF is exempt provided size of plot is not bigger than 500 square meters.

ACTIVITY 4.2

State True or False:

i) Motor car held as stock-in-trade is a taxable asset. ———

ii) Investment into shares of a company is non-taxable asset. ——

iii) Assets transferred to a minor child are taxable in the hands of the parents. ——

iv) Property transferred to a trust for the benefit of the spouse is exempt. ——-

v) All residential buildings of a former ruler are exempt. ———

vi) The only house owned by the assessee built on the area of 600sq. meters isexempt. —————



CHECK YOUR PROGRESS

Q 3 : State the persons to whom Wealth Tax is not chargeable u/s 45.

……

……

Q 4 : Mentione the assets which are exempt from Wealth Tax.

……

……

……

4.6 COMPUTATION OF WEALTH TAX LIABILITY

In this section, we shall try to compute the net wealth and wealth tax liability thereon. On the basis of above discussion, the wealth tax liability can be computed in following manner:-

Particulars	Amount
Aggregate value of all the taxable assets [as are defined in sec.2(ea)], belonging to the assessee, wherever located, as on the valuation date computed in accordance with the valuation rules given in schedule III of the wealth Tax Act.	XX
Add:- Deemed wealth U/s 4 (clubbing provisions)	XX
TOTAL	XXX
Less:- Assets exempt U/s 5 or U/s 6	(XX)
Gross wealth	XXX
Less: debts incurred by the assessee in relation to acquisition of any taxable assets included in gross wealth as above (purpose of loan should be for acquiring taxable assets only)	(XX)
Net Wealth	XXX
Less:- Basic Exemption/ standard Deduction	(30 Lacs)
Net Taxable wealth	XXX

On the total taxable wealth, an assessee is liable to pay wealth tax chargeable @1% of the amount by which net wealth exceeds 30 lakhs rupees, hence If net wealth is up to Rs. 30 lakhs, there will not be any wealth tax. If net wealth exceeds Rs.30 lakhs, wealth tax is calculated as:

Wealth Tax = 1% [Net Wealth – Rs 30 Lakhs]

Note:-

a) liability to wealth tax is a personal debt of the assessee. It is a debt created by the statute. It is not a debt incurred by the assessee and not related to the acquisition of any taxable aaset and therefore, the liability to wealth tax is not a deductible debt.

Illustration 1: Mr. Ashok has the following assets and liabilities on the valuation date :

S.N.	Details	Rs.
1	Guest House	50,00,000
2	Residential House	40,00,000
3	Motor-Car for personal use	10,00,000
4	Jewellery	16,00,000
5	Aircrafts and boats for personal use	1,00,00,000
6	Farm house 15 Kms away from local limits of Bengaluru	12,00,000
7	Cash in hand	2,00,000
8	Bank Balance	3,50,000
9	Shops given on rent	12,00,000
10	Loan taken to purchase aircrafts	70,00,000
11	Loan taken to purchase residential house	32,00,000

Compute Net Wealth and Wealth Tax liability of Mr. Ashok.

Solution 1: Computation of Net Wealth and Wealth Tax Liability thereon of Mr. Ashok

S.N.	Details	Rs.
1	Guest House	50,00,000
2	Residential House	-
3	Motor-Car for personal use	10,00,000
4	Jewellery	16,00,000
5	Aircrafts and boats for personal use	1,00,00,000
6	Farm house 15 Kms away from local limits of Bengaluru	12,00,000
7	Cash in hand (in excess of 50,000)	1,50,000
8	Bank Balance	-
9	Shops given on rent	-
10	Less: Loan taken to purchase aircrafts	(70,00,000)
	Net Wealth	**1,19,50,000**

Wealth Tax Liability :

Wealth Tax = 1% of [Net Wealth – Rs. 30 lakhs] = 1% (89,50,000) = Rs. 89,500

Illustration 2: X Ltd. is engaged in construction of residential flats:

a) Land in urban area (construction is not permissible as per municipal laws in force) Rs.35 Lacs

b) Motor-Cars (used in business of running them on hire) Rs.700000

c) Jewellery Rs. 1500000. Loan taken for purchasing this Rs. 1000000

d) Cash balance (as recorded in books) Rs.225000

e) Bank Balance Rs.350000

f) Guest house Rs.600000

g) Residential flats occupied by the Managing Director Rs. 1000000. The managing director is on a whole time appointment and is drawing a salary of Rs. 3 Lacs per month.

h) Residential house were let out on hire for 200 Days of Rs. 800000

Compute Taxable Wealth and tax liability thereon on 31st march.

Solution 2: Computation of Net Wealth of X Ltd.

I.	Land in urban area	Not an asset
II.	Motor-Cars	Not an asset
III.	Jewellery	1500000
IV.	Cash balance	Not an asset
V.	Bank Balance	Not an asset
VI.	Guest house	600000
VII.	Residential flats	1000000
VIII.	Residential house (assume it not to be SIT)	800000
	Total	3900000
	Less: Debt	(1000000)
	Net Wealth	2900000

Wealth Tax Liability :

Wealth Tax = 1% of [Net Wealth – Rs. 30 lakhs] = NIL



4.7 LET US SUM UP

In this unit we have discussed the following:

- Wealth Tax is charged on six specified assets (excluding exempt assets) minus of deductible debts.
- An assessee is not only chargeable in respect of the assets belonging to him on valuation date but also for his deemed assets.
- Wealth Tax is charged @1%of the amount by which Net Wealth exceeds Rs.30 Lakhs
- As per Sec. 45 of the Wealth Tax Act, the following entities are not leviable to wealth Tax
  - a) Any Company registered U/s 25 of the Companies Act, 1956;
  - b) Any Co-operative society;
  - c) Any social club;
  - d) A political party as defined U/s 13A of the Income Tax Act;

e) A mutual fund specified U/s 10(23D);

f) A Reserve bank of India incorporated under Reserve Bank of India Act, 1934.



4.8 FURTHER READINGS

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.



4.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1 : 1st April, 1957

Ans to Q No 2 :

(a) "**Net wealth**" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee [on the valuation date which have been incurred in relation to the said assets.

Total income means the amount left after making the deductions under

(b) "**Valuation date**" is 31st March immediately preceding the assessment year. Thus, for assessment year 1st April 2013 to 31st March2014 valuation date is 31st March 2013.

Ans to Q No 3 : By virtue of section 45, no wealth tax is chargeable in respect of net wealth of the following persons:

a) Any Company registered U/s 25 of the Companies Act, 1956;

b) Any Co-operative society;

c) Any social club;

d) A political party as defined U/s 13A of the Income Tax Act;

e) A mutual fund specified U/s 10(23D);

f) A Reserve bank of India incorporated under Reserve Bank of India Act, 1934.

Ans to Q No 4:

1) Property held under trust [Sec. 5(i)]

2) Interest in the coparcener property [Sec. 5(ii)]

3) One building in the occupation of former Ruler [Sec. 5(iii)]

4) Jewellery in possession of a former Rule [Sec. 5(iv)]

5) Assets of Indian repatriate [Sec. 5 (v)]

6) House [Sec 5 (vi)]



4.10 MODEL QUESTIONS

(1) Define 'assets' under the Wealth Tax Act.

(2) List out "deemed assets"

(3) Mention the items of Wealth which are exempt from Wealth Tax

(4) How would you treat the following under Wealth Tax Act?

(i) Mr. Ashok has gifted jewellary worth Rs. 1 Lakh to his daughter-in-law. The jewellary is held by her on valuation date and its value on this date is Rs. 6 Lakhs.

(ii) Mr. Ashok gifted to his daughter-in-law shares of some companies, value of the shares on the valuation date is Rs. 2 Lacs.

(iii) Mr. Ashok gifted a piece of land to his daughter in law after obtaining approval of the authorities constructed 5 shops as at and let out the same. The value of shops on valuation date is Rs. 50 Lacs.

(iv) Mr. Ashok formed a trust for the benefit of his wife and transferred his urban land valued at Rs. 20 Lacs to the trust. Income of the land will be available to his wife through out her whole life.

(5) Mr. Ajay has following assets and liabilities on the valuation date

1.	Gold and Silver		2000000
2.	Share on Indian companies (not an asset u/s 2(ea))		200000
3.	Residential houses	-A	3000000
		- B	4000000
4.	Commercial building used for own business		5000000
5.	Jewellery		1200000
6.	Boat		500000
7.	Cars for personal use		1200000
8.	Bank Deposits		500000
9.	Cash in Hand		350000
10.	Loan taken to purchase gold		500000
11.	Loan taken to purchase houses A		1200000
12.	Loan taken to purchase houses B		2500000
13.	Loan taken to purchase Boat		300000
14.	Loan taken to purchase Jewellery		800000

(out of which Rs. 300000 used to pay personal expenses)

Calculate his wealth tax?

(6) From the following particulars of Mr. Vijay on the valuation date, calculate his Net Wealth and Wealth Tax Liability-

		Rs.
i)	Agricultural land in Delhi	120000
ii)	Agricultural land in village 8 km from municipal limits of Delhi	200000
iii)	Farm house at a distance of 6 km from Delhi	900000
iv)	Crop on agricultural land	500000
v)	Cars	250000
vi)	Tools for agricultural	200000
vii)	Jewellery	1500000
viii)	Interest in HUF	300000
ix)	Cash in hand	30000
x)	Shares on Indian companies	500000
xi)	Units of UTI	300000
xii)	Loan for agricultural land	100000
xiii)	Income Tax liability	20000
xiv)	Wealth Tax Liability	12000

*** ***** ***

UNIT 5 TAX PLANNING-1

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Meaning and Concept of Tax Planning

5.4 Tax Planning for setting up of a new business-

5.5 Tax Planning for Financial Management Decision

5.5.1 Capital Structure

5.5.2 Dividend

5.5.3 Bonus Share

5.6 Let Us Sum Up

5.7 Further Reading

5.8 Answers To Check Your Progress

5.9 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the meaning and concept of tax planning
- differentiate between tax planning, tax avoidance and tax evasion
- discuss the various tax planning considerations in relation to setting up of a new business
- discuss the various tax planning considerations in relation to financial management decisions

5.2 INTRODUCTION

As a tax payer, an assessee always looks for various ways to reduce their tax liability. In the process, they often tend to non-disclosure of income or evade the taxes, which is illegal. However, reducing a tax liability is not always an illegal exercise and can be done through proper tax planning. Tax planning is legal. However, application of tax planning to reduce our taxes requires a thorough understanding of the principles, practices and procedures of tax laws and the ability to apply such knowledge to various practical situations. In this chapter, we shall discuss about tax planning w.r.t. setting up of a new business and w.r.t. financial management decisions to ensure that the incidence of tax is reduced to the extent possible, by taking advantage of the various allowances, deductions and other tax concessions provided under the Income Tax Law.

5.3 MEANING AND CONCEPT OF TAX PLANNING

As a general view, we all know that activities done with proper planning produces better results. And tax planning is no different. Tax planning is a systematic financial procedure wherein the tax payer would ensure compliance with the taxation provisions in such a manner that full advantage is taken of all tax exemptions, deductions, concessions, rebates and reliefs permissible under the Income Tax Act so that the incidence of tax is the least. The various tax benefits in the form of incentives, concessions, allowances, rebates, reliefs, etc. provided for in the tax laws are meant to be availed for certain clear objectives to achieve. Tax planning may, therefore, be regarded as a method of intelligent application of expert knowledge of planning corporate affairs with a view to securing consciously provided tax benefits on the basis of the national priorities in consonance with the interests of the State and the public. Tax planning is extremely important for new business entities that are to be set up in India and has become extremely important after the increasing market competition and the post-pandemic consequences. Tax planning aims to reduce the outflow of cash resources made available to the Government by way of taxes so that the same may be effectively utilised for the benefit of the individual or the business, as the case may be. Tax planning is legal and can neither be

equated to tax evasion nor to tax avoidance.

In order to have a better understanding of the concept of tax planning, let us discuss about tax avoidance and tax evasion and how tax planning differs from them.

Tax Avoidance

Tax avoidance is a method of taking advantage of the loopholes in the tax law of the country to avoid paying taxes. It minimizes tax liability using complex and often critical provisions of the Act. Tax avoidance uses legal means to avoid taxes but is not encouraged because it is an exploitation of the legal provision of the tax law which was not intended or considered while framing the law. Suggestions from the tax experts and taxpayers and continuous evaluation of the various provisions of the Income Tax Act may help in the removal of such loopholes and may thus reduce the incidences of tax avoidance.

One can consider their residential status in some safe tax havens where tax rates are low or where special incentives are given for certain activities which are not available in the assessee's own place of residence, in order to avoid paying taxes. In addition, they may also change their business structure or establish an offshore company in tax havens, etc.

Having considered the meaning of each of the above methods of reducing tax liability we may now consider the differences between each one of them.

Tax Avoidance vs. Tax Planning:

a. Tax planning contributes to the nation building by investing in certain activities which are normally not ventured into. On the other hand, tax avoidance is simply paying less tax or not paying tax at all without any contribution to the society.

b. While tax planning is perfectly legal and encouraged by the government, tax avoidance is somewhat legal but not always encouraged.

c. Tax planning is not risky at all while tax avoidance involves a lot of risk.

d. Tax planning is using the exemptions and reliefs specifically provided in the Act which is meant to be used to reduce tax liability but tax avoidance

is using the unintended, hidden and often unspecified tax provisions to reduce tax liability.

Tax Evasion :

Tax Evasion is another method of evading taxes used by assessees. This method is resorted to with the motive of defrauding. Tax is evaded by concealing income, by showing lesser income and other providing false and incomplete information to the taxing authorities. Tax evasion is always done intentionally by maintaining different sets of books of accounts, carrying on transactions in cash with no invoices, carrying on transactions in a dummy name, preparing false invoices, paying lesser taxes than what is being assessed, etc.

Tax evasion may be resorted to with an intention of defrauding. It may also be resorted because of high rates of tax, absence of taxpayer┐ friendly tax policies and absence of adequate tax incentives. Tax evasion is mostly adopted by people having black money. They conceal their income and as a result evade taxes.

It results in loss of revenue to the state exchequer. It is one of the reasons for the rise in inflation. Tax evasion is considered a civil offence in the country, i.e., illegal and immoral. It is a growing menace in the country as more and more people are stashing money abroad in tax havens and thus avoiding paying of taxes. Assets are kept hidden and undeclared so that tax can be evaded. This menace can be stopped by having a strict and efficient tax system in the nation so that tax evaders can be easily located and can be penalized for such illegal action.

Tax Planning vs. Tax Evasion :

1. Tax planning involves the use of provisions in the law to reduce tax liability whereas tax evasion is using unethical ways to reduce taxes.
2. Tax planning is legal whereas tax evasion is illegal.
3. Tax planning benefits the society as well as the individual while tax evasion is considered harmful for the development of the nation and

may be the root cause of all social evils like corruption, poverty, underdevelopment and black money.

4. Tax evasion is considered as a crime while tax planning is not.

Thus, we can say that although all the above methods are used for reducing tax liability, tax planning is the best of all methods as it uses perfectly legal means to reduce tax liability. On one hand, the assessee can enjoy his income to the fullest and on the other hand he can also contribute to the society.

Tax Avoidance vs. Tax Evasion:

1. While in tax avoidance one discloses all material facts, under tax evasion there is often incomplete or false information being disclosed by the assessee.
2. Tax avoidance is reducing of tax liability by using the loopholes in the Act, while tax evasion is evading of taxes by fraudulent means like misrepresenting or concealing information or not paying tax at all.
3. Tax avoidance exploits the tax laws but is not considered illegal always as it works within the ambit of law although it is not intended by the law makers nor encouraged, while tax evasion is definitely illegal as it uses illegal methods to reduce tax liability and evade taxes which the tax payer legally owes.

5.4 TAX PLANNING FOR SETTING UP OF A NEW BUSINESS

Let us now discuss about Tax Planning that could be done in case of setting up of new businesses. Due to the new industrial policy, new licensing policy, Export Import (EXIM) policy and Foreign Trade Policy (FTP) along with the monetary and fiscal measures of the government, new businesses are increasingly coming across various sectors and regions. The advent and access to emerging new technologies and new market potential has also attracted new entrepreneurs to invest in various sectors. However, for starting up new businesses one is more concerned about their cost structure, likely profitability in future and sustainability which is influenced to a great extent by

their tax liabilities. Since the income of new businesses is mainly chargeable to tax under the head, Business and Profession, Capital Gains and Income from other sources, the new entrepreneur or management takes into account allowable business expenditures in computing taxable business income, the exemptions, deductions, the special incentives available for particular locations, nature and organisational forms of business to minimise the overall tax liability. The entrepreneur has to find and undertake tax planning in areas where tax liability can be reduced and maximum advantage of the various allowances, deductions and other tax concessions given under the law could be availed.

For a new business, the areas where tax planning is more relevant are as follows :

a) Nature of the Business
b) Location of the Business
c) Form of the Business Firm

a) Nature of the Business : One of the major consideration in tax planning about new business is the choice of the nature of the business which calls for appropriate planning with reference to the various special benefits available under the taxation laws to the particular kinds of industries which are not available to other kinds. Some of these benefits are of such a substantial nature that they constitute one of the major factors in the determination of the nature of the business. Broadly, business for this purpose may be divided into two categories—trading and manufacturing business. There could be a third category involving combination of both. Deduction is available under section 10AA to newly established units in Special Economic Zones. A taxpayer carrying on manufacturing or industrial activities would be in a position to avail of the various concessions such as Depreciation allowance u/s 32, Spectrum expenditure u/s 35ABA, Telecom licence u/s 35ABB, Preliminary expenses u/s 35D and Mining expenditure u/s 35E. Tax holiday benefit under section 80-IAC would be available in case of eligible start-up, under section 80- IBA in case of developing and building housing projects and under section 80LA in case of offshore banking unit and IFSC located in Special Economic Zone. While deciding the nature of the business, the

benefit of tax exemption or treatment available in respect of certain types of income such as agricultural concessional income, new industrial undertakings, ships, business of repairs to ocean going vessels, business of exploration, etc. of mineral oils, etc. should also be taken into account.

b) Location of the Business : Considering the availability of tax concessions, tax incentives, deductions or allowances on the basis of location of new businesses, tax planning w.r.t. the same is worth exercisable.

The following are the some of the important incentives, concessions, deductions or allowances on the basis of location of businesses:

1. Full exemption under Section 10A for ten years in the case of a newly established industrial undertaking in free trade zones, etc. [Not allowed w.e.f. A.Y. 2012-13].
2. Full exemption under Section 10AA for initial five years, 50% for subsequent five years and further deduction of 50% for a further period of five years in the case of a newly established units in special economic zones on or after 1.4.2005.
3. Full exemption under Section 10B for 10 years in the case of a newly established 100% export-oriented undertaking. [Not allowed w.e.f. 2012-13].
4. Deduction under Section 80-IAB in respect of profits and gains by an undertaking or an enterprise engaged in the development of Special Economic Zone.
5. Deduction under Section 80-IB in the case of newly set up industrial undertaking in an industrially backward State or district.
6. Deduction under Section 80-IC in case of newly set up industrial undertaking or substantial expansion of an existing undertaking in certain special category States.
7. Deduction under Section 80-ID in respect of profits and gains from business of hotels and convention centres in specified area or a hotel at world heritage site.

8. Deduction under Section 80-IE in respect of certain undertakings in North-Eastern States.

c) Form of the Business Organisation : The choice of the appropriate form of business organisation will have to be thought of and decided by the person who intends to carry on business or profession at the beginning itself, because a change in the form of business organisation after the commencement of the business, may attract liability to tax. A new business can be organised under any of the following forms:

(i) Sole proprietorship

(ii) Hindu undivided family

(iii) Association of persons or Body of Individuals

(iv) Partnership firm/LLP

(v) Company

(vi) Co-operative society

The selection of a particular form of organisation would depend not only on the tax aspect but on other considerations also, e.g., financial requirements and resources, requirement of limited liability and many other practical considerations.

However, depending upon the taxable status and level of tax liability of the owners, a selection can be made from the various forms available for setting up a new unit.

(i) Sole Proprietorship: In the case of a sole proprietorship concern, remuneration paid to proprietor is not allowed as deduction from business profits of the sole proprietorship firm. Whereas remuneration paid by partnership firm/LLP to its working partner is allowed as deduction subject to sec 40(b) As a result, the taxable income from business would get reduced and correspondingly, the incidence of tax would also be reduced.Under sole proprietorship, the entire income of a business unit gets assessed in the hands of the same person along with other income, while the entire loss and other allowances shall be available for set off in his hands against other income. This may have some advantage in the initial years, after which the possibility of converting it into company/firm

may be considered; on such conversion, the questions of possible capital gains tax, etc., will have to be considered.

(ii) Hindu Undivided Family 'HUF': The HUF is treated as a separate entity under the Income Tax Act. Since the law does not specifically provide for the disallowance of such expenses, it is advantageous to carry on a business through the HUF wherever possible. The income of the family is computed and first taxed in the hands of the family at the rates applicable to it. The income of the family may, thereafter, be divided amongst the members of the family and the members, in such cases, do not attract any liability to tax in view of the specific exemption granted under section 10(2) of the Income-tax Act, 1961. Thus, if a business is carried on by a Hindu undivided family, the advantages which are available in the case of a company could be fully availed of and in addition, the members of the family would not become liable to tax when they receive any portion of the family's income.

(iii) Partnership and LLP: All firms and LLPs will be taxed at a flat rate of 30%. If the total income exceeds 1 crore, surcharge @ 12% is applicable. There will be no initial exemption and the entire income will be taxed. In computing the taxable income of a firm, certain prescribed deductions in respect of interest and remuneration have to be allowed. The share income of a firm in the hands of the partners of the firm is fully exempt under section 10(2A). Also, partnership firms carrying on eligible business can declare income on presumptive basis as per the provisions of section 44AD@8% of gross receipts (6% in case gross receipts are received by an account payee cheque/bank draft/ use of ECS through bank account). Partnership firms carrying on notified profession can declare income on presumptive basis@50% of gross receipts as per the provisions of section 44ADA.

(iv) Company: Within the company form of organisation, however, several alternatives exist. On the basis of the ownership and control, a company can either be organised as a widely held company, i.e. a company in which the public are substantially interested u/s 2(18) of the Income-tax Act, 1961. Alternatively, it can be organised as a closely held company. Depending upon the choice of the form of organisation of the company,

the following important tax consequences would have to be considered from the view point of tax planning:

(1) The General tax rate of domestic company is 30% and if turnover is upto '250 crores in F/Y 16/17 then General tax rate is 25%.

(2) The general tax rate of foreign company is 40%.

(3) The surcharge on domestic company is 7% if Total Income exceeds 1 crore and 12% if Total Income exceeds 10 crores.

(4) The surcharge on foreign company is 2% if Total Income exceeds 1 crore and 5% if Total Income exceeds 10 crores.

(5) The provisions of section 79 regarding restrictions on carry forward of losses in the event of substantial change in the shareholding of the company also become applicable if the company is one in which the public are not substantially interested. This aspect would assume particular significance in the case of closely held companies where losses are made and shareholdings are transferred before such losses are fully absorbed.

(6) Domestic companies have to pay CDT @ 15% plus surcharge @12% plus cess @ 4% on dividend declared, distributed or paid u/s 115O.

(7) MAT provisions are applicable to companies. It so happens that in case of companies enjoying tax holiday benefits still have to pay tax under MAT provisions, credit of which also cumulated for number of years without being used causing significant outflow of funds in the initial years.



CHECK YOUR PROGRESS

Q 1: State the meaning of Tax Planning.

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Q2: Mention three important areas where tax planning is relevant for a setting up a new business.

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5.5 TAX PLANNING FOR FINANCIAL MANAGEMENT DECISION

Financial management decisions cover the decisions relating to planning, organising, directing and controlling the financial activities viz. procurement and utilisation of funds of the enterprise. It implies application of general management principles to financial resources of the enterprise. The key aspects of financial decision-making relate to investment, financing and dividends.

Investment decisions also called as capital budgeting includes investment in fixed assets. Financial decisions are related to the raising of finance from various resources which will depend upon decision on type of source, period of financing, cost of financing and the returns thereby. In dividend decision the finance manager has to take decision with regards to the net profit distribution. While undertaking all these above decision in order to attain the ultimate goal of shareholders wealth maximisation a firm always considers these decisions from the point of view of taxation.

5.5.1 Capital Structure

Financing decisions are concerned with quality of finance basically focusing on achieving an optimum mix between debts and equity. Capital structure decision is a matrix of three considerations namely the risk, cost of capital and tax planning Thus the tax planner should properly make a balance between risk, cost of capital and tax saving consideration in such a manner, which ensure maximum shareholder's return with optimum risk.

When a company raises long term loans from financial institutions or by way of public issue of debentures or inviting deposits from the public, it should plan that the expenses incurred on such issues of debentures or expenses towards stamp duty, registration fees, and lawyer's fees should be incurred only after the date of the 'setting-up' of the business. The interest paid before the commencement of production but after setting up of the business on loans taken by the company for the acquisition of its plant and machinery

and other assets, forms part of the actual cost of the asset and it should be capitalized in actual cost of asset. Thus, the company would be allowed to capitalise the expenditure and claim a higher depreciation and investment allowance. The company should also plan the optimum use of the share capital and the borrowed funds. Note that the borrowings should be utilised as far as possible for the acquisition and installation of assets like, buildings, plant and machinery so that interest can be capitalised for the period after setting up of the acquired assets like buildings, plant and machinery but before the commencement of production. The interest and higher amount of depreciation (due to capitalisation of expense) may be claimed as revenue expenditure pertaining to the business of the company. The company should also plan to purchase the depreciable assets on credit terms and an agreed amount of interest can be paid on such credit purchases or the company may purchase these company assets on the basis of the hire purchase agreement enabling the company to claim the amount of interest paid as revenue business expenditure. The company would also be entitled to claim either the depreciation for use of the asset or may treat the hire charges as the rent for the asset in the normal course of business and claim deduction on revenue account.

5.5.2 Dividend

A dividend is that part of residual disposable income of a company which is paid to shareholders. According to Section 2(22) the following payments or distribution by a company to its shareholders are treated as deemed dividend to the extent of its accumulated profits :

a. any distribution entailing the release of company's assets

b. any distribution of debenture, debenture stock and bonus to preference shareholders

c. Distribution on liquidation of company

d. Distribution on reduction of capital

e. Any payment of loan or advance by closely held company to a shareholder holding substantial interest provided the loan should

not have been made in the ordinary course of business and money lending should not be a substantial part of the company 's business.

In the first four cases (a to d) the recipient shareholder of the dividend is not chargeable to tax but the company will pay the dividend tax according to section 115-O but in the last case (e), the recipient shareholder of the dividend and not the company, will pay the dividend tax.

Dividend received from a company other than a domestic company is chargeable to tax in the hands of recipients. Under section 115BBDA aggregate dividend income from a domestic company in excess of Rs.10 Lakh to a resident individual/HUF/ firm is chargeable to tax at the rate of 10%.

Dividend decisions are important financial decisions as it maximizes the shareholders wealth on one hand and results in cash outflows reducing the cash resources of the company on the other hand. Dividend policy of the company determines how much amount of distributable profit is to be distributed among shareholders and how much is to be kept as retained earnings for meeting the financial requirements of the company. Besides considering the tax implication of dividend on shareholders wealth, the non-payment or less payment of dividend which may lead to selling of shares attracting capital gains tax liability on individuals needs to be assessed.

5.5.3 Bonus Share

Bonus shares are not taxable as dividend if issued to equity shareholders but are taxable as dividend if issued to preference shareholder. If a company capitalise its profits by the distribution of ordinary and equity shares as bonus then there is no release of assets by the company to its shareholders and therefore bonus shares are not taxable as dividend in the hands of either the issuing company or shareholder at the time of issue of bonus share. At the time of sale of bonus shares the issuing company does not attract any tax liability but the shareholder is chargeable to tax for capital gains on bonus share. For this, cost of acquisition will be zero as the bonus shares are received without any payment. (Section 55). Holding period will be determined from date of allotment. At the time of redemption of bonus shares or at liquidation of company the issue of bonus share will be deemed as dividend distribution up-

to the amount of accumulated profit and the company is liable to pay the dividend distribution tax on it. However, the shareholder will be exempt from tax to the extent of deemed dividend and the balance will be treated as capital gain. If bonus shares are issued to preference shareholders, then it amounts to distribution of dividend and therefore bonus shares are taxable in the hands of shareholders at the time of sale of such shares under capital gains.



CHECK YOUR PROGRESS

Q 3: Mention the payments or distribution made by a company to its shareholders which are treated as deemed dividend to the extent of its accumulated profits.

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Q 4: Why bonus shares issued to preference shareholders are taxable as dividends?

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5.6 LET US SUM UP

- In this unit, we have discussed the following :
- Tax planning aims at reducing the tax liability to its minimum by complying the tax laws on the one hand and taking legitimate benefit of its provisions in respect of exemptions deductions, allowances, rebates on the other.
- Tax planning is legitimate as it is within the framework of tax laws.
- When the tax liability is illegally reduced using unfair means and manipulations it is termed as tax evasion or avoidance.
- Tax evasion simply refers to all the methods by which tax liability is

illegally avoided i.e. unfair means or methods attempted for tax omission which may lead to punishment and prosecutions.

- Tax avoidance is generally referred to a legal way of escaping the tax liability using the loopholes in the laws.
- Tax Planning could be done in case of setting up of new businesses. Allowable business expenditures in computing taxable business income, the exemptions, deductions, the special incentives available for particular locations, nature and organisational forms of business needs to be taken into account to minimise the overall tax liability.



5.7 FURTHER READING

1) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.
2) Income Tax Act, 1961, Bare Act.
3) Income Tax Act by Girish Ahuja & Ravi Gupta.
4) E.A. Srinivas, Corporate Tax Planning, Tata McGraw Hill.
5) Vinod K. Singhania, Taxmann's Direct Taxes Planning and Management.
6) V.S. Sundaram, Commentaries on the Law of Income- Tax in India, Law Publishers, Allahabad.
7) A.C. Sampath Iyengar, Law of Income Tax, Bharat Publishing House, Allahabad.
8) Bhagwati Prasad, Direct Taxes Laws Practice, Wishwa Prakashan



5.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Tax planning is an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it. It is in some way a practice of saving tax.

Ans to Q No 2: For setting up of a new business, three areas where tax planning is relevant are as follows:

a) Form of the organisation
b) Nature of the business
c) Location of the business

Ans to Q No 3 : According to Section 2(22) the following payments or distribution by a company to its shareholders are treated as deemed dividend to the extent of its accumulated profits :

a. any distribution entailing the release of company's assets
b. any distribution of debenture, debenture stock and bonus to preference shareholders
c. Distribution on liquidation of company
d. Distribution on reduction of capital

Ans to Q No 4: If bonus shares are issued to preference shareholders, then it amounts to distribution of dividend and therefore bonus shares are taxable in the hands of shareholders at the time of sale of such shares under capital gains.



5.9 MODEL QUESTIONS

Q 1: Define Tax Planning.
Q 2: How is tax planning different from tax avoidance and tax evasion? Discuss.
Q 3: Write a brief note on tax avoidance.
Q 4: Discuss the various forms of business organisations.
Q 5: Discuss in detail the areas where the tax planning can be resorted to in relation to setting up of a new business.
Q 6: Discuss the various tax planning considerations in relation to a new business.
Q 7: Discuss how managers can take advantage of tax planning while taking financial management decisions.
Q 8: Explain the Tax implications of capital structure decisions with the help of a suitable example.
Q 9: Explain how location of business is significant factor in tax planning?

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UNIT - 6 : TAX PLANNING-2

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Tax Planning for Managerial Decision-

6.3.1 Make or Buy Decision

6.3.2 Own or Lease

6.3.3 Amalgamation and merger

6.4 Tax Planning for Employees' Remuneration

6.5 Tax Planning for Distribution of Assets at the Time of Liquidation

6.6 Let Us Sum Up

6.7 Further Reading

6.8 Answers To Check Your Progress

6.9 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the relevance and application of tax planning in various managerial decisions such as Make or Buy Decision, Own or Lease, Amalgamation and Merger

6.2 INTRODUCTION

In our previous unit, we discussed in details about tax planning. We learned that tax planning is basically an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it. Tax planning is legitimate as it is within the framework of tax laws. We also discussed about the various tax planning considerations in relation to business. A new business cab do tax planning in the areas such as form of the organisation; nature of the business; financial structure; acquisition of plant and machinery and other fixed assets and setting up and commencement of business.

In this unit, we shall discuss the relevance and application of tax planning in various managerial decisions such as Make or Buy Decision, Own or Lease, Amalgamation and Merger.

6.3 TAX PLANNING FOR MANAGERIAL DECISION

In an organisation, the manager has to make decisions considering various factors and tax is also one of those factors. Tax factors do influence the managerial decisions and to illustrate this point, tax implications that are relevant while taking some specific management decisions are explained below:

6.3.1 Make or buy decision

In a situation where the management has an alternative to make or buy a product or part/component of a product, it can compare the variable cost of making it with its purchase price in the market before taking the final decision. The article is brought if the cost of making it is greater than the buying it. Alternatively, if the decision to make involves establishment of a separate industrial unit for this purpose, a decision may be taken on the basis of total cost rather than variable cost. In such an event, the assessee would also be in a position to get the tax benefits arising from allowances such as depreciation, tax holiday benefit and deduction in respect of profits from new industrial undertakings, wherever applicable.

The basis of taking make or buy decision should be ‘saving after tax’. The net saving is ascertained after deducting from gross savings, income-tax payable on the amount of saving. The long- term advantages arising out of a decision to make should also be given due weightage in arriving at a decision.

Further, while ascertaining the variable cost of the product (in case of both make or buy decision) all taxes such as GST, customs duty etc., payable in the process of manufacture should be taken into account and in determining purchase price of the product. All taxes to be borne by the purchaser should be added for the purpose of comparison and cost purchasing.

6.3.2 Own or lease

The decision regarding owing or leasing an asset is another important area where tax factor comes into effect. Leasing has its own advantages and disadvantages. There are many factors which are required to be considered before making 'own or lease' decision such as cost of asset to be owned, rent of the asset to be taken on lease, source of financing the asset, risk involved in the alternatives, impact of tax concessions such as depreciation, tax holiday benefit, etc.

Leasing can also provide important tax advantages. If the asset is taken on lease, the firm can deduct for income-tax purposes, the entire rental payment. If the rate of tax is 30%, then, the effective rent obligation is reduced to that extent. Another tax advantage of the lease is that the life of the lease can be shortened compared to the depreciable life otherwise allowed if the assessee purchased the asset. Thus, there is a delay in playing taxes and in effect an interest free loan by the Government to the extent of the delay in taxes.

6.3.3 Amalgamation and merger

Following decisions could be taken by the management considering the tax factor relating to amalgamation and merger of business:

1. Since the unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward and set off in the hands of the amalgamated company, except in the cases prescribed under Section 72A of the Act, it is proposed:
    a. that the scheme of the amalgamation can be put off till such time the full benefit of set off is availed of by the amalgamating company; and
    b. that the loss carrying company should absorb or take over the business of the profit-making company. In other words, the profit making company should merge itself with the loss incurring company. This would help in carrying to carry forward the benefits of all unabsorbed losses and depreciation to be set off against the profits derived from the business of the profit-making company.

2. A company whose shares are not quoted on a recognised stock exchange may avail the benefit of amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help its shareholders to take the advantage of the quoted price of their shares in the stock exchange while determining their liability for wealth tax purposes.

3. A loss incurring company and a profit-making company may merge in order to reduce the overall incidence of liabilities to tax under the Income Tax Act,1961.

   There is a recent trend of going in for reverse merger. It means that the profit making company merges into the sick company thereby becoming eligible to carry forward of losses etc. without the aid of Section 72A of the Act. The profit making or healthy company extincts and looses its name and the surviving sick company retains its name. It is actually device to bypassing merger under Section 72A of the Act and is being increasingly popular now a days.



CHECK YOUR PROGRESS

Q 1: State two areas for tax planning of managerial decisions.

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Q 2: State two decisions that could be taken by the management considering the tax factor relating to amalgamation and merger of business.

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6.4 TAX PLANNING FOR EMPLOYEE'S REMUNERATION

Employer's initiative towards maximization of post-tax income of its employees act as an important motivational factor for encouraging the later to perform better. An employer should exercise tax planning for employee's remuneration in order to ensure the maximum possible post-tax income for them. At the same, it enables the employer to ensure compliance with income tax laws and relevant provisions. Keeping in mind the basic purpose of tax planning i.e. minimizing the incidence of tax, the employer can design the constituent parts of employee's remuneration in such a way that the employees can avail maximum tax exemptions, deductions, tax benefits, concessions etc. and maximize their post-tax remuneration.

6.5 TAX PLANNING FOR DISTRIBUTION OF ASSETS AT THE TIME OF LIQUIDATION

According to section 45 of the Income Tax Act, 1961, a transferor of capital asset is liable to pay capital gains tax on any profits or gains arising from the transfer of the capital asset effected in the previous year. However, notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45 of Income Tax Act 1961. Again, where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income- tax under the head" Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of section 2(22)(c) of Income Tax Act 1961and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48 of Income Tax Act 1961.



6.6 LET US SUM UP

In this unit, we discussed on the following:

- In an organisation, the manager has to make decisions considering various factors and tax is also one of those factors
- In a situation where the management has an alternative to make or buy a product or part/component of a product, it can compare the variable cost of making it with its purchase price in the market before taking the final decision.
- All taxes to be borne by the purchaser should be added for the purpose of comparison and cost purchasing.
- The decision regarding owing or leasing an asset is another important area where tax factor comes into effect.
- Leasing can also provide important tax advantages
- Reverse merger means that the profit making company merges into the sick company thereby becoming eligible to carry forward of losses etc. without the aid of Section 72A of the Act.



6.7 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.

6.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: a) Own or Lease

b) Amalgamation and merger

Ans to Q No 2: 1) A company whose shares are not quoted on a recognised stock exchange may avail the benefit of amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help its shareholders to take the advantage of the quoted price of their shares in the stock exchange while determining their liability for wealth tax purposes.

2) A loss incurring company and a profit-making company may merge in order to reduce the overall incidence of liabilities to tax under the Income Tax Act,1961.

6.9 MODEL QUESTIONS

Q 1 : Discuss briefly the tax planning considerations with respect to managerial decisions.

Q 2 : Write short note on tax planning with respect to make or buy decision.

Q 3 : Write briefly about tax planning with respect to amalgamation and merger.

Q 4 : Write a brief note on tax planning with respect to lease or own decision in a business.

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UNIT 7 : TAX MANAGEMENT

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Meaning and Concept of Tax Management

7.4 Tax Management regarding Tax Deducted at Source

7.5 Tax Management regarding Advance Payment of Tax

7.6 Tax Management regarding Assessment Procedure

7.7 Tax Planning for Individuals

7.8 Let Us Sum Up

7.9 Further Reading

7.10 Answers To Check Your Progress

7.11 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the meaning and concept of tax management
- explain about tax management regarding tax deducted at source
- explain about tax management regarding advance payment of tax
- discuss about the various assessment procedures under the Income Tax Act.
- Discuss about tax planning for individuals

7.2 INTRODUCTION

We have already had a detail discussion on Tax Planning in our previous two units: Unit 5 and Unit 6. In this Unit, we shall discuss on Tax Management. Tax management consists of steps taken to comply with Income Tax law e.g. maintaining of books of account, computing the income, deposit of tax, filing of returns etc. In this Unit, we shall discuss various issues involved in tax management of an assessee covering the areas such as deduction of tax at

source, advance payment of tax, assessment procedure and tax planning for individuals.

7.3 MEANING AND CONCEPT OF TAX MANAGEMENT

Tax management refers to compliance with the income tax rules and regulations. Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases. The objectives of tax management are to ensure compliance with tax laws at the specified time and in the specified manner as also to ensure that the tax cost isminimized. The functions of tax management include tax planning, organizing thepersonnel to ensure tax compliance and directing and coordinating the compliancewith all the provisions of tax laws.

In this Unit, we shall discuss various issues involved in tax management of an assessee covering the areas such as deduction of tax at source, advance payment of tax, filing of Returns of Income under various sections of the Income Tax Act, 1961.

The important areas of tax management are discussed below:

1. Tax Deducted at Source
2. Collection of tax at source: In some special cases, some persons responsible for collecting the tax at source from the buyers
3. Payment of advance tax
4. Maintenance of Books of Accounts: Maintaining books of accounts and other relevant documents so that the tax can be computed accurately and verified by the Assessing Officer. Maintenance of account books, vouchers, bills, correspondence and agreements, etc. is a part of tax management.
5. Audit of books of accounts: If the turnover of the business for the previous year 2015-16 exceeds one crore rupees, the audit of books of accounts is compulsory as per income tax rules.
6. Furnishing the return of income: The tax manager must ensure that the return of income is furnished on time otherwise the assesse will lose the

right to carry forward and set off the losses and become liable to pay interest, penalty, prosecution or fine or both.

7. Documentation and maintenance of tax records: An assessee should keep complete and updated tax files so that the documentary evidences can be made available in case of all queries. Tax files include filed returns, Form 16, documentary evidence in support of deductions, rebate and relief, court orders, etc.

8. Review of orders of Income Tax Department: Review the assessment orders and other orders received from the tax department is an important function of tax management. If there is any mistake in the order, application for rectification can be made. If the order is prejudicial to the interest of the assessee he can file an appeal, revision or an application for settlement of case can be made.

7.4 TAX MANAGEMENT REGARDING TAX DEDUCTED AT SOURCE

The provisions of the Income Tax Act, 1961 requires the tax payer to follow the principle “pay as you earn”. The system of tax deducted at source (TDS) is an outcomes of that principle. The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor. Thus, TDSis also a form of advance tax where taxes are collected by the person who is disbursing theincome. Persons who can deduct tax at source of income are:

1. In case of payment made under government employment, the Drawing and Disbursing Officer;
2. The employer paying salary to his employees or the Principal Officer;
3. In case of individual, the borrower himself;

4. In case of a company, it is the company including the Principal Officer;
5. In case of any other type of payments, the payer himself: if the payer is a company, the Principal Officer will be responsible for TDS.

Tax has to be deducted at the rate specified in relevant Sections of the Income Tax Act, 1961. Deductor must have the Permanent Account Number (PAN) of payee. Tax is deducted at source in case of the following payments:

1. Salaries (Section 192),
2. Interest on securities (Section 193),
3. Dividends (Section 194),
4. Interest other than interest on securities (Section 194A),
5. Winnings from lotteries or crossword puzzles (Section 194B),
6. Winnings from race horses (Section 194BB),
7. Payment to contractors or sub-contractors (Section 194C),
8. Insurance commission (Section 194D),
9. Payment to non-resident sportsman, payment to sports association (Section 194E),
10. Payment in respect of deposits under National Savings Scheme, etc. (Section 194EE),
11. Payment on account of repurchase of units by mutual funds or Unit Trust of India (Section 194F),
12. Payment of commission, etc. on sale of lottery tickets (Section 194G),
13. Commission or brokerage (Section 194H),
14. Rent (Section 194I),
15. Fees for professional or technical services (Section 194J),
16. Income in respect of units of UTI and mutual funds (Section 194K),
17. Payment of compensation on acquisition of certain immovable properties (Section 194LA)

Apart from this tax is also deducted at source from payment to non-residents, units purchased in foreign currency, long term capital gain from foreign currency, income of Foreign Institutional Investors (FII) from securities, etc.

Sums deducted by an office of the government shall be paid to the credit of the central government on the same day where the tax is paid without production of an income tax challan and, on or before seven days from the end of the month in which the deduction is made where income tax challan is accompanied. Sums deducted by deductors other than an office of the government shall be paid to the credit of the central government on or before 30th of April where income is paid in the month of March and in any other case, on or before seven days from the end of the month in which deduction is made. Every deductor, deducting tax, shall deliver or cause to be delivered, to the Director General of Income Tax (DGIT) or the person or agency authorised by the DGIT, the annual return of deduction of tax in specified forms by the end of the month of June falling in the financial year immediately following the previous year.

In case of deduction of tax under Section 192, certificate of tax deducted at source is to be furnished to the employee or payee by the employer in Form No. 16 annually by 31st of May of the financial year immediately following the financial year in which the income was paid and tax deducted; and in other cases certificate is to be furnished in Form No. 16A quarterly within fifteen days from the due date for furnishing the statement of tax deducted at source under rule 31A.

In short the process of TDS includes the following steps:

1. Payer deducts tax from payment.
2. Payer deposit tax to government.
3. Payer files return of TDS.
4. Payer issues TDS certificates to payee.
5. Payee claims refund of TDS in his Income Tax Return (ITR).

If the deductor fails to pay the amount of tax so deducted to the credit of the central government, he/she shall be liable to pay simple interest under Section 201(1A) on the amount of such tax from the date on which such tax was deducted to the date such tax is actually paid at the rate specified from time to time.

TDS on Salary income

Tax Deducted at Source (TDS) holds a special importance in tax management of a salaried individual. Section 192 of the Act makes it clear that any person responsible for paying any income chargeable under the head "Salaries" shall at the time of payment, deduct income - tax on the estimated income of the employee under the head "Salaries" for that financial Act of the respective year.



CHECK YOUR PROGRESS

Q 1: What do you mean by Tax Management?

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Q 2: Write the meaning of Tax Deducted at Source.

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The tax is to be deducted at the average of income tax computed on the basis of the rates in force for the financial year in which the payment is made. In other words, the total tax to be deducted, on the estimated income of the employee for the relevant financial year, is divided by the number of months of his employment during the financial year. The amount so arrived at is the monthly deduction of tax at source. TDS provisions relating to payment of salary are materially different from provisions for other payments, in respect of the manner of determining the amount to be deducted. In respect of all other payments, the person deducting tax has to deduct a fixed percentage of gross amount payable, irrespective of payee's income tax liability. However, in respect of salary payment, the employer has to make an honest estimate of income under the head salary and deduct tax at the appropriate rate, on the income so estimated. In view of this, tax planning in respect of TDS becomes more important on the part of the employees. Since the monthly tax to be deducted is the average of income tax computed for the relevant financial year, the employee should take care of all the deductions and benefits available

under the Act after considering the amendments made in the Finance Act of the respective year.

7.5 TAX MANAGEMENT REGARDING ADVANCE PAYMENT OF TAX

According to Section 208 of the Income Tax Act, tax payers whose total income is likely to be chargeable to tax for the assessment year are required to pay tax in advance during the financial year (April 1 to March 31) on their estimated current income, which will be assessable to tax during the next following financial year called assessment year. Advance tax is payable if the assessee's tax liability exceeds Rs.10,000 in a Financial Year. Senior citizen, a resident individual who is at least 60 years of age at any time during the Financial Year and not having any income from business or profession, capital gains, interest on investments, lottery etc is not liable to pay advance tax. The due dates for various installments of advance tax for all assessee for F.Y. 2022-23 and A.Y. 2023-24 is as follows –

Due Date	Advance Tax Instalment Amount
15th June	At least 15% of Tax on total income for the year
15th September	At least 45% of Tax on total income for the year less advance tax already paid
15th December	At least 75% of Tax on total income for the year less advance tax already paid
15th March	100% of Tax on total income for the year less advance tax already paid

7.6 TAX MANAGEMENT REGARDING ASSESSMENT PROCEDURE

Assessment means to assess the income of the assessee i.e. to decide the income and tax liability of the assessee on the basis of return filed, information gathered or to the best of judgment of income tax department. The

various types of assessment that are carried out under Income tax act will be discussed below.

i. Self-assessment u/s 140A

In case of self-assessment, the tax payer himself determines his taxable income and tax liability and pay tax accordingly. After assessment of tax liability, any amount paid under this section shall be deemed to have been paid towards such assessment. If a taxpayer 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.

ii. Assessment by Income Tax Department

After submission of return or on non-submission of return by the assessee, assessment is made by the Income tax department. The Assessing Officer can assess the income of the assessee in any of the following manner:

a. Intimation u/s 143(1);

b. Scrutiny Assessment u/s 143(3);

c. Best Judgment Assessment u/s 144;

For making assessment, the Assessing Officer can make an inquiry u/s 142 of the Income Tax Act for the purpose of obtaining full information in respect of the income (or loss) of any person, as he considers necessary. However, the assessee must be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry u/s 142(2) or any audit u/s 142(2A) and is proposed to be utilised for the purpose of the assessment.

a) Intimation u/s 143(1)

Where a return has been filed u/s 139 or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely:-

a. the total income or loss shall be computed after making the following adjustment:

i. any arithmetical error in the return;

ii. an incorrect claim, if such incorrect claim is apparent from any

information in the return;

iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished after the due date;

iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

v. disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80- IB, 80-IC, 80-ID or 80-IE, if the return is furnished after the due date;

b. the tax, interest and fee, if any, shall be computed on the total income computed above;

c. the sum payable by (or the amount of refund due to), the assessee shall be determined after adjustment of the tax, interest and fee, if any, by any TDS, TCS, advance tax paid, any relief, tax paid on self- assessment and any amount paid otherwise by way of tax, interest or fee;

d. an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee; and

e. the amount of refund due to the assessee in pursuance of the determination shall be granted to the assessee.

f. An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest or fee is payable by, or no refund is due to, him.

However, no intimation shall be sent after the expiry of 1 year from the end of the financial year in which the return is made. The period of limitation will run from the date of filing of latest revised return.

b) Scrutiny Assessment u/s 143(3)

Where a return has been furnished u/s 139 or in response to a notice u/s 142(1) and the Assessing Officer considers it necessary to ensure that the assessee has not understated his income; or declared excessive loss; or under paid the tax, he can make a scrutiny in this regard and gather such information and evidence as he deems fit. And on the basis of such information

and evidence so collected, he shall pass an assessment order. Such order shall be treated as regular assessment order. The Assessing Officer shall serve on the assessee a notice requiring the assessee, on a date specified in the notice, to produce, or cause to be produced, any evidence on which assessee may rely, in support of the return. However no notice shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished. After collecting such information and hearing such evidence as the assesseeproduces in response to the notice u/s 143(2) and after taking into account all relevant materials, which the Assessing Officer has gathered; The Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by him or refund of any amount due to him on the basis of such assessment. The scrutiny assessment u/s 143(3) should be completed within 12 months from the end of the relevant assessment year.

c) Best Judgement Assessment u/s 144

Under this section, assessment shall be made by the Assessing Officer to the best of his judgment after considering all relevant materials which he has gathered. Assessing Officer cannot reduce the tax liability of the assessee by assessment under this section. Assessment under this section shall be made in the following situations -

i. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or

ii. If the person fails to comply with the terms of notice u/s 142(1); or

iii. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or

iv. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.

The assessment u/s 144 can only be made after giving the assessee a reasonable opportunity of being heard. Such opportunity shall be given by serving a “Show cause notice” calling upon the assessee to show cause(s), on a date and time specified in the notice, why the assessment should not be completed

to the best of judgment of the Assessing Officer. However, such opportunity need not be given, where notice u/s 142(1) has already been issued. The time limit for completion of assessment is 12 months from the end of relevant assessment year.



CHECK YOUR PROGRESS

Q 3: Mention the due dates for various installments of Advance Tax?

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Q 4: What do you mean by Best Judgement Assessment u/s 144?

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7.7 TAX PLANNING FOR INDIVIDUALS

We have already discussed about Tax Planning and have learned that it is the process of efficient utilization of beneficial provisions of exemptions, deductions, rebates and reliefs, while fulfilling the tax obligations.

According to the Income-tax Act 1961, an individual may be an employee, a sole-proprietor, a partner in a firm, a member in a Hindu Undivided Family (HUF) or an Association of Persons (AOP) or a Body of Individuals (BOI) or a non-resident or otherwise. The tax planning process varies from individual to individual and depends, among many factors, taxable income, time schedule for investments, risk bearing inclination, existing investment pattern, expected returns etc. Over the years, tax planning scenario has become more dynamic and complicated, due to constant changes in the tax laws and falling interest rates. The tax-planning in the case of an individual usually cover the following aspects:

1. Planning for 'Residential status'.
2. Planning under 'Income from salary'.
3. Planning under 'Income from house property'.

4. Planning under 'Income from business or profession'.
5. Planning under 'Income from capital gains'.
6. Planning under 'Income from other sources'.
7. Planning for 'Deductions from gross total income (GTI)'



7.8 LET US SUM UP

In this unit, we have discussed the following:

- Tax management refers to compliance with the income tax rules and regulations.
- Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases.
- The important areas of tax management are discussed below:
  1. Tax Deducted at Source
  2. Collection of tax at source
  3. Payment of advance tax
  4. Maintenance of Books of Accounts
  5. Audit of books of accounts
  6. Furnishing the return of income
  7. Documentation and maintenance of tax records
  8. Review of orders of Income Tax Department
- The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government.
- Except the Salary Income, TDS has to be deducted at the rate specified in relevant Sections of the Income Tax Act, 1961.
- In respect of salary payment, the employer has to make an honest

estimate of income under the head salary and deduct tax at the appropriate rate, on the income so estimated.

- Assessment means to assess the income of the assessee i.e. to decide the income and tax liability of the assessee on the basis of return filed, information gathered or to the best of judgment of income tax department.
- The various types of assessment that are carried out under Income tax Act are:
    i. Self-assessment u/s 140A;
    ii. Intimation u/s 143(1);
    iii. Scrutiny Assessment u/s 143(3);
    iv. Best Judgment Assessment u/s 144;



7.9 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications.

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & KapilSinghania

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.



7.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Tax management refers to compliance with the income tax rules and regulations. Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases. The objectives of tax management are to ensure compliance with tax laws at the specified time and in the specified manner as also to ensure that the tax cost isminimized.

Ans to Q No 2: As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

Ans to Q No 3: The due dates for various installments of advance tax for all assessee for F.Y. 2022-23 and A.Y. 2023-24 is as follows –

Due Date	**Advance Tax Instalment Amount**
15th June	At least 15% of Tax on total income for the year
15th September	At least 45% of Tax on total income for the year less advance tax already paid
15th December	At least 75% of Tax on total income for the year less advance tax already paid
15th March	100% of Tax on total income for the year less advance tax already paid

Ans to Q No 4 : The assessment made u/s 144 by the Assessing Officer to the best of his judgment after considering all relevant materials which he has gathered, is known as Best Judgement Assessment. Assessment under this section shall be made in the following situations -

i. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or

ii. If the person fails to comply with the terms of notice u/s 142(1); or

iii. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or

iv. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.



7.11 MODEL QUESTIONS

Q 1: Write briefly about tax management discussing its important areas.

Q 2: Discuss briefly about Tax Deducted at Source.

Q 3: Write a brief note on TDS on Salary Income.

Q 4: Discuss briefly about tax planning regarding assessment procedure.

Q 5: Discuss the various tax planning considerations in case of salary income.

Q 6: Explain the assessment procedure under the Income Tax Act.

*** ***** ***

UNIT 8 : TAX ADMINISTRATION

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Income Tax Authorities

8.4 Appointment and Powers of Various Income Tax Authorities

8.5 Appeals

8.6 Penalties

8.7 Let Us Sum Up

8.8 Further Reading

8.9 Answers To Check Your Progress

8.10 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit, you will able to:

- identify the various income tax authorities and comprehend the provisions of law relating to their appointment and powers
- identify the orders appealable before different appellate authorities
- identify the cases where penalty is leviable.

8.2 INTRODUCTION

In earlier unit you have found that income tax laws are incorporated in the Income Tax Act 1961. Any enactment and amendments in it by the Parliament are to be implemented and administered by the executives through proper official machinery. Income tax laws are also administered through well structured machinery as defined in the Income Tax Act 1961 in the rules made under it. Tax is paid out of the income earned and it is natural human instinct to

pay less tax. Again tax is essential for the Government as it is the major source of its income. Hence there is the need of efficient tax authorities to properly implement the provisions of the IT Act.

In this unit we shall discuss about the income tax authorities and their power and functions. We shall also have a discussion on the appellate authorities and the various penalties under the Act.

8.3 INCOME TAX AUTHORITIES

Under Section 116 of the Income Tax Act, the following income-tax authorities have been constituted to discharge executive and administrative functions :

(i) The Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963.

(ii) Directors General of Income Tax or Chief Commissioners of Income Tax.

(iii) Directors of Income Tax or Commissioners of Income Tax or Commissioners of Income Tax (appeals).

(iv) Additional Directors of Income Tax, Additional Commissioners of Income Tax or Additional Commissioners of Income Tax (Appeals).

(v) Joint Directors of Income Tax or Joint Commissioners of Income Tax.

(vi) Deputy Directors of Income Tax or Deputy Commissioners of Income Tax or Deputy Commissioners of Income Tax (Appeals).

(vii) Assistant Directors of Income Tax or Assistant Commissioners of Income Tax.

(viii) Income Tax Officers.

(ix) Tax Recovery Officers.

(x) Inspectors of Income Tax.

On the basis of the nature of duties and functions, the various authorities stated above can be classified into the following three categories:

1. Administrative authorities
2. Assessing Officers and
3. Appellate Authority.

1. The following are the Administrative authorities as per the Act:
   (a) Central Board of Direct Taxes;
   (b) Directors-General of Income Tax;
   (c) Chief Commissioner or Chief Commissioners of Income Tax;
   (d) Deputy Directors of Income Tax; or
   (e) Deputy Commissioners of Income Tax
2. The following are the Assessing Officers as per the Act:
   (a) Assistant Commissioner;
   (b) Assistant Director,
   (c) Deputy Director;
   (d) Deputy Commissioner; or
   (e) Income Tax Officer.
3. The Appellate Authority as per the Act is:
   (a) Commissioner of Income Tax (Appeals)

8.4 APPOINTMENT AND POWERS OF VARIOUS INCOME TAX AUTHORITIES

Appointment of Tax Authorities :

The Central Government may appoint such persons as it thinks fit to be income tax authorities [Section 117]. However, the Central Government may authorise the Board, or any Director General, Chief Commissioner, Director or Commissioner to appoint income tax authorities below the rank of Assistant Commissioner/Deputy Commissioner. An income tax authority authorised by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions. All these appointments can be made subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts.

Powers of Tax Authorities :

The following are the powers of different Tax Authorities:

(a) The Central Board of Direct Taxes: It was constituted under the Central Board of Revenue Act, 1963. It works under the Ministry of Finance. It is the highest executive authority in the sphere of direct taxes. Main powers and functions assigned to this authority are as under:

(i) To exercise Control over other Income Tax Authorities.

(ii) To issue necessary orders, instruction and information to subordinate authorities as per the provisions contained in sections

2(17), 2(18), 11() (c), 35(3), 35D(3), 36(1) (iv), 44AA, 80RRA, 80U, 118, 119, 120, 124(2), 127, 132(1), 138, 139A(4), 197(2A), 200, 228A, 246, 273A(2), 279, 288, 293B and 295 of the Income Tax Act, 1961.

(b) Powers of Director General/Director: The Director General/Director appointed by the Central Government. They are required to perform such function as may be assigned by the Central Board of Direct taxes. The Director General/Director enjoys the following powers under different provisions of the Act:

(1) Enquiry and investigation into concealment;

(2) Search and Seizure;

(3) Requisition of books of account;

(4) Making survey;

(5) Making any enquiry;

(6) Giving instructions to the Income Tax Officers.

(c) Powers of Commissioners of Income-tax: The Commissioners of income tax are appointed by the Central Government. They are appointed to head the income tax administration of a specified area, generally a state or a region. As the head of the administration, a Commissioner of income tax enjoys both administrative as well as judicial powers. Following are the functions of Commissioners of income tax :

(i) to appoint of Income Tax Officers (Class II) and Inspectors of income tax;

(ii) to issue instruction to subordinate authorities;

(iii) to assign jurisdiction of Inspecting Assistant Commissioner and Income Tax Officers;

(iv) shifting of jurisdiction;

(v) to order the search and seizure;

(vi) to grant sanction for reopening assessment after the expiry of 4 years;

(vii) to authorise the Income Tax Officers to recover any arrear of tax due from an assessee;

(viii) to direct the Income Tax Officers to prefer appeal to the Appellate Tribunal against the Appellate Assistant Commissioner;

(ix) to order for revision of orders passed by the Income Tax Officer which is prejudicial to the revenue ;

(x) to award or withdraw recognition to provident fund;

(xi) to reduce or waive the penalty in some cases under the provisions of the Income Tax Act.

(d) Powers of Income Tax Officers:

There are two types of Income Tax Officers – Class I and Class II. Income Tax Officers of Class I service are appointed by the Central Government. The Income Tax Officers of Class II service is appointed by the Commissioner of Income Tax. Powers and functions of Income Tax Officers are varied and many. The following are some of the powers and functions of Income Tax Officers:

(i) discovery and production of evidence;

(ii) power in respect of search and seizure;

(iii) power to call for information;

(iv) power to make assessment;

(v) power to impose penalty;

(vi) power to inspect registers of companies;

(vii) to allot permanent account number (PAN);

(viii) to re-assess escaped income;

(ix) to grant approval for deduction of tax at source at lower rate;

(x) to demand advance payment of tax;

(xi) to grant refund etc.

(d) Powers of Inspectors of Income Tax :

The Inspectors of Income Tax are appointed by the Commissioner of Income Tax. Inspectors of Income Tax have to perform such functions as are assigned to them by the Commissioner or any other authority, under which they are appointed to work.

The Inspectors of Income Tax are appointed by the Commissioner of Income Tax. They have to perform such functions as are assigned by the Commissioner and any other authority.



CHECK YOUR PROGRESS

Q 1: Who are the Assessing Officers as per the Income Tax Act?

Q 2: State the Appellate Authority as per the Income Tax Act.

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……

8.5 APPEALS

The right of appeal must be given by express enactment in the Act and as such, the assessee has no inherent right of appeal unless the statute specifically provides that a particular order is appealable. Therefore, in case there is no provision in the Act for filing an appeal regarding a particular matter, no appeal shall lie. The right of appeal arises where the taxpayer is aggrieved by the order passed by the income-tax authority. As per the provisions of Income Tax Act, 1961, there are four stages of appeal, as shown below:

First Appeal ⇨ Commissioner (Appeals)

↓

Second Appeal ⇨ Appellate Tribunal

↓

Third Appeal ⇨ High Court

↓

Final Appeal ⇨ Supreme Court

Appeals before Commissioner (Appeals)

An assessee or any deductor or any collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against such orders under section 246A –

- Order passed by a Joint Commissioner u/s 115VP(3)(ii);

- Order against the assessee, where the assessee denies his liability to be assessed under this Act;
- Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [Scrutiny assessment] [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)] or u/s 144 [Best judgment assessment] in respect of income assessed or tax determined or loss computed or residential status;
- Order of assessment, reassessment or recomputation u/s 147 [(except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)], 150 & 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)];
- Order u/s 154 (Rectification of Mistake) or u/s 155 (other amendments) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee [except where it is in respect of an order referred to in sec. 144BA(12)]
- Order of assessment or reassessment u/s 92CD(3)
- Order u/s 163 treating assessee as an agent of a non-resident;
- Order u/s 170 relating to assessment on succession;
- Order u/s 171 refusing to recognize partition of an HUF;
- Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;
- Order u/s 237 relating to refunds;
- Order relating to Penalty;
- Order imposing penalty under chapter XXI;
- An order of penalty imposed under chapter XXI or an order of imposing or enhancing penalty u/s 275(1A)
- Any order made by an Assessing Officer other than a Joint Commissioner, as the Board may direct.

Further, u/s 248 where under an agreement or other arrangement –

- the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; & such person

having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income

Appeals to the Appellate Tribunal

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer can file appeal before the Appellate Tribunal. Several Benches of the Appellate Tribunal constituted all over India by the Central Government and it functions under the Ministry of Law. It consists of as many judicial and accountant members as the Central Government thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

Section 253(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –

- An order passed by a Commissioner (Appeals) u/s 154, 250, 270A, 271, 271A or 272A; or
- An order passed by a Principal Commissioner or Commissioner u/s 12AA [registration of trust], 80G(5)(vi), 263 [revision order], 154, 270A or 271 or 272A; or
- An order passed by an Assessing Officer u/s 143(3) or 147 or 153A or 153C in pursuance of the directions of the Dispute Resolution Panel or with the approval of the Commissioner (or Principal Commissioner) as referred to in sec. 144BA(12) or an order passed u/s 154 or 155 in respect of such order.
- An order passed by an Assessing Officer u/s 115VZC(1)
- An order passed by the prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via)
- An order passed by Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director u/s 272A [penalty].

Section 253(2) provides that the Principal Commissioner or Commissioner may, if he objects to any order passed by the Commissioner

(Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

Appeals to High Court :

Under Section 260A, the Assessee or the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner, being aggrieved by the order of the Appellate Tribunal may directly appeal to the High Court against the orders of the Appellate Tribunal. Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. If the High Court is so satisfied, it shall formulate that question.

Appeals to Supreme Court :

Under Section 261, the Assessee or the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner, being aggrieved from the judgment of the High Court may appeal to the Supreme Court against the orders of the High Court. The aggrieved party may make an application to the Supreme Court under Article 136 of the Constitution of India. The costs of the appeal shall be borne by the person as decided by the Supreme Court. Where the judgment of the High Court is varied or reversed by the Supreme Court, Tribunal should pass necessary order to dispose the case in conformity with such judgment.

8.6 PENALTIES

The Income-tax Act, 1961 provides for the imposition of a penalty on an assessee who commits any offence under the provisions of the Act. Penalty is levied over and above the amount of any tax or interest payable by the assessee and thus, penalty is distinct and different from the tax payable. Penalty proceedings, however, are a part of the assessment proceedings. The authority concerned is entitled to levy penalty only if he is satisfied in the course of any proceedings under the Act that a person has been found guilty of any default in complying with the provisions of the Act. If the order of the penalty is set aside in appeal on the ground the assessee was not given a reasonable opportunity

of being heard, the Assessing Officer would be entitled to levy a penalty again after rectifying the mistakes in proceedings. The penalty to be levied on an assessee is to be based upon the law as it stood at the time the default was committed and not the law as it stands in the financial year for which the assessment is made

The provisions of the Income Tax Act, 1961 prescribe the minimum and the maximum penalty that can be imposed on an assessee. However, the Principal Commissioner or Commissioner is empowered to waive or reduce the penalty, in certain cases. The Income Tax authorities have been given the discretion to levy or not to levy a penalty on an assessee. But if a penalty is levied, it cannot be less than the prescribed minimum nor can it exceed the maximum amount prescribed by the Act. The quantum of penalty levied by a lower authority can be modified by a higher authority on appeal, reference of revision. The various defaults in respect of which penalty can be levied under the Act are as follows:

<table>
<tr><th rowspan="2">Section</th><th rowspan="2">Nature of default</th><th colspan="2">Penalty</th></tr>
<tr><th>Minimum</th><th>Maximum</th></tr>
<tr><td>221(1)</td><td>Failure in making the payment of tax, interest or any demand within the prescribed time limit</td><td rowspan="2">Amount decided by the Assessing Officer</td><td rowspan="2">Tax or interest or both in arrears</td></tr>
<tr><td>140A (3)</td><td>Failure to pay whole or any part of income tax and/or interest as per sec.140A(1)</td></tr>
<tr><td>270A</td><td>Penalty for under-reporting and misreporting of income (Discussed later on in details)</td><td>50% of the tax on under-reported income</td><td>200% of the tax on misreported income</td></tr>
<tr><td>271A</td><td>Failure to comply with sec. 44AA i.e. to keep or maintain books of account, documents, etc.</td><td colspan="2">₹ 25,000</td></tr>
<tr><td>271AA(1)</td><td>Failure to keep and maintain, information and documents for international transactions or specified domestic transaction or fails to report such transaction</td><td colspan="2">2% of the value of each international transaction or specified domestic transaction</td></tr>
<tr><td>271AA(2)</td><td>Fails to furnish the information and the document as required u/s 92D(4)</td><td colspan="2">₹ 5,00,000</td></tr>
</table>

Section	Nature of default	Penalty	
		Minimum	Maximum
271AAB (1A)	undisclosed income in case of search initiated on or after 15-12-2016however, if the assessee:a) in the course of the search, in a statement u/s 132(4), admits the undisclosed income and specifies the manner in which such income has been derived.b) substantiates the manner in which the undisclosed income was derived; andc) on or before the specified date: a. pays the tax, together with interest in respect ofthe undisclosed income; and b. furnishes the return of income for the specified previous year declaring such undisclosed income therein	60% of the undisclosed income of thespecified previous year 30% of the undisclosed income of thespecified previous year	
271AAC	Where the income determined includes any income referred to in sec. 68, 69, 69A, 69B, 69C or 69D for any previous year	10% of tax payable u/s 115BBENo penalty shall be levied if such income has been included by the assessee in the return of income furnished u/s 139 and the tax thereon (as per sec. 115BBE) has been paid on or before the end of the relevant previous year.	
271B	Failure to comply with sec. 44AB I.e. to get accounts audited or to furnish such audit report.	0.5% of the total sales or turnover or gross receipts	` 1,50,000
271 BA	Failure to furnish report from an accountant as per sec.92E	` 1,00,000	
271C	Failure to deduct part or whole of tax u/s 192 to 196C	Amount of tax failed to deduct	
	Failure to pay tax on dividends u/s 115-0 or under second proviso to sec. 194B	Amount of tax failed to pay	
271CA	Failure to collect tax at source	Amount of tax failed to collect	
271 D	Taking or accepting any loan or deposit or specified sum In contravention of the provisions of sec.269SS	Amount of the loan or deposit or specified sum so taken/accepted	

Section	Nature of default	Penalty	
		Minimum	Maximum
271 DA	Receives any sum In contravention of sec. 269ST	Amount equal to such receipt	
271E	Repayment of any loan or deposit or specified advance in contravention of the provisions of sec.269T	Amount of loan or deposit or specifiedadvance so repaid.	
271FA	Failure to furnish a statement of financial transaction or reportable account as required u/s 285BA(1) within the prescribed time limit	` 100 for every day during which the failure continues	
Proviso to sec. 271 FA	Failure to furnish the statement of financial transaction or reportable account as within the period specified In the notice issued u/s 285BA(5)	` 500 for every day during which the failure continues, beginning from the day immediately following the day on which the time specified In such notice expires	
Proviso to sec. 271 FA	Failure to furnish the statement of financial transaction or reportable account as within the period specified In the notice issued u/s 285BA(5)	` 500 for every day during which thefailure continues, beginning from the day immediately following the day on which the time specified In such notice expires	
271FAA	Person referred to In sec. 285BA(1)(k) provides inaccurate Information In the 'statement of financial transaction or reportable account'	` 5,000	
271FAA	Person referred to In sec. 285BA(1)(k) provides inaccurate Information In the 'statement of financial transaction or reportable account'	` 5,000	
271FAB	Falls to furnish information or document as required u/s 9A(5) within the prescribed time limit	` 5,00,000	
271G	Failure to furnish information or documents as required u/s 92D(3)	2% of the value of the international transaction or specified domestic transaction.	
271GA	Failure to furnish information or documents as required u/s 285A	2% of the value of the transaction, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; In other case :` 5,00,000	

Section	Nature of default	Penalty	
		Minimum	Maximum
271GB(1)	Failure by any reporting entity to furnish the report referred to in sec. 286(2) in respect of a reporting accounting year	➢ Failure does not exceed one month: ` 5,000 per day ➢ Failure continues beyond the period of one month `: 15,000 per day ➢ Failure continues after an order of penalty has been served on the entity; 50,000 per day from the date of service of such order	
271GB(2)	Failure by any reporting entity to produce the information and documents within the period specified u/s 286(6)	➢ ` 5,000 per day ➢ Failure continues after an order of penalty has been served on the entity; 50,000 per day from the date of service of such order	
271GB(4)	Reporting entity provides inaccurate information in the report referred to in sec. 286(2)	` 5,00,000 Penalty shall be levied if; a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of 15 days of such discovery; or c) the entity furnishes inaccurate information or document in response to the notice issued u/s 286(6),	
271H1	Failure to furnish TDS/TCS Return or furnishing inaccurate details in these Return	` 10,000	` 10,000
271-I	Fails to furnish information, or furnishes inaccurateinformation as required u/s 195(6)	` 1,00,000	
271J	furnishing incorrect information in reports or certificates by an accountant or merchant banker or registered valuer	` 10,000 for each reportpenalty is leviable by the AO or the Commissioner (Appeals) who in the course of any proceedings finds that such report has incorrect information	

Section	Nature of default	Penalty	
		Minimum	Maximum
272A (1)(a)	Failure to answer any question (related to assessment) of an income-tax authority	` 10,000 for each default	
272A (1)(b)	Refuse to sign any statement made by the assessee In course of Income tax proceedings		
272A (1)(c)	Failure to comply with summons u/s 131 (1) to attend office or to give evidence or to produce books of account or other documents, at certain place & time		
272A (1)(d)	Fails to comply with a notice u/s 142(1) or 143(2) or falls to comply with a direction issued u/s 142(2A) [Penalty shall be levied by such authority]		
272A (1)(d)	Fails to comply with a notice u/s 142(1) or 143(2) or falls to comply with a direction issued u/s 142(2A) [Penalty shall be levied by such authority]		
272A (2)(a)	Failure to comply with a notice Issued u/s 94(6)	A sum of` 100, for every day during which the failure continues: However, the amount of penalty for failures in relation to a declaration mentioned in sec. 197A, a certificate as required by sec. 203 and returns or statement u/s 200 or 206 and 206C shall not exceed the amount oftax deductible or collectible.	
272A (2)(b)	Failure to give notice of discontinuance of his business or profession as required u/s 176(3)		
272A (2)(c)	Failure to furnish in due time any of the returns, statements or particulars mentioned In section 133, 206, 206C or 285B		
272A (2)(d)	Failure to allow inspection of any register u/s 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken		
272A (2)(e)	Failure to furnish the return of Income which he Is required to furnish u/s 139(4A) or (4C) within time allowed and In the manner required.		
272A (2)(f)	Failure to deliver or cause to be delivered In due time a copy of the declaration mentioned In sec.197A		

Section	Nature of default	Penalty	
		Minimum	Maximum
272A (2)(g)	Failure to furnish a certificate u/s 203 or 206C		
272A (2)(h)	Failure to deduct and pay tax u/s 226(2)		
272A (2)(I)	Failure to furnish a statement u/s 192(2C)		
272A(2)(j)	Failure to deliver a copy of declaration referred u/s206C(1A) within due time		
272A(2)(I)	Failure to deliver or cause to be delivered the quarterly return within the time prescribed u/s 206A(1)		
272A (2)(m)	Failure to deliver a statement within the time prescribed u/s 200(2A) or 206C(3A)		
272AA	Failure to comply with the provisions of sec. 133B	Maximum up to ` 1,000	
212B	Failure to comply with the provisions of sec. 139A	` 10,000	
272BB (1A)	Failure to quote tax deduction or collection number	` 10,000	
272BBB	Failure to comply with the provisions of sec. 206CA	` 10,000	

The assessee may file an appeal against the orders of the Assessing Officer to the Commissioner (Appeals), in accordance with the relevant provisions under Section 246 and appeal against the order of the Commissioner (Appeals) can be preferred by the Assessee or the Commissioner of Income Tax and such appeal lies with the Appellate Tribunal.



CHECK YOUR PROGRESS

Q 3: Mention the various stages of appeal, as per the provisions of Income Tax Act.

Q 4: Under the Income Tax Act, who is empowered to waive or reduce the penalty.

……

…..……



8.7 LET US SUM UP

In this unit, we have discussed the following :

- The Central Government may appoint such persons as it thinks fit to be income tax authorities [Section 117].
- The Inspectors of Income Tax are appointed by the Commissioner of Income Tax.



8.8 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes, Capital Publishing Company, G S Road, Guwahati.

2) V K Singhania, K Singhania, Taxmann.



8.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The following are the Assessing Officers as per the Act:

(a) Assistant Commissioner;

(b) Assistant Director,

(c) Deputy Director;

(d) Deputy Commissioner; or

(e) Income Tax Officer.

Ans to Q No 2: The Appellate Authority as per the Act is Commissioner of Income Tax (Appeals)

Ans to Q No 3: As per the provisions of Income Tax Act, 1961, there are four stages of appeal, as shown below:

First Appeal ⇨ Commissioner (Appeals)
↓
Second Appeal ⇨ Appellate Tribunal
↓
Third Appeal ⇨ High Court
↓
Final Appeal ⇨ Supreme Court

Ans to Q No 4: The Principal Commissioner or Commissioner is empowered to waive or reduce the penalty, in certain cases



8.10 MODEL QUESTIONS

Q 1 : State the names of any four Income Tax Authorities.

Q 2 : Who is an Assessing officer?

Q 3 : Mention the powers of Central Board of Direct Taxes.

Q 4 : State the powers of Inspectors of Income Tax.

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UNIT 9 : GOODS AND SERVICE TAX

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Meaning and Concept Goods and Service Tax

9.4 Legislative History of GST in India

9.5 Taxes Subsumed by GST

9.6 Goods and Services Network (GSTN)

9.7 Commodities kept outside the scope of GST

9.8 Digital Signature (DSC) and E-signature (E-sign) for GST

9.9 Types of GST

9.10 Definition of important terms used in the GST Act.

9.11 Let Us Sum Up

9.12 Further Reading

9.13 Answers To Check Your Progress

9.14 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the concept of Goods and Service Tax
- discuss the various Constitutional Provisions regarding Pre GST taxation
- discuss the Constitutional Background regarding Post GST taxation
- discuss the types of GST
- discuss the transitional provisions relating to migration of existing tax payers

9.2 INTRODUCTION

In the preceding units of this course, we discussed in detail about the direct taxes. Now we shall discuss in detail about the indirect taxes applicable in India. We have already understood that taxes are the major sources of revenue for the Government. As per the data provided by the Ministry of Finance,

GOI, the budget estimates of gross tax revenue for the year 2018-19 is Rs. 22,71,241 crores. Approximately 49% of the total tax revenues are collected from indirect taxes. Goods and Service Tax (GST) and Custom Duty are the major indirect taxes applicable in India. GST has been implemented in India since July 2017. France was the first country to implement GST in the year 1954. In the last 63 years, more than 160 countries across the world have adopted GST. We shall discuss in details about both GST and Customs Duty in the succeeding units.

In this unit, we shall discuss about meaning and concept of goods and service tax, constitutional background, Types of GST, genesis of GST in India, important terms and definitions used in GST, etc.

9.3 MEANING AND CONCEPT OF GOODS AND SERVICE TAX

The implementation of Goods and Services Tax (GST) is the most historic indirect tax reform in India since Independence, which aims at creating a single, unified Indian market throughout the Nation. It is a comprehensive destination based indirect tax levy on goods as well as services at the national level. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming number of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration and converted the nation into one market.

GST is a consumption based tax which is levied on the basis of “Destination principle.” The concept relates to taxing the supply of goods or services at the point of consumption. It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply chain. Further, GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. The essence of GST is in removing the cascading effects i.e., tax on tax of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider’s point up to the consumer level.

In the earlier indirect tax era, there were many indirect taxes levied by both state and center. Excise duty was leviable by Centre on the goods manufactured in India and Service Tax on services provided in India. States were collecting Value Added Tax (VAT) on sale of goods. Every state had a separate set of act & rules. Central Sales Tax (CST) was applicable on interstate sale of goods and was taxed by Centre and collected by State. Apart from these, there were numerous indirect taxes that were levied by state and centre. GST consolidated multiple indirect tax levies into a single tax thus subsuming an array of tax levies. However, Basic Customs Duty continues to be levied on imports. GST covers all the goods except alcoholic liquor for human consumption. The Excise duty and Sales tax on Alcoholic liquor for human consumption will continue to be collected by the State Governments.

9.4 LEGISLATIVE HISTORY OF GST IN INDIA

In India, the Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) recommended in 2005 introduction of a comprehensive tax on all goods and service replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of making of a product.

Earlier, in the year 2000, the then Prime Minister introduced the concept of GST and set up a committee to design a GST model for the country. In 2003, the Central Government formed a taskforce on Fiscal Responsibility and Budget Management, which in 2004 recommended GST to replace the existing tax regime by introducing a comprehensive tax on all goods and services replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of the value chain. An announcement was made by the then Union Finance Minister in Budget (2006-07) to the effect that GST would be introduced with effect from April 1, 2010 and that the EC, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. After this announcement, the EC decided to set up a Joint Working Group in May 10, 2007, with the then Adviser to the Union

Finance Minister and Member-Secretary of the Empowered Committee as its Co-conveners and four Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. This Joint Working Group got itself divided into three Sub-Groups and had several rounds of internal discussions as well as interaction with experts and representatives of Chambers of Commerce & Industry. On the basis of these discussions and interaction, the Sub-Groups submitted their reports which were then integrated and consolidated into the report of Joint Working Group (November 19, 2007).

The GST Bill with certain amendments was passed in both the Lok Sabha and the Rajya Sabha in August, 2016. Further the bill was ratified by required number of States and received assent of the President on 8 September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16.09.2016.


भारत का राजपत्र
The Gazette of India
EXTRAORDINARY
PART II — Section 1
PUBLISHED BY AUTHORITY
No. 88] NEW DELHI, THURSDAY, SEPTEMBER 8, 2016/BHADRA 17, 1938 (SAKA)
Separate paging is given to this Part in order that it may be filed as a separate compilation.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 8th September, 2016/Bhadra 17, 1938 (Saka)
The following Act of Parliament received the assent of the President on the 8th September, 2016, and is hereby published for general information:—
THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016
[8th September, 2016.]
An Act further to amend the Constitution of India.

In order to introduce GST, the following important changes have been introduced in the Constitution by the 101st Amendment Act:

a) Insertion of new article 246A which makes enabling provisions for theUnion and States with respect to the GST legislation. It further specifies that Parliament has exclusive power to make laws with respect to GST on inter-State supplies.

b) Article 268A of the Constitution has been omitted. The said articleempowered the Government of India to levy taxes on services. As tax on services has been brought under GST, such a provision was no longer required.

c) Article 269A has been inserted which provides for goods and services tax on supplies in the course of inter-State trade or commerce which

shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

d) Article 270 has been amended to provide for distribution of goods and services tax collected by the Union between the Union and the States.

e) Article 271 has been amended which restricts power of the Parliament to levy surcharge under GST. In effect, surcharge cannot be imposed on goods and services which are subject to tax under Article 246A.

f) Article 279A has been inserted to provide for the constitution and mandate of GST Council.

g) Article 366 has been amended to exclude alcoholic liquor for human consumption from the ambit of GST, and services have been defined.

h) Article 368 has been amended to provide for a special procedure which requires the ratification of the Bill by the legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution. Thus, any modification in GST Council shall also require the ratification by the legislatures of one half of the States.

i) Entries in List I and List II have been either substituted or omitted to restrict power to tax goods or services specified in these Lists or to take away powers to tax goods and services which have been subsumed in GST.

j) Parliament shall, by law, on the recommendation of the Goods and Services

Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for five years.

k) In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.



CHECK YOUR PROGRESS

Q 1: Define GST.

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.....

Q 2: Mention the year in which GST Act came into force.

.....

.....

9.5 TAXES SUBSUMED BY GST

Prior to the GST Act, various indirect taxes were in existence in India i.e. VAT, Service Tax, Excise Duty, Custom Duty etc. resulting in multiplicities of taxes being levied on same goods or services. Rate of taxes were also different in different states on the same goods. Further same goods were bearing taxes from the side of centre and state. As the taxes were being levied by different governments, the businesses were not allowed to take the benefit of taxes (paid at the time of purchase) against their tax liability.

After the implementation of the GST Act, the pre-GST taxes were subsumed in GST. Thus, GST consolidated the multiple indirect tax levied into a single tax thus subsuming an array of tax levies.

VAT : Value Added Tax (VAT) was a tax on the value added to a commodity or service at each stage of production and distribution process or chain. The Indirect Taxation Enquiry Committee defined Value Added Tax as "Value Added Tax in comprehensive form is a tax on all goods and services (except export and Government services), its special characteristics being that it falls on the value added at each stage from the stage of production to retail stage."

According to Section 2(56) of the Assam Value Added Tax Act 2003, "Value Added Tax means a tax on sale of any goods at every point in the series of sales made by the registered dealer with the provisions of credit of input tax paid at the points of previous purchases thereof."

Value Added Tax could be understood as "the value that a producer (whether a manufacturer, distributor or advertising agent) adds to his raw materials or purchases before selling the new or improved product or service. VAT in simple terms could be defined "as a tax on the value addition at different stages of manufacturing and distribution of goods and services".

It was a multi-point sales tax (exports being zero rated) which was levied on every sale with the facility of set off tax paid on purchases. It was levied only on the incremental value added at each stage unlike the turnover tax which was levied on the gross turnover of the dealer.

VAT was an indirect tax on consumption. The final and total burden of the tax was fully borne by the domestic consumer. VAT replaced the local state sales tax including additional taxes.

There were three types of VAT. They were: (i) Production Type VAT, (ii) Income Type VAT and (iii) Consumption Type VAT.

These are discussed below :

(i) Production Type VAT : While calculating the value added by a firm, the value of capital goods e.g. machinery, building etc. is not deducted from the sales of the firm. Moreover, no depreciation is deducted. Only the value of non capital purchases is deducted. In short, Input tax credit is not available on tax paid on capital goods. Therefore,

Production Type VAT = Gross receipts - Cost of intermediate goods

(ii) Income Type VAT : While calculating the value added by a firm, this system allows the deduction of full value of non capital goods and the amount of depreciation of capital goods occurred during the year. For tax paid on capital goods, credit will be spread to the life of capital assets. Therefore,

Income Type VAT=Gross receipts-Cost of intermediate goods-Depreciation

(iii) Consumption Type VAT : While calculating the value added by a firm under this system, the firm is allowed to deduct the full value of capital goods along with non capital inputs. For tax paid on capital goods, full credit is given in the year of purchase.It allowsno adjustment for depreciation, if did so, it would be deducting the price of the capital goods twice.The base for taxation is restricted to the value of production of consumer goods only. Therefore,

Consumption Type VAT = Gross receipts - Cost of intermediate goods - Cost of capital goods.

CST : Central sales tax (CST) was a tax on sales of goods levied by the Central Government of India. It extended to the whole of India. The Central Sales Tax was levied under this act by the Central Government but, it was collected by that state government from where the goods were sold. The tax thus collected was given to the same state government which collected the tax. In case of Union Territories the tax collected was deposited in the consolidated fund of India. Every dealer who made an inter-state sale must be a registered dealer and a certificate of registration had to be displayed at all places of his business. There was no exemption limit of turnover for the levy of central sales tax.

CST was applicable only in the case of inter-state sales and not on sales made within the state or import/export of sales. The inter-state nature of transaction was to be determined as defined in Section 3(a)/(b). If sale/ purchase occasions movement of goods from one State to another State, it was an interstate sale. Thus, consignments to agents or transfer of goods to branch or other offices were not a sale. A sale, effected by transfer of documents of title to goods when goods were in inter-state movement, was also an inter-state sale. Under this act, the goods were classified as:

- Declared goods or goods of special importance in inter-state trade or commerce and
- Other goods.

The rates of tax on declared goods were lower as compared to the rate of tax on goods in the second category. However, goods that were sold within

a state, but while travelling through another state was not considered as inter-state sales.

The rules regarding submission of returns, payment of tax, appeals etc. were not given in the Act. For this purpose, the rules followed by a state in respect of its own sales tax law shall be followed for purpose of this Act also. Even though the central sales tax had been framed by the central government but, the state governments were allowed to frame such rules, subject to such notification and alteration as it deem fit.

SERVICE TAX: The Service tax was introduced during the financial year 1994-95 on the recommendation of Dr. Raja Chelliah Committee on tax reforms. There was no separate Act for Service Tax. The provisions of service tax were contained in Chapter V of the Finance Act, 1994. The power to change service tax vested with the Central Government. Initially it was imposed at a uniform rate of 5% on 3 services. However under the Finance Act, 2012 the concept of Positive list of Taxable services was replaced with a negative list. As such, all services except as notified in Negative list or exemption list were subject to applicability of service tax.

Service tax was administered by the Central Board of Excise and Customs (CBEC) which was under the control of the Department of Revenue, Ministry of Finance. CBEC administered the service tax through the Central Excise Department. A separate cell called the service tax cell, under each Commissionrates of central excise were created for the purpose. Service Tax was introduced in India to generate a considerable amount of revenue from the booming service sector which was previously not within the purview of tax administration. Service Tax was levied at the rate of twelve percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Service Tax was destination based consumption tax in the sense that it was applicable on commercial activities and was not a charge on the business but on the consumer and would be leviable only on services provided within the country. The liability to pay service tax arised upon issuance of invoice or

receipt of paymentorcompletion of the provision of service whichever was earlier.

EXCISE DUTY : The Central Excise Act, 1944 (which prior to 1996, had been known as the Central Excises and Salt Act 1944) was the main law relating to duties of Excise on goods manufactured or produced in India and on Salt. This Act had replaced not less than 10 separate Excise Acts and 11 sets of statutory rules besides 5 Acts relating to Salt. Thus the Central Excise Act, 1944 was a comprehensive Excise duty enactment administered by the Union Government.

The power to levy Central Excise duty was derived from Constitution. The Indian Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in the Seventh Schedule to Constitution. (Called 'Union List'). Entry No. 84 of list I of Seventh Schedule to the Constitution reads as follows : "Duties of excise on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics. "The Products under List II (State List) or List III (Concurrent List) of the VII Schedule of the Constitution of India were not covered by Central Excise. The products like opium, narcotic drugs, and alcoholic liquors for human consumption were outside the scope of Central Excise. The medicinal and toilet items which contain alcohol were also covered by central excise and subject to duty of excise.

The Central Excise duty liability arose when there was manufacture of goods which were moveable, marketable, and found a mention in the First or Second Schedule to the Central Excise Tariff Act 1985.

The levy of central excise was applicable on the manufacture of goods. Though the taxable event of manufacture happened at a particular point of time, the levy and collection was postponed to removal of goods from the place of manufacture/factory for administrative convenience and practical compliance.

CUSTOMS DUTY : Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods,

passengers etc., into or outside the country. The Act extends to whole of India.

The Customs Act, 1962, not only regulates the levy and collection of duties, but also, serves equally importantpurposes, like :

i) Regulation of Imports & Exports

ii) Protection of Domestic Industry

iii) Prevention of smuggling

iv) Conservation and augmentation of foreign exchange

Section 12 of the Customs Act, 1962 that provides duties of customs to be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India. Goods become liable for customs duty when they are Imported into India or Exported out of India. Duty is levied at the stage where the declaration of such liability is made and the persons / properties in respect of the goods is identified. If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (pre-clearance) as may be specified in such notification, goods of the specified description, from the whole or any part of the customs duty leviable thereon. An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective method. Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to whole of India.

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9.6 GOODS AND SERVICES NETWORK (GSTN)

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN provides three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN developed back-end IT modules for 27 States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). GSTN has selected 73 IT, ITeS and financial technology companies and 1 Commissioner of Commercial Taxes (CCT, Karnataka), to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN.

Central Government holds 24.5 percent stake in GSTN while the state government holds 24.5 percent. The remaining 51 per cent are held by non Government financial institutions, HDFC and HDFC Bank holds 20%, ICICI Bank holds 10%, NSE Strategic Investment holds 10% and LIC Housing Finance holds 10%. The GST Council in its 27^{th} meeting held on 04.05.2018 has approved the change in shareholding pattern of GSTN. Considering the nature of 'state function' performed by GSTN, the GST Council felt that GSTN be

converted into a fully owned Government company. Accordingly, the Council approved acquisition of entire 51 per cent of equity held by non- Governmental institutions in GSTN amounting to Rs. 5.1 crore, equally by the Centre and the State Governments.



CHECK YOUR PROGRESS

Q 3: Mention the items which are outside the purview of GST in India ?

.....

.....

Q 4: What do you mean by GSTN ?

.....

.....

The design of GST systems is based on role based access. The tax-payer can access his own data through identified applications like registration, return, view ledger etc. The tax official having jurisdiction, as per GST law, can access the data. Data can be accessed by audit authorities as per law. No other entity can have any access to data available with GSTN

9.7 COMMODITIES KEPT OUTSIDE THE SCOPE OF GST

At present, following items are kept outside the purview of GST in India :

(i) Alcohol for human consumption

Alcohol for human consumption does not fall under the purview of GST in India at present. The taxes imposed to Alcohol for human consumption are continued as per the structure before GST implementation.

(ii) Petroleum Products

Petroleum Products such as petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel etc. are also kept outside the purview of GST in India

(iii) Electricity.

Electricity has also been kept outside the scope of GST. So, electricity does not fall under GST at present. Hence, GST is not applicable for electricity. However, the taxes applicable at present for electricity is continued as before.

9.8 DIGITAL SIGNATURE (DSC) AND E-SIGNATURE FOR GST

As per the Information Technology Act 2000, all the forms and applications under the GST Act viz. GST returns, GST registration application, reply to notices or any other document requires a digital signature. A Digital Signature Certificate (DSC) is an encrypted and secure way of acknowledging the taxpayer's identification when filing various returns and applications on the GST portal. DSC is created as per the provisions laid down under the Information Technology Act, 2000. DSC authentication is mandatory for Companies and LLPs. Besides DSC, Electronic Signature (E-Sign) is also used as a method of user authentication in the GST portal. E-Sign is an electronic signature service in India which facilitates an Aadhaar holder to digitally sign a document using a One Time Password (OTP) which will be sent to the mobile number registered with Aadhaar.

A valid class 2 digital signature is required for GST registration and GST filing in India. There are three types of Digital Signatures, Class 1, Class 2 and Class 3 Digital Signature. The individual shall use Class 1 type of Digital Signatures only for securing the email communication. Class 2 type of Digital Signatures are used for GST registration or filing, company or LLP registration, IT Return E-Filing, Obtaining DIN or DPIN, and filing other forms with the Ministry of Corporate Affairs and Income Tax Department. For E-Tendering and participating in E-Auctions, the concerned individual shall use Class 3 type Digital Signatures. Digital Signatures come in the form of a USB E-Token. The taxpayer can access the Digital Signature Certificate through the USB Drive with a computer to sign documents electronically.

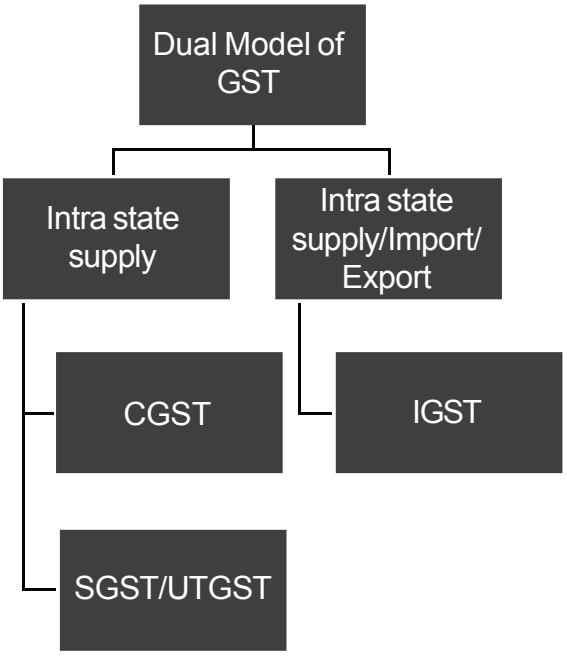
9.9 TYPES OF GST

India has adopted dual GST model because of its unique federal nature. Under this model, tax is levied concurrently by the Centre as well as the States on a common base, i.e. supply of goods or services or both. GST to be levied by the Centre would be called Central GST (Central tax /CGST) and that to be levied by the States would be called State GST (State Tax / SGST). State GST (State Tax / SGST) would be called UTGST (Union territory tax) in Union Territories without legislature. CGST & SGST / UTGST shall be levied on all taxable intra-State supplies. While CGST, UTGST and SGST are charged for intra State supply of goods and/or services, IGST (Integrated Goods and Service Tax) is chargeable for :

Inter-State supplies (supply between two different States),

(a) Imports, and

(b) Exports



To determine whether Central Goods & Services Tax (CGST), State Goods & Services Tax (SGST) or Integrated Goods & Services Tax (IGST) will be applicable in a taxable transaction, it is important to first know if the transaction is an Intra State or an Inter-State supply.

- **Intra-State supply of goods or services** is when the location of the supplier and the place of supply i.e., location of the buyer are in the same state. In Intra-State transactions, a seller has to collect **both CGST and SGST** from the buyer. The CGST gets deposited with Central Government and SGST gets deposited with State Government.
- **Inter-State supply of goods or services** is when the location of the supplier and the place of supply are in different states. Also, in cases of export or import of goods or services or when the supply of goods or services is made to or by a SEZ unit, the transaction is assumed to be Inter-State. In an Inter-State transaction, a seller has to collect **IGST** from the buyer.

CGST : Under GST, CGST is a tax levied on Intra State supplies of both goods and services by the Central Government and will be governed by the CGST Act. SGST will also be levied on the same Intra State supply but will be governed by the State Government.

This implies that both the Central and the State governments will agree on combining their levies with an appropriate proportion for revenue sharing between them. However, it is clearly mentioned in Section 8 of the GST Act that the taxes be levied on all Intra-State supplies of goods and/or services but the rate of tax shall not be exceeding 14%, each.

SGST : Under GST, SGST is a tax levied on Intra State supplies of both goods and services by the State Government and will be governed by the SGST Act. As explained above, CGST will also be levied on the same Intra State supply but will be governed by the Central Government. However, any tax liability obtained under SGST can be set off against SGST or IGST input tax credit only.

An example for CGST and SGST :

Let's assume that Sanjib is a dealer in Assam who sold goods to Shyam in Assam worth Rs. 1,00,000. The GST rate is 18% comprising of CGST rate of 9% and SGST rate of 9%. In such case, the dealer collects Rs. 18,000 of which Rs. 9000 will go to the Central Government and Rs. 9000 will go to the Assam Government.

IGST : The Inter-State supply of goods or services shall be subjected to integrated GST (Integrated tax / IGST). The IGST model is a unique contribution of India in the field of VAT. The IGST Model envisages that Centre would levy IGST (Integrated Goods and Service Tax) which would be CGST plus SGST on all inter-State supply of goods or services or both. The inter-State supplier will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The person based in the destination State will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds. The major advantages of IGST Model are :

a) Maintenance of uninterrupted ITC chain on inter-State transactions.

b) No upfront payment of tax or substantial blockage of funds for the inter-State supplier or recipient.

c) No refund claim in exporting State, as ITC is used up while paying the tax.

d) Self-monitoring model.

e) Model takes 'Business to Business'as well as 'Business to Consumer' transactions into account.

9.10 DEFINITION OF IMPORTANT TERMS USED IN THE GST ACT

Some of the important terms and definitions under GST Act, 2017are discussed below -

i) SUPPLY : The term, "supply" has been inclusively defined in the section 7 of the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply :

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.

2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory.

Exceptions :

1. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.
2. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

ii) **AGENT:** According to section 2(5) of the GST Act, 2017, "agent" means a person, including a factor, broker, commission agent, arhatia,del credere agent, an auctioneer or any other mercantile agent, by whatever namecalled, who carries on the business of supply or receipt of goods or services or both onbehalf of another.

iii) **AGGREGATE TURNOVER:** According to section 2(6) of the GST Act,2017, "aggregate turnover" means the aggregate value of all taxable supplies(excluding the value of inward supplies on which tax is payable by a person on reversecharge basis), exempt supplies, exports of goods or services or both and inter-Statesupplies of persons having the same Permanent Account Number, to be computed on allIndia basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

iv) **AGRICULTURIST:** According to section 2(7) of the GST Act 2017, "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land-

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour underpersonal supervision or the personal supervision of any member of the family.

v) **ASSESSMENT :** According to section 2(11) of the GST Act, 2017,"assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

vi) **AUDIT :** According to section 2(13) of the GST Act, 2017, "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.

vii) **BUSINESS :** According to section 2(17)of the GST Act, 2017, "business" includes—

a. any trade, commerce, manufacture, profession, vocation, adventure,wager or any other similar activity, whether or not it is for a pecuniary benefit;

b. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

c. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

d. supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

f. admission, for a consideration, of persons to any premises;

g. services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

h. Services provided by a race club by way of total is a tor or a licence to book maker in such club; and

i. Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

viii) **BUSINESS VERTICAL:** According to section 2(18) of the GST, Act, 2017, "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals. **Explanation.-** For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—

(a) The nature of the goods or services;

(b) The nature of the production processes;

(c) The type or class of customers for the goods or services;

(d) The methods used to distribute the goods or supply of services; and

(e) The nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

ix) **CAPITAL GOODS:** According to section 2(19) of the GST Act,2017,"capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

x) **CASUAL TAXABLE PERSON:** According to section 2(20) of the GST Act, 2017, "casual taxable person" means a person who occasionally undertake stransactions involving supply of goods or services or both in the course or furtheranceof business, whether as principal, agent or in any other capacity, in a State or a Unionterritory where he has no fixed place of business;

xi) **CENTRAL TAX:** According to section 2(21) of the GST Act, 2017, "central tax" means the central goods and services tax levied undersection 9;

xii) **CESS:** According to section 2(21) of the GST Act, 2017, "cess" shall have the same meaning as assigned to it in the Goods andServices Tax (Compensation to States) Act;

xiii) **COMPOSITE SUPPLY:** According to section 2(30) of the GST Act, 2017, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration- Where goods are packed and transported with insurance,the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

xiv) **CONSIDERATION:** According to section 2(31) of the GST Act, 2017, "consideration" in relation to the supply of goods or services or bothincludes-

a. any payment made or to be made, whether in money or otherwise, inrespect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shallnot include any subsidy given by the Central Government or a StateGovernment;

b. the monetary value of any act or forbearance, in respect of, inresponse to, or for the inducement of, the supply of goods or services orboth, whether by the recipient or by any other person but shall not includeany subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods orservices or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

xv) CONTINUOUS SUPPLY OF GOODS: According to section 2(32) of the GST Act, 2017,"continuous supply of goods" means a supply of goods which isprovided, or agreed to be provided, continuously or on recurrent basis, under acontract, whether or not by means of a wire, cable, pipeline or other conduit, andfor which the supplier invoices the recipient on a regular or periodic basis andincludes supply of such goods as the Government may, subject to such conditions,as it may, by notification, specify;

xvi) **CONTINUOUS SUPPLY OF SERVICES:** According to section 2(33) of the GST Act, 2017, "continuous supply of services" means a supply of services which isprovided, or agreed to be provided, continuously or on recurrent basis, under a contract,for a period exceeding three months with periodic payment obligations and includessupply of such services as the Government may, subject to such conditions, as it may,by notification, specify;\\

xvii) **CONVEYANCE:** According to section 2(34) of the GST Act, 2017, "conveyance" includes a vessel, an aircraft and a vehicle;

xviii) **DEBIT NOTE :** According to section 2(38) of the GST Act 2017"debit note" means a document issued by a registered person under sub-section (3) of section 34.

xix) **CREDIT NOTE :** According to section 2(37) of the GST Act 2017"credit note" means a document issued by a registered person under sub-section (1) of section 34.

xx) **DRAWBACK:** According to section 2(42) of the GST Act, 2017, "drawback" in relation to any goods manufactured in India and exported,means the rebate of duty, tax or cess chargeable on any imported inputs or on anydomestic inputs or input services used in the manufacture of such goods;

xxi) **EXEMPT SUPPLY:** According to section 2(47) of the GST act 2017"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax

under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

xxii) **GOODS:** According to section 2(52) of the GST Act, 2017,"goods" means every kind of movable property other than money andsecurities but includes actionable claim, growing crops, grass and things attached toor forming part of the land which are agreed to be severed before supply or under a contract of supply.

xxiii) **INPUT SERVICE:** According to section 2(60) of the GST Act, 2017, "input service" means any service used or intended to be used by a supplierin the course or furtherance of business.

xxiv) **INPUT SERVICE DISTRIBUTOR:** According to section 2(61) of the GST Act, 2017, "Input Service Distributor" means an office of the supplier of goods orservices or both which receives tax invoices issued under section 31 towards thereceipt of input services and issues a prescribed document for the purposes ofdistributing the credit of central tax, State tax, integrated tax or Union territory tax paidon the said services to a supplier of taxable goods or services or both having the samePermanent Account Number as that of the said office.

xxv) **INPUT TAX:** According to the section 2(62) of the GST Act, 2017, "input tax" in relation to a registered person, means the central tax, State tax,integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.

xxvi) JOB WORK: According to section 2(68) of the GST Act, 2017, "job work" means any treatment or process undertaken by a person ongoods belonging to another registered person and the expression "job worker" shallbe construed accordingly.

xxvii) **LOCATION OF THE RECIPIENT OF SERVICES:** According to section 2(70) of the GST Act, 2017, "location of the recipient of services" means,-

(a) where a supply is received at a place of business for which theregistration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of businessfor which registration has been obtained (a fixed establishment elsewhere), thelocation of such fixed establishment;

(c) where a supply is received at more than one establishment, whether theplace of business or fixed establishment, the location of the establishment mostdirectly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient.

xxviii) **LOCATION OF THE SUPPLIER OF SERVICES:** According to section 2(71) of the GST Act, 2017, "location of the supplier of services" means,-

a. where a supply is made from a place of business for which theregistration has been obtained, the location of such place of business;

b. where a supply is made from a place other than the place of businessfor which registration has been obtained (a fixed establishment elsewhere), thelocation of such fixed establishment;

c. where a supply is made from more than one establishment, whether theplace of business or fixed establishment, the location of the establishment mostdirectly concerned with the provisions of the supply; and

d. in absence of such places, the location of the usual place of residence of the supplier.

xxix) MANUFACTURE: According to section 2(72) of the GST Act, 2017 "manufacture" means processing of raw material or inputs in any mannerthat results in emergence of a new product having a distinct name, character and useand the term "manufacturer" shall be construed accordingly.

xxx) MARKET VALUE: According to section 2(73) of the GST Act, 2017,"market value" shall mean the full amount which a recipient of a supply isrequired to pay in order to obtain the goods or services or both of like kind and qualityat or about the same time and at the same commercial level where the recipient and the supplier are not related.

xxxi) MIXED SUPPLY: According to section 2(74) of the GST Act 2017 "mixed supply" means two or more individual supplies of goods or services,or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration- A supply of a package consisting of canned foods, sweets,chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

xxxii) INWARD SUPPLY: According to section 2 (67) of the GST Act, 2017, "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration.

xxxiii) OUTWARD SUPPLY : According to section 2(83) of the GST Act, 2017, "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, agreed to be made by such person in the course or furtherance of business.

xxxiv) PERSON : According to section 2 (84) of the GST act , 2017, "person" includes-

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporatedor not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a countryoutside India;

(i) a co-operative society registered under any law relating to co- operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above

xxxv) PLACE OF BUSINESS: According to section 2 (85) of the GST Act, 2017,"place of business" includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through anagent, by whatever name called.

xxxvi) PLACE OF SUPPLY: According to section 2(86) of the GST Act, 2017,"place of supply" means the place of supply as referred to in

Chapter V ofthe Integrated Goods and Services Tax Act;

xxxvii) RECIPIENT: According to section 2(93) of the GST Act, 2017, "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services orboth, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the personto whom the goods are delivered or made available, or to whom possession oruse of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, theperson to whom the service is rendered,and any reference to a person to whom a supply is made shall be construed as areference to the recipient of the supply and shall include an agent acting as such onbehalf of the recipient in relation to the goods or services or both supplied.

xxxviii) REMOVAL: According to section 2(96) of the GST Act, 2017, "removal" in relation to goods, means-

(a) despatch of the goods for delivery by the supplier thereof or by anyother person acting on behalf of such supplier; or

(b) collection of the goods by the recipient thereof or by any other personacting on behalf of such recipient;

xxxix) REVERSE CHARGE: According to section 2(98) of the GST Act, 2017, "reverse charge" means the liability to pay tax by the recipient of supply ofgoods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.

XL) **SERVICES :** According to section 2(102) of the GST Act, 2017, "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

XLi) **SUPPLIER :** According to section 2(105) of the GST Act, 2017, "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

XLii) **TURNOVER IN STATE :** According to section 2(112) of the GST Act, 2017, "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

XLiii) **VOUCHER :** According to section 2(118) of the GST Act, 2017, "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

XLiv) **WORKS CONTRACT :** According to section 2(119) of the GST Act, 2017, "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods

(whether as goods or in some other form) is involved in the execution of such contract.



CHECK YOUR PROGRESS

Q 5: Mention two advantages of GST to the final consumer.

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Q 6: State the various types of GST.

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9.11 LET US SUM UP

In this unit, we have discussed the following:

- Prior to GST, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.
- Post GST implementation, a majority of the indirect taxes has been subsumed into GST.
- Legislative history of GST in India
- Alcohol for human consumption, Petrol & Petroleum Products and Electricity has also been kept outside the scope of GST.
- India has adopted dual GST model because of its unique federal nature. Under this model, tax is levied concurrently by the Centre as well as the States on a common base, i.e. supply of goods or services or both. GST to be levied by the Centre would be called Central GST (Central tax /CGST) and that to be levied by the States would be called

State GST (State Tax / SGST). State GST (State Tax / SGST) would be called UTGST (Union territory tax) in Union Territories without legislature. CGST & SGST / UTGST shall be levied on all taxable intra-State supplies. While CGST, UTGST and SGST are charged for intra State supply of goods and/or services, IGST (Integrated Goods and Service Tax) is chargeable for Inter-State supplies (supply between two different States)

- As per the Information Technology Act 2000, all the forms and applications under the GST Act viz. GST returns, GST registration application, reply to notices or any other document requires a digital signature.



9.12 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



9.13 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: GST is a consumption based tax which is levied on the basis of "Destination principle." The concept relates to taxing the supply of goods or services at the point of consumption. It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply chain. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming number of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration and converted the nation into one market.

Ans to Q No 2: 1) The GST Act came into force in July 01, 2017.

Ans to Q No 3: GST covers all the goods except alcoholic liquor for human consumption, petrol & petroleum products and electricity.

Ans to Q No 4: Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN provides three front end services to the taxpayers namely registration, payment and return.

Ans to Q No 5: (i) Reduction in prices of goods and services due to elimination of cascading effect (i.e. no tax on tax)

(ii) Uniform prices throughout the country

Ans to Q No 6: The various types of GST are: SGST, CGST, UGST, IGST



9.14 MODEL QUESTIONS

Q 1: Discuss the meaning and concept of GST.

Q 2: Explain the features of GST.

Q 3: Discuss the major indirect taxes which were applicable in India prior to introduction of GST Act.

Q 4: Discuss legislative history of GST implementation in India.

Q 5: Write briefly about GSTN.

Q 6: Discuss the advantages of GST.

Q 7: Write a brief note on important terms and definitions used in the GST Act.

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UNIT 10 : REGISTRATION UNDER GST ACT

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Advantages of Registration

10.4 Persons Liable for Registration (Section 22)

10.5 Persons not liable for registration (Section 23)

10.6 Compulsory Registration under the GST (Section 24)

10.7 Procedure for registration under GST Law

10.8 Deemed Registration

10.9 Registration Number under GST Law

10.10 Amendment of registration under GST Law

10.11 Cancellation of Registration under GST Law

10.12 Revocation of Cancellation of Registration under GST Law

10.13 Let Us Sum Up

10.14 Further Reading

10.15 Answers To Check Your Progress

10.16 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the advantages for getting registered under GST Act
- know the registration requirement under the GST Act
- the procedure of registration under the GST Act
- know the persons who are liable for registration
- explain the provisions relating to amendment and cancellation of registration under the GST Act.

10.2 INTRODUCTION

Business entities need to be registered under the GST Act to be part of its tax regime. The registration is essential requirement for various reasons besides identification of the tax payers. Chapter VI of the CGST Act, 2017 comprising of section 22 to 30 deals with the provisions relating to the registration. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 20 Lakhs in the relevant financial year, is liable to be registered under the Act. Under GST Act, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.

On being registered under the GST Law, the business entities will obtain a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies. The registration under GST is to be taken State-wise.

In his unit, we shall go through the various provisions relating to registration under the GST Act, 2017. The learners will be able to know the registration requirement, its procedure, advantages of GST registration, provisions relating to amendment / cancellation of the registration etc.

10.3 ADVANTAGES OF REGISTRATION

Registration under Goods and Services Tax (GST) regime will confer following advantages to the business :

1) Legally recognized as supplier of goods or services or both.

2) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.

3) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.

4) Getting eligible to avail various other benefits and privileges rendered under the GST laws.

10.4 PERSONS LIABLE FOR REGISTRATION (SECTION 22)

Following persons are liable for registration under the GST Law :

(1) Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakhs rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.



LET US KNOW

According to Section 22(1) of the CGST Act, 2017 every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds 20 lakhs during a Financial Year. However, the limit of 20 lakhs will be reduced to 10 lakhs if the person is carrying out business in any of the Special Category States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

10.5 PERSONS NOT LIABLE FOR REGISTRATION (SECTION 23)

The following persons shall not be liable to registration under this law, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(c) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.



CHECK YOUR PROGRESS

Q 1: Mention two advantages of registration under GST Act.

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Q 2: State two persons liable for registration under GST Act.

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Q 3: State two persons not liable for registration under GST Act.

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10.6 COMPULSORY REGISTRATION UNDER THE GST (SECTION 24)

The following categories of persons shall be required to be compulsorily registered under this Act,–

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) person who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) every electronic commerce operator;

(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

10.7 PROCEDURE FOR REGISTRATION UNDER GST LAW

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation - Every person who makes a supply from the territorial waters of India shall obtain registration in the State where the nearest point of the appropriate baseline is located in the State.

(2) A person seeking registration under this Act shall be granted a single registration:

Provided that a person having multiple business verticals in the State may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Act, 1961 in order to be eligible for grant of registration: Provided that a person who is required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which

may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1) —

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from the date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section

(10) communicated to the applicant within that period.

10.8 DEEMED REGISTRATION

Section 26 of the CGST Act provides that :

1. The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

2. Not with standing anything contained in sub-section (10) of section 25,

any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union



CHECK YOUR PROGRESS

Q 4: State two persons who are required to be compulsorily registered under the GST Act.

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Q 5: What do you mean by deemed registration under the GST Act?

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Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

10.9 REGISTRATION NUMBER UNDER GST LAW

The registration in GST is PAN based and State specific. Supplier has to register in each of such State or Union territory from where he has effected supply. But within a State an entity with different branches would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business. In GST registration, the supplier is allotted a 15-digit GST identification number called “GSTIN” and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number. Registration under GST is not tax specific which means that there is a single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

10.10 AMENDMENT OF REGISTRATION UNDER GST LAW

Section 28 of the GST Act provides that :

(1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed: Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

10.11 CANCELLATION OF REGISTRATION UNDER GST LAW

Section 29 of the GST Act provides that:

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity,

demerged or otherwise disposed of; or

b) there is any change in the constitution of the business; or

c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

a) a registered person has contravened such provisions of the Act or the rules made there under as may be prescribed; or

b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

d) any person who has taken voluntary registration under sub- section (3) of section 25 has not commenced business within six months from the date of registration; or

e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made there under for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash

ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

10.12 REVOCATION OF CANCELLATION OF REGISTRATION UNDER GST LAW

Section 30 of the GST Act provides that :

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application :

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as

the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.



CHECK YOUR PROGRESS

Q 6: What do you mean by GST TIN?

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10.13 LET US SUM UP

In this unit we have discussed the following:

- Business entities need to be registered under the GST Act to be part of its tax regime
- On being registered under the GST Law, the business entities will obtain a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies.
- In GST registration, the supplier is allotted a 15-digit GST identification number called “GSTIN” and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal.
- The process for registration under GST is online.
- Registration under GST is not tax specific which means that there is a single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.



10.14 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



10.15 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (1) Legal recognition as supplier of goods or services or both.

(2) Proper accoun/75 for payment of GST due on supply of goods or services or both by the business.

Ans to Q No 2: (1) Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakhs rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

Ans to Q No 3: (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Ans to Q No 4: (i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

Ans to Q No 5: The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity

Number under this Act subject to the condition that the application for registration or the

Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

Ans to Q No 6: The registration in GST is PAN based and State specific. In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number.



10.16 MODEL QUESTIONS

Q 1: What do you mean by registration under the GST Act?

Q 2: Discuss the advantages of registration under the GST Act.

Q 3: Who are liable for registration under the GST Act?

Q 4: Discuss the various advantages of registration under the GST Act.

Q 5: Mention the Persons not liable for registration under the GST Act.

Q 6: Mention the Persons liable for compulsory registration under the GST Act.

Q 7: Discuss the Procedure for registration under GST Law.

Q 8: Write a brief note on registration number under GST Law.

Q 9: Discuss the procedure for amendment of registration under GST Law.

Q 10: Discuss the procedure for cancellation of registration under GST Law.

Q 11: Discuss the procedure for revocation of Cancellation of Registration under GST Law.

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UNIT 11 : LEVY AND COLLECTION OF TAX

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Rates of GST

11.4 Scope of Supply

11.5 Activities to be treated as supplies even without consideration

11.6 Activities or transactions not treated as supply of goods or services under the GST Act

11.7 Composition Levy

11.8 Levy under Reverse Charge Mechanism

11.9 Power to grant exemption from tax

11.10 Time and value of supply of goods and services

11.11 Let Us Sum Up

11.12 Further Reading

11.13 Answers to Check Your Progress

11.14 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the provisions relating to levy and collection of GST
- explain the scope of Supply
- explain the concept of composite and mixed supply
- describe the composition scheme under GST.

11.2 INTRODUCTION

The GST Act is an Act to make a provision for levy and collection of tax on intra-State/inter –State supply of goods or services or both. Prior to the introduction of GST, taxable events for levy of various taxes under indirect taxation were different. For example: in case of excise duty, the taxable event was manufacture or production of goods in India, for service, the taxable event was provision of service and under VAT/CST it was sale of goods. To replace such multiplicity, GST has brought a single and unified taxable event which is supply, i.e., taxes would be levied and collected on the supply of goods or services or both.

In this Unit, we shall discuss about the various provisions of the GST Act relating to levy and collection of GST.

11.3 RATES OF GST

Section 9(1) of CGST Act, 2017 provides that there shall be levied of tax called Central Goods and Services Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the CGST Act, 2017 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendation of the Council and collected in such a manner as may be prescribed and shall be paid by the taxable person.

It means maximum GST rate not exceeding 40% (i.e. CGST 20% and SGST 20%) on all intra-state supplies of goods or services.

Section 5(1) of IGST Act, 2017, provides that there shall be levied of a tax called Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods or services or both at such rates not exceeding 40%.

IGST on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975.

According to Section 9(3) of CGST Act, 2017 the Government may, on the recommendation of the GST Council, may notify categories of supply of

goods or services or both, the tax on which shall be paid on reverse charge basis (similar provision under section 5(3) of IGST Act, 2017).

Section 9(4) of CGST Act, 2017, central tax (i.e. CGST) in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient (Similar provision under section 5(4) of IGST Act, 2017). This provision suspended till 31.03.2018.

Note: Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds 5,000 in a day (Vide Notification No. 8/2017 Dt. 28.06.2017).

Section 9(5) of CGST Act, 2017 Electronic Commerce Operator (ECO) is liable to pay tax. If ECO does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax. Provided further that where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax (similar provision under section 5(5) of IGST Act, 2017)

11.4 SCOPE OF SUPPLY

Under GST, the various taxable events in erstwhile indirect taxes, like manufacture, sale, rendering of service, purchase, entry into a territory of state etc. have been included in just one event i.e. 'supply'. The definition of 'supply' as contained in Section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. The scope of Supply as per Section 7 of the CGST Act, 2017 is as follows :

As per Section 7 **(1)Supply includes**	**As per Section 7** **(2)Supply excludes**
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.	(a) activities or transactions specified in Schedule III; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **Note:** Activities specified in Schedule III (i.e. Negative list) : 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others 4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling.

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Sale of goods or service even as a vocation

is a supply under GST. Therefore, even if a famous politician paints paintings for charity and sells the paintings even as a one- time occurrence, the sale would constitute supply. Section 7(1)(a) of CGST Act, 2017 states all forms of supply of goods or services or both such as made or agreed to be made for a consideration by a person in the course or furtherance of business :

a. sale,
b. transfer,
c. barter,
d. exchange,
e. license,
f. rental,
g. lease or
h. disposal

11.5 ACTIVITIES TO BE TREATED AS SUPPLIES EVEN WITHOUT CONSIDERATION

There are instances where an activity or transaction is treated as supply, even if the same is made without consideration. These are specifically mentioned in Schedule I appended to the CGST Act. As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7:

i. **Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I]:** Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.

ii. **Supply between related person or distinct persons [Para 2 of Schedule I]:** Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify

as supply even if made without consideration provided it is made in the course or furtherance of business.

iii. **Principal – Agent [Para 3 of Schedule I]:** Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

iv. **Importation of services [Para 4 of Schedule I]:** Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".

11.6 ACTIVITIES OR TRANSACTIONS NOT TREATED AS SUPPLY OF GOODS OR SERVICES UNDER THE GST ACT

Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/ transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In other words, it is a "Negative list" for the purposes of taxation in GST.

It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some clarifications have been issued clarifying that certain transactions are to be considered as non-supplies.

A. Non-supplies listed in Schedule III

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.

3. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.

4. Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.

5. Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

6. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

7. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.

8. Actionable claims, other than lottery, betting and gambling.

B. Non-supplies notified vide notification

Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/ transactions which shall be treated neither as supply of goods nor as supply of services. Till now, following activities/transactions have been notified under said clause:

(i) Activity in relation to Panchayat/Municipality functions: Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service 22.

(ii) Grant of alcoholic liquor licence: Services by way of grant of alcoholic liquor licence by the State Governments are treated neither as a supply of goods nor as a supply of service.

C. Non-supplies clarified by way of clarification

CBIC has clarified that following activities / transactions are non-supplies:

(i) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
- Buses,
- Trucks,
- Tankers,
- Trailers,
- Vessels,
- Containers,
- Aircrafts,

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST25.

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017**].

(ii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Except in cases where movement of such goods is for further supply of the same goods, such inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements. In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017-GST dated 22.11.2017].



CHECK YOUR PROGRESS

Q 1: What is the taxable event for levy of GST under the GST Act ?

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Q 2: State the rate of GST under CGST Act.

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11.7 COMPOSITION LEVY

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to a prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.

Initially, the scheme was designed to benefit the small traders, manufacturers and restaurant service providers. So, the scheme was fundamentally for the suppliers of goods and only for restaurant service providers. However, subsequently, suppliers availing composition scheme were permitted to supply other services also, though only upto a small specified value. This scheme is contained in sub-sections (1) and (2) of section 10 of the CGST Act (hereinafter referred to as composition scheme for goods).

Under this scheme, suppliers of goods have the option to pay tax at the concessional rate of 1% (CGST + SGST/UTGST) of the turnover and restaurant service providers have the option to pay tax @ 5% (CGST + SGST/UTGST) of the turnover. Small taxpayers with an aggregate turnover in the preceding financial year up to Rs. 1.5 crores [Rs. 75 lakh in 8 specified Special Category States viz. Arunachal Pradesh, Mizoram, Meghalaya, Manipur, Tripura, Nagaland, Sikkim & Uttarakhand] are eligible to pay tax at these rates in the current financial year up to an aggregate turnover of Rs. 1.5 crore. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for

this composition scheme stipulated under sub-sections (1) and (2). Further, the option of a registered person to avail composition scheme for goods shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of Rs. 1.5 crore [Rs 75 lakh in 8 specified special category States] [Section 10(3)].

In order to provide benefit of composition scheme to persons engaged in supply of services other than restaurant service whose aggregate turnover in the preceding financial year is up to Rs. 50 lakh, a scheme to pay tax @ 6% (CGST + SGST/UTGST) of the turnover was introduced subsequently. A mixed supplier who is primarily engaged in supplying services other than restaurant service along with marginal supply of goods could also avail the benefit of this scheme. The provisions of this scheme are contained in sub-section (2A) of section 10.

Essentially, the composition scheme under sub-section (2A) (hereinafter referred to as composition scheme for services) is for small service providers like salon stylist, tailors, etc. This scheme provides an option to such suppliers to pay tax @ 6% of the turnover in the current financial year up to an aggregate turnover of Rs. 50 lakh.

Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply wherein no tax will be charged from the recipient.

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at the prescribed percentage of his turnover every quarter. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier. Registration under GST law is compulsory for opting for the composition scheme.

The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Levy] of Central Goods and Services Tax (CGST) Rules, 2017.

the Government of India provides for simplified and easy of doing business scheme for payment of taxes and filling of returns to certain categories of taxable person. As a result such taxable person is not required to maintain elaborate records and filing detailed returns. Section 10 of the CGST Act, provides for composition levy to such person. **Composition scheme** gives an option to small businesses under which they can opt to pay a fixed percentage of turnover as TAX in lieu of Normal Tax and be relieved from the detailed compliance of the GST law.Small taxpayers with anaggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy. Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on the same, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply wherein no tax will be charged from the recipient.

At the end of a quarter, the registered person opting for composition levy would pay a certain specified percentage of his turnover of the quarter as tax, without availing the benefit of input tax credit. Persons making inter- State supplies of goods/making supplies of goods through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme. The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Rules] of Central Goods and Services Tax (CGST) Rules, 2017.

Persons not entitled to avail Composition Scheme:

The Section 10(2) of the CGST Act, 2017 specifies the benefit of composition scheme shall not be granted if a taxable person is:

a. Supplier who is either a casual taxable person or a non-resident taxable person

b. engaged in making any supply of goods or services which are not leviable to tax under this Act;

c. engaged in making any inter-state outward supplies of goods or services;

d. engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; and

e. a manufacturer of ice cream, pan masala, tobacco and aerated waters or supplier of notified services.

11.8 LEVY UNDER REVERSE CHARGE MECHANISM

Generally, the supplier of goods or services is liable to pay GST. However, under the reverse charge mechanism, the liability to pay GST is cast on the recipient of the goods or services.

Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply [Section 2(98)].

It may be noted that the underlying principle of an indirect tax is that burden of tax has to be ultimately passed on to the recipient. GST being an indirect tax, this principle holds good for GST. Under normal circumstances, the statutory liability to deposit GST and undertake compliances [i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] is on the supplier while he may recover the same from its recipient. However, under reverse charge mechanism, the statutory liability to deposit GST and undertaking compliance requirements, [i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] shifts from supplier to recipient.

11.9 POWER TO GRANT EXEMPTION FROM TAX

GST law empowers the Central Government or State Government, as the case may be, to grant exemption from tax. The exemption is granted on recommendation of the GST Council.

Exemption can be from whole of the tax or part of the tax. It should be granted in public interest.

Exemption can be granted to goods or services or both of any specified description, by way of issuance of notification, either absolutely [i.e.

unconditional exemption; exemption is not subject to any condition(s)] or conditionally [i.e. exemption is subject to specified condition(s)]. Exemption may be granted by a special order in case of the circumstances of an exceptional nature.

The absolute/ unconditional exemption is mandatory in nature. Where the supply of the goods or services or both are unconditionally exempted from whole of the tax, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both. Where the supply of the goods or services or both are unconditionally exempted from part of the tax, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both. However, where the exemption is conditional, it is at the option of the registered person whether to avail the same or not.

11.10 TIME AND VALUE OF SUPPLY OF GOODS AND SERVICES

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order / agreement, dispatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

Section 12 provides for the determination of time of supply in the following situations:

- **Supply of goods under forward charge;**

  As per section 12(2), the time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:

  - Date of issue of invoice by the supplier or the last date on which the invoice ought to have been issued in terms of section 31, to the extent the invoice covers the supply of goods; or
  - Date of receipt of payment by the supplier, to the extent the payment covers the supply of goods.

- **Supply of goods under reverse charge;**

  The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act is determined in terms of section 12(3)(a), (b) and (c), as follows:

  The time of supply for such goods will be the earliest of the following dates:

  - Date on which the goods are received, or
  - Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
  - Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

  If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

  - Supply of vouchers that can be used to pay for goods;
  - As per section 12(4), the time of supply of vouchers exchangeable for goods
  - is-
  - ❑ Date of issue of the voucher, if the supply that it covers is identifiable
  - at that point, or
  - ❑ ? Date of redemption of the voucher in other cases.
  - ❑ Residual cases;
  - ❑ Addition to value of supply of goods by way of interest or late fee or penalty for delayed payment.



CHECK YOUR PROGRESS

Q 3: Who is eligible to avail composition scheme under GST Act ?

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Q 4: What do you mean by mixed supply ?

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11.11 LET US SUM UP

In this unit, we have discussed the following :

- The GST Act is an Act to make a provision for levy and collection of tax on intra-State/inter –State supply of goods or services or both.
- GST has brought a single and unified taxable event which is supply, i.e., taxes would be levied and collected on the supply of goods or services or both.
- The definition of 'supply' as contained in Section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively.
- Small taxpayers with an aggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy.



11.12 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



11.13 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Supply

Ans to Q No 2: 20%.

Ans to Q No 3: Small taxpayers with an aggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy.

Ans to Q No 4: Mixed supply means combination of two or more individual supplies of goods or services with each other for a single price. Each of these items can be supplied separately and is not dependent on each other.



11.14 MODEL QUESTIONS

Q 1: Discuss the scope of supply under the GST Act.

Q 2: Discuss briefly the rate structure of GST.

Q 3: Explain composite and mixed supply under the GST Act.

Q 4: Discuss the composition scheme under the GST Act.

Q 5: State the persons who are not entitled to avail Composition Scheme.

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UNIT 12 : INPUT TAX CREDIT

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Meaning of Input Tax Credit

12.4 Eligibility and Conditions for Taking Input Tax Credit

12.5 Apportionment of Credit and Blocked Credits

12.6 Availability of Credit in special circumstances

12.7 Input Tax Credit in Respect of Inputs and Capital Goods Sent for Job Work

12.8 Manner of Distribution of Credit by Input Service Distributor

12.9 Manner of Recovery of Credit Distributed in Excess

12.10 Let Us Sum Up

12.11 Further Reading

12.12 Answers To Check Your Progress

12.13 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the relevant terms w.r.t. input tax credit
- discuss the various conditions, timelines, restrictions and processes for taking input tax credit
- identify the items on which input tax credit is available
- discuss the manner of distribution of credit by Input Service Distributor
- discuss the manner of recovery of credit distributed in excess

12.2 INTRODUCTION

Uninterrupted and seamless chain of input tax credit is one of the key features of Goods and Services Tax. Prior to GST, credit of taxes being levied by Central Government was not available as set-off for payment of taxes levied by State Governments, and vice versa, resulting in cascading of taxes. Under GST system, the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage. In this unit, we shall discuss about meaning and concept of input tax credit; discuss the relevant terms in relation to input tax credit; discuss the various conditions, timelines, restrictions and processes for taking input tax credit; identify the items on which input tax credit is available; discuss the manner of distribution of credit by Input Service Distributor discuss the manner of recovery of credit distributed in excess, etc.

12.3 MEANING AND CONCEPT OF INPUT TAX CREDIT

In order to understand the concept of input tax credit, we need to have a brief discussion on input tax and output tax. The taxes paid on inward supply (purchases) of raw materials (inputs), capital goods and services are called input taxes. And output tax primarily constitutes the taxes collected on sale of goods and services. The output taxes collected by the registered dealer are periodically paid to the Government. Now, while calculating the amount of taxes to be paid to the Government, a registered dealer can claim deduction of input tax paid on purchases from the output taxes collected on sales. In short, only the net amount of tax i.e. output tax less input tax is to be paid to the Government. This deduction of input taxes paid by a registered dealer from the output taxes collected on sales is termed as availing of input tax credit.

The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services.

Input Tax Credit is considered to be the backbone of the GST regime. In fact, it is the provisions of Input Tax Credit which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

12.4 ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT

Section 16 of the GST Act defines the eligibility and conditions for availing input tax credit.

i. Eligibility for taking Input Tax Credit [Section 16(1)]

a. Registration under GST

Subject to the provisions relating to use of Input Tax Credit under section 49 (provisions relating to payment of tax, interest, penalty & other amounts) and the conditions and restrictions in the rules, every registered person shall be entitled to Input Tax Credit charged on inward supply of goods and / or services.

b. Goods/services to be used for business purposes

Input Tax Credit will be available on goods and/or services which are used in the course or furtherance of the business; the "intention to use" the goods and/or services in the course or furtherance of business would also lead to availing of credit on such goods and/or services. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit. Input Tax Credit will be credited in Electronic Credit Ledger

ii. Conditions for taking Input Tax Credit [Section 16(2)]

In order to avail input tax credit on supply a registered person has to fulfill all the four conditions mentioned below:

a. Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules]

Input Tax Credit can be availed on the basis of any of the following documents:

i) Invoice issued by a supplier of goods and/or services

ii) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)

iii) A debit note issued by supplier

iv) Bill of entry or similar document prescribed under Customs Act

v) Revised invoice

vi) Document issued by Input Service Distributor.

b. Receipt of the goods and / or services [Section 16(2)(b)] The person taking the Input Tax Credit must have received the goods and / or services.

c. Tax leviable on supply actually paid to Government [Section 16(2)(c)]

Tax should actually have been paid, by cash or through utilization of Input Tax Credit, on the goods and / or services for which Input Tax Credit is being taken. However, provisional Input Tax Credit can be taken initially, prior to matching in the common portal, and used for payment of self-assessed tax on outward supply.

d. Filing of return [Section 16(2)(d)]

The registered person taking the Input Tax Credit must have filed his return under section 39.



CHECK YOUR PROGRESS

Q 1: Define Input Tax Credit.

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Q 2: Mention the conditions to be fulfilled for availing Input Tax Credit.

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12.5 APPORTIONMENT OF CREDIT AND BLOCKED CREDITS

Although GST aims at providing seamless flow of credit throughout the supply chain, a few situations as mentioned in Section 17 of the GST Act disallow availing input tax credit. The situations are:

i. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

The situations requiring apportionment are as follows:

a. when the goods and / or services are used by the registered person partly for the purpose of business (see the definition of business) and partly for other purposes [Section 17(1)]; and

b. when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies (see the definition of exempt supplies) [Section 17(2)].

In both the above situations, full Input Tax Credit on inward supplies cannot be taken; only proportionate Input Tax Credit is allowed in such scenarios. Where goods and/or services are used partly for non-business purposes and partly for business purposes, Input Tax Credit attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, Input Tax Credit attributable to taxable supplies and zero rated supplies can be taken by the registered person.

ii. Blocked credits [Section 17(5)]

Input tax credit shall not be available in respect of the following, as per section 17(5) of GST Act.

1.	**Motor vehicles and other conveyances**	Motor vehicles and other conveyances are not eligible for ITC except when they are used— (i) for making the following taxable supplies, namely— (A) further supply of such vehicles or conveyances (B) transportation of passengers(C) imparting training on driving, flying, navigating such vehicles orconveyances (ii) for transportation of goods
2.	**Goods andservices for food, beauty treatment, health mainly for personal consumption**	(i) Following supply of goods and services or both are not eligible for input tax credit (a) Food and beverages, (b) outdoor catering, (c) beauty treatment, (d) health services, (e) cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person ▪ for making an outward taxable supply of the same category of goods or services or both or ▪ as an element of a taxable composite or mixed supply; (ii) membership of a club, health and fitness centre, (iii) rent-a-cab, life insurance and health insurance except where (a) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force or (b) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category ofgoods or services or both or as part of a taxable composite or mixed supply; (iv) travel benefits extended to employees on vacation such as leave or home travel concession.

3.	**Works contract services**	Works contract services for construction of an immovable property is not eligible, **EXCEPT WHEN** ▪ It is input service for further supply of works contract service ▪ Immovable property is plant and machinery
4.	**Construction of anImmovable property**	Inward supplies received by a taxable person for construction of an immovable property on his own account is not eligible, even when such supplies are used in the course or furtherance of business **EXCEPT WHEN** ▪ Construction of Plant & Machinery ▪ Construction of immovable property for Others **Meaning of construction and plant and machinery**"**Construction**", both in this clause and the previous one, includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property; **"Plant and machinery"** means apparatus, equipment, and machinery fixed to earth by foundation or structural supports but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.
5.	**GST paid under composition scheme**	Goods or services or both on which tax has been paid under section 10 (composition scheme) are not eligible.
6.	**Goods or servicesor both received bya non-resident taxable person**	Goods or services or both received by a non-resident taxable person are not eligible for input tax credit, except on goods imported by him
7.	**Goods and services used for personal consumption**	Goods or services or both used for personal consumption are not eligible for input tax credit

8.	**Lost, stolen ordestroyed goodsand free samples**	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples are not eligible for input tax credit
9.	**GST paid after detection of fraud or suppression or goods removed incontravention of GST Act**	Any tax paid under sections 74, 129 and 130 of CGST Act are not eligible for input tax credit. This covers GST paid after detection of fraud or suppression or goods removed in contravention of GST Act

12.6 AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

Section 18 of the GST Act deals about availability of credit in special circumstances which have been tabulated below:

When a Person apply for registration under GST, on becoming liable toregister [Sec. 18(1)(a)]	**Persons eligible to take credit** : Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration **Goods eligible for ITC**: Inputs held in stock and inputs contained in semi-finished or finished goods held in stock other than capital goods as on the day immedicately preceding the date from which he becomes liable to pay GST. **Restriction/conditions**:- ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
When a person voluntarily apply forregistration [Sec. 18(1)(b)]	**Persons eligible to take credit**:- Person who is not required to register, but obtains voluntary registration **Goods eligible for ITC**:- Inputs held in stock and inputs contained in semi-finished or finished goods held in stock other than capital goods as on the day immediately preceding the date of grant of registration **Restriction/conditions**:- ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.

When A person leave the composition scheme and become a regular dealer [Sec. 18(1)(c)]	**Persons eligible to take credit**:- Registered person who ceases to pay composition tax and switches to regular scheme **Goods eligible for ITC**:- Inputs held in stock and inputs contained in semi finished or finished goods held in stock and capital goods as on the day immediately preceding the date from which he becomes liable to pay tax under regular scheme **Restriction/conditions**:- ▪ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. ▪ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier. ▪ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier
When exempted goods or services become taxable [Sec. 18(1)(d)]	**Persons eligible to take credit**:- Registered person whose exempt supplies become taxable supplies **Goods eligible for ITC:**- Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply as on the day immediately preceding the date from which such supply becomes taxable **Restriction/conditions**:- ▪ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. ▪ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier. ▪ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.

Conditions for availing above credit (Rule-40)	1. Filing of electronic declaration in form ITC-01 giving invoice wise details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible. 2. Declaration has to be filed within **30 days from** becoming eligible to avail credit. 3. Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than Rs. 2,00,000. 4. Such credits are subject to verification of details furnished by the supplier in GSTR– 1 or GSTR – 4 on the common portal.

12.7 INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK

Section 19 deals with Input Tax Credit on inputs and capital goods sent for job work. A registered person who sends the inputs/capital goods to a job worker for carrying out the job work is called Principal. Section 2(68) of the CGST Act, 2017 defines job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'. The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work. Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the registered person shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business. Where the inputs sent for job work are not received back by the registered person after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the registered person to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

The registered person shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work. Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business. Where the capital goods sent for job work are not received back by the registered person within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

12.8 MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR

A company may have a number of units and the GST paid by it on input services received can be distributed to the beneficiary units on the basis of their previous year turnover. The office of the company which distributes the credit is called input service distributor.

The input service distributor is required to maintain arithmetical accuracy and ensure that the credit distributed does not exceed the credit available with it for distribution.

Manner of distribution of credit by Input Service Distributor [Section 20 of the CGST Act, 2017]:

1. The Input Service Distributor (ISD) shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

2. The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

   a. the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

   b. the amount of the credit distributed shall not exceed the amount of credit available for distribution;

   c. the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

   d. the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

   e. the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.– For the purposes of this section,—

   a. the “relevant period” shall be—

   i. if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

   ii. if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

b. the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

c. the term ‘‘turnover’’, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

12.9 MANNER OF RECOVERY OF CREDIT DISTRIBUTED IN EXCESS

According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.

The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03.

If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.

It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.



CHECK YOUR PROGRESS

Q 3: Define Job Work.

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Q 4: Define Input Service Distrubutor.

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12.10 LET US SUM UP

In this unit, we have discussed the following :

- Prior to GST, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax



12.11 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



12.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: While calculating the amount of taxes to be paid to the Government, a registered dealer can claim deduction of input tax paid on purchases from the output taxes collected on sales. In short, only the net amount of tax i.e. output tax less input tax is to be paid to the Government. This deduction of input taxes paid by a registered dealer from the output taxes collected on sales is termed as availing of input tax credit.

Ans to Q No 2: In order to avail input tax credit on supply a registered person has to fulfill all the four conditions mentioned below :

a. Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules.

b. Receipt of the goods and / or services [Section 16(2)(b)]

c. Tax leviable on supply actually paid to Government [Section 16(2)(c)]

d. Filing of return [Section 16(2)(d)]

Ans to Q No 3: Section 2(68) of the CGST Act, 2017 defines job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'.

Ans to Q No 4: A company may have a number of units and the GST paid by it on input services received can be distributed to the beneficiary units on the basis of their previous year turnover. The office of the company which distributes the credit is called input service distributor.



12.13 MODEL QUESTIONS

Q 1: Discuss the meaning and concept of Input Tax Credit.

Q 2: Discuss the eligibility and conditions for taking Input Tax Credit

Q 3: Briefly explain apportionment of credit and blocked Credits

Q 4: Discuss Input Tax Credit in respect of Inputs and Capital Goods sent for Job Work.

Q 5: Write briefly about availability of credit in special circumstances.

Q 6: Write a brief note on manner of distribution of credit by Input Service Distributor

Q7: Write a brief note on manner of recovery of credit distributed in excess.

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UNIT 13 : TAX INVOICE, CREDIT AND DEBIT NOTES

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Tax Invoice

13.4 Time Limit for Issue of Tax Invoice

13.5 Manner of Issue of Tax Invoice

13.6 Prohibition of Unauthorized Collection of Tax

13.7 Amount of Tax to be reflected in Tax Invoice and Other Documents

13.8 Credit Note

13.9 Debit Note

13.10 E-Way Bill

13.11 Bill of Supply

13.12 Receipt Voucher

13.13 Refund Voucher

13.14 Payment Voucher

13.15 Let Us Sum Up

13.16 Further Reading

13.17 Answers to Check Your Progress

13.18 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the particulars of a tax invoice
- analyse the provisions relating to tax invoice in case of taxable supply of goods and in case of taxable supply of services - time-limit and manner of issuing the same
- explain the provisions relating to issue of credit and debit notes

- explain the provisions relating to prohibition of unauthorized collection of tax
- explain the provisions relating to bill of supply, receipt voucher, refund voucher, payment voucher, E-Way Bill

13.2 INTRODUCTION

The importance of Tax Invoice in Indirect Taxation is very high. It not only evidences the supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). Invoicing is a crucial aspect for ensuring tax compliance under any indirect taxation system. In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite. A registered person cannot avail Input Tax Credit unless he is in possession of a tax invoice or a debit note. In our previous units, we have learned that GST is chargeable at the time of supply and the Tax Invoice is an important indicator of the time of supply. Thus the importance of an invoice under GST cannot be under-rated and instead, it is the primary document evidencing the supply and vital for availing Input Tax Credit. In this Unit, we are going to have a detailed discussion about tax invoice, debit and credit notes.

13.3 TAX INVOICE

An invoice is a commercial instrument issued by a supplier of goods/ services to a recipient. It identifies both the trading parties, and lists, describes, and quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full. Under the GST regime, an “invoice” or “tax invoice” means the tax invoice referred to in section 31 of the CGST Act, 2017.

Contents of a Tax Invoice

There is no prescribed format of a Tax Invoice, but Rule 46 of the CGST Rules states that subject to rule 54, a tax invoice referred to in section 31 shall be

issued by the registered person containing the following particulars, namely,-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "——" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;

f. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

g. Harmonised System of Nomenclature code for goods or services;

h. description of goods or services;

i. quantity in case of goods and unit or Unique Quantity Code thereof;

j. total value of supply of goods or services or both;

k. taxable value of the supply of goods or services or both taking into account discount or abatement, if any;

l. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

m. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

n. place of supply along with the name of the State, in the case of a supply in the course of Inter-State trade or commerce;

o. address of delivery where the same is different from the place of supply;

p. whether the tax is payable on reverse charge basis;

q. signature or digital signature of the supplier or his authorised representative: and

r. Quick response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48.

13.4 TIME LIMIT FOR ISSUE OF TAX INVOICE

The time limit for issuing a tax invoice would depend on the nature of supply viz. whether it is a supply of goods or supply of services.

Time Limit for issue of Tax Invoice in case of supply of goods

Section 31 of the CGST Act provides that a registered person supplying taxable goods shall issue a tax invoice before or at the time of:

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case.

Section 31(4) provides that in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Section 31(7) provides that where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Proviso to Section 31(1) provides that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

Time Limit for issue of Tax Invoice in case of supply of services

Section 31(2) provides that tax invoice in case of supply of services shall be issued before or after the provision of service but within a prescribed period.

Rule 47 provides that invoice in the case of the taxable supply of services, shall be issued within a period of **thirty days** from the date of the supply of service.

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be **forty five days** from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

Section 31(5) provides that subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services, -

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Section 31(6) provides that in a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued

to the extent of the supply made before such cessation.

Section 31(7) provides that in a case where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before/at the time of supply or 6 months from the date of removal whichever is earlier.

13.5 MANNER OF ISSUE OF TAX INVOICE

Rule 48 of the CGST Rules provides that:

1. The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,-
   a. the original copy being marked as ORIGINAL FOR RECIPIENT;
   b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
   c. the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.
2. The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-
   a. the original copy being marked as ORIGINAL FOR RECIPIENT; and
   b. the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
3. The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.
4. The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.
5. Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

6. The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4)].

13.6 PROHIBITION OF UNAUTHORISED COLLECTION OF TAX

Section 32 of the GST Act prohibits unauthorized collection of tax. A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act. No registered person shall collect tax except in accordance with the provisions of this Act or the rules made there under.



CHECK YOUR PROGRESS

Q 1: What do you mean by Tax Invoice?

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Q 2: Mention the time limits for issue of invoice in case of supply of goods.

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13.7 AMOUNT OF TAX TO BE REFLECTED IN TAX INVOICE AND OTHER DOCUMENTS

Section 33 of the Act states that notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

13.8 CREDIT NOTE

Section 34(1) of the CGST Act states that in cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is more than what is actually payable/chargeable or where the recipient has returned the goods, the supplier can issue a credit note to the recipient. A registered person who issues such a credit note has to declare details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made or the date of furnishing of the relevant annual return, whichever is earlier. The tax liability of the registered person will be adjusted in accordance with the credit note issued, however no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised. The issuance of the credit note easily allows the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

13.9 DEBIT NOTE

Section 34(3) of the CGST Act states that where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed. Any registered person who issues a debit note in relation to a supply of goods or services or both, shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed. The issuance of a debit note/supplementary invoice creates additional tax liability. The treatment of a debit note/supplementary invoice is

identical to the treatment of a tax invoice as far as returns and payment are concerned. The debit note/supplementary invoice is a convenient and legal method by which the value of the goods and/or services in the original tax invoice can be enhanced. The issuance of the debit note allows the supplier to pay his enhanced tax liability in his returns without requiring him to undertake any other tedious process.

13.10 E-WAY BILL

In order to monitor the movement of goods for controlling any tax evasion, the Central Government has designed an electronic mechanism called the e-way bill system. Under this system, a taxpayer - prior to movement of goods via a conveyance - would inform each transaction's details to the tax department through the GST Portal, obtain an electronic document thus generated, and then use the same as a valid document evidencing the movement of goods. This electronic document is called E-Way Bill. An E-Way Bill contains details relating to shipment of the goods viz. name of consignor, consignee, the point of origin of the consignment, destination details and route.

E-way Bill is generated electronically in Form GST EWB 01 on the common portal (www.ewaybillgst.gov.in). E-way Bill can be generated through various modes like Web (Online), Android App, SMS, using Bulk Upload Tool and API (Application Program Interface) based site to site integration etc.

The facility of generation, cancellation, updation and assignment of e-way bill is available to the supplier, recipient and the transporter, as the case may be. The pre-requisite for generation of e-way bill is that the person who generates e-way bill should be a registered person on GST portal and he should register on the e-way bill portal using his GSTIN. If the transporter is generating the e-way bill, but he is not registered person under GST law, it is mandatory for him to get enrolled on e-waybill portal before generation of the e-way bill to get 15-digit Unique Transporter Id called TRANSIN.

Rule 138 of the CGST Rules provides that:

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees

i. in relation to a supply; or

ii. for reasons other than supply; or

iii. due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.

13.11 BILL OF SUPPLY

According to Section 31(3)(c) of the CGST Act, a registered person supplying exempted goods or services or both or a registered person paying tax under composition levy, shall issue a bill of supply instead of a tax invoice. A bill of supply is similar to a GST invoice except that bill of supply does not contain any tax amount as the seller cannot charge GST to the buyer.

A bill of supply shall be issued by the supplier containing the following details:

(a) Name, address and GSTIN of the supplier

(b) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as "-" and "/"respectively, and any combination there of, unique for a financial year

(c) Date of its issue

(d) Name, address and GSTIN or UIN, if registered, of the recipient

(e) HSN Code of goods or Accounting Code for Services

(f) Description of goods or services or both

(g) Value of supply of goods or services or both taking into account discount or abatement, if any

(h) Signature or digital signature of the supplier or his authorized representative.

13.12 RECEIPT VOUCHER

Section 31(3)(d) provides that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as per Rule 50 of the CGST Rules, 2017, evidencing receipt of such payment.

Proviso to Rule 50 of the CGST Rules, 2017, if at the time of receipt of advance,

(i) The rate of tax is not determinable, the tax may be paid@18%;

(ii) The nature of supply is not determinable, the same shall be treated as inter-State supply.

Contents of Receipt Voucher :

Rule 50 of CGST Rules provides that a receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars, namely,-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "¯" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. description of goods or services;

f. amount of advance taken;

g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

h. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

i. place of supply along with the name of State and its code, in case of a supply in the course of inter- State trade or commerce;

j. whether the tax is payable on reverse charge basis; and

k. signature or digital signature of the supplier or his authorised representative :

Provided that where at the time of receipt of advance,-

i. the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent;

ii. the nature of supply is not determinable, the same shall be treated as Inter-State supply

13.13 REFUND VOUCHER

Section 31(3)(e) provides that where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment as per Rule 51 of the CGST Rules, 2017.

Contents of Refund voucher :

Rule 51 of the CGST Rules provides that a refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely :-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "¯" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. number and date of receipt voucher issued in accordance with the provisions of rule 50;

f. description of goods or services in respect of which refund is made;

g. amount of refund made;

h. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

i. amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

j. whether the tax is payable on reverse charge basis; and

k. signature or digital signature of the supplier or his authorised representative.

13.14 PAYMENT VOUCHER

Section 31(3)(e) provides that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

Contents of Payment Voucher:

Rule 52 of CGST Rules provides that a payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely:-

a. name, address and Goods and Services Tax Identification Number of the supplier if registered;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "¯" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number of the recipient;

e. description of goods or services;

f. amount paid;

g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

h. amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

i. place of supply along with the name of State and its code, in case of a supply in the course of inter- State trade or commerce; and

j. signature or digital signature of the supplier or his authorised representative.



CHECK YOUR PROGRESS

Q 3: Define Credit Note ?

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Q 4: What do you mean by E-Way Bill ?

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13.15 LET US SUM UP

In this unit, we have discussed the following :

13.16 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.

13.17 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: ATax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full. Under the GST regime, an "invoice" or "tax invoice" means the tax invoice referred to in section 31 of the CGST Act, 2017.

Ans to Q No 2: Time Limit for issue of Tax Invoice in case of supply of goods

Section 31 of the CGST Act provides that a registered person supplying taxable goods shall issue a tax invoice before or at the time of:

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case

Ans to Q No 3: Section 34(1) of the CGST Act states that in cases where tax invoice has been issued for a supply and subsequently it is found that the value or tax charged in that invoice is more than what is actually payable/ chargeable or where the recipient has returned the goods, the supplier can issue a credit note to the recipient.

Ans to Q No 4: Under the GST system, a taxpayer - prior to movement of goods via a conveyance - would inform each transaction's details to the tax

department through the GST Portal, obtain an electronic document thus generated, and then use the same as a valid document evidencing the movement of goods. This electronic document is called E-Way Bill. An E-Way Bill contains details relating to shipment of the goods viz. name of consignor, consignee, the point of origin of the consignment, destination details and route.

13.18 MODEL QUESTIONS

Q 1: What do you mean by Tax Invoice? Explain the particulars of a Tax Invoice.

Q 2: Discuss the provisions relating to tax invoice in case of taxable supply of goods and in case of taxable supply of services.

Q 3: Explain the provisions relating to tax invoice regarding time-limit and manner of issuing the tax invoice.

Q 4: Discuss the provisions relating to issue of credit and debit notes.

Q 5: Write short notes on:

a. prohibition of unauthorized collection of tax

b. Bill of Supply

c. Receipt Voucher

d. Payment Voucher

e. Refund Voucher

f. E-Way Bill

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UNIT 14 : ACCOUNTS AND RECORDS UNDER GST

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Maintenance of Records and Accounts

14.4 Period of Retention of Records and Accounts

14.5 Payment of Tax, Interest, Penalty and Other Amounts

14.6 Interest on Delayed Payment of Tax

14.7 Tax Deduction at Source

14.8 Collection of Tax at Source

14.9 Transfer of Input Tax Credit

14.10 Let Us Sum Up

14.11 Further Reading

14.12 Answers to Check Your Progress

14.13 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- enumerate the accounts and other records required to be maintained under GST.
- describe the period of retention of records and accounts
- explain the provisions relating payment of tax, interest, penalty and other amounts
- explain the provisions relating to tax deduction at source and collection of tax at source
- explain the provisions relating to transfer of input tax credit

14.2 INTRODUCTION

The GST Act requires a registered person to maintain the accounts and records of the transactions as a part of necessary compliance of the GST Law. The compliance verification is to be done by the department through documentary checks rather than physical controls. This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records. The accounts and records may be maintained either electronically or manually. Proper maintenance of accounts and records, eases the task of filling periodical returns under the Act which is necessary for claiming input tax credit. There is no prescribed format for maintaining the accounts.

In this Unit, we shall discuss about maintenance of accounts and records under GST Law, enumerate the accounts and records required to be maintained, period of retention of records and accounts, etc. We shall further discuss about payment of tax, interest, penalty and other amounts under the GST Law. Provisions of TDS, TCS and transfer of input tax credit shall also be discussed.

14.3 MAINTENANCE OF RECORDS AND ACCOUNTS

Chapter VIII – Accounts and Records [Sections 35 and 36] of the CGST Act read with Chapter VII – Accounts and Records [Rules 56 to 58] of the CGST Rules, 2017, deals with the matters relating to Accounts and Records. Section 35(1) read with rule 56(7) and 56(10) states that every registered person shall keep and maintain, his books of accounts at his principal place of business and books of account relating to additional place of business as mentioned in the certificate of registration.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

Accounts and records required to be maintained

A true and correct account of following is to be maintained:

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid

(f) such other particulars as may be prescribed [Section 35(1)].

I. Records prescribed by rules [Rule 56(1), 56(3), 56(5) and 56(6)]

In addition to the above mentioned accounts, Rule 56(1), 56(3), 56(5) and 56(6) of the CGST Rules, 2017 prescribes that

Rule 56(1) : the registered person shall keep and maintain records of-

(a) goods or services imported or exported or

(b) supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills

Rule 56(3): every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

Rule 56(5): every registered person shall keep the particulars of –

(a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;

(b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;

(c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

Rule 56(6): if any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

II. Records to be maintained only by a supplier other than a supplier opting for composition levy [Rule 56(2) and (4)]

a. Stock of goods: Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

b. Details of tax: Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

III. Records to be maintained by agent [Rule 56(11)]

Every agent shall maintain accounts depicting the-

a. particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

b. particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

c. particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

d. details of accounts furnished to every principal; and

e. tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever

name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

IV. Records to be maintained by a manufacturer [Rule 56(12)]

Apart from other records, every registered person manufacturing goods has to maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

V. Records to be maintained by a service provider [Rule 56(13)]

Every registered person supplying services has to additionally maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

VI. Records to be maintained by a person executing works contract [Rule 56(14)]

Every registered person executing works contract shall keep separate accounts for works contract showing -

- the names and addresses of the persons on whose behalf the works contract is executed;
- description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- the details of payment received in respect of each works contract; and
- the names and addresses of suppliers from whom he received goods or services.

VII. Records to be maintained by owner or operator of godown or warehouse and transporters [Section 35(2) read with rule 58]

Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a

registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

If such persons are not registered under GST, they shall obtain a unique enrollment number by applying electronically at the GST Common Portal.

Such person may also amend the details furnished in the prescribed form.

a. **Records to be maintained by the transporter:** Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches.

b. **Records to be maintained by an owner/operator of a warehouse/ godown**

   Every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.

   The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

VIII. Records to be maintained by a custodian/clearing and forwarding agent [Rule 56(17)]

Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

In case of failure in maintenance of accounts and records by the registered person for the goods or services or both in accordance with the provisions

of the GST Law, the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the GST liability on the supply has to be borne by the person.

14.4 PERIOD OF RETENTION OF RECORDS AND ACCOUNTS

Section 36 of the CGST Act, 2017 provides that every registered person who is required to maintain books of account or other records in accordance with the provisions of the GST Act shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

14.5 PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS

In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government and the State GST (SGST)/UTGST, going into the account of the concerned State Government/ Union Territory. For any inter-state supply, tax to be paid is Integrated GST (IGST) which have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the Government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made. Chapter X of the CGST Act,

2017 (Section 49 to 53) and Chapter IX of CGST Rules (Rules 85 to 88) deals with the matter relating to Payment of Tax.

The whole mechanism with respect to payment of taxes under the GST regime works with the aid of three ledgers maintained on the common portal namely (a) Electronic Cash Ledger (b) Electronic Credit Ledger and (c) Electronic Liability Ledger. The Electronic Cash Ledger and the Electronic Credit Ledger are prepared and updated by the Tax Payer. While the Electronic Liability Ledger is prepared and updated on the basis of returns furnished by the Registered person or the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings

Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dashboard at all times.

The Electronic Cash Ledger contains a summary of all the deposits/ payments made by a taxpayer. Electronic Cash Ledger is maintained on the GST Portal. The Electronic Cash Ledger has to be maintained in prescribed form on the common portal by a person liable to pay tax. Any deposit made towards payment of tax, interest, penalty, late fee or any other amount will be credited to the electronic cash ledger. Any debit to the electronic cash ledger represents payment there from towards tax, interest, penalty, late fee or any other amount.

The deposit in the electronic cash ledger shall be made through any of the following modes, namely:-

(i) Internet Banking through authorized banks;

(ii) Credit card or Debit card through the authorized bank;

(iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or

(iv) Over the Counter payment through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

The scheme is such that the liability towards tax, interest, penalty, fee or any other amount is first created by debiting the Electronic Liability Ledger.

Then, Electronic Credit Ledger is credited by availing input tax credit and, for deficient amount, Electronic Cash Ledger is credited by the actual deposit of cash in the Government treasury.

The liability is then discharged by debiting the Electronic Cash Ledger and Electronic Credit Ledger and crediting Electronic Liability Ledger.

14.6 INTEREST ON DELAYED PAYMENT OF TAX

Under GST, interest is liable to be paid when the tax dues are not paid within the stipulated time. Interest is payable by the registered person for delay in remittance of taxes beyond the stipulated due date on account of delay in filing of return under section 39, only on the net cash liability of taxes and not on the gross tax liability. The rate of interest shall be notified by the Government on the basis of recommendation of the Council. However, such rate to be notified shall not exceed 18% in case of belated payment of tax i.e. on failure to pay tax (or part of tax) to the Government's account. [Notification No. 13/2017 CT dated 28.06.2017 has notified the rate of interest as 18% per annum].



CHECK YOUR PROGRESS

Q 1: Mention the period of retention of records and accounts under GST Law.

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Q 2: Mention the rate of interest on delayed payment of tax under GST Law..

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4.7 TAX DEDUCTION AT SOURCE

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'tax deduction at source'. The TDS provisions

empower the Central Government to make it mandatory for the following persons (the deductor) to deduct tax at source from payments made to the suppliers of taxable goods and/or services.

The following persons have been notified under clause (d) of sub-section (1) of section 51 of the CGST Act by the Central Government:

(a) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 51% or more participation by way of equity or control, to carry out any function;

It has been clarified vide Circular No. 76/50/2018 GST dated 31.12.2018 that the rider of 51% or more participation by way of equity or control is applicable to both the items (i) and (ii). Thus, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;

(c) public sector undertakings:

Tax is not liable to be deducted at source in the following cases:-

(i) When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person [Notification No. 61/2018 CT dated 05.11.2018]

(ii) When supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act. [Notification No. 73/2018 CT dated 31.12.2018]

The deductees are the suppliers whose total value of supply of taxable goods and/or services under a contract exceeds Rs. 2,50,000 exclusive of tax

& cess as per the invoice. The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and/or services under CGST Act, 2017. The amount of tax deducted at source should be deposited to the Government account by deductor by 10th of the succeeding month. The deductee can claim credit of the tax deducted, in his electronic cash ledger.

14.8 COLLECTION OF TAX AT SOURCE

Tax Collected at Source (TCS) refers to the tax which is collected by the electronic commerce operator when a supplier supplies taxable goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. Every Electronic Commerce Operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) on the net value of taxable supplies [supplies net of returns if any] made through it by suppliers, where the ECO collects the consideration on behalf of the supplier for such supplies.

The rate of TCS is half percent of the net value of intra-State taxable supplies and 1% of the net value of inter-State taxable supplies.

The TCS amount collected by the ECO has to be remitted to the Government Treasury within 10 days after the end of the month in which the collection was made.

14.9 TRANSFER OF INPUT TAX CREDIT

If the amount of CGST is utilised towards dues of IGST then, in terms of section 53 of the CGST Act, there shall be reduction in the amount of CGST, equal to the credit so utilized, and the Central Government shall transfer such amount equivalent to the amount so reduced in CGST account to the IGST account.

Similarly, if the amount of IGST is utilised towards dues of CGST/ UTGST then, in terms of section 18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and the Central Government

shall transfer such amount equivalent to the amount so reduced in IGST account to the CGST/UTGST account.

However, if the amount of IGST is utilised towards dues of SGST then, in terms of section 18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and will be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government.



CHECK YOUR PROGRESS

Q 3: State the persons notified as deductor to deduct TDS under GST Law?

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Q 4: State the rate of TCS under GST Law ?

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14.10 LET US SUM UP

In this unit, we have discussed the following:



14.11 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



14.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Section 36 of the CGST Act, 2017 provides that every registered person who is required to maintain books of account or other records in accordance with the provisions of the GST Act shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Ans to Q No 2: 18%

Ans to Q No 3: The following persons have been notified under clause (d) of sub-section (1) of section 51 of the CGST Act by the Central Government:

(a) an authority or a board or any other body, -

  (i) set up by an Act of Parliament or a State Legislature; or

  (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function;

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;

(c) public sector undertakings:

Ans to Q No 4: The rate of TCS is half percent of the net value of intra-State taxable supplies and 1% of the net value of inter-State taxable supplies.



14.13 MODEL QUESTIONS

Q 1 : Discuss the accounts and other records required to be maintained under GST.

Q 2 : Explain the provisions relating payment of tax, interest, penalty and other amounts

Q 3 : Explain the provisions relating to period of retention of records and accounts under the GST Act.

Q 4 : Discuss the provisions relating to tax deduction at source and collection of tax at source

Q5 : Discuss the provisions relating to transfer of input tax credit

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UNIT 15 : RETURNS UNDER GST

UNIT STRUCTURE

15.1 Learning Objectives

15.2 Introduction

15.3 Furnishing of Details of Supplies

15.4 Furnishing of Details of Inward Supplies

15.5 Furnishing of Returns

15.6 First Return

15.7 Claim of Input Tax Credit and Provisional Acceptance Thereof

15.8 Matching

15.9 Annual Return

15.10 Notice to Defaulters

15.11 Levy of Late Fee

15.12 Goods and Service Tax Practitioners

15.13 Assessment

15.14 Audit by Tax Authorities

15.15 Let Us Sum Up

15.16 Further Reading

15.17 Answers to Check Your Progress

15.18 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the various types of statements and returns to be filed by a registered taxpayer
- identify the persons eligible to file various statements/returns as also the forms prescribed there for and explain the periodicity for filing such statements/returns

- determine the late fee for delayed filing of return
- explain the provisions relating to Goods and Service Tax practitioner
- explain the provisions relating to audit by tax authorities
- explain the provisions relating to assessment

15.2 INTRODUCTION

Under Tax Laws, the term "return" means a statement to be furnished which comprises of the details pertaining to the nature of activities/business operations forming the subject matter of taxation; the measure of taxation such as sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given period.

Filing of tax returns constitutes the most important compliance procedure which enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers. All the returns under GST laws are to be filed electronically. Chapter IX of the CGST Act [Sections 37 to 48] and sections 150 & 123 prescribe the provisions relating to filing of returns. The provisions relating to forms and manner, in which information is to be furnished through returns, are given under Chapter VIII of the CGST Rules [Rules 59-84]. In this Unit, we shall discuss about the various types of statements and returns to be filed by a registered tax payer, identify the persons eligible to file various statements/returns. We shall also discuss about the provisions relating to Goods and Service Tax practitioner, audit by tax authorities and the provisions relating to assessment.

15.3 FURNISHING OF DETAILS OF SUPPLIES

Section 37 relates to furnishing of details of outward supplies by the supplier. A return of Outward supplies under this Section should be furnished by every registered taxable person except for the following persons namely

(i) Input service distributor

(ii) A non-resident taxable person

(iii) A person paying tax under the provisions of section 10 (composition levy)

(iv) A person paying tax under the provisions of section 51 (TDS)

(v) A person paying tax under the provisions of section 52 (TCS)

(vi) A person referred to in Section 14 of IGST Act – Person providing Online Information and Data Access & Retrieval Services

The details about outward supplies along with debit/credit notes issued shall be communicated to the corresponding purchasing taxpayer within prescribed time so as to enable them to file return for inward supplies. Such details are required to be furnished, electronically, in Form GSTR-1 for the month or quarter. A Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer.

15.4 FURNISHING OF DETAILS OF INWARD SUPPLIES

Section 38 relates to furnishing of details of inward supplies by the recipient. The tax payer is required to file monthly return of GSTR-2 giving details of inward supplies and relevant debit/ credit notes. The details of GSTR-2 will mostly be auto-populated from the GSTR-1 of counterparty making supplies. The auto-populated details can be modified, validated, deleted and additional invoices or debit/credit can also be added in case such details are missed out by the supplier. The taxable person shall file the details of inward supply, including those under reverse charge and IGST with relevant debit/ credit notes within 15th of succeeding month, unless extended by Board/ Commissioner.

15.5 FURNISHING OF RETURNS

Section 39 of the CGST Act states the manner of furnishing of returns. It provides that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

Under GST, a regular taxpayer needs to furnish monthly returns and one annual return. There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer registered as an Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number. It is important to note that a taxpayer is not required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities they undertake.

Form GSTR-3B has been notified as the return under section 39(1) which contains summary of outward supplies, inward supplies liable to reverse charge, eligible ITC, payment of tax etc. GSTR-3B can be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

15.6 FIRST RETURN

When a person becomes liable to registration after his turnover crosses the threshold limit, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration.

Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue revised tax invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration [Section 31(3)(a) read with rule 53 of CGST Rules]. Further, section

40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.



CHECK YOUR PROGRESS

Q 1: State the persons not liable to furnish return of outward supplies.

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15.7 CLAIM OF INPUT TAX CREDIT AND PROVISIONAL ACCEPTANCE THEREOF

Section 16(2) mandates payment of tax by the suppler as a condition for the recipient to avail input tax credit. However, said provision is subject to Section 41 which provides as below:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilized only for payment of self assessed output tax as per the return referred to in the said sub-section.

15.8 MATCHING

According to Section 42(1) of the CGST Act, 2017, the details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched –

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

15.9 ANNUAL RETURN

All registered persons are required to file an annual return. However, following persons are not required to file the annual return :

(i) Casual taxable persons.

(ii) Non- resident taxable person

(iii) Input service distributors14

(iv) Persons authorized to deduct/collect tax at source under section 51/ 5215 and

(v) Person supplying OIDAR services from outside India to unregistered persons in India

The annual return for a financial year needs to be filed by 31st December of the next financial year.

The due date of filing annual return may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

The annual return is to be filed electronically in Form GSTR-9 through the common portal. Composition scheme supplier i.e. a person paying tax under composition scheme is required to file the annual return in Form GSTR-9A.

15.10 NOTICE TO DEFAULTERS

Notice to return defaulters [Section 46 read with rule 68 of the CGST Rules]

A notice in prescribed form is issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return] or section 52 [TCS Statement].

The notice requires the registered person to furnish the return within 15 days, failing which the tax liability will be assessed under section 62, based on the relevant material available with the proper officer. In addition to tax so assessed, applicable interest and penalty will also be payable.

15.11 LEVY OF LATE FEE

Section 47 of the CGST Act provides that :

1. Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

2. Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State or Union territory.

Late fee for filing NIL returns have been reduced to Rs 20 per day of delay for taxpayers(i.e having Nil tax liability for the month) for GSTR-1, GSTR-3B and GSTR-4 & GSTR-5.

15.12 GOODS AND SERVICE TAX PRACTITIONERS

Section 48 provides for the authorisation of an eligible person to act as approved Goods and Services Tax Practitioner (GSTP). A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government. The manner of approval of GSTPs, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in the rules 83, 83A and 84 of the CGST Rules.

GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under

GST Law. A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.

Standardized formats have been prescribed for making application for enrolment as GSTP, certificate of enrolment, show cause notice for disqualification, order of rejection of application of enrolment, list of approved GSTPs, authorisation letter and withdrawal of authorisation. A GSTP enrolled in any State or Union Territory shall be treated as enrolled in the other States/ Union territories.

The responsibility for correctness of any particulars furnished in the return or other details filed by the GSTP continues to rest with the registered person on whose behalf such return and details are furnished. The registered person before confirming, should ensure that the facts mentioned in the return are true and correct before signature. However, failure to respond to request for confirmation is treated as deemed confirmation.

15.13 ASSESSMENT

Chapter XII of the CGST Act, 2017 deals with the assessment (Section 59 to 64). Further Chapter XI of the CGST Rules (Rules 98 to 102) deals with the assessment. According to Section 2(11) of the CGST Act, 2017 "assessment" means determination of tax liability under this act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

1) Self-Assessment:

Section 59 of the CGST Act, 2017 states that every registered person shall self-assess the taxes payable under this act and furnish a return for each tax period as specified under section 39. Thus, GST has continued with the legacy of tax philosophy of self-assessment where trust is placed on the assessee to determine its tax liability on its own volition and file its returns.

2) Provisional Assessment:

Section 60 of the CGST Act, 2017 provides that:

1. Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine

the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

2. The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

3. The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

   Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

4. The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual Consumer payment, whether such amount is paid before or after the issuance of order for final assessment.

5. Where the registered person is entitled to a refund consequent to the order of final assessment under subsection (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Thus, the aforesaid provisions relating to provisional assessment give an opportunity to the registered person to determine its tax liability on provisional basis without attracting penal provisions under the Act. It requires prior permission from the proper officer and he is required furnish bond or such security as the proper offer seeks to secure the interest of revenue. The proper officer is, however, mandated to finalize the assessment within the prescribed timelines.

3) Scrutiny Assessment:

As such, the registered person is entitled to determine its tax liability on its own, GST officer is however empowered to scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

Scrutiny of returns

Section 61 of the CGST Act, 2017 provides that:

1. The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
2. In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.
3. In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

4) Summary assessment in certain special cases

Section 64 of the CGST Act, 2017 provides that:

1. The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional

Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

2. On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

5) Best Judgement Assessment:

(i) Assessment of non-filers of returns

Section 62 of the CGST Act, 2017 provides that :

1. Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issued an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates

2. Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

(ii) Assessment of unregistered persons

Section 63 of the CGST Act, 2017 provides notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates :

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

15.14 AUDIT BY TAX AUTHORITIES

Audit under GST is the examination of records maintained by a registered dealer. The aim is to verify the correctness of information declared, taxes paid and to assess the compliance as prescribed under the GST statutes.

In terms of Section 2(13) of the CGST Act, 2017, “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this act or the rules made thereunder.

Audit by Tax Authorities

Section 65 of the CGST Act, 2017 provides that:

1. The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
2. The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

3. The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.
4. The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

   Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.
5. During the course of audit, the authorised officer may require the registered person, –
   i. to afford him the necessary facility to verify the books of account or other documents as he may require;
   ii. to furnish such information as he may require and render assistance for timely completion of the audit.
6. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
7. Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.



CHECK YOUR PROGRESS

Q 2: State the persons who are not required to file the annual return ?

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Q 3: Define Audit under CGST Act, 2017 ?

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15.15 LET US SUM UP

In this unit, we have discussed the following :

- Filing of tax returns constitutes the most important compliance procedure which enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers.
- All the returns under GST laws are to be filed electronically.
- Chapter IX of the CGST Act [Sections 37 to 48] and sections 150 & 123 prescribe the provisions relating to filing of returns.
- The provisions relating to forms and manner, in which information is to be furnished through returns, are given under Chapter VIII of the CGST Rules [Rules 59-84].
- The tax payer is required to file monthly return of GSTR-2 giving details of inward supplies and relevant debit/ credit notes.
- The details of GSTR-2 will mostly be auto-populated from the GSTR-1 of counterparty making supplies.
- Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.
- Chapter XII of the CGST Act, 2017 deals with the assessment (Section 59 to 64). Further Chapter XI of the CGST Rules (Rules 98 to 102) deals with the assessment.
- Audit under GST is the examination of records maintained by a registered dealer. The aim is to verify the correctness of information declared, taxes paid and to assess the compliance as prescribed under the GST statutes.



15.16 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.



15.17 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: A return of Outward supplies under this Section should be furnished by every registered taxable person except for the following persons namely

(i) Input service distributor

(ii) A non-resident taxable person

(iii) A person paying tax under the provisions of section 10 (composition levy)

(iv) A person paying tax under the provisions of section 51 (TDS)

(v) A person paying tax under the provisions of section 52 (TCS)

(vi) A person referred to in Section 14 of IGST Act – Person providing Online Information and Data Access & Retrieval Services

Ans to Q No 2: All registered persons are required to file an annual return. However, following persons are not required to file the annual return:

(i) Casual taxable persons.

(ii) Non- resident taxable person

(iii) Input service distributors14

(iv) Persons authorized to deduct/collect tax at source under section 51/ 5215 and

(v) Person supplying OIDAR services from outside India to unregistered persons in India

Ans to Q No 3: In terms of Section 2(13) of the CGST Act, 2017, "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this act or the rules made thereunder.



15.18 MODEL QUESTIONS

Q 1: Discuss the various types of assessments under the GST Act.

Q 2: Write short notes on:

a. Furnishing of Details of Supplies

b. Furnishing of Details of Inward Supplies

c. Furnishing of Returns

d. First Return

e. Claim of Input Tax Credit and Provisional Acceptance Thereof

f. Matching

g. Annual Return

h. Notice to Defaulters

i. Levy of Late Fee

j. Goods and Service Tax Practitioners

k. Audit by Tax Authorities

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