

PAPER – 5 : TAXATION

QUESTIONS

1. State with reasons whether the following statements are true or false [A.Y. 2010-11] –
 - (a) The benefit of deduction under sections 10A and 10B were to be allowed only up to A.Y.2010-11.
 - (b) Advance tax would be payable only if the advance tax liability is Rs. 5,000 or more.
 - (c) While computing Capital gains in respect of enhanced compensation, cost of acquisition shall be taken as the cost to the previous owner.
 - (d) The qualifying amount of the preliminary expenditure under section 35D can be claimed as deduction over a period of 10 years in equal installments.

Residential Status and Scope of total income

2. Gourav, citizen of France, is appointed by a multi-national company to its branch in New Delhi in 2005. Gourav has never been to India before this appointment. He arrives in Bombay on 15th April, 2006 and joins the New Delhi office on 20th April, 2006. His wife and children join him in India on 20th October, 2006. The company allotted him a leased residence for the purpose of his stay. This residence is occupied by him from the beginning of October, 2006.

On 10th February, 2007, he is transferred by his employer, on deputation basis, to be the regional chief of his employer's operations in South East Asia having headquarters in Hongkong. He leaves New Delhi on 11th February 2006 and arrives in Hongkong on 12th February, 2007. Gourav leaves behind his wife and children in India till 14th August, 2008, when they leave along with him for Hongkong. Gourav had come to India earlier on 15th June, 2008 on two months' leave. The members of the family occupied the residence till date of departure to Hongkong.

At the end of the period of deputation, Gourav is reposted to India and joins the New Delhi office of his employer as chief of Indian operations on 30th January, 2010.

In what residential status Gourav will be assessable, for the various years, to income tax in India?

Incomes which do not form part of total income

3. Discuss the exemption limit for taxation of anonymous donations under section 115BBC as amended by the Finance Act (No.2), 2009.
4. Explain the tax treatment for Limited liability partnerships.

Income from House Property

5. Three brothers Arun, Babloo and Chandan having equal share are co-owners of a house property consisting of six identical units, the property was constructed on 31-5-1993. Each of them occupies one unit for his residence and the other three units are let out at a rent of Rs. 9,000 per month per unit. The Municipal Value of the house property is Rs. 5,00,000 and the Municipal Taxes are 40% of such Municipal Value, which were paid during the year. The other expenses were as follows:

| | Rs. |
|---------------------------------------------------------------|----------|
| (i) Repairs | 25,000 |
| (ii) Collection charges | 6,000 |
| (iii) Insurance Premium (paid) | 12,000 |
| (iv) Interest payable on loan taken for construction of house | 2,50,000 |

One of the let out units remained vacant for three months during the year. Arun could not occupy his unit for six months as he was transferred to Mumbai. He does not own any other house. The other income of Arun, Babloo and Chandan are Rs.1,90,000, Rs.2,00,000 and Rs. 2,20,000 respectively.

Compute the income under the head "Income from House Property" and the total income of the three brothers for the assessment year 2010-11.

Income from house property

6. Ownership itself is the criteria for assessment under the head income from house property. Discuss.
7. State with reasons whether the following statements are true or false [A.Y. 2010-11] –
- If two or more persons jointly own a property and if their shares are definite and ascertainable, then the income from such property can be taxed as income of an association of persons.
 - Where the total income of an assessee includes any income, arising from the transfer of long term capital asset, which is chargeable under the head "capital gains", such long term capital gain shall be charged to tax at 10% rate.
 - Where the Commissioner of Income-tax is satisfied that the activities of the charitable trust, which has been accorded registration is not genuine, he can cancel the registration by passing an order in writing.
 - Where an urban agricultural land owned by an individual, continuously used by him for agricultural purposes for a period of two years prior to the date of transfer, is compulsorily acquired under law and the compensation is fixed by the State Government, resultant capital gain is exempt.

Profits and gains of business or profession

8. Compute the gross total income of Mr. Sunder on the basis of the following particulars:

Profit and Loss Account for the year ended 31st March, 2010

| Particulars | Amount (Rs.) | Particulars | Amount (Rs.) |
|-------------------------|-----------------|-------------------------------------------------|-----------------|
| Interest | 2,000 | Gross profit b/d | 1,25,000 |
| Repairs and Renewals | 2,500 | Interest on debenture of an institution (Gross) | 12,000 |
| Insurance | 4,500 | Rent from House property | 40,000 |
| Depreciation | 6,000 | | |
| Compensation | 11,000 | | |
| Law charges | 5,500 | | |
| Labour Welfare expenses | 4,000 | | |
| Subscriptions | 6,000 | | |
| Net Profit | 1,35,500 | | |
| | <u>1,77,000</u> | | <u>1,77,000</u> |

- (a) (i) Interest includes Rs. 400 on loan taken for purchasing debentures of a company and Rs. 500 on loan taken for reconstruction of house property let out.
- (ii) The expenses relating to house property let out are 40% of the repairs and renewal expenses.
- (iii) Depreciation includes Rs. 1,500 on house property let out.
- (iv) Compensation was paid to an employee whose dismissal was in business interest.
- (v) Insurance includes 30% for fire insurance of the house property let out, 30% for workers accident insurance and the balance for life insurance.
- (vi) Law charges include Rs. 3,000 relating to a petition filed against breach of contract and the balance regarding Sales tax appeal.
- (vii) Subscriptions include Rs. 3,000 given for election purpose to political parties.
- (b) The amount not debited to profit and loss account are as follows:
- (i) Expenses incurred on the occasion of Diwali Rs. 1,500.
- (ii) Theft of cash from iron safe Rs. 1,000.
- (iii) Expenses for new telephone connection in the business Rs. 3,000.

Clubbing of income

9. Mr. Amit, a widower, has 3 children of 19 yrs, 15 yrs and 5 yrs respectively. The first child derives Rs. 1,20,000 income every year. The income details of his second and third child are as follows:

| Particulars | Mr. Amit | Second child | Third child |
|----------------------------------------------|----------|--------------|-------------|
| | Rs. | Rs. | Rs. |
| Business income | 70,000 | --- | --- |
| Interest on FD invested out of gifts | --- | 20,000 | --- |
| Bank interest | 8,000 | 9,000 | 2,000 |
| Salary earned on application of skills | 50,000 | 25,000 | -- |
| Interest on salary income saved and invested | 9,000 | 3,000 | -- |

Compute the gross total income for the assessment year 2010-11.

Salaries

10. Manish, a resident but not ordinarily resident individual, is employed by an Indian company. For the previous year 2009-10, he submits the following information:

| | Rs. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Salary of 4 months of service in New York (paid by the foreign branch in USA) | 1,20,000 |
| Salary of 8 months of service in Delhi | 2,20,000 |
| Bonus of 2008-09 (not taxed earlier) | 30,000 |
| Employer's contribution towards recognized provident fund @ Rs. 4,000 per month for the entire previous year [provident fund is maintained in India; When Manish was posted abroad, employer's contribution was transferred to a separate account in USA and later on along with employee's contribution it is remitted to India] | 48,000 |
| Free car facility in Delhi only for private purpose of Manish and his family members; Expenditure of the employer | 58,000 |
| Car allowance in New York @ Rs. 11,000 per month (one third of which is utilized for private purpose) | 44,000 |

Besides, the employer-company provides a rent-free furnished flat both in Delhi and New York. While lease rent of the flat provided at Delhi is Rs. 14,000 per month (rent of furniture: Rs. 9,000), lease rent of the flat provided at New York is Rs. 20,000 per month (rent of furniture: Rs. 7,000 per month). During 2009-10, Manish is paid a special allowance of \$15,000 by UNO in appreciation of his services rendered in New York. His

income from other sources is Rs. 2,10,000. On March 10, 2010, the employer sells a computer to Manish for 16,500 (it was purchased by the company for Rs. 62,000 on April 10, 2007, and up till its transfer to Manish it was used by the employer for business purposes).

Manish makes the following payments: (a) his contribution to the recognized provident fund: Rs. 65,000 (contribution was remitted from USA when he was posted abroad); (b) contribution to public provident fund: Rs.19,000 (c) life insurance premium to an American insurance company : Rs. 35,000 (sum assured: Rs. 1,50,000); (d) investment in equity shares at a notified company which is engaged in maintaining and operating on infrastructure facility: Rs. 26,000; and (e) tuition fees of Manish's son: Rs. 4,000 per month.

Determine the taxable income and tax liability for the assessment year 2010-11 on the assumption that he holds 20 per cent equity share capital in the employer company and on April 1, 2010, he pays Rs. 300, being professional tax pertaining to the previous year 2009-10. Manish gets a pension of Rs. 10,000 per month from the Gujarat Government (date of retirement being March 31, 2007).

Capital Gains

11. Dinesh owns 2 residential house properties. Property X was purchased by him in 1978 for Rs.75,000 and property Y was purchased in 1991-92 for Rs.3,50,000. Market Value of property X and Y on 1-4-1981 was Rs.1,50,000 and Rs. 1,00,000 respectively.

Both the house properties were sold by him on 6-7-2009 for Rs.15,00,000 each. Brokerage of Rs.25,000 was paid by Dinesh for the sale of each such property.

The sale proceeds were invested by him in the following manner:

| | Rs. |
|----------------------------------------------------------------------------------------------------------------------|----------|
| (1) Purchase of residential property on 5-3-2010 | 8,00,000 |
| (2) Purchase of agricultural land on 15-5-2010 | 4,00,000 |
| (3) Deposit in capital gain scheme for construction of additional floor on the residential house property purchased. | |

| Date of deposit | Amount Deposited |
|-----------------|------------------|
| | Rs. |
| 16.5.2010 | 3,00,000 |
| 25.6.2010 | 1,50,000 |
| 31.7.2011 | 2,50,000 |

Compute capital gain for the assessment year 2010-11.

Set-off and Carry forward of losses

12. Briefly discuss carry forward and set-off of losses in case of closely held companies.

Income from other sources

13. Mr. Ram, who follows the accrual system of accounting, purchased land for Rs, 26,00,000 in June 2001. This asset was transferred to the Government by way of compulsory acquisition in September, 2006 for an immediate compensation of Rs.80,00,000. However, Mr. Ram disputed the compensation and an enhanced compensation of Rs. 25,00,000 was awarded to him by the court in November 2008. Interest accrued on this compensation as on 31st March, 2009 was Rs. 5,00,000. The enhanced compensation was received by him in May, 2009 along with an interest of Rs. 6,00,000, which has accrued till date. Discuss the year of chargeability and appropriate heads of income under which the above transactions would be taxed.

Deductions from Gross Total Income

14. Ramesh a resident individual, submits the following particulars of his income 2009-10:

| | Rs. |
|----------------------------------------------------------------------------------------------------------------|------------|
| Business income | 85,000 |
| Interest on debentures | 50,000 |
| long-term capital gains on transfer of gold | 4,20,000 |
| Short-term capital gain on sale of shares taxable under section 111 A | 25,000 |
| Other short-term capital gain | 15,000 |
| Contribution towards public provident fund | 45,000 |
| Payment of medical insurance premium on own life | 5,000 |
| Donation to the National Trust for welfare of persons with Autism | 6,000 |
| Donation to the fund set up by the Gujarat Government for providing relief to victims of earthquake in Gujarat | 5,000 |
| Donation to Rajiv Gandhi Foundation | 2,000 |
| Donation to the Prime Minister's Drought Relief Fund | 7,000 |
| Donation to approved public charitable institution | 12,000 |
| Donation to a poor boy for higher education | 7,000 |
| Donation of clothes to an approved institution | 15,000 |
| Donation to a charitable Institution for construction of a rest house only for particular religious community | 9,000 |

Determine the total income of Ramesh for the assessment year 2010-11.

Computation of total income and tax liability of an individual

15. Vicky is employed by a private sector company, monthly salary being Rs. 50,000. He holds 100 shares in the company and is a member of Board of Directors of the company. The employer-company provides the following allowances / perks:

1. Free car only for personal use, expenditure incurred by the employer (including depreciation and salary of driver): Rs. 1,25,000, 10 per cent of the expenditure is attributable for covering the distance between office and residence.
2. Expenditure on providing computer training to Vicky (Rs. 9,000), his wife (Rs. 4,500) and his children (Rs. 4,000).
3. Sale of goods manufactured by the employer at discount (discount availed during 2009-10: Rs. 10,000). The same discount is given by the company to its dealers.
4. Special allowance: Rs. 1,15,000.
5. Ordinary medical facility in a hospital owned by the employer: Rs. 16,000 (being cost to the employer).
6. Reimbursement of expenses on medical treatment of Mrs. Vicky outside India - expenditure on medical treatment: Rs. 7,00,000 (permission of RBI is taken), expenditure on travel of Mrs. Vicky and Mr. Vicky outside India for treatment of Mrs. Vicky : Rs. 3,00,000, expenditure on boarding and lodging outside India of Mrs. Vicky and Mr. Vicky Rs. 3,50,000 (permission of RBI is taken).
7. Furniture provided to Mr. Vicky: Rs. 15,000 (being market rent of the furniture, original cost to the employer: Rs.2,50,000).

During the previous year 2009-10, Mr. Vicky has the following other income:

1. He sold a residential house on May 5, 2009 for Rs 12,50,000 (it was purchased in 1986; indexed cost of acquisition: Rs. 12,25,735). He purchases a house property on April 6, 2009 for Rs. 12,55,000. He, however, sells the new house on March 30, 2010 for Rs. 13,95,000.
2. On July 10, 2009, he has withdrawn Rs. 60,000 (capital Rs 45,000; interest: Rs 15,000) from the National Savings Scheme, 1981.
3. He owns a flat which is self-occupied for residential purposes (municipal valuation being Rs. 80,000). A loan of Rs 8,50,000 was taken from LIC to finance purchase of the flat. During 2009-10, he pays Rs. 35,000 (Rs. 19,000 interest and Rs. 16,000 as repayment of loan) to LIC.
4. Winning from lotteries: Rs. 1,20,500 (gross) received on December 17, 2009.
5. Interest on company deposit received by minor son of Vicky: Rs. 25,700 (income of Mrs. Vicky is lower).
6. Income from agriculture in India: Rs. 1,80,000.

7. On June 29, 2009, Vicky gets a cash gift of Rs. 45,000 from his friend in foreign currency outside India. No other gift is received from any person during the previous year.

During the previous year 2009-10, he donates Rs. 15,000 to a public charitable institute and deposits Rs. 70,000 in the public provident fund. Compute the total income for the assessment year 2010-11.

Rebate and relief

16. Suman, an employee furnished the following particulars for previous year ending 31.03.2010:

| S. No. | Particulars | Rs. |
|---------------|------------------------------------------------------------------------------------------------------|------------|
| (a) | Salary income as computed | 6,00,000 |
| (b) | During the year arrears of salary were received not included in the above) related to F.Y. 2001- 02 | 15,000 |
| (c) | Assessed income of Financial Year 2001-02 | 66,000 |
| (d) | On 25.3.2010, amount deposited in Public Provident Fund Account | 50,000 |

You are requested to compute relief u/s. 89 in terms of tax payable.

The rates of tax for the A.Y. 2002-2003 are:

| | |
|---------------------|-----|
| On First Rs. 50,000 | Nil |
| On Next Rs. 10,000 | 10% |
| On Next Rs. 90,000 | 20% |
| On the balance | 30% |

(Surcharge @ 2% when taxable income exceeds Rs. 60,000).

Profits and gains of business or profession

17. Parvesh is a trader of electrical goods paid hire charges to a goods carrier on different occasions as detailed here below:

- (a) Rs. 26,000 by way of cash on 28-09-2009.
- (b) Cash payment of Rs. 31,000; and Rs. 9,000 for one invoice on 11-10-2010.
- (c) Rs. 10,000; Rs. 15,000; and Rs. 8,000 all by way of cash on 13-03-2010.

Advise on the admissibility of above payment.

Tax deducted at source

18. The Finance Act (No.2), 2009 has inserted a new section in respect of mandatory requirement of furnishing PAN in all TDS statements, bills, vouchers and correspondence between deductor and deductee. Discuss.

Provisions for Filing of Return of Income

19. Is it compulsory to file a return of income? If so what is the time limit for submission of the return of income.

Refund of service tax

20. Answer the following with reference to *Notification No. 17/2009 dated 07.07.2009* relating to exemption to specified services received by an exporter and used for export of goods (refund of service tax paid) :-
- (a) What is the minimum amount of refund claim admissible?
 - (b) What is the time limit for filing the refund claim?

Special provision for payment of service tax

21. Explain the special provision for payment of service tax in case of services provided in relation to purchase or sale of foreign currency including money changing.

Exemption to services provided to SEZ

22. Singh Transporters are engaged in providing the services in relation to transport of goods to a unit of Special Economic Zone (SEZ) engaged in carrying out the authorized operations. The said services are consumed wholly within the SEZ. You are required to advise Singh Transporters as to what are the conditions which should be fulfilled in order to claim exemption in respect of the said services provided.

Computation of VAT

23. Compute the net VAT liability of Rishabh using the information given as follows:-

| Particulars | Rupees |
|---------------------------------------------------------------------------------------|--------|
| Raw material purchased from foreign market (including duty paid on imports @ 20%) | 12,000 |
| Raw material purchased from local market (including VAT charged on the material @ 4%) | 20,800 |
| Raw material purchased from neighbouring state (including CST paid on purchases @ 2%) | 7,140 |

| | |
|-------------------------------------------|-------|
| Storage, transportation cost and interest | 2,500 |
| Other manufacturing expenses incurred | 600 |

Rishabh sold the goods to Rajul and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.

Subtraction method

24. Briefly discuss, under what circumstances subtraction method of computing VAT is normally applied?

Demerits of VAT

25. Illustrate the demerits of VAT system.

SUGGESTED ANSWERS/HINTS

- (a) **False** – The Finance Act (No. 2), 2009 has extended the benefit of deduction under sections 10A and 10B upto A.Y. 2011-12.

(b) **False** - The Finance (No.2) Act, 2009 has revised the limit. Accordingly, from financial year 2009-10 onwards, advance tax would be payable only if the advance tax liability is Rs.10,000 or more.

(c) **False** – While computing Capital gains in respect of enhanced compensation, cost of acquisition shall be taken as Nil.

(d) **False** - The qualifying amount of the preliminary expenditure under section 35D can be claimed as deduction over a period of 5 years in equal installments.
- On analyzing the information given about the period of stay of Gaurav in India, the following position emerges:

| Previous year | Assessment year | Period of stay (Number of days) |
|---------------|-----------------|---------------------------------|
| 2006- 2007 | 2007- 2008 | 303 |
| 2007- 2008 | 2008- 2009 | - |
| 2008- 2009 | 2009- 2010 | 61 |
| 2009- 2010 | 2010- 2011 | 61 |

Considering the number of days of stay during each of the previous years, the residential status of Gaurav is determined as follows:

- (i) For the assessment year 2007-2008, Gaurav has stayed for not less than 182 days during the relevant previous year 2006-2007. Hence, he is a resident. Also he

satisfies the two additional conditions for not ordinarily resident. Therefore, status of Gaurav for the A.Y.2007-08 is Resident but Not Ordinarily Resident.

- (ii) For the assessment year 2008-09, he has never stayed in India. Therefore, he is a non-resident, as having not fulfilled any of the two basic conditions.
- (iii) For the assessment year 2009-10, the period of stay is 60 days. According to section 6, an individual who stays for 60 days or more should also fulfill the requirement of stay of 365 days or more during the preceding 4 years. This limb of the basic condition is not satisfied and therefore, he is a non-resident.
- (iv) For the assessment year 2010-11, the period of stay does not satisfy any of 2 basic conditions. Therefore, he is a non-resident.

Note : -

The information about stay of Gaurav's wife and children in India is not relevant to determine the residential status of Gaurav. Similarly, maintenance of a residence in India is not relevant for determination of residential status.

3. Exemption limit for taxation of anonymous donations under section 115BBC

- (i) Anonymous donations received by wholly charitable trusts and institutions are subject to tax at a flat rate of 30% under section 115BBC. Further, anonymous donations received by partly charitable and partly religious trusts and institutions would be taxed @ 30%, only if such anonymous donation is made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.
- (ii) In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.
- (iii) The exemption limit is the higher of the following –
 - (1) 5% of the total donations received by the assessee; or
 - (2) Rs.1 lakh.
- (iv) The total tax payable by such institutions would be –
 - (1) tax@30% on anonymous donations exceeding the exemption limit as calculated above; and
 - (2) tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.
- (v) The following table illustrates the calculation of anonymous donations liable to tax @30% under section 115BBC –

| Situation | Total donations during the year (Rs.) | Anonymous donations received during the year (Rs.) | Exemption (Rs.) | Anonymous donations taxable@30% (Rs.) |
|-----------|---------------------------------------|----------------------------------------------------|-----------------|---------------------------------------|
| 1 | 15,00,000 | 4,00,000 | 1,00,000 | 3,00,000 |
| 2 | 30,00,000 | 7,00,000 | 1,50,000 | 5,50,000 |
| 3 | 40,00,000 | 10,00,000 | 2,00,000 | 8,00,000 |

4. Tax Treatment for Limited Liability Partnerships [Sections 2(23) & 140]

- (i) The Finance (No.2) Act, 2009 has incorporated the taxation scheme of LLPs in the Income-tax Act on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.
- (ii) Consequently, the following definitions in section 2(23) have been amended -
 - (1) The definition of 'partner' to include within its meaning, a partner of a limited liability partnership;
 - (2) The definition of 'firm' to include within its meaning, a limited liability partnership; and
 - (3) The definition of 'partnership' to include within its meaning, a limited liability partnership.

The definition of these terms under the Income-tax Act would, in effect, also include the terms as they have been defined in the Limited Liability Partnership Act, 2008. Section 2(q) of the LLP Act, 2008 defines a 'partner' as any person who becomes a partner in the LLP in accordance with the LLP agreement. An LLP agreement has been defined under section 2(o) to mean any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

- (iii) The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. Therefore, clause (cd) has been inserted in section 140, which lays down the "Authorised signatories to the return of income", to provide that the designated partner shall sign the return of income an LLP. However, where, for any unavoidable reason such designated partner is not able to sign and verify the return or where there is no designated partner as such, any partner can sign the return.
- (iv) Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general partnership firm to an LLP will have no tax

implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.

- (v) The LLP shall be entitled to deduction of remuneration paid to working partners, if the same is authorized by the partnership deed, subject to the limits specified in section 40(b)(v), i.e., -
- | | | |
|-----|--------------------------------------------------------------|--------------------------------------------------------|
| (a) | On the first Rs.3,00,000 of book profit or in case of a loss | Rs.1,50,000 or 90% of book profit, whichever is higher |
| (b) | On balance book profit | 60% of book profit |
- (vi) The LLP shall be entitled to deduction of interest paid to partners if such payment is authorized by the partnership deed and the rate of interest does not exceed 12% simple interest per annum.
- (vii) The LLPs cannot avail the presumptive taxation scheme under section 44AD w.e.f. A.Y.2011-12. However, section 44AE does not debar a LLP from availing the scheme thereunder.

5. Computation of Income from House Property for the Assessment year 2010-11

| | Rs. | Rs. |
|--------------------------------------------------------------------------------------------------|----------|-----------------|
| Let out property (50%) | | |
| Gross annual value | | |
| (a) Municipal value (50% of Rs. 5,00,000) | 2,50,000 | |
| (b) Actual rent (Rs.9,000 x 12 x 3) (Rs.3,24,000 – Rs.27,000) (vacancy of one unit for 3 months) | 2,97,000 | 2,97,000 |
| Less : Municipal taxes paid (50% of Rs. 2,00,000) | | 1,00,000 |
| Net annual value | | 1,97,000 |
| Less : Deduction u/s. 24 | | |
| (a) Standard deduction @ 30% | 59,100 | |
| (b) Interest on loan (50%) | 1,25,000 | 1,84,100 |
| Income from let out property | | 12,900 |
| Therefore, share of each co-owner is 1/3 rd of Rs.12,900 | | 4,300 |

Self Occupied Property

| | Arun | Babloo | Chandan |
|----------------------------------------------------------------------------------------------------|-------------------|-------------------|-------------------|
| | Rs. | Rs. | Rs. |
| Annual value | Nil | Nil | Nil |
| Less : Deduction u/s. 24(b) | | | |
| Interest on loan (Rs. 1,25,000 ÷ 3 = 41,666) restricted to maximum Rs. 30,000 for each co-owner | 30,000 | 30,000 | 30,000 |
| Income from self occupied property | (-) 30,000 | (-) 30,000 | (-) 30,000 |

Computation of the total income of the three brothers for the A.Y. 2010-11

| | Arun | Babloo | Chandan |
|-----------------------------------|-----------------|-----------------|-----------------|
| | Rs. | Rs. | Rs. |
| Income from House Property | | | |
| Let out portion | 4,300 | 4,300 | 4,300 |
| Self-occupied portion | (-) 30,000 | (-) 30,000 | (-) 30,000 |
| Net income from house property | (-) 25,700 | (-) 25,700 | (-) 25,700 |
| Other income | 1,90,000 | 2,00,000 | 2,20,000 |
| Total income | 1,64,300 | 1,74,300 | 1,94,300 |

Interest on borrowed capital is allowable subject to maximum of Rs. 30,000

6. Deemed Ownership (Section 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(ii)]** – 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 house 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 – Any rights by way of lease from month to month or for a period not exceeding one year.

7. (a) **False** - If two or more persons jointly own a property and if their shares are definite and ascertainable, then the income from such property cannot be taxed as income of an association of persons. In such case the property owned by co-owners are assessable individually.
- (b) **False** - Where the total income of an assessee includes any income, arising from the transfer of long term capital asset, which is chargeable under the head "capital gains", such long term capital gain shall be charged to tax at 20% rate.
- (c) **True** - As per section 12AA(3), the Commissioner has power to cancel the registration of the trust, by passing a written order, where he is satisfied, inter alia, that the activities of the trust are not genuine. However, the trust should be given a reasonable opportunity of being heard.
- (d) **False** - In this case, the compensation has been fixed by the State Government and hence the exemption will not be available. As per section 10(37), where an individual owns urban agricultural land which has been used for agricultural purposes for a period of two years immediately preceding the date of transfer, and the same is compulsorily acquired under any law and the compensation is determined or approved by the Central Government or the Reserve Bank of India, resultant capital gain will be exempt.

8. **Computation of Gross Total Income of Mr. Sunder for the A.Y. 2010-11**

| | Rs. | Rs. |
|----------------------------------------------------------------------------|--------|--------------|
| Income from house property | | |
| Rent from house property | | 40,000 |
| Less : Municipal taxes | | Nil |
| | | <hr/> 40,000 |
| Less : | | |
| (i) Standard deduction @ 30% | 12,000 | |
| (ii) Interest | 400 | 12,400 |
| | | <hr/> 27,600 |
| Income from house property | | |
| Profit and Gains of Business or Profession | | |
| Net Profit as per P & L A/c. | | 1,35,500 |
| Add: Inadmissible expenses | | |
| (i) Interest on loan for securities and house property (Rs. 400 + Rs. 500) | 900 | |
| (ii) Repairs and renewal of property (Rs. 2,500 x 40%) | 1,000 | |

| | | |
|-----------------------------------------------------------------|-------|----------------|
| (iii) Depreciation on house property | 1,500 | |
| (iv) Fire insurance premium on house property (Rs. 4,500 x 30%) | 1,350 | |
| (v) Life insurance premium (Rs. 4,500 x 40%) | 1,800 | |
| (iv) Subscription to political parties | 3,000 | 9,550 |
| | | <hr/> 1,45,050 |

Less : Income not taxable under this head

| | | |
|-------------------------------|--------|--------------|
| (i) Interest on Debentures | 12,000 | |
| (ii) Rent from house property | 40,000 | 52,000 |
| | | <hr/> 93,050 |

Less : Expenses allowable but not debited to P & L A/c.

| | | |
|---------------------------------|-------|--------------|
| (i) Diwali expenses | 1,500 | |
| (ii) New telephone expenses | 3,000 | |
| (iii) Loss of cash due to theft | 1,000 | 5,500 |
| | | <hr/> 87,550 |

Business Income

87,550

Income from other sources

Interest on debentures (Rs.12,000 – Rs.200) 11,800

Computation of Gross total income

| | |
|--------------------------------------------------|--------|
| (i) Income from house property | 27,600 |
| (ii) Profits and gains of business or profession | 87,550 |
| (iii) Income from other sources | 11,800 |

Gross Total Income

1,26,950

Note: Subscription of Rs. 3,000 paid to political party shall be allowed as deduction u/s. 80GGC.

9. Computation of Gross Total Income for the A.Y. 2010-11:

| Particulars | Mr. A Rs. | Second child Rs. |
|--------------------------------|--------------|---------------------|
| 1. Salary | 50,000 | 25,000 |
| 2. Income from business | 70,000 | |
| 3. Income from other sources : | | |

| | | |
|----------------------------|-----------------|---------------|
| Bank interest | 8,000 | |
| Interest on investment | 9,000 | |
| 4. Income to be clubbed : | | |
| (a) Second child's income | | |
| Interest on FD | 20,000 | |
| Bank interest | 9,000 | |
| Interest on investment | 3,000 | |
| | 32,000 | |
| Less : Exempt u/s. 10(32) | 1,500 | 30,500 |
| (b) Third child's income : | | |
| Bank interest | 2,000 | |
| Less : Exempt u/s. 10(32) | 1,500 | 500 |
| Gross Total Income | 1,68,000 | 25,000 |

Note: Income of minor child is clubbed even if it is earned on investment made out of salary. First child's income is not clubbed as age of majority had been attained.

10. Manish is a resident but not ordinarily resident in India for the assessment year 2010-11. Income earned and received out of India is not chargeable to tax in India. Therefore, salary and perquisites received out of India for rendering service in New York is not deemed as income chargeable to tax in India under section 9(1)(iii). For the assessment year 2010-11, taxable income of Manish will, therefore, be computed as follows:

| | Rs. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Salary of 4 months of service in New York (not taxable) | - |
| Salary of 8 months of service in Delhi | 2,20,000 |
| Bonus of 2008-09 | 30,000 |
| Employer's contribution towards recognised provident fund in excess of 12% of salary [Rs. 4,000 x 12 – 12% of (Rs. 1,20,000 + Rs.2,20,000); salary of the entire previous year will be taken, as the provident fund is maintained in Delhi] | 7,200 |
| Free car facility in Delhi | 58,000 |
| Car allowance in New York (not chargeable as Manish is resident but not ordinarily resident in India) | -- |
| Rent free flat in Delhi (Note 1) | 54,000 |
| Rent free flat in New York (not chargeable as Manish is resident but | -- |

not ordinarily resident in India)

| | |
|--------------------------------------------------------------------------------------------------------|-----------------|
| Sale of computer | - |
| Pension from Gujarat Government (Rs. 10,000 x 12] | 1,20,000 |
| Gross salary | 4,89,200 |
| Less : Deduction under section 16 | -- |
| Income from salary | 4,89,200 |
| Income from other sources | 2,10,000 |
| Gross total income | 6,99,200 |
| Less : Deduction under section 80C (Note 5) | 1,00,000 |
| Net income (rounded off) | 5,99,200 |
| Tax | |
| Income tax | 83,760 |
| Add : Surcharge (surcharge is not applicable in case of an individual for the assessment year 2010-11) | Nil |
| Tax and surcharge | 83,760 |
| Add : Education cess (2% of tax and surcharge) | 1,675 |
| Add : Secondary and higher education cess [1% of tax and surcharge] | 838 |
| Tax payable | 86,273 |
| Tax payable (rounded off) | 86,270 |

Notes:

1. Salary for the purpose of valuation of rent-free flat at Delhi comes to Rs. 3,00,000 (i.e., Rs. 2,20,000 + pension of 8 months: Rs. 80,000). Lease rent of the flat is Rs. 1,12,000 (i.e., Rs. 14,000 x 8). As lease rent of the flat exceeds, 15% of salary, Rs. 45,000 (being 15% of salary) is taxable value of unfurnished flat. To this figure, rent of furniture is added to arrive at the valuation of furnished flat. Therefore, Rs. 54,000 (i.e., Rs.45,000 + Rs. 9,000) is value of rent-free furnished flat provided in Delhi.
2. Salary, allowance or perquisite from UNO is not chargeable to tax.
3. Professional tax is deductible on payment basis. As professional tax is paid after the end of the previous year 2009-10, it is, not deductible.
4. Perquisite in respect of sale of computer

| | Rs. |
|-------------------------------------------------------------------------------------|---------------|
| Cost of computer to the employer | 62,000 |
| Less: Normal wear and tear for first year ending April 9, 2008 (50% of Rs. 62,000) | 31,000 |
| Balance as on April 10, 2008 | 31,000 |
| Less: Normal wear and tear for second year ending April 9, 2009 (50% of Rs. 31,000) | 15,500 |
| Balance as on April 10, 2009 | 15,500 |
| Less: Sale price paid by Manish | 16,500 |
| Balance | Nil |

5. Deduction under section 80C

| | Rs. |
|----------------------------------------------------------------------------------------------------------|-----------------|
| Gross qualifying amount | |
| Contribution to recognised provident fund | 65,000 |
| Contribution to public provident fund | 19,000 |
| Payment of insurance premium to an American insurance company (subject to maximum of 20% of sum assured) | 30,000 |
| Tuition fees of Manish's son (Rs. 4,000 x 12) | 48,000 |
| Investment in equity shares of a notified company engaged in maintaining an infrastructure facility | 26,000 |
| Total | 1,88,000 |
| Maximum permissible | 1,00,000 |
| Deduction under section 80C | 1,00,000 |

11. **Computation of Capital Gain for the Assessment year 2010-11**

| | Property X | Property Y |
|---------------------------------------------------------------------------|-------------------|-------------------|
| | Rs. | Rs. |
| Full Value of consideration | 15,00,000 | 15,00,000 |
| Less: Expenses of transfer | 25,000 | 25,000 |
| Indexed cost of acquisition | | |
| Property 'X' $\left(\text{Rs. } 1,00,000 \times \frac{632}{100} \right)$ | 6,32,000 | |

$$\text{Property 'Y' } \left(\text{Rs. } 3,50,000 \times \frac{632}{199} \right) \quad 11,11,558$$

| | | |
|--------------------------------------------------------------------|-----------------|-----------------|
| Long term capital gain | 8,43,000 | 3,63,442 |
| Total long-term capital gain | | 12,06,442 |
| Less: Exemption u/s 54 (8,00,000+3,00,000+1,50,000) but limited to | | 12,06,442 |
| Taxable long-term capital gain | | Nil |

12. Carry forward and Set-off of Losses in case of closely held companies [Section 79]

- (i) Where in any previous year, there has been a change in the shareholding of a company in which the public are not substantially interested, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the previous year only if the beneficial shareholders of at least 51% of the voting power on the last day of the previous year remained the same as on the last day of the year or years in which the loss was incurred.
- (ii) However, this restriction shall not apply in the following two cases:
 - (1) where a change in the voting power is consequent upon the death of a shareholder or on account of transfer of shares by way of gift by a shareholder to his relative; and
 - (2) where the change in shareholding takes place in an Indian company, being a subsidiary of a foreign company, as a result of amalgamation or demerger of the foreign company. However, this is subject to the condition that 51% of the shareholders of the amalgamating/demerged company continue to be shareholders of the amalgamated/resulting company.
- (iii) The provisions of this section are applicable only in respect of carry forward of losses and not in respect of carry forward of unabsorbed depreciation, which is covered by section 32(2).

13. The taxability of the above transactions are as follows:

| Particulars | Head of Income | Financial year of chargeability | Explanation |
|---------------------------------------------------------------------------|----------------|---------------------------------|-------------------------|
| Compulsory acquisition in 2006 and receipt of compensation (Rs. 80 lakhs) | Capital gains | 2006-07 | By virtue of Section 45 |

| | | | | |
|----------------------------------------------------------------------------------|---------------------------|---------|--|----------------------------------------------------------------------------|
| Award of enhanced compensation of Rs.25 lakhs in November, 2008 | | | | Not taxable in F.Y. 2008-09 as the compensation has not yet been received. |
| Interest accrued on enhanced compensation (Rs.5 Lakhs) as on 31.3.2009 | | | | Not taxable in F.Y.2008-09 as the interest has not yet been received. |
| Receipt in May, 2009: | | | | |
| (a) Enhanced compensation (Rs.25 lakhs); and | Capital gain | 2009-10 | | By virtue of section 45 |
| (b) Interest on enhanced compensation (Rs.6 lakhs) subject to deduction u/s. 57. | Income from other sources | 2009-10 | | By virtue of section 56(2). |

14. Computation of total income of Ramesh for A.Y. 2010-11:

| | Rs. |
|-----------------------------------------------------------|-----------------|
| Business income | 85,000 |
| Long-term capital gains on transfer of gold | 4,20,000 |
| Short-term capital gain under section 111 A | 25,000 |
| Other short-term capital gain | 15,000 |
| Interest on debentures | 50,000 |
| Gross total income | 5,95,000 |
| Less: Deductions under sections 80C to 80U | |
| Under Section 80C in respect of public provident fund | 45,000 |
| Under Section 80D in respect of medical insurance premium | 5,000 |
| Under Section 80G in respect of donations [see Note 1] | 20,550 |
| Net income | 5,24,450 |

Note 1 - Computation of deduction under section 80G in respect of donations

Step 1 - Gross qualifying amount:

| | |
|----------------------------------------------------------------------------------------------------------------|-------|
| Donation to be National Trust for welfare of persons with Autism | 6,000 |
| Donation to the fund set up by the Gujarat Government for providing relief to victims of earthquake in Gujarat | 5,000 |
| Donation to Rajiv Gandhi Foundation | 2,000 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Donation to the Prime Minister's Drought Relief Fund | 7,000 |
| Donation to public Charitable institutions | 12,000 |
| Donation to a poor student (not eligible as the donee is not a public charitable institution) | -- |
| Donation of clothes to an approved institution (donation in kind is not eligible) | -- |
| Amount for construction of rest house (not eligible as amount will be utilised for the benefit of a particular community) | -- |
| Gross qualifying amount | 32,000 |
| Step 2 - Net qualifying amount | |
| Donation to the Notional Trust for welfare of persons with Autism (without any maximum limit) | 6,000 |
| Donation to the fund set up by the Gujrat Government for providing relief to victims of earth quake in Gujrat (without any maximum limit) | 5,000 |
| Donation to Rajiv Gandhi Foundation (without any maximum limit) | 2,000 |
| Donation to the Prime Minister's Drought Relief Fund (without any maximum limit) | 7,000 |
| Donation to the public charitable institutions | |
| It is : | |
| a. Rs. 12,000 (being amount of donation) ; or | |
| b. Rs. 10,100 (being 10% of adjusted gross total income calculated under Note 2), whichever is lower. | |
| Rs. 10,100 is, therefore, eligible for net qualifying amount | 10,100 |
| Net qualifying amount | 30,100 |
| Step 3 - Amount deductible: | |
| 50% of Rs. 19,100 + 100% of Rs. 11,000 | 20,550 |
| Note 2 - Adjusted Gross Total Income is calculated as under | |
| Gross total income | 5,95,000 |
| Less: Long-term capital gains | 4,20,000 |
| Less: Short-term capital gain under section 111 A | 25,000 |
| Less: Amount of deduction under sections 80C to 80U except section 80G | 49,000 |
| Adjusted gross total income | 1,01,000 |

15. Computation of total income for the Assessment year 2010-11

| | Rs. | Rs. |
|-----------------------------------------------------------------------------------------------------|------------|------------------|
| Salary (Note 1) | | 11,71,000 |
| Income from house property | | (-) 19,000 |
| Capital gains (Note 2) | | |
| Sale proceeds of house | | |
| Sale proceeds of house | 12,50,000 | |
| Less : Indexed cost of acquisition | 12,25,735 | |
| Long-term capital gain | | 24,265 |
| Short-term capital gain (i.e., Rs. 13,95,000 - Rs. 12,55,000) | | 1,40,000 |
| Income from other sources | | |
| Amount withdrawn from NSS 81 | 60,000 | |
| Winnings from lotteries | 1,20,500 | |
| Gift from friend [nothing is taxable since the quantum of gift received does not exceed Rs. 50,000] | Nil | |
| Minor son's income (Rs. 25,700 -Rs. 1,500) | 24,200 | 2,04,700 |
| Gross total income | | 15,20,965 |
| Less: Deduction under section 80C [Rs.16,000 (repayment of loan to LIC) and Rs. 70,000 (PPF)] | | 86,000 |
| Less: Deduction under section 80G | | 7,500 |
| Net income (rounded off) | | 14,27,465 |

Note:

1. Income from salaries

| | |
|------------------------------------------------------|----------|
| Basic salary | 6,00,000 |
| Car (Rs. 1,20,500 - Rs. 12,500) | 1,12,500 |
| Expenditure on training of | Nil |
| Expenditure on education of family members | 8,500 |
| Sale of goods at discount | 10,000 |
| Special allowance | 1,15,000 |
| Medical facility in a hospital owned by the employer | Nil |
| Medical treatment outside India (permitted by | Nil |

RBI)

Expenditure on travel in connection with medical treatment outside India (taxable as gross total income before including this expenditure exceeds Rs. 2,00,000) 3,00,000

Expenditure on stay outside India (RBI's permission is taken) Nil

Furniture (10% of Rs. 2,50,000) 25,000

Gross salary 11,71,000

Less: Standard deduction --

Salary income 11,71,000

2. In this case exemption under section 54 is not taken. X has purchased a house within the stipulated time which is sold before the expiry of 3 years (within the same previous year). If exemption under section 54 is taken, then long-term capital gain will be reduced to nil and short-term capital gain will be increased by Rs. 11,265.

16. Tax payable for A.Y. 2010-11

| Computation of tax | Excluding arrears of salary (Rs.) | Including arrears of salary (Rs.) |
|------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|
| Current year salary | 6,00,000 | 6,00,000 |
| Add : Arrears of salary | -- | 15,000 |
| Gross Total income | 6,00,000 | 6,15,000 |
| Less : Deduction under chapter VI-A | | |
| -u/s 80C – P.P.F. Contribution | 50,000 | 50,000 |
| Total income | 5,50,000 | 5,65,000 |
| Income tax thereon | 69,000 | 73,500 |
| Add : Education cess @ 3% (includes 1% secondary and higher education cess) | 2,070 | 2,205 |
| Tax payable | 71,070 | 75,705 |

B. Tax payable for A.Y. 2002-03

| Computation of tax | Excluding arrears of salary | Including arrears of salary |
|--------------------|-----------------------------------|-----------------------------------|
|--------------------|-----------------------------------|-----------------------------------|

| | (Rs.) | (Rs.) |
|-------------------------|---------------|---------------|
| Current year income | 66,000 | 66,000 |
| Add : Arrears of salary | -- | 15,000 |
| Total income | 66,000 | 81,000 |
| Income tax thereon | 2,200 | 5,200 |
| Add : Surcharge @ 2% | 44 | 104 |
| Tax payable | 2,244 | 5,304 |

C. Relief u/s. 89

| Particulars | Rs. | Rs. |
|-----------------------------------------------------------------------------|--------|--------------|
| (i) Tax payable on arrears in A.Y. 2010-11 : | 75,705 | |
| Tax on income including arrears | 71,070 | 4,635 |
| Less : Tax on income excluding arrears | | |
| (ii) Tax payable on arrears in A.Y. 2002-03: | | |
| Tax on income including arrears | 5,304 | |
| Less : Tax on income excluding arrears | 2,244 | 3,060 |
| Relief u/s. 89 (i.e. excess tax payable in A.Y. 2002-03 for arrears) | | 1,575 |

D. Tax payable for A.Y. 2010-11 after relief u/s. 89

| Particulars | Rs. |
|-------------------------------------------------|---------------|
| Income tax payable on income including arrears | 75,705 |
| Less : Relief u/s. 89 as per workings (C) above | 1,575 |
| Tax payable | 74,130 |

17. In the case of payments otherwise than by A/c payee cheque/draft made towards carriage of goods, an enhanced limit of Rs. 35,000 has been allowed as against Rs. 20,000 in other cases. Accordingly, up to Rs. 35,000, disallowance u/s 40A(3) shall not apply. However, the enhanced limit is applicable only in respect payments made on or after 01-10-2009. In respect of payments made up to 30-09-2009, the limit of 20,000 applies. In the given case, accordingly, following would be the admissibility with regard to different situations.

- (a) Rs. 26,000 paid on 28-09-2009 by cash. Entire sum is disallowable since it was made above Rs. 20,000 prior to 30-09-2009.

- (b) On 11-10-2009, aggregate payment of Rs. 40,000 has been made. Payment by cash and by way of bearer cheque amounting to Rs. 40,000 shall be subject to disallowance u/s. 40A(3).

Students may note that in case a cheque of Rs. 9,000 was issued as crossed account payee instrument, the entire sum of Rs. 40,000 could have been claimed as deduction. Since, the cash payment of Rs. 31,000 would have been within the limit of Rs. 35,000 u/s. 40A(3) for freight payment.

18. Mandatory requirement of furnishing PAN in all TDS statements, bills, vouchers and correspondence between deductor and deductee [New Section 206AA]

- (i) The non-quoting of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.
- (ii) With a view to strengthening the PAN mechanism, new section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –
- (1) the rate prescribed in the Act;
 - (2) at the rate in force i.e., the rate mentioned in the Finance Act; or
 - (3) at the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I. However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194-B. Therefore, wherever tax is deductible at a rate higher than 20%, this amendment would not have any consequence.

- (iii) Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- (iv) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- (v) If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (ii) above.
- (vi) These provisions will also apply to non-residents where tax is deductible on payments or credits made to them.

- (vii) Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

19. Compulsory filing of return of income [Section 139(1)]

- (1) As per section 139(1), it is compulsory for companies and firms to file a return of income or loss for every previous year on or before the due date in the prescribed form.
- (2) In case of a person other than a company or a firm, filing of return of income on or before the due date is mandatory, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeds the basic exemption limit.
- (3) Such persons should, on or before the due date, furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.
- (4) Further, every person, being an individual or a HUF or an AOP or BOI or an artificial juridical person -
 - whose total income or the total income of any other person in respect of which he is assessable under this Act during the previous year
 - without giving effect to the provisions of section 10A or 10B or 10BA or Chapter VI-A
 - exceeded the basic exemption limit

is required to file a return of his income or income of such other person on or before the due date in the prescribed form and manner and setting forth the prescribed particulars.

For the A.Y.20010-11, the basic exemption limit is Rs.1,60,000 for individuals/HUFs/AOPs/BOIs and artificial juridical persons, Rs.1,90,000 for women assesseees below the age of 65 years and Rs.2,25,000 for assesseees of the age of 65 years or more at any time during the previous year. These amounts denote the level of total income, which is arrived at after claiming the admissible deductions under sections 10A, 10B, 10BA and Chapter VI-A. However, the level of total income to be considered for the purpose of filing return of income is the income before claiming the admissible deductions under sections 10A, 10B, 10BA and Chapter VI-A.

- (5) 'Due date' means -
 - (a) 31st October of the assessment year, where the assessee is -
 - (i) a company; or

- (ii) a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or
 - (iii) a working partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.
 - (b) 31st July of the assessment year, in the case of any other assessee.
- 20. (a)** The minimum amount of refund claim admissible under the said notification is five hundred rupees.
- (b)** The claim for refund shall be filed within one year from the date of export of the said goods.
- The date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962.
- 21.** The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Finance Act, 1994 as amended shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of chapter V of the Finance Act, 1994.
- However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.
- 22.** In the instant case, the conditions to be satisfied in order to claim the exemption of the services provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone are as follows:-
- (a)** The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);
 - (b)** The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;
 - (c)** In case of the services consumed wholly within the special economic zone (as in the given case), the exemption can be claimed by the developer or units of special economic zone upfront without following the refund route.

- (d) No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004.
- (e) Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification.
- (f) The developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.

23. Computation of Sale Price and VAT payable thereon;

| Particulars | Rupees |
|----------------------------------------------------------------------------|---------------|
| Raw material purchased from foreign market (Note – 1) | 12,000 |
| Raw material purchased from local market (Rs. 20,800 – Rs. 800) (Note – 2) | 20,000 |
| Raw material purchased from neighbouring state (Note – 3) | 7,140 |
| Storage, transportation cost and interest | 2,500 |
| Other manufacturing expenses incurred | 600 |
| Cost of production | <u>42,240</u> |
| Add: Profit earned @10% on Rs. 42,240 | 4,224 |
| Sale Price | <u>46,464</u> |
| VAT @ 12.5% on sales | <u>5,808</u> |

Net VAT liability of Rishabh:-

| | |
|-----------------------------------|--------------|
| VAT on sale price | 5,808 |
| Less: Set-off of VAT on purchases | |
| On imports | Nil |
| On local purchases | <u>800</u> |
| Net VAT payable by Rishabh | <u>5,008</u> |

Notes:-

- Since, the duty paid on imports is not a State VAT; it will form part of cost of input.
- VAT charged by the local suppliers is Rs. 800. Since, the credit of this would be available; it shall not be included in the cost of input.
- Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.

24. The subtraction method of computing VAT is normally applied where:-

- (a) the tax is not charged separately and
- (b) the same rate of tax is attracted on all, including consumables and services, added at all the stages of production/distribution.

25. Demerits of VAT system:-

- 1. The merits accrue in full measure only under a situation where there is only one rate of VAT and VAT applies to all commodities without any question of exemptions whatsoever. Once concessions like differential rates of VAT, composition schemes, exemption schemes, exempted category of goods etc. are built into the system, distortions are bound to occur.
- 2. In the federal structure of India in the context of sales-tax, so long as Central VAT is not integrated with the State VAT, it is difficult to put the purchases from other States at par with the State purchases. Therefore, the advantage of neutrality is confined only for purchases within the State.
- 3. For complying with the VAT provisions, the accounting cost increases. The burden of this increase does not commensurate with the benefit to traders and small firms.
- 4. Since VAT is imposed or paid at various stages and not on last stage, it increases the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage-last point taxation system.
- 5. VAT is a form of consumption tax. Since, the proportion of income spent on consumption is larger for the poor than for the rich, VAT tends to be regressive.
- 6. As a result of introduction of VAT, the administration cost to the State increases as the number of dealers to be administered goes up significantly.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.2009 and 31.10.2009

Students may note that the Study Material for IPCC Group I Paper 4: Taxation A.Y. 2010-11 has been updated with the law as amended by the Finance (No.2) Act, 2009 and notifications and circulars issued upto 30.04.2009. This study material is relevant for the students of both IPCC and PCC appearing for May 2010 examination. However, for the PCC students, the following chapters in VAT are not relevant: –

- 1. Chapter 5: Input Tax Credit and Composition Scheme for Small Dealers
- 2. Chapter 6 : VAT Procedures

The following are the amendments which have been made between 1.05.2009 and 31.10.2009. It may carefully be noted that for the students appearing in May 2010 examination, the amendments made by Notifications, Circulars etc. up to 31.10.2009 are relevant.

A. INCOME TAX

I CIRCULARS

1. Circular No. 4/2009, dated 29.6.2009

Section 195 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a non-resident unless a no objection certificate has been obtained from the Income Tax Department. This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format. The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorised dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking. The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009 is as follows:-

- (i) The person making the payment (remitter) will obtain a certificate from an accountant (other than employee) as defined in the Explanation to section 288 in Form 15CB.
- (ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

- (iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.
- (iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.
- (v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

2. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

- a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.
- b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No 23 dated 23rd July, 1969.

II NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

| S. No. | Financial Year | Cost Inflation Index |
|--------|----------------|----------------------|
| 1. | 1981-82 | 100 |
| 2. | 1982-83 | 109 |
| 3. | 1983-84 | 116 |
| 4. | 1984-85 | 125 |
| 5. | 1985-86 | 133 |

| | | |
|-----|-----------|-----|
| 6. | 1986-87 | 140 |
| 7. | 1987-88 | 150 |
| 8. | 1988-89 | 161 |
| 9. | 1989-90 | 172 |
| 10. | 1990-91 | 182 |
| 11. | 1991-92 | 199 |
| 12. | 1992-93 | 223 |
| 13. | 1993-94 | 244 |
| 14. | 1994-95 | 259 |
| 15. | 1995-96 | 281 |
| 16. | 1996-97 | 305 |
| 17. | 1997-98 | 331 |
| 18. | 1998-99 | 351 |
| 19. | 1999-2000 | 389 |
| 20. | 2000-01 | 406 |
| 21. | 2001-02 | 426 |
| 22. | 2002-03 | 447 |
| 23. | 2003-04 | 463 |
| 24. | 2004-05 | 480 |
| 25. | 2005-06 | 497 |
| 26. | 2006-07 | 519 |
| 27. | 2007-08 | 551 |
| 28. | 2008-09 | 582 |
| 29. | 2009-10 | 632 |

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

- (1) An e-Return Intermediary shall have the following qualifications, namely:-

- (a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or
 - (b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or
 - (c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
 - (d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or
 - (e) a Drawing or Disbursing Officer (DDO) of a Government Department.
- (2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.
- (3) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessee's information is properly secured.
- (4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e>Returns which will be filed through him, as decided by e-Return Administrator from time to time.
- (5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

B. SERVICE TAX

Notification No. 26/2009 ST dated 19.08.2009 has notified 01.09.2009 as the date on which the services introduced by the Finance (No. 2) Act, 2009 would become effective. Further, the amendments made in the existing services vide the Finance (No. 2) Act, 2009 would also become effective from 01.09.2009.

1. **Notification No. 40/2009 ST dated 30.09.2009** has amended *Notification No.17/2009 ST dated 07.07.2009* which exempts certain specified taxable services received by an exporter and used for export of goods. The following service (inserted at point no. 17 in the original notification) received by an exporter and used for export of goods has also been exempted vide this notification:

| | | | |
|-----|---------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17. | (zzzzl) | Service provided for transport of export goods through national waterway, inland water and coastal shipping. | <p>i. The exporter shall-</p> <ol style="list-style-type: none"> 1. produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; 2. produce evidence to the effect that the said transport is provided for export of relevant goods. |
|-----|---------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. *Notification No. 9/2009 ST dated 03.03.2009* was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has been issued to amend the aforesaid *Notification 9/2009 ST dated 03.03.2009* to provide unconditional exemption to services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. The exemption by way of refund would be limited to situations only when taxable services provided to SEZ are consumed partially or wholly outside SEZ.

This has been done by making the following amendments in *Notification No. 9/2009 ST dated 03.03.2009*:

- A. Conditions (a) to (f) mentioned in paragraph 1 for claiming the exemption have been amended in the following manner:
- (i) The condition (c) for claiming the exemption has been substituted with the following condition:
“the exemption claimed by the developer or units of special economic zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the special economic zone except for services consumed wholly within the special economic zone;”
 - (ii) The condition (d) for claiming the exemption has been substituted with the following condition:
“the developer or units of special economic zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services;”

(iii) Another condition (g) has been added after condition (f) for claiming the said exemption. The new condition (g) reads as follows:

“(g) the developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.”

B. The manner of giving exemption mentioned in paragraph 2 has been amended. In paragraph 2, for the words, “shall be subject to the following conditions”, the words, “,except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions” shall be substituted.

Note: The Budget Notifications issued on 07.07.2009 are given in the Supplementary Study Paper 2009. Further, they have also been incorporated in the Study Material of Taxation (Edition 2009). Therefore, the same have not been given here again.