

## Assessment of Various Entity

### Company

#### Tax rate for Company

Assessee	Tax rate
Domestic company (if total income < ₹400 crores in the PY 2019-20)	25%
Domestic company (other cases)	30%
Foreign company	40%

Assessee	Condition	Surcharge rate
Domestic company:	if net income ₹1 crore – ₹10 crore	7%
	if net income ₹10 crore and above	12%
Foreign company:	if net income ₹1 crore – ₹10 crore	2%
	if net income ₹1 crore – ₹10 crore	5%

In all the above cases, Health and Education Cess is applicable @ 4% on tax

#### Section 115BA: 25% Tax in case of certain Domestic Manufacturing Companies

 **Assessee:** Domestic Manufacturing Company – Setup & Registered on or after 01.03.2016

 **Tax Rate:**

1. Income u/s 115BA shall be taxable @ 25%
2. Special tax rate for the income u/s 111A, 112, 112A etc.
3. Surcharge and HEC are applicable at usual rates

 **MAT** – is applicable as per S.115JAA

 **Conditions:**

1. Company has been setup & registered on or after 01.03.2016
2. Company is engaged in the business of manufacture or production of any article or things
3. Company should not claim benefits of sections
  - 10AA
  - 32(1)(iia), 32AD
  - 33AB & 33ABA
  - 35
  - Any deduction in respect of certain income u/c VI-A (except 80JJAA)

 **Options**

1. Exercise the option before the due date of ROI u/s 139(1)
2. Once option is exercised, it can't be withdrawn for the same or any other PY
3. However, company which has opted for S.115BAA in that case option under this section may be withdrawn.

## **Section 115BAA: 22% Tax in case of certain Domestic Manufacturing Companies**

 **Assessee:** Domestic Company – w.e.f. AY 2020-21

 **Tax Rate:**

1. Income u/s 115BAA shall be taxable @ 22%
2. Special tax rate for the income u/s 111A, 112, 112A etc.)
3. 10% Surcharge (for all income) and 4% HEC are applicable at usual rates

 **MAT** – is NOT applicable & B/fd MAT credit cannot be set off against income u/s S.115BAA


 **Conditions:**

1. Company has been setup & registered on or after 01.03.2016
2. Company is engaged in the business of manufacture or production of any article or things
3. Company should not claim benefits of sections
  - 10AA
  - 32(1)(iia), 32AD
  - 33AB & 33ABA
  - 35, 35AD, 35CCC, 35CCD
  - Any deduction in respect of certain income u/c VI-A (except 80JJAA, 80LA, 80M)
4. Company cannot set-off any B/fd loss or unabsorbed depreciation which is attributable to deduction referred above. Such loss or unabsorbed depreciation shall be deemed to have already given full effect and no further deduction for such loss shall be allowed for any subsequent year.
5. If the above conditions are not satisfied in any PY – the option will be invalid for the PY and subsequent PYs.

 **Options**


1. The beneficial provisions of this section apply only if the option is exercised in the Form 10-IC on or before the due date of ROI u/s 139(1) for AY 2020-21 or subsequent AY
2. Once option is exercised, it would apply to subsequent AYs
3. Further, once the option is exercised for any PY it cannot be withdrawn for the same or any other PY

## **Section 115BAB: Tax in case of certain New Domestic Manufacturing Companies**

 **Assessee:** Domestic Manufacturing Company – w.e.f. AY 2020-21

 **Tax Rate:**

1. Income u/s 115BAB shall be taxable @ 15%
2. STCG on transfer of depreciable asset @ 15%  
STCG on transfer of non-depreciable asset @ 22%  
Other income (IFHP & IFOS, etc) @ 22%  
(however, no deduction or allowance u/s 24, 57 shall be allowed)  
Special tax rate for the income u/s 111A, 112, 112A etc.)  
Excess profit as computed by AO u/s 115BAB(6) @ 30%
3. 10% Surcharge (for all income) and 4% HEC are applicable at usual rates

 **MAT** – is NOT applicable & No B/fd MAT credit as it is new company

 **Conditions:**

1. Setup and registered on or after 01.10.2019 and  
Commences manufacturing business on or before 31.03.2023

2. It should not be formed by splitting up or reconstruction of a business already in existence
3. P&M should be new.

**Exception**

- 20% of total P&M can be second hand
  - Imported P&M shall be treated as new only for this section
4. Company does not use any building previously used as a hotel or a convention center
  5. Company is not engaged in any business other than manufacturing or production of any article or thing and research relating to, or distribution of such article or thing manufactured or produced by it.

**But does not include business of**

- Development of Computer Software
  - Mining
  - Bottling of gas into cylinder
  - Printing books or production of cinematograph film
  - Any other notified business
- Note:** Business of power generation or distribution shall be treated as manufacturing business
6. Company should not claim benefits of sections
    - 10AA
    - 32(1)(iia), 32AD
    - 33AB & 33ABA
    - 35, 35AD, 35CCC, 35CCD
    - Any deduction in respect of certain income u/c VI-A (except 80JJAA , 80M)
  7. Company cannot set-off any B/fd loss or unabsorbed depreciation which is attributable to deduction referred above. Such loss or unabsorbed depreciation shall be deemed to have already given full effect and no further deduction for such loss shall be allowed for any subsequent year.
  8. If the above conditions are not satisfied in any PY – the option will be invalid for the PY and subsequent PYs. Thereafter regular tax rate or 115BAA is applicable.

 **Options**

1. The beneficial provisions of this section apply only if the option is exercised in the Form 10-ID on or before the due date of ROI u/s 139(1) for AY 2020-21 or subsequent AY
2. Once option is exercised, it would apply to subsequent AYs
3. Further, once the option is exercised for any PY it cannot be withdrawn for the same or any other PY

 **Other points**

1. If it appears to AO that, owing to the close connection between the company and any other person or for any other reason, the course of business is so arranged that the business transacted between them produces more profit than ordinarily expected to the company, excess profit computed by AO to be treated as income to the company and taxable @ 30% + 10% + 4%.
2. If transaction is > 20 crore, it will be covered in specified domestic transaction and transfer pricing shall apply.

**Section 115JB: Minimum Alternate Tax [MAT]****Applicable:** to Companies [including foreign / Govt / Non-Govt company]**Tax:** WEH of normal tax or 15% of book profit**MAT calculation:** 15% of book profit + applicable Surcharge + HEC**Section 115JB(7):** Located in International Financial Services Center (IFSC) & derives its income solely in convertible foreign exchange, then MAT is applicable @ 9% instead of 15%**Explanation to S.115JB: Computation of Book Profit:**

	<b>Part – 1</b>	<b>₹</b>
	<b>Profit as per the statement P/L A/c (Companies Act 2013)</b> <b>[except banking companies, insurance companies &amp; electricity companies]</b>	xxx
+	Income tax paid / provision [including tax + DDT + interest + SC + HEC][except penalty and fines]	xxx
+	Dividend paid / proposed	xxx
+	Provision for un-ascertained / contingent liabilities	xxx
+	Provision for diminution in the value of assets [provision for bad debts / AS-13 / AS28]	xxx
+	Any amount transferred to any reserve A/c	xxx
-	Amount withdrawn from any reserve A/c (if debited in PPY in P/L A/c)	xxx
+	Expenses for earning income exempt u/s 10/11/12	xxx
-	Income exempted u/s 10/11/12	xxx
+	Depreciation debited to P/L A/c	xxx
-	Depreciation (excluding depreciation on revaluation of asset)	xxx
+	Deferred tax (debit in P/L A/c)	xxx
-	Deferred tax (credit in P/L A/c)	xxx
+	Expenses related to share in the income of AOP / BOI	xxx
-	Income as a share in income of AOP / BOI (because income is already taxable in the hands of AOP / BOI)	xxx
+	Balance in revaluation reserve on retirement or disposal of asset (if not credited to P/L A/c)	xxx
-	Transfer from revaluation reserve (to the extent depreciation on revaluation assets)	xxx
+	Expenses relating to income to <b>foreign company</b> from - capital gain on securities or - interest, Dividend, royalty, fees for technical services If the tax rate on above income is less than MAT rate of 15%	xxx
-	Income to <b>foreign company</b> from – a. Capital gain on securities or b. Interest, dividend, royalty or fees for technical services If the tax rate on above income is less than MAT rate of 15%	xxx
+	Expenditure relatable to income by way of royalty of patent taxable u/s 115BBF	xxx
-	Income by way of royalty in respect of patent chargeable to tax u/s 115BBF (as per S.115BBF royalty is taxable @ 10% – MAT is not applicable)	xxx
+	Any notional loss on exchange of shares of SPV with units of Business Trust or notional loss due to change in carrying amount of units or loss on the transfer of units	xxx
-	Any notional gain on exchange of shared of SPV with units of business trust or notional gain due to change in carrying amount of units or gain on the transfer of units	xxx
+	Amount of gain on transfer [not on revaluation] of units of business trust (SP of units – cost of shares of SPV)	xxx

-	Amount of loss on transfer [not on revaluation] of units of business trust (SP of units – cost of shares of SPV)	xxx
+	Losses of subsidiary company	xxx
-	Profit of sick industrial company	xxx
-	WEL of [b/fd losses or b/fd unabsorbed depreciation]	xxx
-	B/fd losses <b>and</b> unabsorbed depreciation of company- (i) against whom an application for corporate insolvency resolution process has been admitted by the adjudicating authority u/s 7 or 9 or 10 of the Insolvency and Bankruptcy Code, 2016 (ii) company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the CG u/s 241 of the Companies Act, 2013 has suspended the BOD of such company and has appointed new directors who are nominated by the CG u/s 242 of the said act. (a company shall be a subsidiary of another company, if such other company holds more than half in the nominal value of equity share capital of the company)	xxx
	<b>Book Profit</b>	xxx

	<b>Part – 2</b>	<b>₹</b>
	<b>In case the company required to comply with Ind-AS then following additional adjustments to be made in book profit computed in Part – 1</b>	
	<b>Section 115JB(2A) &amp; 115JB(2C)</b>	
	<b>Book Profit as per Part – 1</b>	xxx
+	Items credited to other comprehensive income (OCI) and not to be reclassified to statement of profit or loss (except note 1)	xxx
+	Gain from change in fair value of equity instruments through OCI and revaluation surplus from assets on retirement, disposal, realisation or transfer	xxx
+	Amount debited to statement of P/L on distribution of non-cash assets to shareholder in a demerger as per Appendix A to Ind AS10	xxx
+	1/5 <sup>th</sup> of transition amount	xxx
-	Items debited to other comprehensive income (OCI) and not to be reclassified to statement of profit or loss (except note 1)	xxx
-	Loss from change in fair value of equity instruments through OCI and revaluation surplus from assets on retirement, disposal, realisation or transfer	xxx
-	Amount credited to statement of P/L on distribution of non-cash assets to shareholder in a demerger as per Appendix A to Ind AS10	xxx
-	1/5 <sup>th</sup> of transition amount	xxx
		xxx

**Note 1:**

Following shall not be increased or decreased from the book profit

1. Revaluation surplus from asset in accordance with the Ind AS 16 & 38
2. Gain or loss from investment in equity instruments designated at fair value through OCI in accordance with the Ind AS 109

Means MAT not applicable on Notional profit or loss of above 2 items. It will be applicable in the year in which such asset or investment is retired. Disposed, realised or transferred.

**Note 2:**

In a demerger, in the case of a resulting company, where the property and the liabilities of the undertaking received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company – S.115JB(2B)

**Note 3:**

Transition amount means the amount or the aggregate of the amount adjusted in the other equity (excluding capital reserve, and securities premium reserve) on the convergence date but not including the following:

1. Amount or aggregate of the amount adjusted in the other comprehensive income on the convergence date which shall be subsequently re-classified to the profit or loss
2. Revaluation surplus for assets in accordance with the Ind-AS 16 and Ind-AS 38 adjusted on the convergence date
3. Gains or losses from investments in equity instruments designated at fair value through other comprehensive date
4. Adjustments relating to items of property, plant and equipment and intangible recorded at fair value as deemed cost in accordance with paragraph D5 and D7 of the Ind AS 101 on the convergence date
5. Adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost in accordance with paragraph D15 of the Ind AS 101 on the convergence date and
6. Adjustments relating to cumulative translation differences of a foreign operation in accordance with paragraph D13 of the Ind-AS 101 on the convergence date.

However, the book profit of the PY in which the asset or investment referred to in sub-clause (B) to (E) above is retired, disposed, realised or otherwise transferred, shall be increased or decreased, as the case may be, by the amount or the aggregate of the amounts referred to in the said sub-clause relating to such asset or investment. The book profit of the PY in which the foreign operation referred to in sub-clause (F) is disposed or otherwise transferred, shall be increased or decreased, as the case may be, by the amount or the aggregate of the amounts referred to in the said sub-clause relating to such foreign operations

Convergence date means the first day of the first Ind-AS reporting period as defined in the Ind AS 101. Year of convergence means the PY within which the convergence date falls.

**Note:**

1. Provision for gratuity, leave salary, provision for warranty shall not be added, if it is made as per actuary valuation or scientific basis
2. MAT is not applicable in case of foreign companies
  - a. Foreign company – resident of a country or specified territory with which India has DTAA & such foreign company does not have any permanent establishment (P.E) in India
  - b. Foreign company – resident of country with which India does not have any DTAA & Foreign company is not required to seek registration under any companies' law

3. The provisions of S.115JB shall not be applicable in case of foreign company, if total income solely of PGBP referred u/s 44B, 44BB, 44BBA, 44BBB & such income offered to tax of such special rules

#### **Section 115JAA: MAT Credit**

1. MAT credit shall be c/fd & set-off up to 15 AYs
2. MAT credit = MAT – Normal tax
3. Setoff [up to normal tax - MAT] = Normal Tax > MAT
4. In case of conversion of a unlisted company into an LLP, the tax credit u/s 115JAA for MAT paid by the company u/s 115JB would not be allowed to the successor LLP
5. The amount of MAT credit will be reduced by:  
Foreign Tax Credit Allowed against MAT – FTC allowed against normal tax

#### **Note:**

1. Company to which MAT applies shall be liable to pay advance tax, interest u/s 234A/B/C
2. Apollo Tyres Ltd – where P&L is prepared as per Companies Act, the AO could not recompute profit of company for MAT calculation. He can adjust only adjustment provided in explanation 1 of S.115JB
3. MAT is not applicable to life insurance companies or person exercised option referred u/s 115BAA or 115BAB.

In case of company, where there is an increase in book profit of the current PY due to income of PPYs included in the book profit on account of an Advance Pricing Agreement u/s 92CC or Secondary Adjustment u/s 92CE, the AO shall, on an application made by the assessee, recompute the book profit of the PPYs, AO will also compute tax payable if any assessee.

#### **Note:**

1. For the purpose of rectification u/s 154, 4 year time limit shall be computed from the end of financial year in which application is made by assessee.
2. Above provision is applicable only if company have not utilized MAT credit arise in earlier years.

**Section 115BAC:** Concessional slab rates to individual and HUF [optional] [w.e.f. AY 2021-22]

Net Income Range	Income - Tax rates
Up to ₹2,50,000	Nil
₹2,50,001 – ₹5,00,000	5%
₹5,00,001 – ₹7,50,000	10%
₹7,50,001 – ₹10,00,000	15%
₹10,00,001 – ₹12,50,000	20%
₹12,50,001 – ₹15,00,000	25%
₹15,00,001 and above	30%

👤 **Special Income (u/s 111A, 112, 112A etc) shall be taxable @ Special rates**

👤 **Surcharge at usual rate for Individual and HUF + 4% HEC – applicable**

👤 **AMT:** is NOT applicable & B/fd AMT credit is first exhausted before opting S.115BAC

👤 **Conditions:**

1. Assessee is not eligible for following deductions / exemptions:

**HP:**

- Interest u/s 24(b) for self-occupied property.
- Set-off of HP Loss against other head

**Salary:**

- **S.16:** Standard deduction | Entertainment Allowance | Professional Tax
- **S.10(5):** Leave Travel Concession
- **S.10(13A):** HRA
- S.10(14): Allowances except
  - Transport Allowances
  - Travelling or Tour Allowances
  - Daily Allowances
  - Conveyance Allowances

**PGBP:** Section

- 10AA
- 32(1)(iia), 32AD
- 33AB, 33ABA
- 35, 35AD, 35CCC

**IFOS:**

- 10(32): Allowance for income of minor
- 10(17): Allowances to MPs / MLs
- 57: Deduction from family pension
- 35, 35AD, 35CCC

**Deduction u/c VI-A not available except [S.80JJAA, 80CCD(2)]**

2. Assessee cannot set-off any b/fd loss or unabsorbed depreciation attributable to deduction referred above
3. HP loss can
4. B/fd HP loss cannot be set-off against other head.
5. No deduction or exemption for allowance or perquisite provided under any other law for the time being in force



On failure to satisfy any of the forgoing conditions: option of concessional rate will be invalid and normal provisions of the Act shall apply –

- In respect of relevant AY – in case of Individual / HUF not having business income
- In respect of relevant AY and subsequent AY – in case of Individual / HUF having business income.

### **Option**

The option has to be exercised in Form 10-IE along with ROI to be furnished u/s 139(1)

- **In case of Individual / HUF not having business income:** assessee may choose whether or not to exercise the option in each PY, therefore assessee can choose any of the two tax regime every year depending on their tax liability.
- **In case of Individual / HUF having business income:** once the option is exercised it cannot be withdrawn except assessee ceases to have PGBP

### **Other Points**

- Rebate u/s 87A is available
- Clarification for the purpose of TDS by employer,  
Intimate his option to employer to deduct TDS as per S.115BAC else normal rate is taken

## **Section 115BAD: Tax on Income certain Resident Co-operative societies**

 **Assessee:** Resident Co-operative Society – w.e.f. AY 2021-22

 **Tax Rate:**

1. Income u/s 115BAD shall be taxable @ 22%
2. Special tax rate for the income u/s 111A, 112, 112A etc.)
3. 10% Surcharge (for all income) and 4% HEC are applicable at usual rates

 **AMT** – is NOT applicable & B/fd AMT credit is first exhausted before opting S.115BAD

 **Conditions:**

1. Assessee should not claim benefits of sections
  - 10AA
  - 32(1)(iia), 32AD
  - 33AB & 33ABA
  - 35, 35AD, 35CCC, 35CCD
  - Any deduction in respect of certain income u/c VI-A (except 80JJAA , 80LA)
2. Assessee cannot set-off any B/fd loss or unabsorbed depreciation which is attributable to deduction referred above.
3. If the above conditions are not satisfied in any PY – the option will be invalid for the PY and subsequent PYs. Thereafter regular tax rate is applicable.

 **Options**

1. The beneficial provisions of this section apply only if the option is exercised in the Form 10-IF on or before the due date of ROI u/s 139(1) for AY 2021-22 or subsequent AY
2. Once option is exercised, it would apply to subsequent AYs
3. Further, once the option is exercised for any PY it cannot be withdrawn for the same or any other PY

**Note:**

1. If assessee opted 115BAA / 115BAC / 115BAD in the first PY & if any unabsorbed additional depreciation of earlier years, then it will not be allowed to be setoff but shall be added to opening WDV of Block in the first PY.
2. If assessee opted section 115BA, 115BAB, 115BAC / 115BAD then maximum depreciation allowed @ 40%

### **Section 115BBF: Royalty income from Patent**

**Income:** Royalty income in respect of patent developed & registered in India

**Tax rate:** 10%

#### **Notes:**

1. Developed means 75% of expenditure should be incurred in India
2. No deduction for any expenditure / allowance in respect of royalty income shall be allowed under Act.
3. Eligible Assessee means: a person resident in India who is true and first inventor of the invention & whose name is registered as patentee under Patent Act, 1970.
4. Assessee has to exercise the option for taxation of royalty in accordance with provisions of S.115BBF up to due date of return filing u/s 139(1).
5. Where assessee opts for S.115BBF for any PY & the assessee is not offered income as per S.115BBF in any of the next 5 years then assessee shall not be eligible to claim benefit of S.115BBF for 5 AY subsequent to the AY relevant to the PY in which income has not been offered as per S.115BBF.

### **Section 115BBG: Income from Transfer of Carbon Credit**

**Assessee:** All Assessee

**Tax Rate:** 10% [on gross income without any deduction]

Notes for the S.115BB, S.115BBE, S.115BBF, S.115BBG

1. Deductions u/s 28 to 44C or S.57 not allowed against above income
2. Deduction u/s VI-A not available
3. Basic Exemption Benefit NOT available except  
LTCG u/s 112, 112A & STCG u/s 111A in case of Resident Individual & HUF

## Taxation of Business Trust [REIT / INVIT]

### Real Estate Investment Trust [REIT] or Infrastructure Investment Trust [INVIT]

**Examples:** India Grid Trust, Highways Infrastructure Trust, Embassy REIT, etc...

#### Taxability in the hands of Business Trust

1. Interest & Dividend from SPV shall be fully exempt u/s 10(23FC) & SPV is not required to deduct TDS on such interest
2. Rental income of REIT (only REIT) from renting / leasing / letting out any real estate asset owned by REIT shall be exempt u/s 10(23FCA)
3. All other income of business trust – taxable
  - a. LTCG u/s 112 – taxable @ 20%
  - b. STCG u/s 111A – taxable @ 15%
  - c. All other income – taxable @ MMR [30%+37%+4% = 42.744%]

#### Taxability in the hands of Unit Holders

1. Interest from business trust [which is received from SPV] shall be fully taxable and TDS is also applicable

Unit holder	Tax rate	TDS rate
NR / Foreign company	5%	5%
Others	Normal tax rates	10%

2. Dividend from business trust [which is received from SPV & SPV is taxable u/s 115BAA @ 22%] shall be fully taxable and TDS is also applicable

Unit holder	Tax rate	TDS rate
NR / Foreign company	10%	10%
Others	Normal tax rates	10%

3. Dividend from business trust [which is received from SPV & SPV is taxable NOT u/s 115BAA @ 22%] shall be fully exempt in the hands of business trust u/s 10(23FC) & in the hands of unit holder u/s 10(23FD)
4. Rental income received by unit holder from REIT shall be taxable in the hands of unit holder as it is exempt in the hands of REIT u/s 10(23FCA)

Unit holder	Tax rate	TDS rate
NR / Foreign company	Normal tax rates	Rates as per S.195
Others	Normal tax rates	10%

5. Taxability on transfer of unit of business trust [listed & STT paid]
  - a. LTCG [POH > 36 months] – taxable @ 10% u/s 112A in excess of 1 lakh
  - b. STCG – taxable @ 15% u/s 111A

Note: if unit is not listed

- a. LTCG [POF > 36 months] – taxable @ 20% u/s 112
  - b. STCG – taxable @ normal tax rate
6. All other income of business trust – exempt u/s 10(23FD)
  7. If any person transfers shares of SPV to Business Trust in exchange of units of business trust, it shall not be treated as transfer & capital gain shall not apply [S.47(xvii)]

**S.49(2AC):**

COA units = COA of shares in SPV

POH = Period of shares in SPV + Units in business trust

**Notes:**

1. Business Trust compulsorily required to file return as per S.139(4E)
2. SPV means Indian company in which business trust holds controlling interest & any specified percentage of shareholding (presently 50% or more)
3. Income distribution by business trust to its unit holders shall be of the same nature & in the same proportion in hands of the unit holders as it had been received by business trust [S.115UA].

## Taxation of Investment Fund

Investment fund means category I or category II alternative investment fund and is regulated under SEBI (Alternative Fund) Regulations, 2012.

**Category I:** Investment in Start-ups, SME, social and economically viable projects.

**Example:** Venture Capital Funds, SME funds, Social Venture Funds, Infrastructure Funds, Angel Investment Funds

**Category II:** Investment in Equity and Debt Securities,

**Example:** Private Equity Funds, Debt Fund, Fund of Funds.

### Note:

1. All incomes of investment funds (except PGBP) are exempt u/s 10(23FBA)
2. All income received by unit holders from investment fund are taxable in hands of unit holders (except PGBP) u/s 115UB.
3. Tax rates for investment fund (PGBP): Company & Firm – 30% | Others @ MMR
4. Any income distributed by investment fund (except PGBP), TDS has to be deducted by investment fund u/s 194LBB.

Unit holder	Tax rate	TDS rate
NR / Foreign company	Normal tax rates	Rates in force
Others	Normal tax rates	10%

5. If the income accruing / arising / received by fund during PY has not been paid / credited to unit holder, the same shall be deemed to have been credited to the account of investor on the last day of PY & taxable in hands of unit holder.

**Note:** If income already taxed in the year of accrual, then not taxable in the year of receipt

6. Any income accruing to received by a person being unit holder of an investment fund, out of investment made in investment fund, shall be chargeable to income tax in the same manner as if it were the income accruing / received by unit holder (same nature & proportion)
7. Investment fund compulsorily required to file return u/s 139(4F)
8. Losses of investment fund (after set-off)  
PGBP losses – c/fd and set-off by investment fund only  
Losses under any other head
  - a. Accumulated losses as on 31.03.2019
    - o Distributed to unit holders holding units on 31.03.2019
    - o Can be c/fd & set-off by unit holders
  - b. Current year losses
    - o Distributed to unit holder
    - o Can be c/fd & set-off by unit holders (if units held for 12 months or more)

## Taxation of Securitisation Trust

### Securitisation Trust:

- 👤 A special purpose distinct entity  
Regulated by SEBI (Public Offer & Listing of Securities DEBT Instruments Regulation), 2008
- 👤 A special purpose vehicle  
The guidelines on securitisation of standard assets issued by RBI
- 👤 A trust set up be a securitisation company or reconstruction company  
SARFAESI Act, 2002 or RBI directions / guidelines

### Taxability

1. Income of securitisation trust from the activity of securitisation shall be exempt in the hands of trust as per S.10(23DA)
2. Income accruing or arising to, or received by investor from securitisation trust (out of investment made in trust), shall be taxable in the hands of investor in the same manner & to the same extent as if investor had made investment directly in the underlying asset & not through the trust [S.115TCA]
3. Income in hands of investor shall be of the same nature & in the same proportion as it had been accrued / received by securitisation trust
4. If the income accruing / arising / received by trust during PY has not been paid or credited to the investor, the same shall be deemed to have been credited to the account of investor on the last day of PY
5. Where income has been taxable in hands of investor in the year of accrual then same shall not be taxable in the year in which trust actually paid income.
6. Securitisation trust required to deduct TDS at the time of payment or credit whichever is earlier u/s 194LBC

	Payee / Investor	TDS Rate
1	Resident individual / HUF	25%
2	Other Resident company	30%
3	NR & Foreign Company	Rate in force

### Common note for business trust, investment fund & securitisation trust

The business trust, investment fund & securitisation trust shall provide breakup regarding nature and proportion of its income and other details to unit holder / investor up to 30<sup>th</sup> June of the FY following the PY and Income Tax Authority (CIT / PCIT) up to 30<sup>th</sup> November (15<sup>th</sup> June in case of investment fund) of the FY following the PY.

## Charitable or Religious Trusts and Institutions

### Taxation of Trust [S.11 / 12 / 13]

#### Section 2(15): Charitable purpose means

1. Relief to poor
2. Education
3. Yoga
4. Medical relief
5. Preservation of environment (including watersheds, forests & wildlife)
6. Preservation of monuments or places or objects of artistic or historic interest
7. Advancement of any other object of general public utility (provided PGBP  $\leq$  20%)  
If PGBP > 20%, then exemption is not available in that PY but registration not cancelled.  
As per CBDT promotions of games & sports also treated as charitable purpose

#### Section 11(1): Income of Trust

Following incomes of trust shall be exempt-

1. Corpus Donations
2. 15% of Gross Income
3. Income **applied** for charitable or religious purposed in India (out of remaining 85%)

#### Notes:

1. Applied means  
Capital expenses + Revenue expenses  
**Donation** to other trust registered u/s 12AA / 12AB  
Repayment of loan taken for acquisition of capital assets.
2. If cost of asset already taken as applied then depreciation is not allowed [S.11(6)]
3. Corpus donation is exempt if safe investment [S.11(5)] is made
4. Amount applied out of corpus fund – not treated as applied but  
Income of any PY is utilised to reinvest for such corpus fund – allowed as applied
5. Application from loans and borrowings – is not considered as applied, however  
On repayment of such loan – is considered as applied
6. **Corpus** donation to any trust or institution registered u/s 12AB / 10(23C) – not treated as applied
7. Loss in trust [applied > 85%] – is not carry forwarded
8. Following sections are available  
S.40(a)(ia): Payment to resident without TDS – 30% on such payment is disallowed  
S. 40A(3) / 40A(3A): Payment > ₹10,000 other than A/c Payee Cheque / ECS etc. – disallowed
9. If 85% could not be applied
  - c. If Accrual System of Accounting is followed:  
then deemed to applied in the following conditions
    - Not applied in the PY due to income not received
    - but declare before the DD of Filing of ROI
    - that the income will be applied in the year of receipt or next year of receiptNote: If not applied as per the above declaration,  
then such sum shall be treated as income of the next year of receipt
  - d. For any other reason: the following is treated as applied  
Declare to the AO before the DD of filing of ROI to apply such amount in the next PY



Provided apply in the next PY, else such sum shall be treated as in come of that PY

**Section 11(2): Exemption if income accumulated for specific purpose:**

Where 85% of income is not applied during the PY but accumulated or set apart,

Then such sum is not included in income on following conditions:

1. Assessee should furnish a statement to AO stating the purpose & period for which such income is accumulated [Maximum period can be 5 years]
2. Such money should be deposited in S.11(5) modes (Safe investments)
3. Such money should not be donated to any other trust.

**Note:** provided that in computing the period of 5 years, the period during which the income could not be applied for the purpose, due to an order of any court, shall be excluded.

**Section 11(3): Exemption withdrawn if conditions not satisfied:**

Any income referred u/s 11(2)

1. Is applied other than for the specified purposes then taxable in the year of misapplication
2. Ceases to be in safe investment [S.11(5)] then taxable in the year of cessation
3. Not utilised within the specified period [Max 5 years] or 1 year after the specified period  
Then taxable after the expiry of the specified period
4. If donated to any trust then taxable in the year of donation.

**Section 139(1): Denial of exemption if return not filed up to date**

Exemption u/s 11(2) shall not be available, if

1. Statement to AO not filed up to DD for filing of ROI, or
2. Return of income not filed up to DD for filing of ROI

**Section 11(4)/(4A): Business Income of Trust**

If business is incidental to the attainment of main objective of trust & separate books of A/cs are maintained, then exemption u/s 11(1) & 11(2) can be claimed on business income.

In assessment, If AO finds any concealed income in respect of business, then exemption u/s 11(1) / 11(2) shall not be available in respect of such concealed income.

**Section 11(5): Safe Investment mode for trust:**

1. Investment in Government Saving Certificates, Units of UTI, CG / SG Securities, debentures of any company which is guaranteed by Govt, Units of MF, equity shares of a depository, stock certificate as defined in Sovereign Gold Bonds Scheme, 2015, Shares of NSDC, Shares of stock exchange or subsidiary of stock exchange.
2. Deposits with Post Office Savings Banks, Schedule Banks or Co-Op Banks or Industrial Development Bank

3. Investment or deposits in any public sector company. (If PSC cease to be PSC, then investment in shares of that company should be treated as legitimate investment till 3 years from the date of cessation and in any other investment till the time of maturity).
4. Investment in bonds of approved financial corporation / public companies providing long term finance
5. Investment in immovable property.

**Section 11(7): Exemption u/s 10 not available:**

Where trust claim exemption u/s 11, then exemption u/s 10 [other than Agri 10(1) & 10(23C) & Govt Trust 10(46)] shall not be allowed to trust.

Provided that registration u/s 12AA / 12AB shall become inoperative from the date on which the trust or institution is approved u/s 10(23C)(iv)/(v)/(vi)/(via) or notified u/s 10(46), as the case may be.

**Note:** So, either trust / institution can claim exemption u/s 11/12 or u/s 10(23C)(iv)/(v)/(vi)/(via).

**Section 12A: Conditions for Applicability of S.11 & 12.**

Exemptions u/s 11 & 12 available if:

1. Trust is registered u/s 12AA / 12AB
2. If total income (before claiming exemption) is more than basic exemption then audit report from auditor should be furnished within the time given u/s 44AB

Note:

1. Exemption is available from PY in which application is made but exemption u/s 11 & 12 shall also be available for earlier AYs for which assessment is pending before AO on the date of registration & activity of trust in earlier AY are same as those on the basis of which registration has been granted.
2. No action u/s 147 shall be taken by the AO in case of such trust or institution for any preceding AY only for non-registration of such trust or institution for the said AY.

Note: above benefit (earlier AY) not available if trust had applied for registration & it was rejected or registration once granted was cancelled.

**Section 12AB: Requirement for obtaining registration w.e.f. 01.04.2021**

1. Registered u/s 12AA should apply for registration u/s 12AB within 3 months [30.06.2021]  
Registration is granted within 3 months from the date of application  
Period of registration: 5 years (without inquiry)
2. New trust should apply at least 1 month prior to the commencement of PY  
Registration is granted within 1 month from the date of application  
Period of **provisional** registration: 3 years (without inquiry)
3. Trust with provisional registration should apply  
WEE of 6 months prior the expiry of approval or 6 months from the commencement of activity  
Registration is granted within 6 months from the date of application  
Period of registration: 5 years (from provisional registration) (with inquiry)
4. Registered Trust u/s 12AB should apply within 6 months prior of expiry of registration  
Registration is granted within 6 months from the date of application

Period of registration: 5 years (with inquiry)

5. Registered trust adopted modification of objects (new) should apply  
Within 30 days from the date of adaptation or modification  
Registration is granted in 6 months from the end of month in which application is received  
Period of registration: 5 years (with inquiry)
6. Trust registration becomes inoperative due to S.11(7) should apply  
6 months prior to commencement of AY from which registration sought to be made operative  
Registration is granted within 6 months from the date of application  
Period of registration: 5 years (with inquiry)

### **Section 12AB: Procedure of registration w.e.f. 01.04.2021**

1. CIT / PCIT on receipts of application shall pass and order for registration the trust **[5 or 3 years]**.
2. CIT / PCIT on receipt of application shall call for documents or information and satisfy himself
  - a. Activities of trust are genuine, or
  - b. Activities are in accordance with the object, or
  - c. Trust or institution complied with the requirement of other law as are material for the purpose of achieving its objects (**inquiry case**)
3. After satisfying he may pass order for registration of trust or refusing registration or cancelled the registration within time limit.
4. All applications, pending before the CIT / PCIT on which no order has been passed u/s 12AA before 01.04.2021. shall be deemed to be an application made u/s 12AB
5. Where registration is granted u/s 12AB but after that CIT / PCIT satisfied that:
  - a. Activities of trust are not genuine, or
  - b. Activities are not in accordance with the object, or
  - c. Trust not complied with the requirement of other law, or
  - d. Section 13(1) applied:  
He may cancel the registration after giving a reasonable opportunity of being heard

### **Section 13(1): Exemption u/s 11 shall not apply**

Exemption u/s 11 & 12 not available in following case:

1. Income from private religious purpose.
2. Income for the benefit of particular religious caste or community.  
**Except:** if for BC / SC / ST / girl child / Minority
3. Income for the benefit of specified persons (relative).
4. Funds not invested in safe investment [S.11(5)]  
Note: if section 13(1) applied then trust income is taxable at MMR.

### **Section 13(3): Meaning of specified person (Relative)**

1. Author / founder of trust
2. Person who made donation of > ₹50,000
3. Where the founder / donor is HUF, member of HUF
4. Trustee or Manager of Trust
5. Relative of any founder, donor, member, trustee, manager

6. Any concern in which any of the above person has a substantial interest.

### Section 12(2) & 13(6): Educational & Medical facilities to specified person

- As per S.13(1), if trust applies income for the benefit of the specified persons,
- then exemption u/s 11 & 12 is not available
- but if trust is running any educational institution or medical institution or hospital,
- then exemption u/s 11 & 12 shall not be denied
- only because trust provides educational or medical facility to specified person.
- Value (FMV) of such medical / educational facility provided
- to specified person shall be treated as income of trust.

### Section 11(1A): Capital gain deemed to be applied for charitable purpose

Where any capital asset is transferred by trust & net consideration is utilised for acquisition of another capital asset then following capital gain shall be exempt.

1. If net consideration fully utilised then capital gain fully exempt
2. If net consideration partly utilised then

Exemption = Cost of new asset – cost of old asset

**Tax rates of trust:** Same as Individual slab rate

### Section 115BBC: Tax on Anonymous Donations received by trust or institutions

1. Income tax @ 30% on the anonymous donations received in excess of the higher of following
    - a. 5% of total donation including Govt Grants
    - b. ₹1,00,000
  2. Balance income of trust (other than the above item) should be taxable at normal tax rate.
- Anonymous donation received by wholly religious trust – not taxable [sub to S.11 & 12]
  - Anonymous donation received by wholly religious & charitable purpose – not taxable
  - Taxable u/s 115BBC if it is made with specific direction that such donation should be used for educational institution / medical institution / hospital run by such trust.

Note: if anonymous donation not taxable u/s 115BBC, then such donation shall be taxable as per normal provision of income tax & subject to S.11 & 12.

<b>Format Income Computation for Trust</b>		
	<b>Particulars</b>	<b>₹</b>
	Gross receipts of Trust (other than corpus donation & anonymous donation u/s 115BBC)	xxx
	Capital Gain on Transfer of Capital Asset	xxx
	<b>Total</b>	xxx
Less	15% standard deductions + accumulated and set apart	xxx
		xxx
Less	Application of income for trust purpose	xxx
Less	Capital Gain deemed to be applied u/s 11(1A)	xxx
Less	Deemed application (outstanding or other reason)	xxx
Less	Income accumulation u/s 11(2)	xxx

	<b>Income taxable at normal tax rates</b>	xxx
Add	Anonymous donation taxable at special rate of 30%	xxx
	<b>Total Income (for determination of surcharge)</b>	xxx

**Question:** An institution having its main object as “advancement of general public utility” received ₹30 lakhs in aggregate during the P.Y. 2021-22 from an activity in the nature of trade. The total receipts of the institution, including donations, was ₹140 lakhs. It applied 85% of its total receipts from such activity during the same year for its main object i.e. advancement of general public utility.

- i. What would be the tax consequence of such receipt and application thereof by the institution?<sup>1</sup>
- ii. Would your answer be different if the institution’s total receipts had been ₹150 lakhs (instead of ₹140 lakhs) in aggregate during the P.Y. 2021-22?<sup>2</sup>
- iii. What would be your answer if the main object of the institution is “relief of the poor” and the institution receives ₹30 lakhs from a trading activity, when its total receipts are ₹140 lakhs and applies 85% of the said receipts for its main object?<sup>3</sup>

**Question:** “Save Wild Life” an institution having its main object as ‘preservation of wildlife’, used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31.03.2022. Would such utilization of its income be treated as utilisation for “charitable purpose”? Examine. Would your answer be different, if the main object of the institution is “advancement of object of general public utility”?<sup>4</sup>

**Example 1:** During the previous year ending 31<sup>st</sup> March, 2022. A charitable trust earned an income of ₹1,00,000 but it received only ₹60,000 in that year. The balance of ₹40,000 is received in during previous year 2022-23.

Particulars	₹
Total income earned during the P.Y. 2021 -22	1,00,000
Actual receipt in P.Y. 2021-22	60,000
Permissible accumulation @ 15% of ₹1,00,000	15,000
Balance to be applied during P.Y. 23021 -22	45,000
Amount received in P.Y. 2022-23 to be applied in P.Y. 2022-23 or P.Y. 2022-24	40,000

**Example 2:** A trust receives a sum of ₹50,000 on 30<sup>th</sup> March, 2022. Its previous year ends on 31.03.2022. It is obvious that it is impossible to apply the requisite sum within one day. Therefore, it has been provided that such sum can be applied at any time during the immediately following previous year i.e., up to 31.03.2023.

<sup>1</sup> In case of advancement of object of general public utility, PGBP ≤ 20% of TI. Hence exemption is not available but trust approval is not cancelled.

<sup>2</sup> As per earlier one, the exemption is available.

<sup>3</sup> In case of “relief of the poor” PGBP ≤ 20% of TI is not required. Hence exemption is available

<sup>4</sup> In case of objective of ‘preservation of wildlife’ – exemption is available if amount is applied for such purpose. In case of objective of ‘advancement of any other general public utility’, PGBP ≤ 20% of TI

**Question:** XYZ Charitable Trust is an educational institution registered under section 12AB of the Income-tax Act. During the Financial Year 2021-22, the trust receives a corpus donation of ₹25 lakhs with a specific direction that the corpus fund should be utilised for setting up a science laboratory. The trust intends to set up the lab only during P.Y. 2023-24 and will utilize the funds only during that financial year. In this regard, the trust wants to understand whether the corpus donations are exempt under section 11(1)(d) of the Income-tax Act.<sup>1</sup>

**Question:** MSO Foundation, a registered charitable institution set up on 1<sup>st</sup> April, 2020 is engaged in providing education in hotel management. The organisation acquires a building for using the same for holding classes and office activities. It has approached you for your opinion on its eligibility to claim the cost of the building and also depreciation thereon in the current year and the subsequent year. Advise the institution indicating the reasons.

Would you advise change, if building has been acquired out of loan taken from bank, to be repaid in installments?<sup>2</sup>

**Question:** A charitable institution registered under section 12AB of the Income-tax Act, 1961 filled in Form No. 10 for seeking permission to accumulate unapplied income under section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The Assessing Officer found that the objects for which accumulation was sought were not particularized in as much as they covered the entire range of objects of the institution. Can the Assessing Officer deny the benefit of accumulation in such a case?<sup>3</sup>

**Question:** A charitable trust derives its income from the business of providing mineral water to various companies situated in Software Technology Park in Hyderabad. A sum of ₹30 lakhs has been derived as net income from such business activity, which has been applied for the object of general public utility. The total receipts of the trust during the P.Y. 2021-22 was ₹140 lakhs.

Examine the taxability of application of the income, if the income so derived relates to the previous year 2021-22. Would your answer be different, if the trust runs a school in a backward district and applies the profits from the business for such school's activity?<sup>4</sup>

**Example 3:**

Particulars	₹
Original cost of capital asset transferred	1,00,000
Consideration for which it is transferred	1,50,000
Situation 1 Cost of new capital asset acquired	1,50,000

<sup>1</sup> Exemption is available provided invest the corpus donation as per S.11(5) [safe investment]

<sup>2</sup> Yes, exemption is available. Write all the provision for availing the exemption. In case of loan, the term applied is applicable on repayment of loan

<sup>3</sup> Bharat Krishak Samaj vs. Deputy Director of Income-tax (Exemption) (2008) 306 ITR 153 (Del.). It is not required to particularize the objective of corpus fund. Hence exemption is not denied.

<sup>4</sup> In case of advancement of object of general public utility, PGBP ≤ 20% of TI. But in the second case if the amount is applied for its objective, then exemption is available

Situation 2 Cost of new capital asset acquired	1,20,000
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Amount that will be deemed to have been applied for charitable purposes.

Situation 1	₹50,000
Situation 2	₹20,000

**Example 4:** A capital asset is being held under trust. Two-thirds of the income derived from such capital asset are being utilised for the charitable purposes of the trust. The asset is being transferred.

Particulars	₹
Cost of transferred asset	1,20,000
Net consideration	1,80,000
Cost of new asset acquired	1,50,000
Capital gains	60,000[1,80,000-1,20,000]
Appropriate fraction 2/3rd	

Income represented by 'appropriate fraction' = 2/3rds of ₹60,000 = ₹40,000

Since the entire net consideration has not been utilised in acquiring the new asset, the amount deemed to have been utilised for charitable purpose will be (2/3rds of ₹1,50,000) – (2/3rds of ₹1,20,000) = ₹1,00,000 – ₹80,000 = ₹20,000.

**Question:** A public trust is to be created for charitable purposes in April 2021. The trust intends to claim benefits of sections 11 and 12 from A.Y. 2022-23. In this regard, what is the time limit for making an application for registration, time limit for granting approval by the Principal Commissioner or Commissioner and the period for which the approval is valid?<sup>1</sup>

**Question:** Hundi (charitable box) super scribing "contributions in this hundi form part of corpus of trust fund" kept at Lord Venkateshwara Temple, Tirumala, was opened on 30.03.2021. Cash of ₹100 lakhs and valuable articles worth ₹250 lakhs were found to have been contributed by the devotees. Discuss the tax implications.<sup>2</sup>

**Question:** The following trusts claim that anonymous donations received by them during the financial year 2021-22 are not liable to tax under section 115BBC:

- i. A charitable trust referred to in section 11 which applied the entire amount of anonymous donations for purposes of the trust during the relevant financial year.
- ii. A trust established wholly for religious purposes which applied 85% of the amount of anonymous donations for the purposes of the objects of the trust during the relevant financial year.

<sup>1</sup> S.12AB: requirement for obtaining registration

<sup>2</sup> The Rajasthan High Court in Sukhdeo Charity Estate v. CIT (1984)149 ITR 470. Not anonymous donation

Examine the validity of the claim made by the trusts.<sup>1</sup>

**Question:** Help All, a trust created on 1<sup>st</sup> April 2021 for providing relief to the poor, applied for registration under section 12AB on 28 February 2022. The Commissioner denied registration on the ground that the trust had not commenced any charitable activity, due to which he could not satisfy himself about the genuineness of the trust. Is the ground for denial of registration by the Commissioner justified in this case? Discuss.<sup>2</sup>

**Question:** An institution operating for promotion of education claiming exemption under section 11 since 1994 furnishes the following data for the assessment year 2022-23:

	Particulars	₹ in crores
1	Fees collected from students	14
2	Construction of a new computer science laboratory	0.50
3	Land acquired to be used as a cricket field for the students	2
4	Amount earmarked and set apart for construction of an arts block within the next 4 years	4

Compute the total income of the institution for the A.Y.2022-23.

**Answer:**

Computation of total income of the institution for the A.Y. 2022-23		
	Particulars	₹ (in Crores)
	Fees Received	14.00
Less	15% (exempt even if not spent for the objects of the institution)	2.10
		11.90
	Construction of computer science lab (capital & revenue exp. allowed)	0.50
	Purchase of land for cricket field (capital & revenue exp. allowed)	2.00
		9.40
Less	Accumulated for specified purpose (for 5 years)	4.00
	Total Income	5.40

**Question:** A public charitable trust registered under section 12AB, for the previous year ending 31.03.2022, derived gross income of ₹21 lakhs, which consists of the following:

	Particulars	₹ in lakhs
a	Income from properties held by trust (net)	10
b	Income (net) from business (incidental to main objects)	4
c	Voluntary contributions from public	7

<sup>1</sup> Write the provision of anonymous donation

<sup>2</sup> No. provisional registration is given without inquiry



The trust applied a sum of ₹11.60 lakhs towards charitable purposes during the year which includes repayment of loan taken for construction of orphanage ₹3.60 lakhs. The entire expenditure incurred on construction of orphanage was allowed as application of income in the P.Y. 2020-21.

**Answer:**

Computation of taxable income of public charitable trust		₹
(i)	Income from property held under trust (net)	10,00,000
(ii)	Income (net) from business(incidental to main objects)	4,00,000
(iii)	Voluntary contributions from public (with a specific direction towards corpus are alone to be excluded)	7,00,000
		21,00,000
Less	15% of the income eligible for retention/accumulation without any conditions	3,15,000
		17,85,000
Less	Amount applied for the objects of the trust	
(i)	Amount spent for charitable purposes (₹11,60,000 – ₹3,60,000)	8,00,000
(ii)	Repayment of loan for construction of orphan home (is applied)	-
	Taxable Income	9,85,000

**Question:** ABC Public Charitable trust registered under section 13AB for the previous year ending 31.03.2022 derived gross income of ₹50 lakhs, which consists of the following:

Particulars	Lakhs
Income from properties held by trust	10
Voluntary contributions from public	30
Voluntary contributions from public with a specific direction that it shall form part of the corpus	10

The trust applied a sum of ₹35 lakhs towards charitable purposes during the year. The corpus donation of ₹10 lakhs is not invested in any of the modes specified under section 11(5). Determine the taxable income of the trust for the assessment year 2022-23.

**Answer:**

Computation of taxable income of public charitable trust		₹
(i)	Income from property held under trust	10,00,000
(ii)	Voluntary contributions from public	30,00,000
(iii)	Voluntary contribution made with a specific direction towards corpus – Taxable as not made safe investment	10,00,000
		50,00,000
Less	15% of income eligible for retention/accumulation without any conditions	7,50,000

		42,50,000
Less	Amount applied for the objects of the trust	35,00,000
	Taxable Income	7,50,000

**Question:** Work out, from the following particulars, the amount of capital gain which shall be deemed to have been applied for charitable or religious purpose arising out of sale of a capital asset utilized for the purposes of trust to the extent of 60%.<sup>1</sup>

Particulars	₹
Cost of transferred asset	2,40,000
Sale consideration	3,60,000
Cost of new asset purchased	3,00,000

### Section 10(23C): Income of certain Universities, Hospitals, Educational Institution, Medical Institution

- Income of any university or educational institution or any hospital or other institution wholly or substantially financed by the Government (Govt grant > 50% of total receipts) which exists solely for educational or medical purposes and not for profit, shall be fully exempt from tax. No registration or no approval is required [S.10(23C)(iiiab)/(iiiac)]
- Income of any university or educational institution or any hospital or other institution which exists solely for educational or medical purpose and **not for profit** and the **aggregate annual receipts is up to ₹5 crore**, shall be fully exempt from tax, [S.10(23C)(iiiad)/(iii ae)]  
**Note:** if any person has receipts from university / education institution as well as from hospital / medical institution then exemption under these sections shall not apply if aggregate receipts from such institution more than ₹5 crores [₹5 crore limit apply for aggregate receipts for section 10(23C)(iiiad)/(iii ae)]
- Income of any **approved** fund / trust / institution for charitable or religious purpose or university or educational institution or any hospital or other institution approved by CIT (exemption) which exists solely for educational or medical purposes and not for profit, shall be exempt from tax subject to certain conditions.

Time limit for making approval u/s 10(23C)(iv)/(v)/(vi)/(via) – similar to application u/s 12AB

Exemption and condition are similar to exemption u/s 11/12 and condition u/s 11/12/13

**Question:** An educational institution having annual receipts of ₹3.80 crore during the P.Y. 2021-22, has availed exemption under section 10 (23C) (iiiad). The Assessing Officer has denied the exemption on the grounds that the educational institution has not made any application to the prescribed authority

<sup>1</sup> As only part of SC is used for purchasing new asset & partly applied for charitable purpose. Amount deemed to be applied for charitable purpose = such proportion on (COAn – COAo) = 60% of (₹3,00,000 – ₹2,40,000)=60% of ₹60,000= ₹36,000

for approval under the said section 10(23C) (iiiad). Examine the action of the Assessing Officer in denying the exemption.<sup>1</sup>

**Question:** A not for profit trust undertakes philanthropic activities through an educational institution and a hospital. During the P.Y. 2021-22 the trust had annual receipts of ₹3 crores from its educational institution and ₹4 crore from the hospital. During the P.Y. 2021-22, it desires to avail exemption under section 10(23C)(iiiad) and 10(23C)(iii ae), as the individual threshold under each of the sub-clauses, is less than ₹5 crore. Can it do so? Examine.<sup>2</sup>

**Question:** Suez Maritime University, an educational institution was set up on 1<sup>st</sup> December 2020. The educational institution has never applied for section 10 (23C) exemptions. The board of trustees now decides to obtain section 10(23C) (vi) approval effective from A.Y.2022-23. The University wants to understand the time within which it should apply for obtaining the exemption approval, the time within which the approval would be granted and the period of validity of such approval. Advise.<sup>3</sup>

### Tax on Accreted Income of Certain Trust or Institution [Exit Tax]

Section 115TD: Tax on Accredited Income – taxable @ MMR [30%+12%+4% = 34.944%]

1. Conversion of trust / institution in to a form not eligible for registration u/s. 12AA / 12B [note 2]
2. Merger into an entity not having similar objectives and registered u/s 12AA / 12AB
3. Non distribution of assets on dissolution to any other trust / institution registered u/s 12AA / 12AB / 10(23C) within 12 months from the end of the month in which dissolution takes place.

Notes:

1. The exit tax shall be in addition to income taxable in hands of entity.
2. Deemed conversion into non eligible form in the following cases:
  - a. Registration granted u/s 12AA / 12B has been cancelled
  - b. It has adopted or undertaken modification of its objects which do not conform to the conditions of registration and
    - i. It has not applied for fresh registration u/s 12AA / 12AB in that PY or
    - ii. It has applied for fresh registration u/s 12AA / 12AB but application has been rejected
3. Accredited Income shall be computed on specified date.

	₹
Aggregate FMV of total asset	xxx
(-) Total liability of trust	xxx
<b>Aggregate Income</b>	xxx

### Note:

The following assets and liabilities in respect of that assets not be considered in accreted income

- a. Assets acquired out of agricultural income
- b. Assets acquired by trust from the date of creation of trust to the date from which registration become effective u/s 12AA / 12AB

<sup>1</sup> As per S.10(23C)(iiiad), exemption is availed without any application as PGBP ≤ ₹5 crores

<sup>2</sup> As per expln to S.10(23C)(iii ae), exemption is not available as PGBP in aggregate > ₹5 crore

<sup>3</sup> Similar to S.12AB: requirement for obtaining registration

[where the benefit u/s 11 & 12 have been allowed to the trust or institution in respect of any PY or years beginning prior to the date from which the registration u/s 12AA / 12AB become effective, then, the registration shall be deemed to have become effective from the first day of the earliest PY]

- c. Asset transfer on dissolution to other trust / institution registered u/s 12AA / 12AB / 10(23C) within 12 months from the end of the month in which dissolution takes place.
4. Meaning of specified date for valuation of assets & liabilities
  - a. Conversion of trust into non-eligible form
    - i. Registration granted cancelled – date of order cancelling registration u/s 12AA / 12AB
    - ii. Modification of objects – date of adoption or modification of any objects
  - b. Merger with any other non-charitable trust – date of merger
  - c. Failure to transfer asset on dissolution within 12 months – date of dissolution
5. When the tax on the accreted is levied on the FMV & if subsequent transfer of such asset, the cost of acquisition shall be the FMV of such asset.

**Section 115TD(4):** Exit tax shall be payable even if no income tax is payable by the trust / institution.

**Section 115TD(5):** Tax has to be paid to the Central Govt. within 14 days from

- a. Conversion of trust into non eligible form
  - i. Registration granted u/s 12AA / 12AB has been cancelled.  
14 days from the date on which:
    - a. The period for filing appeal to ITAT against the order cancelling the registration expires & No appeal has been filed by trust. Or
    - b. The order in any appeal confirming the cancellation of registration is received by trust
  - ii. It has adopted or undertaken modification of its objects which do not conform to the condition of registration
    - a. Not applied for fresh registration – 14 days from the end of PY
    - b. Applied for fresh registration by rejected – 14 days from the date on which
      1. The period for filing appeal to ITAT against the order rejecting the application expired & No appeal has been filed by trust. Or
      2. The order in any appeal confirming the rejection of the application is received by trust
- b. Merger with any other non-charitable institutions – 14 days from the date of merger
- c. Failure to transfer asset to trust / institution registered u/s 12AA / 10(23C) within period of 12 months from the end of the months in which dissolution took place  
14 days from the date on which period of 12 months (at the end of the month in which dissolution took place) expires

**Section 115TE: Transfer for non-payment of tax within 14 days.**

Interest @ 1% p.m. or part of the month from the 15<sup>th</sup> day till on which the tax is actually paid.

**Section 115TF: Trust / Institution is deemed to be assessee in default.**

If tax not paid then principal officer / trustee / trust / institution shall be treated as assessee deemed to be in default

In case of transfer of assets upon dissolution of the trust to recipient, which is not a charitable trust, the recipient of asset shall also be treated as assessee in default.

However, recipient's liability shall be limited to the extent to which the asset received by him is capable of meeting the liability.

## **Rule 17CB: Calculation of FMV of Assets**

### **Part A – Assets:**

For the purpose of S.115TD, the aggregate FMV of the total assets of the trust or institution, shall be the aggregate of the FMV of all the assets in the B/S as reduced by –

1. Any amount of TDS / TCS or as advance tax payment as reduced by the amount of income tax claimed as refund under the Act and
2. Any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

### **FMV of Assets**

1. **Quoted shares and securities:** average of lowest & highest price on valuation date on a recognised stock exchange

**Note:** if no trading of such shares and security on valuation date then average of lowest & highest price of immediately preceding the valuation date which such shares and securities traded in recognised stock exchange.

2. **Unquoted equity shares:**  $\frac{A-B-L}{PE} \times PV$

Notes:

A – Book value of all assets (other than covered in B) excluded TDS, advance tax in excess of income tax refund claimed & deferred expenditure shown in the asset side

B – FMV of bullion, jewellery, precious stone, artistic work, shares securities and immovable property as determined in the manner provided in this rule

L – Book value of liabilities, but not including the following amounts, namely:

- i. The paid up capital in respect of equity shares
- ii. The amount set apart for payment of dividends on preference shares and equity shares
- iii. Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation
- iv. Any amount representing provision for taxation, other than amount of income tax paid, if any, less the amount of income tax claimed as refund, if any to the extent of the excess over the tax payable.
- v. Any amount representing provisions made for unascertained liabilities
- vi. Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares:

PE = total amount of paid up equity share capital as shown in the B/S

PV = the paid up value of equity shares held by trust

3. Unquoted shares or security (other than equity shares):  
FMV / NRV on valuation date on the basis of valuation of merchant banker or a CA
4. Immovable Property: WEH of SDV or FMV / NRV on valuation date
5. A business undertaking:  $[A + B - L]$
6. Any other assets: FMV / NRV on valuation date

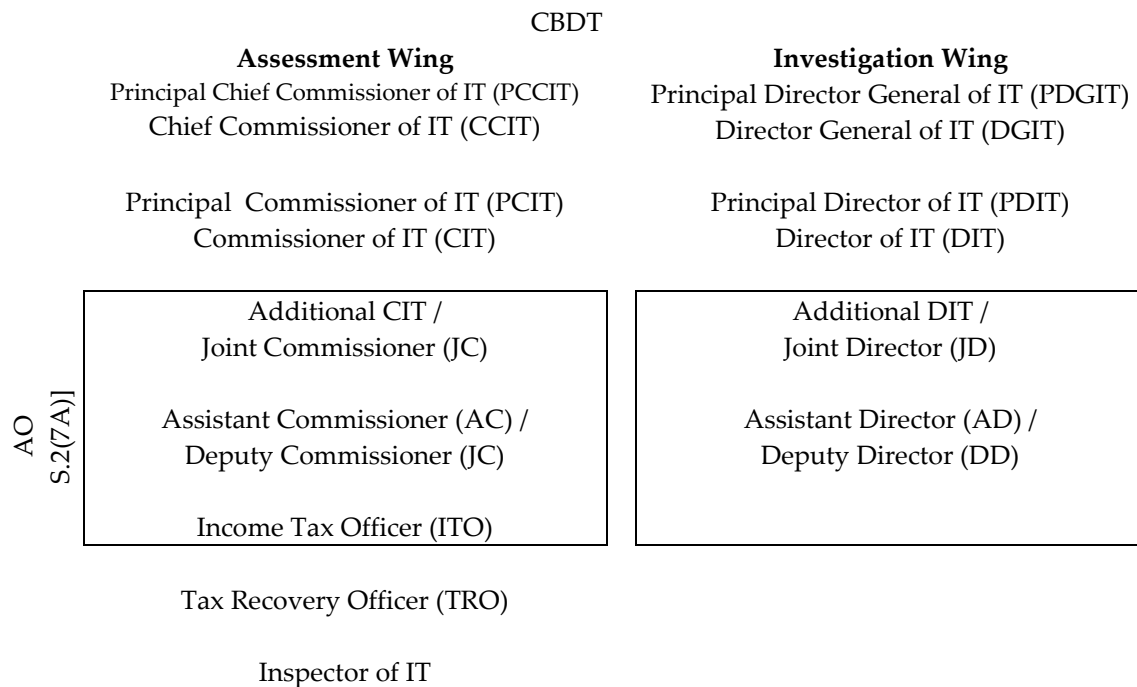
### **Part B – Liabilities:**

Total liabilities of the trust or institution shall be the book value of liabilities in the B/S on the specified date but not including the following amounts, namely: -

1. Capital fund or accumulated funds or corpus, by whatever name called;
2. Reserves or surpluses or excess of income over expenditure, by whatever name called;
3. Any amount representing contingent liabilities
4. Any amount representing provisions made for meeting liabilities, other than ascertained liabilities
5. Any amount representing provision for taxation, other than amount of TDS / TCS or as advance tax payment as reduced by the amount of income tax claimed as refund under the act, to the extent of the excess over the income tax payable.

## Income Tax Authorities & Their Powers

Section 116: IT Authorities



**Note:** CIT [Appeal] is also IT Authority as per S.116

### Section 119: Power of CBTD to issue orders, instructions and circulars

1. The CBDT can issue orders, instructions and circulars to its subordinates for the administration of the Act & its binding on subordinates
2. The CBDT, however, is not empowered to issue orders, instructions or directions in such a way as to –
  - a. Require any IT authority to make a particular assessment in a particular manner; or
  - b. Interfere with the discretion of the CIT(A) in the exercise of his appellate functions
3. Relax certain provisions of Income Tax Act to remove any difficulties faced. Like extension of due date for filing the ROI, etc.
4. Pass a general or special order authorising any IT authority [other than a CIT(A)] to admit a certain claim, exemption, deduction, refund, carry forward of losses etc made even after the expiry of specified periods to avoid any genuine hardships faced by the assessee.

**Case law:** S.V Gopala Rao and Others [2017][SC]

CBDT does not have the power to amend legislative provisions in exercise of its poeres u/s 119 of the Income Tax Act, 1961 by issuing a circular.

### Section 120: Jurisdiction of Income Tax Authority

Jurisdiction is allotted on the basis of –

1	Territorial Area	For e.g., PIN Code
2	Person or Class of person	For e.g., Company
3	Income or Class of Income	For e.g., Salary Income

4	Cases or Class of Cases	For e.g., Professionals like Cas, Doctors, Lawyers etc.
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#### **Section 124: Jurisdiction of Assessing Officer**

Once, jurisdiction of an area is allotted to an AO, then within that area he can exercise his jurisdiction over any person –

1. Who is carrying on business or profession in that area; or
2. Who has principal place of his business or profession in that area; or
3. Who resides in that area

In case of disputed over jurisdiction AO shall refer to higher authority.

Assessee can also challenge the jurisdiction of AO within the following limits

	<b>ROI filed</b>	<b>ROI not filed</b>
	<b>WEE</b>	<b>WEE</b>
1	1 month from the date of receipt of notice u/s 142(1) / 143(2) or	Within the limit allowed in notice u/s 142(1) / 148(2) to furnish ROI or
2	Before the completion of assessment	Within the limit allowed in a show-cause notice u/s 144 to show a cause

#### **Section 127: Power to transfer cases**

CCIT or CIT can transfer the case from AO to another AO subordinate to him after giving a reasonable opportunity of being heard to concerned assessee. However, no opportunity of being heard shall be required if the case is to be transferred from one AO to another AO within the same city, town or locality. Disputes regarding jurisdiction shall be resolved by the concerned CCIT or CIT on mutual understanding

#### **Section 129: Change of Income Tax Authority**

Where an IT authority succeeds another IT authority, who ceases to exercise jurisdiction, then, the succeeding IT authority may continue the proceedings from the stage at which the proceedings was left by his predecessor.

The assessee concerned may demand that before continuance of proceedings as in the requirement, the previous proceeding or any part thereof be reopened or be reheard before passing of any assessment order against him.

#### **Section 131: Power of IT Authority**

IT Authority shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908:

- a. Discovery & Inspection
- b. Enforcing the attendance of any person & examining such person on oath
- c. Compelling the production of books of accounts & documents
- d. Issuing summons
- e. IT authority can impound books of A/c for max 15 working days

#### **Section 133: Power to call for Information**

IT Authority can call information from any person



e.g., information from bank relating to any account holder etc.

U/s 133(6) AO, CIT(A), CCIT or CIT may require any person to furnish any information. This power cannot be exercised by any authority below the rank of CIT / DIT, if proceeding is not pending without the prior approval of CIT / DIT. This power can be exercised by JD, DD, AD without approval of CIT / DIT.

### **Section 133B: Power to collect information**

IT Authority may enter at any place at which Business / Profession is carried on and collect information from there.

IT Authority may enter any place of business or profession referred to above only during the hours at which such place is open for business or profession.

### **Section 133C: Power to call for information by prescribed IT Authority [Investing wing]**

The IT authority may for the purpose of verification of information for its possession relating to any person, issue notice to such person requiring him to furnish information & documents and utilise such information and document in accordance with the scheme notified under this section or provisions of S.135A. This power can be exercised even if no proceedings are pending.

### **Section 133A: Power to Survey**

1. IT Authority may enter any building or place at which Business or Profession is carried on or activity of charitable purpose is carried on.

Provided that no action under this section shall be taken by an IT Authority without the approval of the PDGIT or the DGIT or the PCCIT or the CCIT.

IT Authority means –

- a. A PCIT or CIT, a PDIT or DIT, a JC or JD, and AD or a DD or an AO, or a TRO and
- b. Includes an inspector, for the purposes of inspecting books of accounts & documents, place marks of identification and make copies & extracts therefrom and for survey at any function, ceremony or event

Who is subordinate to the PDGIT / DGIT (Investigation) or the PCCIT / CCIT(TDS)

2. Upon entering they can do:

- a. Inspect any books of accounts or documents
- b. Check or verify the cash, stock or other valuable articles
- c. Place marks of identification on books of accounts & documents
- d. Impound books of accounts [Max 15 working days]
- e. Record the statement of any person

3. If books of accounts or assets relating to business or profession or charitable purpose are kept at same other place, then such other place can also be covered under survey