Block-VI

Business Environment & Law

Tax Laws

Block

VI

TAX LAWS

Ref. No. BEL SLM 102021B6

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BLOCK VI: TAX LAWS

The sixth block is the replica of 'Ignorance of law is no excuse'. Taxes are vital inflows for social and economic development of a nation. Taxes form an important component of State revenue in most developing economies. Business organizations must keep themselves abreast with the various tax laws of the State. Businesses need to take advantage of certain incentives, exemptions provisions and embedded in the prevailing tax laws to reduce their tax burden. This calls for proper planning on the part of business. There are two types of taxes – Direct Taxes and Indirect Taxes. While the direct taxes is based on principle of 'ability to pay' indirect tax are not.

Unit 16 outlines the important provisions of direct taxes. Direct taxes are the taxes that are borne completely by the income / wealth tax assessee. The direct tax is levied under five heads of income – income from salary, income from house property, profits and gains from business or profession, income from capital gains and income from other sources. The income tax levied is governed by the Income Tax Act, 1961.

Unit 17 deals with the indirect taxes. The unit covers benefits of GST, Salient Features of GST, GST Administration, GST Operational Issues and Refunds under GST

Unit 16

Direct Taxes

Structure

16.1 Introduction

In the previous unit, we discussed the Companies Act, 2013 which came into existence in August 2013 in place of the sixty years old Companies Act, 1956. The Companies Act, 2013 has 7 schedules, 29 chapters, and 470 sections. This new Act introduced ideas like Corporate Social Responsibility (CSR), Class Action Suits, and Fixed Term Independent Directors, tightening the provisions for raising money from the public and prohibiting insider trading by company directors or key managerial personnel by treating such activities as a criminal offense, etc. The Unit also discussed briefly the types of companies and various operational issues related to Companies in the Indian context.

The present unit deals with Direct Taxes. The origin of the word "Tax" is from the Latin taxo which means an estimate. A tax is a compulsory financial charge or some other type of levy imposed upon a taxpayer (an individual or legal entity) by a governmental organization in order to fund various public expenditures. A failure to pay, along with evasion or avoidance of taxation, is punishable by law.

Tax**es** are levied in almost every country of the world, primarily to raise revenue for government expenditures, although they serve other purposes as well. For example, taxes are used to pay for people who work for the government, such as the military and police, provide services such as education and health care and to maintain or build things like roads, bridges and sewers.

In India, the system of taxation existed even in ancient times, which find references in *Manu Smriti* and *Arthasastra*. A detailed analysis given by Manu on the subject clearly shows the existence of a well-planned taxation system in ancient India. Taxes were paid as gold coins, cattle, grains, raw materials and also by rendering personal service. Present Indian tax system is based on this ancient tax system which was built on the theory of maximum social welfare.

In this unit, we shall identify the different types of taxes and the various taxes that fall under each category. First, we shall deal with the first category of taxes – Direct taxes.

16.2 Objectives

After going through the unit, you should be able to:

- Classify the various types of taxes
- List a few important incomes that are exempted from tax
- Summarize important provisions that fall under the head of 'Salaries'
- Reproduce the various deductions that can be claimed under the head of 'House Property'
- Recognize the expenditure that is allowable as deduction, and the expenditure that is disallowed for the purpose of computation of 'Profits and Gains of Business or Profession'
- List the items that will be considered 'Deemed Income' for the purpose of taxation under the head of 'Profits and gains of Business or Profession'
- State the important deductions that are allowed from Gross Total Income

Types of Tax Systems

"Taxes are paid and nations are made".

Any government collects different forms of direct and indirect taxes to meet up its expenses. This money is deployed for various purposes and projects for the development of the nation. Taxes are determined by the Central and State governments along with the local authorities such as municipal corporations. The government cannot impose any tax unless it is passed as a law.

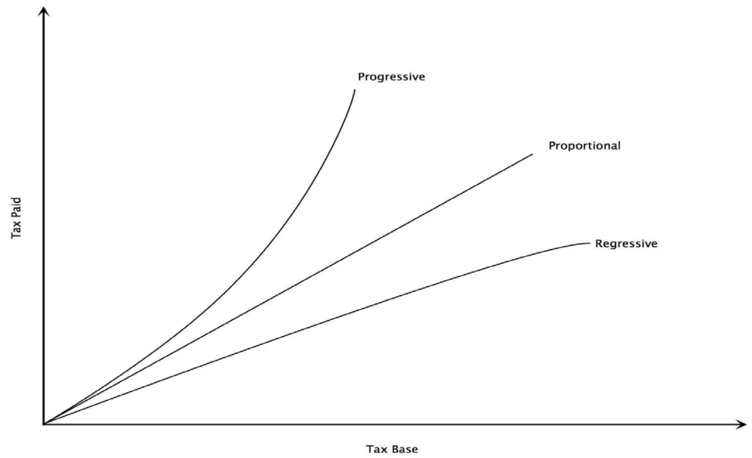
There are three types of tax systems available across the globe. (Refer Figure 1.1)

Progressive Tax System: In a progressive tax rate system, higher income individuals pay a higher proportion of tax with a rise in their income. In this case, the marginal tax rate would be higher than the average tax rate. This system is cited as a method to reduce inequality in the society. Most economies around the world use a progressive tax system to assess taxes for individual income.

Proportional Tax System: In a proportional tax rate system, everyone pays the same proportion of his or her income as tax. Here, as the tax rate does not change with an increase or decrease in their income, the average tax rate will be equal to the marginal tax rate. This system exists in Ethiopia, Latvia, Lithuania, Ukraine and Russia and is considered to be more 'fair' and easier method to manage for everyone. Some states in the U.S. like Colorado, Utah and Michigan impose a proportional income tax for individuals.

Regressive Tax System: A regressive tax is a tax which results in a decrease in the tax rate as the amount subject to taxation increases. In this system, the individuals with lower income pay a higher proportion of his or her income as tax. Here, the marginal tax rate is lower than the average tax rate. Any tax with a cap above which no taxes are paid are regressive taxes. This system exists in Denmark, Sweden, Norway, Netherlands and Switzerland.

Figure 1.1: The Three Types of Tax Systems



16.3 Classification of Taxes

In India, taxes are the largest source of income for the government. Tax, in general, is the imposition of financial charges upon an individual or a company by the Government of India or the respective State or similar other functional equivalent in the State. The computation and imposition of the varied taxes prevalent in the country are carried on by the Department of Revenue which works under the Ministry of Finance of the respective government.

Prevalence of various kinds of taxes is found in India. Broadly, taxes in India can be

- Direct Taxes (governing authority is Central Board of Direct Taxes, CBDT)
- Indirect Taxes (governing authority is Central Board of Excise and Customs, CBCE)

However, the types of taxes also depend on whether a particular tax is being levied by the central or the state government or any other municipalities.

Direct Taxes

Is a tax levied on income or profits of the person who pays it. It is obligatory and has to be directly paid to the Government of India. Here the burden to pay tax cannot be shifted to others, but will have to be borne entirely by the person that pays it. There has been a gradual and steady increase in the direct tax collections in the recent years in India. The visible growth in these tax collections as well as the rate of taxes reflects a healthy economic growth of India. Besides that, it even portrays the compliance of high tax along with better administration of taxation.

Some of the direct taxes made obligatory by Government of India are:
Income Tax: If money is earned and it crosses a particular slab of income received then tax has to be paid on the excess. Income tax returns have to be filed in different forms for different types of businesses and individuals. There are different ITR forms available for salaried person, self-employed person, partnership firms and more.

Capital Gains Tax: The profit you make on sale of a property attracts capital gains tax. For example: A property purchased for 30 lakhs is sold for an amount of 80 lakhs; then the profit on the sale (called capital gain) attracts capital gains tax @ 20% on the long term capital gains obtained + 3% education cess on the tax amount.

The long term capital gain amount is calculated after considering the inflation index value of the year in which the property was purchased and the inflation index value of the year in which the property was sold.

Securities Transaction Tax: This type of tax is applicable when customer purchases or sells any securities such as equity shares, derivative instruments, and equity oriented mutual funds, etc. This tax cannot be avoided as it is part of the transaction (i.e. tax value is added to the transaction value for arriving at the total transfer price of the securities). Most often this tax goes unnoticed because only a small amount is what gets deducted.

Fringe Benefit Tax (or) Perquisite Tax: Fringe benefit tax was abolished in the year 2009. It is used to be applicable on non-monetary benefits offered to employees like cars, club memberships etc. Presently all of these benefits are taxable under perquisite tax.

Corporate Tax: If a corporate organization (Private Limited Company or Limited Company) is operating in India then corporate taxes are applicable on the income generated by the organization. Unlike individuals' taxation, there are no slabs. Income tax is applicable on the total taxable profits of the company.

Indirect Taxes

An indirect tax is not levied on any particular organization or an individual. As opposed to the direct taxes, such a tax in the nation is generally levied on some specified services or some particular goods. Almost all the activities, which fall within the periphery of the indirect taxation, are included in the range starting from manufacturing goods and delivery of services to those that are meant for consumption.

Apart from these, the varied activities and services, which are related to import, trading, etc. are also included within this range. This wide range results in the involvement as well as implementation of some or other indirect tax in all lines of business. Thus, indirect taxes are levied on individuals but paid by another individual or company to either of the Central or State government or the local bodies, i.e. tax is collected by an intermediary from the individual who bears the ultimate economic burden of the tax; and the intermediary later files a tax return and forwards the tax proceeds to the government along with the return.

Value added tax, sales tax, etc. are all indirect taxes. If a customer makes service tax payment on a restaurant bill, it is collected by the restaurant and remitted to the Government, this is an indirect tax.

Some of the indirect taxes collected by Government of India are

Service Tax: Most of the services offered in businesses such as software companies, restaurant, travel agents, etc., charge service tax for offering paid services. Service provided by businesses such as travel agents, tour operators, health center, banking and financial services etc. are liable to pay service tax. The current rate of service tax in India is 14%.

Value Added Tax (VAT): VAT is an important tax for State government, as it is a major source of revenue for State Governments. VAT is applicable on the sale of goods and products. Every state has their respective Sales Tax or VAT Act. The VAT rates also differ based on the item and from one state to another.

Customs Duty: Goods imported into India from a foreign country will attract custom duty. Customs duty is collected at the port of entry by the Customs Department.

Central Excise: Central Excise Duty is a form of Indirect Taxation levied through the Central Excise Act, 1944. The Central Excise Duty is levied on Goods and Products, which are manufactured or produced in India. Excise duty is levied when the goods are manufactured or produced in India and is payable when the goods are removed from the manufacturing premises.

Table 1.1: Tax Structure

Tax	Who Levies	Revenue goes to	Nature	Incidence	Levied on
Custom Duty	Central Government	Central Govt.	Progressive	Shifts to Final Consumer	Export and Import
Excise Duty /CENVAT	Central Government	Both Central and State Govt.	Progressive	Shifts to Final Consumer	Domestically Manufactured Goods
Service Tax	Central Government	Central Govt.	Regressive	Shifts to Final Consumer	All Services
VAT	State Government	State Govt.	Regressive	Shifts to Final Consumer	Sale of Goods in the States

Source: Icfai Research Center

Most of these indirect taxes have been subsumed into Goods and Services Tax which came into force in India from 1st July 2017.

The revenues that are generated in the form of levying taxes become the revenues of Central and State Government basing on the subjects listed under 'Union List' State List' and 'Concurrent List 'of the Indian Constitution. These lists specifies what revenues goes to central and state governments and what should be shared between them in the prescribed ratio.

Taxes collected by Center: The Central Government collects wholly indirect taxes like customs duty, excise duty, Central Sales Tax (CST), and direct taxes like income tax, capital gains tax, securities transaction tax, corporate tax, wealth tax (wealth tax was discontinued from 1st April 2016), estate duty(Estate duty was abolished in 1985), education cess, etc.

Taxes collected by State: Indirect taxes like Sales Tax/VAT, excise duty on liquor etc., and direct taxes like property tax, professional tax were collected by the concerned State Governments. With effect from July 2017, Sales tax/Vat were subsumed into Goods and Services Tax (GST) _

Taxes are applicable to every person of India if he comes under the purview of the tax net. Taxes are calculated on the basis of revenues generated or expected to be generated on the particular persons.

16.4 Income Tax

Income Tax is a species of direct tax and is governed by the Income Tax Act, 1961. By virtue of the power conferred on the Central Government by the Constitution of India, the former enacted the Income Tax Act, 1961 (herein the chapter referred to as 'the Act'). The Act extends to the whole of India and came into force on the first day of April 1962.

Part B of the Central Budget contains detailed tax proposals. Once it is approved by the Parliament and acquires the assent of the President, it becomes the Annual Finance Act. Through this Act, Central Government gives effect to financial proposals at the beginning of every financial year. This Act renews itself every year, to include the existing policies, new policies as well as all changes made to the existing policies. The income of every person shall be charged according to the rates of tax prescribed in Schedule I of the Finance Act. The Act is administered by Central Board of Direct Taxes (CBDT), an executive authority, empowered to frame rules to achieve the purpose of the enactment and ensure proper governance of the Act. The CBDT issues circulars from time to time:

- To clarify any doubts regarding the scope and meaning of the Act;
- To act as a guide for officers and assessee.

However, the circulars of CBDT are binding on assessing officers but not on assessee and courts. The Central Government is empowered to constitute an independent authority, settlement commission, a quasi-judicial body to subordinate the CBDT.

Income tax can be levied on both individuals (personal income tax) and businesses (tax on business and corporate income) with respect to the income, both earned (salaries, wages, tips, commissions) and unearned (interest, dividends).

16.4.1 Important Terms under the Income Tax Act, 1961

Before discussing about the other aspects of the Act, let us have a look at the important terminology pertaining to the Income Tax Act.

- **Assessee (Section 2(7)):** An assessee is a person by whom tax or any other sum of money is payable under the Act. It includes every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or loss or the amount of refund due to him; a person who is assessable in respect of income or loss of another person; and a person who is deemed to be an assessee or an assessee in default under any provisions of the Act.

- **Assessment Year (Section 2(9)):** Assessment year means the period of 12 months starting from 1st April of every year and ending on 31st March of the next year.
- **Previous Year (Section 3):** The period of 12 months immediately preceding the assessment year is called the previous year. Income earned in a year is taxable in the next year. The year in which income is earned is known as the previous year and the next year in which income is taxable is known as the assessment year.

  In case of a newly set up business / profession or in the case of a new source of income, the previous year will be the duration between the date of commencement of the source of income and the immediately next March 31^{st}. In these cases, for the second and subsequent years, the previous year shall be 12 months period starting 1^{st} April and ending on 31^{st} March.

  Exceptions to this rule:

  As per the exceptions to the rule of previous year as explained above, the income of the previous year will be taxable in the same previous year without waiting for the assessment year. Following are the situations where the exceptions are applicable:

  - Income of a non-resident shipping company
  - Income of persons leaving India either permanently or for a long period of time
  - Income of bodies formed for a short duration
  - Income of a person trying to alienate his assets with a view to avoiding payment of tax

  Income of a discontinued business
- **Receipt vs. Accrual of Income:** Income is said to have been received by a person when payment has been actually received whereas income is said to have accrued if there arises in the person a fixed and unconditional right to receive it on its due date.
- **Belated Return:** Section 139(4) provides that a return which has not been furnished by the due date may still be furnished as a belated return before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
- **Revised Return:** If a person having filed his return within the due date discovers any omission or wrong statement therein, he may file a revised return before the expiry of one year from the end of the assessment year or completion of assessment whichever is earlier.
- **Income:** The definition of income under Section 2(24) of the Income Tax Act, 1956, is of an inclusive nature, i.e., apart from the items listed in the definition, any receipt which satisfies the basic condition of being income is also to be treated as income and charged to income tax. Accordingly, Income includes:

a. Profits and gains of business or profession including any benefit, amenity, and perquisite obtained in the course of such business or profession.

b. Salary income including any benefit, allowance, amenity or perquisite obtained in addition to or in lieu of salary.

c. Income from house property.

d. Dividend Income.

e. Winnings from lotteries, crossword puzzles, races, games, gambling or betting.

f. Capital gains on sale of capital assets.

g. Amounts received under a Keyman Insurance Policy, i.e., a life insurance policy taken by a person on the life of another person who is or was the employee of the first mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person. It includes the sum allocated by way of bonus on such policy.

h. Voluntary contributions received by a religious or charitable trust or scientific research association or a sports promotion association.

i. Any allowance granted to the assessee either to meet the personnel expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.

j. Any special allowance or benefit, other than perquisite granted to the assessee under this Act, to meet the expenses, wholly, necessarily and exclusively for the performance of his duties of an office or employment of profit.

k. The value of any benefit or perquisite received from a company by its director or any person having substantial interest in the company or, by a relative of its director or such person. The value can be convertible or nonconvertible into money. Such sum paid by the company on behalf of its director or such person, as an obligation.

l. The profits and gains of any business of insurance carried on by a mutual insurance company or by a cooperative society. The computation should be done as prescribed under the Act, 1961.

m. The profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society with its members.

n. Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees State Insurance Act, 1948 or any other fund for the welfare of such employees.

o. Any sum of money referred as income from other sources.

p. Any consideration received for issue of shares in excess of its fair market value.

q. Any other specified income.

- **Gross Total Income:** According to Section 14 of the Income Tax Act, 1956, GTI is the aggregate of the income of a person as computed under the following 5 heads:
  a. Salary income
  b. House property income
  c. Profits and gains of business or profession
  d. Capital gains income
  e. Income from other sources
- **Total Income:** The net income or total taxable income of a person is calculated as the GTI minus all amounts permissible as deductions u/s 80C to 80U.
- **Rounding off of income [Sec.**288A]

  Taxable income is always rounded off to the nearest multiple of Rs.10.
- **Rounding off of tax [Sec.**288B]

  Tax amount is always rounded off to the nearest multiple of Rs.10.

Check Your Progress - 1

1. The new tax slabs introduced by the government in the budget 2020-21 has the highest tax slab of 30 % for those whose taxable income is above Rs 15 lakhs. An additional surcharge of 10 %, 15 % on tax is levied on taxable income above Rs 50 lakhs and Rs 1 crore. Identify the type of tax system followed by the government in the above case?
   a. Progressive tax system
   b. Proportionate tax system
   c. Regressive tax system
   d. Basic tax system,
   e. None of the above
2. Mr Rajesh paid an amount of Rs 2450 towards tax for purchase of LED TV from Croma as per the invoice. The type of tax paid by Mr Rajesh is ________________
   a. Direct tax
   b. Indirect tax
   c. Excise duty

   d. VAT
   e. Wealth tax

3. Mrs Parvathi Sekar working for a public sector bank purchased a flat in 2015 for Rs 55 lakhs and has sold it for Rs 125 lakhs in 2021 thus making a profit of Rs 70 lakhs in a span of 6 years. Her auditor included an income of Rs 46 lakhs towards profit made from the sale of the flat in her I T statement after adjustments. Identify the type of income from the following in the subject case?
   a. Income tax
   b. Wealth tax
   c. Security transaction tax
   d. Fringe benefit tax
   e. Capital gains tax

4. Mr Kamalnath , working for a private sector bank has been paid an amount of Rs 45,000 towards income tax for the period ending March 2021. Identify the previous and Assessment and years to be filled in the I T form for Mr Kamalnath.
   a. 2019-20 and 2020-21
   b. 2020-21 and 2021-22
   c. 2021-22 and 2022-23
   d. 2018-19 and 2019-20
   e. None of the above

5. The definition of income under Section 2(24) of the Income Tax Act, 1956, is of an inclusive nature. Identify one such item given below which cannot be considered as income for a person as per the section 2 (24) of the act?
   a. Salary and perquisites
   b. Dividend from investments in shares
   c. Income from house property
   d. Income from the salary of Spouse
   e. Capital gains tax on sale of property

16.4.2 Heads of Income

According to Section 14 of the Act, income of a person is computed under the following five heads: (a) Income from Salaries, (b) Income from House Property, (c) Profits and Gains of Business or Profession, (d) Capital Gains and (e) Income from Other Sources.

16.4.3 Basis of Charge

Basis of charge of an income lets us know on what grounds the income earned by a person will be chargeable to tax. It specifically defines whether income so received is tax chargeable on receipt basis or on accrual basis, and also defines the chargeability of tax in case of variations in the accounting method.

According to Section 4 of the Income Tax Act, 1961 the gross taxable income of every person during the previous year is the basis of calculation of income tax. The rate of tax depends upon the class of assessee he belongs to, and the tax rates prescribed by the Finance Act.

16.4.4 Tax Rates

Tax rates are given by the Finance Act, which is passed by the Parliament every year. Income tax is computed according to the relevant Finance Act. The tax rates are contained in the First Schedule (Parts i, ii and iii).

Income may be of 3 categories:

Normal income is subjected to the slab rates of tax.

Casual income includes winnings from lotteries, horse races, card games, betting, gambling, etc., and is subjected to tax at a flat rate of 30% tax under section 115BB. This income is not subjected to basic exemption.

Special income includes capital gains (short-term and long-term) taxable under section 112. Long term capital gains on all general assets are taxed at flat rate of 20%; and on listed securities other than equity shares and units of equity oriented mutual fund or zero coupon bonds tax shall be payable @20%of the capital gain computed after allowing indexation benefit or 10% of the capital gain computed without giving the benefit of indexation whichever is less. Short term capital gains on (a) equity shares and equity oriented mutual funds are taxed at 15% if transaction tax is paid, and 20% if transaction tax is not paid; (b) debt oriented mutual funds are taxed at 20%; (c) all other assets are taxed as per the slab rates.

For the Assessment Year 2020-21, the rates are

1. In the case of Individuals (resident or non-resident) or HUF or Association of Persons or Body of Individuals or any other artificial juridical person

There are two types of tax rates-1, under old regime and the other under alternate tax regime. Alternate tax regime is applicable from the Assessment Year 2021-22

Under old regime, certain deductions are permitted under various sections. Under alternate tax regime no such deductions are permitted, but with lower slab rates.)

	Existing Regime Slab Rates for FY 19-20 and FY 20-21			New Regime Slab Rates for FY 20-21
Income Tax slab Amount Rs in lakhs	Resident Individuals & HUF < 60 years of age & NRIs	Resident Individuals & HUF > 60 to < 80 years	Resident Individuals & HUF > 80 years	Applicable for All Individuals & HUF
Rs 0.0 – 2.5	NIL	NIL	NIL	NIL
2.5 – 3.00	5% (tax rebate u/s 87A is available)	NIL	NIL	5% (tax rebate u/s 87A is available) *Contd. .....*
3.00- 5.00	5% (tax rebate u/s 87A is available	5% (tax rebate u/s 87A is available)	NIL	5%(tax rebate u/s 87 A is available
5.00 – Rs 7.5	20%	20%	20%	10%
7.5 – Rs 10.00	20%	20%	20%	15%
10.00 Rs. 12.50	30%	30%	30%	20%
12.5 – Rs. 15.00	30%	30%	30%	25%
> Rs. 15 Lakhs	30%	30%	30%	30%

In the case of resident senior citizens and super citizens a separate tax structure is given in the above table

Surcharge: 10% of income tax, where total income exceeds INR 50 lakh up to INR 1 crore. 15% of income tax, where the total income exceeds INR 1 crore up to INR 2 crore. 25% of income tax, where total income exceeds Rs 2 crore upto Rs 5 crore and 37% of income tax, where total income exceeds Rs 5 crore.

Health and Education Cess: 4% of Income Tax plus Surcharge.

2. **In case of Partnership Firm (Including LLP), Local Authority and Domestic Companies**

   For the Assessment Year 20-21, a partnership firm is taxable @ 30%.

Add: Surcharge, Education Cess and Secondary and Higher Education Cess

3. **In case of Foreign Companies, cooperative societies a separate tax structures are prescribed.**

   i. Surcharge

Surcharge means 'Add On Tax'. Underneath, the amount of income-tax shall be increased by a surcharge @ 10% of such tax. This can be levied where the total income of the assessee exceeds one crore rupees during the financial year 20-21. However, the income tax payable and its surcharge shall not exceed the amount of income that exceeds one crore rupees.

In case of Domestic Company and Foreign Company where the total income of the assessee exceeds ten crore rupees during the financial year 20-21 then the total income tax and its surcharge shall not exceed the amount of income that exceeds ten crore rupees.

ii. Education Cess

In addition to income tax and surcharge, an additional levy of 2% towards 'education cess' is to be made on the aggregate of income tax and surcharge payable for the Assessment Year 20-21

iii. Secondary and Higher Education Cess

This is in addition to income tax payable and the applicable surcharge. It is calculated @ 1% of such income-tax and surcharge.

iv. Rebate under Section 87A

This rebate is available to a person who is resident individual and whose total income does not exceed Rs.5, 00,000 during the financial year 20-21 . The rebate is 100% of the income-tax or Rs.2000/-, whichever is less.

In addition to the tax rates prescribed by relevant Finance Act, special rates are prescribed under Income Tax Act. For example, the long-term capital gains are taxable at the rate of 20% under Section 112, winnings from lotteries, crossword puzzles, races, card games is taxable at 30% under Section 115 BB.

16.5 Residence in India and Tax Incidence

Tax incidence of an individual depends upon his residential status, which is defined on the basis of his physical presence in India as per the Income Tax Act. As per Section 5 of the Income Tax Act, the total income of any person in the previous year is determined according to his residential status (Resident and Ordinary Resident, Resident but not Ordinarily Resident and Non-Resident) of that person for the relevant assessment year.

16.5.1 Residence in India of an Individual

The basis for determination of residential status of an individual is laid down in Section 6.

Resident of India

An individual becomes resident of India when he fulfills the basic conditions prescribed in the Act (Table 16.3).

Table 16.3: Basic Conditions

In the case of an individual [other than that mentioned in columns (2) and (3)].	In the case of an Indian citizen who leaves India in any previous year for the purpose of employment outside India, or as a member of the crew of an Indian ship.	In the case of an Indian citizen or a person of Indian origin, who is in outside India, comes to India on a visit in any previous year.
(1)	(2)	(3)
a. Presence for at least 182 days or more in India during the relevant previous year **or** b. Presence of at least 60 days or more in India in the relevant previous year and 365 days or more during 4 years immediately preceding the relevant previous year.	Presence of at least 182 days or more in India in the relevant previous year and 365 days or more during 4 years immediately preceding the relevant previous year.	Presence of at least 182 days or more in India in the relevant previous year and 365 days or more during 4 years immediately preceding the relevant previous year.

Additional Conditions:-

i. An individual has been a resident of India for at least two years out of ten previous years preceding the relevant previous year.

ii. He has been in India for a period of at least 730 days during seven previous years preceding the relevant previous year.

Residential Status

- An individual is said to be 'Resident of India' in any previous year when he fulfills either of the basic conditions (a or b) and both the additional conditions (i and ii) as prescribed in the Act.
- An individual is said to be 'Not Ordinarily Resident of India' in any previous year when he fulfills either of the basic conditions (a or b) and only one or none of the additional conditions (i or ii) as prescribed in the Act.

- An individual is said to be 'Non Resident of India' in any previous year when he fulfills neither of the basic conditions (aor b) as prescribed in the Act.

Resident But Not Ordinarily Resident of India

An individual is said to be 'Not Ordinarily Resident of India' in any previous year provided he fulfills the following conditions-

- An individual is a non-resident of India in nine out of ten previous years preceding to the relevant previous year

  Or

- He been in India during the seven previous years preceding the relevant previous year for a period of seven hundred and twenty nine days or less

Illustration: Mr. Suraj came to India on 2nd January, 2020 after staying 18 years abroad. The financial year for him in India shall be 2020-21. Does this become a taxable year for him?

The answer is 'Yes'. He is liable to pay tax as a resident and not ordinarily resident of India. Because he is a non-resident Indian for all the 18 years preceding his current financial year and also his stay in India is less than 729 days in the previous year.

Non-Resident of India

An individual, not fitting into any of the above conditions, is said to be a non-resident of India.

16.6 Exempted Incomes

Section 10 of the Act provides exemption for certain incomes from the calculation of Total Income. That means those incomes need not to be considered as taxable income subject to conditions laid under this Act, 1961.

Some of those incomes are:

1. Agricultural income.
2. Receipts by an individual HUF member out of the income of the family.
3. Share of profit of a partner in a partnership firm.

Self-Assessment Questions – 1
a. What is scope/applicability of Indian Income Tax Act in terms of geographical area and when did it come into force? b. Can January 1st to December 31st, the period of 12 months be considered as assessment year under Income Tax Act, 1961?
c. Mr. X's (below 65 years) total income for the assessment year 20-21 is Rs.4,50,000. Compute his tax liability.

16.7 Income from Salaries

For the income to be taxable under this head, the relationship of employer and employee must exist between the payer and payee. The person employed may be on a full-time or a part-time basis.

The remuneration received by an individual is taxable under the head "Salaries" irrespective of whether the remuneration is termed as salary or wages as both are compensation for work done or services rendered.

The salary payable must be real and not fictitious and there must be an intention to pay on the part of employer and an intention to receive on the part of employee.

Under Section 17(1), salary includes:

- Wages,
- Any annuity or pension,
- Any gratuity,
- Any fees, commission, perquisite or profits in lieu of or in addition to any salary or wages,
- Any advance of salary,

- Any payment received in respect of any period of leave not availed by the employee,
- Portion of the annual accretion in any previous year to the balance at the credit of an employee participating in recognized provident fund to the extent it is taxable as specified.
- The aggregate of all sums that constituted in the transferred balance of an employee who participates in a recognized provident fund, to the extent chargeable to tax under this Act, 1961
- Contribution made by the Central Government or any other employer to the account of an employee under a referred pension scheme in the previous year

16.7.1 Advance Salary

Any salary received in advance is taxable on receipt basis in the year in which it is received, irrespective of incidence of tax in the hands of the employee. For this purpose, any loan taken from the employer is not regarded as advance salary.

16.7.2 Arrears of Salary

If there are any arrears of salary which have not been taxed in the past, such arrears will be taxed in the year in which these arrears are paid or allowed to the employee.

16.7.3 Surrender of Salary

If any employee opts to surrender his salary to the Central Government under Section 2 of the Voluntary Surrender of Salaries (exemption from taxation) Act, 1961, the salary so surrendered is excluded while computing his taxable income.

16.7.4 Tax-free Salary

When the employee receives tax-free salary from his employer, it means that the employer himself pays the tax which is due on the salary of such employee. The amount of tax, so paid by the employer, along with the tax-free salary received, is also to be considered as the income of the employee and will be added to his salary. Later, on the calculation of the tax liability of the employee, such tax paid on the tax-free salary will be eligible to be deducted from the tax liability.

16.7.5 Leave Salary

Any amount received as cash equivalent of leave salary in respect of period of earned leave at his credit at the time of retirement whether on superannuation or otherwise is exempt from tax in the case of government employees. Similar provisions with certain limits apply to leave salary in the case of other employees. However, in the case of other employees, there are certain limits applicable for exemption and the balance will be taxable in their hands.

16.7.6 Gratuity

Gratuity is paid for the long and meritorious services rendered by an employee. Under Payment of Gratuity Act, 1972, gratuity payment has become legally compulsory in most of the cases and where it is not applicable the employee can claim gratuity under the terms of contract of employment. In the case of government employees gratuity is wholly exempt in the case of employees covered under Payment of Gratuity Act, 1972, the amount is limited to to fifteen days' (15/26) of the last drawn half month's average salary for every completed year of service (including any part thereof above 6 months) or actual gratuity received or Rs.20,00,000 whichever is less. In the case of employees not covered under Payment of Gratuity Act, 1972, the amount is limited to half month's average salary (calculated for the last 10 months) for every completed year of service (excludes any part thereof) or actual gratuity received or Rs.20,00,000 whichever is less.

When the gratuity is received from more than one employer then the maximum amount received among such employments shall be considered for calculating the exempted amount.

16.7.7 Pension

Pension is a periodical payment of money for all the years of past service and it is received by employee after his retirement and is taxed as salary. Pension earned and received abroad but later remitted to India is exempt from tax, in the case of a non-resident and a resident but not ordinarily resident. It is chargeable to tax if the pensioner is resident and ordinarily resident.

Pension may be received by the assessee either in lump sum or periodically. The payment in lump sum is known as commuted pension and the periodic payment is known as uncommuted pension. Uncommuted pension is treated as salary, taxable in the hands of every recipient irrespective whether he is a government or non-government employee.

Any amount received by a Government employee as commutation of pension is fully exempted from tax under Section 10(10A)(i).

But in case of non-government employee the amount exempt from tax is limited to commuted value of 1/3 of pension or 1/2 of pension depending on whether he is in receipt of gratuity or not. In other words, an employee who receives gratuity, 1/3 of the commuted value of pension is exempted from tax. And for an employee who does not receive gratuity, ½ of the commuted value of pension is exempted from tax.

16.7.8 Bonus

It is taxable in the year of receipt or the year of accrual, whichever is earlier. Contractual bonus is treated as salary while gratuitous bonus is treated as perquisite. An assessee may claim relief from tax under Section 89 for the year in which he receives bonus in arrears.

16.7.9 Fees and Commission

They are taxable as salary irrespective of the fact that they are paid in addition to or in lieu of salary. However, commission paid to a director (not being an employee) for his giving guarantee for repayment of loan is taxable under the head "Income from Other Sources".

16.7.10 Dearness Allowance (DA)

It is taxable under the head 'Income from Salaries'.

16.7.11 City Compensatory Allowance

It is taxable whether given for meeting personal and other expenses that an employee may have to incur either due to the special circumstances he works in or posting at a particular place.

16.7.12 House Rent Allowance

The least of the following will be allowed as deduction:

i. 50 percent of salary – in case the residential house is situated at Mumbai, Delhi, Kolkata, and Chennai;
   40 percent of salary – in case the residential house is situated at any other place in India;

ii. Actual house rent allowance received by the employee in the previous year;

iii. The excess of rent paid over 10 percent of the salary.

For the purpose of calculating HRA,

> Salary means Basic Salary + DA, if the terms of employment so provide to include it in the retirement benefits + Commission based on a fixed percentage of turnover achieved by an employee as per terms of contract of employment but it excludes all other allowances and perquisites. Most of the private sector companies possess only the basic salary for their employees.

Exemption in case of HRA is denied where rent paid does not exceed 10 percent of salary or when employee lives in his own house or when he lives in a house for which he does not pay any rent.

16.7.13 Special Allowances

Special allowance will be allowed as exemption which is not in nature of a perquisite within the meaning of Section 17(2) and which is specifically granted to meet expenses incurred wholly, necessarily and exclusively for the performance of the official duties or employment for profit, as notified by the Central Government in the Official Gazette.

16.7.14 Perquisites

Perquisite is defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. They may be provided either in cash or in kind. Perquisites are included in salary only if they are:

a. received by an employee from his employer,

b. allowed during the continuance of employment,

c. directly dependent upon service,

d. resulting in the nature of personal advantage to the employee, and

e. derived by virtue of employer's authority.

16.7.15 Standard Deductions Under the head salary (Section 16)

The income chargeable under the head ''Salaries'' shall be computed after making the following deductions from gross salary:

1. Standard Deduction [Section 16(i)]: A fixed amount of Rs.50,000 is allowed to be deducted as standard deduction.
2. Deduction for Entertainment Allowance [Section 16(ii)]: This deduction is permissible only for government employees. Salary for this purpose means and includes only basic pay.

   Least of the Following

   i. Actual Amount, or

   ii. 1/5th of Salary, or

   iii. Rs. 5,000

3. Deduction for Profession Tax [Section 16(iii)]: The actual amount paid by the employee as professional tax is permissible as a deduction.

Check Your Progress - 2

6. An add on tax of 10% of income tax, where total income exceeds INR 50 lakh up to INR 1 crore. 15% of income tax, where the total income exceeds INR 1 crore up to INR 2 crore. 25% of income tax, where total income exceeds Rs 2 crore upto Rs 5 crore and 37% of income tax, where total income exceeds Rs 5 crore is charged by the Government on individuals. Identify the term used for this add on tax

   a. Cess
   b. Surcharge
   c. Penalty
   d. Rebate
   e. None of the above

7. Mr Raghav works for an IT company and frequently works for the foreign subsidiary. Some times he stays for one year as well Mr Raghav can be treated as resident of India when he fulfils the basic conditions prescribed in the Act which is

   a. Presence for at least 90 days or more in India during the relevant previous year

   b. Presence for at least 152 days or more in India during the relevant previous year

   c. Presence for at least 182 days or more in India during the relevant previous year

   d. Presence for at least 100 days or more in India during the relevant previous year

   e. Presence for at least 60 days or more in India during the relevant previous year

8. Mr Saket Agarwal has income from various sources such as salary, interest, dividend etc. Section 10 of the Act provides exemption for certain incomes from the calculation of Total Income. Identify one such income which is exempted from calculation of Tax for Mr Saket?

   a. Rs 2.56 lakhs being income from house property

   b Rs 3.23 lakhs being income from interest on various investments in Banks and bonds

   c. Rs 1.50 lakhs being share of profit from partnership firm where Mr Saket is partner.

   d. Rs 1.75 lakhs being dividend income from shares

   e. Rs 0.35 lakhs being income from consultancy

9. Mr Srinivasan , one of the reputed tech consultant in an I T company draws tax free salary of Rs 48 lakhs / annum it amounts to government loosing tax revenue on the income from salaries of Mr Srinivasan (True/ False)

10. Mr Sashwat Kulkarni has just retired after rendering 36 years of service in a private company. He is covered under Payment of Gratuity Act, 1972. His last pay at the time of retirement was Rs 76,365. The gratuity payable to him at the time of retirement is

    a. Rs 15,00,265

    b. Rs 15,86,042

    c. Rs 20.00.000

    d. Rs 18.46,275

    e. Rs 21,42,475

16.8 Income from House Property

The annual value of property consisting of any buildings or lands appurtenant thereto, of which the assessee is owner, is chargeable to tax under the head, "Income from House Property". Any house property occupied by the assessee for the purpose of business or profession carried on by him, the profits of which are chargeable to tax, annual value of such property is not chargeable to tax under this head.

According to Sec.22 of the Income Tax Act, 1961, tax is charged only if (a) the property consists of any building or land appurtenant thereto; (b) the assessee is the *owner* of house property; and (c) the property should not be used by the owner for purpose of his business or profession, the profits of which are chargeable to tax.

If the house property is sublet, it is not taxable under this head but it is taxed under the head "Income from Other Sources" for the person who sublet the rented property.

Tax on house property is levied only if the assessee is the owner of the property. Owner includes legal as well as deemed owners. Under this section owner may be an individual, firm, company, co-operative society, or association of persons.

Under Section 27 of the Act the following persons will be treated as deemed owners – an individual, who transfers house property otherwise than for adequate consideration to his or her spouse or to minor child, the holder of impartible estate, a member of cooperative society, company or association of persons to whom a building or a part thereof is allotted or leased under a house building scheme of the society, company or association, a person who is allowed to take or retain possession of any building in part performance of a contract entered into under Section 53A of the Transfer of Property Act, a person who acquires any rights on the property by virtue of any transaction specified under section 269U of the Act, 1961.

Tax is levied on the annual value of the property and not on rent. It includes service tax as leviable on such property concerned.

16.8.1 Annual Value

The annual value is calculated by taking the following factors into consideration (i) the rent payable by the tenant, (location of property), (ii) municipal valuation of the property, (iii) fair rent of the property, and (iv)the standard rent under the Rent Control Act.

Income from house property is referred to as annual value. For the purpose of taxation, the annual value of house property is to be determined. Computation methodology is given in Act

16.8.2 Computation of Income from House Property

Gross Annual Value	xxx
Less: Municipal Taxes	xxx
Net Annual Value	xxx
Less: Deductions under section 24 – Standard deduction – Interest on borrowed Capital	xxx
Income from House Property	xxx

16.8.3 Property Exempt from Tax

There are certain properties which are completely exempt from tax under this head. They are:

- Income from farm house.
- Annual value of any one palace of an ex-ruler.
- Property income of local authority.
- Property income of an authority constituted for the purpose of planning, development or improvement of cities, towns and villages.
- Property income of an approved scientific research association.
- Property income of a university or other educational institutions, hospital or other medical institution, games association, trade union.
- Property income of a trade union.
- House property held for charitable purposes.
- Property income of a political party.
- Property used for own business or profession and one self-occupied property.

16.8.4 Deductions under Income from House Property

i. Municipal rates and taxes.

ii. **30% of Net Annual Value:** 30% of the Net Annual Value is allowed as statutory deduction under this head. This deduction is automatic and does not depend on the quantum of actual expenditure incurred in respect of repairs, collection charges etc. This deduction is allowed even if no expenditure is incurred by the assessee. The assessee can avail this deduction even if the tenant undertakes to do the repairs.

iii. **Interest on Loans:** Interest payable on the loans borrowed for the purpose of acquisition, construction, renovation, repairing or reconstruction can be claimed as deduction. Interest relating to the year of completion of construction can be fully claimed in that year irrespective of the date of completion. Interest accrued during the construction period preceding the year of completion of construction can be accumulated and claimed as deduction over a period of five years in equal installments commencing from the year of completion of construction.

In the case of self-occupied property, interest on loan borrowed on or after April 1, 1999 is limited to Rs.2,00,000 for the A.Y.20-21 . In the case of others there is no such ceiling.

However, under the following circumstances, the said limit is reduced to Rs.30,000/- :

- In case the loan borrowed before 01.04.1999 for any sort of purpose relating to house property
- In case the loan borrowed after 01.04.1999 for any purposes other than for construction or acquisition of house property
- If the construction or acquisition is not completed within five years from the date of the financial year in which capital was borrowed.

iv. Unrealized rent from the tenant.

16.8.5 Tax Treatment of Loss from House Property

If the assessee incurs a loss under the head ‘Income from House Property’, the loss can be set-off against any other head of income. Any unadjusted loss can be carried forward for a period of 8 years for being set-off against any future income under the same head.

Self-Assessment Questions – 2	
a.	The maximum exemption of gratuity in case of non-government employees covered under Payment of Gratuity Act, 1972 for the assessment year 20152016 is?
b.	If the rent is paid for a house situated in Delhi, the HRA shall be exempt to the maximum extent of?

c. The municipal value of a let-out property of Mr.Naidu was Rs.5,90,000; its fair value was Rs.7,05,000; and the standard rent fixed under Rent Control Act is Rs.3, 95,000. What can be taken as reasonable rent for this property?

16.9 Income from Profits and Gains of Business or Profession

Meaning of Business

In view of Section 2(13) business includes any (a) trade (b) commerce (c) manufacture or (d) any adventure or concern in the nature of trade, commerce or manufacture. Though the definition is not exhaustive, it covers every facet of an occupation carried on by a person with a view to earning profit. Production of goods from raw material, buying and selling of goods to make profits and providing services to others are different forms of "business". Profits arising therefrom are, therefore, chargeable to tax under the head "Profits and Gains of Business or Profession". The term "business" is a word of wide import and in fiscal statutes it must be construed in a broad rather than a restricted sense.

Some of the expenses are expressly allowed as deductions and some are disallowed. This is generally an exhaustive list and while computing the tax these items are to be taken into consideration.

16.9.1 Deemed Profits

Deemed profits are those receipts which have to be treated as income for the sake of inclusion under the head 'profits and gains of business or profession' even though these incomes are not considered as one as per the accounting norms of the company.

i. Any recovery or salvage obtained from items allowed as deduction in any of the previous years is chargeable to tax as business income.

ii. Balancing charge on asset of an undertaking engaged in generation or, generation and distribution of power.

iii. Sale of assets used for scientific research. iv. Recovered bad debts earlier allowed as deduction.

iv. Amount withdrawn from special reserve created and maintained by certain financial institutions.

v. Any amounts in the form of unexplained investments. Unexplained money investments not fully disclosed. Unexplained and amount borrowed or repaid on hundi are considered as deemed incomes.

16.9.2 Accounting Method

The accounting method regularly employed by the assessee has to be used to calculate the income under the head "Profits and Gains of Business or Profession". That is, it shall be computed only in accordance with either the cash or the mercantile system of accounting regularly employed by an assessee.

16.9.3 Compulsory Maintenance of Books of Account

This section provides for compulsory maintenance of books of account by certain specified persons (Table 16.4).

Table 16.4: Compulsory Maintenance of Books by Specified Persons

a.	Persons carrying on specified profession (Section 44AA(1))	Gross receipts does not exceed Rs.1,50,000 in any of the three years preceding the relevant previous years.	The persons falling under this category should maintain books of account and other documents to the satisfaction of Assessing Officer.
b.	Persons carrying on specified profession or business (Section 44AA(3)	Gross receipts from the profession exceeds Rs.1,50,000 in any of the three years preceding the relevant previous years.	The persons falling in this category should maintain prescribed books of account under Income Tax Rules. Rule 6F prescribes the books of accounts compulsorily to be maintained by the person carrying on specified profession.
c.	Persons carrying on non-specified profession or business	Income from profession or business does not exceed Rs.1,20,000 or, the total sales, turnover or gross receipts thereof are not in excess of Rs.10,00,000 in any of the three years immediately preceding	Not required to maintain any books of account.

Contd. ....

		the relevant previous year.	
d.	Persons carrying on non-specified profession or business	Income from profession or business exceeds Rs.1,20,000 or, the total sales, turnover or gross receipts thereof are in excess of Rs.10,00,000 in any of the three years immediately preceding the relevant previous year.	Should maintain books and other documents to the satisfaction of Assessing Officer.

16.9.4 Audit of Certain Persons

This section provides for audit of accounts of certain persons (Refer 16.5 Table).

Table 16.5: Audit of Certain Persons

Different taxpayers	When then are covered by the provisions of compulsory audit under Section 44AB.
A person carrying on business	If the total sales, turnover or gross receipts in business for the accounting year or years relevant to the assessment year (2020-21) exceed (s) rupees one crore
A person carrying on profession	If the gross receipts in profession for an accounting year relevant to any of the assessment year (2020-21), exceeds rupees twenty-five lakhs.
A person covered under Section 44AD, 44AE, 44AF, 44BB, 44BBB	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these sections (irrespective of his turnover).

16.9.5 Minimum Alternate Tax (MAT)

The concept of MAT was introduced in the direct tax system to make zero tax companies under the Income Tax Act, 1961 to pay tax at a fixed percentage of book profit. This sort of tax is what is called as Minimum Alternate Tax (MAT).

In this context, companies means those companies making huge profits and paying substantial dividends to its shareholders but not contributing to the government revenue in the form of corporate tax. This non-contribution happened because of various incentives and exemptions available under the Income Tax Act, 1961 that are availed by these companies.

Section 115JB provides that, where in the case of an assessee, being a company, the income tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half percent of its book profit, the tax payable for the relevant previous year shall be deemed to be eighteen and one-half percent of such book profit and such book profit shall be deemed to be the 'total income'.

16.10 Capital Gains

Section 2(14) defines a 'Capital Asset' means a property of any kind held by an assessee, whether or not connected with his business or profession, except exclusions made under this section.

The term Capital Asset does not include the following:

- Any stock-in-trade, consumable stores or raw materials held for the purpose of business or profession.
- Personal effects of the assessee, that is movable property including wearing apparel and furniture held for personal use or for the use of any member of his family dependent upon him. It excludes
  a. Jewellery
  b. Archaeological Collections
  c. Drawings
  d. Paintings
  e. Sculptures
  f. Any work of Art
- Agricultural land in India, provided it is not situated in any area within the jurisdiction of a municipality or a cantonment board, having a population of 10,000 or more or in any such notified area;
- 6 percent Gold Bonds, 1977 or 7 percent Gold Bond, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government; and with effect from assessment year 2000-01, Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 shall not be included;
- Special Bearer Bonds 1991 issued by the Central Government;
- Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999, notified by the Central Government.

The goodwill of a business is capital asset and any excess realized over its book value would be a capital gain chargeable to tax, right to subscribe to shares, partner's share in a firm, leasehold in mines and license to manufacture an item, dealership rights, right of tenancy under Tenancy Act, a right to obtain conveyance of an immovable property, a business undertaking, and route permits are included as capital assets.

Government makes changes in IT Act during the Budget Session and the significant changes in Budget 2021-22 are given in Exhibit 16.1 hereunder.

Exhibit 16.1: Changes in IT Introduced in Union Budget 2021-22

Union Budget 2021-22 brought some significant changes, keeping income-tax slabs for individual taxpayers unchanged. It had brought some significant changes in the income-tax rules to ease the taxpayers' compliances that includes-

- Senior citizens above the age of 75 years, who only have pension and interest as a source of income, will be exempted from filing their income tax return (ITR). These senior citizens have not been exempted from paying tax but are exempted from filing an ITR if they fulfill certain conditions. They will be exempted from filing ITR only in the case where the interest income is earned in the same bank where the pension is deposited. The government will notify a few banks where account holders will be eligible for this exemption and they will have to provide a declaration to the specified bank. After that, the specified bank will have to compute the income of such senior citizens after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Such senior citizens will not have to furnish a return of income for this assessment year after that.
- ITR form will now have pre-filled information on dividend, interest and capital gains to ease compliance for individual taxpayers. Details of capital gains from listed securities, dividend income, and interest from banks, post office, etc. will also come pre-filled. Details of salary income, tax payments, TDS, etc., will also be there in ITR forms
- Interest on employee's share of contribution to Employees' Provident Fund (EPF) on or after April 1, 2021, will be taxable at the stage of withdrawal if it exceeds ₹2.5 lakh in any year. This will lead to additional tax liability, especially for High Net worth Individuals (HNIs) who make higher contributions and will also discourage voluntary provident fund (VPF) contributions. This along with taxation of aggregate employer's contributions in excess of ₹7.5 lakh to EPF, NPS and superannuation fund and interest thereon introduced last year, may make EPF an even less attractive retirement scheme.

Contd. ……

• The government proposed to make exempt dividend payment to REITs (Real Estate Investments Trusts) and InvITs (Infrastructure Investment Trusts) from TDS. • The government proposed to levy higher TDS for non-filers of income-tax returns. • The government had brought ULIPs (Unit Linked Insurance Plans) under tax bracket. If the annual premium payable by the individual exceeds Rs.2.5 lakhs, it is subject to capital gains tax on par with the equity-oriented mutual funds. • There are certain changes in LTC Scheme Notification, extension of tax holiday on affordable housing, extension of time limit for filing revised ITR or Belated ITR as well

Source: *https://www.hindustantimes.com/budget/union-budget-2021-22-here-are-10-income-tax-changes-announced-101612496255265.html*

16.10.1 Computation of Capital Gains

Steps	Computation of short-term capital gain.	Computation of long-term capital gain.
I	Full value of consideration received.	Full value of consideration received.
II	Deduct a. Expenditure incurred wholly and exclusively in connection with such transfer b. Cost of acquisition c. Cost of improvement	Deduct a. Expenditure incurred wholly and exclusively in connection with such transfer b. Indexed cost of acquisition c. Indexed cost of improvement
III	From the above resultant deduct exemptions.	From the above resultant deduct exemptions.
IV	Balance is short-term capital gains.	Balance is long-term capital gains.

16.10.2 Transactions Not Regarded as Transfer

For the purpose of capital gain tax, certain transactions are not regarded as transfer. Hence, for these transactions, there is no liability towards capital gains;

- Any distribution of capital assets on the total or partial partition of a Hindu Undivided Family (HUF).
- Any transfer of a capital asset under a gift, or will or an irrevocable trust.

- Any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company.
- Transfer of shares in certain schemes of amalgamations, etc.
- Transfer of a capital asset being any work of art, archaeological, scientific or art collection, book, drawing, painting, etc. to the government or any university or museum notified by the Central Government.
- Any transfer involved in a scheme entered into by the assessee with borrower of securities for lending of any securities under an agreement or arrangement subject to guidelines issued by SEBI.
- Any transfer of capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be regarded as transfer. The revenue received from reverse mortgage scheme by senior citizens would not be taxable income.

16.10.3 Tax Treatment for Short-term Capital Gains and Long-term Capital Gains Short-term Capital Gains

A short-term capital asset is one which is held for 36 months or less – 12 months or less in the case of equity shares, units of mutual funds/UTI and listed securities – immediately preceding the date of transfer. Short-term capital gains, i.e. gains arising from the transfer of short-term capital assets, are treated as a part of total income in the year in which the transfer is effected, and taxed at the normal rates of tax.

Prior to amendment made in Finance Act 2004 the short-term capital gains are taxed at applicable tax rates (i.e., slab rates). This treatment continues to apply to all shortterm capital assets except short-term capital gains from sale of securities. A new section 111A has been introduced, to tax the short-term capital gains arising from the sale of securities to investors @ fifteen per cent.

Long-Term Capital Gains

Assets other than short-term capital assets are regarded as long-term capital assets. Under Section 112, individual assesses and HUFs will pay a flat rate of tax @ 20% on long-term capital gains (except on securities). The long-term capital gains on sale of securities are fully exempt. Instead a tax of 0.125 % on the value of all the transactions of purchase of securities that take place in recognized stock exchange in India has been introduced.

Indexed Cost of Acquisition and Indexed Cost of Improvement

To determine capital gains arising out of the transfer of a long-term capital asset, the indexed cost of acquisition and the indexed cost of improvement are allowed as a deduction from the sales proceeds.

The cost of acquisition and the cost of improvement of asset are linked to the Cost Inflation Index to obtain the indexed cost of acquisition and the indexed cost of improvement. (Table 16.6).

Long-term capital gains are therefore computed by deducting from the full value of the consideration the expenditure incurred in connection with the transfer, the indexed cost of acquisition and the indexed cost of improvement.

Table 16.6: Cost Inflation Index from 2001-02 till 2020-21

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

Source: https://taxadda.com/cost-inflation-index-cii/

Indexed cost of acquisition means an amount which bears to the cost of acquisition the same proportion, as the Cost Inflation Index (CII) for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on 1 April, 2000, whichever is later. In other words, indexed cost of acquisition for financial year 2020-21 = [(CII for 2020-21) ÷ (CII for 2000-01 or later)] x Cost of Acquisition.

The indexed cost of improvement will also be similarly computed.

Exemptions from Long Term capital gains

Certain exemptions are provided from taxation of capital gains. Some of them are

- Exemption on Transfer of Residential House Property (Section 54)
- Exemption from Long-term Capital Gains Invested in Bonds (Section 54EC & 54F)
- Exemption on Transfer of Assets in case of shifting of Industrial Undertaking from Urban Area (Section 54G)

16.10.4 Adjustment of Capital Losses

Losses due to transfer of short-term or long-term capital assets cannot be set-off against any other income. Long-term capital losses can be set-off only against long-term capital gains. However, Short-term capital losses can be set-off against both short-term capital gains and long-term capital gains. Any unadjusted capital loss may be carried forward and set off against income under the head, "capital gains" of the subsequent years. However such loss cannot be carried forward for more than 8 assessment years.

Self-Assessment Questions – 3

a X purchases a house property on March 10, 2018 and transfers it on June 6, 2020. Is this a short-term asset or long-term asset? Justify.

b Mr.Ramesh claims Rs.42,500 as deduction in respect of Income tax paid on April 15th, 2020 in respect of earlier year. Is the amount allowable as section 40a deduction under the head of 'Profits and Gains of Business or Profession?

c Ms.Jasmine purchased a house on June 30th, 2001 for Rs.6,50,000. She sold the property on June 15, 2008 for Rs.75,00,000. The expenses incurred on transfer were Rs.50,000. Compute the capital gains.

16.11 Income from Other Sources

Incomes like

- Dividends;
- Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature;
- Any sum received by the assessee from his employer as contributions to any staff welfare scheme (if not taxable under Section 28);
- Interest on securities, if not charged to tax under the head 'Profits and gains of business or profession;
- Income from machinery, plant or furniture let on hire [if it is not taxable in profits and gains of business or profession];
- Income from letting of plant, machinery or furniture along with the building and letting of building is inseparable from the letting of plant, machinery or furniture (if it is not taxable under Section 28); and
- Any sum received under a Keyman insurance policy, including bonus, if not taxable as salary or business income.

The treatment of each of the incomes that may be included in the head 'income from other sources' is detailed in the following paragraphs:

16.11.1 Exempted Assessees

Interest on securities is not taxable in the hands of the following assesses:

i. Local authority.

ii. An authority constituted in India for town planning, etc.

iii. Approved scientific research association.

iv. A regiment fund or non-public fund.

v. An approved hospital.

vi. An approved athletic association.

vii. A registered trade union.

viii. A statutory, recognized provident fund and approved superannuation fund and an approved gratuity fund. ix. A charitable trust.

16.11.2 Deductions [Section 57]

The income that is taxable under the head 'income from other sources' will be arrived at after making the following deductions under Section 57:

a. Any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realizing such dividend or interest on behalf of the assessee is allowed as deduction.

b. The amount credited by the employer on or before the due date in the employee's accounts towards provident fund/superannuation/other funds with the amounts of contribution received is allowed as deduction.
c. Repairs in respect of building, insurance premium paid in respect of insurance against risk of damage or destruction of the premises, repairs and insurance of machinery, plant and furniture and depreciation are deductible in case of income chargeable under Section 56 (ii)/(iii).
d. Rs.15,000 or 33 1/3% of income in the nature of family pension under Section 57 (iia) whichever is less.
e. Any other expense not being capital in nature, expended in the previous year wholly and exclusively for the purpose of making or earning income.

16.11.3 Inadmissible Expenses [Section 58]

The following expenses are not deductible by virtue of Section 58:

i. Personal Expenses.
ii. Wealth Tax.
iii. Expenses of the nature described in Section 40A.
iv. Interest and salary payable outside India, if tax has not been paid or deducted at source.
v. No deduction shall be allowed in respect of winnings from lotteries, crossword puzzles, card games, races including horse races, gambling, betting, etc. (These incomes are charged to tax under Section 115BB at a flat rate of 30%).

In respect of the activity of owning and maintaining race horses, expenses incurred shall be allowed even in the absence of any stake money earned. Such loss shall be allowed to be carried forward in accordance with the provisions of Section 74A for a period of 4 assessment years.

16.12 Deductions from Gross Total Income

Several deductions are allowable to deduct from Gross Total Income for claiming tax exemption. Some of such deductions are discussed hereunder:

16.12.1 Deductions Made in Respect of Certain Payments and Expenditure

The deductions that are allowed for payment or expenditure for computation of gross total income are as follows:

Deductions in Respect of Certain Payments

Deduction in Respect of Life Insurance Premia, Contribution to PF, etc. (Sec. 80C). This deduction is allowed for an individual or H.U.F. only. Contributions to any / all of the following is subject to a maximum of Rs.150,000, is eligible for deduction under this section as:

a. Premia paid on life insurance policies.

b. Sum paid for a deferred annuity as is not in excess of 20% of the actual capital sum assured.

c. Provident fund contributions.

d. Subscriptions to any savings certificates as the Central Government may specify on this behalf in the Official Gazette.

e. Contribution by an individual towards an approved superannuation fund.

f. Premium to keep in force a contract for annuity plan of the LIC or any other insurer as the Central Government may notify.

g. Subscription to National Savings Certificates (VIII issue), issued under the Government Saving Certificates Act, 1959.

h. Subscription of any security of the Central Government.

i. Any unit-linked insurance plan of LIC mutual fund.

j. Subscription to any units of the mutual fund notified under section 10 (23D).

k. Contribution to any pension fund set-up by any mutual fund notified under section 10 (23D).

l. Subscriptions to notified deposit scheme or contribution to any notified pension fund of the National Housing Bank.

m. Any sum paid on account of repayment of the sum borrowed for the purchase or construction of house property from approved agencies.

n. Education expenses for the purpose of full time education (restricted to two children).

o. From the AY 2007-08, investment in term deposit for a fixed period of not less than five years with any scheduled bank.

q. Five year time deposit in an account under post office time deposit rules, 1981.

r. Deposit in an account under the senior citizens savings scheme rules, 2004.

Deduction in Respect of Contribution to Pension Fund (Section 80CCC)

This section provides a deduction to an individual for any amount paid by him in any annuity plan of LIC for receiving pension. This contribution under this section is limited to, the overall ceiling of Rs.1,50,000 laid down under Section 80CCE. As per section CCE, the combined maximum limit for deduction which can be availed under sections 80C, 80CCC and 80CCD(1) is Rs.150,000.

Deduction in Respect of Contribution to New Pension Scheme (Section 80CCD)

A new pension scheme has been introduced and is applicable to new entrants to Government service. This section provides a deduction of the amounts paid or deposited by an individual employed by the Central Government on or after 1st January 2004, in the pension account subject to a maximum of ten per cent of his salary in the previous year as per the scheme notified by the Central Government. From the AY 2008-09, an individual employed by any other employer on or after the 1 January 2004 and who has paid or deposited the specified amount in his account under the pension scheme referred to in section 80CCD(1) of the said section is also eligible for deduction. Such individual is eligible for 10% of his gross total income in the previous year.

An assessee claiming deduction under this section cannot claim deduction under 80C for the same amount.

However, the total of the deductions under 80C, 80CCC and 80CCD shall not exceed Rs.1,50,000 (inserted by Section 80CCE).

An assessee can claim additional deduction on employer's contribution to employee's pension account referred to in section 80CCD (2) for up to 10% of his salary. There is no monetary ceiling on this deduction.

Deduction in Respect of Medical Insurance Premium (Section 80D)

A deduction of Rs.25,000 is allowed under Section 80D in respect of any sum paid by an assessee to effect or keep in force Mediclaim insurance policy or any payment made on account of preventive health check-up of the assessee or his family. Family means the assessee, spouse and the dependent children of the assessee. For senior citizens , it is 50,000

Additionally, with effect from AY 20-21 a deduction of Rs.50,000 is allowed on any payment made to effect or keep in force an insurance on the health of parent or parents or any payment made on preventive health check-up of them. In case, any or both parents are senior citizen(s), then Rs. 50,000 is the amount allowed for deduction under this section.

Towards any payment made on preventive health checkup, then the amount deductible shall not exceed Rs. 5000.

Medical Treatment of Handicapped Dependents (Section 80DD)

Section 80DD provides that if an assessee incurs some expenditure on the maintenance or medical treatment of a handicapped dependent, or deposits money in an approved scheme for the maintenance of such dependent. The deduction is available to a resident individual or a HUF as follows: (i) where disability is 40% or more but less than 80%, fixed deduction of Rs.75,000; (ii) where there is severe disability (disability is 80% or more), fixed deduction of Rs.1,25,000 can be claimed..

Deduction in Respect of Medical Treatment (Section 80DDB)

This deduction is available for individuals and HUF for the amounts spent for medical treatment on self or dependent relative. In case of the person below age 60, a deduction up to Rs.40,000 is available with respect to any expense incurred towards treatment of specified medical diseases or ailments.

In case of HUF, such a deduction is available with respect to medical expenses incurred towards these prescribed ailments for any of the HUF members. In case the individual on behalf of whom such expenses are incurred is a senior or super senior citizen, the individual or HUF tax payer can claim a deduction up to Rs.1 lakh.

Any reimbursement of medical expenses by an insurer or employer shall be reduced from the quantum of deduction the tax payer can claim under this section. The person needs to get a prescription for such medical treatment from the concerned specialist and produce the same for claiming the deduction.

Interest on Loan taken for Higher Education (Section 80E)

A deduction is allowed to an individual in respect of interest on loan taken for pursuing higher studies. The loan should be from an approved institution. The loan can be taken for higher education of himself or his relative being spouse and children. The deduction is allowed from the year the assessee starts paying interest on the loan and subsequent seven years.

Deduction in Respect of Donations to certain funds, charitable institutions, etc. (Section 80G)

The various donations as specified under section 80G are eligible for deduction up to either 100% or 50% with or without restriction. From the financial year 2017-18, any donations made in cash exceeding Rs.2,000 will not be allowed as deduction. The donations above Rs.2,000 should be made in any more other than cash to qualify for 80G deduction.

The list of donations as specified under this section fall under 4 broad categories: (a) donations with 100% deduction without any qualifying limit; (b) donations with 50% deduction without any qualifying limit; (c) donations with 100% deduction subject to a limit of 10% of the adjusted gross total income; and (d) donations with 50% deduction subject to a limit of 10% of the adjusted gross total income.Deduction in Respect of Rent Paid (Section 80GG)

Any amount paid in respect of expenditure towards payment of rent by a selfemployed person and/or salaried employee who is not in receipt of any house rent allowance is allowed as deduction under this section. Only individuals are eligible for deduction under this section. The tax payer, spouse or minor child should not own residential accommodation at the place of employment. The tax payer should not have self-occupied residential property in any other place.

The amount deductible under this section is the least of the following amount:

i. Rs.2,000 per month; or

ii. 25 percent of adjusted gross total income; or

iii. The excess of actual rent paid over 10 percent of adjusted gross total income.

Adjusted gross total income is arrived at after adjusting the gross total income for certain deductions, exempt income, long term capital gains and income related to non-residents and foreign companies.

Donations for Scientific Research or Rural Development (Section 80GGA)

Under this section, certain donations to specific kinds of institutions are eligible for 100% deduction.

Deduction in Respect of Contributions given to Political Parties – Sec. 80GGB and 80GGC

Section 80GGB deduction is allowed to an Indian company for any amount contributed by it to any political party or an electoral trust. Deduction is allowed for contribution done by any way other than cash.

Deduction under section 80GGC is allowed to an individual tax payer for any amount contributed to a political party or an electoral trust. It is not available for companies, local authorities and artificial juridical person wholly or partly funded by the government. Deduction can be availed only if the payment is made by any way other than cash.

Deductions in Respect of Certain Incomes (Section 80-IA)

Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc. (Section 80-IA)

Deduction under Section 80-IA is available to the industrial undertakings engaged in the following activities:

i. Provision of infrastructure facility.
ii. Telecommunication facility.
iii. iii. Industrial park or special economic zone.
iv. Power generation, transmission and distribution.
v. Undertaking substantial renovation and modernization of the existing transmission and distribution lines

Deduction will be 100% of profits and gains derived from such business for 10 consecutive assessment years out of 15 years beginning with the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or generates power or commences transmission or distribution of power or undertakes substantial renovation or modernization.

Deductions in Respect of Royalty of a Patent (Section 80-RRB)

Deduction for any income by way of royalty for a patent, registered on or after 1 April 2003 under the Patents Act 1970, shall be available for up to Rs.3 lakhs or the income received, whichever is less. The tax payer must be an individual patentee and an Indian resident. The tax payer must furnish a certificate in the prescribed form duly signed by the prescribed authority.

Deductions in Respect of Interest on Savings Account (Section 80-TTA)

An individual or a HUF can claim a deduction of maximum of Rs.10,000 against interest income from their savings account with a bank, co-operative society, or post office. This deduction is not available on interest income from fixed deposits, recurring deposits, or interest income from corporate bonds.

Deductions in Respect of Interest Income (Section 80-TTB)

A new section 80TTB has been inserted vide Budget 2018 in which deductions with respect to interest income from deposits held by senior citizens will be allowed. The limit for this deduction is Rs.50,000. No further deduction under section 80TTA shall be allowed.

Deductions in Respect of Physical Disability (Section 80-U)

A deduction of Rs.75,000 is available to a resident individual who suffers from a physical disability (including blindness) or mental retardation. In case of severe disability, one can claim a deduction of Rs.1,25,000.

Check Your Progress - 3

11. Mr Subash Waghmare has sublet his house property to his friend for Rs 21, 000 / month. The income from subletting of the house for Mr Subash should be treated as income from___________

    a. Income from house property

    b. Income from miscellaneous sources

    c. Income from subletting of house

    d. Income from other sources

    e. None of the above

12. Income from house property is to be taxed for individuals at the relevant tax slab. However there are certain properties which are completely exempt from tax under this head. Identify from the following, one such property which is not exempted from paying I T?

    a. Property income of a trade union.

    b. House property held for charitable purposes.

    c. Property income of a political party.

    d. Income from property located in backward region

    e. Income from farm house.

13. Mr Vyas is a C A and is carrying on specified profession under (Section 44AA(3) . Under which of the following conditions should he maintain books of account?
    a. Gross receipts from the profession exceeds Rs.10,00,000 in any of the three years preceding the relevant previous years.
    b. Gross receipts from the profession exceeds Rs.10,50,000 in any of the three years preceding the relevant previous years.
    c. Gross receipts from the profession exceeds Rs.1,50,000 in any of the three years preceding the relevant previous years.
    d. Gross receipts from the profession exceeds Rs.15,00,000 in any of the three years preceding the relevant previous years.
    e. Gross receipts from the profession exceeds Rs.25,00,000 in any of the three years preceding the relevant previous years.
14. Certain expenditures incurred by individuals are permitted for payment or expenditure for computation of gross total income subject to certain limit . Identify one such expenditure which does not qualify for such deductions from the gross income?
    a. Premia paid on life insurance policies.
    b. Provident fund contributions
    c. Any unit-linked insurance plan of LIC mutual fund.
    d. Deposit in an account under the senior citizens savings scheme rules, 2004.
    e. Monthly expenditure incurred for purchase of nonfood items
15. An individual is eligible for deduction of certain expenses from taxable income under the combined maximum limit under sections 80C, 80CCC and 80CCD (1) . Identify the amount which is eligible under the above referred sections for an individual?
    a. Rs 2,00,000
    b. Rs 1,00,000
    c. Rs 1,50,000
    d. Rs 2,50,000
    e. None of the above

16.13 Computation of Income Tax Liability of an Assessee

The format for computation of Income Tax Liability of an Assessee is given below:

Table 1.6: Computation of Income Tax Liability of Assessee for the A.Y 2020-21

Sl. No.		Amount Rs.	Amount Rs.
1.	Income from Salary Eg. Basic Salary, Leave Salary, Gratuity, etc.		
	Taxable Allowances		
	Taxable value of Perquisites		
	Gross Salary		
	Less: Standard Deductions u/s 16		
	1. Entertainment Allowance		
	2. Professional Tax		
	Taxable Income of Salary		
2.	Income from House property		
	Adjusted Net Value		
	Less: Deductions u/s 24		
	Taxable Income from House Property		
3.	Profits and Gains from Profession or Business		
	Net profit as per P & L A/c		
	Add. Amounts which are debited to P & L A/c but are not allowed as deductions under this Act		
	Taxable under Profits and Gains from Profession or Business		
4.	Income from Capital Gains		
	Amount of Gains (Short Term and Long Term Capital Gains)		

Contd. ……

	Less: Exempted Amounts from Long Term Capital Gains under sections 54, 54B, 54D, 54EC, 54ED, 54F, 54G and 54GA		
	Taxable Capital Gains		
5.	Income from Other Sources Eg. Winning from Lotteries, Horse Races, Interest from Securities, etc.		
	Gross Income from other sources		
	Less: Deductions u/s 57		
	Taxable Income from Other Sources		
	Gross Total Income (1+2+3+4+5)		
	Less: Deductions u/s 80C to 80U		
	Net Taxable Income Liable to Tax		
	Computation of Tax Liability		
	Tax on Net Income		
	Add: 1. Surcharge **2.** Education Cess **3.** Secondary and Higher Education Cess		
	Less: Rebate u/s 87A		
	Less: Prepaid Taxes or Tax paid in Advance		
	Less: Tax paid on Self-Assessment		
	Less: Tax Deducted as Source		
	Tax Liability of an Assessee		

Self-Assessment Questions – 4

a. Mr.Sagar does not own any house and stays in a rented house and pays a rent of Rs.3,500 per month. Compute the amount of deduction that can be claimed by Mr.Sagar for the Assessment Year 2020-21 if his total income is Rs.3,30,000.

Contd. .....

b. Ms.Latha has taken a loan of Rs.7,00,000 to pursue her post graduation. She repays an amount of Rs.30,000 towards principle and an amount of Rs.42,000 towards interest on loan for the previous year 2020-21. How much is the amount she can claim as deduction under section 80E.

c. Sheela (widow of Arvind) was in receipt of Rs.1,00,000 family pension for AY 2020-21. Is she eligible for any deduction under this income? If so how much?

16.14 Summary

- The Income Tax Act, 1961 provides the basic framework and guidelines for the determination of taxable income and tax liability.
- Assessment year means the period of 12 months starting from April 1 of every year and ending on March 31 of next year.
- The year in which the income is earned is known as Previous Year. It is the financial year immediately preceding the assessment year.
- Sections 10 and 11 to 13A of the Income Tax Act deal with certain incomes that are not part of the total income of an assessee or in other words incomes that is exempt from tax.
- "Salary" includes basic salary, encashment of leave salary, advance of salary, arrears of salary, various allowances such as dearness allowance, entertainment allowance, house rent allowance, conveyance allowance and also includes perquisites by way of free housing, free car, free schooling for children of employees.
- Annual value of a house property consists of buildings or land adjacent thereto and is owned by the assessee. The income from such property is taxable under the head "Income from House Property".
- Business includes any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacturing.
- Rent, rates, taxes, land revenue, municipal taxes and repairs and insurance premium paid or payable for business premises and machinery, plant and furniture are deductible from business income.

- Profit/Gain from the transfer or sale of a capital asset is chargeable to tax under the head "Capital Gain" in the year in which capital asset is sold or transferred.
- In order to obtain the amount of long-term capital gain on sale of a long-term capital asset, from the sale proceeds the expenses on transfer are to be reduced. From the balance amount the indexed cost of acquisition and indexed cost of improvement are to be deducted to get the amount of taxable capital gains.
- Incomes not chargeable under any specific heads i.e., salaries, house property, business or profession or capital gains are chargeable to tax under the head of 'Income from other sources'. Winnings from lotteries, crosswords, puzzles, races including horse races, card games or other games of any sort or gambling or betting of any form or nature are taxable under this head.
- Aggregate of income under all heads will give the "Gross Total Income". From that income certain deductions are available on satisfaction of certain conditions.
- As per the provisions of Wealth Tax Act, net wealth of an assessee on valuation date in excess of Rs.30 lakhs is taxable @ of 1%.
- Net wealth means taxable wealth, it represents the excess of assets over debts. Assets include deemed assets but do not include assets exempted under the Section 5.

  • The valuation of assets for Wealth Tax purposes will be made on the basis of provisions laid down in the Schedule III to the Wealth Tax Act, on the valuation date.

16.15 Glossary

- **Assessee** means a person by whom any tax, or any other sum of money is payable under the Act.
- **Assessment Year** means the period of 12 months commencing on the 1st day of April every year. It is also called a financial year, but it immediately succeeds the relevant previous year.
- **Cost Inflation Index for any Year** means such index as the central government may, having regard to 75% of average rise in the consumer price index for urban non-manual employees for that year, by notification in the Official Gazette specify in this behalf.
- **Cost of Acquisition of an Asset** means the value for which the asset was acquired by the assessee. The expenses of capital nature for completing or acquiring the title to the property are to be included in the cost of acquisition.

- **Depreciation** means loss or decline in value, which occurs gradually over the useful life of a material thing, due to physical wear, tear and decay, and is generally limited to losses or declines in value which are not restored by current repairs and maintenance.
- **Gratuity** denotes a gratuitous payment made by an employer to his/her employee for the services rendered to him.
- **Long-term Capital Asset** is a capital asset that is held for more than 36 months before the date of its transfer.
- **Long-term Capital Gains** means capital gain arising from the transfer of longterm capital asset.
- **Pension** is a periodical payment received by an employee after his/her retirement and is taxed as salary.
- **Perquisite** signifies some benefit in addition to the amount that may be legally due by way of contract for the services rendered.
- **Previous Year** means the financial year in which income earned is referred to as the previous year. It also means the financial year immediately preceding the assessment year.
- **Recognized Provident Fund** is a fund, which is recognized by the Commissioner of Income Tax in accordance with the rules contained in Part A of the Fourth Schedule of the Income Tax Act.
- **Short-term Capital Gain** means capital gain arising on the transfer of a short-term capital asset.

16.16 Suggested Readings / Reference Material

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16.16 Answers to Check Your Progress Questions

1. **(a)** Progressive tax system- In a progressive tax rate system, higher income individuals pay a higher proportion of tax
2. **(b)** Indirect tax- Tax paid by the vendor after collecting from the client
3. **(e)** Capital gains tax- The profit you make on sale of a property attracts capital gains tax.
4. **(b)** 2020-21 and 2021-22- The period of 12 months immediately preceding the assessment year is called the previous year and Assessment year means the period of 12 months starting from 1st April of every year and ending on 31st March of the next year.
5. **(d)** Income from salary of spouse- This cannot be claimed as income for a person even though the income is from spouse.
6. **(b)** Surcharge means Add on Tax.
7. **(c)** Presence for at least 182 days or more in India during the relevant previous year

8. (c) Rs 1.50 lakhs being share of profit from partnership firm where Mr Saket is partner is exempted from tax according to section 10 of I T Act

9. False

When the employee receives tax-free salary from his employer, it means that the employer himself pays the tax which is due on the salary of such employee and thus the government do not lose the tax revenue.

10. (b) Rs 15,86,042- The amount of gratuity is limited to fifteen days' (15/26) of the last drawn half month's average salary for every completed year of service= 76,365 X15/ 26 X 36

11. (d) Income from other sources- If the house property is sublet, it is taxed under the head "Income from Other Sources" for the person who sublet the rented property

12. (d) Property income located in backward region

13. (c) Gross receipts from the profession exceeds Rs.1,50,000 in any of the three years preceding the relevant previous years

14. (e) Monthly expenditure incurred for purchase of nonfood items

15. (c) Rs 1,50,000- Combined maximum limit for deduction which can be availed under sections 80C, 80CCC and 80CCD(1) is Rs 1,50,000

16.17 Suggested Answers

Self-Assessment Questions – 1

a. The Income Tax Act, 1961 extends to whole of India. It came into on 1st April 1962.

b. According to Section 2(9), assessment year means the period of 12 months starting from April 1 of every year and ending on March 31 of the next year. Hence period from Jan 1st to December 31st cannot be considered as assessment year.

c. Mr. X tax liability is

Income	Tax Rates	
Up to Rs.2,50,000	Nil	Nil
Rs.2,50,001 – Rs.4,50,000	10%	20,000
Total		**20,000**

Contd. .....

Less: Tax rebate u/s 87A		2,000
		18,000
Add: Surcharge @ 10%		1,800
		19,800
Add: Education Cess @ 2%		396
Tax Payable		**20,196**

Self-Assessment Questions – 2

a. In the case of employees covered under Payment of Gratuity Act, 1972, the amount is limited to half month's average salary for every completed year of service or actual gratuity received or Rs.10,00,000 whichever is less. Hence the monetary limit specified is Rs.10,00,000.

b. 50 percent of salary – in case the residential house is situated at Mumbai, Delhi, Kolkata, and Chennai.

c. For the above purpose 'Reasonably expected rent' means municipal valuation or fair rent, whichever is higher subject to a maximum of standard rent under Rent Control Act. In the case of Mr. Naidu's let out Property though the fair value is Rs.1,10,000, reasonable rent will be limited to Rs.95,000 (standard rent under Rent Control Act).

Self-Assessment Questions – 3

a. House property held by X from March 10, 2012 to June 6, 2014 i.e., for 26 months, is a short-term asset because the minimum period for which it should be held to be a long-term asset is 36 months.

b. Any sum paid on account of any tax levied on the profits or gains of any business or profession is expressly disallowed as deduction under section 40(a).

c. Sale consideration Rs.75,00,000

   Less: Expenses on transfer (Rs.50,000)

   Less: Indexed cost of acquisition (Rs.37,83,000)

   (6,50,000 x 582/100)

   Long-term capital gains Rs.36,67,000.

Self-Assessment Questions – 4

a. Deduction under Section 80GG is least of the following:

   i. Rs.2,000 per month = Rs.24,000 per annum.

ii. 25% of total income

i.e., Rs.3,30,000 x 25% = Rs.82,500.

iii. Excess of rent paid over 10% of total income

= (Rs.3,500 x 12) – (Rs.3,30,000 x 10%) = Rs.42,000 – Rs.33,000 = Rs.9,000. Hence, deduction under Section 80GG is Rs. 9,000.

b. Ms. Latha can claim deduction of Rs.42,000 paid towards interest on loan under Section 80E. Principle amount repaid on loan taken for education cannot be claimed under Section 80E.

c. Rs.15,000 or 33 1/3% of income in the nature of family pension under Section 57(iia) whichever is less. Since the amount of Rs.15,000 is less than 33.33% of Rs.1,00,000. Hence Rs.15,000 is allowed as deduction under the head of income from other sources to Ms. Sheela.

Unit 17

Goods and Services Tax: An Overview

Structure

17.1 Introduction

In the previous unit Direct Taxes, we dealt with Income tax. The Income Tax Act, 1961 provided the basic framework and guidelines for the determination of taxable income and tax liability. Assessment year means the period of 12 months starting from April 1 of every year and ending on March 31 of next year. The init provided details about the Income-tax computation for the FY 2020-21.

This unit deals with Goods and Services Tax briefly. The introduction of Goods and Services Tax (GST) in India Tax System from 1st July 2017 is being widely appreciated as a unique initiative among the indirect tax reforms in Indian context. The initiative replaces several Central and State taxes by a transparent, simple and unified indirect tax regime which would eliminate the cascading or double taxation menace. It also promises to build a common national market throughout the country and provides a level playing field for all enterprises. The GST architecture is also going to be leveraged by technological tools and sound monitoring system that could effectively curb tax evasion.

GST is a single tax on the supply of goods and services, right from the manufacturer to the final consumer. The attractive offer of seamless Input Tax Credit is the core of GST reform by which the seller is allowed to net off his output tax liability against input tax credit to arrive at net GST payable, if the difference is positive. If the difference is negative the amount becomes net GST refundable/creditable. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST as a tax only on value addition at each stage. GST is also differently positioned on the principle of destination based consumption taxation as against the present principle of origin based taxation. It is a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST). An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted. Import of goods or services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. In essence, introduction of GST would make Indian products competitive in the domestic and international markets. GST regime is expected to add significant contribution to GDP growth, as tax savings become growth drivers of economy.

Four laws namely CGST Act, UTGST Act, IGST Act and GST (Compensation to States) Act have been passed by the Parliament and since been notified on 12th April, 2017. The economic integration of India was completed on 8th August 2017 when the State of J&K also passed the SGST Act and the Central Government also subsequently extended the CGST Act to the State of J&K. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST. The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except on exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value.

17.2 Objectives

At the end of the unit, the student will be able to

- Appreciate the benefits of implementation of GST
- Summarise the salient features of GST
- Discuss various aspects of GST administration
- Evaluate some of the operational issues of GST
- Recall the importance of returns to be submitted under the GST regime

17.3 Benefits of GST

GST is more a win-win situation for the entire country. It brings benefits to all the stakeholders - industry, government and the consumer. It will lower the cost of goods and services and propel economic growth. Some of the significant benefits are:

- Increased tax collections due to broadened tax base

- Scope for rate reduction in prices due to minimized cascading effect of multiple taxes
- Better compliance leads to reduction in taxes
- Development of common national market through simpler tax regime by adapting fewer rates and exemptions and erasing distinction between goods & services

GST regime is also specially crafted to support two favorite policy themes of Central Government viz., Make in India and Ease of Doing Business. Since the GST can track all supplies from the source till consumption, it will improve compliance. Some of the perceived benefits in support of new economic initiatives are

(i) A unified common national market for India is brought in by GST model

(ii) Cascading of taxes is significantly reduced by Input Tax Credit

(iii) Major indirect tax laws are integrated under one roof

(iv) Tax system so simplified is expected to boost foreign investment, exports and manufacturing activity

(v) Uniform SGST and IGST rates will arrest tax evasion by eliminating rate arbitrage between neighboring states and that between intra and inter-state sales

(vi) For individuals and companies in the GST system, taxes for both Centre and State will be conveniently collected at the point of sale

(vii) Common procedures and electronic access for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will help to enhance ease of doing business

(viii) Final price of goods is expected to be lower due to smooth flow of input tax credit between the manufacturer, retailer and supplier of services. Average tax burden on companies is likely to decline and reduce prices that can in turn trigger more sales and ultimately lead to more production

(ix) GST is built on a technology driven platform that will effectively reduce the human interface to a great extent and paves the way to improve the rating for ease of doing business.

17.4 Salient Features of GST

GST is legally defined as any tax on supply of goods or services or both.

Goods include all materials, commodities & articles – Article 366(12). Services mean anything other than goods – Article 366(26A). Some of the items are kept outside the purview of GST. They are –

(i) Alcohols for human consumption, (ii) Petroleum products such as petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel, etc., (iii) Electricity.

GST is aimed to be one indirect tax for the whole nation on the supply of goods and services, right from the manufacturer to the consumer. It would be applicable on "supply" of goods or services as against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services. Hence it is a tax on value addition at each stage having comprehensive and continuous chain of set-of benefits from the producer's/ service provider's point up to the retailer's level where only the final consumer should bear the tax credits of input taxes paid at each stage will be available in the subsequent stages of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

GST adapted the principle of destination based consumption taxation as against the present principle of origin-based taxation. Destination-based consumption taxation applies to all supplies of goods / services (as against manufacture, sale or provision of service) made for a consideration.

Exports and Imports

Import of goods would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. Import of services would be treated as inter-State supplies and would be subject to IGST.

All exports and supplies to SEZs and SEZ units would be zero-rated (with regards to GST rate). Similar benefits may be given to Special Economic Zones (in processing zones only). No benefit to the sales from an SEZ to Domestic Tariff Area (DTA).GST paid by exporter on the procurement of goods and services will be refunded.

Determination of Tax Slab Rates

Minimizing tax rate slabs to avoid classification issues is the prime objective of GST philosophy. With a view to keeping inflation under check, essential items including food, which presently constitute roughly half of the consumer inflation basket, will be taxed at zero rate.

There are four slabs fixed for GST Rates - 5%, 12%, 18% and 28%. However these are subject to change by the GST Council. As per Article 279A (1) of the amended Constitution, the GST Council was constituted by the President. As per Article 279A of the amended Constitution, the GST Council is a joint forum of the Centre and the States.

Luxury cars, tobacco and aerated drinks are levied with an additional cess on top of the highest tax rates. The collection from this cess as well as that of the clean energy cess would create a revenue pool which would be used for compensating states for any loss of revenue during the first five years of implementation of GST.

It may be noted that the tax rates are subject to change by the government. For example on 30thAugust 2017 the Union Cabinet approved an ordinance enabling the government to raise the goods and services tax (GST) cess on medium-to-large cars and sport utility vehicles (SUVs) to 25% from 15%.

Anti-Profiteering Measure

As per Section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Threshold Exemption and Compounding Options

A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover of ` 20 lakh (` 10 lakh for special category States (except J&K) as specified in article 279A of the Constitution) would be exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) would be available to small taxpayers. The threshold exemption and compounding scheme would be optional.

Aggregate turnover shall include the aggregate value of all taxable supplies, exempt supplies and exports of goods and/or services and exclude taxes viz. GST.] Aggregate turnover shall be computed on all India basis. For North East States and special category states, the exemption threshold shall be [10 lakhs]. All taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Tax payers making inter-State supplies or paying tax on reverse charge basis shall not be eligible for threshold exemption.

Check Your Progress - 1

1. Introducing GST is described as a win-win situation for all as there are both significant and perceived benefits of GST. Identify the perceived benefit of GST from the following?
   a. Increased tax collections due to broadened tax base
   b. Better compliance leads to reduction in taxes
   c. Scope for rate reduction in prices.
   d. Cascading of taxes is significantly reduced by Input Tax Credit
   e. Development of common national market
2. Economist are of the view that GST brings benefits to all the stakeholders - industry, government and the consumer. Implementation of GST will lower the cost of goods and services and propel economic growth. is described as a win-win situation for all as there are both significant and perceived benefits of GST. Identify the a significant benefit of GST from the following?
   a. A unified common national market for India is brought in by GST model
   b. Cascading of taxes is significantly reduced by Input Tax Credit
   c. Simpler tax regime by adapting fewer rates and exemptions and erasing distinction between goods & services
   d. Major indirect tax laws are integrated under one roof
   e. the simplified tax system is expected to boost foreign investment.
3. Goods include all materials, commodities & articles However few items are kept outside the purview of GST. Identify those goods that are within the purview of GST from the following?
   a. Alcohols for human consumption
   b. Petroleum products such as petroleum crude, motor spirit (petrol)
   c. Electronic goods
   d. High speed diesel, natural gas and aviation turbine fuel, etc
   e. Electricity.
4. M/S Raj consultants Pvt Ltd is one of the top agents handing merchandise exports and imports in Mumbai. The goods imported by the agent is subjected to GST apart from customs duties. Identify the type of GST charged on imports and exports for Raj
   a. IGST
   b. SGST
   c. CGST
   d. UGST
   e. None of the above

5. A common threshold exemption would apply to both CGST and SGST in case of normal category states and special category states in terms of turn over. Identify the same
   a. Rs 20 lakhs and Rs 10 lakhs
   b. Rs 40 lakhs and Rs 20 lakhs
   c. Rs 30 lakhs and Rs 15 lakhs
   d. Rs 10 lakhs and Rs 5 lakhs
   e. None of the above

Self-Assessment Questions-1

1. Discuss the significant and perceived benefits of GST

2. Outline the GST implications on exports and imports?

3. Explain the concept of antiprofiteering measures in GST

Composition Scheme under GST

Small taxpayers with an aggregate turnover in a preceding financial year up to [50 lakhs] shall be eligible for composition levy. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover in a state during the year without the benefit of Input Tax Credit. The rate of tax for CGST and SGST/UTGST shall not be less than [1% for manufacturer & 0.5% in other cases; 2.5% for specific services as mentioned in para 6(b) of Schedule II viz Serving of food or any other article for human consumption. A tax payer opting for composition levy shall not collect any tax from his customers. Tax payers making inter- state supplies or making supplies through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme.

The person who is registered as a composition taxpayer shall at the top of the bill of supply issued by him, mention the words- “not eligible to collect tax on supplies” because person registered as the composite taxpayer is not eligible to collect tax on the supplies from his buyer rather tax is paid by the composite taxpayer himself at the special rates decided for the composition dealers.

Tax on Supply of Goods or Services

Supply of Goods or Services take place based on the requirement of client. Hence taxation takes place at different times. Point of taxation will be the point in time when goods have been deemed to be supplied or services have been deemed to be provided. The point of taxation enables us to determine the rate of tax, value and due dates for payment of taxes.

Under GST the point of taxation, i.e., the liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. There are separate provisions for time of supply for goods and time of supply for services.

What are the items that will be taken as Supply?

Section 7 provides the scope of supply. This section provides for activities to be treated as supply. This clause further provides that certain activities, specified in Schedule I of the Act, even made or agreed to be made without a consideration shall be treated as supply. This section also provides activities which are neither supply of goods nor supply of services.

Section 7 of CGST Act 2017 provides for scope of supply as under:

(1) For the purposes of this Act, the expression "supply" includes—

  (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

  (b) Import of services for a consideration whether or not in the course or furtherance of business;

  (c) The activities specified in Schedule I, made or agreed to be made without a consideration; and

  (d) The activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1) —

  (a) Activities or transactions specified in Schedule III; or

  (b) Such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

(a) A supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods.

Supplies under Schedule - I

Besides the transactions of supply with consideration, certain forms of transactions as mentioned in Schedule I of the Act have also been considered as taxable supply in GST. Such transactions are as follows:-

- Permanent disposal of business assets on which input tax credit has been taken.
- Supply of goods and services between a related person or distinct person in the course or furtherance of business.

It is pertinent to note that the employer and employee has been defined as related persons. However, services provided by an employer to an employee will not be considered taxable for an amount up to ` 50,000/- in a financial year.

- Supply of goods, by a principal to his agent, where the agent undertakes to supply goods on behalf of principal.
- By an agent to his principal, where the agent undertakes to buy such goods on behalf of his principal.
- Importation of services by a taxable person from a related person or any of his establishment outside India, in the course or furtherance of business.

The transactions of supply between a principal and agent and also between two branches of the same person would be considered as a taxable supply. The transactions of stock transfers would become taxable in GST.

In respect of importation of services by a taxable person, it is important to note that the importation of services for a consideration has been considered as taxable supply in Section 7(1)(b) and importation of services without consideration from a related person or own establishment located outside India has been considered taxable under Schedule I. Hence, importation of service without consideration by a non-taxable person would not be taxable.

Supplies under Schedule - II

Presently, one of the areas of dispute is the classification of goods and service correctly as these definitions have widened to a very large extent. GST law attempts to resolve this dispute by providing Schedule II in the Act, which prescribes which item will be considered goods and which item will be considered service. In this regard, the Central or State Governments have the power to declare any item as goods or service or nothing of the two. But this power by the Government can be used only with the approval of GST Council.

Supplies under Schedule - III

Schedule-III can be considered as Negative List in GST as this Schedule provides for the activities which will not be considered as goods or service. This, *inter-alia*, includes:-

- Services of an employee to an employer in the course of his employment.
- Services by any court or tribunal.
- Services performed by elected representative or persons holding constitutional posts.
- Services performed by foreign diplomatic missions in India.
- Services of funeral, burial, cremation etc.
- Sale of land and building.
- Actionable claims other than betting and gambling.

Such services carried out by Central or State Governments or a local authority. It is important to note that the services which are taxable in the hands of other persons would be taxable even if carried out by Government or a local authority.

Input Tax Credit is available in respect of taxes paid on any supply of goods and / or services used or intended to be used in the course or furtherance of business (i.e. for business purposes) Proportionate credits allowed in case inputs, inputs services and capital goods are partly used for business and partly for non-business purposes.

HSN (Harmonized System of Nomenclature) wherein HS is a Harmonized System. The Harmonized Commodity Description and Coding System is generally referred to as "Harmonized System" or "HS".

HSN is Harmonized System of Nomenclature. It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO).

It comprises about 5,000 commodity groups; each identified by a six digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.

The system is used by more than 200 countries and economies as a basis for their customs tariffs and for the collection of international trade statistics. It is also extensively used by governments, international organizations and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin etc.

The Harmonized System is governed by "The International Convention on the Harmonized Commodity Description and Coding System". The official interpretation of the HS is given in the Explanatory Notes (5 volumes in English and French) published by the WCO. The maintenance of the HS is a WCO priority. The HS Committee also prepares amendments updating the HS every 5 – 6 years.

Use of HSN Codes

HSN (Harmonized System of Nomenclature) code is used for classifying the goods under the GST regime. Taxpayers whose turnover is above ` 1.5 crores but below ` 5 crores shall use 2-digit code and the taxpayers whose turnover is ` 5 crores and above shall use 4-digit code. Taxpayers whose turnover is below ` 1.5 crores are not required to mention HSN Code in their invoices. Services will be classified as per the Services Accounting Code.

Existing Taxes Subsumed Under GST

The various Central, State and Local levies were examined and subsumed under GST. The details are as follows:

Central Taxes subsumed in GST	State Taxes subsumed in GST
• Central Excise Duty (Cenvat) • Additional Excise Duties • The Excise Duty levied under the Medicinal And Toiletries Preparations (Excise Duties) Act 1955 • Service Tax • Additional Customs Duty, commonly known As Countervailing Duty (CVD) • Special Additional Duty Of Customs – 4% (SAD) • Surcharges and cesses levied by centre include cess on Rubber, Tea, Coffee, National Calamity Contingent Duty Etc. • Central Sales Tax.	• VAT/ Sales Tax • Entertainment Tax (Unless it is levied by the local bodies) • Luxury Tax • Taxes On lottery, betting and gambling • State cesses and surcharges in so far as they relate to supply of goods and services • Octroi and Entry Tax • Purchase Tax

Source: ICFAI Research Center

There is every possibility that the above list will be updated from time to time by GST Council

Items excluded from subsuming from GST.

Exemptions

Not all items are covered under GST levy. Some of the items are exempted. The following are the items. The GST Council has the authority to add or delete items under GST.

- Basic Custom Duty (BCD)
- Stamp Duty
- Tax on alcoholic liquor for human consumption
- Petroleum products - levy of GST to be made effective at a future date
- Tax on entertainment and amusement levied and collected by Municipal authorities

Securities have been specifically excluded from the definition of goods as well as services. Thus, the transaction in securities shall not be liable to GST.

GST would apply to all goods and services except Alcohol for human consumption. GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural gas) would be applicable from a date to be recommended by the GSTC. Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.

The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as well as across States as far as possible

GST collections post pandemic is bullish indicating economy revival. The exhibit 17.1 hereunder explains the optimistic view.

Self-Assessment question-2

1. Discuss composition scheme under GST   2. Schedule-III can be considered as Negative List in GST as this Schedule provides for the activities which will not be considered as goods or service. Discuss

3.Not all items are covered under GST levy. Some of the items are exempted. However the GST Council has the authority to add or delete items under GST. List them out

Exhibit 17.1: August 2021 GST Collections – A Replica to Economic Recovery

India's Goods and Services Tax (GST) collections (GST) were above Rs.1 lakh crore in 10 out of preceding 12 months (2020-2021) a clear indication that Indian Economy is recovering from the devastating impact of Covid-19. This is what GST collections for July and August 2021 was showcased by crossing Rs.1 lakh crore. In the month of August 2021, GST revenues were 30% higher than that of the same month in the last year at ₹1,12,020 crore . Further during the month under reference (August 21), the revenues from domestic transactions (including import of services) were 27 per cent higher than that of same month in the last year, In addition to the economic growth, the enhancement of GST collections was also out of anti-evasion activities like action against fake billers. The Government is confident that the same robust growth in GST revenues may continue in future.

Source: https://www.businessinsider.in/india/news/india-collected-1-12-lakh-crore-in-gst-revenue-in-august/articleshow/85830341.cms

17.5 GST Administration

It would be a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (central tax- CGST) and that to be levied by the States [including Union territories with legislature] would be called State GST (state tax- SGST). Union territories without legislature would levy Union territory GST (union territory tax- UTGST).

Both Centre and States will simultaneously levy GST across the value chain. Tax will be levied on every supply of goods and services. Centre would levy and collect Central Goods and Services Tax (CGST) and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State. In the GST system, both Central and State taxes will be collected at the point of sale. Both components (the Central and State GST) will be charged on the manufacturing cost.

Integrated Goods and Services Tax (IGST): In case of inter-State transactions, the Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods and services under Article 269A (1) of the Constitution. IGST levied & collected by the Centre applicable to Inter-State supplies of goods / services in India, Inter-State stock transfers of goods, Import of goods / services, Export of goods / services (if made on payment of GST under claim of rebate). An Integrated GST (integrated tax- IGST) would be levied on inter-State supply (including stock transfers) of goods or services.

The IGST would be equal to CGST plus SGST. The IGST mechanism has been designed to ensure seamless Dual GST within State.

The inter-State seller would pay IGST on the sale of his IGST goods to the Central Government after adjusting credit of IGST, CGST and SGST on his purchases (in that order). The exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The importing dealer will claim credit of IGST while discharging his output tax liability (both CGST and SGST) in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. Since GST is a destination-based tax, all SGST on the final product will ordinarily accrue to the consuming State.

GST Invoice

An invoice or a bill is a list of goods sent or services provided, along with the amount due for payment.

Any business entity with GST registration needs to provide GST-compliant invoices to his clients for sale of good and/or services.

The Task Force on GST advised the computation of CGST and SGST liability on the Invoice credit method. i.e., allow credit for tax paid on all intermediate goods and services on the basis of invoices issued by the supplier.

Invoice level detail is necessary for the reconciliation of tax deposits and the end-to-end reconciliation of ITC. An effective IGST implementation may also require invoice-level details.

What are the Particulars to be provided in the Invoice?

The invoice has to provide the following details to the client.

- Name, Address & GSTIN of supplier
- Consecutive Serial Number
- Date of issue (related to concept of Time of Supply)
- Name, Address & GSTIN (if registered) of recipient

- HSN/SAC code (as per eligibility on turnover basis)
- Description of Goods, Quantity & Taxable Value
- Rate & Amount of Tax – CGST, SGST, IGST
- Place of Supply (and address of delivery if it is different from POS)
- Reverse Charge if any
- Signature or Digital Signature.

GST tax invoice has to be issued by a registered dealer.

In case of goods the invoice is to be provided on or before the time when goods are removed for supply (where supply involves movement); and on or before the time when delivery is received by the recipient (where no movement is involved).

In case of services invoice has to be issued within 30 days (45 days in case of banks and NBFCs) of supply of services.

Bill of Supply

A business registered under GST has to issue a tax invoice to the buyer. Such an invoice mentions the GST rate charged on the goods and services sold.

The GST invoice is issued in order to charge the tax from the recipient and also pass on the credit. In cases where the recipient is not a registered person of GST or where the supplier is not allowed to charge any kind of tax and hence a GST invoice can't be issued. A Bill of Supply is issued when GST is not applicable on a transaction or when GST is not to be recovered from the customer.

The cases where a registered supplier needs to issue the bill of supply:

- Supply of Exempted/Nil-rated, Non-taxable/Non-GST goods or services
- Paying tax under the composition scheme

The following particulars are available in bill of supply

- Name, Address & GSTIN of supplier
- Consecutive Serial Number
- Date of issue
- Name, Address & GSTIN (if registered) of recipient
- HSN/SAC code
- Description of Goods, Quantity & Value
- Signature or Digital Signature

Reverse Charge

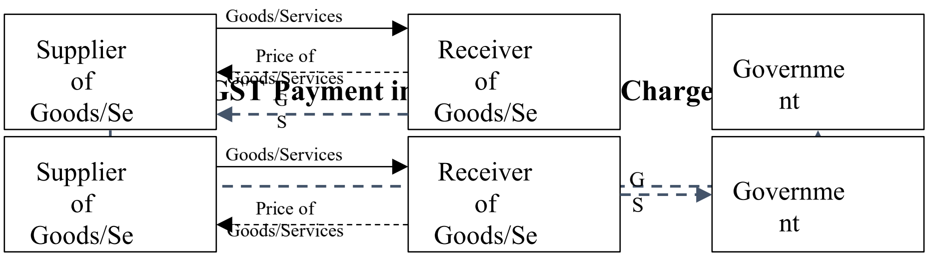
Reverse charge means the liability to pay the tax by person receiving goods and/or services instead of the person supplying the goods and/or services in respect of specified categories of supplies. Reverse charge under GST may be applicable for both services as well as goods.

If a vendor who is not registered under GST, supplies goods to a person who is registered under GST, then reverse charge would apply. This means that the GST will have to be paid directly by the receiver to the Government instead of the supplier.

The registered dealer who has to pay GST under reverse charge has to do self-invoicing for the purchases made.

For Inter-state purchases the buyer has to pay IGST. For Intra-state purchased CGST and SGST has to be paid under RCM by the purchaser.

GST in Normal Payment



If an e-commerce operator supplies services then reverse charge will be applicable to the e commerce operator CBEC has issued a list of goods and a list of services on which reverse charge is applicable.

If a vendor who is not registered under GST, supplies goods to a person who is registered under GST, then Reverse Charge would apply. This means that the GST will have to be paid directly by the receiver to the Government instead of the supplier.

GST Compliance Rating Mechanism

The GST compliance rating is a performance ranking of all registered taxable persons which tells how compliant they are with respect to the GST provisions. This will be irrespective of nature, size, or turnover of the business.

As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and select accordingly. Complying with the GST guidelines will avoid delay in input tax credit across the chain and otherwise it will affect the working capital of businesses. The rating system will prevent the delay of credit for bona fide buyers due to the non-compliance of certain persons. This will create healthy competition amongst taxable persons.

GST Council

As per Article 279A(1) of the amended Constitution, the GST Council has been constituted by the President.

As per Article 279A of the amended Constitution, the GST Council which is a joint forum of the Centre and the States consists of the following members:-

a) Union Finance Minister – Chairperson

b) The Union Minister of State, in-charge of revenue of finance – Member

c) The Minister In-charge of finance or taxation or any other Minister nominated by each State Government - Members

As per Article 279A(4), the Council will make recommendations to the Union and the States on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws, principles that govern Place of supply, threshold limits, GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters, special provisions for certain States, etc.

The Union Cabinet approved setting up of GST Council on 12th September, 2016 and also setting up its Secretariat.

The Central Goods and Services Tax bill, Integrated Goods and Services Tax bill, Union Territories (without legislature) Goods and Services Tax bill and Goods and Services Tax (Compensation to States) bill have been passed by the Lok Sabha on 29.03.2017 and by the Rajya Sabha on 06.04.2017.

Goods and Service Tax Network GSTN

Goods and Service Tax Network (GSTN) provides a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST incorporated on 28.03.2013 as Section 25 private limited company with authorized equity of Rs.10 crore- strategic control to remain with Government.

Equity Holders Central Government - 24.5% and all States together - 24.5% Financial Institutions – 51%.

The functions of the GSTN would, inter alia, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities; (iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network;

(v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

Indian software MNC Infosys is appointed as Managed Service Provider of GSTN.

17.6 GST Operational Issues

All existing taxpayers registered under the Central Excise, Service Tax, State Sales Tax or Value Added Tax (VAT), Entry Tax, Luxury Tax and Entertainment Tax are required to provide their details at GST Common Portal (gst.gov.in) managed by GSTN for the purpose of migrating themselves to the GST regime.

For New Dealers: Single application to be filed online for registration under GST. They are required to obtain for each State from where taxable supplies are being made. A person having multiple business verticals in a State may obtain separate registration for each business vertical.

The registration number will be PAN based and will serve the purpose for Centre and State. Unified application to both tax authorities. Each dealer to be given unique ID GSTIN. Deemed approval within three days is ensured.

Post registration verification is done in risk based cases only. Each taxpayer would be allotted a PAN linked taxpayer identification number with a total of 13/15 digits. This would bring the GST PAN-linked system in line with the prevailing PAN-based system for income tax facilitating data exchange and taxpayer compliance.

Liability to Register

GST being a tax on the event of "supply", every supplier needs to get registered. However, small businesses having all India aggregate turnover below ` 20 lakh (10 lakh if business is in Assam, Arunachal Pradesh, J&K, Himachal Pradesh, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland or Tripura) need not register.

The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register. The aggregate turnover includes supplies made by him on behalf of his principals, but excludes the value of job-worked goods if he is a job worker. But persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land are not liable to register under GST.

Persons liable to register under GST

The following are the persons liable to register under GST:

1. To every person who supplies goods and/or services of value exceeding Rs 20 lakh in a financial year. (Limit is Rs 10 lakh for some special category states). Compulsory registration is required for the assessees in the special category states. And GST must be paid when turnover exceeds Rs 20 lakh (Rs 10 lakh for some special category states).
2. To any person making interstate taxable supply of goods and/or services.
3. Every e-commerce operator.
4. Every person who supplies goods and/or services, other than branded services, through e-commerce operator.
5. Aggregators who supply services under their own brand name.
6. Casual Taxable Person.
7. Non-Resident Taxable Person.
8. Person required to deduct/collect tax (TDS/TCS).
9. Input Service Distributor.
10. Person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person.
11. Person required to pay tax under Reverse Charge.
12. Person supplying the goods on behalf of another taxable person (e.g. Agent).

Persons 'NOT" liable to register under GST

1. Agriculturists.
2. Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act.

Composition Scheme

The composition scheme was brought in by the GST council to include as many businesses as possible into the GST ambit. Majority of the apprehensions of businesses were stringent GST tax laws, compliance costs and tedious processes. The Composition Scheme provided businesses the right to not comply to all of its stringent laws if they follow certain conditions.

Eligibility

A taxpayer whose turnover is below Rs 1.5 crore can opt for Composition Scheme. In case of North-Eastern states and Himachal Pradesh, the limit is now Rs 75 lakh.

As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. As per thirty-second GST Council Meeting held on 10th Jan 2019, Service Providers can opt the Composition Tax Scheme, and the Government has set the threshold turnover for service providers at Rs. 50 lakhs for eligibility to this scheme.

Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover.

Not Eligible to apply

The following people cannot opt for the scheme-

1. Manufacturer of ice cream, pan masala, or tobacco
2. A person making interstate supplies
3. A casual taxable person or a non-resident taxable person
4. Businesses which supply goods through an e-commerce operator.

Conditions to be followed

The following conditions must be satisfied in order to opt for composition scheme:

1. No Input Tax Credit can be claimed by a dealer opting for composition scheme.
2. The dealer cannot supply GST exempted goods
3. The taxpayer has to pay tax at normal rates for transactions under the Reverse Charge Mechanism
4. If a taxable person has different segments of businesses (such as textile, electronic accessories, groceries, etc.) under the same PAN, they must register all such businesses under the scheme collectively or opt out of the scheme
5. The taxpayer has to mention the words 'composition taxable person' on every notice or signboard displayed prominently at their place of business.
6. The taxpayer has to mention the words 'composition taxable person' on every bill of supply issued by him. They are not allowed to issue a tax invoice.
7. As per the CGST (Amendment) Act, 2018, a manufacturer or trader can now also supply services to an extent of ten percent of turnover, or Rs.5 lakhs,

whichever is higher. This amendment will be applicable from the 1st of Feb 2019.

Self-Assessment Question-3

1. Discuss the concept of reverse charge?
2. Explain GST council and the functions of the council?
3. List out the persons who need to registered under GST

Taxes applicable on Composition Scheme business:

The following (Refer Table 2.2) are the rate of tax on turnover applicable for composition dealers:

Table 2.2: GST applicable under Composition Scheme Business

Type of Business	CGST	SGST	Total
Goods Manufacturers and Traders	0.5%	0.5%	1.0%
Restaurants not serving alcohol	2.5%	2.5%	5.0%
Other Service providers	3.0%	3.0%	6.0%

Source: ICFAI Research Center

The GST payment to be made by a composition dealer comprises the following:

- GST on supplies made
- Tax on reverse charge
- Tax on purchase from an unregistered dealer.

Advantages of Composition Scheme

The following are the advantages of registering under composition scheme:

- Lesser compliance (returns, maintaining books of record, issuance of invoices)
- Limited tax liability
- High liquidity as taxes are at a lower rate.

Disadvantages of Opting for the Composition Scheme

Let us now see the disadvantages of registering under GST composition scheme:

- A limited territory of business. The dealer is barred from carrying out interstate transactions
- No Input Tax Credit available to composition dealers
- The taxpayer will not be eligible to supply exempt goods or goods through an e-commerce portal.

Types of Taxes under GST

Under GST, three types of taxes can be charged in the invoice. SGST and CGST in case of an intrastate transaction and IGST in case of an interstate transaction (Refer Table 2.3).

Table 2.3: Type of GST vis-à-vis Type of Transaction

Type of transaction	Tax
Inter state	IGST
Intra state	CGST & SGST
Intra Union Territory	CGST & UTGST

Source: ICFAI Research Center

The deciding factor of interstate or intrastate is the location of supplier and the place of supply. The IGST Act lays down certain rules which define whether a transaction is inter or intrastate. These rules are called the place of supply rules.

<u>Check Your Progress - 2</u>

6. Supplies under schedule III is considered as Negative List in GST as this Schedule provides for the activities which will not be considered as goods or service. Identify one such activity which does not fall under purview of schedule-III?

   a. Services of an employee to an employer in the course of his employment.
   b. Services by any court or tribunal.
   c. Services of funeral, burial, cremation etc
   d. Supply of goods, by a principal to his agent,
   e. Sale of land and building.
7. It would be a dual GST with the Centre and the States levying it on a common base while the central GST is levied first, state GST is levied later. (True/ False)
8. The liability to pay the tax by person receiving goods and/or services instead of the person supplying the goods and services in respect of specified categories of supplies for both services as well as goods is called ____________________
9. Identify from the following, that activity which is exempted from registering for GST
   a. To every person who supplies goods and/or services
   b. Input Service Distributor.
   c. Every e-commerce operator
   d. Agriculturists.
   e. Goods and service suppliers of value of Rs 15 lakhs in a financial year
10. Balaji Traders, a small retailer after taking the support of a tax consultant has applied for GST registration under composition scheme. Identify the turn over limit and the % GST to be paid by Balaji Traders under composite scheme of GST?
   a. Rs 1.00 crore and 1 %
   b. Rs 1.50 crore and 0.5 %
   c. Rs 1.5 crore and 1 %
   d. Rs 50 lakhs and 1.5 %
   e. Rs 2 crores and 2 %

The table 2.4 below explains all possible scenario of transactions and appropriate taxes to be charged.

Table 2.4: Type of Tax Leviable vis-à-vis Type of Transaction

Registered Location of Service Provider	**Place of supply**	**Nature of Supply**	**GST Applicable**
Telangana	Telangana	Intra-state	CGST + SGST

Contd. .....

Telangana	Kerala	Inter-state	IGST
New York, US	Telangana	Import	IGST (Basic Custom Duty)
Telangana	New York, US	Export	Nontaxable (Zero-rated Supply)
Andaman & Nicobar Islands	Andaman & Nicobar Islands	Intra UT	CGST + UTGST
Andaman & Nicobar Islands	Telangana	Inter-state	IGST
Andaman & Nicobar Islands	Daman & Diu	Inter-state	IGST

Source: ICFAI Research Center

Time of Supply

Time of supply means the point in time when goods/services are considered supplied'. When the seller knows the 'time', it helps him identify due date for payment of taxes.

CGST/SGST or IGST must be paid at the time of supply. Goods and services have a separate basis to identify their time of supply. Let's understand them in detail.

A. Time of Supply of Goods

Time of supply of goods is earliest of:

1. Date of issue of invoice
2. Last date on which invoice should have been issued
3. Date of receipt of advance/ payment*.

B. Time of Supply for Services

Time of supply of services is earliest of:

1. Date of issue of invoice
2. Date of receipt of advance/ payment
3. Date of provision of services (if invoice is not issued within prescribed period).

C. **Time of Supply under Reverse Charge**

In case of reverse charge, the time of supply for service receiver is earliest of:

1. Date of payment*
2. 30 days from date of issue of invoice for goods (60 days for services)

- *** 'Date of Payment' is not applicable for goods and applies only to services.**

Taxability

The taxability in GST can be explained as

- The GST is paid on the purchase of goods and services/to be paid on the supply of goods and services.
- There should be no distinction between raw materials and capital goods in allowing input tax credit. The tax base should comprehensively extend over all goods and services up to final consumption point on value addition. Tax is to be paid on Transaction value (TV) of supply generally i.e., the price actually paid or payable for the supply of goods and/or services.
  - Date on which supplier issues invoice.
  - Date on which supplier receives the payment, whichever is earlier.
- Elaborate rules provided for determining the place of supply - Intra-State supply of goods and/or services - where the location of the supplier and the place of supply are in the same State - Inter-State supply of goods and/or services - where the location of the supplier and the place of supply are in different States. Elaborate principles devised for determining the time of supply of goods and services with following being crucial determinants (with certain exceptions).

GST invoice must be issued for all supply with a taxable value of more than ` 200. Also, persons registered under GST are mandatorily required to issue an invoice irrespective of taxable value, when it's demanded by a customer.

The time for issuing GST invoice differs based on the type of supply, i.e., goods or services. For goods, a tax invoice must be issued before the goods are removed from the premises of the supplier for transport to the recipient. In some cases, however, a tax invoice can be issued at the time of delivery of goods or while making the goods available to the recipient. In such cases, a delivery challan can be issued by the supplier to generate **GST** e-way bill and transport the goods to the recipient without a tax invoice. For services, a tax invoice must be issued before or after providing the service, but no later than thirty days from the date of providing of service.

Taxable Persons

For GST, the persons covered are

- It will cover all types of persons carrying on business activities, manufacturing and service activities.
- If a company is having four branches in four different states, all the four branches will be considered as TP (Taxable person) under each jurisdiction of SGs. A dealer must get registered under CGST as it will make him entitled to claim ITC of CGST thereby attracting buyers under B2B (Business to Business) transactions.
- Importers have to register under both CGST and SGST as well.

Tax Payment

The tax payment can be done in the following manner.

- Tax can be deposited by internet banking, NEFT / RTGS, debit/credit card and over the counter
- Date of credit to the Govt., account in the authorized bank is the date of payment for credit in electronic cash ledger
- Payment of Tax is made by way of the debit in the electronic cash or credit ledger hierarchy for discharging payments of various tax liabilities
- Self –assessment of tax
- Provisions for assessment of non-filers, unregistered persons & summary assessments in certain cases
- Provision made for provisional assessment on request of taxable person – to be finalized in six months

Tax Refund

Refund of accumulated ITC (Input Tax Credit) allowed in case of exports or where the credit accumulation is on account of inverted duty structure

- Refund to be granted within 60 days from the date of receipt of complete application
- Interest is payable if refund is not sanctioned within 60 days
- Refund claim along with documentary evidence is to be filed online without any physical interface with tax authorities

- Immediate provisional sanction of 90% of refund claim on account of exports
- Principle of "Unjust enrichment" to be satisfied
- Tax refund will be directly credited to the bank account of applicant
- Refund can be withheld in specified circumstances even without any stay from any higher appellate fora

Some Details about Input Tax Credit

Input tax is the GST incurred on any purchase or acquisition of goods and services by a taxable person for the purpose of making a taxable supply in the course or furtherance of business. The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly, the credit of SGST paid on inputs would be allowed for paying the SGST on output. No cross utilization of credit would be permitted.

Since the Central GST and State GST are to be treated separately, in general, taxes paid against the Central GST shall be allowed to be taken as input tax credit (ITC) for the Central GST and could be utilized only against the payment of Central GST. The same principle will be applicable for the State GST Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST paid on inputs may be used only for paying SGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter-State supplies for payment of IGST.

Assume a manufacturer G has purchased the inputs from 3 suppliers A, B and C. He paid a tax of ` 100 at A, and ` 120 at B and ` 80 at C. The tax on the goods manufactured by G is say ` 500. G has to pay a tax of ` 500 – ` (100+120+80) = ` 200.

Input Tax Credit for Services

Input Service Distributor mechanism for distribution of ITC of input services is available. A business entity can have multiple branches. In such a scenario input service distributor (ISD) will handle the transactions. ISD can be the head office or a branch office or registered office of the registered person under GST. ISD collects the input tax credit on all the purchases made and distribute it to all the recipients (branches) under different heads like CGST, SGST/UTGST, IGST or cess.

Proportionate credits allowed in case inputs/ inputs services and capital goods are partly used for business and partly for non-business purposes.

Proportionate credits allowed in case inputs, inputs services and capital goods are used for taxables including zero rated and exempt (including non-taxable) supplies.

Conditions for ITC Claims

ITC of tax paid on goods and / or services used for making taxable supplies by a taxable person allowed subject to four conditions:

- Possession of invoice;
- Receipt of goods or services;
- Tax actually paid by supplier to government;
- Furnishing of return.

Full ITC allowed on capital goods in one go except in respect of pipelines and telecommunication towers where ITC would be allowed in three equal annual installments.

Input Tax Credit Availment

The following are instances where the ITC can be availed by the business entity:

- ITC cannot be availed after filing of return for the month of September of next Financial Year or filing of Annual Return
- ITC available only on provisional basis for a period of two months until payment of tax and filing of valid return by the supplier
- Matching of supplier's and recipient's invoice details
- ITC to be confirmed only after matching of such information
- ITC to be reversed in case of mis-match

Tax Treatment of Goods returned by the Recipient

In any business transaction the return of goods is a very common transaction. The following are the details of tax treatment to be adopted when goods are returned as part of the business transaction.

Section 34 deals with such situations. Where the goods supplied are returned by the recipient, the registered person (supplier of goods) may issue to the recipient a credit note containing the prescribed particulars. The details of the credit note shall be declared by the supplier in the returns for the month during which such credit note was issued but not later than September following the end of the year in which such supply was made or the date of filing of the relevant annual return, whichever is earlier. The details of the credit note shall be matched with the corresponding reduction in claim for input tax credit by the recipient in his valid return for the same tax period or any subsequent tax period. The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in claim for ITC by the recipient shall be finally accepted and communicated to both parties.

17.7 Returns Under GST

The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities.

Information return is introduced based on the idea of verifying the compliance levels of registered persons through information procured from independent third party sources. ITC credit can also be verified on the basis of the returns filed and revenues reconciled against challan data from banks.

Other returns to be submitted are:

- Common standardized return for all taxes (with different account heads for CGST, SGST, IGST).
- The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities**.**
- Common return would serve the purpose of both Centre and State Governments.
- There are eight forms provided for in the GST business processes for filing of returns. Most of the average tax payers would be using only four forms for filing their returns. These are return for supplies, return for purchases, monthly returns and annual return.
- Small taxpayers who have opted composition scheme shall have to file return on quarterly basis.
- Filing of returns shall be completely online.
- There would no manual filing of returns. All mis-matched returns would be auto generated and there would be no need for manual interventions.
- Most returns would be self-assessed.
- Normal taxpayers, compositions taxpayers, casual taxpayers, non-resident taxpayers, TDS deductors, Input service Distributors (ISDs) to file separate electronic returns with different cut-off dates.
- Annual return to be filed by 31st December of the following Financial Year along with a reconciliation statement.
- Short-filed returns not to be treated as a valid return for matching & allowing ITC and fund transfer between Centre and States.
- Tax Return Preparers scheme to assist taxpayers mainly in filing of returns.

Periodicity of the returns

- GSTR 8 Annual Return By 31st Dec. of the following financial year
- GSTR 4/5/6/7 for special filings in prescribed frequency
- GSTR 2 Inward Supplies, This is a monthly return
- GSTR 3Monthly Return
- GSTR 1 - Outward Supplies. This is a monthly return

Audit by Tax Officials

To maintain a check and examine whether correct GST is being paid and the refund is claimed, certain taxable persons will be subject to audit under Threshold for Audit.

There are three types of audits which is conducted under GST: (i) Audit by Chartered Accountant or Cost Accountant (ii) Audit by tax authorities (iii) Special Audit.

Every registered taxable person whose turnover during a financial year exceeds the prescribed limit [the turnover limit is above ₹ 1 crore] shall get his accounts audited by a chartered accountant or a cost accountant. He shall electronically file in the manner disclosed:

- An annual return using the Form GSTR 9B along with the reconciliation statement by 31st December of the next Financial Year,
- The audited copy of the annual accounts,
- A reconciliation statement, reconciling the value of supplies declared in the return with the audited annual financial statement and other particulars as prescribed.

Audit can be conducted at the place of business of the taxable person or at the office of the tax authorities, after prior intimation to taxable person.

Audit is to be completed within 3 months, extendable by a further period of 6 months.

On conclusion of audit, the taxable person to be informed about findings, his rights and obligations, and reasons for the findings.

Appellate Mechanism under GST

A person, who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (AA, for short). It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the Act.

It is to be noted that no appeals whatsoever can be filed against the following orders: (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; (b) an order pertaining to the seizure or retention of books of account, register and other documents; or (c) an order sanctioning prosecution under the Act; or (d) an order passed under Section 80 (payment of tax in instalments). The time limit for the party to file an appeal before the AA is 3 months from the date of communication of the impugned order. But the AA may condone a delay of up to one month, if he is satisfied that there was sufficient cause for such delay. The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc. The AA can also make such further inquiry as may be necessary. On conclusion of the appeal process, the AA will pass his order (Order-in-Appeal) which may confirm, or modify or annul the decision or order appealed against but shall not refer the case back to the authority that passed the said decision or order.

The AA can also increase the "rigour" of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order. Further, if the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74 of the CGST Act, 2017.

The Order-in-appeal has to be a "speaking order" i.e. it should state the points for determination, the decision thereon and the reasons for the decision. The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal.

Appeal to Tribunal

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

Appeal to the High Court

The law provides that either side (department or party), if *aggrieved* by any order passed by the State Bench or Area Bench of the Tribunal, may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves *a substantial question of law*. It is to be noted that on facts, the tribunal is the final authority.

Appeal to the Supreme Court

The law provides for appeals to the Supreme Court from any judgment or order passed by the High Court, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one, for appeal to the Supreme Court.

A (direct) appeal shall also lie to the Supreme Court from any orders passed by the National/Regional Bench of the Tribunal. It may be noted that the National/ Regional Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.

17.8 Summary

- GST is a dual tax where CGST, SGST and UTGST are levied, collected, etc. by the Central, State and Union territory respectively. IGST is levied and collected by the centre on interstate transactions.
- GST invoice is an invoice issued by a business entity with GST registration number to his clients on sale of goods or services. It contains the complete details of sale and the parties to such sale.
- Bill of Supply is issued where GST is not applicable or the GST is not covered in respect of any transaction.
- There exists different types of GST Returns such as return for supplies, return for purchases, monthly returns, annual return, etc. While the periodicity of each Return is GSTR 1 monthly, GSTR 4 quarterly etc.
- GST Council is constituted by the President of India as per Article 279A (1) of the amendment to the **Indian** Constitution.
- GSTN provides a shared infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST.
- Reverse charge is the liability to pay GST by a person receiving goods or services instead of the person supplying the goods or services in respect of specified categories of supplies.

- GST Audit is an audit conducted by a chartered accountant or cost accountant, audit by tax authorities, and includes a special audit.

Appellate Mechanism under GST includes Appeal to Appellate Authority (AA), Appeal to Tribunal, Appeal to High Court, and lastly Appeal to Supreme Court.

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17.9 Suggested Readings / Reference Material

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17.10 Answers to Check Your Progress Questions

1. **(d)** Cascading of taxes is significantly reduced by Input Tax Credit
2. **(c)** Simpler tax regime by adapting fewer rates and exemptions and erasing distinction between goods & services
3. **(c)** Electronic goods
4. **(a)** IGST- Import of goods would be treated as inter-State supplies and would be subject to IGST
5. **(b)** Rs 40 lakhs and Rs 20 lakhs
6. **(d)** Supply of goods, by a principal to his agent
7. **False**
   Both are levied simultaneously
8. **Reverse charge**
9. **(e)** Goods and service suppliers of value of Rs 15 lakhs in a financial year
10. **(c)** Rs 1.5 crore and 1 %

Business Environment and Law

Course Components

BLOCK I	The Socio-Political Environment of Business
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Unit 2	Demographic and Social Environment
Unit 3	Cultural Environment
Unit 4	Political Environment
BLOCK II	The Economic and Technological Environment of Business
Unit 5	Economic Environment
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BLOCK III	The Legal and Ethical Environment of Business
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BLOCK IV	Business Contracts
Unit 12	Law of Contracts
Unit 13	Special Contracts
BLOCK V	Law Relating to Corporate Business Entities
Unit 14	Insolvency and Bankruptcy Code, 2016
Unit 15	A Brief Note on Companies Act, 2013
BLOCK VI	Tax Laws
Unit 16	Direct Taxes
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