



October 13, 2021

WIRC: WOW Series Issues in Tax Audit: 2021-22

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- Tax Audit in case of Companies
 - Only particulars in Form 3CD to be certified
 - Reliance to be placed on report of Statutory Auditor
 - SA 600 "Using the work of another auditor"
 - Some additional verification maybe necessary
 - Co-relation of particulars given in Form 3CD with disclosures in FS (e.g. AS 18 / Ind-AS 24, CARO report, etc.)

- Format for FS (Corporate Entities)
 - As per Schedule III of The Companies Act, 2013 (including companies having year-end different from 31 March)
 - Format requires previous years' figures

- Tax Audit in case of non corporate entities
 - Entire audit to be conducted
 - True and Fair view of FS

- Format for FS (non corporate Entities)
 - Recommended by ICAI - (follows old schedule VI format)
 - BS in horizontal format - PL in vertical format
 - Format also mentions previous years' figures

- Fact based reporting vs Opinion based reporting i.e. True and Correct vs True and Fair – (corporate / non corporate)
- Assistance to Revenue Authorities to compute taxable income.
- Not all reported items are disallowed
- Reliance / Binding nature of Guidance Note of ICAI
- Primary responsibility of Management to compile information
- For debatable issues, separate management representations, if required
- Important for Peer Review since Tax Audit is also an attest function.
- To follow SA 230 – Audit Documentation
- **Golden principle for Documentation: Write what you do, Do what you write!**

ICAI

44AB related

- ICAI Guidance Note (Edition 2014) (Since then, there is no revised guidance note issued by The ICAI)
- ICAI Implementation Guide (Edition 2018) -Changes effective from 20 August, 2018
- Checklist for Tax audit dated 27 October 2020 pursuant to the report of QRB on commonly found errors in Tax Audits

ICDS related

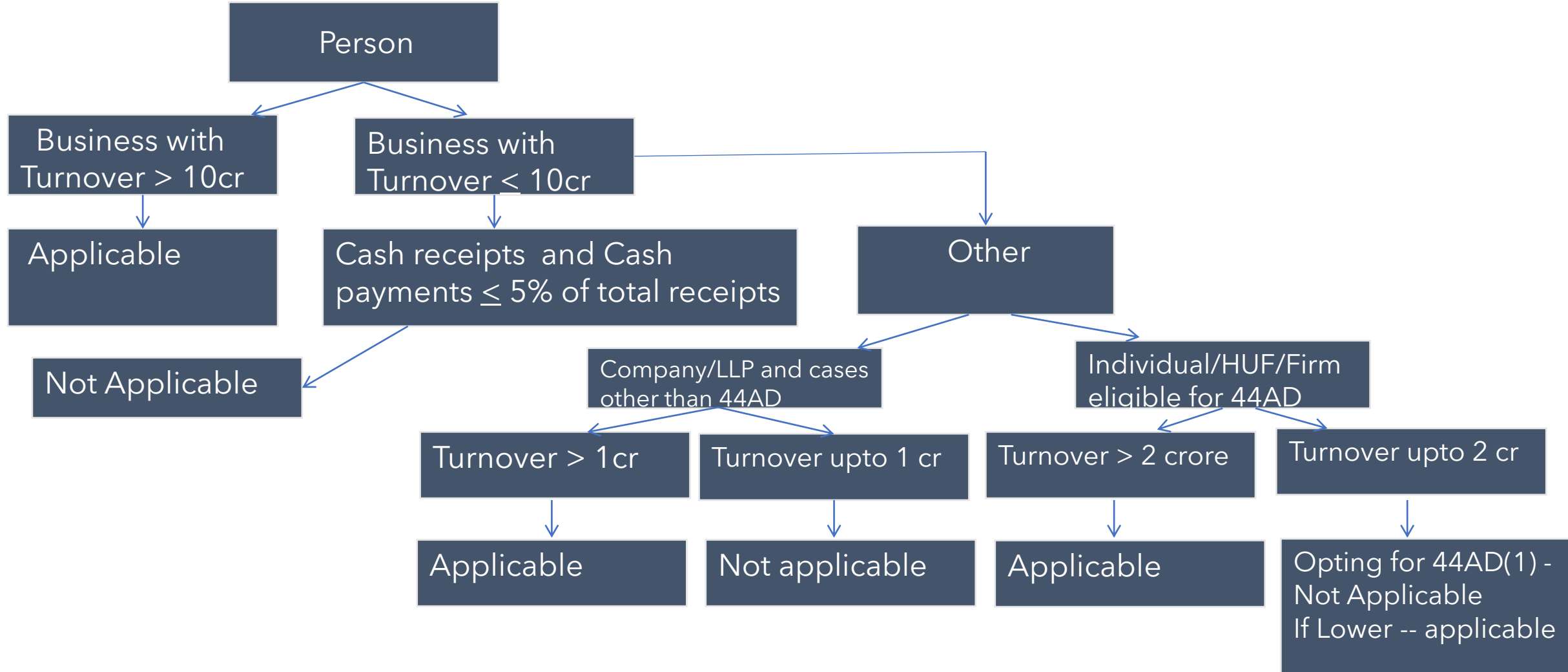
- Notification by CBDT dated 29th September,2016
- Clarification by CBDT by way of FAQs dated 23rd March,2017

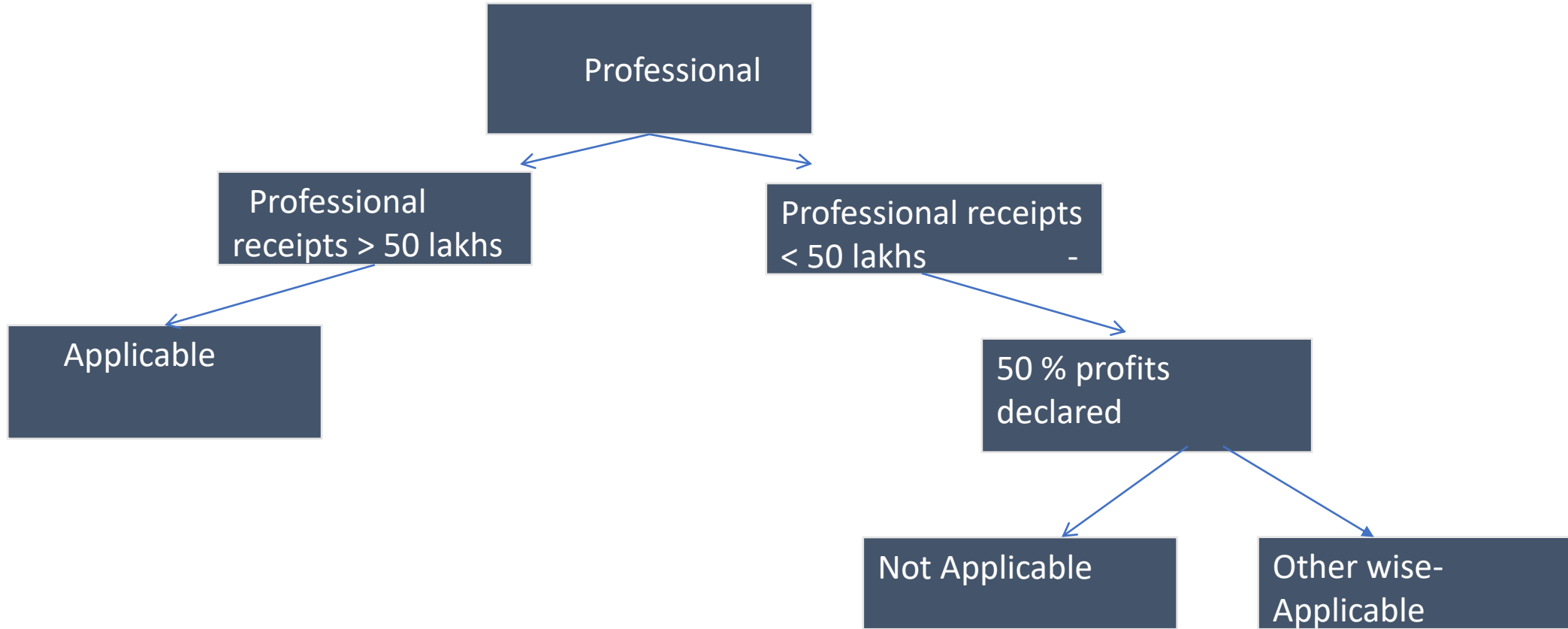
Other Reference Material

- Income Tax Act 1961
- Income Tax Rules 1962
- Notifications and Circulars issued from time to time
- Judicial pronouncements - Binding nature of SC and Jurisdictional High Court

Particulars	Original due date	Revised due date
Filing of ITRs by person other than Companies where no tax audit is applicable	31 July 2021	31 December 2021
Filing of tax audit report and other reports	30 September 2021	15 January 2022
Filing of ITRs by assessee liable for Audit (other than Transfer Pricing Audit) and partners of firm subject to tax audit	31 October 2021	15 February 2022
Filing of Transfer Pricing Report in Form 3CEB	31 October 2021	31 January 2022
Filing of ITRs by assessee liable to furnish report in Form 3CEB	30 November 2021	28 February 2022
Filing revised/ belated tax returns	31 December 2021	31 March 2022

- Vide Circular No. 17/2021 dated 09.09.2021 due dates for filing income- tax returns and audit reports for AY 2021-22 have been extended
- Interest under section 234A to be applicable where net tax liability (SA Tax) of more than Rs. 1 lakh is unpaid before the original due date for filing returns
- The above circular does not provide for any specific case where the tax audit / other audit reports was due on 31 October 2021 due to transfer pricing provisions being applicable





Conditions for enhanced limit of INR 10 crores as per section 44AB:

- Enhanced limit of INR 10 crores applies in respect of taxpayers where:
 - aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and
 - aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:
- Whether for calculation of 5% threshold mentioned above whether capital receipts/ payments to be considered or only turnover
 - Having regard to wordings even capital receipts/ payments to be considered
 - ITR 5 and 6 Forms released - Schedule Part A - Gen - "AUDIT INFORMATION" -
whether aggregate of all amounts received, including amount received for sales, turnover or gross receipts or on capital account such as capital contribution, loans etc. during the previous year, in cash, does not exceed five per cent of said amount?

- If the assessee does not opt for presumptive taxation scheme and wants to declare profits lower than presumptive rate provided under section 44AE, 44BB, 44BBB and section 44ADA
- Section 44AD: If the person opts out of section 44AD and offers his income to tax under regular provisions - income cannot be declared as per presumptive provisions for a period of 5 years after the year of opting out.
 - Tax Audit mandatory if the income exceeds maximum amount not chargeable to tax - irrespective of turnover? Refer 44AB(e)

- To be taken as per ICAI's GN on Tax Audit
- Aggregate amount for which sales are effected or services rendered
- Para 5.10 of GN - considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms - construed in accordance with the method of accounting regularly employed
- To consider whether transaction is made on basis of "principal to principal" or 'principal to agent'
- Excise Duty or State Cess, if any, will be included in Turnover depending on the regular method accounting employed
- **GST is not to be included** since it is collected on behalf of government and is normally credited to a separate account. If the GST is included in turnover/ gross receipts and not reduced, not to be reduced from total turnover

Whether the following is part of turnover?

- Sales proceeds of fixed assets
- Sale of scrap (included in 'Miscellaneous Income') -If of scrap is in respect of raw materials, etc. may be reduced from cost and may not be included in turnover (Refer - CIT v Punjab Stainless Steel Industries (364 ITR 144))
- Sale proceeds of shares/property held as 'Investments'
- Sale proceeds of shares/property held as 'Stock-in-trade'
- Sales by commission agents / share brokers
 - If all significant risks, reward of ownership of goods continue to belong to the principal, the relevant sales shall not form part of the turnover of the commission agent.
- Rent received
- Dividend received
- GST

Para 5.16 of GN states:

- Gross Receipts includes all receipts whether in cash or in kind which will normally be assessable as business income under the Act
- In case of Reimbursements, the GN states that:
 - If the assessee is merely reimbursed for certain expenses incurred, the same will not form part of his gross receipts.
 - But in the case of charges recovered, which are not by way of reimbursement of the actual expenses incurred, they will form part of his gross receipts.
 - In case of professionals, may also depend on whether GST is recovered on such reimbursements.

Are the following included in "Gross Receipts"?

- Export benefits received
- Interest received by money lender
- Exchange difference (net)
- Insurance claims (other than fixed assets)
- Package Tour charges recovered by a travel agent
- Share of profit of a partner from a firm
- Write back of amounts payable to creditors

Purpose	Remarks
For Investment	Tax Audit not applicable provided it purely falls under investment activities based on: Own funds / borrowed funds, average period of holding, frequency, volume of transaction etc.
Share trading (Derivatives, F&O, Speculative)	Tax Audit would be applicable if the turnover exceeds the threshold limits
Joint Purpose: Investment as well as Share trading	<ul style="list-style-type: none"> ➤ Can thresholds (like 90 days, etc.), be used for the purpose of tax audit? ➤ In such a case, can holding more than 90 days, etc. be considered as investment activity?

Purpose	Remarks
Speculative transactions	Aggregate of both positive and negative differences - considered as turnover
Derivatives, F&O	Aggregate of favorable and unfavorable differences is taken as turnover. Premium received on sale of options is also to be included in Turnover
Delivery-based transactions	Depends on whether transaction undertaken in the course of business or as investment. Also depends on facts and circumstances of each case considering nature of transaction, frequency and volume of transaction, etc.

Clauses of section 44AB Description

(a)	carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year (or rupees ten crores in certain cases)
(b)	carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year
(c)	carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year
(d)	carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year
(e)	carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year

- Provisions of tax audit are not applicable where in respect of an assessee referred to in section 44AD(1)- his total sales, turnover or gross receipt do not exceed INR 2 crore rupees in such previous year
- Provisions of tax audit are not applicable in respect of an assessee deriving income of the nature referred to in section 44B or section 44BBA of the Act

Provisions where the assessee has opted for taxation under section 115BA/ 115BAA/ 115BAB/ 115BAC/ 115BAD

Section	Description
115BA	Applicable to domestic company set up on or after 1 April 2016 and engaged in any business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced. Tax rate applicable is 25% subject to certain conditions prescribed in the section.
115BAA	Applicable to domestic company set up on for AY 2020-21 and subsequent years. Tax rate applicable is 22% subject to certain conditions. Option to be exercised on or before the due date of filing the return of income under section 139(1)
115BAB	Applicable to a company registered on or after 1 October 2019 and has commenced manufacturing or production of article or thing on or before 31 March 2023. The tax rate applicable is 15% subject to fulfilment of certain other conditions
115BAC	Provides graded tax rates for individual and HUF which are lower than regular tax rates. For assessee having business income. The option can be exercised prior to due date of filing return under section 139(1). Option once exercised can withdrawn only once and thereafter option cannot be once again exercised, unless the assessee ceased to have business income. Applicable to AY 2021-22 and subsequent years
115BAD	Provides for concessional rate of tax of 22% for a cooperative society for AY 2021-22 and subsequent years. Option to be exercised by filing declaration prior to due date of filing the return of income under section 139(1)

Provisions of section 115BAC in brief:

- Section 115BAC - comes into force from 01.04.2021
- For taxpayers having business income option to be exercised on or before due date u/s 139(1) and once exercised the option to apply for subsequent years
- The option once exercised can be withdrawn only once in subsequent year other than the year in which it was exercised
- Once withdrawn the person not to be eligible for option under section 115BAC unless business income ceases to exist
- Adjustments to WDV of the assets to be made in the manner prescribed to be made only for AY 2021-22 - No adjustment to written down value permitted if the assessee opts for 115BAC regime from subsequent assessment years
- Any loss under the head income from house property not to be eligible for set off against other heads
- Form 10-IE to be filed before the date of filing the return of income

- Applicable specifically to firm and AOP
- Name(s) of partners/ members and their respective profit sharing ratio to be indicated
- Any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change to be indicated
- Section 9B introduced vide Finance Act 2021 - Deems capital asset or stock in trade transferred by a partnership firm/ AOP/ BOI to its partner/ member on dissolution or reconstitution as a taxable transaction
- When a partner/ member receives any capital asset or stock in trade from a partnership firm/ AOP/ BOI on dissolution or reconstitution, such asset shall be deemed to be transferred in the year in which the partner/ member receives it
- Any profits and gains from such deemed transfer is considered as income of the firm/ AOP/ BOI
- In order to determine the gains, fair market value of the asset shall be considered as the consideration
- Reconstitution means, where
 - One or more of its partners/ members, ceases to be partners/ members; or
 - One or more new partners/ members, are admitted such that one or more of the erstwhile partners/members continue as partner/member; or
 - All partners/ members continue with a change in their respective share or shares of some of them

Section 45(4) provides for taxing the firm/ AOP/ BOI on the difference between the fair value of asset transferred and the capital account balance of the receiving partner/ member on reconstitution

- Nature of business or profession to be provided
- In case there is change in nature of business or profession - details of such change to be provided
- Guidance Note at para 19 - Principal businesses
- Information has to be furnished in respect of each business. The code to be mentioned against the nature of business pertains to the main area of business activity
- Any material change in the nature of business should be precisely set out. The change will include change from manufacturer to trader as well as change in the principal line of business
- any addition to or permanent discontinuance of (and not temporary discontinuance), a particular line of business may also amount to change requiring reporting
- In the case of business reorganization/ reconstruction if there is a similar line of activity, no reference needs to be made. However, if a new line of activity emerges because of business reorganization/ reconstruction, the same may be stated. In the case of restructuring, if any line of activity is being hived off, the same may also be reported

Whether P&L a/c includes profit assessable on presumptive basis? - If yes, indicate the amount and relevant section:

Section	Description
44AD & 44ADA	Eligible Business (Individual, HUF, firm - excluding LLP). For 44AD once the assessee opts out of presumptive taxation - presumptive provisions cannot be resorted to for a period of 5 years after the year of opting out. Profession referred to in Section 44AA
44AE	Transport Business
44B	Shipping business of a non-resident
44BB	Non resident providing services in prospecting or extraction of mineral oils
44BBA	Operation of aircraft by non-resident
44BBB	Civil construction in turnkey power projects by non-residents
Chapter -XII-G	Shipping Business
First Schedule	Insurance Business

Certain key issues in presumptive taxation:

- Deduction/ disallowance under section 40(a)/ 43B - presumed to have been given effect to.
- Set off of brought forward losses business losses (from same business when presumptive provision were not opted for or different business) - likely to be permissible
- Set off of unabsorbed depreciation - not likely to be permissible since overriding effect over sections 30 to 38 (including unabsorbed depreciation)
- Calculation of turnover eligible for 6% rate under section 44AD - receipts upto the due date under section 139(1) to be considered. Whether the extended due date to be considered?

- Land or Building or both transferred for consideration less than value adopted by any authority of a State Government (Sec 50C or 43CA)
- Section 43CA or section 50C provide for tolerance band of 10% (increased from 5% by Finance Act 2020 w.e.f. 01.04.2021)
- As per Finance Act, 2021 it is provided to increase the safe harbour from 10% to 20% under section 43CA for the period from 12th November 2020 to 30th June 2021 in respect of the only primary sale of residential units of value up to Rs. 2 crores. Also, relief by increasing the safe harbour from 10% to 20% was allowed to buyers of these residential unit's u/s 56(2)(x) for the same period.
- Tax auditors to specifically report whether the additional safe harbour provided above is applicable
- Where the date of the agreement fixing the agreement and the date of registration of capital asset are not the same, the stamp duty value on the date of agreement to be taken for calculation of capital gains

Other Issues - Applicability in following situations :

- Transfer of flat under construction - ITO v. Yasin Moosa Godil [2012] 20 taxmann.com 424 (Ahd) - section 50C not applicable in case of booking rights transferred.
- Development agreement/Transfer of TDR/ FSI/Leasehold rights - Tax Auditor to exercise professional judgement as to what constitutes Land or Building - ICAI GN Para 26.7
- Transfer of depreciable asset - if the capital gains are taxable as per section 50 of the Act - value as per section 50C to be adopted for the purpose of calculation of capital gains
- If no capital gains arise on transfer of depreciable asset from block under section 50 - only actual monies payable to be reduced and not stamp duty value as per section 50C

Fixed Assets - Block of Assets

- Reconciliation with FA Schedule of financials for additions.
- Reconciliation of sale value of assets with FS - Only sale value to be reduced from block and not amount written off
- Review of any impact of adjustment due to Assessments e.g. expenditure considered as revenue is disallowed and capitalized
- Depreciation is allowed only when asset is put to use - appropriate FAR to be maintained and installation certificates to be obtained to determine date of put to use.
- No depreciation on amount of assets sold during the year.

Clauses specifically applicable for AY 2021-22

- Any adjustment to written down value of block of depreciable assets for taxpayers opting for tax regimes under section 115BAC (individuals and HUFs) and 115BAD (cooperative society)
- Rule 5 amended by Notification No. 610(E) dated 1 October 2020 which provided for adjustment of opening WDV as on 01.04.2020 to the extent depreciation under section 32(1)(ia) brought forward from past years which could not be set off under new regime
- Adjustment only if new regime under section 115BAC/ 115BAD is adopted from AY 2021-22
- Adjustment to WDV on opting for new regime needs to be specifically reported
- If new regime for companies under section 115BAA is opted for in AY 2021-22 - no adjustment in opening WDV permissible for unabsorbed depreciation which is likely to lapse on opting for new regime

Clauses specifically applicable for AY 2021-22 - Depreciation on goodwill

- Finance Act 2021 provides that Goodwill no longer a depreciable asset from AY 2021-22
 - What about interest under section 234C on account of shortfall of advance tax
- Goodwill to be reduced from the WDV in the manner prescribed under section 43(6)(c)(ii)(B)
 - Goodwill WDV to be computed as if it was the only asset in the block and depreciation claimed accordingly
- STCG under section 50 in accordance with Rule 8AC

Clauses specifically applicable for AY 2021-22 - Depreciation on goodwill

Assessment Year	Particulars	Opening WDV	Addition	Reduction	Depreciation	Closing WDV
2017-18	Purchase of TM1 and TM2	-	200	-	50	150
2018-19	Goodwill on purchase of business	150	500	-	162.5	487.5
2019-20	Sale of TM1	487.5	-	250	59.38	178.12
2020-21		178.12	-	-	44.53	133.59
2021-22		133.59	-	210.94	-	-

As per Rule 8AC	Amount
Reduction under section 43(6)(c)(ii)(B)	210.94
(-) WDV of block of assets on 1.4.2020 without giving effect to section 43(6)(c)(ii)(B)	(133.59)
(-) Actual cost of asset acquired during the year	-
Short term capital gains under section 50	77.35

- Details of contributions received from employees for various funds referred to in sec 36(i)(va)
- Amounts are paid beyond due date as per the relevant Acts to be disallowed
- Section 36(1)(va) and section 43B amended by Finance Act 2021 w.e.f. 01.04.2021 to clarify that the employees' contribution to provident fund to be disallowed even if deposited late but before the due date of filing the return of income resulting in permanent disallowance
- Whether delay in payment of PF contribution on account of non-obtaining/ allotment of PF number needs to be reported under this clause? Delay beyond the control of the assessee?

- Club membership fees typically not in the nature of capital expenditure - may not be reported as capital expenditure. Leads to uncalled adjustment by CPC
- Sub-point (3) - Advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party - Expenditure relating to general advertisements are not be disclosed
- Penalty and amount paid for violation of law:
 - Tax auditor while reporting under this clause is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law.
 - This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages.
 - Details are to be given under this clause if the penalty, etc. are debited to profit & loss account, even if the assessee is contesting before the higher authorities.
 - Any fees, charges, interest payable for compensation for delay in payment, etc. not in the nature of penalty/ payment for violation of law - may not be reported

- Amounts inadmissible under sec 40(a)(i) and 40(a)(ia) – Details of payments on which tax is not deducted or where amount is deducted but not paid within due date of filing return
- Details of taxes deducted and paid in subsequent year are not separately reported here. Taxpayers may be advised to maintain appropriate schedule along with documentary proof for disallowances made in section 40(a)(i)/(ia) and tax withholding and deduction claims in subsequent years
- Ensure that the disclosure corresponds to Clause 34 (a)
- Amounts inadmissible under sec 40(a)(ib) to 40(a)(v)
- Amounts disallowable under clause (iv) – any payment to provident fund or other fund established for benefit of the employees is to be disallowed, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from such fund from payments chargeable under the head salaries
- May be advisable to examine PF Trust Deed/ obtain representation to ensure that there are adequate provisions for TDS on payments made out of PF fund – particularly in view of the fact that provisions relating to exemption of PF contribution have undergone significant change due to amendment in section 17 (employer's contribution to PF, superannuation fund and NPS in excess of INR 750,000 and interest accruing thereon) and 10(11)/10(12) (interest on employees' contribution to PF in excess of INR 250,000)

- Provision for Payment of gratuity not allowable under sec 40A(7) - unless provision is made for the purpose of contribution to approved gratuity fund
- Includes only provision for payment of gratuity to employees on their retirement or termination of their employment. Does not include any contribution to approved gratuity funds. Contributions to approved gratuity funds are covered under section 43B (clause 26)
- Important to report unfunded gratuity correctly under section 40A(7) or section 43B - depending on whether provision is for contribution to approved/ unapproved gratuity fund
- If there is no approved gratuity fund - provision for gratuity to be disallowed under section 40A(7) itself
 - Provision for contribution to approved gratuity fund although not affected by section 40A(7) is allowable only on payment basis under section 43B
- If the amount is reported under one clause in TAR but disallowed in other clause in ITR - CPC may consider both the disallowances resulting in double disallowance

Clauses	Description
Clause 21 (h)	<ul style="list-style-type: none"> ➤ Expenditure related to exempt income u/s 14A ➤ Whether disallowance to be made in case of no exempt income in the relevant year? - View supported by various High Court decisions - SLP dismissed ➤ Not applicable for dividend income which are now taxable in the hands of the shareholders ➤ Considerations for 14A may be equally applicable for deduction under section 80M
Clause 21 (i)	<ul style="list-style-type: none"> ➤ Amount inadmissible under the proviso to Sec 36(1)(iii) ➤ Interest on capital borrowed from the date on which capital was borrowed till the date on which the capital asset is first put to use not to be allowed as deduction ➤ For the purpose of identification of qualifying assets and calculation of borrowing cost to be capitalized provisions of ICDS IX to be applied ➤ ICDS IX contains provisions for capitalization of borrowing costs in case where capital is borrowed specifically for an asset or where the borrowing is general ➤ In case of ready to use capital assets which can be immediately put to use - motor car, certain equipments, shares held as investment etc. arguably no borrowing costs to be capitalised

Background

Expenditure for which payments made to specified persons can be disallowed by AO if expenditure is excessive or unreasonable with regard to

- FMV
- Legitimate needs of business or profession
- Benefit derived by assessee

Purpose of the provision

To check on reasonableness of the related party transaction.

Payments to persons specified in 40A(2)(b)

- Ensuring compilation of details from ledger and reconciliation with Financials
- Payment made to persons specified under section 40A(2)(b) - may not always be same as that reported in financials under Related Party Transactions (Different definitions under The Companies Act 2013, AS, Ind-AS)
- Reconciliations with AS 18/ Ind-AS 24 Disclosures/ Transfer Pricing Certificate
- Whether the details required to be furnished should be in respect of gross figures or net of GST?
 - To be considered net of taxes as only relates to expenditure claimed. In case where amounts in financials are inclusive of taxes, to prepare appropriate reconciliations
- Whether to be disclosed as Gross / Net of TDS?
 - Clause 23 of the Form No. 3CD requires only actual payments to persons specified in section 40A(2)(b) to be reported and not the amounts claimed in or debited to profit and loss account.

Payments to persons specified in 40A(2)(b)

- Whether payments made to related party of capital nature are covered in reporting? - Yes
- Whether reimbursement of expenditure is covered?
- What should be the amount to be considered in Payment to Directors - Salary & Allowances, Perquisite value, reimbursement of expenses, rent paid in respect of rent free accommodation provided or should it be simply the amount reflected in Form 16?
- Since payment to Key Management Persons is disclosed as Related Party Transactions in the Financial statements, should the same be disclosed under section 40A(2)(b) also?

- Details of profits chargeable to tax under section 41 & computation thereof
- Where amount is already considered as income and credited to profit and loss account, separate disclosure required? – Yes. Advisable to insert a note where such sums are already credited to profit and loss account.
 - This leads to mismatch once the return is processed by CPC as the taxpayers do not offer to tax the said amount in ITR separately – CPC adds back resulting in double disallowance
- Where a capital liability is written back – whether to be reported? – No, since not included in profit
 - Waiver of loans (term loans/ working capital loans) whether subject to tax under section 41 of the Act? (Mahindra and Mahindra Ltd. (404 ITR 1 (SC))
- Whether reversal of provision for bad or doubtful debts covered u/s 41?

- Different points triggering taxation of reversal of liability under section 41(1):
 - Civil liability which is cancelled by Court order but the opposite party is in further appeal - not taxable unless there is cessation of liability - No cessation when appeal before higher forums are pending
 - Statutory liability decided in favour by lower appellate authorities and refund received although the Government in further appeal against the decision of lower authorities - taxable as benefit immediately on receipt of refund
 - Liability reversed and credited to P&L pending appeal by the taxpayer - taxable on reversal

Section 43B

- Details of payments of sums referred to in clauses (a) to (g) of Sec 43B
 - Pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year
 - Was incurred in the previous year
- Allowability of Expenditure
 - If pre-existing, then it has to be paid during the previous year
 - If during the year, it can be paid till the due date of filing of return
- Also, state whether sales tax, customs duty, excise duty, GST, or any other indirect tax, levy, cess, impost, etc. is passed through P&L

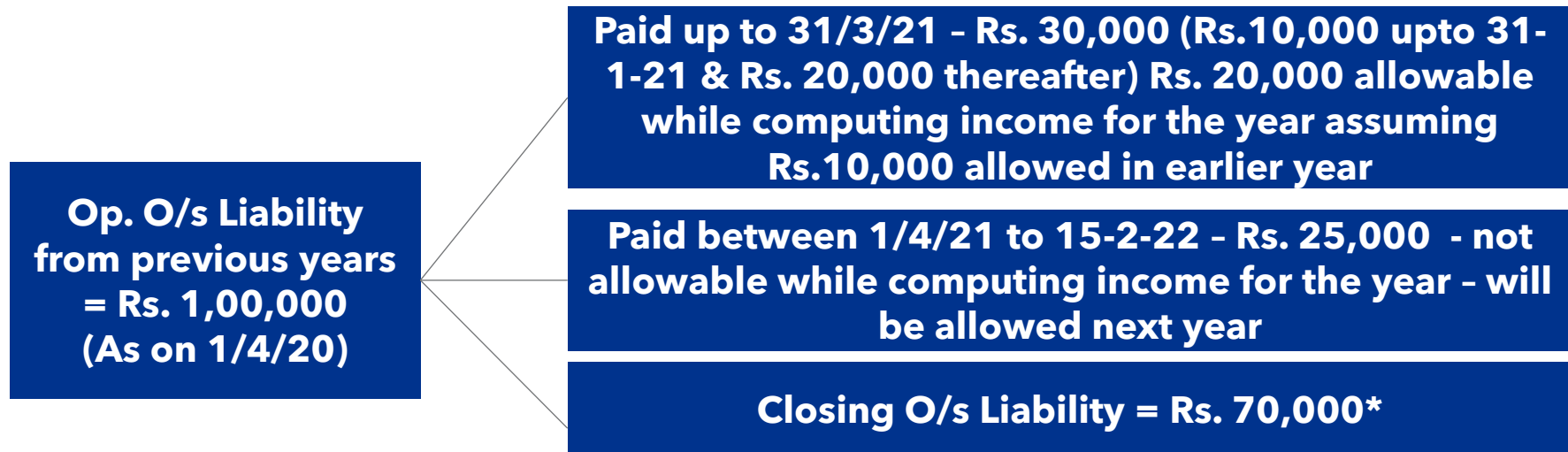
PART A

pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was

(a) paid during the previous year (<i>Will be eligible to be reduced from Net Profits while computing Income Tax payable</i>)	XX
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(b) Not paid during the previous year (<i>Will not be eligible to be reduced from Net Profits while computing Income Tax payable</i>)	XX
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(Also, state whether sales tax, customs duty, excise duty, GST, or any other indirect tax, levy, cess, impost, etc. is passed through P&L)

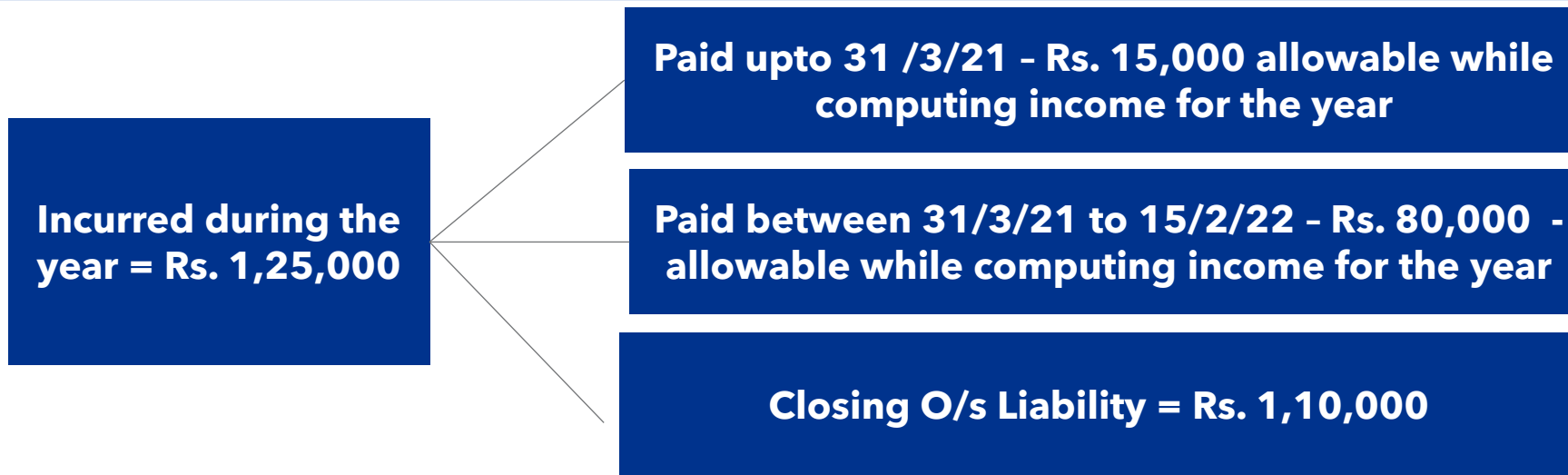


PART B

was incurred in the previous year and was

(a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1) (Will be eligible to be reduced from Net Profits while computing Income Tax payable)	XX
(b) Not paid on or before the aforesaid date (<i>Will not be eligible to be reduced from Net Profits while computing Income Tax payable</i>)	XX

(Also, state whether sales tax, customs duty, excise duty, GST, or any other indirect tax, levy, cess, impost, etc. is passed through P&L)



Points to be kept in mind

- Separate reconciliation has to be maintained as per provisions of income tax on allowability basis. Also it has to be reconciled with previous year TAR & ITR
- Provision/ Liability which pre-existed on the first day of the previous year may not match with opening balance of liability in the financials especially in cases where the liability was settled before return filing in the previous financial year
- Issues where provisions are reversed in each year
- Outstanding liabilities are to be reviewed & review any impact of adjustments due to IT Assessment

- On restructuring debt with the consortium of Financial Institutions/ Banks and the Interest payable is converted into loans, would the conversion of interest into loan tantamount to payment of interest and then obtaining a fresh loan? Hence, the amount of interest paid should be allowed under section 43B? - Arguably no, interest will be allowed as deduction on payment of respective installments only.

{Explanation 3C to 43B}

- Amendment in sec 43B(da) with effect from 01.04.2020:

'any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing'

Section 56(2)(viib):

- Applicable to shares issued at a premium and not applicable to shares issued at a face value
- Applicable on premium received from resident shareholders
- As per rule 11UA, the assessee can opt for NAV or DCF method of valuation. The assessee may also substantiate any other value before the assessing officer based on the value of the assets including intangible assets such as goodwill, patents, trademarks, copyrights, licenses or any other commercial rights of similar nature
- Exception: Shares issued by a Startup during the year - {Notified class of persons under clause (ii) of proviso to section 56(2)(viib)}
- Premium received on shares issued to non- resident not covered in ambit of section 56(2)(viib)



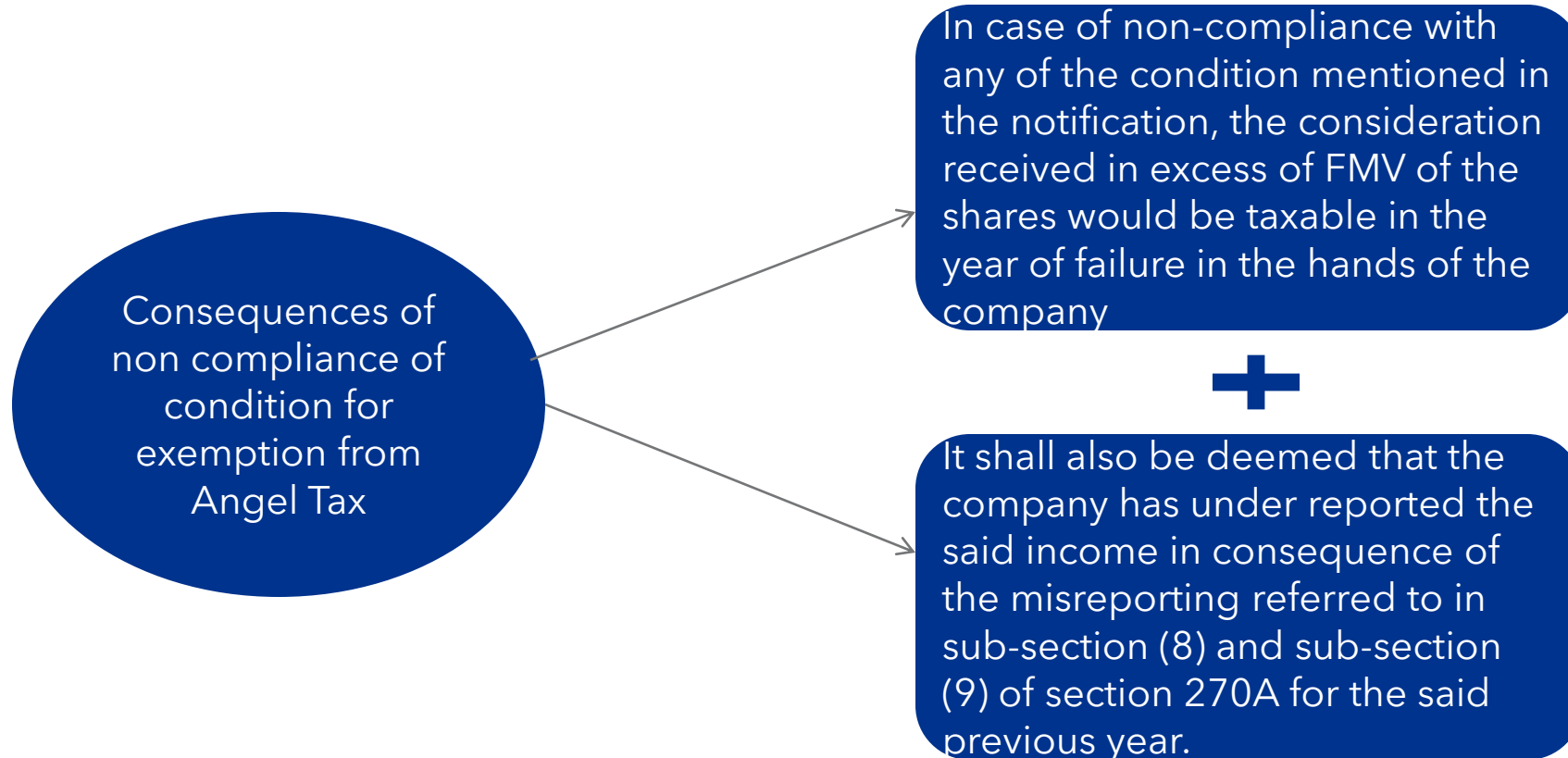
FMV has to be determined as Rule 11UA

The above provision not applicable where consideration is received by

- (i) venture capital undertaking from a venture capital company or a venture capital fund ⁹[or a specified fund]
- (ii) company from a class or classes of persons as may be notified by the Central Government in this behalf

Notification dt 11-4-18 exempting the start-ups being a private company from paying angel tax subject to conditions including recognition by Department for Promotion of Industry and Internal Trade (DPIIT) as startup.

Clause 29 – section 56(2)(viib)



Section 56(2)(viib):

Applicability and reporting requirement in respect of the following:

- Company A Pvt Ltd issues shares during the year at face value of Rs. 10 per share. However the FMV computed under Rule 11UA is Rs. 8 per share. The Company does not have any valuation report under DCF
- Optionally Convertible Preference Shares issued during the year
- Warrants issued during the year
- Optionally Convertible Debentures issued during the year
- Shares issued at a premium to both resident and non resident shareholders. Refer Explanation (a)(ii)

Clause 29A - Taxation under section 56(2)(ix)

- Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—
 - (a) such sum is forfeited; and
 - (b) the negotiations do not result in transfer of such capital asset
- Nature of the sum and amount to be disclosed
- Whether any token money provided to builder which is forfeited taxable under section 56(2)(ix)

Clause 29B - Taxation under section 56(2)(x)

- As per Finance Act, 2021 it is provided to increase the safe harbour from 10% to 20% under section 43CA for the period from 12th November 2020 to 30th June 2021 in respect of the only primary sale of residential units of value up to Rs. 2 crores. Also, relief by increasing the safe harbour from 10% to 20% was allowed to buyers of these residential unit's u/s 56(2)(x) for the same period.
- Amount received by a member from HUF Gift received by individual from his HUF doesn't come under the definition of "Relative" and therefore isn't exempt. The same is held by the Hon'ble bench of Ahmedabad tribunal in case of Gyanchand M. Bardia Vs Income Tax Officer -93 ITR 144(2016).
- However a contrary view has been taken in case of Vineet kumar Raghavjibhai Bhalodia v. ITO [2011] 12 ITR(T) 616 (Rajkot) it was held that HUF is a nothing but a group of relatives and therefore, gift received from HUF would be exempt from tax under section 56(2)(vi)
- Whether the issue of shares due to loan covenants/ similar binding obligations taxable u/s 56(2)(x) - ACIT v Subodh Menon (ITA No. 2776/M/2015)(ITAT Mumbai)
- Whether issue of shares by way of rights issue/ bonus issue taxable under section 56(2)(x) - Sudhir Menon HUF (ITA No. 4887/M/2013)(ITAT Mumbai)
- Waiver of loan - whether subject to section 56(2)(x)

Primary adjustment means, adjustment to transfer price -

- has been made *suo motu* by the assessee in his return of income, or
- made by the Assessing Officer has been accepted by the assessee, or
- determined by an advance pricing agreement entered into by the assessee under section 92CC, or
- made as per the safe harbour rules framed under section 92CB;
- arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation

Eg: A Ltd. is engaged in the business of textiles and has an operating profit of 11.5%. Operating margin of similar industries is 23.5%. TP Auditor certifies ALP accordingly

Primary adjustment = 23.5% - 11.5% = 12.00%

If Primary adjustment is made then things to be reported

- (a) under which clause of sub-section (1) of section 92CE primary adjustment is made?
- (b) amount (in Rs.) Of primary adjustment:
- (c) whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/no)
- (d) if yes, whether the excess money has been repatriated within the prescribed time (Yes/no)
- (e) if no, the amount (in Rs.) Of imputed interest income on such excess money which has not been repatriated within the prescribed time

Impact of Primary adjustment

- (a) Addition of adjustment to income
- (b) If adjustment relates to AY 2016-17 or earlier or if adjustment below Rs. 1 crore,
No further impact
- If (b) not applicable, imputed interest:
- (c) If excess money available with the associated enterprise repatriated within prescribed time,
No further impact
- (d) If not, compute the interest

Clause 30A - Secondary adjustments

- Whether the assessee has paid additional tax in respect of secondary adjustment under section 92CE(2A)
- If no additional tax is paid, report whether excess money has been repatriated and whether the same has been actually repatriated. Further, excess money not to be repatriated where primary adjustment does not exceed INR 1 crore
- If not repatriated, calculation of interest on amount treated as advance under section 92CE of the Act as per rule 10CB
- Whether secondary adjustment required in respect of primary adjustments accepted under VSV proceedings?
- Adjustment made by considering ALP to the transaction of purchase of fixed assets resulting in disallowance of depreciation - whether secondary adjustment only in respect of depreciation disallowed or entire ALP adjustment in respect of transaction of acquisition of purchase of fixed assets
- Adjustment made to ALP of by considering ALP to the transaction of purchase of shares from AE. However, there is no impact on income/ loss of the assessee - whether secondary adjustment required when there is no primary adjustment and in respect of what amount?

Provision -

- a. Where an Indian Company or PE of foreign company has taken any debt from non-resident being an associated enterprise and interest on such loan exceeds Rs.1 crore then excessive interest shall be disallowed.
- b. The excess interest means total interest paid/payable in excess of 30% EBDIT or total interest payable whichever is less.
- c. Not Applicable to Indian Company or PE of foreign company engaged in the business of banking or insurance.
- d. Remaining can be carried forward to next 8 yrs.

Meaning of terms -

- a. "Associated Enterprises" shall have meaning as per Section 92A
- b. "Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession"
- c. "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on

The above provision shall not apply to interest paid on loan taken from lender who is PE in India of Non-Resident being engaged into the banking business. (Amendment by Finance Act, 2020, w.e.f 01-04-21)

Tax Audit reporting

- (i) Amount (Rs.) of expenditure by way of interest or similar nature incurred
- (ii) Earnings before Interest tax, depreciation and amortization (EBITDA) during the previous year
- (iii) Amount (Rs.) by way of interest or of similar nature as per(i) above, which exceeds 30% of EBITDA as per (III) above
- (iv) Details of interest expenditure brought forward as per subsection (4) of section 94B (Assessment year wise amount)

AY	Amount (In Rs.)

- (v) Details of interest expenditure carried forward as per subsection (4) of section 94B (Assessment year wise amount)

AY	Amount (In Rs.)

Section 269SS / 269ST / 269T

Clauses	Description
Clause 31(a)	Details of all loans or deposits accepted during the year exceeding limit in sec 269SS i.e. INR 20,000
Clause 31(b)	Details of amounts received for transfer of immovable property (whether transfer takes place or not) in excess of limit as per sec 269SS i.e. INR 20,000
Clause 31(b)(a)	<ul style="list-style-type: none"> • Details of all amounts received in aggregate in excess of limit in sec 269ST i.e. INR 2,00,000 • from a person in a day or • in respect of a single transaction or 3 • in respect of transactions relating to one event or occasion from a person, • where such receipt is otherwise than through a bank account (cheque/draft/ECS, etc.)
Clause 31(b)(b)	Details as required in Clause 31(b)(a) where receipt is by cheque or bank draft, not being an account payee cheque or an account payee bank draft

Clauses	Description
Clause 31(b)(c)	<ul style="list-style-type: none"> • Details of all amounts paid in aggregate in excess of limit in sec 269ST i.e. INR 2,00,000 • to a person in a day or • in respect of a single transaction or • in respect of transactions relating to one event or occasion to a person, • where such receipt is otherwise than through a bank account (cheque/draft/ECS, etc.)
Clause 31(b)(d)	Details as required in Clause 31(b)(c) where receipt is by cheque or bank draft, not being an account payee cheque or an account payee bank draft

269SS

- Whether security deposits accepted against the performance of contracts required to be reported?
- Retention deposits Maintained in respect of performance of contracts?
 - Security deposits against contracts, etc. are 'deposits' and therefore, such information in respect of them should be given. However, if these 'security deposits' are in the form of amounts retained/withheld from bills, these are 'retentions' as per (AS) 7 and not 'deposits'
- Whether advance for immovable property needs to be reported?
- Advance for immovable property part of stock in trade?
- Receipt/ repayment through book entries? - Issue is debatable. Arguable that bona fide set off claimed of receivable/ payable positions not subject to tax [CIT v Worldwide Township Projects Ltd. (367 ITR 433); Lodha Builders (163 TTJ 778)] unless journal entries are empty formalities Triumph International Finance (I) Ltd. 345 ITR 270
- Is Trade deposits covered u/s 269SS?

269ST

- Cash gift on the occasion of marriage amounting to Rs. 10,65,000 in aggregate?
- Cash received of Rs. 2,50,000 from customer in a day against five invoices of different dates of Rs 50,000 each?
- Cash receipt during the year towards partners capital account – Rs.50,000 every month aggregating to Rs. 6,00,000?
 - *Munjal Sales Corpn. v. CIT [2008] 168 Taxman 43 (SC)*: It appears that capital contributions in money by partners are not hit by section 269SS/269T of the Act. However, to be on a safe side, it makes sense for firms and LLPs to comply with sections 269SS and 269T in the matter of partner's capital contributions as well.
- Cash withdrawal against drawings by partners every month – Rs. 25,000 aggregating to Rs. 300,000?
- Sale of personal motor car for cash of Rs.2,50,000? Would the answer be different if the motor car is used for business?

Clauses	Description
Clause 31(c)	Details of each repayment of loan or deposit or any amount received for transfer of immovable property where amount exceeds limit specified in sec 269T i.e. INR 20,000
Clause 31(d)	Details of repayment of loan or deposit as mentioned above otherwise than through a bank account (cheque/draft/ECS, etc.)
Clause 31(e)	Details of repayment of loan or deposit as mentioned above by a cheque or bank draft which is not an account payee cheque or account payee bank draft

- Becomes difficult to verify all transactions, specially ones which are not routed through books
- Difficult to identify cash transactions
- Rely on management representation and provide disclosure in TAR

- Details of Brought forward Loss or Depreciation Allowance, if applicable
- In case of change in shareholding, provide details for the same and examine applicability of section 79
- Whether the assessee has incurred any speculation loss referred to in section 73 or any loss referred to in section 73A in respect of any specified business during the previous year
- In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to section 73
- Amounts should be matching with previous ITR and TAR
- Adjust amounts as per latest assessments/appeal effect orders v returned losses
 - What if the amount of returned losses are subsequently restored in appellate proceedings – whether such increased losses could be claimed by way of rectification?
- The new tax regime under section 115BAA, section 115BAC and section 115BAD does not allow some specific deductions. If the option under these provisions is used then the brought forward losses need to be modified to the extent they are related to such restricted disallowed deductions.
- Care should be taken to adjust the brought forward losses/ unabsorbed depreciation on account of any appeals which are settled under VSV depending on the option of payment or reduction of losses/ UAD etc exercised by the taxpayer

- Section-wise details of deductions, if any admissible under Chapter VIA or Chapter III (Section 10A, Section 10AA)
- Deductions likely to be available under new regime u/s 115BAA
 - Section 80JJAA
 - Section 80M
 - Dividend distributed by domestic company upto 139(1) due date to be considered
 - Whether extended due date to be considered
 - Issue of allocation of interest and other administrative expenses while calculating deduction under section 80M. The tax authorities will seek to appropriate interest and administrative expenses while allowing deduction under section 80M rather than allowing deduction in respect of gross dividend – decisions and arguments in respect of 14A may be equally relevant in the context of section 80M
- Deductions likely to be available under new regime u/s 115BAC
 - Section 80CCD(2) – contribution to NPS
 - Section 80JJAA
- Whether reporting under this clause is required if the audit is carried for in respect of proprietary business of an assessee?
 - The particulars of deductions admissible under Chapter VIA has to be given with reference to the items appearing in the books of accounts of the business/profession which is subject to audit u/s 44AB

TDS / TCS

- Clause 34 (a) – Details of all expenses on which TDS/TCS is required to be deducted/collected and details of whether TDS/TCS is deducted/collected at specified rates:
 - TDS/TCS reconciliation with books and return
 - In case of total amount required column (3) – whether details of all amounts of the specified nature is to be provided? If so, reconciliation with expenses claimed in P&L. Include transactions of same nature on which TDS/TCS is not required to be deducted e.g. transactions below specified limits
 - In case of lower deduction certificates, if limit exceeded, TDS deducted at normal rates. Also check if lower rate is applied only from date of certificate.

- Clause 34(b) - Whether statement for TDS/TCS required to be furnished? If so, provide details
 - Date of furnishing - date of original return or revised return?
 - Provide confirmation whether all transactions are included - if not included in original return, should there be disclosure/qualification
 - Details of transactions not reported to be provided
- Clause 34(c) - Interest liability u/s 201(1A)/206C(7)

Issues to be considered

- Completeness of details furnished, short deductions
- TDS on year end provisions
- TDS on foreign payments
- TDS applicability - judicial divergence

Clause 35 - Common Issues

1	Issues with respect to valuation - whether value should be as per ICDS or as per books?
2	A common point highlighted in tax scrutiny - mismatch of opening and closing stock as reported in financials, Tax audit report and Income Tax Return

Clause	Particulars
Clause 40	<ul style="list-style-type: none"> ➤ Details regarding turnover, gross profit, etc., for the previous year and preceding previous year. ➤ Confusion regarding calculation of turnover as definition is not there in the Act. Guidelines as per GN issued by ICAI to be considered. ➤ Criteria for groupings to be maintained as a note and calculated accordingly in future years for consistency. <p><i>Issues:</i></p> <p><i>What is to be done In case there has been a re-grouping of previous year figures - whether comparative information is to be taken from the previous year tax audit report or revised figures</i></p>

Specified Financial Transactions (SFT)

- Rule 114E - Relevant clauses applicable generally to companies are as under:

Reporting requirement	Reporting entity
Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company)	A company or institution issuing bonds or debentures.
Receipt from any person of an amount aggregating to ten lakh rupees or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ten lakh rupees or more in a financial year.	A listed company
Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any.)	Any person who is liable for audit under section 44AB of the Act.
Details of dividend payment (introduced with effect from 12.03.2021 applicable for dividend declared in FY 2020-21)	A company paying dividend

- Details of statements furnished in Form No.61 or Form No. 61A or Form No. 61B (i.e., Details of SFT), if any
- Difficult to provide confirmation on whether all details are furnished
- List of transactions not reported also to be provided
- Rely on management representation and make appropriate disclosure in TAR

- Date format and change of year
- Related party transactions not accurately disclosed
- Disallowance u/s 43B not properly disclosed under table A and B
- Bifurcation of Gratuity u/s 40A (7) or 43B
- Correlation of TDS disallowance clause v/s Clause 34(a)
- Depreciation Calculation and addition of more than 180 and less than 180 was not properly bifurcated.
- Unabsorbed depreciation and business loss amount should be cross tallied with ITR
- Interpretation/Meaning of sentence should not change while making the sentence short in the utility due to space constraint
- Can TAR be revised?

// **THANK YOU** //