23-03-2022

AMENDMENT FOR MAY–2022 / NOV–2022

1. RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME

Significant economic presence [Explanation 2A to section 9(1)(i)]

Significant economic presence of a non-resident in India shall also constitute business connection in India.

Significant economic presence means-

	Nature of transaction	Condition
(a)	in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India	Aggregate of payments arising from such transaction or transactions during the previous year should exceed ₹ **2 crores.**
(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be atleast **3 lakhs**.

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

2. DEDUCTION OF TAX AT SOURCE

Question 1: Write a note on Deduction of tax in case of specified senior citizen.

Answer: TDS in case of specified senior citizen Section 194P

(1) Notwithstanding anything contained in the provisions of Chapter XVII-B, in case of a specified senior citizen, the specified bank shall, after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A, compute the total income of such specified senior citizen for the relevant assessment year and deduct income-tax on such total income on the basis of the rates in force.

(2) The provisions of section 139 shall not apply to a specified senior citizen for the assessment year relevant to the previous year in which the tax has been deducted under sub-section (1).

Explanation.— For the purposes of this section,—

(a) "specified bank" means a banking company as the Central Government may, by notification in Official Gazette, specify;

(b) "specified senior citizen" means an individual, being a resident in India –

(i) who is of the age of seventy-five years or more at any time during the previous year;
(ii) who is having income of the nature of pension and no other income except the income of the nature of interest received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and
(iii) has furnished a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.'.

Question 2: Write a note on Deduction of tax at source on payment of certain sum for purchase of goods.

Answer: TDS in case of payment of certain sum for purchase of goods Section 194Q

If any person is purchasing goods of aggregate value during a particular year exceeding ₹50 lakh, such person shall deduct tax at source @ 0.1% of the sum exceeding ₹50 lakh however such buyer should also be engaged in a business and turnover from such business should exceed ₹10 crores in financial year immediately preceding the year in which goods are being purchased. E.g. ABC Ltd. is engaged in the business of sale of generators and its turnover in F.Y. 2020-21 was ₹12 crore and company has purchased generators from the manufacturer in the year 2021-22 for ₹70 lakh, in this case amount of TDS shall be 0.1% of ₹20 lakh = ₹2,000. But if turnover of business in F.Y. 2020-21 is upto ₹10 crore, no tax shall be deducted at source.

If there is any transaction to which provisions of section 194Q is applicable and also provisions of some other section of TDS is applicable, in that case tax shall be deducted at source under the provisions of other section.

If any transaction is subject of tax collection at source other than section 206C(1H) and also TDS under section 194Q, in that case, tax shall be collected at source and section 194Q shall not be applicable. E.g. ABC Ltd. is engaged in the sale of alcoholic liquor and it has sold alcoholic liquor of ₹70 lakh to XYZ Ltd. and XYZ Ltd. had turnover of ₹12 crore in P.Y. 2020-21, in this case ABC Ltd. shall collect tax from XYZ Ltd. @ 1% of ₹70 lakh and XYZ Ltd. shall not do any TDS under section 194Q.

If TCS provisions under section 206C(1H) are applicable and also 194Q is applicable, section 206C(1H) shall not apply rather section 194Q shall be applicable. E.g. ABC Ltd. has turnover of ₹12 crore and it has sold goods to XYZ Ltd. of the value of ₹70 lakh and XYZ Ltd. has turnover in P.Y. 2020-21 ₹12 crores, in this case XYZ Ltd. shall do TDS under section 194Q = 20 lakh x 0.1% = ₹2,000 and ABC Ltd. shall not collect tax at source.

Guidelines under section 194Q of the Income-tax Act, 1961 [CBDT Circular No.13/2021 dated 30th June, 2021]

1. Applicability on transactions carried through various Exchanges

It is provided that the provisions of section 194Q shall not be applicable in relation to,

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)
(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges.

2. Calculation of threshold for the F.Y. 2021-22

Section 194Q has come into effect from 1st July, 2021. Accordingly, as regards the manner of computation of threshold of Rs.50 lakh specified under this section, it is clarified that since the threshold of Rs.50 lakhs is with respect to the previous year, calculation of sum for triggering TDS u/s 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already credited or paid Rs.50 lakhs or more up to 30th June 2021 to a seller, TDS u/s 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.

As regards whether tax is required to be deducted in respect of advance paid before 1st July 2021 and sum credited thereafter, it is clarified that since section 194Q mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever is earlier, the provisions of this section shall not apply

on any sum credited or paid before 1st July 2021. If either of the two events had happened before 1st July 2021, that transaction would not be subjected to the provisions of section 194Q.

3. Whether non-resident can be buyer under section 194Q?

As regards whether the provisions of section 194Q would apply to a buyer being a non -resident, it is clarified that the provisions of section 194Q shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

4. Whether tax is to be deducted when the seller is a person whose income is exempt?

As regards whether the provisions of section 194Q would apply to a seller whose income is exempt, it is clarified that the provisions of section 194Q would not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

5. Whether tax is to be deducted on advance payment?

As regards whether the provisions of section 194Q would apply to advance payment made by the buyer, it is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q shall apply to advance payment made by the buyer to the seller.

6. Whether provisions of section 194Q shall apply to buyer in the year of incorporation?

As regards whether the provisions of section 194Q shall apply to a buyer in the year of its incorporation, it is clarified that u/s 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs.10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation.

7. Whether provisions of section 194Q shall apply to buyer if the turnover from business is Rs.10 crore or less?

As regards whether the provisions of section 194Q would apply to a buyer who has turnover or gross receipts exceeding Rs.10 crore but total sales or gross receipts or turnover from business is Rs.10 crore or less, it is clarified that, for the purposes of section 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs.10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs.10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.

8. Cross application of section 194-O, section 206C(1H) and section 194Q Clarification of how section 194-O, section 206C(1H) and section 194Q apply on the same transaction.

(i) If tax has been deducted by the e-commerce operator on a transaction u/s 194-O [including transactions on which tax is not deducted on account of section 194-O(2)], that transaction shall not be subjected to tax deduction u/s 194Q.

(ii) Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties, it is clarified that this exemption would also cover a situation where, instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.

(iii) If a transaction is both within the purview of section 194-O as well as section 194Q, tax is required to be deducted u/s 194-O and not u/s 194Q.

(iv) Similarly, if a transaction is both within the purview of section 194 -O as well as section 206C(1H), tax is required to be deducted u/s 194-O. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. It is clarified that here primary responsibility is one-commerce operator to deduct the tax u/s 194-O and that responsibility cannot be condoned if the

seller has collected the tax u/s 206C(1H). This is for the reason that the rate of TDS u/s 194-O is higher than rate of TCS u/s 206C(1H).

(v) If a transaction is both within the purview of section 194Q as well as section 206C(1H), then, tax is required to be deducted u/s 194Q. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. However, if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax u/s 194Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H)

9. <u>Adjustment for GST, purchase returns</u>

As regards whether adjustment is required to be made for GST or purchase returns for the purpose of tax deduction u/s 194Q vide Circular No.17/2020 dated 29.9.2020, it was clarified that no adjustment on account of GST is required to be made for collection of tax under section 206C(1H), since the collection is made with reference to receipt of amount of sale consideration.

However, the situation is different so far as TDS is concerned. It has been clarified in CircularNo.23/2017 dated 19th July 2017 as under –

"wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid or payable without including such 'GST on services' component.

GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax."

Accordingly, with respect to TDS u/s 194Q, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted u/s 194Q on the amount credited without including such GST.

However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

Further, with respect to purchase return it is clarified that the tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, before purchase return happens, the tax must have already been deducted u/s 194Q on that purchase. If that is the case and against this purchase return, the money is refunded by the seller, then, this tax deducted may be adjusted against the next purchase against the same seller. No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q has been completed with goods replaced.

Question 3: Write a note on Requirement to Furnish Permanent Account Number.

Answer: <u>Requirement to Furnish Permanent Account Number</u> <u>Section 206AA</u>

Every person on whose behalf, tax is being deducted at source shall submit his PAN to the person deducting tax at source otherwise rate of TDS shall be the actual rate or 20% whichever is higher. The person deducting tax at source has to mention such PAN in the quarterly statement. ***However, if the assessee, whose tax is required to be deducted under section 194-O or 194Q, does not submit his PAN or Aadhar, rate of TDS shall be 5% instead of 20%.***

Question 4: Write a note on Special provision for deduction of tax at source for non-filers of income-tax return.

Answer: <u>Special provision for deduction of tax at source for non-filers of income-tax return Section 206AB</u>

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than sections 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person to a specified person, the tax shall be deducted at the higher of the following rates, namely:–

at twice the rate in force or at the rate of five per cent.

(2) If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Special provision for collection of tax at source for non-filers of income-tax return **Section 206CCA**

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:—

at twice the rate in force or at the rate of five per cent.

(2) If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

How the scheme will work

Income Tax Department shall prepare a list of specified persons on the start of the financial year 2021-22, taking previous years 2018-19 and 2019-20 as the two relevant previous years. List contains name of taxpayers who did not file return of income for both previous years 2018-19 and 2019-20 and have aggregate of TDS and TCS of fifty thousand rupees or more in each of these two previous years.

During the financial year 2021-22, no new names are added in the list of specified persons. This is a taxpayer friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified person more than once during the financial year.

If any specified person files a valid return of income (filed & verified) for previous year 2018-19 or 2019-20 during the financial year 2021-22, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2021-22.

3. PROVISIONS FOR FILING OF RETURN OF INCOME

Question 5 [V. Imp.]: Write a note on Belated Return of Income Section 139(4).

Answer: Belated Return of Income Section 139(4)

Earlier belated return was allowed to be filed upto the end of assessment year but now belated return can be filed upto 3 months prior to the end of relevant assessment year.

E.g. For previous year 2021-22 ABC Ltd. has to file its return of income upto 31.10.2022. However, belated return is allowed under section 139(4) but maximum upto 31.12.2022.

Question 6: Write a note on fee for default in furnishing return of income

Answer: Fee for default in furnishing return of income. Section 234F

where a person required to furnish a return of income under section 139, fails to do so within the time prescribed u/s 139(1), he shall pay, by way of fee, ***a sum of ₹ 5,000***

Provided that if the total income of the person does not exceed ₹5,00,000 the fee payable under this section shall not exceed ₹ 1,000.

Example: For the P.Y.21-22, Mr. X has Total Income ₹7,00,000 and he files his return on 10th August 2022, in this case Penalty of ₹5000 is payable but if his total income is upto ₹5,00,000, Penalty shall be ₹1000.

Question 7 [V. Imp.]: Write a note on Revised Return of Income Section 139(5).

Answer: Revised Return of Income Section 139(5)

Earlier revised return was allowed to be filed upto end of relevant assessment year but now revised return can be filed upto 3 months prior to the relevant assessment year.

Question 8 [V. Imp.]: Write a note on Quoting of Aadhaar number.

Answer: Quoting of Aadhaar number. Section 139AA/Rule 114AAA

The last date for linking of Aadhaar with permanent account number has been extended upto 31st March 2022

Question 9: Write a note on fee for default relating to intimation of Aadhaar number.

Answer: Fee for default relating to intimation of Aadhaar number Section 234H

Where a person is required to intimate his Aadhaar number under of section 139AA(2) and such person fails to do so on or before such date, as may be prescribed, he shall be liable to pay such fee, as may be prescribed,

not exceeding one thousand rupees, at the time of making intimation under section 139AA(2) after the said date.

SIGNING OF RETURN OF INCOME SECTION 140

"Other person" prescribed for verification of return of income in case of a company or LLP

Section 140 specifies the persons authorised to verify returns of income in case of different assessees, namely, individual, HUF, company, firm, LLP, local authority and political party.

In case of a company, the managing director thereof verifies the return of income. Where for any unavoidable reason, such managing director is not able to verify the return or where there is no managing director, any director of the company **or any other person prescribed for this purpose** can verify the return.

In case of an LLP, the designated partner thereof verifies the return of income. Where for any unavoidable reason, such designated partner is not able to verify the return or where there is no designated partner, any partner of the LLP **or any other person prescribed for this purpose** can verify the return.

The CBDT has, vide Notification No.93/2021 dated 18.8.2021, specified that "any other person" shall be the person, appointed by the Adjudicating Authority (i.e., National Company Law Tribunal constituted under section 408 of the Companies Act, 2013) for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder.

4. INCOME UNDER THE HEAD CAPITAL GAINS

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Question 10: write a note on capital gains in case of Depreciable Assets.

Answer: Capital gains in case of Depreciable Assets Section 50

If any person has transferred depreciable asset, gain or loss shall always be short term and indexation shall not be applicable and capital gains shall be computed in the manner given below:

Full value of consideration

Less:

(i) Written down value of the asset in the beginning of the year

(ii) Selling expenses

Short Term Capital Gains

"Provided that in a case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in such manner as may be prescribed.".

Example

ABC Ltd. has one plant and machinery on 01.04.2021 with w.d.v ₹6,00,000 and it was acquired by the company on 01.04.2009 and the plant was sold on 01.01.2022 for ₹11,00,000 and selling expenses are ₹30,000, in this case, capital gains shall be computed in the manner given below:

	₹
Full value of consideration	11,00,000
Less:	
(i) Written down value of the asset in the beginning of the year	(6,00,000)
(ii) Selling expenses	(30,000)
Short Term Capital Gains	4,70,000

Question 11: Write a note on taxability of amount received under Unit Link Insurance Policy.

Answer: <u>Unit Linked Insurance Policy Receipts [Section 45(1B)]</u>

Where any person receives, at any time during any previous year, any amount, under a ULIP issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of –

(i) premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy; or

(ii) the aggregate amount of premium exceeding ₹2,50,000 in any of the previous years during the term of any such ULIP(s), in a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021,

then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of the **such person for the previous year in which such amount was received.** The income taxable shall be calculated in such manner as may be prescribed.

Section 45(3) and 45(4) have been deleted

Question 12: Write a note on computation of capital gain in case of slump sale covered under section 50B.

Answer: <u>Special provision for computation of capital gains in case of Slump Sale</u> <u>Section 50B</u>

If any person has ***transferred by any means***, any unit/division for a lump sum consideration, it is called slump sale and capital gain shall be computed for the entire unit instead of individual asset and capital gains shall be computed in the manner given below:

- Net worth of the unit on the date of sale shall be deducted from full value of consideration to compute Capital Gains. Also expenses in connection with transfer shall be deducted
- Indexation is not applicable.

If unit is sold within 3 years, a capital gain is Short term otherwise Capital Gain is Long Term.

While computing net worth, revaluation of asset shall be ignored.

<u>"Net worth"</u> shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account:

- ***Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.***
  As per Rule 11UAE FMV shall be higher of FMV1 and FMV2
  FMV1 is market value computed in prescribed manner
  FMV2 is actual cash consideration + market value of consideration in kind
- For computing the net worth, the aggregate value of total assets shall be,—
  (*a*) in the case of depreciable assets, the written down value of the block of assets;

  (*aa*) *in the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner,* nil;

  (*b*) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, *nil;* and

  (*c*) in the case of other assets, the book value of such assets.

Example

ABC Ltd. has sold one of its division on 01.10.2021 for ₹35,00,000 and its net worth on 01.10.2021 was ₹20,00,000 and it was setup in 2003, in this case there is long term capital gain of ₹15,00,000.

Question 13: Write a note on Cost of Acquisition.

Answer: Cost of Acquisition Section 55(2)

Earlier in case of self-acquired goodwill of a profession, capital gains were not allowed to be computed because of Supreme Court judgement but now Income Tax Act has been amended and cost of acquisition for all the self-acquired intangible assets shall be taken to be nil.

In case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by the assessee in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by the assessee under section 32(1).

5. INCOME UNDER THE HEAD BUSINESS/PROFESSION

No depreciation shall be allowed on goodwill w.e.f. previous year 2020-21 i.e. deprecation shall be allowed only upto previous year 2019-20.

Question 14: Write a note on full value of consideration for transfer of assets other capital asset in certain cases.

Answer: Special provision for full value of consideration for transfer of assets other than capital assets in certain cases Section 43CA

If any person has sold land or building which was held as stock-in-trade and it was sold at a value less than the stamp duty value, in such cases sale value shall be considered to be stamp duty value but if the seller has entered into a agreement to sell the property at an earlier date and some advance was taken through account payee cheque or account payee draft or through electronic clearing system through a bank account, Credit Card, Debit Card, Net Banking, IMPS (Immediate Payment Service), UPI (Unified Payment Interface), RTGS

(Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhaar Pay, in such cases stamp duty value on the date of agreement shall be taken into consideration.

If the stamp duty value is upto 110% of the actual consideration, the consideration so received shall be considered to be full value of consideration for the purpose of computing income under the head Business/ Profession but in case of sale of new residential units from 12.11.2020 to 30.06.2021, 110% shall be taken as 120%. Further the consideration for the house should not exceed ₹2 crore.

ORIGINAL TEXT

Provided further that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent.", the words "one hundred and twenty per cent." had been substituted, if the following conditions are satisfied, namely: —

(i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;
(ii) such transfer is by way of first time allotment of the residential unit to any person; and
(iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.
Explanation.—For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

Question 15 [V. Imp.]: Write short note on Compulsory Tax Audit.

Answer: Compulsory Tax Audit

Audit of accounts of certain persons carrying on business or profession Section 44AB

The following persons have to get their accounts audited.

1. Every person carrying on business, if his total sales turnover or gross receipts, in business exceeds **₹100 lakh** during the previous year.

2. Every person carrying on profession if his gross receipts in profession exceed ***₹50 lakh*** during the previous year.

3. If income of any person is to be computed under section 44AD or 44ADA or 44AE on presumptive basis but such person has rejected presumptive income, in such cases such person shall be required to get the accounts audited.

4. Every person carrying on business, if his total sales turnover or gross receipts, in business exceeds ₹1000 lakh during the previous year provided that in the case of a person whose—

(a) 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

(b) 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.

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.

The accounts should be audited by a Chartered Accountant and audit report should be submitted latest by one month prior to the last date of filing of return of income

This section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year.

Penalty for violating provisions of Section 44AB Section 271B

If any person fails to get his accounts audited or fails to submit audit report in time, penalties may be imposed under section 271B equal to ½% of total turnover or gross receipt subject to a maximum of ₹1,50,000.

Example

Mr. X has turnover of his business ₹105 lakhs but he has failed to get his accounts audited, in this case penalties may be imposed amounting to ₹52,500 but if his turnover was ₹400 lakhs, penalties imposable shall be ₹2,00,000 but maximum ₹1,50,000.

6. INCOME UNDER THE HEAD SALARY

Question 16 [V. Imp.]: Discuss the provisions relating to taxability of recognised Provident Funds?

Answer: Recognised provident fund Part A of fourth schedule/ Section 10(12)

Employer's contribution **upto 12% of the employee's retirement benefit salary** shall be exempt from income tax.

Interest credited to the provident fund account **upto 9.5% p.a. shall be exempt from income tax**.

'Provided that the provisions of this clause shall not apply to the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the aggregate of amounts of contribution made by that person exceeding two lakh and fifty thousand rupees in any previous year in that fund, on or after the 1st day of April, 2021 and computed in such manner as may be prescribed.

Provided further that if the contribution by such person is in a fund in which there is no contribution by the employer of such person, the provisions of the first proviso shall have the effect as if for the words "two lakh and fifty thousand rupees", the words "five lakh rupees" had been substituted.

Deduction shall be allowed under section 80C for employee contribution.

Meaning of Retirement Benefit Salary

Retirement Benefit Salary shall include:

(i) Basic pay

(ii) Dearness allowance if the terms of employment so provided

(iii) Commission if it is paid as a fixed percentage of the turnover as decided in **Gestetner Duplicators Pvt. Ltd v CIT, (1979)(SC).**

Question 17: Explain taxability of Statutory provident fund. Section 10(11) (Provident Fund Act 1925)

Answer: Statutory provident fund (also called Government Provident Fund) is applicable in case of Government employees and is regulated through Provident Fund Act, 1925. The Employer do not contribute to this fund hence there is no tax treatment for employer contribution and interest on employer contribution. Interest on employee contribution is exempt from Income Tax.

'Provided that the provisions of this clause shall not apply to the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the

aggregate of amounts of contribution made by that person exceeding two lakh and fifty thousand

rupees in any previous year in that fund, on or after the 1st day of April, 2021 and computed in such

manner as may be prescribed:

Provided further that if the contribution by such person is in a fund in which there is no contribution by the employer of such person, the provisions of the first proviso shall have the effect as if for the words "two lakh and fifty thousand rupees", the words "five lakh rupees" had been substituted;'

Further, the lump sum payment from such provident fund at the time of retirement or termination of service is also exempt from tax.

Deduction shall be allowed under section 80C for employee contribution.