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Important Announcement

Applicability of services for May 2011 and November 2011 examinations:-

Professional Competence Examination

It is clarified that in Part –II : Service tax and VAT of Paper 5 : Taxation, students will not be tested on specific questions covering individual taxable services

Integrated Professional Competence Examination

It is clarified that in Part –II : Service tax and VAT of Paper 4 : Taxation, students will be examined only in respect of the following taxable services:

1. Legal consultancy services
2. Commercial training or coaching services
3. Information technology software services
4. Cargo handling services
5. Customs house agent's services
6. Practising Chartered Accountant's services
7. Consulting engineer's services
8. Manpower recruitment or supply agency's services

PART A: INCOME TAX**Tax Slab****1. For Resident Women**

Income	Tax Rate
0 - 1,90,000	Nil
1,90,001 - 5,00,000	10%
5,00,001 - 8,00,000	20%
More than 8,00,000	30%

2. For Resident Senior Citizen

Income	Tax Rate
0 - 2,40,000	Nil
2,40,001 - 5,00,000	10%
5,00,001 - 8,00,000	20%
More than 8,00,000	30%

3. For Other Individual & HUF

Income	Tax Rate
0 - 1,60,000	Nil
1,60,001 - 5,00,000	10%
5,00,001 - 8,00,000	20%
More than 8,00,000	30%

Other Individuals mean:

1. A male whether resident or non- resident below 65 years.
2. Non-resident women.
3. Non-resident senior citizen.

4. Firm & Limited Liability Partnership

Flat tax rate of 30%. No Surcharge

5. Indian Company

Flat tax rate of 30%. Surcharge @ 7.5% shall be liable if the income exceeds ` 1 Crore.

6. Foreign Company

Flat tax rate of 40% [50% of Specified royalties and Fees for rendering technical services]. Surcharge @ 2.5% shall be liable if the income exceeds ` 1 Crore.

Education Cess: For all the above assesseees @ 2% of the Total Tax Payable.

Secondary Higher Education Cess: For all the above assesseees @ 1% of the Total Tax Payable.

Special Rates of Income Tax

On Short-term Capital Gain Covered u/s 111A	15%
On Long-term Capital Gain covered u/s 112	20%
On winning of lotteries, crossword puzzles, etc u/s 115BB	30%
MAT Rate for Corporate Assessee	18%

Illustration 1: X Ltd., a domestic company, has gross total income of ` 1,01,25,000 and deduction allowed u/c. VIA are ` 65,000. Compute his tax liability for assessment year 2011-12.

Solution:

	`
Gross Total Income	1,01,25,000
Less: Deductions u/s. 80C to 80U	<u>65,000</u>
Total Income	<u>1,00,60,000</u>
Tax on ` 1,00,60,000 at flat rate @ 30%	30,18,000
Add: Surcharge @ 7.5%	2,26,350
	32,44,350
Less: Marginal Relief = (Increase in Tax - Increase in Income) = (` 32,44,350 - ` 30,00,000) - (` 1,00,60,000 - ` 1,00,00,000) = (` 2,44,350 - ` 60,000)	1,84,350
Tax before Education Cess	30,60,000
Add: Education Cess @ 2%	61,200
Secondary Higher Education Cess @ 1%	30,600
Tax Liability	31,51,800

Income of an approved Research Association

Under this clause, income of a association, which is approved for the purpose of carrying on any research, whether in the nature of scientific research or research in the field of social sciences or statistical research is exempt.

Charitable Purpose [Sec. 2(15)]

It is defined to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife), preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility if the aggregate value of receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business do not exceed ` 10 lakh in the previous year.

Essential conditions for exemption: The compliance of the following main conditions is essential for claiming exemption under section 11:

- The property from which income is derived should be held under a trust.
- The property should be held for charitable or religious purposes.
- The trust should not be created for the benefit of any particular religious community or caste.
- No part of the income should ensure directly or indirectly for the benefit of the settler or other specified persons.

- Trust and institution can carry out business activities if the business activities are incidental to the attainment of its objective and separate books are maintained without losing complete exemption from income-tax.
- The trust should apply for registration (Form No. 10A for application) with the Commissioner of Income-tax and such trust is registered under section 12AA. Unless and until an institution is registered under section 12A, it cannot claim the benefit of section 11.
- The accounts of the trust should be audited in Form No. 10B for such accounting year in which its income (without giving effect to the provisions of sections 11 and 12) exceeds the exemption limit.
- Voluntary contributions (not being contributions made with a specific direction that they shall form part of the corpus of trust) shall be deemed to be income derived from property held under trust.
- Funds of the trust should be invested or deposited in any one or more of the modes or forms mentioned in section 11(5).

Computation of Charitable / Religious Trust Income

Income from property held for Charitable / Religious Purpose	XX
Add: Voluntary Contribution (Contribution with specific direction to form part of corpus excluded)	XX
Less: 15% Corpus	XX
Less: Applied for charity (All expenses of trust including depreciation, purchases of fixed assets, tax payment)	XX
Less: Amount not realized for which opinion exercised u/s 11 (1)	XX
Less: Amount to be utilized in subsequent year for which option exercised u/s 11(1)	XX
Less: Amount accumulated for specific purpose u/s 11(2)	XX
Add: Anonymous Donation	XX
Total Income	XX

Tax on Anonymous Donation at flat rate of 30% + EC + SHEC and on remaining income as per Slab Rate + EC + SHEC.

Where

Amount not realized for which opinion exercised u/s 11(1)

This represents the income recognized on accrual basis (such as interest on debenture) but not realized in cash. Amount will be utilized for charity in the year of receipt or in the year subsequent to the year of realization.

Amount to be utilized in subsequent year for which opinion exercised u/s 11(1)

This represents the amount which the trust wishes to expend in the next financial year because it could not be expended during the current year. Donation to other trust not eligible for deduction from such amount.

Amount accumulated for specific purpose

If the trust wishes to make a huge capital expenditure after some time, it can retain amount by exercising option u/s 11(2). This amount can be retained for a maximum of 5 year & should remain invested in specific

security as given u/s 11(5). If not expended till 5th year, the whole amount set apart u/s 11(5) will be taxable in 6th year. Donation to other trust not eligible for deduction from such amount set apart.

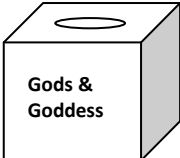
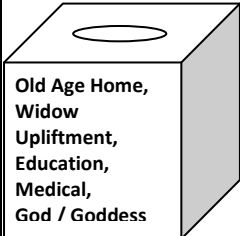
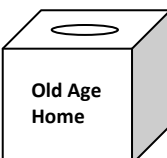
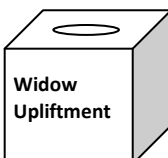
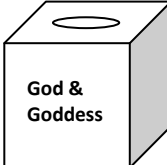
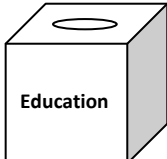
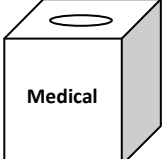
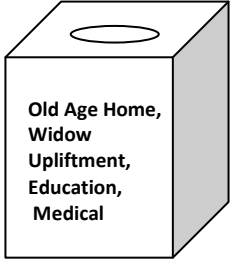
Anonymous Donations to be taxed in Certain Cases [Sec. 115BBC]

Anonymous Donation means:

- Any voluntary contribution
- Where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed
- To the extent it exceeds higher of 5% of total donation or ` 1 lac whichever is higher

“Anonymous donations” are not taxable under section 115BBC if

- (i) Such donations are received by any trust/institution established wholly for religious purposes. Therefore in case of a trust owning a temple, the offerings/donations made by the devotees etc shall not be taxable under this section even if the names/ addresses of donors are not there. Such donations shall be subjected to provisions of section 11 & 12.
- (ii) Such donations are received by any trust/institution established wholly for religious and charitable purposes. However such donations shall be taxable under section 115BBC if the anonymous donations is made with specific direction that such donations is for any university/school/educational institution/hospital/medical institution run by such trust or institution.

Wholly Religious	Wholly Religious & Charitable		Wholly Charitable
	Only 1 Donation Box	Specific Donation Boxes	
		<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  Not Anonymous </div> <div style="text-align: center;">  Not Anonymou </div> <div style="text-align: center;">  Not Anonymous </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  Anonymous </div> <div style="text-align: center;">  Anonymous </div> </div>	
Not Anonymous Donation	Not Anonymous Donation		Anonymous Donation

Commissioner of Income – tax also empowered to cancel registration obtained under Section 12A [Section 12AA(3)]

It has now been specifically provided that the Commissioner is also empowered to cancel registration obtained under Section 12AA, if the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust or institution. (Effective from 1st June, 2010)

Allowance for transport Employees

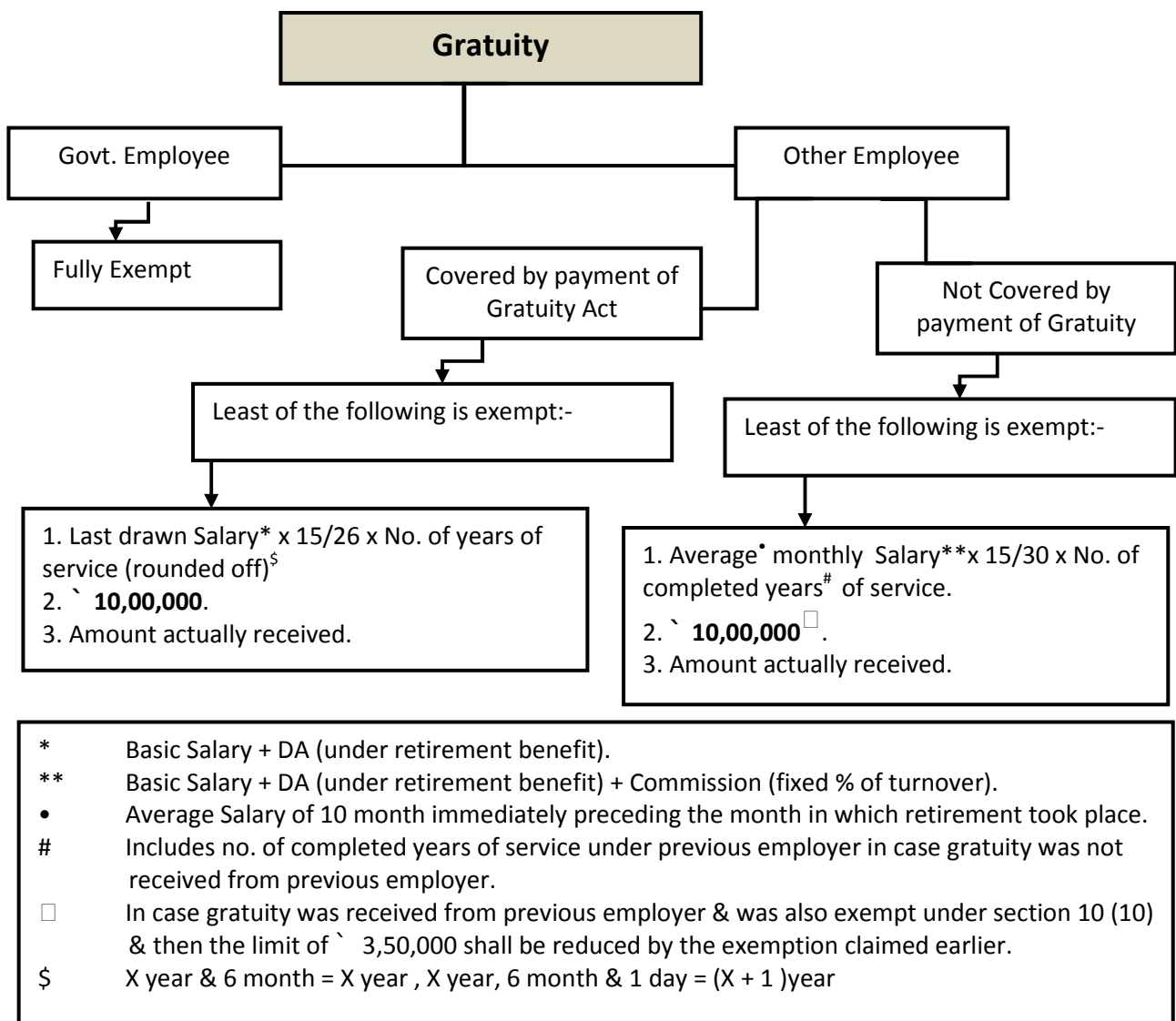
It is an allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place provided that such employee is not in receipt of daily allowance.

The amount of exemption is-

- a. 70 per cent of such allowance; or
 - b. ` 10,000 per month,
- whichever is lower.

Interest credited to Recognised Provident Fund

Exempt from tax if rate of interest does not exceed notified rate of interest; [i.e., 9.5 per cent & 8.5% w.e.f. 1.9.2010] excess of interest over notified rate of interest is taxable.



Scientific Research Expenditure [Sec. 35]

Section	Nature of Expense	Purpose	Deduction	Exception
35(1)(i)	Revenue PY - All 3 years preceding date of commencement of business Salary to research staff (excluding perquisites) Materials used in research	Scientific Research carried on by assessee related to business of assessee whether incurred himself or paid to other person for research during PY	100% In the year in which business is commenced	
35(1)(ii)	Contribution to scientific research association, university, college, other institution	Scientific Research whether related or unrelated to business of assessee	175%	
35(1)(ia)	Contribution to Indian company		125%	
35(1)(iii)	Contribution to university, college, other institution or Indian company	Social/ Statistical Research whether related or unrelated to business of assessee	125%	
35(1)(iv)	Capital PY - All 3 years preceding date of commencement of business – All	Scientific Research carried on by assessee related to business of assessee	100%	Land
35(2AA)	Contribution to IIT, National Laboratory, university or specified person	Scientific research related to business of assessee	175%	
35(2AB)	Capital + Revenue	In house research by assessee engaged in business of manufacturing any article or thing, not being article specified in 11 th Schedule.	200% If research and development facility approved by the prescribed authority.	Land & Building However, expenditure on building will be allowable @ 100% u/s 35(1)(iv)

Illustration 2: X Ltd. furnishes the following particulars for the P.Y. 2010-11. Compute the deduction allowable under section 35 for A.Y. 2011-12, while computing its income under the head "Profits and gains of business of profession".

	Particulars	₹
1.	Amount paid to Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
(a)	Revenue expenditure on scientific research	3,00,000
(b)	Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	7,50,000

Solution: Computation of deduction under section 35 for the A.Y. 2011-12

Particulars	₹	Section	% of weighted deduction	Amount of deduction (₹)
Payment of scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	175%	1,75,000
IIT, Delhi	2,50,000	35(2AA)	175%	4,37,500
X Ltd.	4,00,000	35(1)(iia)	125%	5,00,000
Expenditure incurred on in-house research and Development facility				
Revenue expenditure	3,00,000	35(2AB)	200%	6,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(2AB)	200%	5,00,000
Deduction allowable under Section 35				22,12,500

Deduction in respect of expenditure on specified business [Section 35AD]

Specified Business	Eligible Assessee	Date of Commencement of Business on or after
Setting up & operating a cold chain facility for agricultural produce, meat, poultry products, processed food, etc.	Any assessee	April 1, 2009
Setting up & operating a warehousing facility for storage of agricultural produce	Any assessee	April 1, 2009
Laying & operating a cross-country natural gas pipeline network for distribution including storage facilities	Indian company or consortium of such companies	April 1, 2007
Laying & operating a cross-country crude/petroleum oil pipeline network for distribution including storage facilities	Indian company or consortium of such companies	April 1, 2009

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Building and operating anywhere in India, a new hotel of 2 Star or above category	Any assessee	April 1, 2010
New Hospital with atleast 100 beds	Any assessee	April 1, 2010
Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	Any assessee	April 1, 2010

Where the pipeline is used as common carrier, of the total capacity 1/3rd will be made available for natural gas pipeline and 1/4th for petroleum product pipeline.

Deduction

- 100% deduction of capital expenditure incurred during the previous year.
- 100% of capital expenditure incurred prior to commencement of business shall be allowed in year of commencement of business only if same has been capitalized on the date of commencement of business.
- Capital expenditure shall not include land, goodwill & financial instrument.

Other Provisions

1. Business should be new business i.e. should not be formed by splitting/reconstruction of old business.
2. Business should not be set up by transfer of old plant & machinery. Old plant & machinery should not be more than 20% of total plant & machinery used for the business.
3. Deduction u/c VI-A shall not be allowed in respect of such business for any assessment year.
4. Actual cost of asset for which deduction has been allowed under section 35AD shall be taken as Nil.

Illustration 3: XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2010. The company incurred capital expenditure of ` 50 lakh during the period January, 2010 to March, 2010 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2010. Further, during the P.Y. 2010-11, it incurred capital expenditure of ` 2 crore (out of which ` 1.50 crore was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y. 2011-12, assuming that XYZ Ltd. has fulfilled all the conditions specified in section 35AD and has not claimed any deduction under Chapter VI-A.

Solution: The amount of deduction allowable under section 35AD for A.Y. 2011-12 would be

Particulars	`
Capital expenditure incurred during the P.Y. 2010-11 (excluding the expenditure incurred on acquisition of land) = ` 200 lakh - ` 150 lakh	50 lakh
Capital expenditure incurred prior to 1.4.2010 (i.e., prior to commencement of business) and capitalized in the book of account as on 1.4.2010	<u>50 lakh</u>
Total deduction under Section 35AD for AY 2011-12	<u>100 lakh</u>

Assets partly used for business purposes [Section 38]

Expenses u/s 30-32 (repairs, insurance, taxes, depreciation, etc.) on assets being building, plant & machinery and furniture, used partly for business purposes and partly for other purposes, shall be allowed proportionately.

Illustration 4: Assessee purchased a car on 01-07-10 for ` 4,00,000 (depreciation rate 15%). He submitted with you the following statement for consideration:

TAXATION**AMENDMENTS**

Income u/h PGBP (before car depreciation)	2,00,000
Less: Depreciation on car (as per books)	45,000
Income u/h PGBP	1,55,000

He further submitted that he used car 60% for business purposes and 40% for personal purposes. Compute his income u/h PGBP for AY 2011-12. Assume no other car is owned by assessee.

Solution:

Profit before depreciation		2,00,000
Less: Depreciation	60,000	
(-) Disallowed 40%	<u>24,000</u>	<u>36,000</u>
Income u/h PGBP		<u>1,64,000</u>

WDV of Asset For Next Year Would be $4,00,000 - 36,000 = ₹ 3,64,000$

WDV in case of Assets used partly for Business & partly for Agricultural purposes

Where the income of an Assessee is derived both from agriculture and business of the Assessee chargeable to the income tax under the head "Profits and Gains from Business and Profession", then for computing the WDV of the assets acquired before the previous year, the depreciation will be computed and allowed as if the whole income is derived from the business chargeable to the income tax under the head "Profits and Gains from Business and Profession."

Illustration 5:

Opening WDV as on 01-04-2010	₹ 2,00,000
Add: Purchases as on 05-05-2010	₹ 1,00,000
Less: Sales	NIL
WDV	3,00,000
Depreciation @ 15%	45,000
Opening WDV as on 01-04-2011	2,55,000
Depreciation allowable in PY 2010-11 (40% of ₹ 45,000) (that can be claimed for computing business profits (non-agricultural activity profits))	18,000

Earlier, depreciation amount of ₹ 45,000 was used to apportioned between agricultural activities (say 60%) and business activities (say 40%). In that case opening WDV as on 01-04-2011 had been ₹ 3,00,000 less 40% of 45,000 = ₹ 2,82,000.

Since income from agricultural activities is exempt, therefore, expenses pertaining to such activities shall not be allowed henceforth.

Note: This provision shall be applicable only in case of business activities vs. agricultural activities. In case asset used for business as well as for personal use, section 38 shall prevail.

Amounts not deductible under section 40(a): In the case of any assessee, the following expenses are expressly disallowed under section 40(a):

Interest, Royalty, Fees for Technical Services Payable Outside India or Payable to A Non-Resident [Sec. 40(a)(i)]

If the following three conditions are satisfied the assessee (i.e., the payer) is supposed to deduct tax at source (TDS) under section 195

1. The amount paid is interest, royalty, fees for technical services or other sum.
2. The aforesaid amount is chargeable to tax under the Act in the hands of the recipient,
3. The aforesaid amount is paid/ payable (a) outside India to any person; or (b) in India to a non-resident.

If the above three conditions are satisfied, the assessee (the payer) is supposed to deduct tax at source and deposit the same with the Government within the time-limit specified by section 200(1).

TDS defaults- TDS defaults may be broadly grouped in the following categories

1. Tax is deductible at source but the assessee has not deducted it.
2. Tax is deducted during the current year. Under section 200(1) it should be deposited during the current year but the assessee (i.e., the payer) has not deposited it during the current year.
3. Tax is deducted during the current year. The last date of deposit, as per section 200(1), falls in the next financial year. Tax is actually deposited by the assessee (i.e., the payer) in the next financial year after the due date.

Consequences if tax is deposited subsequently

If the above expenditure is not allowed in the current year, deduction will be available while computing the business income of the subsequent previous year in which such tax will be paid (i.e., in the year in which tax deducted by the assessee will be paid to the Government).

Illustration 6: Consider the following cases pertaining to payment of interest, royalty, technical fees or any other sum to a non-resident which is subject to the provisions of tax deduction at source under section 195 (in all cases liability is incurred during the previous year 2010-11)

Date on which tax is supposed to be deducted	Actual date of tax deduction	When tax should be deposited under section 200(1)	Date of deposit of TDS	Previous year in which it is deductible
June 26, 2010	June 26, 2010	July 7, 2010	September 1, 2010 (i.e., deposited during the current financial year 2010-11, late deposit is immaterial if tax is deposited in the financial year in which tax was deducted)	2010-11
July 26, 2010	July 26, 2010	August 7, 2010	April 1, 2011 [i.e., deposited in the next financial year after the due date give under section 200(1)]	2011-12
March 31, 2011	March 31, 2011	May 31, 2011	May 31, 2011 (deposited in the next financial year but before the due date)	2010-11

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Mach 31, 2011	March 31, 2011	May 31, 2011	June 1, 2011 [deposited in the next financial year but after the due date given under section 200(1)]	2011-12
May 16, 2010	May 16, 2010	June 7, 2010	Not deposited	Not deductible
Dec., 1, 2010	Not deducted	--	Not deposited	Not deductible
June 10, 2010	June 10, 2010	July 7, 2010	July 20, 2012 [deposited in a subsequent financial year but after the due date given under section 200(1)]	2012-13
Dec 1,2010	Not Deducted	Jan 7, 2010	Jan 7, 2010	Not Deductible

Compliance of TDS Provisions in case of A Resident [Sec. 40(a)(ia)] Section 40(a) (ia) is applicable if the following conditions are satisfied

1. It covers the following expenses

	TDS provision given in the following sections
Interest	193 or 194A
Commission or brokerage	194H
Rent	194-I
Fees for technical services	194J
Fees for professional services	194J
Royalty	194J
Payment to contractors/sub-contractors	194C

2. In the above cases recipient is resident in India.

Consequences if the above Conditions are Satisfied - If the aforesaid conditions are satisfied, the expenditure is not deductible in the following cases-

Cases	Expenditure given in Column 1 of the above table – is it deductible in the current previous year	Is such expenditure deductible in any subsequent previous year
Case 1 – Tax is deductible but not deducted before the end of PY.	No deduction in the current previous year	If tax is deducted in any subsequent year, the expenditure will be deducted in the year in which TDS will be deposited by the assessee with the Government.
Case 2 – Tax is deductible (and is so deducted) before the end of PY but it is not deposited on or before the due date of submission of return of income under section 139(1)	No deduction in the current previous year	If tax is deposited with the Government after the due date of submission of return of income, the expenditure will be deductible in that year in which tax will be deposited.

Illustration 7:

S. No.	Nature of Expense	Date of Payment	Date of Credit	Date of Deduction of tax	Date of Deposit of Tax	Assessment Year in which deduction of expense is allowed	Refer Working Note
1	Interest on loan	--	31-3-2010	31-3-2010	16-8-2010	2010-11	--
2	Interest on loan	--	31-3-2010	31-5-2010	30-9-2010	2011-12	1
3	Payment to contractor	16-9-2009	--	31-3-2010	30-9-2010	2010-11	--
4	Payment to contractor	16-9-2009	--	15-4-2010	30-9-2010	2011-12	2
5	Audit Fee	15-3-2010		31-3-2010	10-10-2010	2011-12	3
6	Rent	--	30-6-2010	31-3-2011	30-9-2011	2011-12	--
7	Rent	--	30-6-2010	31-5-2011	30-9-2011	2012-13	4

Assuming due date of filing return is 30th September in all the above cases

Notes:

1. The tax should have been deducted on 31-3-2010. As tax has been deducted after 31-3-2010, deduction of expense will be allowed in the year in which such tax has been paid i.e. previous year 2010-11 and assessment year 2011-12.
2. As tax has been deducted after 31-3-2010, deducted of expense will be allowed in the year in which such tax has been paid i.e. previous year 2010-11 and assessment year 2011-12.
3. As tax has been deposited after the due date of filing of the return of income, the deduction of expense will be allowed in the year in which such tax has been paid i.e. previous year 2011-11 and assessment year 2011-12.
4. As tax has been deducted after 31-3-2011, deducted of expense will be allowed in the year in which such tax has been paid i.e. previous year 2011-12 and assessment year 2012-13.

Salary Payable Outside India Without Tax Deduction [Sec. 40(a)(iii)]

Section 40(a) (iii) is applicable if the following conditions are satisfied –

1. The payment is chargeable under the head “Salaries” in the hands of the recipient.
2. It is payable –
 - a) Outside India (to any person resident or non-resident); or
 - b) In India to a non-resident.
3. Tax has not been paid to the Government nor deducted at source under the Income Tax Act.

If the aforesaid conditions are satisfied, then the payment is not allowed as deduction.

Illustration 8: The following illustration is given in respect of salary payable for the previous year 2009-10 by a company to (a) any person outside India or (b) a non-resident in India –

Amount	Date on which tax is supposed to be deducted (i.e, the date of salary payment)	Actual date of tax deduction	When tax should be deposited under section 200(1)	Actual date of tax deposit	Previous year in which salary payment is deductible
40,000	July 31, 2010	July 31, 2010	August 7, 2010	Nov 10, 2010	2010-11
90,000	March 31, 2011	March 31, 2011	April 7, 2011	April 7, 2011	2010-11
1,60,000	March 31, 2011	March 31, 2011	April 7, 2011	April 12, 2011	2010-11
70,000	March 31, 2011	Not deducted	April 7, 2011	April 12, 2011	2010-11
75,000	March 31, 2011	March 31, 2011	April 7, 2011	Not deposited	2010-11
95,000	March 31, 2011	Not deducted	April 7, 2011	Not deposited	Not deductible

When audit of account is compulsory [Sec. 44AB]

Who has to get his accounts audited on compulsory basis - The following persons are required to get their accounts compulsorily audited by a chartered accountant-

Different taxpayers	When they are covered by the provision of compulsory audit under section 44AB
A person carrying business	If the total sales, turnover or gross receipt in business for the previous year(s) relevant to the assessment year exceeds or exceeds ` 60 lakh.
A Person Carrying on Profession	If his gross receipts [#] in profession for the PY relevant to the AY exceeds ` 15 lakh. # Out of Pocket Expense & Advance Receipt not included
A person covered under section 44AD, 44AE	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).

Computation of income on estimated basis in the case of taxpayers engaged in any business except the business of plying, hiring or leasing goods carriage.

Conditions - The provisions of section 44AD will be applicable only if the following conditions are satisfied –

- Eligible assessee-** The assessee should be an eligible assessee. Eligible assessee for this purpose is an individual, a partnership firm (not being a limited liability firm).
- Has not claimed some deductions** – The assessee has not claimed any deduction under section 10A, 10AA, 10B, 10BA, 80HH to 80RRB in the relevant assessment year.
- Eligible business** – The assessee should be engaged in any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE.
- Turnover-** Total turnover/ gross receipt in the previous year of the eligible business should not exceed ` 60 lakh.

Consequences if the Above Conditions are Satisfied - If the above conditions are satisfied, the income from the eligible business is estimated at 8 per cent of the gross receipt or total turnover. The following points should be noted-

- The assessee can voluntarily declare a higher income in his return.

2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections. However, in the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed. Moreover, it will be assumed that disallowance, if any, under sections 40, 40A and 43B has been considered while calculating the estimated income @ 8 per cent.
3. An assessee opting for the above scheme shall be exempted from payment of advance tax related to such business.
4. An assessee opting for the above scheme shall be exempted from maintenance of books of account related to such business as required under section 44AA.

Is it Possible to Declare Lower Income- A taxpayer can declare his income to be lower than the deemed profits and gains as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above-

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit.
2. The taxpayer will have to get his books of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

Computation of income on estimated basis in the case of taxpayers engaged in the business of plying, leasing or hiring trucks [Sec. 44AE]

Section 44AE is applicable only if the following conditions are satisfied –

1. The taxpayer may be an individual, HUF, AOP, BOI, firm, company, co-operative society or any other person. He or it may be a resident or a non-resident.
2. Taxpayer is engaged in the business of plying, hiring or leasing goods carriages.
3. The taxpayer owns not more than 10 goods carriages at any time during the previous year. For this purpose, a taxpayer, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

Consequences if Section 44AE is Applicable - If the aforesaid conditions are satisfied then section 44AE is applicable. The following are the consequences if section 44AE is applicable:

Income to Be Calculated on Estimated Basis - Income from the aforesaid business shall be calculated as follows:

Type of goods carriage	Estimated Income
Heavy goods vehicle (Vehicle Weight > 12000 kg.)	` 5,000 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.
Other than heavy goods vehicle (Vehicle Weight ≤ 12000 kg.)	` 4,500 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.

Illustration 9: Pawan Ltd. is engaged in the business of carriage of goods. On April 1, 2010, it owns 10 trucks (6 out of which are “heavy goods vehicle”). On May 6, 2010, one of the heavy goods vehicles is sold by Pawan Ltd. To purchase a light goods vehicle on May 10, 2010 which is put to use only from June 17, 2010. Find out the net income of Pawan Ltd. For the assessment year 2011-12 taking into consideration the following data-

TAXATION**AMENDMENTS**

Freight collected	8,90,000
Less:	
Operational expenses	6,40,000
Depreciation as per section 32	1,90,000
Other office expenses	<u>15,000</u>
Net profit	45,000
Other business/non-business income	6,70,000

Solution:

Income shall be computed under section 44AE as follows-

Type of carriage	Period during which trucks are owned	Number of months (including a part of month)	Rate per month	Amount
4 Light goods vehicles	April 1, 2010 to March 31, 2011	12	4,500	2,16,000
1 Heavy goods vehicle	April 1, 2010 to May 6, 2010	2	5,000	10,000
5 Heavy goods vehicles	April 1, 2010 to March 31, 2011	12	5,000	3,00,000
1 Light goods vehicle	May 10, 2010 to March 31, 2011	11	4,500	49,500
Total				5,75,500

Computation of Income	
Income from carriage of goods	5,75,500
Other income	<u>6,70,000</u>
Net income	<u>12,45,500</u>

Cost Inflation Index

Cost inflation index as notified by the Central Government for different previous years is given below.

Previous year	Cost inflation index	Previous year	Cost inflation index
1981-82	100	1996-97	305
1982-83	109	1997-98	331
1983-84	116	1998-99	351
1984-85	125	1999-2000	389
1985-86	133	2000-01	406
1986-87	140	2001-02	426
1987-88	150	2002-03	447
1988-89	161	2003-04	463
1989-90	172	2004-05	480
1990-91	182	2005-06	497
1991-92	199	2006-07	519
1992-93	223	2007-08	551
1993-94	244	2008-09	582
1994-95	259	2009-10	632
1995-96	281	2010-11	711

Conversion of small private companies and unlisted public companies into LLPs to be exempt from capital gains tax subject to fulfillment of certain conditions

Clause (xiiib) has been inserted in section 47 to provide that –

- (1) Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP; or
- (2) Any transfer of a share or shares held in a company by a shareholder

on conversion of a company into a LLP in accordance with section 56 and section of 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain conditions. This clause has been introduced to facilitate conversion of small private and unlisted public companies into LLPs. These conditions are as follows:

- (1) The total sales, turnover or gross receipts in business of the company should not exceed ` 60 lakh in any of the three preceding previous years;
- (2) The shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
- (3) No consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
- (4) The erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;
- (5) All assets and liabilities of the company become the assets and liabilities of the LLP; and
- (6) No amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

However, if subsequent to the transfer, any of the above conditions are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be.

Further, the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company.

Illustration 10: Ashok Pvt. Ltd. has converted into a LLP on 1.4.2010. The following are the particulars of Ashok Pvt. Ltd. as on 31.3.2010 -

- | | |
|--|--------------|
| (1) Unabsorbed depreciation | ` 13.32 lakh |
| Business loss | ` 27.05 lakh |
| (2) WDV of assets | |
| Plant & Machinery (15%) | ` 60 lakh |
| Building (10%) | ` 90 lakh |
| Furniture (10%) | ` 10 lakh |
| (3) Cost of land (acquired in the year 2000) | ` 50 lakh |
| (4) VRS expenditure incurred by the company during the previous year 2008-09 is ` 50 lakh. The company has been allowed deduction of ` 10 lakh each for the P.Y. 2008-09 and P.Y. 2009-10 under section 35DDA. | |

Assuming that the conversion fulfils all the conditions specified in section 47 (xiiib), explain the tax treatment of the above in the hands of the LLP.

Solution:

(1) As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of Ashok Pvt. Ltd. as on 31.3.2010. However, if in any subsequent year, say previous year 2011-12, the LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set off of loss or depreciation so made in the previous year 2010-11 would be deemed to be the income chargeable to tax of P.Y. 2011-12.

(2) The aggregate depreciation for the P.Y. 2010-11 would be

Plant & Machinery	₹ 9 lakh (15% of ₹ 90 lakh)
Building	₹ 9 lakh (10% of ₹ 90 lakh)
Furniture	₹ 1 lakh (10% of ₹ 10 lakh)

In this case, since the conversion took place on 1.4.2010, the entire depreciation is allowable in the hands of the LLP. Had the conversion taken place on any other date, say 1.7.2010, the depreciation shall be apportioned between the company and the LLP in proportion to the number of days the assets were used by them. In such a case, the depreciation allowable in the hands of Ashok Pvt. Ltd. and the LLP would be calculated as given below-

In the hands of A Ltd. (for 91 days)

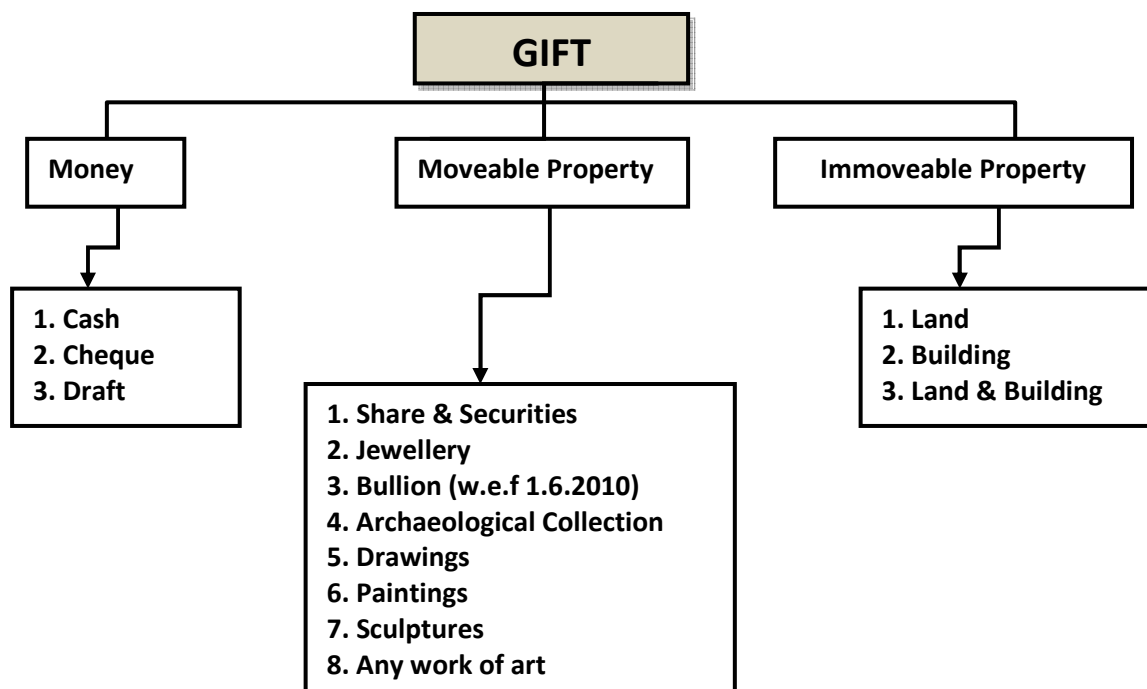
Plant and machinery	$\frac{91}{365} \times 9,00,000$	2,24,384
Building	$\frac{91}{365} \times 9,00,000$	2,24,384
Furniture	$\frac{91}{365} \times 1,00,000$	24,932

In the hands of the LLP (274 days)

Plant and machinery	$\frac{274}{365} \times 9,00,000$	6,75,616
Building	$\frac{274}{365} \times 9,00,000$	6,75,616
Furniture	$\frac{274}{365} \times 1,00,000$	75,068

(3) The cost of acquisition of land in the hands of the LLP would be the cost for which Ashok Pvt. Ltd. acquired it, i.e., ₹ 50 lakh.

(4) The LLP would be eligible for deduction of ₹ 10 lakh each for the P.Y. 2010-11, P.Y. 2011-12 and P.Y. 2012-13 under section 35DDA.



Receipt of sum of money/property without consideration should fall in any of the following categories-

Different categories	Tax treatment	For the ceiling of ` 50,000 whether a single transaction or all transaction of the previous year will be considered
Category 1 – Any sum of money (gift in cash or by cheque or draft).	If aggregate amount of sum of money received by a individual/ HUF without any consideration from one or more persons during a previous year exceeds ` 50,000, the whole of such aggregate value will be chargeable to tax.	All transactions
Category 2 – Movable property without consideration	If aggregate fair market value of movable properties received without consideration during a previous year (but on or after October 1, 2009) exceeds ` 50,000, the whole of aggregate fair market value of movable property or properties will be chargeable to tax.	All transactions
Category 3 – Movable property for a consideration which is less than fair market value	If movable property is received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ` 50,000, then the difference between aggregate fair market value and the the consideration is chargeable to tax.	All transactions
Category 4 – Immoveable property without consideration	If any immovable property (without any consideration) is received and the stamp duty value of which exceeds ` 50,000, stamp duty value will be chargeable to tax.	Single transaction

The immovable property for inadequate consideration has been removed from gift taxability.

Exempted Categories

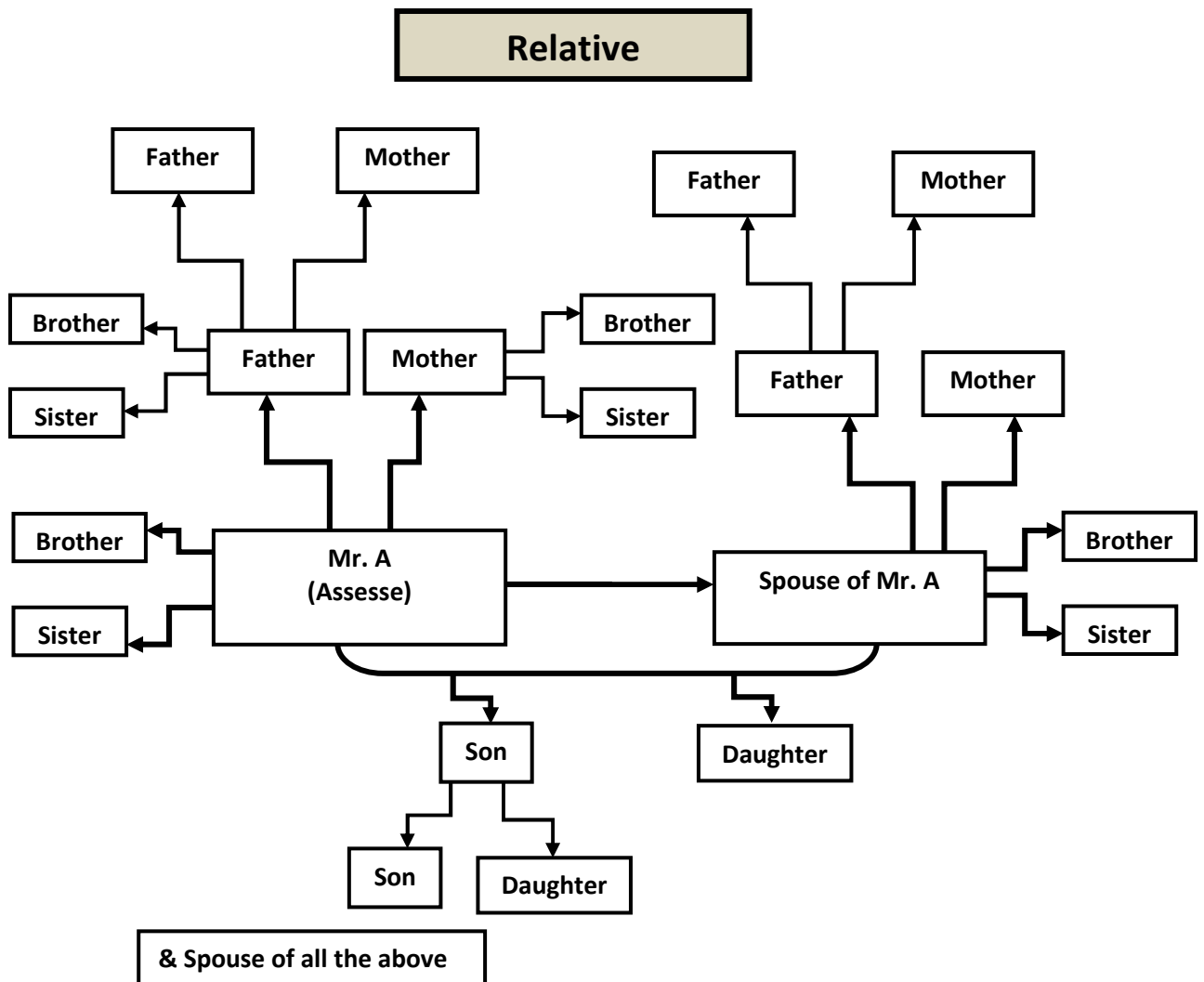
While calculating the above monetary limit of ` 50,000 in any of the categories, any sum of money or property received from the following shall not be considered.

1. Money/ property received from a relative.
2. Money/ property received on the occasion of the marriage of the individual.
3. Money/ property received by way of will/ inheritance.
4. Money/ property received in contemplation of death of the payer.
5. Money/ property received from a local authority.
6. Money/ property received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
7. Money received from a charitable institute registered under section 12AA.

Other Relevant Points

The following points should be noted

1. The value of movable property shall be the fair market value as on the date of receipt in accordance with the method prescribed. In the case of immovable property, the value of the property shall be the stamp duty value of the property.
2. For the aforesaid purpose, the term "relative" means



New Gift Taxability (w.e.f 1.6.2010)

Where a firm or a closely held company, receives, any shares of a closely held company:

- without consideration, the aggregate fair market value of such shares will be treated as income of the assessee.
- for inadequate consideration when compared to fair market value, the difference would be treated as income of the assessee

Conditions:

- The amount of such income exceeds ` 50,000
- The clause shall not apply to any such property received by way of a transaction not regarded as transfer.

Illustration 11: Mr. A, a dealer in shares, received the following without consideration during the P.Y. 2010-11 from his friend Mr. B -

- (1) Cash gift of ` 75,000 on his anniversary, 15th April, 2010.
- (2) Bullion, the fair market value of which was ` 60,000, on his birthday, 19th June, 2010.
- (3) A plot of land at Faridabad on 1st July, 2010, the stamp value of which is ` 5 lakh on that date. Mr. B had purchased the land in April, 2005.

Mr. A purchased from his friend C, who is also a dealer in shares, 1,000 shares of X Ltd. @ ` 400 each on 19th June, 2010, the fair market value of which was ` 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2010

Further, on 1st November, 2010, Mr. A took possession of property (building) booked by him two years back at ` 20 lakh. The stamp duty value of the property as on 1st November, 2010 is ` 32 lakh.

On 1st March, 2011, he sold the plot of land at Faridabad for ` 7 lakh.

Compute the income of Mr. A chargeable under the head "Income from other sources" and "Capital Gains" for A.Y. 2011-12.

Solution: Computation of "Income from other sources" of Mr. A for the A.Y. 2011-12

Particulars	`
(1) Cash gift is taxable under section 56(2) (vii), since it exceeds ` 50,000	75,000
(2) Bullion has been included in the definition of property w.e.f. 1.6.2010. therefore, when bullion is received without consideration after 1.6.2010, the same is taxable, since the aggregate fair market value exceeds ` 50,000	60,000
(3) Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(vii)	5,00,000
(4) Difference of ` 2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.	--
(5) Appreciation in the value of immovable property between the time of its booking and its actual registration is outside the scope of section 56(2)(vii).	--
Income from other Sources	6,35,000

Computation of “Capital Gains” of Mr. A for the A.Y. 2011-12

Sale Consideration	7,00,000
Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(vii) as per section 49(4)]	<u>5,00,000</u>
Short-term capital gains	<u>2,00,000</u>

Note: The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

Chapter VI –A (Deduction)

Not available From LTCG, STCG u/s 111A, lottery income, races etc.

Sec.	Available to	Condition	Deduction
80CCF	Individual /HUF	Long term Infrastructure Bond notified by CG Tenure of the Bond <ul style="list-style-type: none"> • A minimum period of 10 years • The minimum lock in period for an investor shall be five years. 	Up to ` 20,000
80D	Individual /HUF	Mediclaime Policy of GIC paid by any mode other than cash or Central Government Health Scheme. <ul style="list-style-type: none"> • Insurance can be taken on the health of Self, Spouse and Dependent Children 	Up to ` 15,000 Up to ` 20,000 (if anyone is Senior Citizen)
		<ul style="list-style-type: none"> • Insurance can be taken on the health of Parents (Father & Mother whether dependent or not) 	Up to ` 15,000 Up to ` 20,000 (if any one is Senior Citizen)
80GGA	Assessee not having PGBP income	Sum paid to following institutions:- <ul style="list-style-type: none"> • Approved scientific research association, university, college or other institution to be used for scientific research. (similar to sec. 35) • Approved research association who has as its object the undertaking of research in social science or statistical research or to a university, college or other institution for research in social science or statistical research. (similar to sec. 35) 	100% of the sum paid
80IB	Any Assessee	Construction and development of housing project 5 years from end of FY in which approved	100% of Profit till sold
80ID	Any Assessee	Hotel (2,3,4 Star), Convention Centre in Delhi, Faridabad, Gurgaon, Ghaziabad, Budh Nagar Costruction Period: 1.4.07 to 31.7.10	100% of Profit for 5 AY

Illustration 12: Mr. Y, aged 40 years, paid medical insurance premium of ` 12,000 during the P.Y. 2010-11 to insure his health as well as the health of his spouse and dependent children. He also paid medical insurance premium of ` 21,000 during the year to insure the health of his father, aged 67 years, who is not dependent

on him. He contributed ₹ 2,400 to Central Government Health Scheme during the year. Compute the deduction allowable under section 80D for the A.Y 2011-12.

Solution: Deduction allowable under section 80D for the A.Y. 2011-12

Particulars	₹
(i) Medical insurance premium paid for self, spouse and dependent children	12,000
(ii) Contribution to CGHS	
(iii) Mediclaim premium paid for father, who is over 65 years of age (₹ 21,000 But restricted to ₹ 20,000, being the maximum allowable)	2,400
	<u>20,000</u>
	<u>34,400</u>

Note: The total deduction under (i) and (ii) above should not exceed ₹ 15,000. In this case, since the total (ii) (i.e., ₹ 14,400) does not exceed ₹ 15,000, the same is fully allowable under section 80D. However, had the medical insurance premium paid for self, spouse and children been ₹ 14,000 instead of ₹ 12,000, then, the total of ₹ 16,400 (i.e., ₹ 14,000 + ₹ 2,400) under (i) and (ii) above would be restricted to ₹ 15,000. In such a case, the total deduction allowable under section 80D would be ₹ 35,000 [i.e., ₹ 15,000 [(i) & (ii)] + ₹ 20,000 (iii)].

Maximum Permissible Remuneration to Partner in Firm [Section 40(b)]

To allow remuneration the following specific conditions, as prescribed by section 40 (b), should be satisfied:

1. Remuneration should be paid only to a working partner.
2. Remuneration must be authorized by the partnership deed.
3. Remuneration should not pertain to period prior to partnership deed.
4. Remuneration should not exceed the permissible limit.

If the above conditions are satisfied remuneration to partners is allowable as deduction in the hands of the firm. However, the maximum amount of such payment to all the partners during the previous year should not exceed the limits given below-

Book Profit	Maximum amount deductible in respect of remuneration to partners under section 40(b)
If book profit is negative	₹ 1,50,000
In case book profit is positive	
- On first ₹ 3 lakh of book profit	₹ 1,50,000 or 90% of book profit, whichever is more
- On the balance of the book profit	60% of book profit

Computation of Book Profit for Remuneration u/s 40(b)

	₹
NP as per P/L A/c (before Income Tax)	xx
Less: Income under all other head (except PGBP)	(xx)
Add: Remuneration to Partner appearing in P/L	xx
Add: Excessive Interest to Partner on Capital	xx
Less: B/F Depreciation (not B/f loss)	(xx)
Book Profit	<u>xx</u>

When a person becomes liable to pay advance tax

Every person is liable to pay advance tax if advance tax payable is ` 10,000 or more. All items of income are liable for payment of advance tax. From the assessment year 2011-12, an assessee, who has opted for the scheme of computing business income under section 44AD on presumptive basis at the rate of 8 percent of turnover, shall be exempted from payment of advance tax related to such business.

TDS RATES

Section	Nature of Payment	Threshold limit to deduct tax	In case recipient is an Individual/ HUF	In case recipient is other than Individual / HUF
192(1)	Salary	Basic exemption limit	Slab Rate	NA
193	Interest on securities (Listed)	` 2,500 p.a.	10%	10%
	Zero Coupon Bond	--	--	--
	8% Saving (Taxable) Bond 2003	` 10,000 p.a.	10%	10%
	Interest on Securities (Unlisted)	--	10%	10%
194	Dividend u/s 2(22) (e)	2,500	20%	20%
194 A	Interest from Banking Company / Co-operative Society engaged in banking/ deposit with Post office	` 10,000 p.a.	10%	20%
	Interest other than from Banking company & Security (Unsecured Loan)	` 5,000 p.a.	10%	20%
194 B	Winning from lottery, Cross word puzzle or other game	` 5,000 p.a. ` 10,000 w.e.f. 1.7.10	30%	30%
194 BB	Winning from horse Race	` 2,500 p.a. ` 5,000 w.e.f. 1.7.10	30%	30%
194 C	Payment to contractor/ sub contractor	` 20,000 (` 30,000 w.e.f. 1.7.10) per single contract or ` 50,000 (` 75,000 w.e.f. 1.7.10) in aggregate	1%	2%
	Payment to Transport contractor, if PAN quoted (on or after 1.10.09)	--	Nil	Nil
194 D	Insurance Commission	` 5,000 p.a. ` 20,000 p.a. w.e.f. 1.7.10	10%	10% (20% for Company)
194 H	Payment of commission or	` 2,500 p.a.	10%	10%

TAXATION**AMENDMENTS**

	Brokerage	₹ 5,000 p.a. w.e.f. 1.7.10		
194 I	Payment of Rent for land or building whether or not owned by payee	₹ 1,20,000 p.a. ₹ 1,80,000 p.a. w.e.f. 1.7.10	10%	10%
	Payment of Rent for use of Plant, Machinery or equipment, furniture or fitting whether or not owned by payee	₹ 1,20,000 p.a. ₹ 1,80,000 p.a. w.e.f. 1.7.10	2%	2%
194 J	Payment of Professional/ Technical services/ Non compete fee	₹ 20,000 p.a. ₹ 30,000 p.a. w.e.f. 1.7.10	10%	10%

Note:

1. Surcharge and Education Cess is not applicable for TDS.
 - Surcharge applicable only when the recipient is a foreign company and the payment exceeds ₹ 1 crore. Rate of surcharge : 2.5% of TDS.
 - EC and SHEC applicable for TDS on payment of Salary or other sum to a non-resident or a foreign company.
2. The Rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee w. e. f. 1.4.10.
3. TDS needs to be deducted if the amount is above the limits given.
4. TDS is deducted when the expense is due or paid whichever is earlier. However, on salaries it is deducted at the time of payment.
5. **Interest @ 1% p.m. or part of the month from the date TDS was deductible to the date tax is deducted (i.e. on late deduction)**
6. **Interest @ 1.5% p.m. or part of the month [1% p.m. or part of the month upto 30.6.2010] from the date tax was deducted to the date tax is Actually paid (i.e. on late deposit)**

Illustration 13: ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y. 2010-11

- ₹ 15,000 on 1.5.2010
- ₹ 25,000 on 1.8.2010
- ₹ 30,000 on 1.12.2010

On 1.3.2011, a payment of ₹ 28,000 is due to Mr. X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

Solution: In this case, the individual contract payments made to Mr. X up to 30.6.2010 does not exceed ₹ 20,000 and after 1.7.2010 does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y. 2010-11 exceeds ₹ 75,000 (on account of the last payment of ₹ 28,000, due on 1.3.2011, taking the total from ₹ 70,000 to ₹ 98,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted @ 1% on the entire amount of 98,000 from the last payment of ₹ 28,000 and the balance of ₹ 27,020 (i.e. ₹ 28,000 – 980) has to be paid to Mr. X.

Illustration 14: If XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.2010 towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Determine the liability of TDS.

Solution: TDS under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y. 2010-11.

Illustration 15: An amount of ₹ 40,000 was paid to Mr. X on 1.7.2010 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2011, from which tax @ 10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2011. Compute the interest chargeable under section 201(1A).

Solution: Interest under section 201(1A) would be computed as follows

1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months	320
1 ½ % on tax deducted but not deposited i.e. 1 ½ % on ₹ 9,000 for 4 months	<u>540</u>
	<u>860</u>

TCS RATES

S. No.	Nature of Goods/ Contract	% of Purchase Price
1.	Alcoholic Liquor for human consumption	1%
2.	Tendu leaves	5%
3.	Timber or any other forest produce not being tendu leaves	2.5%
4.	Scrap	1%
5.	Parking lot, Toll Plaza, Mining and quarrying (shall not include mining & quarrying of mineral oil i.e. petroleum and natural gas)	2%

Note:

1. Surcharge and Education Cess is not applicable for TCS.
2. Every seller shall, at the time debiting of the amount to the account of the buyer, or at the time of receipt whichever is earlier collect from the buyer a sum equal to the following percentage of the purchase price as income tax.
3. Surcharge, EC & SHEC applicable if the purchaser is a foreign company & the amount subject to TCS exceeds ₹ 1 crore.

Centralized Processing Centers

A Centralised Processing Centre (CPC) has been set up at Bangalore for processing all e-filed income-tax returns as well as paper returns filed in the State of Karnataka. The CPC has commenced operations during this year and is currently processing 20,000 returns daily. Two more CPCs are proposed to be rolled out in the coming year. This initiative will help provide better tax payer service through faster processing of returns and issue of refunds.

PART B: SERVICE TAX

Export of Service

Any taxable services provided shall be treated as export of services only if -

- (a) ~~such service is provided from India and used outside India; and~~
- (b) payment for such service is received in convertible foreign exchange.

In case of export of service no Service tax Liability. So exporter can take cenvat Credit of input tax paid from other taxable service which is not exported or can get refund.

Lottery

The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing or organising lottery, shall have the option to pay tax at the following rates

S.No.	Rate	Condition
1	` 6,000 on every ` 10 lakhs (or part thereof) of aggregate face value of lottery tickets printed by the organizing state for a draw	If lottery scheme is one where guaranteed prize payout is 80% or more
2	` 9,000 on every ` 10 lakhs (or part thereof) of aggregate face value of lottery tickets printed by the organizing state for a draw	If lottery scheme is one where guaranteed prize payout is less than 80% .

Face value: It is the amount mentioned on the lottery ticket.
 Aggregate Face Value: Face value of lottery x the number of tickets printed
 Guaranteed Prize Payout: The agreed aggregate prize money distributed to all the winners

Provided that in case of online lottery, the aggregate face value of lottery tickets **sold** shall be taken.

Provided further that the distributor or agent shall exercise such option within a period of **one month** of beginning of each F/Y and such option shall not be withdrawn during the remaining part of the F/Y.

[Inserted on 8th October 2010, applicable for May 2011 exams]

General Scheme of Lotteries (as given in Departmental Circular)

Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998.

The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance are now being covered by introducing a separate taxable service to cover the services in connection with games of chance, organized conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the 'Games of chance' service. The tax would be applicable also to such games conducted online.

Sponsorship Service

The **exclusion** relating to sponsorship pertaining to sports events **has been removed**. Earlier, sponsorship of sports events was kept out of the purview of the taxation with a view to encourage sports activity and to provide an avenue for funding sports events. However, there grew a disparity between the advertisements through sponsorship of such events and the advertisements displayed otherwise. Hence, service provided in relation to sponsorship of sports events has now been brought under the service tax net. (Effective from 1st July, 2010)

Electronic Filing (E-filing) of Return

E-filing of returns is mandatory for assessee who has paid total service tax of ` 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

E-filing is a facility for the electronic filing of service tax return by the assessee from his office, residence or any other place of choice, through the internet, by using a computer. The assessee can go to the e-filing site 'Home Page' by typing the address <http://www.servicetaxefiling.nic.in> in the address bar of the browser.

E-Payment of Service Tax

Some banks provide the facility of e-payment of excise duty and service tax. It is known as Electronic Accounting system in Central Excise and Service Tax (Easiest). In case of e-payment, GAR-7 challan is used instead of TR-6 challan.

With effect from April 1, 2010, it has become mandatory to make e-payment of service tax in case of assessee who had paid service tax of ` 10 lakh or more in the preceding financial year.

The assessee must mention their assessee code compulsorily in the TR-6/ GR-7 challans, otherwise banks will not accept their payment of service tax.

PART C: SPECIFIC SERVICES

LEGAL CONSULTANCY SERVICES

'Legal Consultancy Service' is one of the new services brought into the service tax net in Budget 2009. This levy is introduced by way of insertion of clause (zzzzm) in sub section 105 of section 65 of the Finance Act, 1994 which reads as follows:

'Legal Consultancy Service' means services provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner.

Provided that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Explanation.—for the purposes of this sub-clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual;"

While proposing to extend the ambit of service tax to cover legal advice and consultancy, finance minister Pranab Mukherjee in his budget speech clarified, "This (service tax) will not be applicable in case the service provider or the service receiver is an individual".

The tax would be limited to services provided by a business entity to another business entity. It has been defined that a business entity includes firms, associates, enterprises, companies etc. but does not include an individual. Thus, services provided by an individual advocate either to an individual or even to a business entity would be outside the scope of the taxable service. Similarly, the services provided by a corporate legal firm to an individual would also be outside the purview of taxable service. Any service of appearance before any court of law or any statutory authority would also be kept outside this levy.

Any individual in association with another individual who is conversant with any branch of law can provide the said service in any manner by forming a partnership.

For e.g. if two individuals (who are not advocates) form a partnership firm and provide services related to patent law or undertake tax compliance work of corporate clients, they are also liable to service tax under this new levy subject to the exclusion provided therein.

Illustration 16: With reference to legal consultancy services, state whether service tax is applicable in the following cases:

- (i) Mr. Ramesh, an advocate, providing consultancy services to Omega Ltd. in relation to company law matters.
- (ii) Mehta and Sons, a law firm, providing legal assistance to Omega Ltd. in relation to civil cases filed against the company.
- (iii) Mehta and Sons providing advisory services to Mr. Kamlesh in respect of his property matters.
- (iv) Mehta and Sons providing service of appearance before Sessions Court to Omega Ltd. in relation to criminal cases filed against the company.

Solution: Scope of legal consultancy service shall include any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Here, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

Thus, legal consultancy services shall not be liable to service tax in following cases:-

- (a) Where such service is provided by way of appearance before any court, tribunal or authority;
- (b) Where the service provider and/or service recipient is an individual.

The questions are now answered as follows:

- (i) Mr. Ramesh, being an individual service provider is not a business entity. Hence, Mr. Ramesh will not be liable to service tax.
- (ii) Here, both service provider and service receiver are business entities. Thus service tax will not be liable to service tax.
- (iii) In this case, Mr. Kamlesh, the service receiver is an individual and thus not a business entity. Thus, service tax will not be applicable in this case.
- (iv) Here, though both the service provider and the service receiver are business entities, but the service being rendered is that of appearance before any court, tribunal or authority; which is excluded from the scope of taxable service. Hence, service tax will not be applicable in this case.

COMMERCIAL TRAINING AND COACHING CENTRE

“Commercial training or coaching” means any training or coaching provided by a Commercial training or coaching center to any person.

Commercial training or coaching center

means

any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate

and includes

coaching or tutorial classes

but does not include

- preschool coaching and training centers or
- any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

Exemption Notification

This Service shall be 100% exempt when provided by

1. Vocational Training Institute: The exemption extended to a Vocational Training Institute, which means a industrial training institutes affiliated to National Council of Vocational Training which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. On going through the above, the general understanding one can get is that Service Tax is exempted if the courses covered under Schedule I of Apprentices Act which impart knowledge for poor educated/ semi-educated youth about some Vocational Courses, which will help them in their future endeavors.





2. Recreational Training Institute:

But this exemption shall not be applicable to Computer Training Institute.

Computer Training Institute means

Discuss whether the following shall be subject to Service Tax?

Coaching Centre	Sports Training Centre
Premier Institute of Commerce 	 
Whether liable for Service Tax? _____ Reason	Whether liable for Service Tax? _____ Reason

Home Tuition	Tuition Bureau	School	
		Sunbeam 	St. Johns 
Whether liable for Service Tax? _____ Reason	Whether liable for Service Tax? _____ Reason	Whether liable for Service Tax? _____ Reason	

Pre- School	University/ College/ ICAI	
 	BHU 	ICAI 
Whether liable for Service Tax? _____	Whether liable for Service Tax? _____	

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Reason

Reason

Vocational Training**Computer Training Institute****Mobile Repairing****Computer Typing**

Whether liable for Service Tax? ____

Whether liable for Service Tax? ____

Reason

Reason

Recreational Training Institute**Music Class****Dance Class**

Whether liable for Service Tax? ____

Reason

Q1. Whether intensive tuition/ coaching institutes /group of individuals for various competitive exams/ correspondence and foreign degree courses/ spoken language course liable for Service Tax?

Ans. Commercial coaching and training services provided by institutes that prepare applicants for Board examinations and competitive exams, like entrance examinations for IIT, Joint Entrance Exams./ Premedical Tests, Civil Services Exam, etc. are chargeable to service tax.

However, services in relation to Commercial Coaching and training, provided by-
Vocational Training Institute, and
Recreational Training Institute

have been exempted from service tax. Therefore, vocational coaching and training services provided by typing and shorthand institutes, TV/Vehicle repairs training institutes, tailoring institutes, industrial training institutes, foreign language institutes, hobby classes, institutes teaching martial arts, painting, dancing etc, would not be chargeable to Service Tax.

Q2. Whether service tax is leviable on postal/correspondence coaching?

Ans. Service Tax is leviable on any coaching or training provided by an institution on commercial basis. Therefore, the coaching provided by postal means would also be covered under the service tax.

Q3. Whether individuals going to houses to impart tuition/coaching would be chargeable to service tax?

Ans. Service tax is on institutions/ establishments. Only those service providers are covered under service tax who have some establishment for providing commercial coaching or training. Thus, individuals providing services at the premises of a service receiver would not be covered under service tax. However, if coaching or training center provides commercial coaching by sending individuals to the premises of service receivers, such services would be chargeable to service tax.

Q4. Whether commercial coaching provided by institute to the students of degree exams held by universities are chargeable to service tax?

Ans. Yes. The commercial coaching given to the students to prepare them to prepare for university degree exam is liable for service tax

Q5. With reference to commercial training or coaching services, state whether service tax is applicable in the following cases:

- (i) Pinnacle Institute offering courses on personality development and grooming.
- (ii) BTL Engineering College offering B. Tech to students. However, the college has been derecognized by the All India Council for Technical Education.

Ans. Section 65(105)(zcc) provides that the scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching. As per section 65(27), a commercial training or coaching centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

- (i) Institutes offering general course on improving communication skills, how to be effective in group discussions or personal interviews, personality development, general grooming and finishing etc. are not covered under the definition of vocational training institute because they only improve the chances of success for a candidate possessing required skill and do not impart training to enable the trainee to seek employment or self-employment.

Thus, Pinnacle Institute is not entitled to exemption under the above notification and is liable to service tax.

(ii) B. Tech degree is recognized by law and thus institutes offering such degrees are excluded from the scope of the said taxable service. An institution or establishment which is derecognized by the professional councils (such as All India Council for Technical Education-AICTE, medical Council of India-MCI, India Council for Agricultural Research-ICAR, institutes/establishments which issue diploma or certificate recognized by the law for the time being in force and hence is taxable under the category of commercial coaching and training services.

Thus, BTL Engineering College being derecognized by All India council for Technical Education shall be liable to service tax.

INFORMATION TECHNOLOGY SOFTWARE SERVICES

Information technology software means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

The Scope of the taxable service is being expanded to tax such service even if the service provided is used for purposes other than business or commerce. Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to information technology software, including,

- (i) Development of information technology software,
- (ii) Study, analysis, design and programming of information technology software,
- (iii) Adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- (iv) Providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,
- (v) Acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,
- (vi) Acquiring the right to use information technology software supplied electronically

Branded Software vs Unbranded Software

Branded software or packaged software or normal software are treated as “goods”. A few examples are Microsoft’s Window XP/Vista software, oracle software, lotus software, tally - accounting software. These are sold as “goods” and subject to excise duty and VAT. Service tax is not leviable in the case of branded software or packaged software.

From the department clarification, it appears that unbranded software or customized software are not considered by the department as “goods” and service tax is leviable. However, there is a lot of confusion, as many State Governments have levied Vat on customized software.

Even if it is assumed that unbranded or customized software is service (and subject to service tax). Notification No. 12/2003 –ST, dated June 20, 2003, permits deduction of value of material sold from the value of taxable service to find out service tax liability. For instance, if ` 60,000 is charged by a service provider for development of a Customized software, value of taxable service shall be calculated as follows-

	It the state Government treats “Customised software” as “goods” and charges VAT `	It the State Government does not charge VAT `
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Charges for development of customized software	60,000	60,000
Less: Value of material sold (as per Notification No. 12/2003, dated June 20, 2003) [the State Government charges VAT on sale of customized software]	60,000	Nil
Value of taxable service	Nil	60,000

Illustration 17: Aarush, a software consultant, has developed a software for Beta Ltd. He raised a bill of ` 2,50,000 on Beta Ltd. on 02.03.2011. A sum of ` 1,50,000 was received from Beta Ltd. on 15.03.2011 and the balance on 23.06.2011. The questions are:

- (i) Is the service provided by Aarush liable to service tax? If yes, then whether Aarush will be liable to pay service tax, even though the same has not been charged by him?
- (ii) In case Aarush is liable to service tax, what is the value of taxable service and the service tax payable by him for the financial year 2010-11?

Solution:

(a) Yes, development of software is liable to service tax under information technology software services. Yes, Aarush will be liable to pay service tax. Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Aarush will be liable to pay service tax.

(b) When the assessee has not charged service tax because of the nature of service or has failed to recover the service tax from the client / customer, the amount recovered from the client in lieu of having rendered the service is taken to be inclusive of service tax. Accordingly service tax payable is calculated by making back calculations.

Since, service tax is payable on receipt basis, in the F.Y. 2010-11, only ` 1,50,000 will be liable to service tax.

The rate of service tax payable: 10.30%

$$\begin{aligned}
 \text{Value of Taxable Service} &= \frac{\text{Gross Amount} \times \text{Effective Rate}}{100 + \text{Effective Rate}} \\
 &= \frac{1,50,000 \times 100}{110.30} \\
 &= \text{` } 1,35,993
 \end{aligned}$$

$$\begin{aligned}
 \text{Service Tax Payable} &= \frac{1,50,000 \times 10.30}{110.30} \\
 &= \text{` } 14,077
 \end{aligned}$$

CARGO HANDLING SERVICES

Cargo – The term ‘cargo’ means ‘the load (i.e., freight) of a vessel, train, truck, aeroplane or other carrier’. Thus any goods which are meant for transportation from one place to another place by any mode of transport are known as ‘cargo’.

Any service provided (or to be provided) to any person, by a cargo handling agency in relation to cargo handling services, is a taxable service. “Cargo handling service” means-

- a. Loading of cargo;
- b. Unloading of cargo;
- c. Packing of cargo; or
- d. Unpacking of cargo.

Besides the above, it also includes-

1. **Services Provided In Special Containers** - Cargo handling service also includes service provided in special containers. Now a day, container service has become a significant mode of cargo transportation by ship/aircraft/rail.
2. **Services Provided by Container Freight Terminals** – A place where empty containers are stored and accounted for when not in use, is known as container freight terminal. Generally, loading/unloading of cargo takes place at such a terminal. Such services are also taxable.
3. **Packing And Transportation Only** – “Cargo handling service” also include services of only packing together with transportation of cargo. Such service may be provided with or without providing other services like loading, unloading, packing or unpacking. These services are also known as “packers and movers” services. Even if the facility of unloading and unpacking is not provided at the destination, such service would be taxable under “cargo handling service” only.

It does not Include

1. **Cargo Handling Relating to Export** - All cargo handling services in relation to export are excluded from “cargo handling service”. This exemption is available even in cases where goods are sent for transshipment for further transport for export. Handling of export cargo from one international carrier to another international/domestic carrier is also exempt.
2. **Handling of Passenger Baggage** - Handling of passenger baggage (Whether accompanied baggage or unaccompanied baggage) is excluded from “cargo handling service”

3. **Mere Transportation** - Where goods are transported without under – going any loading, unloading, packing or unpacking, handling of such goods are excluded from the purview of the definition of “cargo handling service”.

Value of Taxable Service

Service tax is payable on the entire amount received for the aforesaid services. However, service tax is not payable on charges which represent cost of goods sold by service provider.

Cargo Handling service is taxable in relation to all modes of transport.

Transportation of cargo is taxable only when it is through air/road/pipeline or other conduit.

Suppose, goods sent by Road. GTA Invoice		Suppose, Goods sent by Ocean (Sea). Shipping Company's Invoice	
Packing/Unpacking/Loading Charges	4,000	Packing/Unpacking/Loading Charges	4,000
Transportation Charges	<u>25,000</u>	Transportation Charges	<u>25,000</u>
Total Charges	<u>29,000</u>	Total Charges	<u>29,000</u>
ST		ST	
ST on cargo handling service (4,000 * 10.2%)		ST on cargo handling service (4,000 * 10.2%)	
ST on Transport Service (25,000 * 10.2%)		ST on Transport Service	-----No ST-----

Exemption

1. Cargo handling service provided to a goods transport agency (GTA) for use by the said GTA to provide transportation service to a customer in relation to transport of goods by road in a goods carriage.
2. When provided in relation to
 - Agricultural Produce (e.g., Sugarcane/ Rice)
 - Goods meant for cold Storage (e.g., Fish)

CUSTOM HOUSE AGENT'S SERVICES

Any service provided (or to be provided) to any person, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods, is a 'taxable service'.

Custom house agent is the person licensed, temporarily or otherwise, under the Customs Act providing service in relation to entry or departure of conveyances or Import or export of goods.

Does not cover:

- 1. Representatives/ employees of** an enterprise providing the above services to the enterprise.
- 2. CHA,** who provides services to other licensed CHA.

Service Covered

- Obtaining relevant documents (invoices, packing list, license required for clearance of cargo, license required for export, bill of lading)
- Preparation of bill of entries
- Arranging for execution of bond
- Examination of cargo
- Preparing shipping bill
- Making payment of export/import duty
- Clearing of import and export consignment
- Loading/unloading of import/export goods from/at the premises of exporter / importer
- Packing weight and measurement of export / import goods;
- Transportation of export goods to customs station or import good from customs station to importer's premises;
- Sorting/ marking / stamping / sealing of goods on behalf of exporter / importer

Value of taxable service

Service tax is payable on the amount received for the aforesaid services. However, service tax is not payable on charges which represent cost of goods sold by the service provider. Moreover, expenses (which are liability of the service receiver) incurred by the service provider and later on recovered from service receiver are not subject to service tax.

PRACTICING CHARTERED ACCOUNTANT'S SERVICE

Any service provided (or to be provided) to person, by a practicing chartered accountant in his professional capacity in any manner, is taxable service.

Service Should be Provided by a practicing Chartered Accountant- Service should be provided by a practicing chartered accountant. A practicing chartered accountant is one, who satisfies the following requirements

- a. The said accountant must be a "person"
- b. Such person must be a member of the institute of Chartered Accountants of India; and
- c. Such person must be holding a certificate of practicing granted under the provisions of the Chartered Accountants Act, 1949.

A concern engaged in providing services in the field of chartered accountancy is also included in the definition of a practicing chartered accountant. Service can be provided by the chartered accountant himself or with the help of other persons. These other persons may or may not be practicing chartered accountant. Service can be provided directly or through post, e-mail or any other electronic mode.

Service can be Provide to Any Person - The recipient of service may be "any person" and not necessarily a client of the service provider. In other words, the recipient of service may or may not be a client of the practicing chartered accountant who provides professional services.

Service relating to representing a client before Statutory Authority is exempt - Service provided (or to be provided) by a practicing chartered accountant in his professional capacity to a client relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, is fully exempt from service tax, provided such proceedings are initiated by way of issue of a notice. This exemption is available vide Notification No. 25/2006. In other words, this exemption is available if the following propositions are satisfied-

1. Service is provided by a practicing chartered accountant. A member of the institute who does not hold a certificate of practice, is not eligible for the aforesaid exemption.
2. Service should be provided to a client. In other words, if service receiver is not a client of the service provided, this exemption is not available.

Exemption is available when the aforesaid conditions are satisfied.

Examples of Exempt Services

1. Appearing before income-tax authorities/custom authorities/sales tax authorities/service tax authorities/excise duties authorities where a notice has been issued.
2. Appearing before Appellate Tribunals (e.g., ITAT, CESTAT) where a notice has been issued.
3. Appearing before ROC, SEBI, etc., where a notice has been issued.

Examples of Services not Exempt

1. Submitting income-tax / TDS returns or returns to ROC, SEBI, etc.
2. Drafting documents / agreements / deeds / memorandums.
3. Drafting scheme of mergers.
4. Statutory audit.
5. Inspection of records/documents.
6. Preparation of accounts.

Value of taxable service

Service tax is payable on the amount received for the aforesaid services (excluding exempt services). However, service tax is not payable on charges which represent cost of goods sold by service provider. Moreover, expenses (which are a liability of the service receiver) incurred by the practicing chartered accountant and later on recovered from the service receiver, are not subject to service tax.

Threshold exemption up to ` 10 lakh

Threshold exemption limit up to ` 10 lakh is available to a small service provider.

Illustration 18: X, a chartered accountant, obtains a certificate of practice from the Institute of Chartered Accountants of India on April 12, 2010. The following services are provided during the financial year ending March 31, 2011-

Bill No. (Date)	Nature of service	Whether exempt	Amount	Registration Requirement	Service tax
Bill No. 1 (May 1, 2010)	Appearing before Assessing Officer in a scrutiny assessment under section 143(3) on behalf of A Ltd	Yes	6,80,000	No registration required	No service tax
Bill No. 2 (September 12, 2010)	Appearing before ITAT on behalf of B Ltd. in an appeal filed by CIT	Yes	2,70,000	Registration is required as value of "taxable services" exceeds ` 9,00,000. The expression "taxable services" includes even those services which are exempt.	No service tax
Bill No. 3 (December 5, 2010)	Statutory audit of C Ltd.	No exemption	20,000	Already registered	No service tax as value of "taxable services" does not exceed ` 10,00,000
Bill No. 4 (March 18,	Appearing before CIT to	Yes	1,80,000	Already registered	Even if "taxable services" exceed ` 10,00,000, no

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2011)	defend D Ltd. against a notice issued for imposing concealment penalty				service tax is payable, as this service is exempt by the notification.
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From the next financial year 2011-12, service tax will be applicable from day one as, value of "taxable services (including services exempt under the aforesaid Notification in the preceding year 2010-11 exceeds ` 10,00,000. Suppose, for a statutory audit, he gets a payment of ` 50,000 on April 20, 2011, service tax will be applicable. Suppose, another payment of ` 2,00,000 is received on April 30, 2011, for appearing before the Tribunal, service tax is not applicable, as it is exempt as per the aforesaid Notification.

CONSULTING ENGINEER'S SERVICES

Any service provided (or to be provided) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner (in one or more discipline of engineering including the discipline of computer hardware engineering) is a taxable service. Services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines **of both** computer hardware engineering and computer software engineering shall also be classifiable under "consulting engineer's services".

Service Should Be provided by a consulting Engineer – Service should be provided by a "consulting engineer". Consulting engineer for this purpose is any professionally qualified engineer or anybody corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering. The consulting engineer should be professionally qualified engineer. Alternatively the service provider can be any body corporate or any other firm who renders any advice, consultancy or technical assistance in any manner to a receiver of service by engaging professionally qualified engineer/engineers in any discipline of engineering.

Service Should Be Provided to any Person - The recipient of service may be any person. He may or may, not be a client of the service provider.

Service must Relate to Any Discipline of Engineering – Service rendered by way of advice, consultancy or technical assistance, should be in relation to one or more disciplines of engineering. An illustrative list of the disciplines of engineering are-



INDUSTRIAL ENGINEERING

An INDUSTRIAL engineer designs the soda factory layout. They set up an entire manufacturing process keeping in mind people who have to work in the factory.



MECHANICAL ENGINEERING

A MECHANICAL engineer designs the machines in the factory.



AEROSPACE ENGINEERING

An AEROSPACE engineer designs the geometry of the flow system which is used to make the soda mix in the most efficient manner.



COMPUTER ENGINEERING

A COMPUTER engineer designs a computer system to automate many of the machines.



ELECTRICAL ENGINEERING

An ELECTRICAL engineer designs and regulates the circuitry throughout the plant. They link the machines to the computer operating systems.



METALLURGICAL ENGINEERING

A METALLURGICAL engineer chooses the type of aluminum used to make the can.



CHEMICAL ENGINEERING

A CHEMICAL engineer designs the chemical process necessary to create that favorite type of soda. They have to decide what to mix together and how to do it in mass quantities.



CIVIL ENVIRONMENTAL

A CIVIL / ENVIRONMENTAL engineer determines a process to control all the waste products and helps to keep the factory within environmental guidelines.

Other Discipline of engineering are-

- Agricultural
- Aquaculture
- Architecture
- Automobile
- Aviation
- Electronics
- Environmental
- Fabrication
- Geotechnical
- Hydraulic
- Marine
- Mining
- Telecommunication
- Biotechnology

Value of taxable service

Service tax is payable on the amount received for the aforesaid service. However, service tax is not payable on charges which represent cost of goods sold by service provider. Moreover, expenses (which are the liability of the service receiver) incurred by the service provider and later on recovered from service receiver, are not subject to service tax.

Other points

1. Service provided by unqualified engineers cannot be taxed under "consulting engineer's services.
2. Service provided by a person who is holder of certificate from an industrial training institute run by Ministry of Labour and Rehabilitation, cannot be taken as service provided by consulting engineer.
3. It is not necessary that the concern rendering service should be a commercial concern.

MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICES



Any service provided (or to be provided) to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower (temporarily or other-wise) in any manner, is a taxable service. The expression “recruitment or supply of manpower” also includes

- a. Service in relation to pre-recruitment screening;
- b. Verification of the credentials and antecedents of the candidate; and
- c. Authenticity of documents submitted by the candidate.

Service May be Provided to any Person – It is not necessary that service receiver is a client of the service provider.

Service Should be Provided by a Manpower Recruitment or Supply Agent – The service provider must be engaged in providing services connected with recruitment of manpower, as an organized and fairly continuous activity, and not as an isolated or occasional activity.

Service Should be provided in Relation to Recruitment or Supply of Manpower - The service should be in relation to recruitment or supply of manpower on permanent or on temporary basis. Further, it includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate. The scope of this service includes the following services provided by an agency-

- a. Preliminary stage of building a database of manpower for different categories of personnel employment, whether white collar or blue collar, whether for employment in India or overseas;
- b. Determining manpower requirement for the client, preliminary identification, short listing and screening of prospective candidates, providing specialists for interviewing prospective candidates, arranging for their interviews at every stage; and
- c. Placing advertisements for recruitment of manpower in the print or electronic media. In short, it will cover entire gamut of services from incipient stage of selecting / identifying manpower requirement till stage of final selection.

Value of Taxable service – Service tax is payable on the amount received for the aforesaid service. However, expenses (which are the liability of the service receiver) incurred by the service provider and later on recovered from the service receiver, are not subject to service tax.

Illustration 19: A manpower supply agency provides truck drivers to a transport undertaking for carriage of goods from Delhi to Bombay. Service tax is not applicable.

Illustration 20: The following points should also be noted-

1. Educational institutions (such as universities, IIMs, IITs) fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment.
2. The contract should be for supply of manpower. If the contract is for executing some work (e.g., floor polishing), it is not a "manpower supply service".
3. Amount collected by an agency for making available bio-data/resume of prospective candidates, is subject to service tax.

Illustration 21: Assessee entered into a contract with a company to provide labourers as per co's requirement for housekeeping work, for loading, unloading purpose etc. Payment to be made by the company was related to the no. of labourers supplied during a specified period and not related to quantum of work carried out.

Thus held that above contract was nothing but supply of manpower and covered under 'Manpower Recruitment or supply agency's service'.

Illustration 22: M/s RK Consultants are a renowned placement agencies. Premier Ltd requires 2 qualified CA for the purpose of employing (recruiting) them in the company. Premier Ltd has contacted M/S RK consultants in this regard. M/s RK gets 2 qualified CA recruited in ABC Ltd and charges ` 20,000 for that. The "manpower recruitment and supply service" covers service relating to **recruitment of manpower permanently**. Thus, ABC Ltd. would also be liable to service tax under the category of "Manpower recruitment or supply service"

Illustration 23: AB Ltd is a LABOUR CONTRACTOR, i.e., it supplies labour on temporary basis to the clients for a particular period/project. The labour so supplied remains on the payroll of AB Ltd. recovers charges for supply of labour from the client and they pay the labour employed by it.

The "manpower recruitment and supply service" covers mere **supply of manpower temporarily**. Thus, ABC Ltd. would also be liable to service tax under the category of "Manpower recruitment or supply service"

Illustration 24: M/s Omega Consultants are a **labour contractor** of manpower to M/s Work Creations. They charge to the **principal employer** for the wages of their labour which amounts to ` 1,20,000 plus their service charges of ` 10,000 for arranging the labour. The issue is whether service is payable on the gross amount charged by them or only their charges for labour. Examine the case.

The service tax is payable on the "value of taxable service" which shall be the gross amount charged by the service provider for the service. M/s Omega Consultant is providing the service of supply of manpower. In Relation to their service, they have charged ` 1,30,000 in totality which is inclusive of ` 1,20,000 payable by them to labour as wages. CBEC in this context has clarified that the value shall include recovery of staff costs

from the recipient e.g., salary and other contributions. Thus, M/s Omega consultant shall be liable to pay service tax on ` 1,30,000

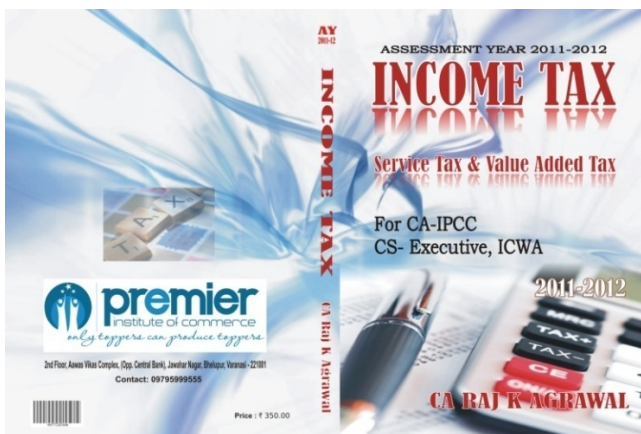
Illustration 25: Whether there would be in any change in you answer if agreement provides for direct payment of ` 1,20,000 by client to the staff and only ` 10,000 is paid to M/s Omega Consultants, the manpower recruitment or supply agency?

No, CBEC has clarified that “even if agreement does not involve the recipient paying these staff costs to the supplier/service provider (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount”.

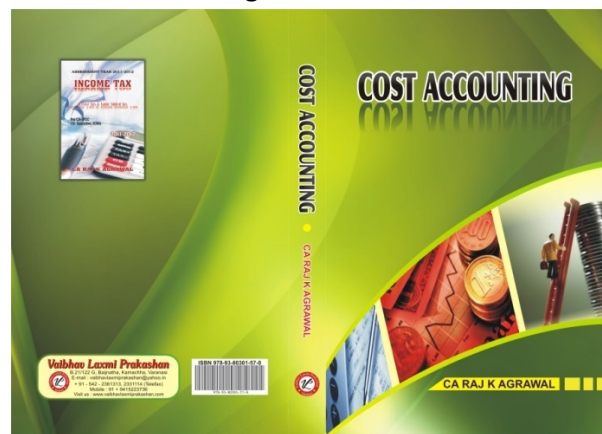
Students should remember that knowing is not enough and application is important to make their dreams of success come true. **There is not any secret behind the success except hard work (in fact, SMART WORK).** The **success mantra** isConceptual understanding of provisions, Clarity in subject, Consistency in Studies, Creativity in preparation, Comprehensive coverage, Constant updating, Continuous practice, Common importance to all topics, Command over the subject and Confidence in the exam.

For detailed discussion on the subject refer to our publications:

Taxation Book for CA-IPCC



Costing Book for CA-IPCC



For more such files and to be in touch ca students can join my free consultancy group:

<https://groups.google.com/group/carajagrawal>

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Remember....**A tax provision a day keeps the exam fear away.** Wishing all the students grand success in the coming examinations. Have a happy reading of Tax Provisions.

+++++Wish you all Success+++++

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