

# **Recent Amendments**

in

# **Income Tax & Company Law**



**CA. PRAMOD JAIN**

FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

**Shared at**

**Webinar, Shalimar Bagh CPE study Circle of NIRC of ICAI**

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*CA. Pramod Jain*

# Income Tax

# SENIOR CITIZEN

- ❖ S. 194 P
- ❖ Age 75 years or above
- ❖ Should have only pension income and interest from **same** bank
- ❖ Banker to give 87A relief, on declaration, deduct tax on interest
- ❖ No ITR in such case

# S. 44AB / 44ADA

✦ Extensions !!!!

✦ S. 44AB (a), if 5% criteria met for receipts & payments

✦ 1 Cr to 5 Cr from AY 2020-21

✦ 5 Cr to 10 Cr from AY 2021-22

✦ Can we do audit even if not required?!!

✦ Non -A/c Payee Cheque/ Draft - Cash

✦ S. 44ADA – HUF, LLP excluded

# TDS – 194Q

- ❖ W.e.f. 1.7.2021. Similar to 206C(1H) !!
- ❖ Exceptions - Tax is collectible u/s. 206C other than transaction to which s. 206C(1H) applies
- ❖ Memorandum - If on a transaction TCS u/s 206C(1H) is required as well as TDS u/s 194Q, then on that transaction only TDS shall be there
- ❖ Cases where 50L condition is met:
  - ❖ Turnover in PY: Seller - 25 Cr, Buyer 5 Cr
  - ❖ Turnover in PY: Seller - 5 Cr, Buyer 25 Cr
  - ❖ Turnover in PY: Seller - 25 Cr, Buyer 25 Cr

# TDS – 194Q

FY ending	Seller 206C(1H)			Buyer (194-Q)			Bal.
	Sale	Receipt	TCS	Purchases	Payment	TDS	
2021	80	40	Nil	80	40	NA	40
2022	50	60	On 10	50	60	Nil	30
2023	80	50	Nil	80	50	On 30	60
2024	80	140	On 90?? 30?? 60??	80	140	On 30	Nil

# 194Q vs. 206C(1H)

- S. 194Q(6)(b) - Provisions of this section shall not apply to a **transaction on which tax is collectible u/s 206C** other than a transaction to which s. 206C(1H) applies
- S. 206C(1H) – Except ....other than goods being exported out of India or **goods covered in** s-s. (1) / (1F) / (1G)
- CBDT clarification on S. 206C(1H) vs. 206C(1F) - (1F) is for a single motor vehicle
  - Receipt from dealer of motor vehicle covered u/s 206C(1H), if not subjected to s. 206C(1F)
  - Sale to consumer:
    - Receipt of Rs. 10 L or less from buyer would be subjected to 206C(1H), if receipt of sale consideration for such vehicles during PY > Rs. 50 L
    - Receipt of sale consideration for sale of motor vehicle exceeding Rs. 10 L would not be subjected to 206C(1H) if subjected to 206C(1F)

# **CBDT GUIDELINES**

- Circular No. 13 of 2021 dt. 30<sup>th</sup> June 2021
- Exemption to:
  - Transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)
  - Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of CERC



# **CBDT GUIDELINES**

- **Calculation of threshold for the financial year 2021-22**
    - **Non-applicability on Payments / Crs prior to 1.7.2021**
    - **Limit of Rs. 50L from 1.4.2021**
  - **GST & Purchase Return**
    - **No TDS on GST portion unless GST not charged separately**
- TDS on purchase return can be adjusted against next purchase from same seller**

# **CBDT GUIDELINES**

- Not applicable to non-resident whose purchase of goods from seller resident in India is not effectively connected with his PE (Exports exempted)
- Not applicable if seller's whole income is exempt u/s 10 or any other act passed by Parliament. – farmers exempt – similar for 206C(1H)
- TDS on advance payment is required

# CBDT GUIDELINES

- Not applicable to buyer in year of incorporation
- For 10 Cr limit - sales or gross receipts or turnover **from business** carried on by him must exceed Rs 10 crore
- If TDS by e-commerce operator u/s 194-0 [including transactions on which there is no TDS due to s. 194-0(2)], then no TDS u/s 194Q
- If TDS by e-commerce operator u/s 194-0 then no TCS u/s 206C(1H)
- If transaction is both within the purview of s. 194-0 as well as s.194Q, then TDS u/s 194-0 only and not u/s 194Q.

# **CBDT GUIDELINES**

- If a transaction is both within purview of s. 194-0 as well as u/s 206C(1H), tax is required to be deducted u/s 194-0.
- Transaction shall come out of purview of s. 206C(1H) after tax has been deducted by e-commerce operator.
- Here primary responsibility is on e-commerce operator for TDS u/s 194-0 and that responsibility cannot be condoned if the seller has collected tax u/s 206C(1H).
- **Reason - rate of TDS u/s 194-0 is higher than rate of TCS u/s 206C(1H)**

# CBDT GUIDELINES

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

# S. 194 Q EXEMPTIONS

- Purchases from Non-Residents (Imports)
- Non-resident whose purchase of goods from seller resident in India is not effectively connected with his PE (Exports exempted)
- If on a transaction TDS is deducted under any other section.. Say 194C / 194 -O.
- Transactions in electricity, renewable energy certificates & energy saving certificates traded through power exchanges
- Transactions in securities & commodities which are traded through recognized SE or cleared & settled by recognized clearing corporation including recognized SEs or recognized clearing corporation located in IFSC

# S. 194 Q EXEMPTIONS

- If buyer's sales or gross receipts or turnover **from business** does not exceed Rs 10 crore – Schools, Hospitals...
  - Though CG, SG, Embassy, High Commission, etc. Local authority, exempt from s. 206C(1H) but s. 194Q !!!!
  - If seller's whole income is exempt u/s 10 or any other Act passed by Parliament – farmer...
  - Transaction on which tax is collectible u/s 206C other than a transaction to which s. 206C(1H) applies.
- If tax has been collected by seller u/ s. 206C(1H), before buyer could deduct tax u/s 194-Q on the same transaction.

# TDS / TCS ON NON-ITR FILERS

- ❖ S. 206AB (TDS) / 206CCA (TCS)
- ❖ Higher rate of TDS u/s 206AA / TCS u/s 206CC or new sections (except for non-residents not having a PE in India, and where TDS is u/ss 192, 192A, 194B, 194BB, 194LBC or 194N) for **non-filers of ITR**:
  - ❖ For both of 2 consecutive yrs (for which time limit u/s 139(1) has not expired) **AND**
  - ❖ TDS & TCS  $\geq$  Rs. 50000/- in **each** year.
  - ❖ TDS would be at higher of:
    - ❖ Twice the rate specified in the relevant provisions of the Act
    - ❖ Twice the rate or rate in force or

5%



# **S. 206AB / 206CCA COMPLIANCE**

- ❖ **Functionality through Reporting Portal of ITD - <https://report.insight.gov.in>**
- ❖ **Registration of Tax Deductors / Collectors on Reporting Portal –TAN mode - Principal Officer**
- ❖ **Accessing the compliance check facility**
- ❖ **PAN search mode**
- ❖ **Bulk search mode – CSV template**

# ITR DATES

- ❖ Spouse (u/s 5A) of partner in firm which is audited – 31<sup>st</sup> October
- ❖ Partner of firm which is under TP – 30<sup>th</sup> November
- ❖ Revised Return – 31<sup>st</sup> December
- ❖ Belated Return – 31<sup>st</sup> December
- ❖ S. 234F – Late fee Rs. 5000/- beyond 139(1), If income below 5L – 1000/-
- ❖ S. 234H – Non- intimation of Aadhar – Fee @ Rs.1000/-

## PARTNER - RETIREMENT / RE-CONSTITUTION

- ❖ 45(4) – Where partner (other than Co. or Co-operative society) receives any **capital asset or money** on **re-constitution** - CG in hands of firm.  
Proposed (4A) omitted
  - ❖  $A = B + C - D$
  - ❖ A = Gain, B = Money received, C = FMV of Asset received, D = Balance in Capital A/c as reduced by revaluation and self generated goodwill/asset
  - ❖ In case of A being negative – value to be nil
- ❖ S. 9B introduced – for Dissolution or reconstitution – **Capital asset or stock in trade**
- ❖ Reduction from sale consideration u/s 48 where capital asset is transferred giving effect to s. 45(4)

## RULE & CLARIFICATION – S. 45(4)

- ❖ Rule 8AA(5) – period of holding, if CG u/s 45(4):
  - ❖ Short Term Capital Asset if:
    - ❖ capital asset which is short term capital asset at the time of taxation of amount u/s 45(4);
    - ❖ capital asset forming part of block of asset;
    - ❖ capital asset being self-generated asset and self-generated goodwill
  - ❖ Long Term Capital Asset if:
    - ❖ if it is attributed to capital asset which is not covered above; and
    - is long term capital asset at the time of taxation

## **RULE & CLARIFICATION – S. 9B / 45(4)**

- ❖ Rule 8AB inserted for attribution of Income
- ❖ Form 5C to be filed in year in which CG u/s 45(4) by due date u/s 139(1)
- ❖ revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, allowed only if it is based on a valuation report obtained from a registered valuer as defined in rule 11U(g)
- ❖ depreciation not allowed on the increase in value of asset on account of its revaluation or recognition of the value of self-generated asset or self-generated goodwill.

## **RULE & CLARIFICATION – S. 9B / 45(4)**

- ❖ Circular No. 14 of 2021 dt. 2.7.2021
- ❖ Rule 8AB also applies to block of assets
- ❖ If capital asset remaining with the firm is forming part of a block of asset, the amount attributed to such capital asset under rule 8AB shall be reduced from the full value of the consideration received or accruing as a result of subsequent transfer of such asset by the firm, and the net value of such consideration shall be considered for reduction from the WDV of such block for calculation of CGs, u/s 50

## CASE STUDY 1

❖ ABC & Co have same B/s last 3 yrs

Liabilities		Assets	
Capital A	10	Land S	10
Capital B	10	Land T	10
Capital C	10	Land U	10
Total	30	Total	30

❖ Land Revalued – S & T – Rs. 70L & U – 50L

❖ Partner A wishes to exit – to take land U & Rs. 11 Lacs

❖ Assume Indexed cost of Land U is 15 L

## CASE STUDY 1

- ❖ Tax in Hands of ABC & Co:
  - ❖ U/s 9B
    - ❖  $50 \text{ (Sale)} - 15 \text{ (Indexed cost)} = 35 - \text{LTCG} - \text{Tax } 7 \text{ L}$
  - ❖ U/s 45(4)
    - ❖ Addition to capital –  $40(\text{BP}) - 7(\text{Tax}) = 33/3 = 11$
    - ❖  $11(\text{A}) + 50(\text{B}) - 21 \text{ (C)} [10+11] = 40 - \text{LTCG}$
- ❖ Attribution u/s 45(4) – 20 Lacs each on land S & T – File Form 5C
- ❖ Cost of land in hands of Partner C – 50 L



## CASE STUDY 2

❖ ABC & Co have same B/s last 3 yrs

Liabilities		Assets	
Capital A	10	Land S	10
Capital B	10	Land T	10
Capital C	10	Land U	10
Total	30	Total	30

❖ Land U sold for 50L

❖ Assume Indexed cost of Land U is 15 L

❖ Firm Revalues Land S & T to Rs. 70L each

❖ Partner A to exit – Take 61 L

## CASE STUDY 2

### ❖ Tax in Hands of ABC & Co:

#### ❖ Capital Gain

$$\begin{aligned} &\text{❖ } 50 \text{ (Sale)} - 15 \text{ (Indexed cost)} = 35 - \text{LTCG} - \text{Tax } 7 \\ &\quad \text{L} \end{aligned}$$

#### ❖ U/s 45(4)

$$\text{❖ Addition to capital} - 40(\text{BP}) - 7(\text{Tax}) = 33/3 = 11$$

$$\text{❖ } 61(\text{A}) + 0(\text{B}) - 21(\text{C}) [10+11] = 40 - \text{LTCG}$$

❖ Attribution u/s 45(4) – 20 Lacs each on land S & T – File Form 5C

## CASE STUDY 3

### ABC & Co B/s

Liabilities		Assets	
Capital A	100	Land S (2 yr old)	30
Capital B	100	Patent T (1 Yr)	45
Capital C	100	Cash	225
Total	300	Total	300

❖ Firm Revalues Land S to 45 L & Patent T to Rs. 60L & self generated goodwill of Rs. 30 L

❖ Indexed cost of land is 45 L

❖ Partner A to exit – Take 75 L & and Land S

## CASE STUDY 3

### ❖ Tax in Hands of ABC & Co:

#### ❖ U/s 9B

$$❖ 45 \text{ (Sale)} - 45 \text{ (Indexed cost)} = 0$$

#### ❖ U/s 45(4)

$$❖ \text{Addition to capital} - 15(\text{BP}) - 0(\text{Tax}) = 15/3 = 5$$

$$❖ 75(\text{A}) + 45(\text{B}) - 105(\text{C}) [100+5] = 15 - \text{STCG}$$

### ❖ Attribution u/s 45(4) – Remaining assets of which value increased – Patent (15) & goodwill 30 Lacs – attribution in 1:2 i.e. Patent 5 & goodwill 10 – File Form 5C

### ❖ No depreciation on Rs. 5 attributed to Patent T

### ❖ Depreciation on Patent T on 45 and not revalued

# ULIP

- ❖ ULIP defined u/s 10(10D) – Expl. 3
- ❖ Premium paid exceeding 2.5L in PY either single ULIP or multiple – No 10(10D) benefit except death case
- ❖ To be treated as capital asset u/s 2(14) and CG applicable u/s 45(1B)
- ❖ To be treated as Equity oriented fund u/s 111A and 112A
- ❖ S. 112A amended to define and include such ULIP
- ❖ STT to be applicable on such sale / redemption

## RE-ASSESSMENT & SEARCH

- ❖ No cases u/s 153A / 153C for search after 31.3.2021 – Block Period from 6 yrs to 3 yrs
- ❖ S. 148 - Any information which suggests that income chargeable to tax has escaped assessment:
  - ❖ In accordance with the risk management strategy formulated by Board
  - ❖ Final objection raised by CAG
  - ❖ Search, Survey [Except (2A) TDS/TCS or (5) Expenditure] or requisition cases –3 yrs

# RE-ASSESSMENT & SEARCH

- ❖ New S. 148A – Other than search & requisition cases:
  - ❖ AO to conduct enquiry
  - ❖ Opportunity of being heard to be given
  - ❖ Approval of specified authority required
- ❖ Normal period for case coming u/s 148 reduced from 6 yrs to 3 yrs

## RE-ASSESSMENT & SEARCH

- ❖ However, if AO has evidence in the form of asset, amounts to or is likely to amount to Rs. 50L or more - 10 Yrs
- ❖ Asset shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account
- ❖ In case proceedings u/s 147 started, can decide on any issue even if 148A not complied





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# Company Law

# BUDGET SPEECH

- ❖ Small Co S. 2(85) definition changed w.e.f. 1.4.2021
  - ❖ Paid up Capital from 50 L to 2 Cr
  - ❖ Turnover from 2 Cr to 20 Cr
- ❖ OPC changes w.e.f. 1.4.2021
  - ❖ Indian Citizen even if NR can form
  - ❖ Resident – to be in India for 120 days (earlier 182 days)
  - ❖ No limits for forced conversion
  - ❖ No limits for conversion of Pvt. Ltd. Co. into OPC
- INC 6 amended for both way conversion

# AS

- **Companies (Accounting Standards) Rules, 2021 notified vide notification dated 23.06.2021**
- **Effective for accounting periods commencing on or after 1<sup>st</sup> April, 2021**
- **These would replace Companies (Accounting Standards) Rules, 2006**

# CSR COMPLIANCE

- Co. to constitute CSR Committee & spend at least 2% of average net profits of company made during 3 immediately preceding FYs, if during immediately preceding FY:
  - Net worth of Rs. 500 Cr. or more, or
  - Turnover of Rs. 1000 Cr. or more, or
  - Net profit of rupees Rs. 5 Cr or more
- If not spent:
  - Not a ongoing project - trf to Sch. VII fund in 6 months
  - Ongoing Project – trf within 30 days to special A/c – spend within 3 years. If not trf to Sch. VII fund in 30 days

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Audit Trail



# SCHEDULE III

- ❖ Division I
  - ❖ Companies (Accounting Standard) Rule 2006
- ❖ Division II
  - ❖ Ind AS
- ❖ Division III
  - ❖ NBFC – Ind AS

# CHANGES – B/S

- ❖ Rounding-Off – Turnover to Total Income
- ❖ Heading of PPE corrected
  - II. ASSETS
  - Non-current assets
  - (1) (a) Property, Plant & Equipment and Intangible assets
  - (i) ~~Tangible assets~~ Property, Plant & Equipment
- ❖ Promoters' shareholding & changes during the year
- ❖ “Current Maturities of Long term borrowings” reclassified as Short Term Borrowings instead of Current Liabilities

# CHANGES – B/S

- ❖ Security Deposits reclassified as Other Non-current assets instead of Long-Term Loans & advances
- ❖ Trade Payables Ageing – MSME / Disputed
- ❖ Trade Receivable Ageing – Disputed / Doubtful / Unbilled Dues
- ❖ CWIP / Intangible Asset under Development ageing – In Progress / temporarily suspended - overdue or has exceeded its cost compared to its original plan CWIP separately (ageing of to be completed)
- ❖ In PPE / Intangible Asset Reco. - amt of change due to revaluation (if change is 10% or more in aggregate of net carrying value of each class of PPE) added



# CHANGES – B/S

- ❖ Title deeds of Immovable Property not held in name of the Company – Includes ...if held in name of promoter, director or relative of promoter / director or employee of promoter / director – **CARO – Cl. – 1(c)**
- ❖ In case of revaluation of PPE – valuation by a registered valuer – **CARO – Cl. – 1(d)**
- ❖ Loans or Advances in nature of loans **granted** to promoters, directors, KMPs & related parties (Companies Act) either severally or jointly - repayable on demand or without specifying any terms / period of repayment... along with % to total advances – AS 18, S. 186(4) – **CARO – Cl. – 3(f)**

# CHANGES – B/S

- ❖ Where company has not used borrowings from banks & FIs for specific purpose for which it was taken at B/S date - Details of where used – **CARO – Cl. – 9(c)**  
– **For TL only**
- ❖ Benami Property – to be given only where any proceedings have been initiated or pending against the company – **CARO – Cl. – 1 (e)**
- ❖ Where the Company has borrowings from banks or FIs against current assets - Quarterly returns filed are in agreement with books of accounts - if not, summary of reconciliation & reasons of material discrepancies – **CARO – Cl. 2(b) – 5 Cr**

# CHANGES – B/S

✦ Ratios along with numerator & denominator -  
explanation if variation > 25% - **CARO – cl. (19)**

1. Current Ratio
2. Debt-Equity Ratio
3. Debt Service Coverage Ratio
4. Return on Equity Ratio
5. Inventory turnover ratio
6. Trade Receivables turnover ratio
7. Trade payables turnover ratio
8. Net capital turnover ratio,
9. Net profit ratio,
10. Return on Capital employed
11. Return on investment.

# CHANGES – B/S

- ❖ Details where a company is a declared wilful defaulter by any bank / FI / other – **CARO – Cl. - 9(b)**
- ❖ Details of utilisation of Borrowed funds and share premium – **CARO – Cl. 9(e) & 9(f)**
  - ❖ Where company has advanced.. to any other person(s) or entity(ies), including foreign entities (Intermediaries) with the understanding (whether recorded in writing or otherwise) that the Intermediary shall:
    - ❖ directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (Ultimate Beneficiaries) or
    - ❖ provide any guarantee, security or the like to or on behalf of Ultimate Beneficiaries
- ❖ Similar – where company has borrowed....

# CHANGES – B/S

- ❖ Relationship with struck-off Company – Investment, Drs, Crs, Shareholders, Others
- ❖ Any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof.
- ❖ Compliance with number of layers of companies
- ❖ Compliance with approved Scheme(s) of Arrangements – accounting in books of account 'in accordance with the Scheme' and 'in accordance with accounting standards' and deviation, if any

# CHANGES – PL

- ❖ Total Revenue – Total Income
- ❖ Revenue from operations to include - Grants or donations received (relevant in case of s. 8 co. only)
- ❖ Undisclosed income - not recorded in books of a/cs which are surrendered or disclosed as income during the year under Income Tax, unless immunity under scheme - also whether previously unrecorded income & related assets have been properly recorded in books of a/c during the year. – **CARO – Cl. (8)**
- ❖ Details where the Company has traded or invested in Crypto currency or Virtual Currency

# CHANGES – PL

## ✦ Corporate Social Responsibility (CSR) – CARO – Cl. 20

1. Amount required to be spent during the year,
2. Amount of expenditure incurred,
3. Shortfall at the end of the year,
4. Total of previous years shortfall,
5. Reason for shortfall,
6. Nature of CSR activities,
7. Details of related party transactions
8. Where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.

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answers

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