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Taxation of Salaried Employees

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**Exploring
Provisions**

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PREFACE

The amount of scattered and incomprehensible information available in the market prevents a salaried employee from becoming aware of the options available to maximize their income through tax savings and makes tax filing a dreaded chore for them.

Purpose of this Document

This document provides effective and convenient material to deflect hard-to-understand information and lack of awareness and targets learning about available options.

Intended Audience

This document is intended for use by the clients and staff.

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Introduction

Income tax is an annual tax on income. The Income Tax Act, 1961 (Sec 4) provides that in respect of the total income of the previous year of every person, income tax shall be charged for the corresponding assessment year at the rates laid down by the Finance Act for that assessment year. Section 14 of the Income Tax Act further provides that for the purpose of charge of income Tax and computation of total income all income shall be classified under the following heads of income:

- A. Salaries
- B. Income from house property
- C. Profits and gains of business or profession.
- D. Capital gains
- E. Income from other sources.

The total income from all the above heads of income is calculated in accordance with the provisions of the Act as they stand on the first day of April of any assessment year.

1. IMPORTANT CONCEPTS & PROCEDURES UNDER THE INCOME TAX ACT, 1961

- 1.1 **Assessee** (Section 2(7)): An assessee is a person by whom any tax or any other sum of money is payable under the Act.
- 1.2 **Assessment Year** (Section 2(9)): Assessment year means the period of 12 months starting from 1st April of every year and ending on 31st March of the next year.
- 1.3 **Previous year** (Section 3): Income earned in a year is taxable in the next year. The year in which income is earned is known as

the previous year and the next year in which income is taxable is known as the assessment year.

- 1.4 **Receipt Vs. accrual** of income: Income is said to have been received by a person when payment has been actually received whereas income is said to have accrued to a person if there arises in the person a fixed and unconditional right to receive such income.
- 1.5 **Belated Return:** Section 139(4) provides that a return which has not been furnished by the due date may still be furnished as a belated return before the expiry of one year from the end of the assessment year or before the completion of assessment, whichever is earlier. However, on any return of income that has not been filed by the end of the relevant assessment year, penalty of Rs.5000/- u/s 271F shall be levied.
- 1.6 **Revised Return:** If a person having filed his return within the due date discovers any omission or wrong statement therein, he may file a revised return before the expiry of one year from the end of the assessment year or completion of assessment whichever is earlier.
- 1.7 **Processing u/s 143(1):** The Finance Act 2008 has reintroduced provisions in respect of correcting arithmetical mistakes or internal inconsistencies at the stage of processing of returns. It has, thus been provided that, during the stage of processing, the total income shall be computed after making adjustments in respect of any arithmetical error in the return or any incorrect claim apparent from information in the return and if on such computation, any tax or interest or refund is found due on adjustment of TDS or advance tax or self-assessment tax, then an intimation specifying the amount payable shall be prepared/generated or issued to the assessee. If any refund is found due, it is to be sent along with intimation to such effect. If no demand or no refund arises, the acknowledgement of the return is deemed to be intimation. Such intimation is to be sent

within one year from the end of the financial year in which the return is filed.

- 1.8 **Assessment u/s 143(3):** If the Assessing Officer on the basis of the return filed by the assessee, considers that it is necessary to ensure that the assessee has not understated his income, he shall serve on the assessee a notice u/s 143(2) and, after obtaining such information as he may require, complete the assessment (commonly referred as scrutiny assessment) u/s 143(3).
- 1.9 **Rectification of mistake u/s 154:** If any order passed by an income tax authority suffers from a mistake apparent from record, the assessee may make an application for rectifying the same before the expiry of four years from the end of the financial year in which the above order was passed. The Finance Act 2001 has provided that where an application for rectification under this Section is made by the assessee on or after 1.6.2001, the same shall have to be acted upon by the income tax authority within a period of six months from the end of the month in which the application is received.

2. FILING OF INCOME TAX RETURN

Section 139(1) of the Income-tax Act, 1961 provides that every person whose total income during the previous year exceeded the maximum amount not chargeable to tax shall furnish a return of income. The Finance Act, 2003 has introduced Section 139(1B) which provides for furnishing of return of income on computer readable media, such as floppy, diskette, magnetic cartridge tape, CD- ROM etc., in accordance with the **e-filing** scheme specified by the Board in this regard.

- 2.1 The return of income can be submitted in the following manner:

(i) a paper form;

Where the return is furnished in paper format, acknowledgement slip attached with the return should be duly filled in. Returns in new forms are not required to be filed in duplicate.

(ii) e-filing

Returns can be e-filed through the internet. E-filing of return is mandatory for companies and firms requiring statutory audit u/s 44AB. From A.Y. 2011-12, it is now also mandatory for all business entities (including individuals/HUF) liable to tax audit to e-file their return of income. E-filing can be done with or without digital signature

a) If the returns are filed using digital signature, then no further action is required from the tax payers.

b) If the returns are filed without using digital signature, then the tax payers have to file ITR-V with the department within 15 days of e-filing.

c) The tax payer can e-file the returns through an e-intermediary also who will e-file and assist him in filing of ITR-V within 15 days.

iii) a bar-coded paper return.

Where the return of income is furnished by using bar coded paper return, then the tax payers need to print two copies of Form ITR-V. Both copies should be verified and submitted. The receiving official shall return one copy after affixing the stamp and seal.

The Finance Act, 2005 has provided that w.e.f. 01.04.2006 every person shall file a return of income on or before the relevant due date even if his total income **without giving effect to the provisions of Chapter VI-A** exceeds the maximum amount not chargeable to tax.

2.2 Return not required to be filed:

The Central Board of Direct Taxes has notified the scheme for exempting salaried taxpayers with **total income up to Rs. 5 lakhs** from filing income tax return for assessment year 2012-13, which will be due on July 31, 2012. Individuals having total income up to Rs. 5,00,000 for FY. 2011-12, after allowable deductions, consisting of salary from a single employer and interest income from deposits in saving bank account up to Rs. 10,000 are not required to file their income tax return. Such individuals must report their Permanent Account Number (PAN) and the entire income from bank interest to their employer, pay the entire tax by way of deduction of tax at source, and obtain a certificate of tax deduction in Form No. 16.

Persons receiving salary from more than one employer, having income from sources other than salary and interest income from a saving bank account, or having refund claims shall not be covered under the scheme. The scheme shall also not be applicable in cases where notices are issued for filing the income tax return under section 142(1) or Section 148 or Section 153A or Section 153C of the Income Tax Act, 1961.

2.3 DUE DATES FOR PAYMENT OF ADVANCE TAX & FILING OF RETURN

Liability for payment of advance tax arises where the amount of tax payable by the assessee for the year is Rs.10,000/- or more. The due dates for various installments of advance tax are given below:

	DUE DATE	AMOUNT PAYABLE
i)	On or before 15th September	Amount not less than 30% of the previous year of such advance tax payable
ii)	On or before 15th December	Amount not less than 60% of the previous year of such advance tax payable
iii)	On or before 15th March	Entire balance amount of the previous year such advance tax payable

Also, any amount paid by way of advance tax on or before 31st March is treated as advance tax paid during the financial year.

However, a resident individual who is of the age of 60 years or more and who does not have any income under the head business is exempted from payment of any advance tax.

2.4 Due Date

The due date of filing of return of income in case of salaried employees is **31st of July**.

2.5 Belated Return:

If the return of income has not been filed within the due date, a belated return may still be furnished before the expiry of one year from the end of the assessment year or completion of assessment, whichever is earlier.

A belated return filed u/s 139(4) cannot be revised u/s 139(5)

2.6 FORMS TO BE USED:- The forms to be used for filing the return of income from A.Y. 2011-12 are mentioned below:

	Sahaj (ITR-1	Individual	Income from salary/pension: or Income from one house property (excluding where loss brought forward from previous year): or Income from other sources (excluding winnings from lottery and income from races horses) Note: Further in a case where income of another person like spouse, minor child, etc. is to be clubbed with the assessee this return form can be used only if the income being clubbed falls in to above income categories.
	ITR-2	Individual / HUF	Individual who cannot file Sahaj above and where the total income does not include any income chargeable to income-tax under the head "Profits or gains of business or profession",
	ITR-3	Individual / HUF	partner in a firm and income chargeable to income-tax under the head "Profits or

			gains of business or profession” does not include any income except the income by way of any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by him from such firm
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IMPORTANT FEATURES OF SAHAJ:

- These are the simplest, technology enabled and taxpayer friendly forms designed to facilitate faster digitalization and speedy processing.
- These are colored forms. Taxpayers can download forms from website and print using a color printer or A4 size white paper. It is advisable for taxpayer to set the ‘properties’ in printing options to ‘fit to page’ and print the forms on good quality paper.
- The Acknowledgement copy (ITR-V) to be retained by taxpayer may be printed in black & white.

2.7 CHALLAN FORMS:-

The following are the new computerized challan forms:-

A common single copy challan No. ITNS 280 for payment of Income tax
(Copy of challan enclosed)

All the columns in the challan form should invariably be filled in, details such as PAN, assessment year, status and full address of the payer in

capital letters, the relevant columns of tax, interest etc., should also be filled in properly.

To know your Jurisdiction- log in at:
<https://incometaxindiaefiling.gov.in/portal>, enter PAN and get the jurisdiction:



2.8 Compulsory / Mandatory E filing of Return with digital signature and without digital signature

1	Individual /HUF	ITR-1, ITR-2 ,ITR-3, ITR-4, ITR-4S	If income exceeding 10 Lakh
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2	Individual /HUF	ITR-2,ITR-3,ITR-4	resident and has (i) assets (including financial interest in any entity) located outside India; or (ii) signing authority in any account located outside India
Compulsory e filing of Income Tax return with digital signature			
1	Individual /HUF	ITR-4	if provisions of section 44AB are applicable

2.9 RATES OF INCOME-TAX for A.Y. 2013-14

A. Normal Rates of tax:

Where the total income does not exceed Rs. 2,00,000/-.	NIL
Where the total income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	10 per cent of the amount by which the total income exceeds Rs.2,00,000/-
Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 30,000/- plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 10,00,000/-.	Rs. 130,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 10,00,000/-.

B. Rates of tax for an individual, resident in India and of the age of sixty years or more but less than eighty years at any time during the financial year:

Where the total income does not exceed Rs. 2,50,000	NIL
Where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000/-.	10 per cent, of the amount by which the total income exceeds Rs. 2,50,000/-
Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 25,000/- plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 10,00,000/-.	Rs. 125,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 10,00,000/-.

C. In case of every individual being a resident in India, who is of the age of eighty years or more at any time during the financial year:

Where the total income does not exceed Rs. 5,00,000/-	NIL
Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 10,00,000/-.	Rs. 100,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 10,00,000/-.

The rates for charging income tax for F.Y. 2011-12 i.e. A.Y. 2012-13 will be as follows :-

A. Normal Rates of tax:

Where the total income does not exceed Rs. 180000/-.	NIL
Where the total income exceeds Rs. 1,80,000 but does not exceed Rs. 5,00 000	10 per cent of the amount by which the total income exceeds Rs. 1,80,000 /-

Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 8,00,000/-.	Rs. 32,000/- plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 8,00,000/-.	Rs. 92,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 8,00,000/-.

B. Rates of tax for a woman, resident in India and below sixty years of age at any time during the financial year:

Where the total income does not exceed Rs. 1,90,000/-.	NIL
Where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 5,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,90,000/-
Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 8,00,000/-.	Rs. 31,000/- plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 8,00,000/-.	Rs. 91,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 8,00,000/-.

C. Rates of tax for an individual, resident in India and of the age of sixty years or more but less than eighty years at any time during the financial year:

Where the total income does not exceed Rs. 2,50,000	NIL
Where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000/-.	10 per cent, of the amount by which the total income exceeds Rs. 2,50,000/-
Where the total income exceeds	Rs. 25,000/- plus 20 per cent of the

Rs. 5,00,000/- but does not exceed Rs. 8,00,000/-.	amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 8,00,000/-.	Rs. 85,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 8,00,000/-.

D. In case of every individual being a resident in India, who is of the age of eighty years or more at any time during the financial year:

Where the total income does not exceed Rs. 5,00,000/-	NIL
Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 8,00,000/-.	20 per cent of the amount by which the total income exceeds Rs. 5,00,000/-.
Where the total income exceeds Rs. 8,00,000/-.	Rs. 60,000/- plus 30 per cent of the amount by which the total income exceeds Rs. 8,00,000/-.

2.10 CALCULATION OF INTEREST

The Income Tax Act provides for charging of interest for non-payment/short payment/deferment in payment of advance tax which is calculated as below:

i) INTEREST U/S 234A:

For late or non-furnishing of return, simple interest @ 1% for every month or part thereof from the due date of filing of return to the date of furnishing of return, on the tax as determined u/s 143(1) or on regular assessment as reduced by TDS/advance tax paid or tax reliefs, if any, under Double Tax Avoidance Agreements with foreign countries.

ii) INTEREST U/S 234B:

For short fall in payment of advance tax by more than 10%, simple interest @ 1% per month or part thereof is chargeable from 1st April of the assessment year to the date of processing u/s 143(1) or to the date of completion of regular assessment, on the tax as determined u/s 143(1) or on regular assessment less advance taxpaid/ TDS or tax reliefs, if any, under Double Tax Avoidance Agreements with foreign countries.

iii) INTEREST U/S 234C:

For deferment of advance tax:

If advance tax paid by 15th September is less than 30% of advance tax payable, simple interest @ 1% is payable for three months on tax determined on returned income as reduced by TDS/TCS/Amount of advance tax already paid or tax relief, if any, under Double Tax Avoidance Agreement with forgiving **contribution**. Similarly, if amount of tax paid on or before 15th December is less than 60% of tax due on returned income, interest @ 1% per month is to be charged for 3 months on the amount stated as above. Again, if the advance tax paid by 15th March is less than tax due on returned income, interest @ 1% per month on the shortfall is to be charged for one month.

iv) INTEREST U/S 234D:

Interest @ 0.5% is levied under this Section when any refund is granted to the assessee u/s 143(1) and on regular assessment it is found that either no refund is due or the amount already refunded exceeds the refund determined on regular assessment. The said interest is levied @ 0.5% on the whole or excess amount so refunded for every month or part thereof from the date of grant of refund to the date of such regular assessment.

3 Form 26AS

Income tax Department has given a magic wand to the tax payer to check whether the due credit of taxes has been made available to him or not. The PAN holder can ensure that all the taxes paid by him have been duly deposited to the government account by the deductor.

3.1 PAN holder can view its Annual Tax Statement (Form 26AS) online to check the following:

- Details of tax deducted on behalf of the taxpayer by deductor
- Details of tax collected on behalf of the taxpayer by collectors
- Advance tax/self-assessment tax/regular assessment tax, etc. deposited by the taxpayers (PAN holders)
- Details of paid refund received during the financial year
- Details of the High value Transactions in respect of shares, mutual fund etc.

The Tax Credit Statement (Form 26AS) are generated wherein valid PAN has been reported in the TDS statements. Tax Credits Statement (Form 26AS) **can be viewed/accessed through 3 ways :**

1. View Tax Credit from <https://incometaxindiaefiling.gov.in>

Taxpayers who are registered at the above portal viz. <https://incometaxindiaefiling.gov.in> can view 26AS by clicking on 'View Tax Credit Statement (Form 26AS)' in "My Account". The facility is available free of cost.

For "New Registration", Click on 'Register' on the portal. The registration process is user-friendly and takes minimal time.

2. View Tax Credit (Form 26AS) from bank site through net banking facility

The facility is available to a PAN holder having net banking account with any of authorized banks. View of Tax Credit Statement (Form 26AS) is available only if the PAN is mapped to that particular account. The facility is available for free of cost.

List of banks registered with NSDL for providing view of Tax Credit Statement (Form 26AS) are as below

1. Allahabad Bank
2. Andhra Bank
3. Axis Bank Limited
4. Bank of Baroda
5. Bank of India
6. Bank of Maharashtra
7. Canara Bank
8. Central Bank of India
9. Citibank N.A.
10. City Union Bank Limited
11. Corporation Bank
12. HDFC Bank Limited
13. ICICI Bank Limited
14. IDBI Bank Limited
15. Indian Overseas Bank
16. Indian Bank
17. Karnataka Bank Limited
18. Kotak Mahindra Bank Limited
19. Oriental Bank of Commerce
20. State Bank of Bikaner & Jaipur
21. State Bank of Hyderabad
22. State Bank of India
23. State Bank of Mysore
24. State Bank of Patiala
25. State Bank of Travancore

26. Syndicate Bank
27. The Federal Bank Limited
28. The Karur Vysya Bank Limited
29. The Saraswat Co-operative Bank Limited
30. UCO Bank
31. Union Bank of India
32. United Bank of India
33. Vijaya Bank

3. View Tax Credit (Form 26AS) from TIN website

The facility is available to PANs that are registered with Tax Information Network for view of 26AS statement. The PAN holder has to fill up an online Registration form for such purpose. Thereafter, verification of PAN holder's identity is done by the TIN-Facilitation Centre personnel either at PAN holder's address or at the TIN-facilitation center that has been chosen by the PAN holder. The verification involves a cost at prescribed rates. Once authorised, the PAN holder can view Tax Credit Statement online.

3.2 Conditions when a PAN holder cannot see the credit of taxes deducted in 26AS

1. When tax deductor has not mentioned correct PAN against your taxes
2. When tax deductor has not deposited the tax deducted from your income

3.3 Action Required

1. Contact your tax deductor for correction of your PAN details in the returns filed by him

2. Contact your tax deductor for deposit of taxes with government or refund of your taxes if he refuses to deposit with government.

4 Important checks that need to follow the filing of return

4.1 intimation under section 143(1) of Income Tax Act,1961

It is intimation to the assessee for any differences noticed between the return filed by the assessee and as per the computation of the IT department. It is intimation of refund or income tax payable depending upon the case.

Intimation can be checked by logging in to ‘my account’ at <https://incometaxindiaefiling.gov.in>

4.2 Refund Status

- 1) Status of refund due can be found by logging in to ‘my account’ at <https://incometaxindiaefiling.gov.in> The refunds generated on processing of Income tax Returns by the Assessing officers/ CPC-Bangalore are transmitted to State Bank of India, CMP branch, Mumbai (Refund Banker) on the next day of processing for further distribution to taxpayers.

Refunds are being sent in following two modes:

- i. **RTGS / NECS:** To enable credit of refund directly to the bank account, Taxpayer’s Bank A/c (at least 10 digits), MICR code of bank branch and correct communication address is mandatory.
- ii. **Paper Cheque:** Bank Account No, Correct address is mandatory.

- 2) Taxpayers can also view status of refund 10 days after their refund has been sent by the Assessing Officer to the Refund Banker - at www.tin-nsdl.com by entering 'PAN' and 'Assessment Year' below.

Please enter your Permanent Account number and Assessment Year for which status of refund is to be tracked.

Permanent Account Number (PAN)	<input type="text"/>
Assessment Year	2013-2014 ▼
<input type="button" value="Submit"/>	

Status of 'paid' refund, being paid other than through 'Refund Banker,' can also be viewed at www.tin-nsdl.com by entering the 'PAN' and 'Assessment Year' below.

- 3) 'Refund paid' status is also being reflected in the 'Tax Credit Statements' in Form 26AS.

4.3 Status of return:

Taxpayer can also check the following <https://incometaxindiaefiling.gov.in> and after logging going to 'my account'

1. Know your Jurisdictional AO
2. ITR-V Receipt Status
3. CPC Refund Failure Status
4. CPC Processing Status

5 Oppressed heads Due to complexity of nature:

5.1 INCOME FROM HOUSE PROPERTY

5.1.1 CONDITIONS NECESSARY FOR TAXING INCOME

- The property should consist of any building or land appurtenant thereto
- The assessee should be the owner of the property
- The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to tax.

Unless all the aforesaid conditions are satisfied, the property income cannot be charged to tax under the head 'Income from House property'.

5.1.2 Owner

- Concept explained** For the purpose of section 22, the concept hitherto understood even in court decisions has been that the owner has to be a legal owner. Annual value of property is assessed to tax under section 22 in the hands of owner even if he is not in receipt of income or even if income is received by some other person. For instance, if a person makes gift of rental income to a friend or a relative, without transferring ownership of the property, annual value of property is taxable in the hands of the donor, even if rental income is received by the donee- S. Kartar Singh v. CIT (1969) 73 ITR 438 (Delhi). In other words, for the purpose of section 22, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right- RB. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 (SC). However, there has been some refinement in the concept of ownership after the decision of the Surpeme Court in the case of CIT v. Podar Cement (P) Ltd. (1997) 92 Taxman 541 (SC)/226 ITR 625 (SC). In this case, the Supreme Court has

expressed the view that under common law ‘owner’ means a person who has got valid title generally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act etc. But in the context of Section 22 of the Income tax Act, having regard to the ground realities and further having regard to the object of the Income tax Act, namely, “to tax the income”, ‘owner’ is a person who is entitled to receive income from the property in his own right.

The requirement of registration of the sale deed in the context of section 22 is not warranted. In view of this, where a property is handed over to a purchaser to enjoy fruits of that property by the builder, the purchaser is to be treated as ‘owner’ of that property even though no registered document has been executed in his favour.

ii. Ownership is relevant for the previous year

As tax is levied only on the income of previous year, annual value of property, owned by a person during the previous year, is taxable in the following assessment year, even if the assessee is not owner of the property during the assessment year.

iii. Deemed ownership

In the following situations the ownership shall be deemed for taxing income from house property in view of section 27 of the Act:

(i) When house property is transferred to spouse (otherwise than in connection with an agreement to live apart) or minor child (not being a married daughter) without adequate consideration (Section 27(i))

(ii) In the case of holder of an impartible estate (Section 27(ii))

(iii) A member of a cooperative society, company etc. to whom a building or part thereof has been allotted or leased under a house building scheme

(Section 27(iii)). Thus, when a flat is allotted by a cooperative society or a company to its members/shareholders who enjoy the flat, technically the co-operative society/company may be the owner. However, in such situations the allottees are deemed to be owners and it is the allottees who will be taxed under this head.

(iv) A person who is allowed to take or retain possession of any building (or part thereof) in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, is deemed as the owner of that building (or part thereof) [Sec. 27 (iiia)].

(v) A person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building (or part thereof) by virtue of any such transaction as is referred to in section 269UA(f) [i.e. if a person takes a house on lease for a period of 12 months or more, is deemed as the owner of that building or part thereof] [Sec. 27 (iiib)].

Persons who purchase properties on the basis of Power of Attorney and under long term leases (12 months & more) are also deemed to be owners. The concept of deemed owner is introduced to prevent misuse like transferring properties in the name of spouse or minor child etc. and for assessment of income in the hands of beneficial owner.

iv. Co-ownership

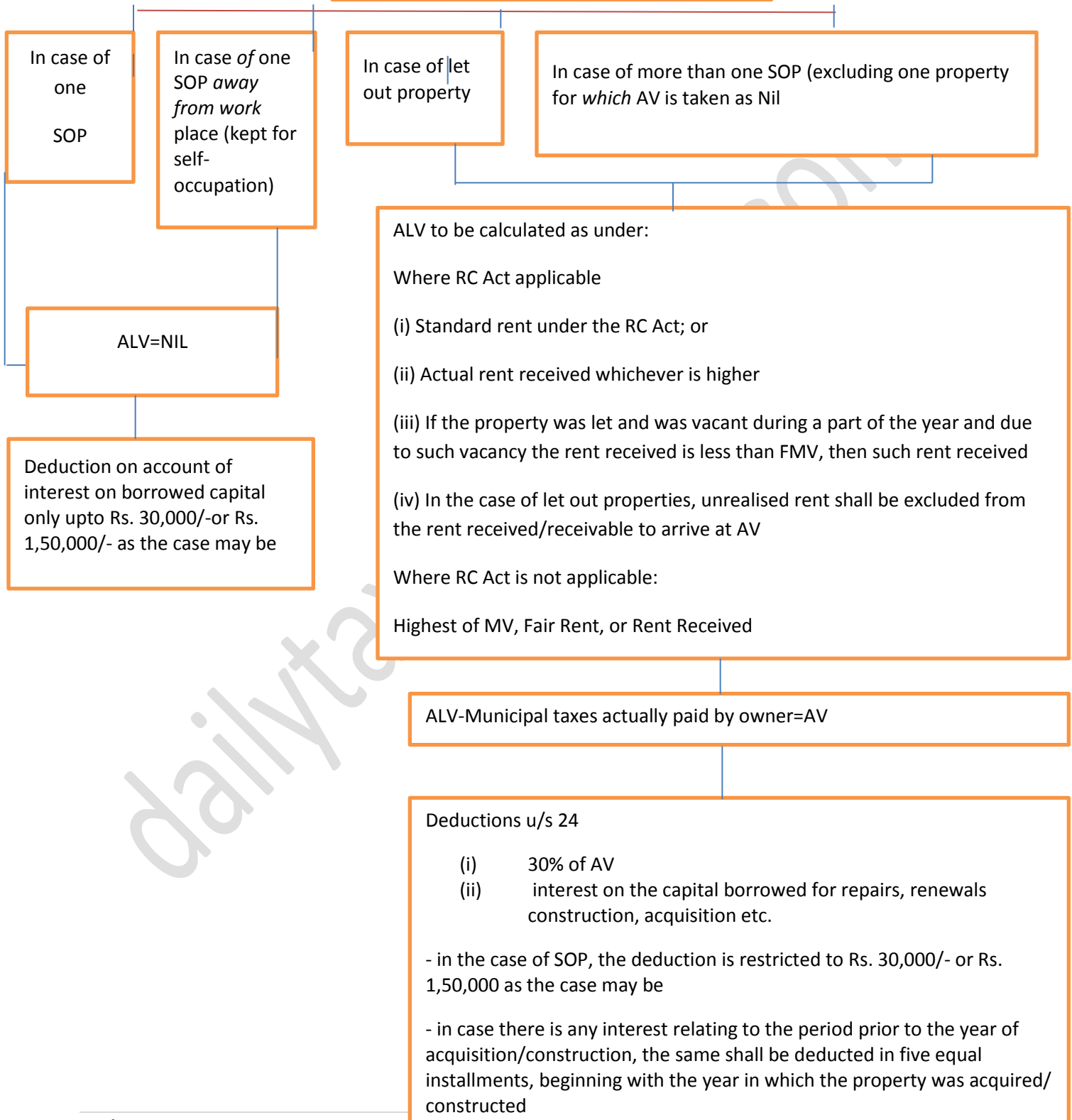
Section 26 concerns properties which are owned by coowners. This section provides that where property consisting of building or buildings and land appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable such persons shall not, in respect of such property, be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income. In such an eventuality,

the relief admissible under section 23(2) shall also be separately allowable to each such person [Explanation to Section 26].

5.1.3 Deductions:

- a. Standard deduction @ 30% of AV
- b. Housing loan interest- let out property
 - 1. Housing loan interest deduction is claimable at Rs. 150000 if the property is self-occupied or vacant. And if the property is let out anytime during in the financial year there would be no ceiling for deduction of interest. In other words the deduction can even exceed Rs. 150000 in such cases.
 - 2. Further such deduction is available on accrual basis.
 - 3. No deduction for compound interest- Further there is no deduction available for interest on interest so that in the event of any default in payment of interest the additional interest charged will not qualify.
- c. No further deduction can be claimed from out of the annual value for the following:
 - i. Brokerage;
 - ii. Stamp duty or registration;
 - iii. Electricity;
 - iv. Maintenance
 - v. Sweeper, gardener
 - vi. Collection charges etc.

Computation of income from House property (At a glance)



Note: AV=Annual Value of the property
 MV = Municipal Valuation
 RC Act = Rent Control Act
 ALV = Annual Lettable value of the property
 SOP = Self occupied property

5.1.4 ILLUSTRATIONS FOR UNDERSTANDING

Illustration I

In the context of a residential property, the following information relatable to the Asst. year 2012-13 is given for determination of the Gross Annual Value (GAV):

- | | |
|---|-------------------|
| i. Municipal Valuation | Rs. 1,20,000 p.a. |
| ii. Rent on which property has been let out Rs. 20,000 p.m. | Rs 2,40,000 p.a. |
| iii. Period for which property remained vacant 2 months | |

The GAV would be Rs. 2,00,000

In respect of this property, the assessee incurs following expenses during the year 2011-12:

- | | |
|--|------------|
| i. Municipal taxes (including Rs. 2000 relating to previous year) | Rs. 9,000 |
| ii. Repairs | Rs. 12,000 |
| iii. Interest on money borrowed for construction of the house from Canara Bank | Rs. 28,000 |
| iv. Repayment of Loan for house Construction to Canara Bank | Rs. 24,000 |
| v. Chowkidar & Mali's pay | Rs. 20,000 |

The other sources of income of A during the previous year are:

i. Salary	Rs. 1,80,000
ii. Interest from bank	Rs. 48,000
iii. Dividends	Rs. 12,000
iv. A has deposited Rs. 24,000 in the Public Provident Fund	

Income computation of A inclusive of property income will be as under:

A. Salary		1,80,000
B. Income from property		
GAV	2,00,000	
Less Municipal taxes	9,000	
Net ALV	1,91,000	
Less standard deduction@30%	57,300	
	1,33,700	
Less interest on loan	28,000	1,05,700
C. Income from other sources:		
Bank interest	48,000	
Dividends (tax free)		48,000
Gross Total Income		3,33,700
Less Deduction u/s 80C:		
PPF Contribution	24,000	
Repayment of loan for House construction	24,000	48,000
D. Total Income		2,85,700
Tax there on		
On first Rs. 1,60,000	NiL	
On next Rs. 1,97,700 @ 10%	10,770	
E. Total tax		10,770
Add: Education Cess on Income Tax @ 2%		215

Secondary and Higher Education Cess
on Income Tax @ 1%

108

F. Total amount chargeable

11,093

Note:

- a. No standard deduction from Salaries is available from asst. year 2006-07 onwards.
- b. No deduction under Section 80L is available from asst. year 2006-07 onwards.
- c. No rebate under Section 88 is available from asst. year 2006-07 onwards.
- d. Expenses on repairs and salaries of chowkidar and mali are covered by the standard deduction of 30% and no separate deduction for these expenses are permissible.

Illustration II

‘A’ who works in a Limited Company in Mumbai has a house property in Kanpur. He has come with his family on transfer to Mumbai where he stays in a rented accommodation. He has only one house at Kanpur which remained unoccupied throughout the year 2010-11 since he could not arrange for a suitable tenant. The rent of a similar property in Kanpur will be Rs. 5000/- p.a. The municipal valuation is Rs. 30,000/- and he has paid municipal taxes of Rs. 2,500/-. He had taken a loan of Rs. 2,00,000 for reconstruction of the property and interest payable thereon is Rs. 25,000/-. What will be his income from House Property?

Assessment year 2012-13

Annual value of the House at Kanpur (since the assessee owns only one house which he could not use throughout the

Nil

year because of his employment at Mumbai). :

Less: Interest on money borrowed	Rs. 25,000
Loss from house property	Rs. 25,000

Note: Only interest on money borrowed for construction, acquisition, repair and reconstruction is allowed in respect of such property, subject to a maximum of Rs. 30,000/- or Rs. 1,50,000/- as the case may be.

Illustration III

Asst. year 2012-13

Mr. A is owner of two house properties, which are let out. The tentative details for the financial year 2011-12 are as follows:

	Property A	Property B
Municipal valuation	60,000	50,000
Fair rent	70,000	60,000
Actual rent received p.m.	SOP	10,000
Municipal tax paid by the owner (including Rs. 1000 of last year	4000	10,000
Interest on loan taken for the marriage of his daughter (Property B is mortgaged)		20,000
Interest on loan for Renovation	40,000	
Interest on loan borrowed for construction (started after 01.04.99 and completed before 1.4.2003)		1,60,000

Property B was lying vacant for two months during the year. The assessee has appointed a Caretaker for both the properties and he is paid a salary of Rs. 1000/- per month

The assessee had another house which was given on rent (upto the A.Y 1999-2000). In 2000-01, it was sold. When it was let out, the assessee could not realize rent of Rs. 25,000 for the A.Ys 1997-98 and 1998-99. However, after a court order, the tenant has now paid the same.

On account of the said court orders, the assessee has also received Rs. 1,00,000/- as arrears of rent for other previous years.

COMPUTATION OF INCOME FROM HOUSE PROPERTY

Property 'A'

As the house was used for self-occupation, the Annual value shall be taken as Nil and no further deduction is allowed, except interest on borrowed capital.

However, as the capital was borrowed for renovating the house, maximum deduction available is Rs. 30,000/-. Computation of income will be:

Annual Value :	Nil
Less: Interest on borrowed capital (restrict to Rs. 30,000) :	Rs. 30,000
Net loss :	Rs. 30,000

Property 'B'

Annual value (being the rent received)	1,00,000
(on the basis of actual rent received 10,000 x 10) :	
Less: Municipal tax actually paid	10,000
Net adjusted annual value :	90,000
Less: Deduction under section 24	
(i) Deduction u/s 24(a) :	27,000
(ii) Interest on capital borrowed :	<u>1,60,000</u>
(iii) Total deduction (i) + (ii) :	1,87,000
Net loss: :	97,000
Loss from House Property A :	30,000
Loss from House Property B :	97,000
Total loss from house properties A and B :	1,27,000

Note:

1. Annual value of let out property: The annual value will be the actual rent received during the year, as it is higher than the Municipal Valuation and fair rent.
2. Municipal Taxes: The deduction is on the basis of actual payment. Therefore, it is immaterial that part of it relates to the earlier years.
3. Interest on capital borrowed for construction:
 - a) In the case of self-occupied property - as the loan was for renovation, the deduction on account of interest is restricted to Rs. 30,000/-

b) In the case of let out house, there is no restriction on the interest to be allowed as deduction. Here, the borrowal may be for repairs, renewals, construction, acquisition etc.

4. Interest on the loan borrowed for the marriage of the daughter cannot be allowed as deduction, because the purpose of loan is not for construction, repairs, etc., of the house property.
5. Payment of salary to caretaker cannot be allowed as deduction as it is covered in standard deduction @ 30%.
6. Unrealised rent: Such rent will be assessed in the year of receipt even if the assessee may not own the house any more. No deduction is available for this income.
7. Arrears: Similarly, arrears are also to be assessed in the year of receipt. The only deduction to be allowed from this is at flat rate of 30% towards repairs etc.
8. the arrears of rent received in the assessment year 2012-13 cannot be spread over the previous years. Commissioner of Income-tax v. R. J. Wood P. Ltd. (2011) 334ITR358 (Del)

Unrealised rent to be treated as income of this year	Rs. 25,000
Add: Arrears of rent received :	Rs.1,00,000
Less: Deduction towards repairs etc. @ 30% : <u>Rs. 30,000</u>	<u>Rs. 70,000</u>
	Rs. 95,000

INCOME UNDER THE HEAD HOUSE PROPERTY

Net Loss for the year against :	Rs.1,27,000
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properties A and B

Less: Income to be assessed in this year as above Rs. 95,000

Net Loss to be carried forward to next year for being set off as per the provisions of Section 71B Rs. 32,000

5.2 Capital Gains

5.2.1 Meaning

A capital gain arising from the transfer of a capital asset is subject to tax. Capital asset is defined under the tax law to mean property of any kind, but is does not include personal effects like movable property held for personal use but includes jewellery , drawings, archeological collections, etc

Short term

- held for not more than thirty-six months immediately preceding the date of its transfer and for shares / units held for not more than 12 months

Long Term

- which is not a short-term capital asset.

CATCH IN THE MEANING:

Short Term Share transactions- Notice 30 day criteria for classification

Long term capital gain has been defined under section 2(29B) of the Act and means capital gain arising from transfer of a long time asset. Long term capital asset has been defined under section 2(29A) and means a capital asset which is not a short term capital asset. Section 2(42A) defines short term capital asset to mean a capital asset which is held by an assessee for not more than 36 months immediately preceding its date of transfer. However, in respect of shares the short term capital asset would mean that such shares are held by the assessee for not more than 12 months.

The benches of the Tribunal often consider below 30 days transactions of sale and purchase as incomes of business nature.

The Jodhpur bench of ITAT in *Ran Mal Bhansali v. Asstt. CIT* (2012) 143TTJ(UO) 65 held that if the share transactions are made on the same day or within 30 days then the same may be treated as business transactions so that only transaction made beyond 30 days and upto 12 months will meet the test of short term capital gains. Ahmedabad bench in *Sugamchand C Shah vs. Asstt. CIT* (2010) 37DTR AT 345 also held that shares held for more than one month should be treated as investments. And the Bombay High Court in *CIT v. Suresh R Shah* in ITA No. 1974/2011 dated 20.06.2012 upheld the following finding by the Tribunal :

“ So far as short terms capital gains were concerned the Tribunal held that about 93% of the short terms gain/loss was attributable to shares of six companies and in any case all the shares were held for periods ranging in excess of 1 month.”

It is thus advisable to exercise caution in disclosing incomes/losses from short term share transactions and perhaps one must take caution to play safe in trading in shares by holding a scrip for 30 days at least especially when transacting in high volumes or frequent trades.

The effect of this trail is that any multiple account of transactions for period less than 30 days if considered as business the gain or profit thereon would be subject to maximum marginal rate of 30% and in case there is a loss the same would be taken as speculative in nature with set off benefit only against speculative gain.

Even the Delhi High Court in CIT v. Vinay Mittal in ITA No. 1172/2011 dated 27.04.2012 observed that quantum or total number may not be determinative but in a given case keeping in view period of holding may indicate intention to make investment.

The Delhi bench in M/s Dynamic Consultants Pvt. Ltd. vs. ACIT in ITA no. 2694/Del/09 dated 30.09.2011 almost laid down the same ratio when it held that merely because the shares are sold within the short span of one to two months would not change the character of capital gains to the business income. And later it followed this decision in favour of the assessee in Narendra Gehlaut in ITA NO. 1648/2010 dated 30.04.2012 where the average holding period of shares sold during the previous year by the assessee is found to be 41 days meaning a month and a half.

Hence assessee is advised to draw a chart of his share transactions keeping a column for holding period in case of transactions for less than 12 months and see that the period of holding is above one month. Else he needs to regroup them between capital gains and business income heading.

5.2.2 Cost of Acquisition

Capital Asset	Cost of Acquisition	
Capital asset, being:		
<ul style="list-style-type: none"> Goodwill of a business, Trade mark or brand name associated with a 	Acquired by purchase	Purchase Price

business <ul style="list-style-type: none"> • Right to manufacture, produce or process any article or thing • Right to carry on any business, tenancy rights, stage carriage permits or loom hours 	from a previous owner	
	Self Generated	Nil
Capital Asset, being		
Right Shares	Amount actually paid	
Bonus Shares	Nil	
Equity share or shares allotted to a shareholder of a recognized stock exchange in India under a scheme for demutualization & corporatization	Cost of acquisition of his original membership of the exchange	
Trading or clearing rights of the recognized stock exchange under a scheme for demutualization & corporatization	Nil	
Any other Capital Asset	<ul style="list-style-type: none"> • Acquired before 01-04-1981 Higher of: Purchase price OR FMV as on 01-04-1981 <ul style="list-style-type: none"> • Acquired on or after 01-04-1981 Purchase price	
Capital assets received under a gift or will		
Immovable Property	<ul style="list-style-type: none"> • If Charged under head “IOS” u/s 56(2)(vii) – The value which has been 	

	<p>taken for the above purpose</p> <ul style="list-style-type: none"> • If not Charged under head “IOS” u/s 56(2)(vii) – Cost of previous owner
Movable property, being: <ul style="list-style-type: none"> • shares and securities • jewellery; • archaeological collections; • drawings; • paintings; • any work of art; • bullion 	<ul style="list-style-type: none"> • If Charged under head “IOS” u/s 56(2)(vii) – The value which has been taken for the above purpose • If not Charged under head “IOS” u/s 56(2)(vii) – Cost of previous owner
Any other Capital Assets	Cost of previous owner

5.2.3 Period of holding

Period of holding mean the duration during which the capital asset is held by the assessee before making its transfer. The POH is much important to ascertain the nature of capital asset being it is short term capital asset or long term capital asset. While calculation period of holding the date on which asset was acquired is included and date on which transfer is made is excluded.

Example:

Ram purchased a land on 15th March, 2009 and sold it on 18th of June 2012. In this case the period of holding will be considered from 15th March 2009 to 17th of June 2012.

Example:

Mr. X a salaried person purchased a flat on 15th May 2009 for Rs. 12,00,000. He sold this flat on 23rd of May 2012 for Rs.20,00,000. In this case the period of holding is from 15th May 2007 to 22nd of May 2012 i.e. 36 Months 8 Days and X is

eligible to get the benefit of indexation and the capital gain will be the Long Term Capital Gain.

However in some cases while calculating the period of holding the period for which the capital was held by the previous owner is also included. Some of these cases are listed below:

- 1 Where the cost of acquisition is to be taken as the cost to the previous owner, the period of holding by the previous owner should also be considered

Example: Gift from relative

Mr. Ram received a plot of land from his father on 10-05-2012 without paying any consideration (i.e. gift). His father acquired the said plot of land on 01-01-1990. Now Mr. Ram wants to sale this plot of land on 30-06-2012. Determine is this plot of land is long term capital asset or short term capital asset in hands of Mr. Ram.

In this case while calculating period of holding in the hands of Mr. Ram the period during which the said property held by his father will also be considered. So, period of holding will be from 01-01-1990 to 29-06-2012 and it will be considered as long term capital asset.

- 2 Where the capital asset is the shares of an amalgamated company acquired in lieu of the shares of the amalgamating company, the period of holding of the shares of the amalgamating company should also be considered.

5.2.4 Indexation

Cost Inflation Index Notified by the GOVTs			
Financial Year	(CII)	Financial Year	(CII)
1981-82	100	1999-2000	389
1982-83	109	2000-2001	406
1983-84	116	2001-2002	426
1984-85	125	2002-2003	447
1985-86	133	2003-2004	463
1986-87	140	2004-2005	480
1987-88	150	2005-2006	497
1987-88	150	2006-2007	519
1988-89	161	2007-2008	551
1989-90	172	2008-2009	582
1990-91	182	2009-2010	632
1991-92	199	2010-2011	711
1992-93	223	2011-2012	785
1993-94	244		
1994-95	259		
1995-96	281		
1996-97	305		
1997-98	331		
1998-99	351		

Cases where indexation is not available:

- On depreciable assets
- On bond or debenture other than capital indexed bonds
- Non- residents to whom first proviso to sec. 48 shall apply

Property Gains-Period of holding- Safer bet

To get the benefit of indexation in case of property sale it is desirable under the law that the property is held for 36 months prior to the date of sale. The Mumbai bench in Mrs. Lata Vasudeva vs. Additional Commissioner of Income tax (2011) 10Taxmann.com 96 held that the period of 36 months would commence from the date of execution of agreement between the buyer and builder and the tentative allotment letter in case of property that is yet to come into existence is not a good fit under the law in which case the assessee may be deprived of indexation benefit as well as may be made subject to higher rate of tax. In this case at the time of booking of flats, the flats were not in existence, even the proposed site plan was also not in existence as the same was yet to be approved. In other words when the assessee booked the flats, the structure was not in existence.

This ratio will not apply in case the property booked is in ready state in which case the date of booking may be taken as the date of purchase for indexation gains.

5.2.5 Computation

The capital gain shall be computed as under:

Full value of consideration	XXX
Less:	
Expenditure incurred wholly and exclusively in connection with such transfer	XXX
Cost of acquisition	XXX
Cost of Improvement	<u>XXX</u>
	<u>XXX</u>

Other LTCCG	20 % [Sec. 112]
STCCG on equity oriented shares or equity oriented units of mutual funds	15 % [Sec. 111A]
Other STCCG	No special rate, being taxable at the normal rate applicable on assessee.

Example:

The total income of a resident individual is Rs. 1,90,000. This Includes long term capital gains (LTCCG) of Rs. 40,000.

	(Rs.)
Total Income	1,90,000
Less: LTCCG treated separately	<u>40,000</u>
	1,50,000
Less: Basic exemption	<u>1,80,000</u>
Unabsorbed basic exemption	<u>30,000</u>
Tax on LTCCG:	
Amount of LTCCG	40,000
Less: Unabsorbed basic exemption	<u>30,000</u>
Balance	10,000
Tax @ 20 % on 10,000	<u>2,000</u>
TOTAL TAX PAYABLE	<u>2,000</u>

For A.Y. 2012-13 the basic exemption limit for a resident individual is Rs. 1,80,000. Here the total income of assessee without considering the LTCG is 1,50,000 and it is below by Rs. 30,000 from the basic exemption limit. Now assessee can adjust its LTCG of Rs. 30,000 with this shortfall and on balance LTCG of Rs. 10,000 he have to pay tax @ 20 % i.e. Rs. 2000.

5.2.7 Tax Reducers

1. Investment into a residential house

If an individual or a HUF having LTCG arising out of sale of capital asset other than a residential house invests in the purchase or construction of a residential house, then, he/it is eligible for a deduction of

$\frac{\text{Amount invested}}{\text{net consideration}} \times \text{LTCG}$

where net consideration = full value of consideration – cost of transfer.

In this case, however, cost of the new asset is not changed. But the assessee should not own more than one residential house other than the residential house in which he has invested as on the date of transfer and also, he should not purchase / construct any other residential house for a period of 1/3 years, respectively, from the date of transfer. In case he owns more than one residential house as on the date of transfer he is not eligible for this deduction. In case he purchases/constructs a house within 2/3 years from the date of transfer after getting this deduction, the amount allowed as deduction would be taxed as capital gains in the year of such purchase/construction.

If the new asset is transferred within 3 years of its purchase or construction the deduction given earlier from LTCG would be charged as LTCG in the year of such transfer.

2. Investment in financial assets

If an assessee having LTCG invests in any of the following the amount invested is eligible for deduction up to a maximum of the LTCG.

a) bonds redeemable after three years issued on or after 1.4.2000 by National Bank for Agricultural and Rural Development (NABARD) or by National Highway Authority of India (NHAI).

b) bonds redeemable after three years issued on or after 1.4.2001 by Rural Electrification Corporation Limited (RECL).

c) bonds redeemable after 3 years issued on or after 1.4.2002 by National Housing Bank or Small Industries Development Bank of India.

The investment is to be made within six months from the date of transfer of the original capital asset. The bonds should not be transferred or converted into money for a period of three years from the date of acquisition. In case the bonds are transferred within 3 years from the date of their acquisition, the deduction allowed for investment earlier would be taxed in the year of such transfer as capital gains. For this purpose it would be considered as transfer even if the assessee takes any loan or advance on the security of the specified securities.

The Finance Act, 2008 has laid a ceiling of Rs. 50 lakhs on the maximum investment that can be made under this section w.e.f. 1.4.2008.

6 Income From Salaries:

Simple Steps:

Nature of Income	Requirements	Documents needed for filing Return of Income
Total salary / income upto 5,00,000 including	Not taxable	No filing of return required

savings bank interest of Rs. 10000		
If the income derived is only from salaries	Just get Form 16 from employer(s)	Form 16
If income derived is from salaries + interest income from savings bank account exceeding Rs. 10000.	Declare the interest income to the employer and get the effect in form 16	Form 16
If income derived is from salaries + Transfer of capital asset	Form 16+ computation of capital gains (ST/LT)- it will include indexation in case LT, exemption in case the amount is reinvested and final tax liability.	Form 16 + tax liability of capital gains
If income derived is from salaries + Income from house property (case 1)*	Form 16 + Interest certificate from bank in case of self-occupied loaned property- deduction can be submitted to the employer and effect can be taken in Form 16	Form 16
If income derived is from salaries + Income from house property (case 2)*	Form 16 + Interest certificate from bank in case of loaned property and rent details of let out – Computation can be submitted to the employer and effect can be taken in Form 16	Form 16

* Consideration of interest paid on loan can be availed only after the possession of said property, till then no deduction on loan is allowed
Interest u/s 234 A/B/C/D is chargeable in case of late deposit of taxes.

7 Tips

HRA Relief Condition

If annual rent paid by the employee exceeds Rs.1,80,000 per annum, it is mandatory for the employee to report PAN of the landlord to the employer. In case the landlord does not have a PAN, a declaration to this effect from the landlord along with the name and address of the landlord should be filed by the employee.

Medical exemption/benefits

For the purpose of availing exemption on expenditure incurred on medical treatment, "hospital" includes a dispensary or clinic or nursing home, and "family" in relation to an individual means the spouse and children of the individual. Family also includes parents, brothers and sisters of the individual if they are wholly or mainly dependent on the individual.

S. 80 C deduction- house payments/repayments

Where the house property in respect of which deduction has been allowed under s. 80C is transferred by the tax-payer at any time before the expiry of five years from the end of the financial year in which possession of such property is obtained by him or he receives back, by way of refund or otherwise, any sum specified in section 80C(2)(xviii), no deduction under such provisions

shall be allowed in respect of such sums paid in such previous year in which the transfer is made and the aggregate amount of deductions of income so allowed in the earlier years shall be added to the total income of the assessee of such previous year and shall be liable to tax accordingly.

Hotel industry-Tips/service charges sharing

Employees are advised to add such sums in the returns in view of the ruling of Delhi High Court in CIT v. ITC Ltd. (2011) 338ITR598. In this case tips collected by hotel and disbursed to employees are held to constitute salary.

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Income Tax Rules