

536.13 Prosecution - If a person makes any statement in any verification, or delivers an account or statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable by way of imprisonment up to a period of 3 years and with fine.

However, a person shall not be proceeded for any offence except with the previous sanction of the Chief Commissioner.

536.14 Banking cash transaction tax is deductible - Banking cash transaction tax which is paid during the previous year, is deductible under section 36(1)(xiii).

COMMODITIES TRANSACTION TAX

Commodities transaction tax

537. Commodities Transaction Tax (CTT) has been levied on taxable commodities transactions entered into a recognized association.

537.1 Meaning of "taxable commodities transaction" - For this purpose, 'taxable commodities transaction' means a transaction of purchase or sale in a recognized association of—

- a. option in goods; or
- b. option in commodity derivative; or
- c. any other commodity derivative.

537.2 Tax rates - See Annex. 1, para 0.10-4.

537.3 Collection and recovery - The following provisions will be applicable with regard to collection and recovery of tax—

- Every recognised association (hereinafter referred to as an assessee) shall collect the commodities transaction tax from the seller or the purchaser, as the case may be, who enters into a taxable commodities transaction in that recognised association.
- The commodities transaction tax collected during any calendar month shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

537.4 Furnishing of return - Every assessee will submit a return of all taxable commodities transaction entered into during a financial year in that recognised association within a specified time after the end of financial year. Where, however, any assessee fails to furnish the return within the prescribed time-limit, the Assessing Officer may issue a notice to such an assessee, requiring him to furnish the return within such time as may be prescribed. Belated return can be submitted at any time before the completion of assessment. A return may be revised for correcting any omission or wrong statement at any time before the assessment is made.

537.5 Assessment - For the purposes of making an assessment, the Assessing Officer may serve on any assessee, a notice requiring him to produce on a specified date such accounts or documents or other evidence as the Assessing Officer may require. The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable commodities transactions during the relevant financial year and determine the commodities transaction tax payable or the refund due on the basis of such assessment. No assessment should be made after the expiry of two years from the end of the relevant financial year.

537.6 Rectification of mistake - With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him within one year from the end of the financial year in which the order sought to be amended was passed. The Assessing Officer may make an amendment, either *suo motu* or on any mistake brought to his notice by the assessee.

537.7 Interest - For non-payment or short payment or late payment, a simple interest at the rate of one per cent per month or part of month shall be charged.

537.8 Penalty - Penalty can be imposed only after giving a reasonable opportunity of being heard. However, no penalty can be imposed if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause of default. Penalty provisions are narrated in the Table given below—

<i>Nature of default</i>	<i>Penalty (in addition to paying tax and interest)</i>
Failure to collect whole or any part of the commodities transaction tax by assessee	100% of the amount of commodities transaction tax which is not collected by the assessee
Failure to pay tax to the credit of the Central Government	Rs. 1,000 for everyday during which the failure continues (subject to the maximum of 100% of commodities transaction tax)
Failure to furnish return	Rs. 100 for everyday during which the failure continues
Failure to comply with notice	Rs. 10,000 for everyday during which the failure continues

537.9 Application of certain provisions of the Income-tax Act - The provisions of sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, 1961, shall apply, so far as may be, in relation to commodities transaction tax.

537.10 Appeal - These provisions are given below—

<i>Nature of action</i>	<i>To whom it should be filed</i>	<i>Against which order it can be preferred</i>	<i>Who can prefer</i>	<i>Time-limit</i>	<i>The following provisions of the Income-tax Act shall apply</i>
First appeal	CIT (Appeals)	Order of Assessing Officer	Taxpayer	30 days	249 to 251
Second appeal	Tribunal	Order of the CIT (Appeals)	Taxpayer or CIT	60 days	253 to 255

537.11 Punishment for false statement - If a person makes a false statement in any verification, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, this offence shall be deemed to be non-cognizable within the meaning of that Code.

Wealth-tax**Chargeability**

540. The basis of charge is given below—

1. Net wealth is chargeable to wealth-tax. Net wealth for this purpose is computed as follows—

Assets [Sec. 2(ea)]	XXXX
Add: Deemed assets [Sec. 4]	XXXX
Total	XXXX
Less: Exempted assets [Sec. 5]	XXX
Assets chargeable to wealth-tax	XXXX
Less: Debt owed [Sec. 2(m)]	XXXX
Net wealth	XXXX

2. Net wealth on "valuation date" is chargeable to wealth-tax in the immediately following assessment year.

3. Only an individual, Hindu undivided family and a company is chargeable to wealth-tax. By virtue of section 45, no wealth-tax is chargeable in respect of net wealth of—

- a. any company registered under section 25 of the Companies Act, 1956;*
- b. any co-operative society;
- c. any social club;
- d. any political party; and
- e. a Mutual fund specified under section 10(23D) of the Income-tax Act.

4. Net wealth in excess of Rs. 15,00,000 is chargeable to wealth-tax @ 1 per cent (no surcharge and education cess).

540.1 Judicial rulings - Wealth-tax is charged only on individuals, Hindu undivided families and companies. All other persons are not chargeable to wealth-tax. The following judicial rulings are relevant for understanding the meaning of the relevant words :

- *Law in force* - Law in force on the first day of the assessment year, and not that on the valuation date, is applicable—*Pramod Kumar Jain v. CWT*[1965] 58 ITR 161 (Bom.).
- *System of book-keeping* - The system of book-keeping, whether cash system or mercantile system, is of no consequence under the Wealth-tax Act—*Dipti Kumar Basu v. CWT*[1976] 105 ITR 450 (Cal.).
- *Trustee* - As the word "individual" in section 3 includes individuals, the trustees of the trust constitute an assessable unit under the Act—*Trustees of Gordhandas Govindram Family Charity Trust v. CIT*[1973] 88 ITR 47 (SC).
- *Trust* - A trust (not being an individual or a HUF or a company) is not a taxable entity as enumerated in section 3 and, therefore, not subject to wealth-tax—*CWT v. Bombay Cricket Association* [2001] 118 Taxman 884 (SC).

*These are companies which are formed for the object of promoting commerce, art, science, religion, charity or any useful object and which apply such profits for promoting their objects and prohibit the payment of dividend to their members.

- *Hindu deity* - A Hindu deity is an “individual”—*CWT v. B.C. Gupta & Sons Ltd.* [1990] 182 ITR 240 (Gauhati).
- *Hindu Succession Act* - Under section 8 of the Hindu Succession Act, property of the father, who dies intestate, devolves on his son in son’s individual capacity and not as the karta of son’s family. Such property does not constitute an asset of the son’s HUF—*CWT v. Chander Sen* [1974] 96 ITR 634 (All.), *CWT v. Mukundgirji* [1983] 144 ITR 18 (AP) [approved by the Supreme Court in *CWT v. Chander Sen* [1986] 161 ITR 370].
- *Widow and minor daughter* - Widow and minor daughter cannot constitute HUF in respect of properties devolving on husband’s death— *Rukmani Bai Rathor v. CWT* [1964] 54 ITR 430 (Ori.).
- *Impartible estate* - Properties of jagirdar grant are impartible estates and assessable as HUF—*CWT v. Thakur Ummed Singh* [1980] 4 Taxman 11 (Raj.).
- *Club* - An incorporated club, being an association of persons, is not assessable entity— *Willingdon Sports Club v. WTO* [1982] 137 ITR 83 (Bom.).
- *Artificial juristic entity not included* - The word ‘individual’ in section 3 is not capable of taking with in its scope an artificial juristic entity like a trade union—*State Bank of Travancore Employees Union v. CWT* [1999] 238 ITR 466 (Mad.).

Assessment year [Sec. 2(d)]

541. Assessment year means a period of 12 months commencing from the first day of April every year falling immediately after the valuation date.

Valuation date [Sec. 2(q)]

542. Valuation date is March 31 immediately preceding the assessment year.

542.1 *Change of ownership on the valuation date* - Since the valuation date is a continuous period starting at the first moment and ending at the last moment of a certain day, net wealth shall be taken at the last moment of the valuation date — *Banarsi Dass v. CWT* [1970] 76 ITR 104 (All.), *Dwarka Nath v. CWT* [1966] 62 ITR 304 (All.).

Net wealth - How computed [Sec. 2(m)]

543. The term “net wealth” means taxable wealth. Broadly speaking, it represents the excess of assets [see para 545] over debts [see para 548]. Assets include deemed assets [see para 546] but do not include exempt assets [see para 547].

Incidence of tax [Sec. 6]

544. Incidence of tax in the case of an individual depends upon his residential status and nationality, whereas in the case of a Hindu undivided family and company it depends upon residential status. For the purpose of wealth-tax, residential status will be that which an individual, a Hindu undivided family or a company, enjoys under the Income-tax Act for the previous year ending on the valuation date [see paras 24 and 25]. The following table summarizes tax incidence under the Act :

	Residential status in India Taxable wealth = (x-y) + (p-q)	Residential status outside India Taxable wealth = (x-y)	Company Taxable wealth = (x-y)
In the case of an individual who is an Indian national, every Hindu undivided family and company	Taxable wealth = (x-y) + (p-q)	Taxable wealth = (x-y) Tax-free wealth = (p-q)	Taxable wealth = (x-y) Tax-free wealth = (p-q)
In the case of individual who is a foreign national	Taxable wealth = (x-y) Tax-free wealth = (p-q)	Taxable wealth = (x-y) Tax-free wealth = (p-q)	Taxable wealth = (x-y) Tax-free wealth = (p-q)

'x' denotes all assets [see para 545] located in India, including deemed assets [see para 546] but excluding exempted assets [see para 547].

'y' denotes aggregate value of all the debts (whether located in India or outside India) owed by the assessee on the valuation date which have been incurred in relation to the assets included in "x" *supra*.

'p' denotes all assets [see para 545] located out of India including deemed assets [see para 546] but excluding exempted assets [see para 547].

'q' denotes aggregate value of all the debts (whether located in India or outside India) owed by the assessee on the valuation date in relation to the assets included in "p" *supra*.

544.1 Location of assets - The question as to where an asset is located is essentially one of fact and will have to be decided in the light of evidence. The following guidelines may, however, be used for this purpose :

- Tangible immovable property is situated in India, if the property lies in India.
- Rights or interest in or over immovable property (otherwise than by way of security) or benefits arising out of immovable property are located in India if the immovable property to which the rights are attached, or out of which the benefits arise, lies in India.
- Right or interest (otherwise than by way of security) in or over tangible movable property are located in India if such property is located in India.
- Debts secured or unsecured (other than those dealt with below) are located in India if they are contracted to be repaid in India or if the debtor is residing in India.
- Ships or aircrafts are located in India, if they are registered in India.
- Goods on high seas in transit to India are located outside India— *CWT v. Consolidated Pneumatic Tools Co. Ltd.* [1971] 81 ITR 752 (SC).

It is not possible to give an exhaustive list of assets and the principles to be applicable in determining the location of all such assets. For assets which are not covered above, the location has to be fixed having regard to the nature of the assets.

Assets [Sec. 2(ea)]

545. The term "assets" means the assets given in paras 545.1 to 545.6.

545.1 Guest house, residential house or commercial building [Sec. 2(ea)(i)] - The following are treated as "assets":

1. Any building or land appurtenant thereto whether used for commercial or residential purposes or for the purpose of guest house.
2. A farm house situated within 25 kilometres from the local limits of any municipality (whether known as a municipality, municipal corporation, or by any other name) or a cantonment board.

545.1-1 WHEN A GUEST HOUSE/RESIDENTIAL HOUSE/FARM HOUSE OR COMMERCIAL BUILDING IS NOT TREATED AS "ASSETS" - The following are not included in "assets" :

- **Exception one** - A residential house [Sec. 2(ea)(i)(1)] - A house if the following conditions are satisfied is not treated as "asset"—
 - a. it is meant exclusively for residential purposes ;
 - b. it is allotted by a company to an employee or an officer or a director who is in whole-time employment ;
 - c. the gross annual salary should be less than Rs. 5 lakhs in the case of such employee, officer or director [the term "gross annual salary" is not defined ; as per common parlance it could mean salary, bonus, commission including dearness and other allowances (whether taxable or not), but excluding perquisites and before giving standard deduction].
- **Exception two** - A house held as stock-in-trade [Sec. 2(ea)(i)(2)] - Any house (may be residential house or used for commercial purposes) which forms part of stock-in-trade of the assessee is not treated as "asset".
- **Exception three** - A house used for own business or profession [Sec. 2(ea)(i)(3)] - Any house which the assessee may occupy for the purposes of any business or profession carried on by him is not treated as "asset".

The continuous occupation and usage of a house for business purpose is not necessary to get exemption. Section 2(ea)(3) reads as 'any house which the assessee may' occupy for the purpose of any business or profession carried on by him. The words used is 'may occupy'. Necessarily this means even if the house is kept ready for business purpose, the house is entitled for exemption. The word used in the section 'any house which the assessee may occupy for the purpose of business...' gives an impression that uninterrupted occupation of the property is not necessary to make an asset as business asset. If a place is used for conducting meetings is sufficient to treat the property as business asset—*Tracstar Investment (P.) Ltd. v. CWT* [2005] 1 SOT 117 (Mum.).

■ *Exception four - A let out property [Sec. 2(ea)(i)(4)]* - A residential property which is let out for a minimum period of 300 days in the previous year is not treated as an "asset".

■ *Exception five - A commercial complex [Sec. 2(ea)(i)(5)]* - One or more property in the nature of commercial establishments or complex is not treated as an "asset".

The word 'commercial' means something which is used in or related to a business or a trade. 'Commercial' means relating to or engaged in or used for commerce. The word 'establishment' means an organization, building, construction, shop, store, concern or corporation. Thus, commercial 'establishment' means some kind of place or building or shop or store where business or trade is carried on. The word 'complex' means composite, compounded, multiple, manifold, multi-complex or something composed of or made of many inter-related parts, for example, a multi-purpose building. Thus, the words 'commercial complex' mean the commercial multi-purpose building composed and made of inter-relating parts in contrast to a single commercial establishment. In the case of commercial establishment, it is not necessary that it should be composed of or made of inter-related parts. In the case of a property in the nature of commercial establishment, it is not necessary that it should be also in the nature of commercial complex—*Satvinder Singh v. CWT* [2007] 109 ITD 241 (Pune).

545.1-1P1 Discuss whether the following are "assets"—

1. A commercial multi-storeyed building given on rent by X (not being held as stock-in-trade).
2. A commercial house property used by a Hindu undivided family for the purpose of carrying on own business.
3. Y owns a house property which is occupied by a firm in which he is a partner for its business purposes.
4. Z owns a residential house property. It is given by him as rent-free house to his general manager A who looks after the business of Z. Annual salary of A is Rs. 4,80,000. Z claims that since the house is used for business purposes, it comes in section 2(ea)(i)(3) and it is not an asset.

SOLUTION : 1. A commercial multi-storeyed building given on rent (not being held as stock-in-trade) is not an "asset".

2. A commercial house property used by a Hindu undivided family for carrying on a business or profession is not an "asset" [i.e., exception three].

3. A building occupied by a person for the purpose of any business or profession carried on by him is not an "asset" [i.e., exception three covered by section 2(ea)(i)(3)]. This condition is satisfied when a person who being the owner of certain premises, makes the same available to the firm, in which he is a partner, for carrying on business. The assessee can be held to be carrying on business when that business is a business of a partnership firm and he is a partner in that firm since the firm as a partnership firm has no legal entity and, it is a compendious expression for all the partners—*CIT v. Rasiklal Balabhai* [1979] 119 ITR 303 (Guj.), *CIT v. P.T. Mannel* [1989] 47 Taxman 108 (Ker.), *CIT v. K.M. Jagannathan* [1989] 180 ITR 191 (Mad.).

Consequently, it is not an "asset". Contrary view is given by the Karnataka High Court in *CIT v. K.N. Guruswamy* [1984] 146 ITR 34.

4. The house owned by Z is a residential house. A residential house is covered by section 2(ea)(i)(1) and since it is not owned by a company, the benefit of exemption is not available and it is an "asset".

As the house is used for business purposes, one may argue that it is covered by the exception three given under section 2(ea)(i)(3) and it is not an "asset".

In the case of a residential house, section 2(ea)(i)(1) is a special provision. The maxim "*generalia specialibus non derogant*" is regarded as a cardinal principle of interpretation—*State of Gujarat v. Ramjibhai* AIR 1979 SC 1098. The literal meaning of the expression is that if there is an apparent conflict between two independent provisions of

law, the special provision must prevail—*Union of India v. Indian Fisheries (P.) Ltd.* [1965] 57 ITR 331 (SC). The general provision, however, controls the cases where the special provision does not apply as the special provision is applicable to the extent of its scope—*South India Corpn. (P.) Ltd. v. Board of Revenue* AIR 1964 SC 207. In other words, a special rule controls or cuts down the general provision—*Bengal Immunity v. State of Bihar* AIR 1955 SC 661.

Consequently, section 2(ea)(i)(1) [i.e., exception one] covers a residential house and section 2(ea)(i)(3) [i.e., exception three] covers a house used for carrying on a business or profession but other than a residential house.

In the given problem, the house owned by Z is an “asset”, as the conditions of section 2(ea)(i)(1) are not satisfied—*Floatglass India Ltd. v. CWT* [2004] 89 ITD 542 (Mum.).

545.2 Motor cars [Sec. 2(ea)(ii)] - Except the following two, any other motor car is an “asset”:

- a. motor cars used by the assessee in the business of running them on hire ;
- b. motor cars treated as stock-in-trade.

■ For this purpose, “motor car” covers all motor vehicles other than heavy vehicles—*Southern Roadways Ltd. v. CWT*[2002] 122 Taxman 126 (Mad.).

■ In the case of a leasing company, motor car is an asset.

■ Where an assessee has admittedly purchased a car, merely because in view of some dispute with seller it has not been registered in the assessee’s name, the assessee cannot take plea that car is not includible in its taxable wealth—*Oswal Chemicals & Fertilisers Ltd. v. CWT*[2005] 196 CTR (Delhi) 545.

■ In *Thermax Ltd. v. CWT*[2008] 110 ITD 591 (Pune), the assessee had arranged for motor cars for its employees by devising a finance scheme under which the employees would pay a certain percentage of cost and the balance would be paid by the company. The loan amount would be recovered from the employees’ salary till the loan amount was fully paid and the vehicle (motor car) would remain in the name of the company. It was held that the motor cars in the name of the assessee-company were its assets under section 2(ea) of the Act and the amount of monthly instalments collected would be “debt owed” by the company and would be eligible for deduction.

545.3 Jewellery, bullion, utensils of gold, silver, etc. [Sec. 2(ea)(iii)] - Jewellery, bullion, furniture, utensils and any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals are treated as “assets”.

Jewellery which is misappropriated by a third person and which never came in possession of assessee, cannot be included in assessee’s net wealth.

545.3-1 MEANING OF JEWELLERY - For this purpose, “jewellery” includes the following :

- a. ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel ;
- b. precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel.

545.3-2 STOCK-IN-TRADE NOT AN ASSET - Where any of the above assets (i.e., jewellery, bullion, utensils of gold, etc.) is used by an assessee as stock-in-trade, then such asset is not treated as “assets” under section 2(ea)(iii).

545.3-3 GOLD DEPOSIT BONDS ARE NOT ASSET - “Jewellery” does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

545.4 Yachts, boats and aircrafts [Sec. 2(ea)(iv)] - Yachts, boats and aircrafts (other than those used by the assessee for commercial purposes) are treated as “assets”.

In the case of *Amalgamated Electricity Co. Ltd. v. State of Rajasthan* AIR 1983 Raj. 154, it was held that if the asset is used for doing a business, the object of which is to make profit, then the asset is said to be used for “commercial” purposes. It is nowhere laid down that in order to satisfy the requirements of commercial purposes, aircraft should be used as air taxi. One can use it for one’s own business also to meet the exigencies of the business.

Hence, value of helicopter or aircraft used for purpose of an assessee's business is not exigible to wealth-tax—*Garware Wall Ropes Ltd. v. CIT* [2004] 89 ITD 221 (Mum.).

545.5 Urban land [Sec. 2(ea)(v)] - Urban land is an "asset". An "urban land" is an "asset" whether it is agricultural land or non-agricultural land—*Meena Jacob v. WTO* [2007] 14 SOT 486 (Cochin).

545.5-1 MEANING OF URBAN LAND - Urban land means land situated in the following area :

1. *Land situated within municipality* - Land situated in any area which is comprised within the jurisdiction of a municipality and which has a population of not less than 10,000 according to the last preceding census of which relevant figures have been published before the valuation date.

2. *Land situated outside municipality but within notified area* - Land situated in any area within such distance (not being more than 8 kilometres) from the local limits of any municipality referred to above, as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify [Notification No. SO 871(E), dated November 9, 1993 - *Taxmann's Direct Taxes Circulars*, Vol. 2, 2006 edition].

■ *Municipality* - For the above purpose, "municipality" includes municipal corporation, notified area committee, town planning committee, town committee or a municipality known by any other name.

545.5-2 URBAN LAND WHEN NOT TREATED AS ASSET - In the following cases "urban land" is not treated as "assets" :

1. Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated. For instance, the excess urban land in possession of an assessee on which construction is not permissible, cannot be treated as an asset—*Lalita Dalmia v. CIT* [2004] 85 TTJ (Delhi) 690.

2. Land occupied by any building which has been constructed with the approval of the appropriate authority. The Karnataka High Court in the case of *CWT v. Giridhar G. Yadalam (Kar.)* [2007] 163 Taxman 373 held that "building" for this purpose meant fully constructed building and concluded that this exemption is not available if land is occupied by a building under construction. It is respectfully submitted that the verdict of the Karnataka High Court requires reconsideration what is taxable under section 2(ea) is "urban land". If construction is started it loses the character of land.

3. Any *unused* (i.e., not put to any use) land held by the assessee for industrial purposes for a period of 2 years from the date of its acquisition by him.

4. Any land held by the assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.

545.5-3 LAND ON WHICH CONSTRUCTION IS STARTED - Once construction activity starts on urban land, it loses its character of urban land and is outside purview of definition of 'assets'—*Mathew L. Chakola v. CWT* [2006] 9 SOT 617 (Cochin), *Meera Jacob v. WTO* [2007] 14 SOT 486 (Cochin).

545.6 Cash in hand [Sec. 2(ea)(vi)] - The following is treated as "assets" :

Individual and Hindu undivided families	Cash in hand on the last moment of the valuation date in excess of Rs. 50,000.
Any other person	Any amount not recorded in books of account.

545.7 Illustrative examples - To have a better understanding of the meaning of "assets" under section 2(ea), the following examples are given :

1. Guest house held as stock-in-trade by a property dealer	No
2. Guest house (not held as stock-in-trade) for entertaining personal guests	Yes

Different properties covered by the valuation rules from 1-1-2009	
3. Farm house which is not situated within 25 kilometres of any municipality or a cantonment board	No
4. Farm house which is situated 30 kilometres from local limits of Delhi but within 6 kilometres from Faridabad	Yes
5. Factory building, office building and godown building used for the purpose of carrying on own business or profession	No
6. Factory building and godown building given on rent	Yes
7. Residential house owned by an individual (or Hindu undivided family) and allotted to one of his full-time employees whose salary (including commission, bonus and allowances) is Rs. 41,665 per month	Yes
8. Residential house owned by a company and allotted to a part-time director whose salary is Rs. 1,00,000 per annum	Yes
9. Residential house owned by a company and allotted to one of its officers/ employees/full-time directors whose salary (including commission, bonus and allowances) is :	
a. Rs. 41,666.66 per month	No
b. Rs. 41,666.67 per month	Yes
10. A residential or commercial building held as stock-in-trade	No
11. Residential house owned by a company and allotted to an employee/full-time director (or managing director) whose salary is less than Rs. 5,00,000 per annum and who owns 90 per cent equity share capital in the company	No
12. A commercial complex having 20 offices given on rent by the owner	No
13. A multi-storey office complex given on rent	No
14. A residential house given on rent for 300 days during 2007-08	No
15. Motor car (Indian as well as foreign) held as :	
a. stock-in-trade	No
b. fixed assets	Yes
c. personal asset by a salaried employee	Yes
d. personal asset by a businessman	Yes
e. fixed asset by a company and given for business use to full-time-employee or a director drawing less than Rs. 5,00,000 per annum	Yes
16. Motor cars used by a person in the business of running them on hire to tourists (Indian or foreign citizens) or to other persons	No
17. Silver, gold, jewellery, bullion, etc., owned by a jeweller (as stock-in-trade)	No
18. Gold owned by an individual (not as stock-in-trade)	Yes
19. Gold/silver furniture held by a company (not as stock-in-trade)	Yes
20. Aircraft used by a manufacturing company having turnover of Rs. 400 crore for use by its directors	No
21. Aircraft held by Air India	No
22. Aircraft owned by an individual (not as stock-in-trade) for giving it on lease to others	No
23. Urban land on which a building (residential or commercial) is constructed :	
a. with the approval of an appropriate authority	No
b. without the approval of an appropriate authority	Yes
24. Urban land on which construction is not permitted	No
25. Vacant urban land (on which construction is permissible) owned by a person since 1960	Yes
26. Urban land held as stock-in-trade and which was acquired —	
a. on June 1, 1998	Yes
b. on June 1, 1999	No

	Whether Asset under section 2(ea)
27. Urban unused land held by an assessee, for industrial purposes (whether or not construction is started) and which was acquired :	
a. on April 1, 2007	No
b. on March 31, 2007	Yes
28. Urban land held by an assessee for industrial purposes (as construction of factory will be started during November 2009, it is used for agricultural purposes on temporary basis) and it was acquired on —	
a. April 1, 2007	Yes
b. March 31, 2007	Yes
29. Land acquired in 1965 (it may be used for construction of any building— residential or commercial) and	
a. situated within the jurisdiction of a municipality having population of less than 10,000	No
b. situated within the jurisdiction of a municipality having population of 10,000 or more	Yes
c. situated within 6 kilometres [i.e., the notified distance vide Notification No. SO 871(E)] from Amritsar	Yes
30. Shares, debentures, fixed deposits in bank, plant and machinery, units of a mutual fund, amount recoverable from Government, sundry debtors, goodwill, stock-in-trade	No
31. In the cash book of an individual/HUF opening balance on March 31, 2009 is Rs. 1,85,000, out of which the assessee deposits Rs. 1,35,000 in his current account with Citibank before the close of banking hours on March 31, 2009 (no other inflow or outflow of cash during March 31, 2009)	No

545.8 Assets must belong to the assessee [Sec. 2(ea) read with sec. 2(m)] - Even if a property is an “asset” under section 2(ea), it will not be includible in net wealth unless it belongs to the assessee on the relevant valuation date. The following points should be noted—

1. The expression “belong” has been defined as follows in the *Oxford English Dictionary*: “to be the property or rightful possession of”. So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax.

2. The liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to (or ownership of), property would, therefore, not bring the property within the definition of “net wealth” for it would not then be an asset “belonging” to the assessee.

545.8-1 JUDICIAL RULINGS - The following broad propositions are also relevant—

- **Location not important** - Asset may be located anywhere, but must belong to assessee— *Sardar C.S. Angre v. CWT* [1968] 69 ITR 336 (MP).
- **Mere possession not sufficient** - Right of ownership and not mere possession is crucial— *CWT v. Bishwanath Chatterjee* [1976] 103 ITR 536 (SC).
- **Ownership on valuation date** - The only thing relevant for the purpose of the Wealth-tax Act is that the assessee should be the owner of the assets in question on the relevant valuation date— *CWT v. Bombay Suburban Electric Supply Ltd.* [1976] 103 ITR 384 (Bom.).
- **Property in dispute** - Even if title of property purchased is under dispute, purchaser is liable to pay tax. Except in fixing market value, the fact that title suit was pending in a court of law and the assessee might lose the property if the suit was decided against him, was not relevant— *U.S. Nayak v. CWT* [1968] 68 ITR 171 (Mys.).
- **Seized articles** - Articles seized by excise authorities but not confiscated, are includible— *Jayantilal Amritlal v. CWT* [1982] 135 ITR 742 (Guj.), *CWT v. Meghji Girdharilal* [1988] 40 Taxman 438 (MP).

■ *Partial ownership* - There can be no dispute that the expression 'belonging to the assessee' connotes both complete ownership and limited ownership or interest, e.g., right of user vesting in a tenant, or leasehold rights. It includes contingent interest as well as beneficial interest or ownership in respect of trusts settled on trustees who are legal owners— *P.S. Gandhi v. CWT*[1983] 141 ITR 105 (All.).

Deemed assets [Sec. 4]

546. In computing the net wealth of an assessee, the following assets are included as belonging to that assessee by virtue of section 4 :

546.1 Assets transferred by one spouse to another [Sec. 4(1)(a)(i)] - The provisions of section 4(1)(a)(i) are given below —

546.1-1 CONDITIONS - Section 4(1)(a)(i) is applicable if the following conditions are satisfied —

1. The asset is transferred by an individual after March 31, 1956.
2. It is transferred to his or her spouse.
3. The transfer may be direct or indirect.
4. The asset is transferred otherwise than for adequate consideration or in connection with an agreement to live apart.
5. The asset may be held by the transferee on the relevant valuation date in the same form in which it is transferred or otherwise.

If all these conditions are satisfied then the asset is included in the net wealth of the transferor.

Provisions illustrated - To have better understanding, the following examples are given—

1. X gifts a house property to his wife on April 26, 1976. It shall be included in the net wealth of X.
2. X gifts 2,000 gms. of gold to his wife on April 6, 1984. Mrs. X sells gold for Rs. 7,00,000 on June 16, 1988 and purchases a house from the sale proceeds. Value of house on March 31, 2009 is Rs. 26 lakh. It shall be included in the net wealth of X.

546.1-2 EXCEPTION - Proviso to section 4(1)(a) provides an exception to the aforesaid rule.

■ *Conditions* - The following two conditions should be satisfied to get the benefit of exception :

1. An asset was transferred by an individual to his or her spouse during the accounting years relevant to the gift-tax assessment years 1964-65 to 1971-72.
2. The assets so transferred was either chargeable to tax under the Gift-tax Act or was not chargeable under section 5 of that Act.

■ *Consequences when the two conditions are satisfied* - Both the conditions are cumulative and if they are satisfied, the value of the assets cannot be included in the net wealth of the transferor under section 4(1)(a) for all times to come— *Malti Harshey v. CWT*[1980] 121 ITR 676 (MP), *CWT v. Seth Nand Lal Ganeriwala* [1977] 107 ITR 758 (Punj.), *M.G. Kallankulam v. CIT*[1978] 115 ITR 160 (Ker.).

Provision illustrated - X gifts a house to his wife on April 26, 1968. It was chargeable to gift-tax (or exempt under section 5 of the Gift-tax Act) for the gift-tax assessment year 1969-70. As it was chargeable to gift-tax (or exempt under section 5 of the Gift-tax Act) during the assessment years 1964-65 to 1971-72, it shall not be included in the net wealth of X for any assessment year.

546.1-3 OTHER POINTS - One should also keep in view the following points —

1. If an asset is transferred by an individual to his/her spouse, under an agreement to live apart, the provisions of section 4(1)(a)(i) are not applicable. The expression "to live apart" is of wider connotation and even the voluntary agreements to live apart will fall within the exceptions of this sub-clause.
2. Provisions of section 4(1)(a)(i) are not applicable to a case where HUF effects a transfer in favour of one of its members.
3. If an asset is transferred for adequate consideration, section 4(1)(a)(i) is not applicable. The expression "adequate consideration" cannot be equated to sufficient consideration, good consider-

ation or valid consideration; it means something more than good or valid consideration. "Adequate consideration", within the meaning of section 4(1)(a)(i), must be construed as valuable consideration capable of being compared and measured with money or money's worth—*CWT v. Khan Saheb Dost Mohd. Alladin* [1973] 91 ITR 179 (AP).

4. "Spouse" means lawfully wedded person only. Relationship between husband and wife should subsist between transfer and transferee both on date of transfer and on valuation date — *CWT v. Khan Saheb Dost Mohd. Alladin (supra)*. A widow or widower is not a spouse—*Vinodkumar Ratilal v. CIT* [1975] 100 ITR 564 (Guj.).

5. The assessee gifted Rs. 90,000 to his wife and with the said moneys the latter constructed a house in which both of them resided. For the purposes of wealth-tax assessment, the assessee claimed that the value of the asset to be included in the assessment was Rs. 90,000 only and not the actual value of the house as on the valuation date. It was held that the sum of Rs. 90,000 which was transferred by the assessee to his wife had now been converted into the existing asset, *i.e.*, the house, and it was the value of the house, which alone was existing as an asset as on the valuation date. Accordingly, the value of the house alone had to be included in the net wealth of the assessee—*V. Vaidya Subramaniam v. CWT* [1977] 108 ITR 538 (Mad.).

6. For the purpose of section 4, the expression "transfer" includes any disposition, settlement, trust, covenant, agreement or arrangement.

7. "Individual" includes both males and females—*M. Sulochanamma v. CWT* [1972] 85 ITR 201 (AP).

8. If the properties held by the spouse are "assets" under section 2(ea) on the valuation date and if they are found to have been transferred by the assessee to the spouse (directly or indirectly) otherwise than for adequate consideration, the requirements of section 4 are satisfied and, accordingly, value of such assets would be included in the net wealth of the transferor. However, it is not necessary that the properties concerned should have been "assets" [under section 2(ea)] on the date of the transfer—*M.G. Kallankulam v. CIT* [1978] 115 ITR 160 (Ker.).

For instance, X gifts 1,000 shares of Rs. 20 lakh to Mrs. X on March 2, 2009. Mrs. X transfers these shares on March 12, 2009 and purchases a residential house property from the sale proceeds of shares. The value of the residential house property on March 31, 2009 shall be included in the net wealth of X under section 4(1) for the assessment year 2009-10, as on March 31, 2009, the residential house property is an "asset" under section 2(ea)—*CWT v. Kishan Lal Bubna* [1993] 204 ITR 600 (SC). On the other hand, if X transfers a residential house property to Mrs. X without consideration and Mrs. X purchases shares out of the sale consideration of house property on March 12, 2009, shares shall not be included in the net wealth of X on March 31, 2009 because shares are not "assets" under section 2(ea) on the valuation date (*i.e.*, March 31, 2009).

9. If an intimate connection is established between the two transactions, they would fall within section 4, even though they may be *prima facie* separate transactions—*S.C. Varshnei v. CWT* 1976 TLR 261 (Pat.).

10. Though direct or indirect transfers are covered by section 4, accretions to the assets transferred do not come within the scope of section 4. For instance, if X gifts a residential house property to Mrs. X, house property shall be taxable in the hand of X. If out of rental income of the property, Mrs. X purchases a car, then the value of car cannot be included in the net wealth of X— *see CWT v. T. Saraswathi Achi* [1980] 4 Taxman 356 (Mad.).

546.2 Assets held by minor child [Sec. 4(1)(a)(ii)] - In computing the net wealth of an individual, there shall be included the value of assets which on the valuation date are held by a minor child (including step child/adopted child but not being a married daughter) of such individual. One should also keep in view the following points:

- The net wealth of minor child will be included in the net wealth of that parent whose net wealth [excluding the assets of minor child so includible under section 4(1)] is greater. Where, however, the marriage of parents does not subsist, the net wealth of the minor child shall be included in the net wealth of that parent who maintains the minor child during the previous year ending on the valuation date.

- Where any such assets are once included in the net wealth of either parent, any such asset shall not be included in the net wealth of the other parent in any succeeding year unless the Assessing

Officer is satisfied (after giving that parent an opportunity of being heard) that it is necessary to do so.

■ The aforesaid provision of clubbing of net wealth of minor with the wealth of his parent, is not applicable in respect of following assets held by a minor child on the valuation date :

- a. assets acquired by the minor child out of income which arises (or accrues) to him on account of any manual work done by him ; and
- b. assets acquired by the minor child out of income which arises (or accrues) to him on account of any activity involving application of his skill, talent or specialized knowledge and experience.

■ The aforesaid rule of clubbing of net wealth of minor child with the wealth of his parents is not applicable in the case of minor child who is suffering from any disability of the nature specified in section 80U of the Income-tax Act [see para 267].

■ The aforesaid provisions of clubbing are not applicable, if on the valuation date child has become major.

■ If it is provided under a trust deed that so long as the beneficiaries are minor, the assets are not being held for their benefit but for the benefit of a charitable trust, the aforesaid clubbing provisions are not attracted— see *CWT v. H.H. Yeshwant Rao Ghorpade* [1978] 115 ITR 232 (Kar.).

546.3 Assets transferred to a person or an association of persons [Sec. 4(1)(a)(iii)] - The provisions of section 4(1)(a)(iii) are given below —

546.3-1 CONDITIONS - One has to satisfy the following conditions —

1. An asset is transferred by an individual after March 31, 1956 to a person or an association of person.
2. The transfer may be direct or indirect.
3. It is transferred for the benefit of the transferor, his or her spouse.
4. It is transferred for the immediate or deferred benefit of persons mentioned in 3 *supra*.
5. It is transferred otherwise than for adequate consideration.
6. The asset may be held by the transferee on the relevant valuation date in the same form in which it was transferred or otherwise.

If all these conditions are satisfied, then the asset is included in the net wealth of the transferor.

Provisions illustrated - X gifts a house property to a trust for the benefit of his wife on April 26, 1977. It shall be included in the net wealth of X.

546.3-2 EXCEPTION - See para 546.1-2.

Provisions illustrated - X gifts a house to a trust for the benefit of his wife on April 26, 1969. It was chargeable to gift-tax (or exempt under section 5 of the Gift-tax Act) for the gift-tax assessment year 1970-71. As it was chargeable to gift-tax (or exempt under section 5 of the Gift-tax Act) during the assessment years 1964-65 to 1971-72, it shall not be included in the net wealth of X for any assessment year.

546.3-3 OTHER POINTS - Apart from what is discussed in para 546.1-3, one should keep in view the following points—

1. The provisions of section 4(1)(a)(iii) would be applicable even if the spouse was given only a right to enjoy the income of settled properties for her life.— *Chandulal Shivilal v. CWT* [1965] 55 ITR 441 (Guj.).
2. To attract the provisions of section 4(1)(a)(iii), the beneficiary must have derived some benefit under the trust, either in income or corpus or both.

546.4 Assets transferred under revocable transfers [Sec. 4(1)(a)(iv)] - The provisions of section 4(1)(a)(iv) are given below —

546.4-1 CONDITIONS - Section 4(1)(a)(iv) is applicable if the following conditions are satisfied —

1. The asset is transferred by an individual.
2. It is transferred to a person or an association of person.

3. It is transferred after March 31, 1956.
4. It is transferred under a revocable transfer.
5. The asset may be held by the transferee on the relevant valuation date in the same form in which it is transferred or otherwise.

If all the conditions are satisfied, then the asset is included in the net wealth of the transferor.

■ *Revocable transfer* - For this purpose, the following transactions are treated as revocable transfers [clause (b) of *Explanation* to section 4]:

- a. if the transfer is revocable within a period of 6 years or if it is revocable during the lifetime of the beneficiary ; or
- b. if the transferor derives any benefit, directly or indirectly, from the assets transferred ; or
- c. if the transferor has a right to re-transfer, directly or indirectly, in respect of the whole or any part of the assets or income from the assets so transferred ; or
- d. if the transferor has the right to re-assume power, directly or indirectly, over the whole or any part of the assets or the income from the assets so transferred.

546.4-2 EXCEPTION - See para 546.1-2.

546.4-3 OTHER POINTS - Apart from what is discussed in para 546.1-3, one should also keep in view the following points —

■ The rule of section 4(1)(a)(iv) is based upon the general principle that there is no transfer of assets when a person purports to give and at the same time retains the right of revoking the transfer at his will.

■ The value of any assets transferred under an irrevocable transfer shall be liable to be included in computing the net wealth of the transferor as and when the power to revoke arises to him (irrespective of the fact whether such power is exercised).

546.5 Assets transferred to son's wife [Sec. 4(1)(a)(v)] - The provisions of section 4(1)(a)(v) are given below —

546.5-1 CONDITIONS - The following conditions should be satisfied —

1. The asset is transferred by an individual.
2. The transfer should take place after May 31, 1973.
3. The asset is transferred to son's wife.
4. The transfer may be direct or indirect.
5. The asset is transferred by otherwise than for adequate consideration.
6. The asset may be held by the transferee on the relevant valuation date in the same form in which it is transferred or otherwise.

If these conditions are satisfied, then the asset is included in the net wealth of the transferor.

546.5-2 EXCEPTION - There is no exception to the aforesaid rule.

546.5-3 OTHER POINTS - Apart from what is discussed in para 546.1-3, one should also keep in view the following points —

1. The relationship between father-in-law/mother-in-law and daughter-in-law should subsist between transferor and transferee both on the date of transfer and on valuation date.
2. Any gift made prior to June 1, 1973 is not covered by section 4(1)(a)(v).

546.6 Assets transferred for the benefit of son's wife [Sec. 4(1)(a)(vi)] - The provisions of section 4(1)(a)(vi) are given below —

546.6-1 CONDITIONS - One has to satisfy the following conditions :

1. The asset is transferred by an individual after May 31, 1973.

2. It is transferred to a person or an association of the immediate or deferred benefit of son's wife.
 3. The transfer may be direct or indirect.
 4. The transfer is without adequate consideration.
 5. The asset may be held by the transferee in the same form in which it is transferred or otherwise.
- If all these conditions are satisfied, then the asset is taxable in the hands of the transferor.

546.6-2 EXCEPTION - There is no exception to the aforesaid rule.

546.6-3 OTHER POINTS - See paras 546.1-3 and 546.5-3.

546.7 Interest of partner [Sec. 4(1)(b)] - Where the assessee (may or may not be an individual) is a partner in a firm or a member of an association of persons, the value of his interest in the assets of the firm or an association shall be included in the net wealth of the partner/member. For this purpose, interest of partner/member in the firm or association of persons should be determined in the manner laid down in Schedule III to the Wealth-tax Act.

546.7-1 MINOR ADMITTED TO THE BENEFITS OF A FIRM - Where a minor is admitted to the benefits of partnership in a firm, the value of his interest in the firm (determined in the manner laid down in Schedule III) shall be included in the net wealth of parent of minor in accordance with the provisions of section 4(1)(a)(ii) [see para 546.2].

546.8 Conversion by an individual of his self-acquired property into joint family property [Sec. 4(1A)] - The provisions of section 4(1A) are given below —

546.8-1 CONDITIONS - Section 4(1A) is applicable if the following conditions are satisfied —

1. An individual is a member of a Hindu undivided family.
2. He converts his separate property into property belonging to his Hindu undivided family through the act of impressing such property with the character of property belonging to the family or throwing it into common stock of the family. Alternatively, he transfers his separate property to his Hindu undivided family, directly or indirectly, without adequate consideration.
3. The property is converted or transferred after December 31, 1969.

■ *Consequences before partition* - If all the aforesaid conditions are satisfied, then the converted or transferred property shall be deemed to be the property of the individual and the value of such property is includible in his net wealth.

■ *Consequences after partition* - If all the aforesaid conditions are satisfied and the converted or transferred property becomes the subject-matter of a total or a partial partition among the members of the family, the converted or transferred property or any part thereof, which is received by the spouse of the transferor, is deemed to be the asset of the transferor and is includible in his net wealth.

546.9 Gifts by book entries [Sec. 4(5A)] - Where a gift of money from one person to another is made by means of entries in the books of account maintained by the person making the gift, or by an individual, or a Hindu undivided family, or a firm or an association of persons, or a body of individuals with whom he has business connection, the value of such gift will be included in the net wealth of the person making the gifts unless he proves to the satisfaction of the Wealth-tax Officer that the money had actually been delivered to the other person at the time the entries were made.

546.10 Impartible estate [Sec. 4(6)] - For the purpose of the Wealth-tax Act, the holder of an impartible estate shall be deemed to be the owner of all the properties comprised in the estate.

546.11 Property held by a member of a housing society [Sec. 4(7)] - Where the assessee is a member of a co-operative housing society and a building or part thereof is allotted or leased to him, the assessee is deemed to be the owner of such building and the value of such building is includible in computing his net wealth. In determining the value of such building, any outstanding instalments,

payable by the assessee to the society towards the costs of such house, are deductible as debt owed by the assessee.

The above rules are also applicable if the assessee is a member of a company or an association of persons.

546.12 Property held by a person in part performance of a contract [Sec. 4(8)] - The assets given below are taxable in the hands of beneficial owners, in the same manner in which they are taxed under the Income-tax Act :

- a. 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 [see para 86.2-4d].
- b. 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 clause (f) of section 269UA of the Income-tax Act [see para 86.2-4e].

Assets exempt from tax [Sec. 5]

547. The following assets are exempt from wealth-tax —

The burden of proving that the assets of the assessee are exempt from tax is upon the assessee — *CWT v. Hyderabad Race Club* [1978] 115 ITR 453 (AP).

547.1 Property held under a trust [Sec. 5(1)] - The provisions of section 5(1)(i) [read with section 21A] are given below—

547.1-1 GENERAL RULE - Any property held by an assessee under a trust or other legal obligation for any public purpose of charitable or religious nature in India is totally exempt from tax. However, this rule is subject to two special provisions given below.

547.1-2 SPECIAL RULE ONE - BUSINESS ASSETS - Business assets of a charitable/religious trust are exempt (or taxable) as follows—

■ *When business assets are exempt* - The following business assets held by an assessee under a trust (or other legal obligation) for any public charitable/religious trust are exempt from tax—

- a. where the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or the business is of a kind notified by the Central Government in this behalf in the Official Gazette;
- b. the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution;
- c. the business is carried on by an institution, fund or trust referred to in clause (23B) or (23C) of section 10 of the Income-tax Act.

■ *When business assets are taxable* - Any other business assets of a public charitable/religious trust is not exempt.

547.1-3 SPECIAL RULE TWO - ASSETS OF A TRUST WHEN INCOME/PROPERTY IS DIVERTED [SEC. 21A] - See para 550.1.

547.1-4 JUDICIAL RULINGS - One should also keep in view the following—

■ *Charitable purpose* - It will be sufficient if objects considered as a whole are charitable— *Trustees of K.B.H.M. Bhiwandiwalla Trust v. CWT* [1977] 106 ITR 709 (Bom.).

■ *Application of money* - Unlike the provisions of the Income-tax Act, the application of the money held under a trust or under legal obligation is not a relevant consideration for exemption under section 5(i). If the trustees hold the property for public purpose of a charitable or religious nature, even if they misapply or commit breach of trust, they will continue to enjoy exemption under the Act. Accordingly, the mere fact that the income from the property held under a public religious

endowment was being appropriated by the trustees for their own personal benefit would not disentitle the property to exemption under section 5(i)— *Managing Shebait of Bhukailash Debutter Estate v. WTO* [1977] 106 ITR 904 (Cal.).

■ *Nature of trust* - From the fact that the institution bears the name of a private person, the nature of the trust cannot be determined to be a private one. It is the object of the trust that has to be looked into—*CWT v. H.E.H. The Nizam's Supplemental & Religious Endowment Trust* [1973] 89 ITR 80 (AP).

■ *Application outside India* - Non-mention in trust deed about application of income in India will not entail denial of exemption, so long as no expenditure was incurred outside India—*Trustees of H.E.H. The Nizam's Sahebzadas of Saraf-e-khas Trust v. CWT* [1981] 127 ITR 694 (AP).

547.2 Coparcenary interest in a Hindu undivided family [Sec. 5(ii)] - If the assessee is a member of a Hindu undivided family, his interest in the family property is totally exempt from tax.

547.3 Residential building of a former ruler [Sec. 5(iii)] - The value of any one building used for the residence by a former ruler of a princely State is totally exempt from tax.

■ *Partly self-occupied and partly let out* - Where the assessee, a former ruler, owned a palace which was declared by the Central Government as his official residence and the palace consisted of a number of buildings out of which some were actually occupied by the assessee and quite a few of them were let out to various tenants, it was held that under section 5(iii) the assessee was entitled to exemption only in respect of those buildings or palaces which were occupied by the ruler and not in respect of the buildings let out to tenants—*Mohd. Ali Khan v. CWT* [1997] 224 ITR 672 (SC).

■ *Land appurtenant* - Land appurtenant to the exempted palace is to be treated as part of the palace and is exempt under section 5(iii), in accordance with CBDT Circular, dated July 13, 1985—*WTO v. Shrimant F.P. Gaekwad* [1989] 28 ITD 23 (Ahd.).

■ *New construction* - Exemption under section 5(iii) is admissible even in respect of new building constructed by an assessee in place of old recognised palace, which was used as his official residence—*CWT v. D.S. Virawala Suragwala* [2002] 122 Taxman 782 (Guj.).

■ *Multiple exemption* - An ex-ruler having already opted for one house for exemption under section 5(iii) would not be entitled to exemption of another house under provisions of section 5(vi)—*Gaj Singh v. Settlement Commission* [2000] 113 Taxman 32 (SC).

547.4 Former ruler's jewellery [Sec. 5(iv)] - Jewellery in possession of a former ruler of a princely State, not being his personal property which has been recognised as a heirloom by the Central Government before April 1, 1957, or by the Board after that date, is totally exempt from tax.

547.4-1 CONDITIONS WHEN JEWELLERY IS RECOGNISED BY THE CENTRAL GOVERNMENT [PROVISO TO SECTION 5(iv)] - The following conditions are applicable in case jewellery is recognised by the Central Government before April 1, 1957 by virtue of proviso to section 5(iv). It may be noted that the proviso has no application if jewellery is recognised by the Board on or after April 1, 1957 :

■ The jewellery shall be permanently kept in India and shall not be removed outside India except for a purpose and period approved by the Board.

■ Reasonable steps shall be taken for keeping that jewellery substantially in its original shape.

■ Reasonable facilities shall be allowed to any officer of the Government, or authorised by the Board, to examine the jewellery as and when necessary.

547.4-2 CONSEQUENCE WHEN SUCH RECOGNITION IS WITHDRAWN - If any of the aforesaid conditions is not being duly fulfilled, the recognition may be withdrawn (for reason to be recorded in writing) by the Board with retrospective effect from September 9, 1972. In such a case wealth-tax shall be payable by the former Ruler for all the assessment years commencing from the assessment year relevant for the valuation date falling after September 9, 1972 for which the jewellery was exempted on account of such recognition. This rule is subject to the following propositions :

1. For this purpose the fair market value of any jewellery on the date of the withdrawal of the recognition in respect thereof shall be deemed to be the fair market value of such jewellery on each successive valuation date relevant for the assessment years referred to above (*i.e.*, on each valuation date falling between September 9, 1972 and date of withdrawal of recognition).
2. The aggregate amount of wealth-tax payable in respect of such jewellery cannot in any case exceed 50 per cent of its fair market value on the valuation date relevant to the assessment year in which recognition was withdrawn.

547.4-2P1 X is a former Ruler. His jewellery was recognised by the Central Government as his heirloom prior to April 1, 1957. The recognition is withdrawn by the Board on July 10, 2008 (fair market value of the jewellery is Rs. 90 lakh) with retrospective effect from April 1, 1962. Fair market value of the jewellery on March 31, 2009 is Rs. 108 lakh.

SOLUTION : On the basis of given facts the following tax implications one should note :

1. The Board can withdraw recognition only with effect from September 9, 1972.
2. Assuming that the valuation date is March 31 every year, the assessee will have to pay wealth-tax as follows.
3. For these assessment years wealth-tax liability shall be determined as under :

Assessment years	Value to be included in net wealth	Tax liability
Up to 1972-73	—	Nil
From 1973-74 to 2008-09	Rs. 90 lakh on each valuation date	The aggregate wealth-tax liability for the assessment years 1973-74 to 2008-09 on jewellery cannot exceed 50% of Rs. 108 lakh
2009-10	Rs. 108 lakh	Usual wealth-tax liability.

547.5 Assets belonging to the Indian repatriates [Sec. 5(v)] - Under section 5(v) exemption is available if the conditions given in para 547.5-1 are satisfied :

547.5-1 CONDITIONS - The following conditions must be satisfied :

1. Exemption is available in the case of an assessee who is a person of Indian origin or a citizen of India. A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.
2. Such person was ordinarily residing in a foreign country.
3. On leaving such country, such person has returned to India with the intention of permanently residing in India.

547.5-2 EXEMPTION - If the above conditions are satisfied, then the following shall not be chargeable to tax for 7 successive assessment years (commencing with the assessment year next following the date on which such person returned to India) :

- a. moneys brought by him into India ;
- b. value of asset brought by him into India ;
- c. moneys standing to the credit of such person in a Non-resident (External) Account in any bank in India on the date of his return to India ; and
- d. value of assets acquired by him out of money referred to in (a) and (c) *supra* within one year prior to the date of his return and at any time thereafter.

The exemption under section 5(v) does not extend to the income or interest earned out of the use of the aforesaid funds in India after the date of return—*CWT v. Dr. (Mrs.) Issac* [2002] 125 Taxman 417 (Mad.). Moreover, exemption is not available in respect of assets purchased by an assessee out of money remitted from abroad by others—*CWT v. Noorjahan Jamal* [2003] 127 Taxman 594 (Mad.).

547.5-2P1 X, an Indian citizen, was ordinarily residing in Canada. He comes to India every year during September for 3 weeks. He comes to India permanently on July 9, 2008. He owns the following assets :

1. A residential house (not being let out) at Bombay gifted by his father-in-law.

2. A self-occupied house at Calcutta purchased out of money remitted from Canada on April 6, 2007 (this house is sold on August 7, 2009 to purchase debentures and silver utensils).
3. A house at Bangalore purchased out of money remitted from Canada on August 3, 2007.
4. Two kilograms gold brought at the time of transfer of residence on July 9, 2008.
5. Out of money brought into India at the time of return and out of his Non-resident (External) Account, he acquires the following during July-September 2008 : two cars, air-conditioners and shares in companies.
6. On December 10, 2008, after selling one kilogram of gold, he purchases a boat.

SOLUTION :

1. House at Bombay is chargeable to tax [see also 2 *infra*].
2. Exemption under section 5(v) is not available in respect of house at Calcutta, as it is purchased before July 10, 2007. The assessee can, however, claim exemption under section 5(vi) either in respect of the Bombay house or the Calcutta house. Silver utensils, purchased from the amount of sale proceeds is taxable on the valuation dates falling after August 7, 2009. Debentures are, however, not "assets" and, consequently, they are not chargeable to tax.
3. As the house at Bangalore is purchased after July 9, 2007, it is not taxable for the assessment years 2009-10 to 2015-16 (exemption is not available for the assessment year 2008-09).
4. One kilogram gold (which he has not sold) is not chargeable to tax for the assessment years 2009-10 to 2015-16.
5. Air conditioners and shares are not "assets" and not chargeable to tax. Two cars purchased out of moneys brought into India are not taxable for the assessment years 2009-10 to 2015-16.
6. Boat purchased out of sale proceeds of gold is exempt under section 5(v). Exemption is available in respect of asset purchased out of money remitted into India or out of money standing to his credit in a Non-resident (External) Account.

Even if assessee has converted assets, which were brought by him from outside India, into money, and has used that money for acquisition of other assets, the asset which is acquired with sale consideration of original asset, is also eligible for exemption—*CWT v. K.O. Mathews* [2003] 133 Taxman 418 (Ker.).

547.6 One house or part of a house [Sec. 5(vi)]- The following shall be exempt under section 5(vi) in the case of an individual or a Hindu undivided family —

- a. a house or a part of house, or
- b. a plot of land not exceeding 500 sq. metres in area.

A house is qualified for exemption, regardless of the fact whether the house is self-occupied or let out. In case a house is owned by more than one person, exemption is available to each co-owner of the house.

The following broad propositions taken from different decided cases are relevant :

- The word "house" has no statutory definition and, therefore, has to be given the common parlance meaning. The dictionary meaning of the word is "building for dwelling; a building in general; a dwelling place". It also has the meaning of abode, habitation, etc. The use of the words "a part of a house" is meant to extend the exemption to a part of house where the assessee's interest extends to a part of it.
- A house may consist of more than one self-contained dwelling unit and that if there is a unity of structure, the mere fact that such self-contained dwelling units are occupied by different persons, will not make that house into several houses— *Shiv Narain Chaudhari v. CWT* [1977] 108 ITR 104 (All.).
- A cinema hall cannot be treated as a house for this purpose — *CIT v. Jai Kishan Gupta* [2004] 137 Taxman 388 (All.).

Debt owed

548. From the aggregate of all assets (*i.e.*, including deemed assets but excluding exempted assets), the value of debts owed on the valuation date shall be deducted. The following two conditions should be satisfied to get deduction of "debt owed" :

1. Only "debt owed" by the assessee on the valuation date is deductible— see *CWT v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* [1981] 131 ITR 140 (MP).

2. Debts should have been incurred in relation to those assets which are included in net wealth of the assessee.

548.1 Debt owed - Meaning of - The following are the other judicial rulings which are relevant to the subject :

■ *Meaning* - The expression "debt owed" within the meaning of section 2(m) may be defined to pay *in praesenti* or *in futuro* an ascertainable sum of money. The word "owe" means to be under an obligation to pay; it does not really add to the meaning of the word "debt"—*Kesoram Industries & Cotton Mills Ltd. v. CWT* [1966] 59 ITR 767 (SC).

■ *Existing liability* - The concept of debt postulates an existing liability, a liability which has accrued, as distinguished from a liability which is contingent, to pay a sum of money in the present or in the future. An ascertained present liability constituting a debt owed by the assessee on a valuation date will be deductible in computing its net wealth— *CWT v. Associated Cement Co. Ltd.* [1981] 128 ITR 626 (Bom.). But existing liability quantifiable on future date is also a debt— *V. Chandramani Pattamaha Devi v. CWT* [1967] 64 ITR 147 (AP). Similarly, liability accrued but not quantified is also debt owed—*Devi Raj Chawla v. CWT* [1971] TLR 1444 (All.).

548.1-1 WEALTH-TAX LIABILITY - IS IT DEDUCTIBLE - According to the Central Board of Direct Taxes the liability under the Wealth-tax Act is not a debt owed by the assessee incurred in relation to the assets taxable under the Wealth-tax Act. The liability of wealth-tax is personal liability of the assessee. Moreover, this liability is not a debt incurred by the assessee but is created by the statute. Therefore, no deduction is to be allowed for the wealth-tax liability in the computation of the taxable net wealth of the assessee—Circular No. 663, dated September 28, 1993.

The aforesaid observation of the Board is against the ruling of the Gauhati High Court in *CWT v. Lachmi Devi Chowkhani* [1979] 117 ITR 736 that "agricultural income-tax is undoubtedly, a debt which is incurred in relation to assets, such as agricultural land...".

548.1-1P1 Discuss the following :

1. X wants to claim deduction of outstanding income-tax and wealth-tax liabilities of preceding years of Rs. 1,76,000.
2. Y owns three cars and silver/gold furniture (value of these assets being Rs. 24 lakh). He takes a loan of Rs. 3 lakh by pledging these to invest in shares of companies.
3. By taking a bank overdraft of Rs. 20 lakh, Z purchases diamonds on April 10, 2008 (fair market value of diamonds on March 31, 2009 is Rs. 24 lakh).
4. A has the following assets on March 31, 2009 :

Asset	Market value on March 31, 2009 Rs.	Loan outstanding on March 31, 2009 Rs.	Security
Gold and silver	80 lakh	6 lakh	Shares
Shares	10 lakh	3 lakh	House B
Residential House A	50 lakh	4 lakh	Gold
Residential House B	42 lakh	38 lakh	Personal
Commercial House C [used for carrying on own business]	95 lakh	5 lakh	Personal
Boat	8 lakh	12 lakh	Gold
Motor cars	11 lakh	1 lakh	Silver
Bank deposit	1 lakh	1 lakh	House C
Let out (throughout 2008-09) residential House D	55 lakh	40 lakh	House D
Commercial complex (having 20 offices)	190 lakh	100 lakh	Commercial complex

Besides A took a loan of Rs. 75,000 from his bank (against security of his car) for his friend's marriage. Moreover, out of loan of Rs. 12 lakh taken by him for purchasing boat, he utilised Rs. 1 lakh for financing expenses on his foreign visit.

SOLUTION :

1. Income-tax and wealth-tax liabilities are not deductible.

2. Net wealth of Y shall be computed as under :

	Rs.
Car, silver and gold furniture	24,00,000
Shares (not "assets")	—
Gross wealth	24,00,000
Less : Debts (loan of Rs. 3 lakh is not deductible as it is taken to purchase shares which are not "assets")	—
Net wealth	24,00,000

3. Bank overdraft of Rs. 20 lakh is a "debt owed". Net wealth of Z will include Rs. 4 lakh.

4. Net wealth of A shall be determined as under :

	Assets (Rs. in lakh)	Debts owed (Rs. in lakh)
Gold and silver	80	6
Shares (not an "asset")	—	—
House A [exempt under section 5(vi)]	—	—
House B	42	38
House C (commercial building used for own business purposes is not an "asset")	—	—
Boat	8	11
Cars	11	1
Bank deposit (not an "asset")	—	—
House D (not an "asset")	—	—
Commercial complex (not an "asset")	—	—
Loan for friend's marriage (not deductible)	—	—
Loan utilised for foreign visit (not deductible)	—	—
Total	141	56

Net wealth (Rs. 141 lakh—Rs. 56 lakh) : Rs. 85 lakh

Valuation of assets [Sec. 7]

549. For the purpose of wealth-tax, the value of an asset† (other than cash) shall be its value as on the valuation date determined in the manner laid down in Schedule III [see paras 549.1 to 549.7].

549.1 Valuation of a building [Part B of Schedule III]- Value of any immovable property (being a building or land appurtenant thereto, or part thereof) is to be made in accordance with Part B of Schedule III to the Wealth-tax Act.

549.1-1 FIRST STEP - FIND OUT GROSS MAINTAINABLE RENT - The first step is to find out gross maintainable rent. Gross maintainable rent is :

a. annual rent received/receivable by the owner or annual value of the property as assessed by local authority, whichever is higher (if the property is let out) ; or

†"Asset" means six assets given under section 2(ea). It includes deemed "assets" as per section 4 and excludes exempted assets under section 5. Even if an "asset" is incapable of being sold in open market, the interest of the assessee therein has to be valued—*Binny Ltd. v. CWT* [2005] 96 ITD 500 (Chennai).

b. annual rent assessed by the local authority or if the property is situated outside the jurisdiction of a local authority, the amount which the owner can reasonably be expected to receive as annual rent had such property been let (if the property is not let).

Meaning of annual rent - Where the property is let throughout the year ending on valuation date (hereinafter referred to as "previous year"), the *actual rent* received/receivable by the owner in respect of such rent is "annual rent". If, however, the property is let and was vacant during the previous year, the "annual rent" means the amount which bears the same proportion to the amount of actual rent received or receivable by the owner for the period for which the property is let as the period of 12 months bears to such period. For instance, where a person receives Rs. 8,400 as rent of a house which is let for a period of 7.5 months during the relevant previous year, "annual rent" will be Rs. 13,440 (being Rs. 8,400 × 12/7.5).

549.1-1a ADJUSTMENTS - In the following cases "actual rent" shall be increased in the manner specified below :

- Where the property is in occupation of a tenant and municipal taxes in respect of the property are borne (wholly or partly) by the tenant, the amount of taxes borne by the tenant will be added to the rent paid/payable by the tenant.
- Where the property is in the occupation of a tenant and expenditure on repairs in respect of the property is borne by the tenant, one-ninth of the actual rent shall be added to actual rent.
- Where the owner has accepted deposit of any amount (not being advance payment towards rent for a period of three months or less), actual rent shall be increased by the amount calculated at the rate of 15 per cent per annum on the amount of deposit outstanding from month to month, for the number of months (excluding part of a month) during which such deposit was held by the owner in the previous year. If, however, the owner is liable to pay interest on such deposit, the increase to be made shall be limited to the sum by which the amount calculated as aforesaid exceeds the interest actually paid.
- Where the owner has received any amount by way of premium or otherwise as consideration for leasing of the property (or any modification of the terms of the lease), the amount obtained by dividing the premium or other amount by the number of years of the period of the lease shall be added to actual rent.
- Where the owner derives any benefit or perquisite, whether convertible into money or not, as consideration for leasing of the property (or any modification of the terms of the lease), the value of such benefit or perquisite shall be added to actual rent.

Meaning of rent received or receivable - "Rent received or receivable" shall include all payments for the use of the property (by whatever name called), the value of all benefits or perquisites (whether convertible into money or not), obtained from a tenant or occupier of the property and any sum paid by a tenant (or occupier of the property) in respect of any obligation which, but for such payment, would have been payable by the owner.

549.1-1b DEFAULT BY TENANT - Where the tenant commits default in the payment of rent and makes part payment of the rent, then the gross maintainable rent shall be determined not on the basis of actual rent received by the landlord, but on the basis of the amount payable under the agreement—*CIT v. Bhagawati Ammal* [2003] 262 ITR 622 (Mad.).

549.1-1b WHEN RENT PAID BY ULTIMATE SUB-LESSEE IS HIGHER - Where an assessee has given a premises on license and the licensee has sub-licensed the same to the other person for a higher consideration, only rent received or receivable by the assessee from the licensee would be material and the rent/licence fee paid by the ultimate sub-lessee to the lessee or licensor would be immaterial—*CWT v. Akshya Textiles Trading & Agencies (P.) Ltd.* [2008] 168 Taxman 303 (Bom.).

549.1-2 SECOND STEP - FIND OUT NET MAINTAINABLE RENT - Net maintainable rent is determined by deducting the following from the gross maintainable rent :

- a. the amount of taxes levied by any local authority in respect of property (deductible on "accrual" basis, deduction is available even if these are to be borne by the tenant) ; and
- b. a sum equal to 15 per cent of gross maintainable rent.

549.1-3 THIRD STEP - CAPITALISE NET MAINTAINABLE RENT - The third step is to capitalise net maintainable rent. This can be done by multiplying the net maintainable rent by 12.5. In case such property is constructed on leasehold land, net maintainable rent is to be multiplied by 10 when the unexpired period of lease of such land is 50 years or more (8 where the unexpired period of lease of such land is less than 50 years).

549.1-3a PROPERTIES ACQUIRED/CONSTRUCTED AFTER MARCH 31, 1974 - If a property is acquired/constructed after March 31, 1974, then the following rule will be applicable :

- *Computation 1* - Find out the value of the house property as determined under para 549.1-3.
- *Computation 2* - Find out original cost of construction/acquisition *plus* cost of improvement of the house property.

The higher of *Computation 1* or *Computation 2* is taken as “capitalised” value of net maintainable rent under *Step Three* as stated in para 549.1-3.

549.1-3b EXCEPTION - The rule given in para 549.1-3a is not applicable if the following conditions are satisfied—

- *Condition 1* - The exception is applicable in respect one house property (or a part of one house property). In case of more than one house property, the assessee may select any one house property for the purpose of this exception.
- *Condition 2* - The house property given above is acquired/constructed after March 31, 1974.
- *Condition 3* - The assessee exclusively uses the house property for his own residential purpose throughout the period of 12 months immediately preceding the valuation date. If a house property is acquired/constructed during the financial year ending on the valuation date and thereafter it is used for own residential purposes, the benefit of this exception is available even in the first assessment year (the time gap between the date of acquisition/construction and the first valuation date is less than 12 months and, consequently, it cannot be for own residential purposes throughout the period of 12 months ending on the first valuation date)—*Bharatbhai Vithalbhai Patel (HUF) v. WTO* [2002] 77 TTJ (Ahd.) 142. Moreover, *Condition 3* nowhere states that assessee is required to use the house throughout the period of 12 months as owner thereof—*Manharkumar R. Bhansali v. ITO* [2004] 91 ITD 493 (Mum.).
- *Condition 4* - The cost of acquisition/construction (*plus* cost of improvement) does not exceed Rs. 50 lakh, if the house is situated at Bombay, Calcutta, Delhi and Madras (Rs. 25 lakh at any other place).

If the above four conditions are satisfied, the rule given in para 549.1-3a is not applicable. To put it differently, if the above conditions are satisfied, the original cost of acquisition/construction *plus* cost of improvement is not taken into consideration.

549.1-4 FOURTH STEP - ADD PREMIUM - Fourth step is to add a premium to the capitalised value determined under the third step if unbuilt area of the plot of land on which the property is built exceeds the specified area. For calculating the premium, it is necessary to understand the meanings of the expressions “aggregate area”, “unbuilt area” and “specified area”. While the expression “aggregate area”, in relation to the plot of land on which the property is built, refers to the aggregate of the area on which property is built as well as the unbuilt area, the term “unbuilt area” means that part of such aggregate area on which no building has been erected. The expression “specified area” is defined as :

- a. where the property is situated at Bombay, Calcutta, Delhi or Madras, 60 per cent of the aggregate area ;
- b. where the property is situated at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Lucknow, Ludhiana, Madurai, Nagpur, Patna, Pune, Salem, Sholapur, Srinagar, Surat, Tiruchirapalli, Trivandrum, Vadodara (Baroda) or Varanasi, 65 per cent of the aggregate area ; and

c. where the property is situated at any other place, 70 per cent of the aggregate area.

Where, however, the minimum area of the plot required to be kept as open space, for the enjoyment of the property exceeds the specified area, such minimum area is deemed to be the specified area.

The amount of premium, to be added to the capitalised value, is determined as follows :

<i>The excess of "unbuilt area" over "specified area"</i>	<i>Premium</i>
Not more than 5 per cent of the "aggregate area"	<i>Nil</i>
More than 5 per cent but not more than 10 per cent of the "aggregate area"	20 per cent of capitalised value
More than 10 per cent but not more than 15 per cent of the "aggregate area"	30 per cent of capitalised value
More than 15 per cent but not more than 20 per cent of the "aggregate area"	40 per cent of capitalised value
More than 20 per cent of the "aggregate area"	Rules given in Part B of Schedule III are not applicable [<i>see</i> para 549.7 for valuation].

549.1-5 FIFTH STEP - DEDUCT UNEARNED INCREMENT - Fifth step is to deduct the amount of unearned increment payable. If in the case of property built on leasehold land any part of unearned increase in value is payable to the Government or any authority at the time of transfer of the property, the value of such property, as determined above, will be reduced by the amount liable to be so paid if the property has been transferred on the valuation date or 50 per cent of the value of the property as so determined, whichever is less.

549.1-6 CASES WHERE DIFFERENT RULES OF VALUATION ARE APPLICABLE - The aforesaid rules of valuation are not applicable in the following cases :

- a. if the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable [for meaning of the word "practicable", *see* para 549.1-6a] to apply aforesaid provisions to a particular case ;
- b. where the unbuilt area exceeds the specified area by more than 20 per cent of the aggregate area ;
or
- c. where the property is built on leasehold land and the lease expires within a period of not exceeding 15 years from the relevant valuation date and the lease deed does not give an option to the lessee for the renewal of the lease.

For valuation of the property in these three cases, *see* para 549.7.

549.1-6a "PRACTICABLE" - MEANING OF - The word "practicable" means and specifies that which is feasible or practicable of being put to practice within the available means and resources. In other words, when the Assessing Officer is of the opinion that there is insurmountable difficulty in computing the value as per rent capitalisation method as per rule 3, such situation can be considered as not 'practicable' and even under such circumstances, the Assessing Officer has to take the prior approval of the Deputy Commissioner so as to apply the procedure under rule 20.

■ One should also keep in view the following—

1. Merely because the value as per the agreement of sale is higher than the value as worked out under rule 3, the valuation as arrived at under rule 3 cannot be considered as impracticable. In other words, the Legislature having incorporated separate provisions for adopting higher value than the value that could be arrived at under rule 3, the word 'practicable' cannot be stretched and applied to a situation where by applying a different valuation (or realistic value) the value of the property can be adopted at a higher figure than the one which is worked out as per rule 3—*Arabinda Mitra v. Asstt. CWT* [1996] 59 ITD 609 (Cal.).

2. In view of fact that rent received by assessee is a nominal rent, it would not by itself render rule 3 of Schedule III inapplicable. It cannot be said that it becomes impracticable to apply rule 3 by reason of view of fact that rent is nominal—*George Oakes Ltd. v. CWT* [2004] 140 Taxman 51 (Mad.).

3. To say that the rent is collusive does not amount to saying that it was practicable to apply rule 3. The words 'not practicable' have to be construed as meaning 'not proper or feasible' and not that the valuation is not reasonable or fair; as held by the Gujarat High Court in *Hasanand Pinjomal v. CIT* [1978] 112 ITR 134. Rule 5 itself takes care if the rent is low in that case annual rent assessed by a local authority will have to be taken as gross maintainable rent if it is higher than actual rent—*WTO v. Shri Pratap Villas Palace Trust* [2004] 2 SOT 546 (Rajkot).

549.1-P1 X owns a commercial house property which is situated at Pune. While annual value of the property as per municipal records is Rs. 80,000, rent received from the tenant is Rs. 70,000. Municipal taxes are paid partly by X (Rs. 2,000) and partly by the tenant (Rs. 3,500). Repair expenses are, however, borne by the tenant (Rs. 2,600). The tenant has deposited Rs. 50,000 with X as refundable security. It does not carry any interest. The difference between "unbuilt area" and "specified area" does not exceed 5 per cent. Determine the value of the property on March 31, 2009, being the valuation date of X for the assessment year 2009-10, on the assumption that the house is built on : (a) freehold land, (b) leasehold land (unexpired period of lease of such lands is more than 50 years). Find out the value on the two assumptions : (a) the property is acquired on May 10, 1988 for Rs. 12,50,000, (b) the property is acquired on March 10, 1973.

SOLUTION :

	Rs.	Rs.
Gross maintainable rent		
Annual value (being municipal value) (a)		80,000
Annual rent		
- Actual rent paid by the tenant	70,000	
Add :		
- One-ninth of Rs. 70,000 as repair expenses are borne by the tenant	7,777	
- Municipal taxes paid by the tenant	3,500	
- 15% of Rs. 50,000 (being interest of deposit)	7,500	
Annual rent (b)		88,777
Gross maintainable rent [(a) or (b), whichever is higher]		88,777
Less :		
Municipal taxes (Rs. 2,000 + Rs. 3,500)		5,500
15% of Rs. 88,777		13,316
Net maintainable rent		69,961
Capitalised value		
□ If property is constructed on freehold land (i.e. Rs. 69,961 × 12.5)		8,74,514
□ If property is constructed on leasehold land (i.e., Rs. 69,961 × 10)		6,99,610

Value of property :

	If it is acquired on May 10, 1988 for Rs. 12,50,000	If it is acquired on May 10, 1973
	Rs.	Rs.
□ If it is constructed on freehold land	12,50,000	8,74,513
□ If it is constructed on leasehold land	12,50,000	6,99,610

Notes :

1. No adjustment is required on account of premium specified in para 549.1-4 *supra* as the difference between "unbuilt area" and "specified area" does not exceed 5 per cent of the aggregate area.
2. It is assumed that unearned increment is not payable to the Government.

549.1-P2 Continuing problem 549.1-P1, what will be the valuation of the property if area of plot on which the house is built in 800 sq. metres. FSI permissible is 1.4 and FSI utilised is 1,088 sq. metres (i.e., 136 metres × 8 storeys).

SOLUTION : Area of plot	800 sq. mts.
FSI permissible (1.4 × 800)	1,120 sq. mts.
FSI utilised (136 × 8)	1,088 sq. mts.
Balance potential (1,120—1,088)	32 sq. mts.
Area on which house is constructed	136 sq. mts.
Unbuilt area (i.e., 800—136)	664 sq. mts.
Aggregate area	800 sq. mts.
Specified area (65% of 800 sq. mts.)	520 sq. mts.
Excess of unbuilt area over specified area (664—520 sq. mts.)	144 sq. mts.
144 sq. mts. as percentage of aggregate area	18%

As the difference between unbuilt area and specified area is 18% of aggregate area, a premium at the rate of 40% will be added to the capitalised value, even if the balance of potential area is 32 sq. mts.

	If it is acquired on May 10, 1988 for Rs. 12,50,000		If acquired on May 10, 1973	
	Freehold land Rs.	Leasehold land Rs.	Freehold land Rs.	Leasehold land Rs.
Value as per working 549.1-P1	12,50,000	12,50,000	8,74,513	6,99,610
Add : 40%	5,00,000	5,00,000	3,49,805	2,79,844
Valuation of property	<u>17,50,000</u>	<u>17,50,000</u>	<u>12,24,318</u>	<u>9,79,454</u>

549.1-P3 Continuing problem 549.1-P2, what will be the valuation in the case of property built on leasehold land if 40 percent of unearned increase is payable to the Government. Assume, for the purpose of calculating unearned income, that lease rent capitalisation rate is 7 per cent, annual lease rent is Rs. 1,000, the original lease was for 99 years, out of which 27 years have expired on the valuation date, and the present net maintainable rent of the land is Rs. 35,000.

SOLUTION :	Rs.
Valuation of leasehold land (capitalisation factor @ 7% for 99 years is : 14.268* × Rs. 1,000)	14,268
Capitalised value of present net maintainable rent (capitalisation factor @ 7% for 72 years, i.e., 99—27 years : 14.176*) (14.176 × Rs. 35,000)	4,96,160
Unearned increase, i.e., Rs. 4,96,160 — Rs. 14,268	4,81,892
Amount payable to the Government, i.e., 40% of Rs. 4,81,892 (a)	1,92,757

	If construction of the property is completed on May 10, 1988	If construction is completed on May 10, 1973
	Rs.	Rs.
50% of valuation in the case of leasehold land as per working given in 549.1-P2 (b)	<u>8,75,000</u>	<u>4,89,727</u>
Valuation of the property :		
As per calculation given in 549.1-P2	17,50,000	9,79,454
Less : Deduction on account of unearned increase, i.e., (a) or (b), whichever is less	<u>1,92,757</u>	<u>1,92,757</u>
Valuation of property	<u>15,57,243</u>	<u>7,86,697</u>

*Present value of an annuity of Re. 1 per year payable for 99 years or 72 years if rate of interest is 7 per cent. The formula for this is as follows :

$$\frac{1-[1\div(1.07)^n]}{0.07} \quad n = 99 \text{ years or } 72 \text{ years.}$$

549.2 Valuation of self-occupied property [Sec. 7(2)] - The provisions of section 7(2) are given below—

■ **Conditions** - Section 7(2) is applicable if the following conditions are satisfied—

1. The assessee owns a house (or a part of the house), being an independent residential unit.
2. It is used by the assessee exclusively for his residential purposes throughout 12 months ending on the valuation date.

■ **Consequences when the above conditions are satisfied** - If the above conditions are satisfied, the assessee can adopt any one of the following—

Option one - He can take value of the house as determined under para 549.1 on the valuation date relevant for the current assessment year.

Option two - Alternatively, he take value of the house, as determined under para 549.1, on the first valuation date next following the date on which he became the owner or the valuation relevant for the assessment year 1971-72, whichever is later.

549.2-1 OTHER POINTS - The following points should be noted—

■ **Construction of house** - Where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed.

■ **Compulsory residence not required** - The use of a house for residential purpose does not require a compulsory residence in that house. It only requires that house should be exclusively reserved and available for residential purposes of the assessee at all time—*CWT v. Anilkumar M. Virani* [2002] 123 Taxman 586 (Guj.).

■ **Open space is part of house** - If a person has acquired a house for being used as a residential house and that house happens to have large open space around it for use as garden or as play area or other purposes, as long as the house is used solely for residence and the benefit of those grounds is confined to the residents of the house and their visitors, such a house with its grounds would qualify for the benefit under section 7(2)—*M.K. Kuppuraj (HUF) v. CWT* [2002] 125 Taxman 569 (Mad.).

■ **Case of legal heirs** - X owns a property. He dies on May 2, 1998. As per his will, the property will be transferred amongst his legal heirs (Y, Z, A and Mrs. X). One of his sons, Y, is the administrator of the estate. The property is yet to be transferred to the legal heirs. During the previous year ending on March 31, 2007, Z and A use the property for their residential purposes. Property has not been let out at all. The condition under section 7(2) in respect of house used 'by him for residential purpose' must be regarded as having been satisfied even if the house is used for residential purpose by those heirs who are entitled to a share in estate and not by the administrator himself—*A. Sivasailam v. CWT* [2003] 127 Taxman 45 (Mad.).

■ **Exclusive use** - The words 'exclusively used' do not mean that assessee should have actually lived in house for entire prescribed period. What is required is that the house should have been exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date meaning thereby it should not have been let out for rent or for the use of commercial purposes—*CWT v. Muthu Zulaikha* [2000] 245 ITR 800/[2001] 115 Taxman 185 (Mad.)(FB).

549.3 Valuation of assets of business [Part D, Schedule III] - If the assessee is carrying on a business for which accounts are maintained by him regularly, the net value of the assets of the business as a whole, having regard to the balance sheet of such business on the valuation date, is taken as value of such assets.

549.3-1 VALUE OF ASSETS DISCLOSED IN BALANCE SHEET - The provisions are given below—

■ *Step One* - Find out the following—

Assets	Value
Depreciable assets	Written down value
Non-depreciable assets (other than stock-in- trade)	Book value
Closing stock	Value adopted for the purpose of income-tax.

■ *Step two* - To the value given in table (column 2) (*supra*) add 20 per cent of it.

■ *Step three* - Find out the value of the individual asset as per provisions of Schedule III. Rules of valuation of individual asset as per Schedule III are given in this book as follows—

House property	Para 549.1
Life interest	Para 549.5
Jewellery	Para 549.6 (it is generally taken as market value)
Any other asset	Para 549.7 (it is generally taken as market value)

■ *Step four* - If the amount computed under *Step Three* is more than the amount determined under *Step Two*, then the amount determined under *Step Three* is taken the value of asset for wealth-tax purposes. Conversely, however, if the amount computed under *Step Three* is less than (or equal to) the amount determined under *Step Two*, then the amount given under *Step One* is taken as value of the asset for wealth-tax purposes.

Provisions illustrated - The following assets are taken from the balance sheet of X Ltd. as on March 31, 2009—

Assets	Step one - Balance sheet amount	(2) + 20% of (2)	Individual asset value as per Schedule III	Value to be taken for wealth-tax purpose
(1)	(2)	(3)	(4)	(5)
Building I	30	36	29	30
Building II	40	48	48	40
Car	5	6	4	5
Building III	50	60	61	61
Gold	100	120	147	147
Urban Land	90	108	106	90

Note - Value to be taken for wealth-tax purpose is the amount given under column (4) [if it is more than the amount given under Column (3)]; otherwise it is amount given under column (2).

549.3-2 VALUE OF ASSETS NOT DISCLOSED IN BALANCE SHEET - The value of an asset not disclosed in the balance sheet shall be taken to be the value determined in accordance with the provisions of Schedule III as applicable to that asset.

549.3-3 VALUE OF ASSETS NOT CONSIDERED - The value of the following assets which are disclosed in the balance sheet shall not be taken into account, namely :

- a. any amount paid as advance tax under the Income-tax Act ;
- b. the debt due to the assessee according to the balance sheet (or part thereof) which has been allowed as a deduction under section 36(1)(vii) of the Income-tax Act, for the purposes of assessment for the previous year relevant to the corresponding assessment year under that Act ;
- c. the value of any asset in respect of which wealth-tax is not payable under this Act ;

- d. any amount shown in the balance sheet including the debit balance in the profit and loss account or profit and loss appropriation account which does not represent the value of any asset ;
- e. any asset shown in the balance sheet not really pertaining to the business.

It may be noted that as per definition of the term "asset" given under section 2(ea), the asset (a), (b) and (d) mentioned above are not "asset" and, consequently, these points do not have any practical utility.

549.3-4 LIABILITIES NOT CONSIDERED -The following amounts shown as liabilities in the balance sheet shall not be taken into account, namely :

- a. capital employed in the business other than attributable to borrowed money;
- b. reserves by whatever name called (provision for any purpose other than taxation shall be treated as a reserve);
- c. any provision made for meeting any future or contingent liability;
- d. any liability shown in the balance sheet not really pertaining to the business;
- e. any debt owed by the assessee to the extent to which it has been specifically utilised for acquiring an asset in respect of which wealth-tax is not payable under this Act (where it is not possible to determine the amount of debt so utilised, it shall be taken as the amount which bears the same portion to the total of the debts owed by the assessee as the value of that asset bears to the total value of the assets of the business).

549.4 Value of interest in firm or association of persons [Part E, Schedule III] - First determine the net wealth of the firm (or association of persons) on the valuation date. For determining the net wealth of the firm (or association), no account shall be taken of the exemptions given by section 5*.

■ That portion of the net wealth as is equal to the amount of the capital of the firm (or association) is allocated amongst the partners (or the members) in the proportion in which capital has been contributed by them. The residue of the net wealth is allocated amongst the partners (or the members) in accordance with the agreement of the partnership or association of persons for the distribution of assets in the event of dissolution of the firm or association or in the absence of such agreement, in the proportion in which the partners (or members) are entitled to share profits.

The following points should also be kept in view :

■ If the net wealth of the firm or association includes the value of any assets located outside India, the value of the interest of any partner (or member) in the assets located in India shall be determined having regard to the proportion which the value of assets located in India (diminished by the debts relating to those assets) bears to the net wealth of the firm or association [*see* 549.4-P2].

■ If the net wealth of the firm or association includes the value of any assets which are exempt from inclusion in the net wealth under section 5, the value of interest of a partner (or member) will be deemed to include the value of his proportionate share in the said assets. Provisions of section 5 shall apply to the partners/members accordingly—*CWT v. T.S. Sundaram* [2000] 108 Taxman 178 (SC).

549.4-P1 X, Y and Z are three partners (1 : 2 : 3) of a firm engaged in manufacturing activities. The following is the balance sheet of the firm as on March 31, 2009 :

*In proviso to rule 16 of Sch. III to the Wealth-tax Act, it is incorrectly mentioned as sub-sections (1) and (1A) of section 5.

(Rs. in lakh)

Liabilities		Assets	Book value	Value as per Schedule III to WT Act
Capital		Land (1000 sq. mt.) situated in a rural area	6	90
X	16			
Y	28	Land (1260 sq. mt.) situated in an urban area		
Z	21	outside India (purchased in 1980 for factory which is yet to be constructed)	20	29
Loan against security of gold for working capital	2	Motor cars (WDV : Rs. 5 lakh)	8	3
Loan for paying sales tax	1	Plant and machinery (WDV : Rs. 14 lakh)	16	-
Loan for purchasing gold	3	Office building (WDV : Rs. 34 lakh)	30	-
Loan for purchasing residential house	6	Residential house (not being let out) (WDV : Rs. 3 lakh)	7	18
Loan for purchasing rural land	4	Gold and silver	8	62
Provision for loss	1	Shares	13	-
Provision for tax	6	Sundry debtors	6	-
Sundry creditors	30	Advance tax for the assessment year 2008-09	3	-
		Pre-incorporation expenses	1	-
			118	-

Residential house is provided to a production manager whose gross salary is Rs. 1.50 lakh per annum.

As per partnership deed in the event of dissolution of firm, the assets shall be distributed among X, Y and Z in the ratio of 7: 8 : 5.

Value of personal assets (as per Schedule III) and amount of "debt owed" of X, Y and Z on March 31, 2009 are as follows :

	X Rs.	Y Rs.	Z Rs.
Assets			
Residential house	—	20,000	13,40,000
Car	71,000	—	1,45,000
Gold	26,00,000	12,00,000	10,00,000
Cash in hand	81,000	50,000	10,000
Debts			
Loan taken to purchase car	10,000	—	30,000
Loan taken on security of gold for investing in firm	16,00,000	2,00,000	—
Loan taken on personal security for purchasing residential house	—	6,000	60,000

Find out the net wealth of X, Y and Z on March 31, 2009 for the assessment year 2009-10.

SOLUTION :

Valuation of assets of the firm

(Rs. in lakh)

Land situated in rural area (not an "asset")	—
Urban land [book value Rs. 20 lakh ; as Schedule III valuation is higher than Rs. 24 lakh (i.e., Rs. 20 lakh plus 20% of it), Schedule III valuation is taken]	29
Motor cars [WDV : Rs. 5 lakh ; as Schedule III valuation is not more than Rs. 6 lakh (i.e., Rs. 5 lakh plus 20% of it), written down value is taken]	5

(Rs. in lakh)

Plant and machinery	—
Office building	—
Residential house [written down value : Rs. 3 lakh ; as Schedule III valuation is higher than Rs. 3.60 lakh (i.e., Rs. 3 lakh plus 20% of it), Schedule III valuation is adopted]	18
Gold and silver [Schedule III valuation is taken as it is higher than Rs. 9.60 lakh (i.e., Rs. 8 lakh plus 20% of it)]	62
Shares (not an "asset")	—
Sundry debtors (not an "asset")	—
Gross wealth	114
Less :	
Loan for purchasing gold	3
Loan for purchasing residential house	6
Net wealth of the firm	105

Allocation of the net wealth among the partners.

	X Rs.	Y Rs.	Z Rs.
Net wealth to the extent of share capital	16,00,000	28,00,000	21,00,000
Remaining net wealth (i.e., Rs. 40 lakh) in the ratio of 7 : 8 : 5	14,00,000	16,00,000	10,00,000
Share of partners in the net wealth of firm (a)	30,00,000	44,00,000	31,00,000
[out of which proportionate value of residential house, i.e., 12/105 of (a)]	(3,42,857)	(5,02,857)	(3,54,286)
Computation of the net wealth of partners :			
Share in net wealth of firm (excluding share in residential house of the firm)	26,57,143	38,97,143	27,45,714
Share in residential house of the firm	3,42,857	5,02,857	3,54,286
Personal residential house	—	20,000	13,40,000
Car	71,000	—	1,45,000
Gold	26,00,000	12,00,000	10,00,000
Cash in hand	31,000	—	—
Total	57,02,000	56,20,000	55,85,000
Less : Exemption under section 5(vi) in respect of one residential house property	3,42,857	5,02,857	13,40,000
Gross wealth	53,59,143	51,17,143	42,45,000
Less : Debt owed			
Loan for purchasing car	10,000	-	30,000
Loan for investing in firm	16,00,000	2,00,000	-
Loan for purchasing personal residential house	-	6,000	-
Net wealth (rounded off)	37,49,100	49,11,100	42,15,000

549.4-P2 In problem 549.4-P1, assume that X is a non-resident for the assessment year 2009-10.**SOLUTION :** Since X is a non-resident, assets located outside India (i.e., urban land) is not chargeable to tax in his case. Net wealth of X will be determined as under :

	Rs.
Net wealth of X as determined earlier	37,49,140
Less : Share of X in the urban land situated outside India (Rs. 30,00,000 × Rs. 29 lakh ÷ Rs. 105 lakh)	8,28,571
Net wealth (rounded off)	29,20,600

549.5 Value of life interest [Part F, Schedule III] - The value of life interest of an assessee shall be determined as follows :

1. *Average net annual value* - First find out "average net annual income" of the assessee derived from the life interest during 3 years ending on the valuation date. While computing net annual income, expenses incurred on the collection of such income (subject to the maximum of 5 per cent of the average of annual gross income) shall be deducted.

2. *Multiplier* - Average net annual income shall be multiplied by $1 \div (p+d) - 1$.

Where

p = Annual premium for a whole life insurance without profit on the life of the life tenant for unit sum assured as specified in the Appendix to Schedule III to the Wealth-tax Act.

$d = i \div (1+i)$, i being rate of interest which is 6.5 per cent per annum. In other words $d = 6.5 \div 106.5$.

As mentioned earlier, the average net annual value shall be multiplied by $1 \div (p+d) - 1$. The multiplier depends upon premium for unit sum assured and age of the person having life interest. The multiplier, i.e., $1 \div (p+d) - 1$, for different age is given in the table (*infra*).

3. *Different value in some cases* - The Assessing Officer may, if he is of the opinion that in the case of the life tenant, a life insurance company would not take the risk of insuring his life at the normal premium rates in force but would demand a higher premium, vary the valuation suitably.

4. *Value of life interest in an asset cannot exceed value of the asset* - The value of the life interest so determined shall, in no case, exceed the value as on the valuation date as determined under Schedule III of the corpus of the trust from which the life interest is derived.

TABLE
Value of $1 \div (p+d) - 1$

Age	Multiplier	Age	Multiplier	Age	Multiplier	Age	Multiplier
1	2	3	4	5	6	7	8
0.	10.100	21.	12.207	42.	9.771	63.	5.610
1.	11.999	22.	12.132	43.	9.607	64.	5.419
2.	12.517	23.	12.057	44.	9.441	65.	5.234
3.	12.765	24.	11.972	45.	9.267	66.	5.054
4.	12.893	25.	11.888	46.	9.092	67.	4.879
5.	12.951	26.	11.806	47.	8.911	68.	4.709
6.	12.965	27.	11.715	48.	8.724	69.	4.543
7.	12.955	28.	11.614	49.	8.533	70.	4.380
8.	12.930	29.	11.505	50.	8.333	71.	4.220
9.	12.893	30.	11.399	51.	8.130	72.	4.062
10.	12.850	31.	11.285	52.	7.926	73.	3.907
11.	12.803	32.	11.173	53.	7.722	74.	3.753
12.	12.751	33.	11.053	54.	7.518	75.	3.602
13.	12.699	34.	10.927	55.	7.310	76.	3.453
14.	12.644	35.	10.804	56.	7.099	77.	3.305
15.	12.587	36.	10.675	57.	6.888	78.	3.160
16.	12.534	37.	10.541	58.	6.676	79.	3.016
17.	12.473	38.	10.400	59.	6.464	80.	2.875
18.	12.417	39.	10.249	60.	6.255		
19.	12.351	40.	10.093	61.	6.008		
20.	12.273	41.	9.932	62.	5.806		

549.5-P1 X is aged 35 years. His father has settled a house property in trust giving whole life interest therein to X. The income from the property for the years 2005-06 to 2008-09 was Rs. 70,000, Rs. 84,000, Rs. 80,000 and Rs. 86,000 respectively. The expenses incurred each year were Rs. 3,000, Rs. 5,000, Rs. 6,000 and Rs. 16,000 respectively. Calculate the value of life interest of X in the property so settled on the valuation date March 31, 2009 on the assumption that the value of house as per Schedule III is (a) Rs. 15 lakh, or (b) Rs. 6 lakh.

SOLUTION : *Situation (a)* - X has a life interest in the property which has been settled by his father. The value of the life interest has to be determined under rule 17 of Schedule III to Wealth-tax Act. The multiplier at the age of 35 is given as 10.804. The value of life interest, therefore, comes to Rs. 8,55,317 (i.e., 79,166.67 × 10.804) (see Note). The value of life interest of X in the house will be taken as Rs. 8,55,317 (as it is less than Rs. 15,00,000)

Note : The average annual income from one property for the years 2006-07 to 2008-09 is determined as under :

Years	2006-07	2007-08	2008-09
	Rs.	Rs.	Rs.
Income	84,000	80,000	86,000
Less : Expenses (maximum 5% of income)	4,200	4,000	4,300
Net income	79,800	76,000	81,700

Average annual income is Rs. 79,166.67 (i.e. Rs. 2,37,500 ÷ 3).

Situation (b) - The value of life interest is Rs. 8,85,317. However, value of the house in respect of which X has interest is Rs. 6,00,000. Therefore, value of life interest shall be taken as equal to Rs. 6,00,000 (it cannot be more than value of the house).

549.6 Valuation of jewellery - The value of jewellery shall be estimated to be the price which it would fetch if sold in the open market on the valuation date (i.e., fair market value). The following points should also be kept in view :

	Statement to be submitted along with return of wealth	Reference to Valuation Officer (see also para 549.6-1)
<ul style="list-style-type: none"> ■ Where the value of jewellery does not exceed Rs. 5,00,000 	A statement in Form No. O-8A	The Assessing Officer may refer the valuation to a Valuation Officer, if he is of the opinion that the fair market value of the jewellery exceeds the value of jewellery as declared in the return by more than 33 ¹ / ₃ per cent of the returned value or Rs. 50,000. In such case the value of jewellery shall be the fair market value as estimated by the Valuation Officer.
<ul style="list-style-type: none"> ■ Where the value of the jewellery exceeds Rs. 5,00,000 	A report of a registered valuer in Form No. O-8 See also para 549.6-2.	The Assessing Officer may refer the valuation to a Valuation Officer if he is of the opinion that the value of jewellery declared in the return is less than its fair market value (although it is in accordance with the estimate made by a registered valuer). In such case the value of jewellery shall be the fair market value as estimated by the Valuation Officer.

549.6-1 ADJUSTMENT IN VALUE OF JEWELLERY FOR SUBSEQUENT FOUR ASSESSMENT YEARS - The value of jewellery determined by the Valuation Officer for any assessment year (hereinafter referred as the first assessment year) shall be taken to be the value of such jewellery for the subsequent four assessment years subject to the following adjustments :

- a. where the jewellery includes gold (or silver or any alloy containing gold or silver), the market value of such gold (or silver or such alloy) on the valuation date relevant to the concerned subsequent assessment year will be taken in place of the market value of such gold (or silver or alloy) on the valuation date relevant to the first assessment year ;
- b. where any jewellery (or part of jewellery) is sold (or otherwise disposed of) by the assessee or any jewellery is acquired by him, on or before the valuation date relevant to the concerned subsequent year, the value of the jewellery determined for the first assessment year shall be reduced or increased, as the case may be, and the value as so reduced or increased shall be the value of the jewellery for such subsequent assessment year.

549.6-2 REQUIREMENT OF OBTAINING REPORT OF REGISTERED VALUER IN SUBSEQUENT YEARS - Report of the registered valuer obtained for one assessment year can also be used in subsequent four assessment years subject to the following adjustments, namely —

- a. where the jewellery includes gold (or silver or any alloy containing gold or silver), the value of such gold (or silver or such alloy) on the valuation date relevant to the concerned subsequent assessment year shall be taken in place of the value of such gold (or silver or alloy) on the valuation date relevant to the first assessment year ;
- b. where any jewellery (or part of jewellery) is sold (or otherwise disposed of) by the assessee or any jewellery is acquired by him, on or before the valuation date relevant to the concerned subsequent year, the value of the jewellery determined for the first assessment year shall be reduced or increased, as the case may be, and the value as so reduced or increased shall be the value of the jewellery for such subsequent assessment years.

In such subsequent four assessment years, the requirement specified under para 549.6 can be taken to have been complied if the report of the registered valuer for the initial assessment year along with a chart showing adjustment made as above is enclosed along with the return of the net wealth furnished by the assessee—*vide* Circular No. 646, dated March 15, 1993.

549.7 Valuation of any other asset - The value of any asset, other than cash (being an asset which is not covered in above paras) shall be estimated either by the Assessing Officer himself or by the Valuation Officer if reference is made to him under section 16A. In both these cases, the value shall be estimated to be the price which it would fetch if sold in the open market, on the valuation date. If the asset is not saleable in the open market, the value shall be determined in accordance with guidelines or principles specified by the Board from time to time by general or special order.

For the purposes of determining market value under any provision of Schedule III, the price or other consideration for which the property may be acquired by or transferred to any person under the terms of a deed of trust, or through or under any restrictive covenant in any instrument of transfer, shall be ignored. In *CWT v. T. V. Sundaram Iyengar & Sons Ltd.* [2007] 161 Taxman 140, the Madras High Court held that written down value of vehicles and not the insured value should be taken at market value for purpose of wealth-tax.

Other points

550. Provisions regulating taxation of charitable/religious trust, and association of persons are discussed in the following paras :

550.1 Charitable or religious trusts [Sec. 21A] - Where any property is held under trust for any public purpose of a charitable or religious nature in India, tax shall be leviable upon and recoverable from the trustee or manager in respect of the property held by him under trust at the rate of tax applicable to an Indian citizen, resident in India, if the trust forfeits exemption by reason of any of the following factors, namely :

- a. any part of the trust's property or any income of the trust, including income by way of voluntary contributions, is used (or applied) (directly or indirectly), for the benefit of any person referred to in section 13(3) of the Income-tax Act, *e.g.*, the settlor, the trustee, their relatives etc.; or
- b. any part of the income of the trust, created on or after April 1, 1962, including income by way of voluntary contributions, enures directly or indirectly, for the benefit of any of the persons referred to in section 13(3) of the Income-tax Act ; or
- c. any funds of the trust are invested or deposited or any shares in a company are held by the trust in contravention of the investment pattern for trust funds laid down in section 11(5) of the Income-tax Act.

The aforesaid provisions are not applicable (wholly or partly) in the following cases :

1. In the case of a scientific research association [sec. 10(2I) of the Income-tax Act] the provisions mentioned at (a) and (b) above will not apply. In respect of provisions mentioned at (c), tax will be chargeable in the like manner and to the same extent as if the property were held by an Indian citizen resident in India at the rates specified in section 3(2) [*i.e.*, 1 per cent in excess of net wealth of Rs. 15 lakh].

2. In the case of any institution, fund or trust referred to in section 10(22), (22A), (22B) or (23C) of the Income-tax Act, provisions mentioned at (a) to (c) above will not apply. In other words, section 21A of the Wealth-tax Act will not be applicable to such an institution.

550.2 Association of persons where shares of members are indeterminate/unknown [Sec. 21AA] - The provisions of section 21AA are given below—

550.2-1 CONDITIONS - Section 21AA is applicable if the following conditions are satisfied—

1. Assets chargeable to wealth-tax are held by an association of persons (not being a company, or co-operative society or society).

2. The individual shares of the members in the income or assets of the association are indeterminate or unknown. The shares are indeterminate or unknown either at the time of formation of the association or at any time thereafter.

550.2-2 CONSEQUENCES - If the above two conditions are satisfied, wealth-tax is levied to the same extent as it would be leviable upon and recoverable from an individual who is citizen of India and resident in India. Even exemption under section 5 available to an individual would be considered—**CIT v. K. Santhanam Trust** [2003] 126 Taxman 484 (Mad.).

550.3 Derecognition of partial partition of Hindu undivided family [Sec. 20A] - Section 20A does not recognise partial partition of Hindu undivided families effected after December 31, 1978. Salient features of the scheme of section 20A are as under :

■ In case where a partial partition of a Hindu undivided family has taken place after December 31, 1978, such family shall continue to be liable to be assessed as a Hindu undivided family, as if no such partial partition had taken place, *i.e.*, the property will be deemed to continue to belong to the Hindu undivided family and no member will be deemed to have separated from the family.

■ Each member or group of members of such family immediately before such partial partition and the family will be jointly and severally liable for any tax, penalty, interest, fine or any other sum payable under the Wealth-tax Act by the family in respect of any period, whether before or after such partial partition.

■ The several liability of any member or group of members of such family will be computed according to the portion of the joint family property allotted to him or it at the time of such partial partition.

Return of wealth and assessment

551. Every person is required to file with the Wealth-tax Officer a return of net wealth in Form BA, if his net wealth or net wealth of any other person in respect of which he is assessable under the Act on the valuation date is of such an amount as to render him liable to wealth-tax [*see* Annex 1].

Return can be filed on or before the “due date” specified under section 139 of the Income-tax Act [*see* para 353.3].

551.1 Return in response to a notice - In the case of any person who, in the opinion of Wealth-tax Officer, is assessable to tax, the Wealth-tax Officer may, before the end of the relevant assessment year, issue a notice requiring him to furnish, within 30 days from the date of service of such notice, a return of net wealth in the prescribed form.

551.2 Return showing wealth below taxable limit [Sec. 14(2)] - A return (other than the return furnished in response to a notice under section 17) which shows the net wealth below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished.

551.3 Return after due date or amendment of return [Sec. 15] - If any person has not furnished a return within time allowed under section 14(1) or under section 16(4)(i) or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or revised return, as the case may be. Late return or revised return can be submitted within one year from the end of the assessment year or before completion of the assessment, whichever is earlier.

551.4 Assessment - Where wealth-tax is payable on the basis of return to be furnished, the assessee is required to pay the tax before filing of the return and such return is to be accompanied by the proof of such payment.

551.5 Regular assessment - The Direct Tax Laws (Amendment) Act, 1987 has amended the provisions regarding procedure for assessment. The new provisions have been brought on the lines of the Income-tax Act [see paras 364 and 365].

Interest or penalty/prosecution

552. One is liable for interest or penalty under different sections as follows :

Section	Nature of default	Penalty/Fine
(1)	(2)	(3)
	INTEREST	
17B	Failure to submit return under sections 14(1), 15, 16(4)(i), 17(1) within the due date	Interest @ 1† per cent per month (or part thereof)
31(2)	Failure to pay the amount specified in notice of demand under section 30 within 30 days	Interest @ 1† per cent per month (or part thereof)
	PENALTIES	
15B(3)	Failure to pay tax or interest payable on self-assessment	Liable for penalty by deeming assessee to be in default (not exceeding 100% of tax in arrears)
18(1)(ii)	Failure to comply with notice under section 16(2) or (4) without reasonable cause	Minimum : Rs. 1,000 for each failure Maximum : Rs. 25,000 for each failure
18(1)(iii)	Concealment of wealth	Minimum : 100% of tax sought to be avoided Maximum : 500% of tax sought to be avoided
18A(1)(a), (b) and (c)	Failure to answer questions (i) legally bound, or (ii) sign statements legally required or (iii) comply with summons under section 37(1) without reasonable cause	Minimum : Rs. 500 for each failure/default Maximum : Rs. 10,000 for each failure/default
18A(2)	Failure to furnish in due time statement/information required under section 38 without reasonable cause	Minimum : Rs. 100 for every day of default Maximum : Rs. 200 for every day of default
32	Committing default in payment of tax	Not exceeding 100 per cent of tax in arrears
	PROSECUTIONS	
35A(1)	Wilful attempt to evade tax, penalty or interest : - in case amount sought to be evaded exceeds Rs. 1,00,000	6 months' rigorous imprisonment which may extend to 7 years and fine without prejudice to penalty imposable under any other provision of the Act
	- in any other case	3 months' rigorous imprisonment which may extend to 3 years and fine without prejudice to penalty imposable under any other provision of the Act

†1.25 per cent up to September 7, 2003.

Section	Nature of default	Penalty/Fine
(1)	(2)	(3)
35A(2)	Wilful attempt to evade payment of tax, penalty or interest	3 months' rigorous imprisonment which may extend to 3 years and fine without prejudice to penalty imposable under any other provision of the Act
35B	Wilful failure to furnish in due time return of wealth in terms of section 14(1) or 14(2) or 17(1)— a. in case where tax sought to be evaded exceeds Rs. 1,00,000 b. in any other case <i>Note</i> : Prosecution is not to be resorted to in cases where return is furnished before the end of assessment year or tax determined on regular assessment does not exceed Rs. 3,000	6 months' rigorous imprisonment which may extend to 7 years and fine 3 months' rigorous imprisonment which may extend to 3 years and fine
35C	Wilful failure to produce accounts/records in terms of section 16(4)	Up to 1 year rigorous imprisonment or fine between Rs. 4 and Rs. 10 for every day of default or with both
35D	Filing of false statement in verification (other than under section 34AB regarding registration of valuers)/delivering false statement— a. in case where tax sought to be evaded exceeds Rs. 1,00,000 b. in any other case	6 months' rigorous imprisonment which may extend to 7 years and fine 3 months' rigorous imprisonment which may extend to 3 years and fine
35E	Making false statement in verification mentioned in section 34AB	Imprisonment up to 6 months or fine or both
35EE	Failure without reasonable cause, to furnish particulars under section 34ACC regarding intimation by registered valuer of his conviction of any offence	Rigorous imprisonment up to 2 years and fine
35EEE	Making contravention of order made under section 37A(1)/(3A)	Up to 2 years' rigorous imprisonment and fine
35F	Abetting or inducing another person to make and deliver false accounts, statement or declaration relating to net wealth chargeable to tax— a. in case where tax sought to be evaded exceeds Rs. 1,00,000 b. in any other case	6 months' rigorous imprisonment which may extend to 7 years and fine 3 months' rigorous imprisonment which may extend to 3 years and fine
35G	Second and subsequent offences under section 35A(1), 35B, 35D or 35F	6 months' rigorous imprisonment which may extend to 7 years and with fine

Notes :

1. Where any offence has been committed by a Hindu undivided family, the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If, however, the karta proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of offence, he is not liable to any punishment.

2. Where any offence has been committed by a company, every person who was in charge of, and was responsible to, the company for the conduct of the business of company would be liable to be prosecuted

(sec. 35HA). For the purpose of section 35HA, company means a body corporate, and includes a firm, an association of persons or body of individuals.

3. Prosecution has to be initiated with the previous sanction of specified wealth-tax authority who has also power to compound offences *vide* section 35-I.

Time-limit

553. Provisions relating to different time-limits under the Wealth-tax Act are given below :

Section	Nature of compliance	Time-limit
(1)	(2)	(3)
15B(1)	Payment of wealth-tax, along with interest due for filing belated return, on self-assessment	Before furnishing return
16(1)(a)	Intimation of any tax or interest found due after adjusting tax or interest paid, etc.	Within 2 years from the end of the assessment year in which net wealth was first assessable
16(2)	Service of notice requiring assessee's attendance, production of evidence, etc., in support of return	Within 12 months from the end of the month in which return is furnished
17(1)	Service of notice by Assessing Officer in case of any taxable wealth escaping assessment for the relevant assessment year for reasons other than assessee's failure to file return under sections 14, 15, 16(4), 17 or to disclose fully all material facts	Within 4 years from end of relevant assessment year
17(1A)	Service of notice by Assessing Officer for reassessment : a. where wealth which has escaped assessment is less than Rs. 10,00,000 b. where wealth which has escaped assessment is Rs. 10,00,000 or more	Within 4 years from end of relevant assessment year Within 6 years from end of relevant assessment year
17A(1)	Passing assessment order under section 16	Within 21 months [†] from the end of the assessment year in which net wealth was first assessable
17A(2)	Passing assessment/reassessment order under section 17	Within 9 months [‡] from the end of the financial year in which notice under section 17(1) was served
17A(3)	Completion of fresh assessment after assessment has been set aside or cancelled under section 23A, 24 or 25—	Within 9 months [£] from the end of the financial year in which the order under section 23 or 24 is received or the order under section 25 is passed
18(5)	Imposition of penalty for failure without reasonable cause to comply with notices under section 16(2) or 16(4) and concealment of wealth, etc.— <input type="checkbox"/> in a case where the relevant assessment is the subject-matter of an appeal before Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 23 or before the Tribunal under section 24(2)	Before the end of the financial year in which proceedings in the course of which action for imposition of penalty has been initiated are completed or 6 months from the end of the month in which the relevant appellate order is received by the Chief Commissioner or Commissioner, whichever is later

[†] 24 months if the assessment year is 2003-04 or earlier year.

[‡] 12 months if notice was served before April 1, 2005.

[£] 12 months if order is received or passed by the Commissioner before April 1, 2005.

Section	Nature of compliance	Time limit
(1)	(2)	(3)
	<input type="checkbox"/> in a case where the relevant assessment is the subject-matter of revision by Commissioner under section 25(2)	Before the expiry of 6 months from the end of the month in which such revision order is passed
	<input type="checkbox"/> in any other case	Before the expiry of the financial year in which the proceedings, in the course of which action for imposing penalty has been initiated are completed or 6 months from the end of the month in which action for imposition of penalty is initiated, whichever is later
22D(1)	Rejecting or allowing the application for settlement	Within 1 year from the end of the month in which application is made
22D(4)	Passing order of settlement	Within 4 years from the end of the financial year in which application is allowed to be proceeded with
23(2)/23A(1)	Filing of appeal to Commissioner (Appeals)	Within 30 days from date of receipt of notice of demand or extended date
23A(8A)	Hearing and decision of the appeal by Commissioner (Appeals)	Within a period of one year from the end of the financial year in which such appeal is filed, where it is possible
24(1)/(2)	Filing of appeal to Tribunal	Within 60 days from date of communication of order of Deputy Commissioner (Appeals)/Commissioner (Appeals) or within extended time
24(2A)	Filing of cross-objections with Tribunal	Within 30 days from date of receipt of notice or within extended time
24(5A)	Hearing and decision of the appeal by Tribunal	Within a period of four years from the end of the financial year in which such appeal is filed, where it is possible
25(1), proviso (c)	Filing application to Commissioner for revision of order (not prejudicial to assessee)	Within 1 year from date of the order sought to be revised or within extended time
25(1), proviso (d)	Revision of order by Commissioner <i>suo motu</i> (not prejudicial to assessee)	Within 1 year from date of order sought to be revised
25(2)/(3)	Revision of order of Assessing Officer by Commissioner if considered prejudicial to revenue	Within 2 years from end of financial year in which order sought to be revised is passed
25(3A)	Passing order by Commissioner on application made by assessee for revision	Within one year from the end of the financial year in which application is made
26(1)	Appeal to Tribunal from orders of enhancement under section 18, 18A or 25(2) by Chief Commissioner or Commissioner or an order passed by the Director General or Director under section 18A	Within 60 days from date of communication of order of Chief Commissioner/Commissioner/Director General/Director
27(1)/(2)	Filing application to Tribunal for reference to High Court	Within 60 days from date of service of Tribunal's order under section 24 or 26 or within such further time not exceeding 30 days as allowed by Tribunal on sufficient cause

Section	Nature of compliance	Time limit
(1)	(2)	(3)
27(3)	Drawing up statement of case by Tribunal and referring it to High Court Filing application to High Court requiring Tribunal to state case	Within 120 days of receipt of application Within 90 days from date of service of notice of refusal/rejection
27(3), proviso	Withdrawal of application to Tribunal's refusal to state case	Within 30 days from date on which assessee receives notice of refusal
27A	Filing appeal to High Court by the assessee or Chief Commissioner or Commissioner	Within 120 days of the day upon which he is served with notice of an order under section 24 or section 26 or section 35(1)(e)
31(1)/(3)	Payment of tax, penalty, etc.	Within 30 days of service of notice of demand or within extended or reduced time
34C(2)	Provisional attachment of property	Effective only up to 6 months from date of attachment order or up to 2 years by extension
35(7)/(7A)	Rectification of mistake— a. in case of amendment under section 35(2) b. in any other case c. in cases where valuation of any asset has been enhanced by Valuation Officer	Within 4 years from end of financial year in which order is passed in first appeal or revision Within 4 years from end of financial year in which order sought to be amended is passed Within one year of date of order of Valuation Officer.

Rate of tax

554. Net wealth in excess of Rs. 15,00,000 is taxable at the rate of 1 per cent.

Problems on wealth-tax

555-P1 X purchased a house property in April 2008 for Rs. 35,47,000. He was not able to take possession of the property as the validity of the sale was questioned by the vendor's wife and litigation ensued and was pending on the valuation date (March 31, 2009). In his wealth-tax return the assessee showed the payment as advance against the property. The Assessing Officer seeks to include a sum of Rs. 38,00,000 being the market value of the house as on March 31, 2009. Examine the case.

SOLUTION : A case on the similar facts was examined by the Mysore High Court in *U.S. Nayak v. CWT* [1968] 68 ITR 171, wherein it was held that the facts that the assessee may lose the property if the suit was decided against him and the wealth-tax may not be refunded were not relevant except in fixing the market value. Therefore, in the given problem, disputed title and lack of possession will have to be taken into consideration while determining market value on the valuation date. The opinion of the Madras High Court is still applicable even after the amendment in the Wealth-tax Act (with effect from April 1, 1993). In such case, the property will be valued under rule 8(a) read with rule 20 of Schedule III [see paras 549.1-6a and 549.7].

555-P2 A is a coparcener of the Hindu undivided family ABC. There was a partition in the family in July 1993 and under the terms of the partition deed certain assets of the family were allotted to the wife and minor child of A. The Assessing Officer included these assets in A's individual assessment under the provisions of sub-clauses (i) and (ii) of section 4(a) of the Wealth-tax Act. Is the Assessing Officer justified in his action?

SOLUTION : Section 4(1)(a) of the Wealth-tax Act is applicable only if assets are transferred by an individual. Since, in the given case, assets are transferred by the Hindu undivided family, the action of the Assessing Officer is not tenable in law. However, clubbing under section 4(1)(a)(ii) cannot be avoided [see para 546.2].

555-P3 For the assessment year 2009-10, X, whose valuation date is March 31, 2009 submits the following particulars of his assets and liabilities. Determine his wealth-tax liability on the assumption that (a) X is an Indian national and resident and ordinarily resident in India, (b) X is an Indian national but not ordinarily resident/non-resident in India, and (c) X is a foreign national and non-resident in India.

	Rs.
Jewellery in India	64,00,000
Utensils of gold (situated outside India)	31,70,000
Capital borrowed for purchasing utensils of gold outside India	28,000
Capital borrowed for acquiring jewellery in India	43,000

SOLUTION : Computation of wealth

	In India Rs.	Outside India Rs.
Asset	64,00,000	31,70,000
Less : Debt	43,000	28,000
Balance	63,57,000	31,42,000

COMPUTATION OF WEALTH-TAX LIABILITY IF X IS AN INDIAN NATIONAL AND RESIDENT AND ORDINARILY RESIDENT IN INDIA

	Rs.	Rs.
Net wealth located in India	63,57,000	
Net wealth located outside India	31,42,000	94,99,000
Net wealth		<u>94,99,000</u>

COMPUTATION OF WEALTH-TAX IN OTHER CASES

Net wealth located in India	63,57,000
Net wealth located outside India	Nil
Net wealth	<u>63,57,000</u>

555-P4 X has net wealth exceeding Rs. 40 lakh, and income of over Rs. 4 lakh. He proposes to provide for the post-graduate education of his children who are at present very young, at least 10 years will elapse before the eldest reaches majority. In view of his high income and wealth he feels that there may be no benefit in making outright gift to his children. He seeks your written opinion in the best manner in which it would be so arranged that sufficient income is accumulated without the provisions of clubbing becoming applicable.

Your written opinion is also sought on the question whether any benefit is available by making a gift of assets.

SOLUTION : X should create a trust for the benefit of his children with a direction that income during minority of children will be accumulated and added to the corpus and income from the increased corpus would be given to the children after their attaining majority. Provision of section 64 of the Income-tax Act would not be attracted in this case. Moreover, section 4 of the Wealth-tax Act will not be applicable. Income of the trust, during the minority will be taxable in accordance with the provisions discussed in para 351. After the children attain majority, income of the trust will be taxable in the hands of beneficiaries.

555-P5 Discuss the following :

1. X makes an agreement to sell his property for Rs. 20 lakh on October 8, 2008. He receives Rs. 2,00,000 as earnest money, the balance amount is received on March 27, 2009 but the conveyance deed is executed on April 10, 2009. The documents are registered on June 6, 2009. The property was shown and assessed at Rs. 17,00,000 for the assessment year 2009-10.

Advise X regarding the above transaction for submission of his return of net wealth for the assessment year 2009-10 [valuation date : March 31, 2009].

2. Y is aged 60 years. His father had settled a house property on trust giving life interest to Y. On Y's demise the trust property is to be divided between his two sons in equal shares. The market value of the property is Rs. 30 lakh and the average annual income derived therefrom is Rs. 90,000. How will the trust property be shown in the returns of net wealth of Y and his sons for the assessment year 2009-10 ?

3. The following are the particulars of a flat occupied for his personal residence by Z :

Assessment year	Value as returned Rs.	Value assessed Rs.
1973-74	80,000	80,000
1974-75	80,000	2,00,000
1975-76	80,000	1,10,000
1976-77	80,000	1,10,000
1977-78	80,000	1,20,000

What is the valuation to be adopted for the assessment year 2009-10 ?

SOLUTION : 1. A person who has taken possession of any building under an agreement to sell, satisfying conditions of section 53A of the Transfer of Property Act is chargeable to wealth-tax by virtue of section 4(8). Consequently, X will not be chargeable to wealth-tax in respect of house property for the assessment year 2009-10.

2. Y has a life interest in the property which has been settled by his father. The value of the life interest has to be determined under rule 17 of Schedule III to Wealth-tax Act. The multiplier at the age of 60 is 6.255. The value of life interest, therefore, comes to Rs. 5,62,950 (i.e., Rs. 90,000 × 6.255). The value of interest of Y's sons will, however, be found out by actuaries. The taxpayers may claim exemption under section 5(vi).

3. Under section 7(2), the value of a house belonging to the assessee and exclusively used by him for his residential purposes (throughout a period of 12 months immediately preceding the valuation date) may, at the option of the assessee, be taken to be the market value on the valuation date, next following the date on which the assessee became the owner of the house, or on the valuation date, relevant for the assessment year 1971-72, whichever valuation date is later. Therefore, in this case, the valuation of the residential house for the assessment year 2009-10 would be taken to be Rs. 80,000 [exemption may be claimed under section 5(vi)].

555-P6 While computing the net wealth of A, an Indian resident in India, for the assessment year 2009-10 (valuation date March 31, 2009), the following facts are noted :

1. Since his marriage in 1976, A had made gifts of jewellery and ornaments to his wife from time to time the value whereof at the material time aggregated to Rs. 40,000 but now on the valuation date stands at Rs. 2,00,000. Mrs. A had pledged the ornaments and jewellery to take loans for her personal use out of which loans of Rs. 60,000 were outstanding on the valuation date.

2. A became a member of a co-operative housing society which under a house building scheme of the society allotted to him a flat in 1974 for a sum of Rs. 8,50,000. The flat has throughout been used by A for his own residence. Its value on March 31, 2009 was Rs. 13,00,000. The consideration was payable in instalments and on the valuation date a sum of Rs. 25,000 was still outstanding.

3. A became a member of a similar co-operative housing society in 1982 and made a deposit of Rs. 2,00,000 with it for allotment to him of a flat (which is not allotted so far) under its house-building scheme in a multi-storeyed building. The deposit has been under the said scheme.

4. A took out a policy on his own life for the sum of Rs. 1,00,000 in the year 1990 the maturity being in 2009 or on earlier death. If he survives till 2009 eight annual premiums are payable.

5. A had two cars for his personal use each being of value of Rs. 95,000.

6. By profession A is an architect and the value of the tools and instruments required by him for his professional use is Rs. 70,000.

Discuss how the items are to be treated for purposes of assessment.

SOLUTION : 1. In view of section 4(1)(a), Rs. 2,00,000, value of gift on valuation date, is includible in the wealth of A. Rs. 60,000 is not deductible under section 2(m).

2. Under section 4(7), A is deemed as owner of house property. As the house is self-occupied for residential purpose, its valuation would be market value on March 31, 1974 or on March 31, 2008 [see para 549.2]. Assuming that market value on March 31, 1974 is Rs. 8,50,000, amount includible in net wealth of A will be Rs. 8,25,000 (i.e., Rs. 8,50,000—Rs. 25,000). However, one house is exempt from tax under section 5(vi).

3. Amount of deposit of Rs. 2,00,000 is not chargeable to wealth-tax.

4. Value of the policy on the valuation date is not taxable.

5. Rs. 1,90,000 is chargeable to wealth-tax.
6. Tools and instruments are not taxable.

555-P7 Discuss in respect of the following items, the manner of treatment for Mrs. X's wealth-tax assessment for the assessment year 2009-10.

1. A house property at Calcutta was given to her as a gift by her husband on October 1, 1965. She, with her husband and children, is living in the house for the last 15 years. Its value on March 31, 2009 was Rs. 2,50,000.
2. She has another house property at Nainital given to her as a gift by her father on January 1, 1971 on the occasion of her birthday. This house is also used by her as her own residence where she lives during summer vacations only. The value of the house on March 31, 2009 was Rs. 25,00,000.
3. Jewellery received from her father at the time of her marriage in 1956 was of the value of Rs. 1,30,000 on March 31, 2009.

SOLUTION : 1. As a gift of the house was made on October 1, 1965, section 4(1)(a) is not applicable (assuming the gift was chargeable to gift-tax or exempt from gift-tax under section 5 of the said Act for the assessment year 1966-67). Therefore, value of the house would be includible in the net wealth of Mrs. X, who can, however, opt for valuation under section 7(2) [see para 549.2].

2. Value of the house is to be included in the net wealth of Mrs. X. She can, however, claim exemption under section 5(vi).

3. Jewellery received in 1956 is outside the purview of section 4. Therefore, it will be included in the net wealth of Mrs. X.

555-P8 X made a gift of a house property to Mrs. X on April 1, 2008. The value of the house property as on the date of gift was Rs. 21,50,000. Mrs. X, in her turn, made a gift of that property to her friend Mrs. Y on October 30, 2008. The valuation date for the purposes of wealth-tax assessments of both Mr. and Mrs. X happens to be March 31. In whose net wealth will the value of the house be included? What would have been the position if—

- a. the house had been gifted by Mrs. X to her daughter-in-law; or
- b. the house had been sold to her daughter-in-law for a sum of Rs. 20,00,000 and she had lost the entire sale proceeds by gambling in horse races; or
- c. the house had been sold by Mrs. X to her major son for Rs. 21,50,000 and she had purchased another house property with the sale proceeds, the value of the new house property as on March 31, 2009 being Rs. 21,95,000.

SOLUTION : 1. In case house property is gifted by Mrs. X to her friend Mrs. Y before the valuation date of March 31, 2009, the property will not be included in net wealth of X or Mrs. X for the assessment year 2009-10. If the house property is gifted by Mrs. X to her daughter-in-law, it would amount to an indirect transfer from X to his daughter-in-law and, consequently, by virtue of section 4(1)(a)(v), the value of the house on March 31, 2009 will be includible in the net wealth of X for the assessment year 2009-10. Exemption may, however, be claimed under section 5(vi).

2. If Mrs. X sells the house property to her daughter-in-law for Rs. 20,00,000 and loses the entire sale proceeds by gambling, no property is held by her in any form whatsoever on the valuation date. As the property is not in existence on March 31, 2009, there would be no question of wealth-tax incidence.

3. If Mrs. X sells the house property for Rs. 21,50,000 and acquires another house from sale proceeds, the value of new house on the valuation date (i.e., Rs. 21,95,000) is includible in the net wealth of X for the assessment year 2009-10. Exemption may be claimed under section 5(vi).

555-P9 XYZ is a charitable society registered under the Societies Registration Act. On the ground that it was pursuing an objective that involved the carrying of an activity for profit, the Assessing Officer wants to levy wealth-tax on it. Is such a society liable to wealth-tax?

SOLUTION : Under section 3 of the Wealth-tax Act, the only taxable entities are individuals, Hindu undivided families and companies. A society registered under the Societies Registration Act is neither an "individual" nor a "Hindu undivided family". Moreover it is not an association of persons or body of individuals, or body of trustees which can, by stretching the Supreme Court rulings in *Trustees of Gordhandass Govindram Family Charity Trust v. CIT* [1973] 88 ITR 47 or *CWT v. Kripashankar Dayashankar Worah* [1971] 81 ITR 763, be treated as an individual. A society acquires an artificial juridical character which is separate from its members.

555-P10 X settles for the benefit of Y, his minor son, certain house properties appointing M and N as trustees. The settlement deed provides that the beneficiary would get the net income of the trust till he reached 30 years of age when the entire corpus or the remainder thereof would vest in the beneficiary. Till then the trustees have absolute discretion to expend the money out of the corpus of the trust fund and the annual income therefrom for the benefit of Y for any of the various purposes enumerated in the deed. For the assessment year 2009-10 when Y was 14 years of age, the Assessing Officer wants to add to the entire value of the corpus in the wealth-tax assessment of Y on the ground that Y held a vested interest in the corpus.

SOLUTION : In the given problem the trustees have absolute discretion to spend the trust fund for the benefit of Y, the beneficiary. The only right of Y, the assessee, during the previous year in question is the contingent right to receive the corpus or such part thereof as remained on his completing the age of 30 years, the right being contingent, depending on the assessee completing the age of 30 years. In other words, Y has only a contingent interest in the corpus of the trust till he reaches the age of 30 years. Hence, no portion of the corpus can be included in the net wealth of Y—CWT v. Master Jehangir H.C. Jehangir [1982] 137 ITR 48 (Bom.).

555-P11 X, belonging to the Northern School of Mitakshara law, inherited certain ancestral house properties from his father. His mother was alive when he married under the Special Marriage Act and subsequently solemnised this marriage according to Hindu rites. Subsequent to this, after the birth of two sons, X gifted the aforesaid family properties to his wife and minor sons and claimed exclusion of the gifted properties in the wealth-tax assessment of his HUF. His mother was dead then. He claimed before the Assessing Officer that his marriage under the Special Marriage Act amounted to severance of his joint family status making the inherited properties his separate property which he could deal with in any manner he liked. Discuss the liability to wealth-tax of the properties in HUF's hands.

SOLUTION : Though after the death of X's father, the entire property of the family devolves on X as the sole coparcener he still constituted a joint Hindu family along with his mother. His marriage under the Special Marriage Act would have normally resulted in his severance from the joint family, but for the fact that he had later solemnised his marriage in accordance with the Hindu rites also. This being the position, as a coparcener of the family, the gift made by him in respect of any part of the joint property is an illegal and invalid transaction. Moreover, the minor sons have already acquired a right in this property by birth and their father cannot confer any better right on them by making the gift. Thus, the value of the property gifted away by X is liable to be assessed in the hands of X's HUF—Rai Satya Varta v. CWT [1982] 10 Taxman 316 (All.).

555-P12 X furnishes the following particulars for the compilation of his wealth-tax return for assessment year 2009-10:

	Rs.
1. Gifts of jewellery made to wife from time to time aggregating Rs. 60,000 market value on valuation date	2,00,000
2. Flat purchased under instalment payment scheme in 1972 for Rs. 7,50,000, used for purposes of his residence and market value as on March 31, 2009 (instalment remaining unpaid : Rs. 50,000)	10,00,000
3. Urban land transferred to minor handicapped child valued on March 31, 2009	5,00,000

Explain how you will deal with these items. Make suitable assumptions, if required.

SOLUTION : Computation of net wealth of X

	Rs.
Jewellery held by wife	2,00,000
Flat :	Rs. 7,50,000
Less : Debt due	Rs. 50,000
Balance	Rs. 7,00,000
[*exempt under section 5(vi)]	—
Urban land held by minor child [not to be included as the minor child is handicapped]	—
Net wealth	2,00,000

555-P13 Under what circumstances can the Assessing Officer make a reference to the Valuation Officer for the purpose of making an assessment under the Wealth-tax Act ?

SOLUTION : Under section 16A, a reference to a Valuation Officer may be made by the Assessing Officer, where the market value of any asset is to be taken into account in a wealth-tax assessment under section 7 read with Schedule III. Such reference can be made in the following cases—

- where the valuation has been made by a registered valuer, the Assessing Officer is of the opinion that the value returned is less than its fair market value ;
- in any other case, the fair market value in the opinion of Assessing Officer exceeds the value of the asset (as per return), by 33-1/3% or Rs. 50,000; or
- having regard to the nature of the asset and other relevant circumstances, the Assessing Officer is of the opinion that it is necessary to make a reference.

555-P14 X Ltd. is a company carrying on business in the construction and sale of residential flats. It furnishes the following data and requests you to compile wealth-tax return and determine the tax payable for assessment year 2009-10:

	Market value Rs.
1. Land in rural area (it is within 5 kilometres of Ajmer ; construction is permissible ; land was purchased in 1988)	92,78,600
2. Land in urban area (construction not permitted as per municipal laws)	23,00,000
3. Land in urban area (held as stock-in-trade since 2000, construction will be commenced during June 2009)	49,50,000
4. Motor cars (one of them is imported : Rs. 4,00,000; none of them is held as stock-in-trade)	11,30,000
5. Jewellery (not being held as stock-in-trade)	18,00,000
6. Aircraft for use of directors and auditors	1,58,00,000
7. Bank balance	3,10,000
8. Cash in hand as per cash book	1,70,000
9. Guest house and land appurtenant thereto situated in rural area	8,00,000
10. Residential flats of identical size provided to 6 employees for their use near factory which is situated in rural area (salary of two of them exceeds Rs. 5,00,000)	15,00,000
11. Residence provided to Managing Director (salary exceeds Rs. 5,00,000)	10,00,000
12. Flats constructed and remaining unsold (not being held as stock-in-trade)	30,00,000
13. Residence provided to a whole-time director (salary : Rs. 4,20,000, the director owns 25 per cent equity share capital)	17,00,000
14. Three let out residential houses given on rent (value of each being Rs. 50 lakh; one of them is let out for only 50 days during 2008-09)	

The company has taken a loan of Rs. 6,00,000, Rs. 7,00,000, Rs. 50,000 and Rs. 90,000 for acquiring property numbers 5, 6, 12 and 13, respectively. Find out the wealth-tax liability of the company for the assessment year 2009-10.

SOLUTION : Computation of net wealth and wealth-tax :

	Rs.
Land in rural area within 5 kilometres of Ajmer	92,78,600
Land in urban area (not taxable as construction is not permitted)	—
Land in urban area (not taxable for 10 years in case of stock-in-trade)	—
Motor cars	11,30,000
Jewellery	18,00,000
Aircraft—not taxable as per Garware Wall Ropes Ltd. v. CIT [2004] 89 ITD 221 (Mum.)	—
Guest house	8,00,000
Four residential flats given to the employees (salary not being in excess of Rs. 5,00,000)	Nil
Two residential flats given to the employees (whose annual salary exceeds Rs. 5,00,000)	5,00,000
Residential house given to the managing director	10,00,000
Flats remaining unsold	30,00,000
Residential house given to whole-time director (not taxable as salary less than Rs. 5,00,000)	Nil

Problem 555-P14*Wealth-tax - Rate of tax*

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	Rs.
One let out residential house given on rent for 50 days during 2008-09	50,00,000
Two let out residential houses given on rent throughout the year (not treated as "asset")	<u>Nil</u>
Gross wealth	2,25,08,600
Less : Loan taken to acquire properties numbers 5 and 12	<u>6,50,000</u>
Net wealth	2,18,58,600
Tax [i.e., 1% on the amount in excess of Rs. 15,00,000]	<u>2,03,586</u>

1 ANNEX

Tax Rates

ASSESSMENT YEAR 2009-10

Tax liability - How to find out

Tax liability for the assessment year 2009-10 shall be calculated as follows :—

	Rs.	Rs.
1. Find out gross total income	—	
2. Less: Deductions under sections 80C to 80U	—	
3. Find out net income [(1) - (2)]		—
4. Divide the net income into the following—		
4.1 Income subject to special tax rates mentioned in para 0.1-6	—	
4.2 Remaining income subject to normal rates	—	
5. Find out income-tax on net income—		
5.1 Tax on income specified in 4.1 (<i>supra</i>) at the rates given in para 0.1-6	—	
5.2 Tax on remaining income at the normal rate given in para 0.1-1 or 0.1-2 or 0.1-3 or 0.1-4 or 0.1-5	—	—
6. Add : Surcharge ² @ 0%, 10% or 2.5%		—
7. Find out the total [(5)+(6)]		—
8. Add : Education cess [2% of (7)]		—
9. Add : Secondary and higher education cess [1% of (7)]		—
10. Find out the total [(7)+(8)+(9)]		—
11. Deduct : Rebate under section 86, 89, 90, 90A or 91		—
12. Tax liability [(10)-(11)]		—
13. Add: Interest/penalty, etc.		—
14. Less: Pre-paid taxes [<i>i.e.</i> , advance tax, self-assessment tax, TDS, TCS]		—
15. Tax payable [(12) + (13) - (14)]		—

Notes :

1. (2) cannot exceed (1).

2. Surcharge is applicable as a % of income-tax [*i.e.*, (7)]. These rates are—

Individual/HUF/BOI—	
- if net income does not exceed Rs. 10 lakh	0%
- if net income exceeds the above limit	10%
Artificial juridical person	10%
Firm and domestic company	
- if net income does not exceed Rs. 1 crore	0%
- if net income exceeds Rs. 1 crore	10%

Foreign company	
- if net income does not exceed Rs. 1 crore	0%
- if net income exceeds Rs. 1 crore	2.5%
Co-operative society, local authority	0%

Income-tax

0.1-1 Individuals, Hindu undivided families, AOPs, BOIs - The tax rates applicable to individuals are also applicable to a Hindu undivided family, an association of persons, body of individuals or an artificial juridical person. The rates applicable for the assessment year 2009-10 are as follows :

- For resident woman (who is below 65 years at any time during the previous year) -

Net income range	Income-tax rates†	Surcharge [see Note 1]	Education cess [see Note 3]	Secondary and higher education cess [see Note 4]
Up to Rs. 1,80,000	Nil	Nil	Nil	Nil
Rs. 1,80,000 – Rs. 3,00,000	10% of (total income minus Rs. 1,80,000)	Nil	2% of income-tax	1% of income-tax
Rs. 3,00,000 – Rs. 5,00,000	Rs. 12,000 + 20% of (total income minus Rs. 3,00,000)	Nil	2% of income-tax	1% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 52,000 + 30% of (total income minus Rs. 5,00,000)	Nil	2% of income-tax	1% of income-tax
Above Rs. 10,00,000	Rs. 2,02,000 + 30% of (total income minus Rs. 10,00,000)	10% of income-tax [see Note 2]	2% of income-tax and surcharge	1% of income-tax and surcharge

- For resident senior citizen (who is 65 years or more at any time during the previous year) -

Net income range	Income-tax rates†	Surcharge [see Note 1]	Education cess [see Note 3]	Secondary and higher education cess [see Note 4]
Up to Rs. 2,25,000	Nil	Nil	Nil	Nil
Rs. 2,25,000 – Rs. 3,00,000	10% of (total income minus Rs. 2,25,000)	Nil	2% of income-tax	1% of income-tax
Rs. 3,00,000 – Rs. 5,00,000	Rs. 7,500 + 20% of (total income minus Rs. 3,00,000)	Nil	2% of income-tax	1% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 47,500 + 30% of (total income minus Rs. 5,00,000)	Nil	2% of income-tax	1% of income-tax
Above Rs. 10,00,000	Rs. 1,97,500 + 30% of (total income minus Rs. 10,00,000)	10% of income-tax [see Note 2]	2% of income-tax and surcharge	1% of income-tax and surcharge

- For any other individual, every HUF/AOP/BOI/artificial juridical person -

Net income range	Income-tax rates†	Surcharge [see Note 1]	Education cess [see Note 3]	Secondary and higher education cess [see Note 4]
Up to Rs. 1,50,000	Nil	Nil	Nil	Nil
Rs. 1,50,000 – Rs. 3,00,000	10% of (total income minus Rs. 1,50,000)	Nil	2% of income-tax	1% of income-tax

†See also para 0.1-6.

Net income range	Income-tax rates†	Surcharge [see Note 1]	Education cess [see Note 3]	Secondary and higher education cess [see Note 4]
Rs. 3,00,000 – Rs. 5,00,000	Rs. 15,000 + 20% of (total income minus Rs. 3,00,000)	Nil	2% of income-tax	1% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 55,000 + 30% of (total income minus Rs. 5,00,000)	Nil	2% of income-tax	1% of income-tax
Above Rs. 10,00,000	Rs. 2,05,000 + 30% of (total income minus Rs. 10,00,000)	10% of income-tax [see Note 2]	2% of income-tax and surcharge	1% of income-tax and surcharge

Notes:

1. **Surcharge** - Surcharge is 10 per cent of income-tax if net income of an individual, Hindu undivided family, association of persons, or body of individuals, exceeds Rs. 10,00,000. In the case of an artificial juridical person, surcharge is 10 per cent of income-tax, even if net income is less than Rs. 10,00,000.

2. **Marginal relief** - In the case of the aforesaid person having a net income of exceeding Rs. 10,00,000, the net amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 10,00,000 by more than the amount of income that exceeds Rs. 10,00,000.

3. **Education cess** - It is 2 per cent of income-tax and surcharge.

4. **Secondary and higher education cess** - It is 1 per cent of income-tax and surcharge.

0.1-2 Firms - A firm is taxable at the rate of 30 per cent for the assessment year 2009-10 [see also para 0.1-6].

Surcharge : 10 per cent of income-tax if net income exceeds Rs. 1 crore (no surcharge if net income does not exceed Rs. 1 crore), subject to marginal relief given below—

Marginal relief - In the case of a firm having a net income of exceeding Rs. 1 crore, the net amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Education cess - It is 2 per cent of income-tax and surcharge.

Secondary and higher education cess - It is 1 per cent of income-tax and surcharge.

0.1.3 Companies - For the assessment year 2009-10 the following rates of income-tax are applicable:

Company	Rate of income-tax (per cent) [see also para 0.1-6]
In the case of a domestic company	30
In the case of a foreign company	
□ royalty received from Government or an Indian concern in pursuance of an agreement made by it with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964 but before April 1, 1976 and where such agreement has, in either case, been approved by the Central Government	50
□ other income	40

Surcharge - Surcharge is applicable at the rates given below-

	If net income does not exceed Rs. 1 crore	If net income exceeds Rs. 1 crore
Domestic company	Nil	10%*
Foreign company	Nil	2.5%*

*It is 2.5% or 10% of income-tax. Marginal relief is available which is given below—

†See also para 0.1-6.

Marginal relief - In the case of a company having a net income of exceeding Rs. 1 crore, the net amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Education cess - It is 2 per cent of income-tax and surcharge.

Secondary and higher education cess - It is 1 per cent of income-tax and surcharge

0.1-3a MINIMUM ALTERNATE TAX - For the assessment year 2009-10, the following rate of minimum alternate tax shall be applicable—

(as a % of book profit)

	If book profit does not exceed Rs. 1 crore					If book profit exceeds Rs. 1 crore				
	IT	SC	EC	SHEC	Total	IT	SC	EC	SHEC	Total
Domestic company	10	-	0.2	0.1	10.30	10	1	0.22	0.11	11.33
Foreign company	10	-	0.2	0.1	10.30	10	0.25	0.205	0.1025	10.5575

Note - If book profit of a company exceeds Rs. 1 crore, the minimum alternate tax cannot exceed the following: (Rs. 10 lakh + Book profit - Rs. 1 crore) + EC + SHEC

0.1-4 Co-operative societies - The following rates are applicable to a co-operative society for the assessment year 2009-10—

(Per cent)

Net income range	Rate of income-tax [See also 0.1-6]
Up to Rs. 10,000	10
Rs. 10,000 - Rs. 20,000	20
Rs. 20,000 and above	30

Surcharge : Surcharge is not applicable.

Education cess - It is 2 per cent of income-tax.

Secondary and higher education cess : It is 1 per cent of income-tax.

0.1-5 Local authorities - Local authorities are taxable at the rate of 30 per cent.

Surcharge : Surcharge is not applicable.

Education cess - It is 2 per cent of income-tax.

Secondary and higher education cess : It is 1 per cent of income-tax and surcharge.

0.1-6 Tax rates specified in the Income-tax Act - The following incomes are taxable at the rates specified by the Income-tax Act and not at the rates mentioned in paras 0.1-1 to 0.1-5 *supra* :

Section	Income	Income-tax rates†
(1)	(2)	(3)
111A	Short-term capital gains	15
112	Long-term capital gains	20
115A(1) (a)(i)	Dividend received by a foreign company or a non-resident non-corporate assessee [it is not applicable in the case of dividends referred to in section 115-O]	20*
115A(1) (a)(ii)	Interest received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20

†These rates are subject to surcharge, education cess and secondary and higher education cess [see Notes 1, 2 and 3 at the end of Table].

Section	Income	Income-tax rates†
(1)	(2)	(3)
115A (1)(b)	Royalty or fees for technical services received by a foreign company or non-resident non-corporate assessee from an Indian concern or Government in pursuance of an agreement approved by the Central Government and made after— a. March 31, 1976 but before June 1, 1997 b. May 31, 1997 but before June 1, 2005 c. May 31, 2005	30 20 10
115AB	Income of an overseas financial organisation on transfer of units purchased in foreign currency being long-term capital gains	10
115AC	Income from bonds or Global Depository Receipts ¹ or on bonds or Global Depository Receipts ¹ of a public sector company sold by the Government and purchased in foreign currency or long-term capital gains arising from their transfer * [not applicable in the case of dividends referred to in section 115-O]	10*
115ACA	Income from Global Depository Receipts held by a resident individual who is an employee of an Indian company engaged in information technology software/ services†† <input type="checkbox"/> Dividend [other than dividend referred to in section 115-O] on global Depository Receipts issued under employees stock option scheme and purchased in foreign currency <input type="checkbox"/> Long-term capital gain on transfer of such receipts	10 10
115AD	Income in respect of listed securities received by a Foreign Institutional Investor as specified ² by the Government <input type="checkbox"/> Short-term capital gain covered by section 111A <input type="checkbox"/> Any other short-term capital gain <input type="checkbox"/> Long-term capital gain <input type="checkbox"/> Other income [*not applicable in the case of dividends referred to in section 115-O]	15 30 10 20*
115B	Profits and gains of life insurance business	12.5
115BB	Winnings from lotteries, crossword puzzles, or race including horse race (not being income from the activity of owning and maintaining race horse) or card game and other game of any sort or from gambling or betting of any form or nature	30
115BBA	Income of a non-resident foreign citizen sportsman for participation in any game in India or received by way of advertisement or for contribution of articles relating to any game or sport in India or income of a non-resident sport association by way of guarantee money	10
115BBC	Anonymous donation	30
115E	Income from foreign exchange assets and capital gains of non-resident Indian a. income from foreign exchange asset [*not applicable in the case of dividends referred to in section 115-O] b. long-term capital gain	20* 10
115JB	Tax on book profits of certain companies	10

†These rates are subject to surcharge, education cess and secondary and higher education cess [see Notes 1, 2 and 3 at the end of Table].

††An employee of an Indian company engaged in specified knowledge based industry or service or an employee of its subsidiary engaged in specified knowledge based industry or service.

1. Issued by an Indian company in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993/Issue of Foreign Currency Exchangeable Bonds Scheme, 2008.
2. For notified Foreign Institutional Investor, see Taxmann's *Direct Taxes Circulars*, 2007 edition, Vol. 2.

<i>Section</i>	<i>Income</i>	<i>Income-tax rates†</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
161(1A)	Profits and gains of a business in the case of a trust	30
164	Income of private discretionary trust where shares of beneficiaries are indeterminate	30
164A	Income of an oral trust	30
167A	Income of a firm	30
167B	Income of an association of persons or body of individuals if shares of members are unknown	30
167B(2)	Income of an association of persons or body of individuals if total income of any member (excluding share from the association or body) exceeds the maximum amount not chargeable to tax [*if total income of any member of the association or body is chargeable to tax at a rate higher than 33.99 per cent then tax shall be charged on that portion of the total income of the association/body which is relatable to the share of such member at such higher rate and the balance of the total income is taxable at a rate of 33.99 per cent]	30*

Notes :

1. Surcharge - The above income-tax rates are subject to surcharge as follows—

(% of income-tax)

- | | |
|---|------|
| a. If the taxpayer is an individual/HUF/BOI/AOP | |
| - if net income does not exceed Rs. 10,00,000 | Nil |
| - if net income is above Rs. 10,00,000 | 10% |
| b. if the taxpayer is an artificial juridical person | 10% |
| c. if the taxpayer is a firm or domestic company and net income does not exceed Rs. 1 crore | Nil |
| d. if the taxpayer is a firm or domestic company and if net income exceeds Rs. 1 crore | 10% |
| e. if the taxpayer is a non-domestic company and net income does not exceed Rs. 1 crore | Nil |
| f. if the taxpayer is a non-domestic company and net income exceeds Rs. 1 crore | 2.5% |
| g. if the taxpayer is a co-operative society or local authority | Nil |

However, in the case of sections 161(1A), 164, 164A and 167B surcharge @ 10 per cent is always applicable irrespective of income. In the case of section 115JB, surcharge is applicable only if book profit exceeds Rs. 1 crore.

2. Education cess - 2 per cent of sum total of income-tax and surcharge

3. Secondary and higher education cess : 1 per cent of income-tax and surcharge.

Compulsory deposit

0.2 From the assessment year 1986-87, the scheme of compulsory deposit has been abolished.

□

Wealth-tax

0.3 1 per cent of the amount by which net wealth exceeds Rs. 15,00,000 (applicable in the case of every individual, Hindu undivided family and company) [surcharge : Nil; education cess : Nil].

□

Gift-tax

0.4 Gifts made after September 30, 1998 are not chargeable to gift-tax.

†These rates are subject to surcharge and education cess [see Notes 1 and 2 at the end of Table].

□

Estate duty

0.5 The levy of estate duty has been abolished in respect of estates passing on death occurring on or after March 16, 1985.

□

Rates for tax deduction at source

0.6 During the financial year 2008-09, tax is to be deducted at source at the following rates:

Nature of payment (1)	If the recipient is (a) an individual, HUF, AOP or ACP (aggregate of payment or credit) subject to tax deduction does not exceed Rs. 10,00,000* or (b) a co-operative society or (c) a local authority or (d) a firm/domestic company and aggregate payment/credit does not exceed Rs. 1 crore*					If the recipient is (a) an individual, HUF, AOP or ACP and (aggregate of payment or credit) subject to tax deduction exceeds Rs. 10,00,000* or (b) every artificial juridical person or (c) a firm/domestic company and aggregate payment/credit exceeds Rs. 1 crore*				
	IT (2)	SC (3)	EC (4)	SHEC (5)	Total (6)	IT (7)	SC (8)	EC (9)	SHEC (10)	Total (11)
■ Sec. 194B† - Winnings from lottery or crossword puzzle or card game or other game of any sort to a resident/non-resident	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99
■ Sec. 194BB† - Winnings from horse races to a resident/non-resident	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99
■ Sec. 194C - Payment to a resident contractor/sub-contractor—										
a. payment to a contractor (in the case of advertising contracts)	1	Nil	0.02	0.01	1.03	1	0.1	0.022	0.011	1.133
b. payment to a contractor (other than an advertising contract)	2	Nil	0.04	0.02	2.06	2	0.2	0.044	0.022	2.266
c. payment to a sub-contractor	1	Nil	0.02	0.01	1.03	1	0.1	0.022	0.011	1.133
■ Sec. 194D - Insurance commission to a resident										
- if the recipient is a resident other than a domestic company	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33
- if the recipient is a domestic company	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66
■ Sec. 194E - Payment to a non-resident sportsman or sports association	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33
■ Sec. 194EE - Payment in respect of deposits under National Savings Scheme, 1987 to a resident/non-resident	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66
■ Sec. 194F - Payment on account of repurchase of units of MF or UTI to a resident/non-resident	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66

† Under sections 194B and 194BB, if recipient is a non-domestic company, tax is deductible @ 30.9% (i.e. IT: 30%, EC: 2%, SHEC: 1%) if the payment subject to tax deduction does not exceed Rs. 1 crore or @ 31.6725 (i.e., IT: 30%, SC: 2.5%, EC: 2%, SHEC: 1%) if the payment exceeds Rs. 1 crore.

* See Note 1

Nature of payment (1)	If the recipient is (a) an individual, HUF, BOI or AOP (aggregate of payment or credit) does not exceed Rs. 10,00,000* or (b) a co-operative society or (c) a local authority or (d) a firm/domestic company and aggregate payment/credit does not exceed Rs. 1 crore †				If the recipient is (a) an individual, HUF, AOP or BOI and (aggregate of payment or credit) subject to tax deduction exceeds Rs. 10,00,000* or (b) every artificial juridical person or (c) a firm/domestic company and aggregate payment/credit exceeds Rs. 1 crore †					
	IT (2)	SC (3)	EC (4)	SHEC (5)	Total (6)	IT (7)	SC (8)	EC (9)	SHEC (10)	Total (11)
■ Sec. 194G† - Commission on sale of lottery tickets to a resident/non-resident	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33
■ Sec. 194H - Commission or brokerage to a resident	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33
■ Sec. 194-I - Rent to a resident— a. rent of plant, machinery or equipment b. rent of land, building or furniture to an individual and Hindu undivided family c. rent of land, building or furniture to a person other than an individual or Hindu undivided family	10 15 20	Nil Nil Nil	0.2 0.3 0.4	0.1 0.15 0.2	10.3 15.45 20.6	10 15 20	1 1.5 2	0.22 0.33 0.44	0.11 0.165 0.22	11.33 16.995 22.66
■ Sec. 194J - Fees for professional or technical services to a resident	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33
■ Sec. 194LA - Payment of compensation to a resident on acquisition of certain immovable property	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33

†Under section 194G if the recipient is a non-domestic company, tax is deductible @ 10.3% (i.e., IT : 10%, EC : 2%, SHEC : 1%) if the payment subject to tax deduction does not exceed Rs. 1 crore or @ 10.5575% (i.e., IT : 10%, SC : 2.5%, EC : 2%, SHEC : 1%) if the payment subject to tax deduction exceeds Rs. 1 crore.

*See Note 1

Nature of payment (1)	If the recipient is a non-resident non-corporate person							If the recipient is a non-domestic company and aggregate payment/credit subject to tax deduction exceeds Rs. 1 crore*							
	IT (2)	SC (3)	EC (4)	SHEC (5)	Total (6)	IT (7)	SC (8)	EC (9)	SHEC (10)	Total (11)	IT (12)	SC (13)	EC (14)	SHEC (15)	Total (16)
■ Sec. 195 - Payment of other sum to a non-resident [See Note 2]—															
a. income from foreign exchange assets payable to an Indian citizen	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	NA	NA	NA	NA	NA
b. income by way of long-term capital gains referred to in section 115E	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	NA	NA	NA	NA	NA
c. short-term capital gains under section 11A	15	Nil	0.3	0.15	15.45	15	1.5	0.33	0.165	16.995	15	0.375	0.3075	0.15375	15.83625
d. long-term capital gains [not being covered by section 10(33), 10(36) and 10(38)]	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115
e. income by way of interest payable by Government/Indian concern on money borrowed or debt incurred by Government or Indian concern in foreign currency	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115
f. royalty [see Note 5]	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	30	0.75	0.615	0.3075	31.6725
□ where the agreement is made before June 1, 1997															
□ where the agreement is made after May 31, 1997 but before June 1, 2005	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115
□ where the agreement is made on or after June 1, 2005	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	10	0.25	0.205	0.1025	10.5575
g. royalty [not being royalty of the nature referred to in (f) supra] [see Note 6]															
□ where the agreement is made after March 31, 1961 but before April 1, 1976	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	NA	NA	NA	NA	NA
- if recipient is a non-resident non-corporate person															
- if recipient is non-domestic company	50	Nil	1	0.5	51.5	NA	NA	NA	NA	NA	50	1.25	1.025	0.5125	52.7875
□ where the agreement is made after March 31, 1976 but before June 1, 1997	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	30	0.75	0.615	0.3075	31.6725
□ where the agreement is made after May 31, 1997 but before June 1, 2005	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115

* See Note 1

Nature of payment (1)	If the recipient is a non-resident non-corporate person						If the recipient is (a) an individual, HUF, BOI or AOP and aggregate of payment or credit subject to tax deduction does not exceed Rs. 10,00,000* or (b) a co-operative society or (c) firm or non-domestic company and aggregate payment/credit does not exceed Rs. 1 crore*						If the recipient is a non-domestic company and aggregate payment/credit subject to tax deduction exceeds Rs. 1 crore*					
	IT (2)	SC (3)	EC (4)	SHEC (5)	Total (6)	IT (7)	SC (8)	EC (9)	SHEC (10)	Total (11)	IT (12)	SC (13)	EC (14)	SHEC (15)	Total (16)			
(Sec. 195 contd.) □ where the agreement is made on or after June 1, 2005 h. fees for technical services [see Note 7] □ where the agreement is made after February 29, 1964 but before April 1, 1976 - if recipient is a non-resident non-corporate person - if recipient is non-domestic company □ where the agreement is made after March 31, 1976 but before June 1, 1997 □ where the agreement is made after May 31, 1997 but before June 1, 2005 □ where the agreement is made on or after June 1, 2005 i. any other income - if recipient is a non-resident and non-corporate assessee - if recipient is a non-domestic company ■ Sec. 196B - Income from units (including long-term capital gains on transfer of such units) to an offshore fund ■ Sec. 196C - Income from foreign currency bonds or GDR (including long-term capital gains on transfer of such bonds) (not being dividend) ■ Sec. 196D - Income of Foreign Institutional Investors from securities (not being dividend, short-term or long-term capital gain)	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	10	0.25	0.205	0.1025	10.5575			
	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	NA	NA	NA	NA	NA			
	50	Nil	1	0.5	51.5	NA	NA	NA	NA	NA	50	1.25	1.025	0.5125	52.7875			
	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	30	0.75	0.615	0.3075	31.6725			
	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115			
	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	10	0.25	0.205	0.1025	10.5575			
	30	Nil	0.6	0.3	30.9	30	3	0.66	0.33	33.99	NA	NA	NA	NA	NA			
	40	Nil	0.8	0.4	41.2	NA	NA	NA	NA	NA	40	1	0.82	0.41	42.23			
	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	10	0.25	0.205	0.1025	10.5575			
	10	Nil	0.2	0.1	10.3	10	1	0.22	0.11	11.33	10	0.25	0.205	0.1025	10.5575			
	20	Nil	0.4	0.2	20.6	20	2	0.44	0.22	22.66	20	0.5	0.41	0.205	21.115			

*See note 1.

Notes :

1. Under section 192 tax is deductible from salary. The payer shall calculate salary taxable in the hands of recipient. The amount so determined is subject to tax deduction under section 192. Under section 195, tax is deductible only if income is taxable in the hands of recipient in India. In any other case, gross payment is subject to tax deduction.

2. Tax is deductible at source under section 195 at the above rates or the rates specified in ADT agreements entered into by the Central Government under section 90 (whichever is lower) [section 2(37A)(iii)] [see Referencer 10].
3. Tax is not deductible under section 193, 194, 194A, or 194EE if the recipient makes a declaration in Form No. 15G/15H under the provisions of section 197A [see para 426.1].
4. Under section 197 the recipient can apply the Assessing Officer in Form No. 13 to get a certificate of lower/no tax deduction. This benefit is, however, not available if tax is deductible under section 194B, 194BB, 194E, 194EE, 194F, 196B, 196C or 196D [see para 426.2].
5. Royalty payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern after March 31, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to section 115A(1A) to the Indian concern or in respect of computer software referred to in the second proviso to section 115(1A), to a person resident in India.
6. Not being royalty of the nature referred to above, payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.
7. Fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.

Rates for tax collection at source

0.7 During the financial year 2008-09, tax shall be collected under section 206C at the following rates—

Nature of goods/nature of contract or licence or lease	If the purchaser or licensee or lessee is (a) an individual, HUF, AOP or BOI and the aggregate amount subject to tax collection does not exceed Rs. 10,00,000 or (b) a co-operative society or (c) local authority or (d) a firm or domestic/foreign company and the aggregate of amount subject to tax collection does not exceed Rs. 1 crore				If the purchaser or licensee or lessee is (a) an individual, HUF, AOP or BOI and the aggregate amount subject to tax collection exceeds Rs. 10,00,000 or (b) an artificial juridical person or (c) firm/ domestic company and the aggregate of amount subject to tax collection exceeds Rs. 1 crore				If the purchaser or licensee or lessee is a non-domestic company and aggregate amount subject to tax collection exceeds Rs. 1 crore						
	IT	SC	EC	SHEC	Total	IT	SC	EC	SHEC	Total	IT	SC	EC	SHEC	Total
Alcoholic liquor for human consumption	1	Nil	0.02	0.01	1.03	1	0.1	0.022	0.011	1.133	1	0.025	0.0205	0.01025	1.05575
Tendu leaves	5	Nil	0.1	0.05	5.15	5	0.5	0.11	0.055	5.665	5	0.125	0.1025	0.05125	5.27875
Timber obtained under a forest lease	2.5	Nil	0.05	0.025	2.575	2.5	0.25	0.055	0.0275	2.8325	2.5	0.0625	0.05125	0.025625	2.639375
Timber obtained by any mode other than under a forest lease	2.5	Nil	0.05	0.025	2.575	2.5	0.25	0.055	0.0275	2.8325	2.5	0.0625	0.05125	0.025625	2.639375
Any other forest produce (not being timber or tendu leaves)	2.5	Nil	0.05	0.025	2.575	2.5	0.25	0.055	0.0275	2.8325	2.5	0.0625	0.05125	0.025625	2.639375
Scrap	1	Nil	0.02	0.01	1.03	1	0.1	0.022	0.011	1.133	1	0.025	0.0205	0.01025	1.05575
Parking lot, toll plaza, mining and quarrying	2	Nil	0.04	0.02	2.06	2	0.2	0.044	0.022	2.266	2	0.05	0.041	0.0205	2.1115

Dividend tax under section 115-O

0.8 During the financial year 2008-09, dividend tax shall be charged as follows :

	Dividend tax	SC	EC	SHEC	Total
Dividend* [other than deemed dividend under section 2(22)(e)]	15	1.5	0.33	0.165	16.995
Deemed dividend under section 2(22)(e)**	NA	NA	NA	NA	NA

*Not taxable in the hands of shareholders [sec. 10(34)].

**Taxable in the hands of shareholders under section 56, without claiming any deduction under section 80L or 80M. The payer of such deemed dividend is liable to deduct tax at source under section 194.

Tax on income distributed by UTI/Mutual Fund under section 115R

0.9 Tax on income distributed by UTI/Mutual fund¹ shall be charged during the financial year 2008-09 as follows—

	IT	SC	EC	SHEC	Total
Income distribution to a unit-holder of equity oriented funds ² or any income distributed by the Administrator of the specified undertaking to unit-holder ³	Nil	Nil	Nil	Nil	Nil ³
Money market mutual fund or a liquid fund	25	2.5	0.55	0.275	28.325
Income distribution to any other unit-holder	12.5	1.25	0.275	0.1375	14.1625
- Unit-holder is individual/HUF ⁴		2	0.44	0.22	22.66
- Unit-holder is any other person ⁴					

1. Mutual fund for the aforesaid purpose is a fund specified under section 10(23D).

2. "Equity oriented fund" means the Unit Scheme, 1964 of UTI. It also includes any such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65 per cent of the total proceeds of such fund. The percentage of equity shareholding shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

3. Income distribution to a unit-holder of equity oriented funds shall not be chargeable to distribution tax under section 115R.

4. In the hands of unit-holders any income received in respect of units of UTI/Mutual Fund (whether it is equity oriented fund or otherwise) is exempt under section 10(35).

Other taxes

0.10 Some other tax rates are given below—

0.10-1 Securities transaction tax (STT) rates and other related issues are given below:

	Transaction in recognized stock exchange in India				Sale of unit of an equity oriented fund to the mutual fund
	Purchase of equity shares, units of equity oriented mutual fund (delivery based)	Sale of equity shares, units of equity oriented mutual fund (non-delivery based)	Sale of derivative		
Whether securities transaction tax (STT) is applicable	Yes	Yes	Yes	Yes	Yes
Who has to pay STT	Purchaser	Seller	Seller	Seller (with effect from June 1, 2008, of sale of an option in securities, where option is exercised)	Seller
Rate of STT - from June 1, 2008	0.125%*	0.125%*	0.025%*	0.017%* of option premium in the case of sale of option, 0.125%* of settlement price in the case of sale of an option where option is exercised, 0.017%* of the price in the case of sale of futures	0.25%*
Tax treatment of long-term capital gain in the hands of seller	NA	Exempt from tax under section 10(38) [long-term capital loss if any shall be ignored]	Income is generally treated as business income	Income is generally treated as business income	Exempt from tax under section 10(38) [long-term capital loss if any shall be ignored]

*Surcharge : Nil, Education cess : Nil, Secondary and higher education cess : Nil

	Transaction in recognized stock exchange in India			
	Purchase of equity shares, units of equity oriented mutual fund (delivery based)	Sale of equity shares, units of equity oriented mutual fund (delivery based)	Sale of equity shares, units of equity oriented mutual fund (non-delivery based)	Sale of unit of an equity oriented fund in the mutual fund
Tax treatment of short-term capital gain in the hands of seller	NA	Taxable at the rate of 15% (+ SC + EC + SHEC) under section 111A	Income is generally treated as business income	Taxable at the rate of 15% (+ SC + EC + SHEC) under section 111A
Tax treatment of business income in the hands of seller	NA	From the assessment year 2009-10, securities transaction tax will be deductible under section 36 and rebate under section 88E is not available.		
Who will collect STT	Stock exchange	Stock exchange	Stock exchange	Mutual fund

Note : STT is not applicable in case of preference shares, Government securities, bonds, debentures, units of mutual fund other than equity oriented mutual fund and in such cases, tax treatment of short-term and long-term capital gains shall be as per normal provisions of law.

0.10-2 Fringe benefits tax - Fringe benefit tax rates for the assessment year 2009-10 are given below-

	(% of value of fringe benefit)					
	IT	SC	EC	SHEC	Total	
Employer						
■ Employer is an AOP/BOI and						
- fringe benefit does not exceed Rs. 10,00,000	30	Nil	0.6	0.3	30.9	
- fringe benefit exceeds Rs. 10,00,000	30	3	0.66	0.33	33.99	
■ Employer is a firm or a domestic company or artificial juridical person (irrespective of amount of fringe benefits)	30	3	0.66	0.33	33.99	
■ Employer is a co-operative society or local authority	30	Nil	0.6	0.3	30.9	
■ Employer is a non-domestic company (irrespective of amount of fringe benefits)	30	0.75	0.615	0.3075	31.6725	

0.10-3 Banking cash transaction tax - It is applicable up to March 31, 2009 at the rate of 0.1 per cent of the value of taxable banking cash transaction (no surcharge, no education cess, no secondary and higher education cess).

0.10-4 Commodities transaction tax - Commodities transaction tax shall be applicable (from a date to be notified) as follows—

Taxable commodities transaction		Rate	Rate is applicable on	Payable by
Sale of an option in goods or an option in commodity derivative		0.017%*	Option premium	Seller
Sale of an option in goods or an option in commodity derivative, where option is exercised		0.125%*	Settlement price	Purchaser
Sale of any other commodity derivative		0.017%*	Selling price	Seller

Withholding tax rates under ADT agreement

0.11 The following withholding tax rates are applicable in India—

	Dividend [not being covered by section 115-O]		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Armenia	Both	10%	Both	10%	Both	10%	Both	10%
Australia	Both	15%	Both	15%	Both	[Note 3]	Both	[Note 3]
Austria	Both	10%	Both	10%	Both	10%	Both	10%
Bangladesh	Both	10% (if at least 10% of the capital of the company paying the dividend is held by the recipient)	Both	10% [Note 2]	Both	10%	No separate provision	No separate provision
Belarus	Both	10% if paid to a company holding 25% shares; otherwise 15%	Both	10% [Note 2]	Both	15%	Both	15%
Belgium	Both	15%	Both	15% (10% if granted by a bank)	Both	10%	Both	10%
Botswana	Both	7.5% (if shareholder is a company and holds at least 25% shares in the investee-company); otherwise 10%	Both	10%	Both	10%	Both	10%
Brazil	Both	15%	Both	15% [Note 2]	Both	25% for use of trademark; 15% for others	No separate provision	No separate provision
Bulgaria	Both	15%	Both	15% [Note 2]	Both	15% of royalty relating to literary, artistic, scientific works other than films or tapes used for radio or television broadcasting; 20% in other cases	Both	20%

*Surcharge : Nil, Education cess : Nil, Secondary and higher education cess : Nil

	Dividend (not being covered by section 115-O)		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Canada	Both	15% if at least 10% of the shares of the company paying the dividends is held by the recipient of dividend; 25% in other cases	Both	15% [Note 2]	Both	10%-20%	Both	10%-20%
China	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Cyprus	Both	10% if at least 10% of the capital of the company paying dividend is held by the recipient, 15% in all other cases	Both	10% [Note 2]	Both	15%	Both	10%
Czech Republic	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Denmark	Both	15% if at least 25% of the shares of the company paying the dividend is held by the recipient; 20% in other cases	Both	10% if loan is granted by bank; 15% for others [Note 2]	Both	20%	Both	20%
Germany	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Finland	Both	15%	Both	10% [Note 2]	Both	15%-20% during 1997-2001, 15% for subsequent years; 10% for equipment royalty	Both	Same as in case of royalty
France	Both	10%	Both	10%	Both	10%	Both	10%
Greece	Source	20%	Source	20%	Source	30%	No separate provision	
Hungary	Both	10%	Both	10%	Both	10%	Both	10%
Indonesia	Both	10% if at least 25% of the shares of the company paying the dividend is held by the recipient; 15% in other cases	Both	10% [Note 2]	Both	15%	No separate provision	
Iceland	Both	10%	Both	10%	Both	10%	Both	10%
Ireland	Both	10%-15%	Both	10% [Note 2]	Both	10%	Both	10%
Israel	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Italy	Both	15% if at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company; 20% in other cases	Both	15% [Note 2]	Both	20%	Both	20%
Japan	Both	10%	Both	10%	Both	10%	Both	10%
Jordan	Both	10%	Both	10% [Note 2]	Both	20%	Both	20%
Kazakhstan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%

	Dividend (not being covered by section 115-O)		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Kenya	Both	15%	Both	15% [Note 2]	Both	20%	Both	17.5%
Korea	Both	15% if at least 20% of the capital of the company paying dividend is held by the recipient; 20% in other cases	Both	10% if interest is paid to a bank; 15% for others [Note 2]	Both	15%	Both	15%
Kuwait	Both	10%	Both	10%	Both	10%	Both	10%
Kyrgyz Republic	Both	10%	Both	10%	Both	15%	Both	15%
Libyan Arab Jamahiriya	Source	20%	Source	20%	Source	30%	No separate provision	No separate provision
Malaysia	Both	10%	Both	10%	Both	10%	Both	10%
Malta	Both	10% if at least 25% of the shares of the company paying dividend is held by the recipient company; 15% in other cases	Both	10% [Note 2]	Both	15%	Both	10%
Mangolia	Both	15%	Both	15% [Note 2]	Both	15%	Both	25%
Mauritius	Both	5% if at least 10% of the capital of the company paying the dividend is held by the recipient; 15% in other cases	Both	20% [Note 2]. Nil in some cases	Both	15%	No separate provision	No separate provision
Morocco	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Namibia	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Nepal	Both	10% if at least 10% of the shares of the company paying the dividend is held by the recipient; 20% in other cases	Both	10% if interest is paid to bank 15% for others [Note 2]	Both	15%	No separate provision	No separate provision
Netherlands	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
New Zealand	Both	15%	Both	10% [Note 2]	Both	10%	Both	10%
Norway	Both	15% if at least 25% of the capital of the company paying the dividend is held by the recipient; 20% in other cases	Both	15% [Note 2]	Both	10%	Both	10%
Oman	Both	10% if at least 10% of shares are held by the recipient; 12.5% in other cases	Both	10% [Note 2]	Both	15%	Both	15%
Philippines	Both	15% if at least 10% of the shares of the company paying the dividend is held by the recipient; 20% in other cases	Both	10% if interest is received by a financial institution or insurance company; 15% in other cases	Both	15% if it is payable in pursuance of any collaboration agreement approved by the Government of India	—	—

	Dividend (not being covered by section 115-O)		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Poland	Both	15%	Both	15% [Note 2]	Both	22.5%	Both	22.5%
Portuguese Republic	Both	10%	Both	10%	Both	10%	Both	10%
Qatar	Both	5%-10%	Both	10% [Note 2]	Both	10%	Both	10%
Romania	Both	15% if at least 25% of the shares of the company paying the dividend is held by the recipient; 20% in other cases	Both	15% [Note 2]	Both	22.5%	Both	22.5%
Russian Federation	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Saudi Arabia	Both	5%	Both	10%	Both	10%	No separate provision	
Singapore	Both	10% if at least 25% of the shares of the company paying the dividend is held by the recipient; 15% in other cases	Both	10% if loan is granted by a bank/similar institute including an insurance company; 15% for others	Both	10%	Both	10%
Slovenia	Both	5-15%	Both	10%	Both	10%	Both	10%
South Africa	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Spain	Both	15%	Both	15% [Note 2]	Both	[Note 4]	Both	[Note 4]
Sri Lanka	Both	15%	Both	10% [Note 2]	Both	10%	Both	10%
Sudan	Both	10%	Both	10%	Both	10%	No separate provision	
Sweden	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Swiss	Both	10%	Both	10% [Note 5]	Both	10%	Both	10%
Syria	Residence	Nil	Both	7.5% [Note 2]	Both	10%	No separate provision	
Tanzania	Both	10% if at least 10% of the shares of the company paying the dividend is held for a period of at least 6 months prior to the date of payment of the dividend; 15% in other cases	Both	12.5%	Both	20%	No separate provision	
Thailand	Both	15% if dividend is paid by an industrial company and at least 10% of capital of such company is held by the recipient; 20% in other cases	Both	10% for financial institutions and insurance company; 20% for others [Note 2]	Both	15%	No separate provision	
Trinidad and Tobago	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Turkey	Both	15%	Both	10% if recipient is bank, etc.; 15% in other cases [Note 2]	Both	15%	Both	15%

	Dividend [not being covered by section 115-O]		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Turkmenistan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Uganda	Both	10%	Both	10%	Both	10%	Both	10%
Ukraine	Both	10%-15%	Both	10% [Note 2]	Both	10%	Both	10%
United Arab Emirates	Both	5% if at least 10% of the capital of the company paying dividend is held by the recipient; 15% in other cases	Both	5% if loan is granted by a bank/similar financial institution; 12.5% for others	Both	10%	No separate provision	No separate provision
United Arab Republic	Source	10%	Source	20%	Source	30%	No separate provision	No separate provision
United Kingdom	Both	15%	Both	10% if interest is paid to a bank; 15% for others [Note 2]	Both	[Note 3]	Both	[Note 3]
United States	Both	15% if at least 10% of the voting stock of the company paying the dividend is held by the recipient; 20% in other cases	Both	10% if loan is granted by a bank/similar institution including insurance company; 15% for others	Source	[Note 3]	Source	[Note 3]
Uzbekistan	Both	15%	Both	15% [Note 2]	Both	15%	Both	15%
Vietnam	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Zambia	Both	5% if at least 25% of the shares of the company paying the dividend is held for a period of at least 6 months prior to the date of payment of the dividend; 15% in other cases	Both	10% [Note 2]	Both	10%	No separate provision	No separate provision

1. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying the interest.
2. Dividend/interest earned by the Government and certain institutions like the Reserve Bank of India is exempt from taxation in the country of source.
3. Royalties and fees for technical services would be taxable in the country of source at the following rates :
 - a. 10 per cent in case of rental of equipment and services provided along with know-how and technical services ;
 - b. any other case—
 - i. during first five years of the agreement—
 - 15 per cent if the payer is Government or specified organisation;
 - 20 per cent in other cases;
 - ii. subsequent years, 15% in all cases.
4. Income of Government and certain institutions will be exempt from taxation in the country of source. Royalties and fees for technical services would be taxable in the country of source at the following rates :
 - a. 10 per cent in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;
 - b. 20 per cent in case of fees for technical services and other royalties.
5. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 20 per cent of the capital of the company paying the interest.

2 ANNEX Rates of depreciation

Block of assets [see para 109.5]	Depreciation allowance as percentage of written down value
	AY 2006-07 onwards
1	2
PART A	
TANGIBLE ASSETS	
I. Building [See Notes 1 to 4 below the Table]	
(1) Buildings which are used mainly for residential purposes except hotels and boarding houses	5
(2) Buildings other than those used mainly for residential purposes and not covered by sub-items (1) above and (3) below	10
(3) Buildings acquired on or after the 1st day of September, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities under clause (i) of sub-section (4) of section 80-IA	100
(4) Purely temporary erections such as wooden structures	100
II. Furniture and fittings	
Furniture and fittings including electrical fittings [See Note 5 below the Table]	10
III. MACHINERY AND PLANT	
(1) Machinery and plant other than those covered by sub-items (2), (3) and (8) below :	15 ^c
^a (2) Motor cars, other than those used in a business of running them on hire, acquired or put to use on or after the 1st day of April, 1990	15
(3) (i) Aeroplanes - Aeroengines	40
^b (ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire	30
(iii) Commercial vehicle which is acquired by the assessee on or after the 1st day of October, 1998, but before the 1st day of April, 1999 and is put to use for any period before the 1st day of April, 1999 for the purposes of	

a. Jeeps are classifiable as motor cars—*Crompton Engg. Co. (Madras) Ltd. v. CIT* [1992] 193 ITR 483 (Mad.)/ *CAIT v. Good Hope Enterprises* [1992] 197 ITR 236 (Ker.).

b. Trucks primarily used for assessee's own business and occasionally let out on hire will not fall under this entry unless assessee carries on a business of running them on hire—*CIT v. Manjeet Stone Co.* [1991] 190 ITR 183 (Raj.); Vehicles plying between fixed points for carriage of passengers fall under this entry—*ITO v. Sarojini Transports (P.) Ltd.* [1986] 17 ITD 1014 (Mad.); Mobile crane mounted on a lorry falls under this entry—*Gujco Carriers v. CIT* [2002] 122 Taxman 206 (Guj.); Rigs and Compressors mounted on a lorry do not fall under this item—*CIT v. Popular Borewell Service* [1992] 194 ITR 12 (Mad.); Motor vans are akin to motor lorries or motor buses—*Circular No. 609, dated 29-7-1991/CIT v. Kodak Ltd.* [1990] 181 ITR 275 (Bom.); Ambulance van falls under this entry—*CIT v. Dr. K.R. Jayachandran* [1995] 212 ITR 637 (Ker.); Air conditioned vehicles fall under this entry—*CIT v. Smt. Urmila Goel* [1986] 52 CTR (Delhi) 276.

c. 40 per cent if conditions of rule 5(2) are satisfied.

1	2
business or profession in accordance with the third proviso to clause (ii) of sub-section (1) of section 32 [See Note 6 below the Table]	40
(iv) New commercial vehicle which is acquired on or after the 1st day of October, 1998, but before the 1st day of April, 1999 in replacement of condemned vehicle of over 15 years of age and is put to use for any period before the 1st day of April, 1999 for the purposes of business or profession in accordance with the third proviso to clause (ii) of sub-section (1) of section 32 [See Note 6 below the Table]	60
(v) New commercial vehicle which is acquired on or after the 1st day of April, 1999 but before the 1st day of April, 2000 in replacement of condemned vehicle of over 15 years of age and is put to use before the 1st day of April, 2000 for the purposes of business or profession in accordance with the second proviso to clause (ii) of sub-section (1) of section 32 [See Note 6 below the Table]	60
(vi) New commercial vehicle which is acquired on or after the 1st day of April, 2001 but before the 1st day of April, 2002 and is put to use before the 1st day of April, 2002 for the purposes of business or profession [See Note 6 below the Table]	50
⁴ (vii) Moulds used in rubber and plastic goods factories	30
(viii) Air pollution control equipment, being—	
(a) Electrostatic precipitation systems	
(b) Felt-filter systems	
(c) Dust collector systems	
(d) Scrubber-counter current/venturi/packed bed/cyclonic scrubbers	
(e) Ash handling system and evacuation system	
(ix) Water pollution control equipment, being—	
(a) Mechanical screen systems	
(b) Aerated detritus chambers (including air compressor)	
(c) Mechanically skimmed oil and grease removal systems	
(d) Chemical feed systems and flash mixing equipment	
(e) Mechanical flocculators and mechanical reactors	
(f) Diffused air/mechanically aerated activated sludge systems	
(g) Aerated lagoon systems	
(h) Biofilters	
(i) Methane-recovery anaerobic digester systems	
(j) Air floatation systems	
(k) Air/steam stripping systems	
(l) Urea Hydrolysis systems	
(m) Marine outfall systems	
(n) Centrifuge for dewatering sludge	
(o) Rotating biological contractor or bio-disc	
(p) Ion exchange resin column	
(q) Activated carbon column	
(x) (a) Solidwaste control equipments being - caustic/lime/chrome/mineral/cryolite recovery systems	
(b) Solidwaste recycling and resource recovery systems	

d. Company manufacturing insulated wires and cables is not covered under this entry—*CIT v. Falcon Wires (P.) Ltd.* [1980] 123 ITR 427 (Mad.).

1	2
(xi) Machinery and plant, used in semi-conductor industry covering all integrated circuits (ICs) (excluding hybrid integrated circuits) ranging from small scale integration (SSI) to large scale integration/very large scale integration (LSI/VLSI) as also discrete semi-conductor devices such as diodes, transistors, thyristors, triacs, etc., other than those covered by entries (viii), (ix) and (x) of this sub-item and sub-item (8) below	30
(xia) Life saving medical equipment, being—	
(a) D.C. Defibrillators for internal use and pace makers	
(b) Haemodialysors	
(c) Heart lung machine	
(d) Cobalt Therapy Unit	
(e) Colour Doppler	
(f) Spect Gamma Camera	
(g) Vascular Angiography System including Digital subtraction Angiography	
(h) Ventilator used with anaesthesia apparatus	
(i) Magnetic Resonance Imaging System	
(j) Surgical Laser	40
(k) Ventilators other than those used with anaesthesia	
(l) Gamma knife	
(m) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for chemotherapy	
(n) Fibreoptic endoscopes including Paediatric resectoscope/audit resectoscope, Peritoneoscope, Arthroscope, Microlaryngoscope, Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo Bronchoscope, Video Laryngo Bronchoscope and Video Oesophago Gastroscopy, Stroboscope, Fibreoptic Flexible Oesophago Gastroscopy	
(o) Laparoscope (single incision)	
(4) Containers made of glass or plastic used as re-fills	50
(5) Computers including computer software [See note 7 below the Table]	60
(6) Machinery and plant, used in weaving, processing and garment sector of textile industry, which is purchased under TUFs on or after the 1st day of April, 2001 but before the 1st day of April, 2004 and is put to use before the 1st day of April, 2004 [See Note 8 below the Table]	50
(7) Machinery and plant, acquired and installed on or after the 1st day of September, 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility under clause (i) of sub-section (4) of section 80-IA [See Notes 4 and 9 below the Table]	100
(8) (i) Wooden parts used in artificial silk manufacturing machinery ^e	100
(ii) Cinematograph films - bulbs of studio lights	100
(iii) Match factories - Wooden match frames	100
(iv) Mines and quarries :	
(a) Tubs, winding ropes, haulage ropes and sand stowing pipes	100
(b) Safety lamps	
(v) Salt works - Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clayey material or any other similar material	100

e. Machinery used for dyeing, bleaching and printing of cloth manufactured by some other person will not fall under this item—*CIT v. Jaypee Dyeing House* [1999] 239 ITR 418 (Bom.).

1	2
(vi) Flour mills - Rollers	80
(vii) Iron and steel industry - Rolling mill rolls	80
(viii) Sugar works - Rollers	80
(ix) Energy saving devices, being—	
A. Specialised boilers and furnaces:	
(a) Ignifluid/fluidized bed boilers	
(b) Flameless furnaces and continuous pusher type furnaces	
(c) Fluidized bed type heat treatment furnaces	
(d) High efficiency boilers (thermal efficiency higher than 75 per cent in case of coal fired and 80 per cent in case of oil/gas fired boilers)	80
B. Instrumentation and monitoring system for monitoring energy flows:	
(a) Automatic electrical load monitoring systems	
(b) Digital heat loss meters	
(c) Micro-processor based control systems	
(d) Infra-red thermography	
(e) Meters for measuring heat losses, furnace oil flow, steam flow, electric energy and power factor meters	
(f) Maximum demand indicator and clamp on power meters	
(g) Exhaust gases analyser	
(h) Fuel oil pump test bench	80
C. Waste heat recovery equipment:	
(a) Economisers and feed water heaters	
(b) Recuperators and air pre-heaters	
(c) Heat pumps	
(d) Thermal energy wheel for high and low temperature waste heat recovery	80
D. Co-generation systems:	
(a) Back pressure pass out, controlled extraction, extraction-cum-condensing turbines for co-generation along with pressure boilers	
(b) Vapour absorption refrigeration systems	
(c) Organic rankine cycle power systems	
(d) Low inlet pressure small steam turbines	80
E. Electrical equipment:	
(a) Shunt capacitors and synchronous condenser systems	
(b) Automatic power cut off devices (relays) mounted on individual motors	
(c) Automatic voltage controller	
(d) Power factor controller for AC motors	
(e) Solid state devices for controlling motor speeds	
(f) Thermally energy-efficient stenters (which require 800 or less kilocalories of heat to evaporate one kilogram of water)	
(g) Series compensation equipment	
(h) Flexible AC Transmission (FACT) devices - Thyristor controlled series compensation equipment	
(i) Time of Day (ToD) energy meters	
(j) Equipment to establish transmission highways for National Power Grid to facilitate transfer of surplus power of one region to the deficient region	80

(k) Remote terminal units/intelligent electronic devices, computer hardware/software, router/bridges, other required equipment and associated communication systems for supervisory control and data acquisition systems, energy management systems and distribution management systems for power transmission systems	}	80
(l) Special energy meters for Availability Based Tariff (ABT)		
F. Burners:	}	80
(a) 0 to 10 per cent excess air burners		
(b) Emulsion burners		
(c) Burners using air with high pre-heat temperature (above 300°C)		
G. Other equipment:	}	80
(a) Wet air oxidation equipment for recovery of chemicals and heat		
(b) Mechanical vapour recompressors		
(c) Thin film evaporators		
(d) Automatic micro-processor based load demand controllers		
(e) Coal based producer gas plants		
(f) Fluid drives and fluid couplings		
(g) Turbo charges/super-charges		
(h) Sealed radiation sources for radiation processing plants		
¹ (x) Gas cylinders including valves and regulators		60
(xi) Glass manufacturing concerns - Direct fire glass melting furnaces		60
² (xii) Mineral oil concerns:	}	60
(a) Plant used in field operations (above ground) distribution - Returnable packages		
(b) Plant used in field operations (below ground), but not including kerbside pumps including underground tanks and fittings used in field operations (distribution) by mineral oil concerns		
(xiii) Renewal energy devices being—	}	80
(a) Flat plate solar collectors		
(b) Concentrating and pipe type solar collectors		
(c) Solar cookers		
(d) Solar water heaters and systems		
(e) Air/gas/fluid heating systems		
(f) Solar crop driers and systems		
(g) Solar refrigeration, cold storages and air-conditioning systems		
(h) Solar steels and desalination systems		
(i) Solar power generating systems		
(j) Solar pumps based on solar-thermal and solar-photovoltaic conversion		
(k) Solar-photovoltaic modules and panels for water pumping and other applications		
(l) Windmills and any specially designed devices which run on wind-mills		

f. Mere fact that assessee sold some cylinders during the previous year will not convert the cylinders into stock-in-trade. The cylinders must be capable of containing gas, and there is no requirement that the cylinders must be filled with gas—*Chawla Architects & Consultants (P.) Ltd. v. Assit. CIT* [1995] 54 ITD 330 (Bom.).

g. Petroleum company distributing gas for cooking purpose is a 'mineral oil concern'—*CIT v. Burmah Shell Oil Storage & Distribution Co. of India Ltd.* [1978] 115 ITR 891 (Cal.); Vegetable oil is not a 'mineral oil'—*CIT v. Distillers Trading Corporation Ltd.* [1982] 137 ITR 894 (Delhi).

1	2
<p>(m) Any special devices including electric generators and pumps running on wind energy</p> <p>(n) Biogas plant and biogas engines</p> <p>(o) Electrically operated vehicles including battery powered or fuel-cell powered vehicles</p> <p>(p) Agricultural and municipal waste conversion devices producing energy</p> <p>(q) Equipment for utilising ocean waste and thermal energy</p> <p>(r) Machinery and plant used in the manufacture of any of the above sub-items</p>	80
<p>(9) (i) Books owned by assessee carrying on a profession—</p> <p>(a) Books, being annual publications</p> <p>(b) Books, other than those covered by entry (a) above</p> <p>(ii) Books owned by assessee carrying on business in running lending libraries</p>	100 60 100
IV. SHIPS	
(1) Ocean-going ships including dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes and fishing vessels with wooden hull	20
(2) Vessels ordinarily operating on inland waters, not covered by sub-item (3) below	20
(3) Vessels ordinarily operating on inland waters being speed boats [See Note 10 below the Table]	20
PART B	
INTANGIBLE ASSETS	
Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature	25

Notes :

1. "Buildings" include roads, bridges, culverts, wells and tubewells.
2. A building shall be deemed to be a building used mainly for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent of its total built-up floor area and shall include any such building in the factory premises.
3. In respect of any structure or work by way of renovation or improvement in or in relation to a building referred to in *Explanation 1* of clause (ii) of sub-section (1) of section 32, the percentage to be applied will be the percentage specified against sub-item (1) or (2) of item I as may be appropriate to the class of building in or in relation to which the renovation or improvement is effected. Where the structure is constructed or the work is done by way of extension of any such building, the percentage to be applied would be such percentage as would be appropriate, as if the structure or work constituted a separate building.
4. Water treatment system includes system for desalination, demineralisation and purification of water.
5. "Electrical fittings" include electrical wiring, switches, sockets, other fittings and fans, etc.
6. "Commercial vehicle" means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi-cab", "motor-cab", "tractor" and "road-roller". The expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle", "maxi-cab", "motor-cab", "tractor" and "road-roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988).
7. "Computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.
8. "TUFS" means Technology Upgradation Fund Scheme announced by the Government of India in the form of a Resolution of the Ministry of Textiles vide No. 28/1/99-CTI of 31-3-1999.
9. Machinery and plant includes pipes needed for delivery from the source of supply of raw water to the plant and from the plant to the storage facility.

10. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at a speed, it will plane, i.e., its bow will rise from the water.

**Depreciation rates for power generating units
(applicable from the assessment year 1998-99)**

<i>Class of assets</i>	<i>Depreciation allowance as percentage of actual cost</i>
(a) Plant and Machinery in generating stations including plant foundations :—	
(i) Hydro-electric	3.4
(ii) Steam electric NHRS and Waste heat recovery Boilers/plants	7.84
(iii) Diesel electric and Gas plant	8.24
(b) Cooling towers and circulating water systems	7.84
(c) Hydraulic works forming part of Hydro-electric system including :—	
(i) Dams, Spillways weirs, canals, reinforced concrete Flumes and syphons	1.95
(ii) Reinforced concrete pipelines and surge tanks steel pipelines, sluice gates, steel surge (tanks), Hydraulic control valves and other hydraulic works.	3.4
(d) Building and civil engineering works of permanent character, not mentioned above	
(i) Office and showrooms	3.02
(ii) Containing Thermo-electric generating plant	7.84
(iii) Containing Hydro-electric generating plant	3.4
(iv) Temporary erection such as wooden structures	33.4
(v) Roads other than kuccha roads	3.02
(vi) Others	3.02
(e) Transformers, transformer (Kiosk) sub-station equipment and other fixed apparatus (including plant foundations)	
(i) Transformers (including foundations) having a rating of 100 kilo volt amperes and over	7.81
(ii) Others	7.84
(f) Switchgear including cable connections	7.84
(g) Lightning arrester :	
(i) Station type	7.84
(ii) Pole type	12.77
(iii) Synchronous condenser	5.27
(h) Batteries	33.4
(i) Underground cable including joint boxes and disconnected boxes	5.27
(ii) Cable duct system	3.02
(i) Overhead lines including supports :	
(i) Lines on fabricated steel operating at nominal voltages higher than 66 KV	5.27
(ii) Lines on steel supports operating at nominal voltages higher than 13.2 kilo volts but not exceeding 66 kilo volts	7.84
(iii) Lines on steel or reinforced concrete supports	7.84
(iv) Lines on treated wood supports	7.84
(j) Meters	12.77
(k) Self-propelled vehicles	33.40
(l) Air conditioning plants :	
(i) Static	12.77
(ii) Portable	33.40

<i>Class of assets</i>		<i>Depreciation allowance as percentage of actual cost</i>
(m)	(i) Office furniture and fittings	12.77
	(ii) Office equipments	12.77
	(iii) Internal wiring including fittings and apparatus	12.77
	(iv) Street light fittings	12.77
(n)	Apparatus let on hire	
	(i) Other than motors	33.4
	(ii) Motors	12.77
(o)	Communication equipment :	
	(i) Radio and high frequency carrier system	12.77
	(ii) Telephone lines and telephones	12.77
(p)	Any other assets not covered above	7.69

3 ANNEX

The Eleventh Schedule, Thirteenth Schedule, Fourteenth Schedule/Investment ceiling in the case of small scale industrial undertaking

Eleventh Schedule

LIST OF ARTICLES OR THINGS

1. Beer, wine and other alcoholic spirits.
2. Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.
3. Cosmetics and toilet preparations.
4. Tooth paste, dental cream, tooth powder and soap.
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used. (For this purpose blended flavouring concentrates shall include synthetic essences in any form).
6. Confectionery and chocolates.
7. Gramophones, including record-players, and gramophone records.
9. Cinematograph films* and projectors.
10. Photographic apparatus and goods.
22. Office machines and apparatus, such as, typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.
Explanation : The expression "office machines and apparatus" includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work, for data processing and for transmission and reception of messages**
23. Steel furniture, whether made partly or wholly of steel.
24. Safes, strong boxes, cash and deed boxes and strong room doors.
25. Latex from sponge and polyurethane foam.
27. Crown, corks, or other fittings of cork, rubber, polyethylene or any other material.
28. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material.

Note : Items 8, 11 to 21, and items 26 and 29 are omitted by the Finance Act, 1981, with effect from April 1, 1982.

*With effect from April 1, 1989 "cinematograph films" are excluded.

**With effect from April 1, 1988, for the words "or data processing and for transmission and reception of messages", the words "and for data processing (not being computers within the meaning of section 32AB)" shall be substituted.

The Thirteenth Schedule

[See section 80-IC(2)]

LIST OF ARTICLES OR THINGS

PART A

FOR THE STATE OF SIKKIM

S.No.	Article or thing
1.	Tobacco and tobacco products (including cigarettes, cigars and gutka, etc.)
2.	Aerated branded beverages
3.	Pollution-causing paper and paper products

PART B			
FOR THE STATE OF HIMACHAL PRADESH AND THE STATE OF UTTARANCHAL			
S.No.	Activity or article or thing	Excise classification	Sub-class under National Industrial Classification (NIC), 1998
1.	Tobacco and tobacco products including cigarettes and pan masala	24.01 to 24.04 and 21.06	1600
2.	Thermal Power Plant (coal/oil based)		40102 or 40103
3.	Coal washeries/dry coal processing		
4.	Inorganic Chemicals excluding medicinal grade oxygen (2804.11), medicinal grade hydrogen peroxide (2847.11), compressed air (2851.30)	Chapter 28	
5.	Organic chemicals excluding Provitamins/vitamins, Hormones (29.36), Glycosides (29.39), sugars* (29.40)	Chapter 29	24117
6.	Tanning and dyeing extracts, tannins and their derivatives, dyes, colours, paints and varnishes; putty, fillers and other mastics; inks	Chapter 32	24113 or 24114
7.	Marble and mineral substances not classified elsewhere	25.04 25.05	14106 or 14107
8.	Flour mills/rice mills	11.01	15311
9.	Foundries using coal		
10.	Mineral fuels, mineral oils and products of their distillation; bituminous substances : mineral waxes	Chapter 27	
11.	Synthetic rubber products	40.02	24131
12.	Cement clinkers and asbestos, raw including fibre	2502.10, 2503.00	
13.	Explosive (including industrial explosives, detonators and fuses, fireworks, matches, propellant powders, etc.)	36.01 to 36.06	24292
14.	Mineral or chemical fertilizers	31.02 to 31.05	2412
15.	Insecticides, fungicides, herbicides and pesticides (basic manufacture and formulation)	3808.10	24211 or 24219
16.	Fibre glass and articles thereof	70.14	26102
17.	Manufacture of pulp - wood pulp, mechanical or chemical (including dissolving pulp)	47.01	21011
18.	Branded aerated water/soft drinks (non-fruit based)	2201.20, 2202.20	15541 or 15542
19.	Paper	4801	21011 to 21019
	Writing or printing paper, etc.	4802.10	
	Paper or paperboard, etc.	4802.20	
	Maplitho paper, etc.	4802.30	
	Newsprint, in rolls or sheets	4801.00	
	Craft paper, etc.	4804.10	
	Sanitary towels, etc.	4818.10	
	Cigarette paper	48.13	

*Serial No. 5 Reproduction by synthesis not allowed as also downstream industries for sugar.

S.No.	Activity or article or thing	Excise classification	Sub-class under National Industrial Classification (NIC) 1988
20.	Grease-proof paper	4806.10	
	Toilet or facial tissue, etc.	4803	
	Paper and paper board, laminated internally with bitumen, tar or asphalt	4807.10	
	Carbon or similar copying paper	4809.10	
	Products consisting of sheets of paper or paperboard, impregnated, coated or covered with plastics, etc.	4811.20	
	Paper and paperboard, coated impregnated or covered with wax, etc.	4811.40	
	Plastics and articles thereof	39.09 to 39.15	

PART C	
FOR THE STATE OF JAMMU AND KASHMIR	
S.No.	Article or thing
1.	Cigarettes/cigars of tobacco, manufactured tobacco and substitutes
2.	Distilled/brewed alcoholic drinks
3.	Aerated branded beverages and their concentrates.

The Fourteenth Schedule

[See section 80-IC(2)]

LIST OF ARTICLES OR THINGS OR OPERATIONS

PART A	
FOR THE NORTH-EASTERN STATES	
1.	Fruit and Vegetable Processing industries manufacturing or producing—
	(i) Canned or bottled products;
	(ii) Aseptic packaged products;
	(iii) Frozen products;
	(iv) De-hydrated products;
	(v) Oleoresins.
2.	Meat and Poultry Product industries manufacturing or producing—
	(i) Meat Products (buffalo, sheep, goat and pork);
	(ii) Poultry production;
	(iii) Egg Powder Plant.
3.	Cereal Based Product industries manufacturing or producing—
	(i) Maize Milling including starch and its derivatives;
	(ii) Bread, Biscuits, Breakfast Cereal.
4.	Food and Beverage industries manufacturing or producing—
	(i) Snacks;
	(ii) Non-alcoholic beverages;
	(iii) Confectionery including chocolate;
	(iv) Pasta products;

<p>(v) Processed spices, etc.;</p> <p>(vi) Processed pulses;</p> <p>(vii) Tapioca products.</p> <p>5. Milk and milk based product industries manufacturing or producing—</p> <p>(i) Milk powder;</p> <p>(ii) Cheese;</p> <p>(iii) Butter/ghee;</p> <p>(iv) Infant food;</p> <p>(v) Weaning food;</p> <p>(vi) Malted milk food.</p> <p>6. Food packaging industry.</p> <p>7. Paper products industry.</p> <p>8. Jute and mesta products industry.</p> <p>9. Cattle or poultry or fishery feed products industry.</p> <p>10. Edible oil processing or vanaspati industry.</p> <p>11. Processing of essential oils and fragrances industry.</p> <p>12. Processing and raising of plantation crops - tea, rubber, coffee, coconuts, etc.</p> <p>13. Gas based Intermediate Products Industry manufacturing or producing—</p> <p>(i) Gas exploration and production;</p> <p>(ii) Gas distribution and bottling;</p> <p>(iii) Power generation;</p> <p>(iv) Plastics;</p> <p>(v) Yarn raw materials;</p> <p>(vi) Fertilizers;</p> <p>(vii) Methanol;</p> <p>(viii) Formaldehyde and FR resin melamine and MF resin;</p> <p>(ix) Methylamine, Hexamethylene tetramine, Ammonium bi-carbonate;</p> <p>(x) Nitric Acid and Ammonium Nitrate;</p> <p>(xi) Carbon black;</p> <p>(xii) Polymer chips.</p> <p>14. Agro forestry based industry.</p> <p>15. Horticulture industry.</p> <p>16. Mineral based industry.</p> <p>17. Floriculture industry.</p> <p>18. Agro-based industry.</p>

PART B
FOR THE STATE OF SIKKIM

S.No.	Activity or article or thing or operation
1.	Eco-Tourism including Hotels, Resorts, Spa, Amusement Parks and Ropeways.
2.	Handicrafts and handlooms.
3.	Wool and silk reeling, weaving and processing, printing, etc.
4.	Floriculture.
5.	Precision Engineering including watch making.
6.	Electronics including computronics hardware and software and Information Technology (IT) related industries.

S.No.	Activity or article or thing or operation			
7.	Food processing including Agro-based industries. Processing, preservation and packaging of fruits and vegetables (excluding conventional grinding/extraction units).			
8.	Medicinal and aromatic Herbs - Plantation and Processing.			
9.	Raising and processing of plantation crops, <i>i.e.</i> , tea, oranges and cardamom.			
10.	Mineral based industry.			
11.	Pharma products.			
12.	Honey.			
13.	Biotechnology.			
PART C				
FOR THE STATE OF HIMACHAL PRADESH AND THE STATE OF UTTARANCHAL				
S.No.	Activity or article or thing or operation	4/6 digit excise classification	Sub-class under NIC classification on 1998	ITC(HS) classification 4/6 digit
1.	Floriculture	-	-	0603 or 060120 or 06029020 or 06024000
2.	Medicinal herbs and aromatic herbs, etc., processing	-	-	
3.	Honey	-	-	040900
4.	Horticulture and agro-based industries such as			
	(a) Sauces, ketchup, etc.	21.03	15135 to 15137 and 15139	
	(b) Fruit juices and fruit pulp	2202.40		
	(c) Jams, jellies, vegetable juices, puree, pickles, etc.	20.01		
	(d) Preserved fruits and vegetables			
	(e) Processing of fresh fruits and vegetables including packaging			
	(f) Processing, preservation, packaging of mushrooms			
5.	Food Processing Industry excluding those included in the Thirteenth Schedule	19.01 to 19.04		
6.	Sugar and its by-products	-	-	17019100
7.	Silk and silk products	50.04 50.05	17116	
8.	Wool and wool products	51.01 to 51.12	17117	
9.	Woven fabrics (Excisable garments)	-	-	6101 to 6117
10.	Sports goods and articles and equipment for general physical exercise and equipment for adventure sports/activities, tourism (to be specified, by notification, by the Central Government)	9506.00		
11.	Paper and paper products excluding those in the Thirteenth Schedule (as per excise classification)			
12.	Pharma products	30.03 to 30.05		

S.No.	Activity or article or thing or operation	4/6 digit excise classification	Sub-class under NIC classification on 1998	ITC(HS) classification 4/6 digit
13.	Information and Communication Technology Industry, Computer hardware, Call Centres	84.71	30006/7	
14.	Bottling of mineral water	2201		
15.	Eco-tourism including hotels, resorts, spa, entertainment/amusement parks and ropeways	-	55101	
16.	Industrial gases (based on atmospheric fraction)			
17.	Handicrafts			
18.	Non-timber forest product-based industries.			
Investment ceiling of Rs. 5 crore in respect of small scale industrial undertaking				
Product Code	Name of the items†			
260101	Cotton cloth knitted			
260102	Cotton vests knitted			
260103	Cotton socks knitted			
260104	Cotton undergarments knitted			
260106	Cotton shawls knitted			
260199	Other cotton knitted wears			
260201	Woollen cloth knitted			
260202	Woollen vests knitted			
260203	Woollen socks knitted			
260204	Woollen scarves knitted			
260205	Woollen undergarments knitted			
260206	Woollen caps knitted			
260207	Woollen shawls knitted			
260208	Woollen gloves			
260207	Woollen mufflers knitted			
260299	Other woollen knitted wears			
	Art silk/Man-made fibre hosiery			
260310	1. Synthetic knitted socks and stocking			
260302	2. Synthetic knitted underwears such as vest, briefs and drawer			
260304	3. Synthetic knitted outerwears such as jersey slipovers, pullovers, cardigans and jackets			
260308	4. Synthetic knitted children wear such as baby suits, knicker, frock, underwear and outwear			
26030901	5. Synthetic knitted fabrics except high pile fabric made by silver knitting, and synthetic knitted blankets			
260311	6. Synthetic knitted swimwear such as trunk and costume			
260312	7. Synthetic knitted wear such as scarf, mufflers, shawl, cap, ties, blouse and jean			
260313	8. Synthetic knitted shirt, T-Shirt, collar shirt and sports-skirts			
260314	9. Synthetic knitted hose			
260315	10. Synthetic knitted gas mantle fabric			
260316	11. Other synthetic knitwear			

†For a unit manufacturing these items, investment ceiling is Rs. 5 crore (with effect from October 9, 2001). For others, investment ceiling is Rs. 1 crore.

<i>Product Code</i>	<i>Name of the items†</i>
343101	Hacksaw frames
343102	Pliers
343103	Screw drivers
343104	Spanners
343106	Hammers
343108	Anvils
343109	Wood working saws
343111	Wrenches
343112	Knives and shearing blades (all types including those of metal, paper, bamboo and wood for manual operations)
343113	Nail pullers
343114	Chisels
343115	Pincers
343116	Wire cutters
343199	Other hand tools for blacksmithy, carpentry, hand forging, foundry, etc.

†For a unit manufacturing these items, investment ceiling is Rs. 5 crore (with effect from October 9, 2001). For others, investment ceiling is Rs. 1 crore.

4 ANNEX

Notified backward districts

A. Category 'A' industrially backward districts :			
1. Godda	Bihar	42. Lohardagga	Bihar
2. Gumla	Bihar	43. Chhatarpur	Madhya Pradesh
3. Araria	Bihar	44. Uttarkashi	Uttar Pradesh
4. Gadchiroli	Maharashtra	45. Churu	Rajasthan
5. Madhepura	Bihar	46. Wayanad	Kerala
6. Sidharthanagar	Uttar Pradesh	47. Idukki	Kerala
7. Dumka	Bihar	48. Jalpaiguri	West Bengal
8. Mandla	Madhya Pradesh	49. Almora	Uttar Pradesh
9. Khagaria	Bihar	50. Pithoragarh	Uttar Pradesh
10. Kishanganj	Bihar	51. Tehri Garhwal	Uttar Pradesh
11. Malda	West Bengal	52. The Dangs	Gujarat
12. Palamu	Bihar	53. Banswara	Rajasthan
13. Phulbani	Orissa	B. Category 'B' industrially backward districts :	
14. Madhubani	Bihar	1. Srikakulam	Andhra Pradesh
15. Kalahandi	Orissa	2. Mahbubnagar	Andhra Pradesh
16. Jehanabad	Bihar	3. Katiyar	Bihar
17. Saharsa	Bihar	4. Bhagalpur	Bihar
18. West Dinajpur	West Bengal	5. Gopalganj	Bihar
19. Nawadah	Bihar	6. Darbhanga	Bihar
20. Bahraich	Uttar Pradesh	7. West Champaran	Bihar
21. Sitamarhi	Bihar	8. Saran	Bihar
22. Sahebganj	Bihar	9. Bhojpur	Bihar
23. Murshidabad	West Bengal	10. Samastipur	Bihar
24. Cooch Behar	West Bengal	11. Deoghar	Bihar
25. Bankura	West Bengal	12. Nalanda	Bihar
26. Panna	Madhya Pradesh	13. Gaya	Bihar
27. Pratapgarh	Uttar Pradesh	14. Muzaffarpur	Bihar
28. Maharajganj	Uttar Pradesh	15. Rohtas	Bihar
29. Jalore	Rajasthan	16. Banaskantha	Gujarat
30. Aurangabad	Bihar	17. Sabarkantha	Gujarat
31. East Champaran	Bihar	18. Bidar	Karnataka
32. Banda	Uttar Pradesh	19. Seoni	Madhya Pradesh
33. Barmer	Rajasthan	20. Tikamgarh	Madhya Pradesh
34. Purnia	Bihar	21. Shivpuri	Madhya Pradesh
35. Bastar	Madhya Pradesh	22. Balaghat	Madhya Pradesh
36. Siwan	Bihar	23. Jhabua	Madhya Pradesh
37. Vaishali	Bihar	24. Sidhi	Madhya Pradesh
38. Basti	Uttar Pradesh	25. Vidisha	Madhya Pradesh
39. Sarguja	Madhya Pradesh	26. Raigarh	Madhya Pradesh
40. Chamoli	Uttar Pradesh	27. Morena	Madhya Pradesh
41. Jaisalmer	Rajasthan		

28. Betul	Madhya Pradesh	50. Etah	Uttar Pradesh
29. Rajgarh	Madhya Pradesh	51. Barabanki	Uttar Pradesh
30. Rajnandgaon	Madhya Pradesh	52. Etawah	Uttar Pradesh
31. Sagar	Madhya Pradesh	53. Deoria	Uttar Pradesh
32. Beed	Maharashtra	54. Ghazipur	Uttar Pradesh
33. Bolangir	Orissa	55. Ballia	Uttar Pradesh
34. Mayurbhanj	Orissa	56. Jaunpur	Uttar Pradesh
35. Balasore	Orissa	57. Sitapur	Uttar Pradesh
36. Ganjam	Orissa	58. Jalaun	Uttar Pradesh
37. Dungarpur	Rajasthan	59. Unnao	Uttar Pradesh
38. Dholpur	Rajasthan	60. Faizabad	Uttar Pradesh
39. Sawai Madhopur	Rajasthan	61. Kanpur Dehat	Uttar Pradesh
40. Tonk	Rajasthan	62. Mainpuri	Uttar Pradesh
41. Nagaur	Rajasthan	63. Gonda	Uttar Pradesh
42. Jhalawar	Rajasthan	64. Farukhabad	Uttar Pradesh
43. Sikar	Rajasthan	65. Sultanpur	Uttar Pradesh
44. Hardoi	Uttar Pradesh	66. Mirzapur	Uttar Pradesh
45. Lalitpur	Uttar Pradesh	67. Mau	Uttar Pradesh
46. Hamirpur	Uttar Pradesh	68. Purulia	West Bengal
47. Badaun	Uttar Pradesh	69. Birbhum	West Bengal
48. Fatehpur	Uttar Pradesh	70. Midnapore	West Bengal
49. Azamgarh	Uttar Pradesh		

For the aforesaid purpose, the districts correspond to the districts mentioned in the Report of the Study Group on Identification of Backward Districts dated the 4th October, 1994 and are based on districts as they stood in the Census Report of 1991. Where a district specified as an industrially backward district for the purposes of section 80-IB is reorganised, either by split or otherwise, after the Census Report of 1991, all the areas comprised in the district as it existed in the Census Report of 1991 will qualify for the purpose of this rule.

2. This notification shall apply for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 and subsequent assessment years.

5 ANNEX

Questions set for CA (Final) examinations and answers from November 1998 to November 2008

5.1 Basic concepts

Problem 5.1-1 - "Income-tax Act, 1961 extends to whole of India". What meaning has been assigned to "India" under this Act? [MAY 2008]

■
With a view to providing a comprehensive definition of India, section 2(25A) was amended by the Finance Act, 2007 with retrospective effect from August 25, 1976 to define "India". According to the amended version it means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and the air space above its territory and territorial waters.

Problem 5.1-2 - X Agency is a partnership firm consisting of father and three major sons. The partnership deed provided that after the death of father, the business shall be continued by the sons, subject to the condition that the firm shall pay 20 per cent of the profits to the mother. Father died in March, 2008. In the previous year 2008-09 the reconstituted firm paid Rs. 1 lakh (equivalent to 20 per cent of the profits) to the mother and claimed the amount as deduction from its income. Examine the correctness of the claim of the firm. [MAY 2005]

■
For provisions relating to diversion of income by overriding title, see para 6.1-7. In the present problem, in view of the foresaid provisions, the amount paid to the mother shall be excluded from the income of firm.

Problem 5.1-3 - Explain the incidence of taxation of mutual concerns. [NOVEMBER 2004]

■
See para 6.1-8.

Problem 5.1-4 - Briefly discuss the concept of accelerated assessment applicable to association of persons/body of individuals for the assessment year 2009-10. [MAY 2003]

■
See para 2.2-3.

Problem 5.1-5 - Write short note on concept of real income. [NOVEMBER 2002]

■
See para 6.1-19.

Problem 5.1-6 - Explain the term 'amalgamation' as defined in section 2(1B) of the Income-tax Act. [MAY 1999]

■
See para 516.

5.2 Residential status and tax incidence

Problem 5.2-1 X, a citizen of India, is employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India during the year ending March 31, 2009 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2009-10. Examine the taxability of salary, allowances and perquisites in the hands of X for the assessment year 2009-10. [NOVEMBER 2006]

■
Salary paid by the Government to an Indian national is deemed to accrue or arise in India as per section 9(1)(iii). However, perquisites and allowances are exempt as per section 10(7) - See para 32.5.

Problem 5.2-2 - XY Pvt. Ltd., a company having registered head office in Singapore, for the first time has carried out operations during 2008-09 of purchase of goods in India on four occasions. Immediately after purchase, the company exports the same to China. The total value of such exports is Rs. 100 lakh on which it earns profits of Rs. 20 lakh before the expenses of Rs. 12 lakh, which is directly paid by head office. The company seeks your advice to its liability to tax in India :

1. How much income for the assessment year 2009-10 shall be subject to tax ?
2. To what extent deduction under section 80HHC shall be available ? [NOVEMBER 2003]

In the case of non-resident, by virtue of *Explanation (b)* to section 9(1)(i), no income shall be deemed to accrue or arise in India through or from operations, which are confined to the purchase of goods in India for the purpose of export. In view of the aforesaid provision, in the present problem, XY Pvt. Ltd. is not chargeable to tax in India. Therefore, no question of deduction under section 80HHC comes into picture. Moreover, deduction under section 80HHC is now not available.

5.3 Income exempt from tax

Problem 5.3-1 - Rameshwar Das Birla National Award of Rs. 51,000 was given to X, a chartered accountant by "Rameshwar Dasji Birla Smarak Kosh" for his contributions and work. [MAY 2008]

Rameshwar Das Birla National Award is a notified award under section 10(17A) for the assessment years 1999-2000 to 2001-02 — Notification No. Nil [F. No. 199/19/98-IT(A-II)], dated November 15, 2000. Hence, in the hands of the recipient it is not chargeable to tax for these assessment years.

Problem 5.3-2 - X purchased equity shares in Y Ltd., a constituent of BSE-500 index on Mumbai Stock Exchange on March 1, 2008. He sold the shares on March 4, 2009 at a loss of Rs. 10,000. He wants to set off the loss against other long-term capital gain during the year. Examine whether such set off is permissible. Both purchase and sale transactions were entered into on recognized stock exchange. [NOVEMBER 2004]

The equity shares were held for more than 12 months and were transferred through recognized stock exchange in India. The long-term capital gain is exempt under section 10(38). Any loss from exempted source is not eligible for set off against other taxable incomes — *JCIT v. Thyagarajan S.S.* [1981] 129 ITR 115 (Mad.).

Problem 5.3-3 - Explain with reasons about the taxability of the following transactions for the assessment year 2009-10 :

1. X was declared winner in a lucky DIP on August 15, 2008. He is paid cash of Rs. 1,00,000 as prize money.
2. Y, citizen of India and a non-resident, purchases the savings certificates issued by Central Government from out of dollars remitted from USA on July 11, 2008 on which the interest for the year ended on March 31, 2009 was Rs. 3 lakh. [NOVEMBER 2003]

Pointwise answer :

1. Prize money of Rs. 1,00,000 is taxable @ 30%* in the hands of X.
2. According to section 10(4B), in the case of an Indian citizen or a person of Indian origin who is a non-resident, the interest from notified Central Government Securities (i.e., National Savings Certificates VI/VII Issue), if such certificates are subscribed in convertible foreign exchange remitted from outside through official channels, is exempt from tax. However, no bonds, certificates, etc., are specified/issued by the Central Government for the purpose of the said clause on or after June 1, 2002.

In view of the aforesaid provisions, in the present problem, Rs. 3,00,000 is taxable in the hands of Y.

Problem 5.3-4 - XY & Co., a partnership concern, has established an undertaking for manufacture of computer software in free trade zone. It furnishes the following particulars of its 2nd year of operations ending on March 31, 2009 :

	Rs. (in lakh)
Total sales of business	100
Export sales	80
Profits of business	10
Out of the total export sales, realisation of a sale of Rs. 5 lakh is difficult because of insolvency of buyer. Realisation of rest of the sales is received in time.	

* Plus surcharge plus education cess plus secondary and higher education cess, see Annex 1.

The plant and machinery used in the business has been depreciated @ 15 per cent on SLM basis and depreciation of Rs. 3 lakh is charged in Profit & Loss account. Additional depreciation is not available
Compute the taxable income of XY & Co. for the assessment year 2009-10. [NOVEMBER 2003]

	Rs. (in lakh)
Profits of business	10
Add : Depreciation allowance debited on SLM basis	3
	<u>13</u>
Less : Depreciation allowable under section 32 (see note below)	2.55
Business income	10.45
Less : Amount exempt under section 10A [Rs. 10.45 lakh \times Rs. 75 lakh \div Rs. 100 lakh]	7.8375
Taxable income	<u>2.6125</u>
Note : Actual cost of asset if depreciation on "SLM basis" is Rs. 3 lakh [Rs. 3 lakh \div 0.15]	20
Less : Depreciation @ 15% (assuming it to be the only asset in block) for the first year of operation	3
Depreciated value at the end of first year	<u>17</u>
Less : Depreciation @ 15% for the second year (i.e., previous year 2008-09) of operation	2.55
Depreciated value at the end of second year	<u>14.45</u>

Problem 5.3-5 - The books of account maintained by a National Political Party registered with Election Commission for the year ending March 31, 2009 disclose the following receipts :

	Rs.
Rent of property let out to a departmental store at Chennai	6,00,000
Interest on deposits other than banks	5,00,000
Contributions from 100 persons (who have secreted their names) of Rs. 21,000 each	11,00,000
Contribution @ Rs. 11 each from 1,00,000 members in cash	11,00,000
Net profit of cafeteria run in the premises at Delhi	3,00,000

Compute the total income of the political party for the previous year 2008-09, with reasons for inclusion or otherwise. [MAY 2003]

	Rs.
Rent of property (exempt under section 13A)	Nil
Interest (exempt under section 13A)	Nil
Contribution exceeding Rs. 20,000 (names of persons making contribution not available)	11,00,000
Contribution not exceeding Rs. 20,000	Nil
Net profit from canteen	3,00,000
Net income	<u>14,00,000</u>

Note : For section 13A, see para 43.

Problem 5.3-6 - Discuss the following:

1. A company is engaged in the development and sale of computer software applications. It has started a new undertaking for which approval as a hundred per cent export-oriented undertaking has been obtained from the Central Board of Direct Taxes. It furnishes the following data and requests you (a) to compute the deduction allowable to it under section 10B in respect of assessment year 2009-10:

	Rs. (in lakh)
Total profit of the company for the previous year	50
Total turnover, i.e., export sales and domestic sales for the previous year	500
Consideration received in respect of export of software received in convertible foreign exchange within 6 months of the end of the previous year	250

Problem 5.3-7 : Nov. 1999**Salaries**

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	Rs. (in lakh)
<i>Sale proceeds credited to a separate account in a bank outside India with the approval of RBI</i>	50
<i>Telecom and insurance charges attributable to export of software</i>	10
<i>Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client</i>	40
2. State the conditions to be fulfilled for the undertaking to qualify for the deduction.	
3. How long will the deduction be admissible?	
4. Discuss the provisions relating to the taxation of educational institutions and the conditions in general required to be fulfilled by them for securing exemption from income-tax. [MAY 2002]	

■

Pointwise answer:

	Rs. (in lakh)
1. Computation of deduction under section 10B	
Profit of the business of the undertaking	50
Export turnover (see Note)	250
Total turnover (given)	500

[Profit of the business of the undertaking × Export turnover ÷ Total turnover of the business carried on by the undertaking] = Rs. 50 lakh × Rs. 250 lakh ÷ Rs. 500 lakh = Rs. 25 lakh

Notes - Export turnover is determined as under:

	Rs. (in lakh)
Consideration received in respect of export of software received in convertible foreign exchange within 6 months from the end of the previous year	250
Add: Sale proceeds credited to a separate account in a bank outside India with the approval of RBI	50
Less: Telecom and insurance charges attributable to export of software	10
Less: Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client	40
Export turnover	250

2. See para 40.1.

3. See para 40.3.

4. For provisions of section 10(23C), see para 38.53.

Problem 5.3-7 - A hospital for the reception and treatment of persons suffering from illness, existing for philanthropic purposes and not run for purposes of profit, run by a charitable trust seeks exemption of its income from income-tax for assessment year 2009-10. Discuss [NOVEMBER 1999]

■

According to section 10(23C), income of certain national funds, educational institutions and hospitals is exempt from tax provided certain conditions are satisfied—see paras 38.53-3 and 38.53-4. The trust if it is registered under section 12A, then it can claim exemption in respect of income from the hospital, while computing income as per section 11.

Problem 5.3-8 - Write a note on Employee Welfare Funds contemplated under section 10(23AAA). [MAY 1999]

■

See para 38.46.

Problem 5.3-9 - Write short note on Pension fund set up by LIC. [NOVEMBER 1998]

■

See para 38.47 for section 10(23AAB) and para 237 for section 80CCC.

5.4 Salaries

Problem 5.4-1 - X, an employee with Y Ltd. provides the following information relating to his income for financial year 2008-09:

1. He received salary Rs. 25,000 per month including conveyance allowance @ Rs. 2,500 per month for official purposes.
2. He deposited Rs. 2,500 per month in his account under a pension scheme notified by the Central Government.

3. He paid a sum of Rs. 60,000 during the year as interest on loan taken in April 2007 from bank for higher studies of his daughter.
4. He paid health insurance premium for himself and for his family members Rs. 8,500 in cash and Rs. 9,000 by credit card.
5. He invested Rs. 40,000 in notified bonds under section 80C issued by NABARD in July 2008.
6. Equity shares having fair market price of Rs. 1,00,000 were allotted to him by the company at a concessional price of Rs. 20,000 on May 30, 2008, which were sold by him for Rs. 1,80,000 on February 28, 2009.
- Compute the total income of X for assessment year 2009-10 and give reasons for treatment to each of the items. [NOVEMBER 2008]

Computation of total income of X	Rs.	Rs.
Salary [(Rs. 25,000 × 12) — (Rs. 2,500 × 12)]		2,70,000
Short term capital gain		80,000
Gross Total income		3,50,000
Less: Deduction under section 80CCD (limited to 10% of salary income)	27,000	
Deduction under section 80C in respect of NABARD bonds	40,000	
Deduction under section 80D [amount paid in cash is not deductible]	9,000	
Deduction under section 80E in respect of interest on education loan	60,000	
Total income		<u>2,14,000</u>

Notes :

- It is assumed that the fair market value of Rs. 1,00,000 in respect of shares given in the problem is fair market value on the date of vesting of the option.
- The employer is liable to pay fringe benefit tax on Rs. 80,000 in respect of employee's stock option plan.
- It is assumed that the employer does not contribute towards notified pension scheme.

Problem 5.4-2 X Ltd., manufacturer of drugs and pharma products provides the following information relating to payments made to its marketing manager in the year 2008-09:

- Salary @ Rs. 20,000 per month.
- Motor-cycle purchased for Rs. 45,000 in June, 2008 was given free of cost.
- Conveyance allowance of Rs. 5,000 per month which was allowed to him as exempt under section 10(14).
- Tickets worth Rs. 4,000 for a cricket match between India and England.
- Reimbursement of medical expenses incurred actually by him of Rs. 17,500.

The company asks you to compute the amount of:

- Income chargeable to tax in the hands of marketing manager; and
- Payments covered under fringe benefits, amount chargeable to FBT and the amount of such tax thereon. [NOVEMBER 2007]

Pointwise answer :

1. Computation of taxable income of marketing manager	Rs.
Salary [@Rs. 20,000 × 12]	2,40,000
Perquisite in respect of transfer of movable asset (see para 52.12)	45,000
Conveyance allowance [(Rs. 5000 × 12) — (Rs. 5,000 × 12)]	-
Reimbursement of medical expenditure [excess over Rs. 15,000 is chargeable to tax as perquisite in the hands of marketing manager]	2,500
Taxable income	<u>2,87,500</u>
2. Tax treatment in the hands of X Ltd.	
FBT on medical expenses reimbursement [Rs. 15,000 × 20% × 33.99%]	1,020
Entertainment expenditure [Rs. 4,000 × 20% × 33.99%]	272
FBT of the employer	<u>1,292</u>

Problem 5.4-3 - Can an employee of a State Government claim exemption under section 10(10C) in respect of compensation received on voluntary retirement to the extent of Rs. 5 lakh and relief under section 89 in respect of the amount of compensation in excess of Rs. 5 lakh? [MAY 2006]

An employee can claim both exemption and relief in respect of voluntary retirement compensation. VRS compensation

is exempt under section 10(10C) up to Rs. 5 lakhs and on the excess, relief under section 89 could be claimed — **CIT v. G.V. Venugopal** [2005] 144 Taxman 784 (Mad.).

Problem 5.4-4 - A public sector company has engaged you to frame a scheme of voluntary separation for its employees in order that the amount received by the employees under the scheme would qualify for tax exemptions under section 10(10C). What points would you bear in mind while drawing up the scheme? What will be the tax treatment of the payments under the scheme in the hands of the company? [MAY 2004]

■

See paras 49.20 and 121B.

Problem 5.4-5 - Calculate the value of perquisite, if any chargeable to tax in respect of free accommodation provided by the employer in a hotel to an employee, the previous year being March 31, 2009 :

- a. For 10 days when he was transferred from Delhi to Mumbai.
- b. Throughout the year as per contract of employment. [MAY 2003]

■

In case of accommodation provided in a hotel, the perquisite value shall be calculated at the rate of 24% of salary paid or payable for the previous year or actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided. Where, however, accommodation is provided in a hotel and the following two conditions are satisfied, nothing is chargeable to tax:

- a. the hotel accommodation is provided for a period not exceeding in aggregate 15 days; and
- b. such accommodation is provided on an employee's transfer from one place to another place.

Consequently, in case (a) nothing is chargeable to tax. In case (b) 24% of the 'salary' of employee or expenditure incurred by the employer, whichever is lower, is taxable.

Problem 5.4-6 - Does the tax borne by employer on behalf of employee in respect of provision of non-monetary perquisites constitute an income in the hands of employee with reference to the assessment year 2009-10? What are the tax implications of such payment in the hands of employer? [MAY 2003]

■

As per section 10(10CC) tax on non-monetary perquisite paid by an employer is exempt in the hands of the employee. The tax paid by the employer is, however, not eligible for deduction in view of section 40(a)(v).

Problem 5.4-7 Find out the taxable value of perquisite from the following particulars in case of an employee to whom the following assets held by the company were sold on June 13, 2009.

	Amount (in Rs.)		
	<i>Car</i>	<i>Laptop</i>	<i>Furniture</i>
Cost of purchase (May 2007)	8,72,000	1,22,500	35,000
Sale price	5,15,000	25,000	10,000

The assets were put to use by the company from the day these were purchased. [NOVEMBER 2002 (New)]

■

	Car	Laptop	Furniture
	Rs.	Rs.	Rs.
Cost of the asset on May 2007	8,72,000	1,22,500	35,000
Less: Normal wear and tear for the first year ending May 2008 (20% of Rs. 8,72,000, 50% of Rs. 1,22,500, 10% of Rs. 35,000)	1,74,400	61,250	3,500
Balance on May 2008	6,97,600	61,250	31,500
Less: Normal wear and tear for the second year ending May 2009 (20% of Rs. 6,97,600, 50% of Rs. 61,250, 10% of Rs. 35,000)	1,39,520	30,625	3,500
Balance on May 2009	5,58,080	30,625	28,000
Less: Sale consideration	5,15,000	25,000	10,000
Taxable value of the perquisite	43,080	5,625	18,000

Note - Normal wear and tear on car and laptop is computed on WDV basis. Depreciation on furniture is calculated on SLM basis.

Problem 5.4-8 - From the following data, you are required to calculate the perquisite value of the expenditure on medical treatment, which is assessable in the hands of the employee of a company, inclusive of the conditions to be satisfied :

	Rs.
Gross total income, inclusive of salary	2,00,000
(1) Amount spent on treatment of the employee's wife in a hospital maintained by the employer	10,000
(2) Amount paid by the employer on treatment of the employee's child in a hospital	5,000
(3) Medical insurance premium reimbursed by the employer on a policy covering the employee, his wife and dependent parents	8,000
(4) (a) Amount spent on medical treatment of the employee outside India	1,50,000
(b) Amount spent on travel and stay abroad	1,00,000
(5) Amount spent on travel and stay abroad of attendant	50,000
	[NOVEMBER 2002]

1. Amount spent on treatment of employee's wife in a hospital maintained by the employer	Not taxable as perquisite
2. Amount paid by the employer on treatment of the employee's child in a hospital	Not taxable ¹
3. Medical insurance premium reimbursed by the employer on a policy covering the employee, his wife and dependent parents	Not taxable as perquisite
4. (a) Amount spent on medical treatment of employee outside India	Not taxable as perquisite ²
(b) Amount spent on travel and stay abroad	Not taxable as perquisite ³
5. Amount spent on travel and stay abroad of attendant	Not taxable as perquisite ³

Notes :

1. As the amount does not exceed Rs. 15,000, it is not taxable.
2. Assuming that the expenditure is permitted by the Reserve Bank of India.
3. Assuming that the expenditure in respect of stay abroad is permitted by the Reserve Bank of India. Moreover, because gross total income does not exceed Rs. 2,00,000, cost of travel abroad is not taxable as perquisite.

Problem 5.4-9 - Discuss the following:

1. X joined a company at Ajmer (population : 24 lakh) on June 1, 2008 and was paid the following emoluments and allowed perquisites as under:

Emoluments:

- Basic pay Rs. 25,000 per month
- Dearness allowance Rs. 10,000 per month
- Bonus Rs. 50,000 per month

Perquisites:

- i. Furnished accommodation owned by the employer and provided free of cost.
- ii. Value of furniture therein Rs. 3,00,000.
- iii. Motor car owned by the company (with engine cubic-capacity less than 1.6 litres) along with chauffeur for official and personal use.
- iv. Sweeper salary paid by company Rs. 1,500 per month.
- v. Watchman salary paid by company Rs. 1,500 per month.
- vi. Educational facility for 2 children provided free of cost. The school is owned and maintained by the company.
- vii. Interest free loan of Rs. 5,00,000 given on October 1, 2008 for purchase of a house repayable within 5 years. No repayment was made during the year (SBI lending rate is 10.25 per cent).
- viii. Interest free loan of Rs. 50,000 for purchase of computer to be used for education purpose given on January 1, 2009. No repayment was made during the year (SBI lending rate is 11.5 per cent).
- ix. Corporate membership of a club. The initial fee of Rs. 1,00,000 was paid by the company. X paid the bills for his use of club facilities.

You are required to compute the income of X under the head "Salaries" in respect of assessment year 2009-10. Suitable assumptions may be made, wherever necessary.

2. Write short note on employee's stock option scheme. [MAY 2002]

Pointwise answer:

1. Computation of salary income	Rs.
Basic salary (Rs. 25,000 × 10)	2,50,000
Dearness allowance (Rs. 10,000 × 10)	1,00,000
Bonus (Rs. 50,000 × 10)	5,00,000

Problem 5.4-10 : May 2001*Salaries*

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	<i>Rs.</i>
Rent free furnished accommodation [see Note I]	1,10,000
Motor car [not chargeable to tax]	<i>Nil</i>
Sweeper (Rs. 1,500 × 10)	15,000
Watchman (Rs. 1,500 × 10)	15,000
Educational facility (see Note II)	-
Interest free loan for house (see Note III)	25,625
Interest free loan for computer (see Note III)	1,438
Club membership (see Note IV)	-
Gross salary	<u>10,17,063</u>
Less: Deduction	<u> -</u>
Net salary (rounded off)	<u>10,17,060</u>

Notes:

I. Salary for the purpose of computation of taxable value of the rent-free house is Rs. 8,50,000 (i.e., Rs. 2,50,000 + Rs. 1,00,000 + Rs. 5,00,000). Rs. 85,000 (being 10% of salary) is the taxable value of the perquisite for the assessment year 2009-10. Value of furniture is added, i.e., Rs. 25,000 (being 10% of the Rs. 3,00,000 × 10 ÷ 12).

II. Where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, then the perquisite shall not be chargeable to tax if the cost of such education (or the value of such benefit) per child does not exceed Rs. 1,000 per month.

In view of the aforesaid provisions, assuming cost of education per child does not exceed Rs. 1,000 per month, nothing is chargeable to tax.

III. The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan made available to the employee during the relevant previous year by the employer shall be determined as the sum equal to the simple interest computed at the SBI lending rate (as on the first day of the previous year).

IV. Where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee (or any member of his household), the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

2. Value of any benefit provided free of cost or at a concessional rate by a company to its employees by way of allotment of shares, debentures or warrants directly or indirectly under the Employee's Stock Option Plan or Scheme is a perquisite not chargeable to tax in the hands of employees in all cases. However it is subject to fringe benefit tax in the hands of employer.

Problem 5.4-10 - Discuss the following :

1. X, a managing director of a company, is entitled to commission on sales as per the agreement of service entered into. A part of the commission is converted into purchasing a single premium deferred annuity policy from LIC of India. X claims that the commission diverted to secure the deferred annuity cannot be taxed in his personal assessment.

2. X is contributing amount to unrecognised provident fund. On March 15, 2009, he has finally drawn the deposited amount along with interest. He seeks your advise as how it has to be dealt in his computation for assessment year 2009-10.

3. X, an individual, has income taxable only under the head "Salaries". In the course of the previous year ended March 31, 2009, he pays Rs. 10,000 to an institution recognised by the prescribed authority under section 35CCA. Will X be entitled to any deduction and if so, of what amount?

4. X is a whole-time employee as a Development Officer in LIC of India. He receives incentive bonus based on quantum of business procured in the year. He claims that incentive bonus cannot be wholly included as his income and he should be allowed deduction for expenses incurred in procuring the business. [MAY 2001]

■

Pointwise answer :

1. In *CIT v. Navnit Lal Sakar Lal* [2000] 113 Taxman 692 (SC), it was held that where the employer-company purchased a single premium deferred annuity policy out of commission payable to employee-managing-directors (assessee) in their names, the amounts utilised for obtaining deferred annuity policies would form part of remuneration payable to the assessee and as such be chargeable to tax under the head 'Salaries'. In the present problem, in view of the aforesaid case, the claim of X is unjustified.

2. Interest on employees' contribution is taxable under the head "Income from other sources". Employer's contribution and interest thereon is taxable under the head "Salaries". See para 56.2 (Note 5).

3. X is entitled to deduction of Rs. 10,000 as per section 80GGA from gross total income [for detailed discussion see para 244].

4. See para 49.14-1. The contention of X is correct. However, see also contrary decisions in *CIT v. E.A. Rajendran* [1997] 235 ITR 514 (Mad.) and *K.A. Choudary v. CIT* [1987] 183 ITR 29 (AP).

Problem 5.4-11 - X is employed as a senior executive of Y Ltd. Y Ltd. offers rights to its existing shareholders in the ratio of 1:1 on February 15, 2009 at Rs. 150 per share. X was offered 500 shares at Rs. 150, which he exercised. On these facts you are consulted by X as to—

1. The tax consequences for the assessment year 2009-10.
2. If X is already a shareholder of 250 shares, allotted in public issue will it make any difference? [MAY 2000]

■

The answer is as under :

1. The value of any benefit provided by a company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants, directly or indirectly under the Employees Stock Option Plan or Scheme of the said company is chargeable to fringe benefit tax in the hands of Y Ltd.

Consequently, it is not chargeable to tax in the hands of X.

2. The benefit arising out of an offer of shares at a price lower than the market price, on further issue of capital under section 81(1) of the Companies Act made to the shareholders in general meeting, is not taxable as income under section 2(24)(iv), in the hands of a director or a person who has a substantial interest in the company, or a relative of the director or such person, if he has received the offer as one of its shareholder and receives the advantage *qua* shareholder, is also not taxable under section 2(24)(iii)—Board's letter to Indian Merchants Chamber published in Chamber's Annual Report, 1963, p. 87.

In the present problem, in case the market price of the share of Y Ltd. is more than Rs. 150, the benefit received by X, an employee-shareholder, is not chargeable to tax since 250 shares were acquired by X independent of his employment.

5.5 Income from house property

Problem 5.5-1 - Rent of Rs. 30,000 for the period April 1, 2007 to June 30, 2007 due till the property sold out by the owner on May 16, 2009 is received on February 12, 2010 because of an order of court. [MAY 2008]

■

Under section 25B, arrear rent is taxable in the year of receipt. As per section 25B amount received which is not charged to tax in any of the earlier years (after deducting 30%) is chargeable to tax as income from house property. Sale of house property, before receipt of arrear rent, is not to be considered while deciding the taxability of arrear rent.

Problem 5.5-2 - X, an individual, borrowed Rs. 20,00,000 for repair and reconstruction of his self-occupied house property and paid interest of Rs. 1,60,000 thereon during the year ending March 31, 2009. What is the amount of interest allowable as a deduction under section 24 for the assessment year 2009-10? [MAY 2007]

■

For provisions of section 24(b), see para 91.1-1a. In the present problem, in view of these provisions, X is entitled to a deduction of Rs. 30,000 on account of interest allowable as a deduction under section 24.

Problem 5.5-3 - A Hindu undivided family owns a property which has been let out to a firm carrying on business. The family is a partner in the firm through the Karta. No rent has been charged by the HUF from the firm for use of the premises by the firm. The Assessing Officer, however, has taxed the family on the notional income from property based on municipal valuation. Is this decision justified? [MAY 2004]

■

The action of the Assessing Officer is not legally correct [see para 86.3]. Decision favouring the Revenue could be found in *CIT v. K.N. Guruswamy* [1984] 146 ITR 34 (Kar.).

Problem 5.5-4 - X, an American national, is a resident in India during the previous year ending on March 31, 2009. He was owner of a building located in New York. The same was on rent @ US \$ 12,500 per month. The Municipal Corporation of New York was paid taxes on such building of US \$ 10,000 on February 12, 2009. Besides the above property, he purchased a piece of land at Delhi for construction of a house. The said land was given on rent for running of a dairy @ Rs. 3,000 per month with effect from October 1, 2008. The value of one US \$ in Indian rupee throughout the year remained at Rs. 46.50.

X wants to know his taxable income for assessment year 2009-10. [MAY 2003]

■

It is not clear from the problem whether or not X is ordinarily resident in India. Further, it is not given whether rent of New York house is received in India or outside India. The answer given below covers the following situations—

1. X is resident and ordinarily resident in India and rent of the New York house is received in India.

Problem 5.5-5 : Nov. 2002

Income from house property

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- 2. X is resident and ordinarily resident in India and rent of the New York house is received outside India.
- 3. X is resident but not ordinarily resident in India and rent of the New York house is received in India.
- 4. X is resident but not ordinarily resident in India and rent of the New York house is received outside India.

<i>Computation of income</i>	<i>Situations 1, 2 and 3</i> Rs.	<i>Situation 4</i> Rs.
<i>New York house</i>		
Annual value (Rs. 46.50 × US \$ 12,500 × 12)	69,75,000	Nil
Less: Municipal tax (Rs. 46.50 × US \$ 10,000)	4,65,000	Nil
New annual value	65,10,000	Nil
Less: Standard deduction @ 30%	19,53,000	Nil
Income from house property	45,57,000	Nil
Income from other sources (Rs. 3,000 × 6)	18,000	18,000
Net income	45,75,000	18,000

Problem 5.5-5 - X is the owner of a commercial property let out at Rs. 20,000 per month. The municipal tax on the property is Rs. 25,000 annually 50 per cent of which is payable by the tenant. This tax was actually paid on April 15, 2008. He had borrowed a sum of Rs. 10 lakh from his cousin, resident in U.S.A. (in dollars) for the construction of the property on which interest at 10 per cent is payable. He has also received arrears of rent of Rs. 20,000 during the year, which was not charged to tax in the earlier years. What is the property income of X from assessment year 2009-10? [NOVEMBER 2002]

	Rs.
Gross annual value	2,40,000
Less : Municipal taxes (not paid during the previous year)	Nil
Net annual value	2,40,000
Less :	
Standard deduction under section 24	72,000
Interest on capital borrowed (on the assumption that tax is deducted at source)	1,00,000
Income	68,000
<i>Property income of X</i>	
Income from property	68,000
Arrears of rent (Rs. 20,000 less 30% of Rs. 20,000)	14,000
	82,000

Problem 5.5-6 - The assessee, who was deriving income from house property, realised a sum of Rs. 52,000 on account of display of advertisement hoardings of various concerns on the roof of the building. He claims that this amount should be considered under the head "Income from house property" and not under the head "Income from other sources". Discuss. [NOVEMBER 2000]

In *Mukherjee Estate (P.) Ltd. v. CIT* [2000] 113 Taxman 313 (Cal.), it was held that the hoardings let out by the assessee were neither part of the building nor the land appurtenant thereto. Therefore, permitting some companies to display their boards on hoardings could not be taken as income from house property as hoardings could not be treated as part of the building.

In the present problem, in view of the aforesaid case, Rs. 52,000 is chargeable to tax under the head "Income from other sources".

5.6 Profits and gains of business or profession

Problem 5.6-1 - Specify all those public facilities which have been notified by CBDT as infrastructure facility for the purpose of section 36(1)(viii). [MAY 2008]

■

See footnote to para 134.3.

Problem 5.6-2 - Discuss the following:

1. XYZ Ltd., engaged in the business of manufacturing of industrial cables, imported a car on February 26, 2001 from Japan which costed in total of Rs. 53,00,000. The car was used from March 1, 2001 continuously for the purposes of its business by the company. The Assessing Officer, in the month of June 2009, while completing assessment under section 143(3) for assessment year 2007-08, noted that the company had claimed depreciation @ 25 per cent since assessment year 2001-02 on this car in the block of assets. Therefore, he issued notices under section 148 read with section 147 for assessment years 2001-02 to 2007-08.

Examine the validity of the action of the Assessing Officer.

2. X Ltd., to provide telecom services in Mumbai, obtained a licence on April 11, 2006 for a period of 10 years ending on March 31, 2016 against a fee of Rs. 27 lakh to be paid in 3 instalments of Rs. 10 lakh, 9 lakh and 8 lakh by April 2006, April 2007 and April 2008 respectively. Explain how the payment made for licence fee shall be dealt and work out the amount, if any, deductible in this respect out of income chargeable to tax for assessment year 2009-10 and subsequent years.

3. Ms. X engaged in the business of growing, curing, roasting and grounding of coffee after mixing chicory had a total income of Rs. 3,25,000 from this business which was her only source of income during the year ended on March 31, 2009. She consults you to have an opinion whether she is required to file return of income for the assessment year 2009-10 as per provisions of section 139(1).

4. An amount of Rs. 5 lakh was paid on March 17, 2009 to the parents of X by the Government of Maharashtra as a compensation to the aggrieved family whose only son X lost his life in Mumbai local train serial bomb blasts. Explain with reasons, is the amount of compensation received chargeable to tax in assessment year 2009-10?

5. X Ltd., made a provision on March 31, 2004 of Rs. 85,000 against a bill of supplier of raw material by charging the amount to profit and loss account and claimed deduction thereof while computing the income chargeable to tax for assessment year 2004-05. The amount of Rs. 40,000 not paid to the party till March 31, 2008 was paid in cash on June 11, 2008. The Assessing Officer issued show cause notice to the company to rectify the computation of income for the assessment year 2004-05 on account of payment made in cash on June 11, 2008. Can the Assessing Officer do so? [NOVEMBER 2007]

■

Pointwise answer:

1. For provisions related to depreciation in the case of a foreign made car, see para 109.3. For provisions of section 147, see para 367 and for provisions of section 148, see para 368.

In the present problem, in view of the aforesaid provisions, the action of the Assessing Officer is correct as depreciation has been incorrectly claimed by the assessee (in the case of a foreign made car depreciation is not available if the car is acquired before March 31, 2001). Since depreciation claimed in each of the assessment years 2001-02 to 2007-08 is greater than Rs. 1,00,000, the notice issued under section 148 is valid.

2. The entire payment is made in three instalments. Deduction under section 35ABB is available as under :

	First instalment	Second instalment	Third instalment	Total
Date of payment	April 2006	April 2007	April 2008	
Period during which deduction is available	10 years	9 years	8 years	
Amount of payment	Rs. 10 lakh	Rs. 9 lakh	Rs. 8 lakh	
Amount deductible in previous year	Rs.	Rs.	Rs.	Rs.
2006-07	1,00,000	-	-	1,00,000
2007-08	1,00,000	1,00,000	-	2,00,000
2008-09 to 2015-16	1,00,000	1,00,000	1,00,000	3,00,000

3. As per rule 7B, 40% of Rs. 3,25,000 is non-agricultural income, i.e., income chargeable to tax — see para 279.3. However, since 40% of Rs. 3,25,000 is below the maximum amount not chargeable to tax. Therefore, Ms. X is not required to file return of income for the assessment year 2009-10.

4. As per section 10(10BC), compensation received on account of any disaster is exempt from tax, see para 38.22A.

5. For provisions of section 40A(3), see para 148. In view of these provisions, the action of the Assessing Officer is incorrect as from the assessment year 2008-09, the payment so made shall be deemed to be the business income of the taxpayer of the previous year in which the payment is made.

Problem 5.6-3 - Discuss the following:

1. X, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts in the course of the business of operation of aircraft during the year ending March 31, 2009.

- a. Rs. 2 crore in India on account of carriage of passengers from Chennai.
- b. Rs. 1 crore in India on account of carriage of goods from Chennai.
- c. Rs. 3 crore in India on account of carriage of passengers from Singapore.
- d. Rs. 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by X for the purposes of the business during the year ending March 31, 2009 was Rs. 6.75 crore.

Compute the income of X chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2009-10.

2. X, an individual, carried the business of purchase and sale of agricultural commodities like paddy, wheat, etc. He borrowed loans from Punjab State Financial Corporation and State Bank of India and has not paid interest as detailed hereunder:

	Rs.
Punjab State Financial Corporation (previous years 2006-07, 2007-08 and 2008-09)	36,00,000
State Bank of India (previous years 2007-08 and 2008-09)	72,00,000
	1,08,00,000

Both Punjab State Financial Corporation and State Bank of India while restructuring the loan facilities of X during the year ending March 31, 2009, converted the above interest payable by X to them as loan repayable in 36 equal instalments. During the year ended March 31, 2009, X paid six instalments to Punjab State Financial Corporation and five instalments to State Bank of India. X claimed the entire interest of Rs. 1,08,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities. Discuss whether his claim is valid and if not, what is the amount of interest, if any, allowable.

3. X Ltd. was incorporated on December 12, 2007 for manufacture of tyres and tubes for motor vehicles. The manufacturing unit was set up on April 30, 2008. The company commenced its manufacturing operations on May 1, 2008. The total cost of the plant and machinery installed in the unit is Rs. 100 crore. The said plant and machinery included second hand plant and machinery bought for Rs. 10 crore and new plant and machinery for scientific research relating to the business of the assessee acquired at a cost of Rs. 10 crore.

Compute the amount of depreciation allowable under section 32 in respect of the assessment year 2009-10. Furnish explanations in support of your computation. [MAY 2007]

Pointwise answer:

1. For provisions of section 44BBA, see para 162.9. In the present problem, the income of X under the head, "Profits and gains from business or profession", is Rs. 35,00,000 (i.e., 5% of Rs. 7 crore). It will be taxed at 33.99%.

2. For provisions of section 43B, see para 155. For provisions of Circular No. 7/2006, dated July 17, 2006 relating to conversion of outstanding interest into fresh loan, see para 155.5-7.

In the present problem, in view of these provisions, the claim of X regarding entire interest of Rs. 1,08,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities is invalid. However, X can claim Rs. 16,00,000 [i.e., (Rs. 36,00,000 × 6 ÷ 36) + (Rs. 72,00,000 × 5 ÷ 36)] as deduction in computing business income for the assessment year 2009-10.

3. Computation of depreciation allowable under section 32

	Normal depreciation Rs. (in crore)	Additional depreciation Rs. (in crore)
Total cost of plant and machinery	100	100
Less: Second hand plant and machinery [*additional depreciation is not available on second hand plant and machinery, see para 109.8]	-	10*
Less: New plant and machinery for scientific research [fully allowable under section 35(2), see para 114.3]	10*	10*
Value for computing depreciation/additional depreciation	90	80
Normal depreciation [15% of Rs. 90,000]	13.50	-
Additional depreciation [20% of Rs. 80 crore]	-	16
Total depreciation allowable for assessment year 2009-10 (Rs. 13.50 + Rs. 16)		29.50

Problem 5.6-4 - Discuss the following:

1. What is a zero coupon bond? State briefly the treatment of zero coupon bonds in the hands of the issuer and the investor.
2. What is an adventure in the nature of trade? State the factors which are relevant in deciding whether a transaction is an adventure in the nature of trade. [NOVEMBER 2006]

■
Pointwise answer:

1. See para 127A.
2. See para 101.5.

Problem 5.6-5 - Discuss the following:

1. The Assessing Officer found during the course of assessment of a firm that it had paid rent in respect of its business premises amounting to Rs. 60,000, which was not debited in the books of account for the year ending March 31, 2008. The firm did not explain the source for payment of rent. The Assessing Officer proposes to make an addition of Rs. 60,000 in the hands of the firm for the assessment year 2008-09. The firm claims that even if the addition is made, the sum of Rs. 60,000 should be allowed as deduction while computing its business income since it has been expended for purposes of its business. Examine the claim of the firm.
2. XY and AB are firms with common partners carrying on different businesses. XY had taken a loan from AB for purposes of its business. Interest on the loan for the year ending March 31, 2009 worked out to Rs. 20,000. XY deducted tax of Rs. 2,244 on interest and paid the balance sum of Rs. 17,756 in cash to AB on March 31, 2009. Tax deducted was remitted to the credit of the Central Government on April 30, 2009. How will you treat the interest paid while computing the total income of XY for the assessment year 2009-10? [MAY 2006]

■
Pointwise answer:

1. For provisions of section 69C, see para 157.5. In the present problem, in view of the aforesaid provisions, the claim of the firm is not admissible.
2. For provisions of section 40(a)(ia) see para 143.2. In the present problem, the interest paid shall not be disallowed while computing total income of XY as tax deducted at source during March 2009 has been deposited before the due date of submission of return of income.

Problem 5.6-6 Discuss the following :

1. State, whether the provisions of section 41(1) can be applied to a case, where refund of excise duty has been obtained by the assessee on the basis of a decision of the CEGAT and where the matter has been taken up in further appeal to the court by the Central Excise Department.

2. X Ltd., is a company engaged in the business of growing, manufacturing and selling of Tea.

For the accounting year ended March 31, 2009, its composite business profits, before an adjustment under section 33AB were Rs. 60 lakh. In the year, it deposited Rs. 25 lakh with NABARD.

The company has a business loss of Rs. 10 lakh brought forward from the previous year.

The company withdrew in February, 2009 Rs. 20 lakh from the deposit account to buy a non-depreciable asset for Rs. 18 lakh and could not use the balance before the end of the accounting year. The withdrawal and the purchase were under a scheme approved by the Tea Board.

The non-depreciable asset was sold in November, 2009 for Rs. 29 lakh.

Indicate clearly the tax consequences of the above transactions and the total income for the relevant years.

3. In the course of an assessment proceeding, the Assessing Officer enhanced the value of the closing stock and added the difference to the total income. In the assessment year subsequent to this, the assessee wants the Assessing Officer to enhance, by the same amount, the value of the opening stock that year. Discuss the validity of the claim. [NOVEMBER 2005]

■
Pointwise answer :

1. The refund of excise duty is taxable though a further appeal is preferred by the Central Excise Department as per *Polyflex India (P.) Ltd. v. CIT* [2002] 124 Taxman 373 (SC). See also para 156.1-2.

2. Computation of total income

Business income	Rs. 60,00,000
Less: Deduction under section 33AB [40% of Rs. 60,00,000 or Rs. 25 lakh (being deposit with NABARD) whichever is lower]	24,00,000
Net income	<u>36,00,000</u>

Problem 5.6-7 : May 2005*Profits and gains of business or profession*

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	Rs.
As per rule 8 [see para 279.1] 40% of Rs. 36,00,000 is taken as non-agricultural income which is chargeable to tax and the balance 60% is treated as agricultural income which is not taxable.	
Non-agricultural income [i.e., 40% of Rs. 36,00,000]	14,40,000
Add: Rs. 2 lakh being the amount not utilised up to March 31, 2009 will be business income (40% of which will be taxable as non-agricultural income) for the assessment year 2009-10	(+ 80,000)
Less: Brought forward business loss	(-) 10,00,000
Total income	5,20,000

Assessment year 2010-11

The new asset is transferred within eight years March 31, 2009. Consequently, the taxable income for the assessment year 2010-11 (i.e., previous year 2009-10 in which the asset is transferred) will be determined as follows :

	Rs.
Business income [40% of Rs. 18,00,000 is taxable as non-agricultural income]	7,20,000
Short-term capital gain (i.e., Rs. 29,00,000 - Rs. 18,00,000)	11,00,000

3. See para 163.2. The claim of the assessee is valid. See also *Mahendra Mills Ltd. v. PB Desai*, AAC[1975] 99 ITR 135 (SC).

Problem 5.6-7 - Discuss the following :

1. X Ltd. is engaged in the business of civil construction. The Profit and Loss account of the company for the year ending March 31, 2009 is as under:

	Rs.		Rs.
Opening stock of building and materials	40,000	Receipts from the business of civil construction contracts	37,60,000
Salary to workers and employees	4,10,000	Rent of godown	80,000
Purchase of building materials	24,00,000	Surplus from insurance compensation received for loss of plant and machinery by fire	2,00,000
Interest on loan	3,20,000	Interest on company deposits	25,000
Office administration expenses	2,60,000	Dividend from companies	50,000
Travelling expenses	1,40,000	Closing stock of building materials	25,000
Municipal taxes on godown	12,000		
Insurance premium for godown	8,000		
Directors' remuneration	2,53,000		
Depreciation on plant and machinery	65,000		
Provision for tax:			
Current tax	1,00,000		
Deferred tax	43,000		
Net profit	89,000		
	41,40,000		41,40,000

The following additional information is also available:

- i. Municipal tax of godown includes Rs. 3,000 not paid by the company.
- ii. The book value of the plant and machinery, which was insured against fire, was Rs. 4,20,000. The written down value of plant and machinery block under section 43(6) as on March 31, 2008 was Rs. 1,85,000.
- iii. The entire building materials were purchased from a firm in which the managing director of this company is a partner. The fair market value of the materials purchased is Rs. 20,00,000.
- iv. Interest on loan includes Rs. 15,000 being interest on loan taken for investment in shares of various companies.
- v. Office administration expenses include Rs. 90,000 paid as a donation to a charitable organisation recognized under section 80G.
- vi. The prescribed rate of depreciation under the Income-tax Rules for plant and machinery is 15 per cent.
- vii. The company has decided to follow the presumptive tax provision in respect of its business income.

Compute the total income of X Ltd. for the assessment year 2009-10. Your answer should include explanations of your treatment of various items. Ignore the provision of minimum alternate tax under section 115JB.

2. The profit and loss account of East West Bank Ltd. operating in India for the financial year 2008-09 contains, inter alia, the following particulars :

(Rupees in crores)

Profit before taxation	100
Depreciation as per books	25
Depreciation admissible as per income-tax rule	40

(Rupees in crores)

Corporation tax disputed by the bank and not paid	10
Bad debts written off	45
Provision for non-performing assets as per prudential norms of Reserve Bank of India	250
Provision for standard assets at 2 per cent of such advance as per the above norms	5
Net depreciation on investments under "held for trading" and "available for sale" categories calculated on lower of cost price or market price basis as per guidelines of Reserve Bank of India	30

Other information:

- In assessment year 2007-08 provision for doubtful debts allowed in assessment amounted to Rs. 35 crore only.
- The assessment for assessment year 2008-09 resulted in a loss and unabsorbed depreciation amounting to Rs. 30 crore and 40 crore respectively and the bank was not allowed deduction on account of provision for doubtful debts.
- Unrealised interest income not recognized in the accounts in financial year 2008-09 in respect of non-performing assets as per asset classification norms of RBI amounts to Rs. 65 crore.
- The aggregate average rural advances calculated as per section 36(1)(viiia) read with rule 6ABA amounts to Rs. 30 crores.

From the above information compute total income of the bank for the assessment year 2009-10. [MAY 2005]

Pointwise answer:

1. Computation of total income of X Ltd.	
Income from house property [see Note I]	Rs. 49,700
Income from business [see Note II]	3,00,800
Income from capital gains [see Note III]	4,35,000
Income from other sources [see Note IV]	25,000
Gross total income	8,10,500
Less: Deduction under Chapter VI-A [see Note V]	40,525
Net income	7,69,980

Notes:

I. Computation of income from house property

Rent from godown	80,000
Less: Municipal taxes on godown actually paid during previous year 2008-09	9,000
Gross annual value	71,000
Less: Deductions under section 24:	
Standard deduction [30% of Rs. 71,000]	21,300
House property income	49,700

II. Computation of business income

Income from business of civil construction [8% of Rs. 37,60,000] [for provisions of section 44AD, see para 162.4] 3,00,800

III. Computation of capital gains

Sales consideration [being the amount of compensation, see para 176.15]	6,20,000
Less: Written down value of the plant and machinery block as on April 1, 2008 (assuming depreciation of the previous year 2007-08 has been provided for)	1,85,000
Short-term capital gain	4,35,000

IV. Computation of income from other sources

Interest on company deposits	25,000
Dividend from companies [exempt under section 10(34)]	-
Income from other sources	25,000

V. Computation of deduction under section 80G

Amount of donation	90,000
Maximum ceiling [10% of adjusted gross total income, i.e., Rs. 8,10,500]	81,050
Amount deductible [50% of Rs. 81,050, see para 242]	40,525

2. Computation of total income of East West Bank Ltd.

Net profit as per Profit & Loss A/c	Rs. (in crore) 100
Add: Inadmissible expenses	
Corporation tax disputed by bank and not paid	10

Problem 5.6-8 : Nov. 2004*Profits and gains of business or profession*

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	<i>Rs. (in crore)</i>
Bad debts written off	45
Provision for non-performing assets	250
Provision for standard assets	5
	410
<i>Less:</i> Admissible expenses	
Depreciation adjustment	(-) 15
Total income	395
<i>Less:</i> Deduction for provision for doubtful debts under section 36(1)(viiia) [7.5% of Rs. 395 crore]	(-) 29.625
<i>Less:</i> 10% of aggregate average rural advances	(-) 3
Balance	362.375
<i>Less:</i> Brought forward business loss and unabsorbed depreciation	70
Total income	292.375

Notes:

1. As per the RBI Guidelines, interest on non-performing assets is included in the taxable income of the previous year in which such amount is realized or credited to profit and loss account, whichever is earlier under section 43D. Hence unrealized interest income is not included in taxable income of assessment year 2009-10.

2. In *United Commercial Bank Ltd. v. CIT* [1999] 106 Taxman 601(SC), it was held that investments held under the "held for trading" and "available for sale" category are treated as part of stock-in-trade and therefore, the resultant loss is a trading loss allowable as deduction. As Rs. 30 lakh on account of depreciation of such stock is already debited to P & L A/c, no further adjustment is required.

Problem 5.6-8 - Discuss the following :

1. A company engaged in the manufacturing of pharmaceutical products, commenced its business on April 1, 2008. During the financial years 2005-06 to 2007-08, it had incurred Rs. 2 lakh annually as expenditure on salaries and purchase of raw materials for the purpose of research connected with its business. During the previous 2008-09, it incurred on scientific research revenue expenditure of Rs. 2 lakh and a capital expenditure of Rs. 3.5 lakh on purchase of plant and machinery. Since the result of the research was unsuccessful, the company sold its plant and machinery on December 31, 2009 for Rs. 8 lakh and closed its research activity. Compute the admissible deduction under section 35 for the assessment year 2009-10.

2. A company engaged in textile manufacturing, debited to its Profit & Loss Account a sum of Rs. 60,000 being the interest on loan of Rs. 6,00,000 taken for financing its expansion scheme. The plant and machinery for the project purchased with the loan were not received during the year and those were still in transit at the end of the year. A sum of Rs. 6,000 was paid to a broker who arranged the loan. Discuss the admissibility or otherwise of the interest on borrowing. [NOVEMBER 2004]

■

Point-wise answer :

1. The amount of deduction under section 35 for the assessment year 2009-10 will be determined as under—

	<i>Rs.</i>
Expenditure on salary and purchase of raw material within 3 years before commencement of business is deductible if research is related to the assessee's business [Rs. 2,00,000 × 3]	6,00,000
Revenue expenditure incurred during the previous year 2008-09	2,00,000
Capital expenditure incurred during the previous year 2008-09	3,50,000
Amount deductible under section 35 for the assessment year 2009-10	11,50,000

Note - As the plant and machinery used for scientific research is sold without having been used for other purposes, sale proceeds (i.e., Rs. 8,00,000) or deduction allowed (i.e., Rs. 3,50,000), whichever is less, is chargeable to tax as business income of the previous year in which the sale took place [section 41(3)]. The excess of sale proceeds over deduction allowed (i.e., Rs. 8,00,000—Rs. 3,50,000) is, however, chargeable to tax as capital gains according to provisions of section 45.

2. Interest on borrowing of Rs. 60,000 cannot be claimed as deduction under section 36. It has to be capitalised, see para 127.2.

Problem 5.6-9 X & Co., partnership firm, consisting of three partners A, B and C is engaged in the business of civil construction. The firm gets the following by way of contract receipts :

	<i>Rs.</i>
Contract work for supply of labour	30,00,000
Value of materials supplied by Government	8,00,000
Total value of contract	38,00,000

Each partner of the firm is entitled to draw Rs. 2,500 per month by way of salary as authorized by the terms of the partnership deed. Interest of Rs. 1,00,000 is also paid to partner C on the capital of Rs. 5,00,000 contributed by him. The