

**PROFESSIONAL PROGRAMME**

**SUPPLEMENT**

**FOR**

**ADVANCED TAX LAWS**

**(Part II - Direct Tax and International Tax)**

**(Relevant for Students appearing in June, 2024 Examination)**

**MODULE 1- PAPER 2**

Students appearing in June, 2024 Examination shall note the following:

1. For Direct taxes, Finance Act, 2023 is applicable.
2. Applicable Assessment year is 2024-25 (Previous Year 2023-24).

Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBDT & Central Government, on or before 30<sup>th</sup> November, 2023.

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

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## Lesson 18

### Taxation of Companies, LLP and Non-Resident

Sr. No.	Amendments to Regulations /Rules /Act /Circular /Notification	Weblink (For Details)
1.	<p><b>Imposition of charge on the prescribed electronic modes under section 269SU of the Income-tax Act, 1961 [Circular No. 16/2020 Dated August 30, 2020]</b></p> <p>Section 269SU of the Income tax Act, 1961 provides every person having a business turnover of more than Rs. 50 Crores during the immediately preceding previous year shall mandatorily provide facilities for accepting payment through prescribed electronic modes.</p> <p>However representations were received that banks are collecting charges on transactions carried out through UPI.</p> <p><i>Hence, Central Board of Direct Taxes 'CBDT' vide its Circular No. 16/2020 Dated August 30, 2020 advised banks to refund all the charges collected on and after 1st January 2020 on transactions carried out using the electronic modes as prescribed under section 269SU and not to impose any such charges on any future transactions carried through the prescribed digital modes.</i></p>	<p><a href="https://www.incometaxindia.gov.in/communications/circular/circular-16-2020.pdf">https://www.incometaxindia.gov.in/communications/circular/circular-16-2020.pdf</a></p>
2.	<p><b>Amount of remuneration prescribed under section 9A(3)(m) of the Income-tax Act, 1961 (Circular No. 1/2021 Dated January 15, 2021)</b></p> <p>Finance (No 2) Act, 2019 amended clause (m) of sub-section (3) of section 9A of the Income-tax Act, 1961 w.e.f. 01.04.2019 to provide for payment of remuneration by an eligible investment fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf to be not less than the amount calculated in such manner as may be prescribed.</p> <p>Accordingly, rule 10V of the Income-tax Rules, 1962 has been amended, w.e.f. 01.04.2019, vide Notification No 29/2020 dated 27.05.2020 by way of insertion of sub-rules (12) and (13) as follow:</p> <p>Sub-rule (12) provides for the amount of remuneration to be paid by the fund to a fund manager. 2nd proviso of the said sub-rule provides that the fund may seek Board's approval in case where the amount of remuneration is lower than the amount so prescribed.</p> <p>In this regard, representations have been received expressing inability to comply with the provisions of sub-rule 12 of rule 10V of the Rules regarding the amount of remuneration to be paid by the fund to a fund manager for the financial year 2019-20 as the said Notification No 29/2020 was notified after the financial year got over and the financial year 2020-21 had already commenced.</p> <p><i>In order to avoid genuine hardship in such cases, the Board, provided that for the financial years 2019-20 and 2020- 21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule 10V of the Rules, but is at arm's length, it shall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act. It is stated that the remuneration to be paid to the fund manager, for the financial year 2021- 22, shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lower remuneration in terms of 2nd proviso for this year, if any, may be filed not later than 1<sup>st</sup> February, 2021.</i></p>	<p><a href="https://www.incometaxindia.gov.in/communications/circular/circular_1_2021.pdf">https://www.incometaxindia.gov.in/communications/circular/circular_1_2021.pdf</a></p>

3.	<p><b>Thresholds for the purposes of Significant Economic Presence - Rule 11UD [Notification No. 41 Dated May 3, 2021]</b></p> <p>The Central Board of Direct Taxes has notified the Income-tax (13th Amendment) Rules, 2021 which shall come into force from 1st April 2022. Through this amendment a new rule 11UD has been inserted which notifies the threshold for significant economic presence.</p> <p>As per the new rule, for the thresholds “the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be <b>two crore rupees.</b>”</p> <p>Further, the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be <b>three lakhs.</b></p> <p><i>Accordingly, the threshold limit has been notified for the purpose of significant economic presence.</i></p>	<p><a href="https://www.incometaxindia.gov.in/communications/notification/notification_41_2021.pdf">https://www.incometaxindia.gov.in/communications/notification/notification_41_2021.pdf</a></p>				
4.	<p><b>Guidelines under section 9B and sub-section (4) of section 45 of the Income-tax Act, 1961 [Circular No. 14 Dated July 02, 2021]</b></p> <p>The Government has inserted a new section 9B of the Income Tax Act, 1961 and substituted sub-section (4) of section 45 of the Income Tax Act, 1961 by the Finance Act, 2021. The CBDT has come out with Notification No. 76 dated July 2, 2021 to insert sub-rule (5) to Rule 8AA and a new Rule-8AB so as to prescribe the manner of calculating the income chargeable to tax under section 45(4) of the Act as "capital gains" and also the manner in which such income shall be attributed to remaining assets with the specified entity under clause (iii) of section 48 of the Act.</p> <p>Further, the CBDT issued Circular No. 14 dated July 02, 2021 to provide guidelines for application of section 9B and section 45(4) read with the aforesaid rules.</p>	<p><a href="https://www.incometaxindia.gov.in/communications/circular/circular_14_2021.pdf">https://www.incometaxindia.gov.in/communications/circular/circular_14_2021.pdf</a></p>				
5.	<p><b>Income Tax (19th Amendment), Rules, 2021 [Notification No. 77 Dated July 7, 2021]</b></p> <p>The Central Board of Direct taxes hereby makes Income-tax (19th Amendment), Rules, 2021 further to amend the Income-tax Rules, 1962. As per notification, after rule 8AB, rule 8AC [i.e. Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained] has been inserted.</p>	<p><a href="https://egazette.nic.in/WriteReadData/2021/228152.pdf">https://egazette.nic.in/WriteReadData/2021/228152.pdf</a></p>				
6.	<p><b>Income Tax (22nd Amendment) Rules 2021 [Dated August 9, 2021]</b></p> <p>CBDT has notified Income tax (22nd Amendment) Rules, 2021 to insert the following two rules as follow:</p> <table border="1" data-bbox="207 1591 1299 1900"> <tr> <td data-bbox="207 1591 289 1833"><b>Rule 21AI</b></td> <td data-bbox="289 1591 1299 1833"> <p><b>Computation of exempt income of specified fund for the purposes of clause (4D) of section 10</b></p> <p>The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961.</p> </td> </tr> <tr> <td data-bbox="207 1833 289 1900"><b>Rule 21AJ</b></td> <td data-bbox="289 1833 1299 1900"> <p><b>Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD</b></p> </td> </tr> </table>	<b>Rule 21AI</b>	<p><b>Computation of exempt income of specified fund for the purposes of clause (4D) of section 10</b></p> <p>The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961.</p>	<b>Rule 21AJ</b>	<p><b>Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD</b></p>	<p><a href="https://www.incometaxindia.gov.in/communications/notification/notification_90_2021.pdf">https://www.incometaxindia.gov.in/communications/notification/notification_90_2021.pdf</a></p>
<b>Rule 21AI</b>	<p><b>Computation of exempt income of specified fund for the purposes of clause (4D) of section 10</b></p> <p>The Rule provides formula for computation of income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund for the purpose of clause (4D) of section 10 of the Income tax Act, 1961.</p>					
<b>Rule 21AJ</b>	<p><b>Determination of income of a specified fund attributable to units held by non-residents under sub-section (1A) of section 115AD</b></p>					

	The Rule provides formula of calculation, for purposes of sub-section (1A) of section 115AD, the income of a specified fund by way of short-term or long-term capital gains, referred to in clause (b) of sub-section (1) of section 115AD, attributable to the units held by non-resident (not being the permanent establishment of a non-resident in India)	
7.	<p><b>Income tax (23rd Amendment) Rules, 2021 [Notification No. 92 Dated August 10, 2021]</b></p> <p>CBDT notifies the Income tax (23rd Amendment), Rules, 2021, to prescribe the procedure / methodology for re-computation of book profit u/s 115JB of the Income tax Act, 1961, to provide relief in MAT payable in certain cases.</p> <p>Accordingly, new IT Rule 10RB on 'Relief in tax payable u/s 115JB(1) due to operation of section 115JB(2D)' along with new FORM No. 3CEEA for 'annual furnishing of particulars of re-computation for any adjustment on account of income of past year(s) included in books of account of previous year by a Company on account of secondary adjustment u/s 92CE or on account of an Advance Pricing Agreement entered u/s 92CC' have been introduced/ inserted in the Income Tax Rules, 1962.</p>	<a href="https://www.incometaxindia.gov.in/communications/notification/notification_92_2021.pdf">https://www.incometaxindia.gov.in/communications/notification/notification_92_2021.pdf</a>
8.	<p><b>Clarification for the purposes of clause (c) of Section 269ST of the Income-tax Act, 1961 in respect of dealership/distributorship contract in case of Co-operative Societies [Circular No. 25 Dated December 30, 2022]</b></p> <p>Section 269ST inter-alia prohibits receipt of an amount of two lakh rupees or more (hereinafter referred to as 'the prescribed limit ') by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.</p> <p>References have been received in respect of Milk Producers' Cooperative as to whether under the provisions of Section 269ST of the Act, receipt(s) in cash in a day of bank holiday/closure of bank day within 'the prescribed limit' from a distributor against sale of milk when payments were through bank on all other days is to be considered as a single transaction or whether all such receipts in cash in a previous year would be aggregated in respect of transactions with a distributor to treat it as one event or occasion.</p> <p>it is clarified that in respect of Co -operative Societies, a dealership/ distributorship contract by itself may not constitute an event or occasion for the purposes of clause (c) of Section 269ST. Receipt related to such a dealership/distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with clause (a) as well as clause (b) of Section 269ST, may not be aggregated across multiple days for purposes of clause (c) of Section 269ST for that previous year.</p>	<a href="https://incometaxindia.gov.in/communication/circular/circular-25-2022.pdf">https://incometaxindia.gov.in/communication/circular/circular-25-2022.pdf</a>
9.	<p><b>Extending deeming provision under section 9 to gift to not-ordinarily resident</b></p> <p>Under the Act, income which, inter-alia, is deemed to accrue or arise in India during a year is chargeable to tax. Sub-section (1) of section 9 of the Act is a deeming provision providing the types of income deemed to accrue or arise in India.</p> <p>Finance (No. 2) Act, 2019 inserted clause (viii) to sub-section (1) of section 9 of the Act to provide that the any sum of money exceeding fifty thousand rupees, received</p>	Amendment vide Finance Act, 2023

	<p>by a non-resident without consideration from a person resident in India, on or after the 5th day of July, 2019, shall be income deemed to accrue or arise in India. Sum of money is referred to in sub-clause (xviiia) of clause (24) of section 2 of the Act.</p> <p>The above amendment was introduced as an anti-abuse provision, as certain instances were observed where gifts were being made by persons residents in India to non-residents and were claimed to be non-taxable in India by such non-residents.</p> <p>It has come to notice that certain persons being not ordinarily residents are receiving the gifts from persons resident in India and not paying tax on it. In view of the above, an amendment has been made in clause (viii) of sub-section (1) of section 9 of the Act so as to extend this deeming provision to sum of money exceeding fifty thousand rupees, received by a not ordinarily resident, without consideration from a person resident in India.</p>	
10.	<p><b>Bringing the non-resident investors within the ambit of section 56(2)(viib) to eliminate the possibility of tax avoidance</b></p> <p>Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act.</p> <p>Clause (viib) of sub section (2) of section 56 of the Act was inserted vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.</p> <p>Accordingly, an amendment has been made to include the consideration received from a non- resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.</p>	Amendment vide Finance Act, 2023

## Lesson 20

### Basics of International Taxation – Transfer Pricing

Sr. No.	Amendments to Regulations /Rules /Act /Circular /Notification	Weblink (For Details)
1.	<p><b>Notification No. 83 (October 19, 2020)</b></p> <p>The Central Government vide Notification No. 83 Dated October 19, 2020 notifies that where the variation between the arm’s length price determined under section 92C of the Income tax Act, 1961 and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm’s length price for assessment year 2020- 2021.</p> <p><i>Accordingly, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm’s length price if the variation between the arm’s length price and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases.</i></p>	<a href="https://www.incometaxindia.gov.in/communications/notifications/notification/notification_83_2020.pdf">https://www.incometaxindia.gov.in/communications/notifications/notification/notification_83_2020.pdf</a>
2.	<p><b>Income Tax 30th Amendment Rules 2021 [Notification No. 117 Dated Sept. 24, 2021]</b></p> <p>The Central Board of Direct Taxes hereby makes the Income-tax (30th Amendment) Rules, 2021 as per which, in the Income-tax Rules, 1962, in rule 10TD [Safe Harbour Rules], in sub-rule (3B), for the words and figures “assessment year 2020-21”, the words and figures “assessment years 2020-21 and 2021-22” shall be substituted.</p>	<a href="https://egazette.nic.in/WriteReadData/2021/229929.pdf">https://egazette.nic.in/WriteReadData/2021/229929.pdf</a>
3.	<p><b>Notification No. 135 [Dated December 8, 2021]</b></p> <p>The Protocol, amending the Agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi on 13th April, 1999, has been signed at Bishkek, Kyrgyz Republic on 14th June, 2019, as set out in the Annexure. The date of entry into force of the said amending Protocol is the 22nd October, 2020, being the date of the later notification of the completion of the procedures required by the respective laws for the entry into force of the said amending Protocol, in accordance with Article 3 of the said amending Protocol.</p> <p>Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961, the Central Government hereby notifies that all the provisions of the said amending Protocol shall have effect in the Union of India.</p>	<a href="https://incometaxindia.gov.in/communication/notification/notification-135-2021.pdf">https://incometaxindia.gov.in/communication/notification/notification-135-2021.pdf</a>
4.	<p><b>Clarification regarding the Most-Favoured-Nation (MFN) clause in the Protocol to India's DTAAs with certain countries [Circular No. 3 Dated 3rd February, 2022]</b></p> <p>The Protocol to India’s Double Taxation Avoidance Agreements (DTAAs) with some of the countries, especially the European States and OECD members contains a provision, referred to as the Most-Favoured-Nation (MFN) clause. Though each MFN clause in these DTAAs</p>	<a href="https://incometaxindia.gov.in/communication/circular/circular-3-2022.pdf">https://incometaxindia.gov.in/communication/circular/circular-3-2022.pdf</a>

	<p>has a different formulation, the general underlying provision is that if after the signature/entry into force of the DTAA with the first State, India enters into a DTAA with another OECD Member State, wherein India limits its source taxation rights in relation to certain items of income (such as dividends, interest income, royalties, Fees for Technical Services, etc.) to a rate lower or a scope more restricted than the scope provided for those items of income in the DTAA with the first State, such beneficial treatment should also be extended to the First State.</p> <p>The Central Board of Direct Taxes (CBDT) has received representations seeking clarity on the applicability of the MFN clause (particularly to dividend withholding rates) available in the Protocol to some of the DTAA's with OECD member States. India's DTAA's with countries, namely Slovenia, Colombia, and Lithuania, provide for the lower rate of source taxation with respect to certain items of income. However, these States were not members of the OECD at the time of the conclusion of their DTAA's with India and have become members of the OECD thereafter.</p> <p>On a plain reading of the MFN clauses in India's DTAA's especially with respect to the above-mentioned countries, it is clear that there is a requirement that the third State is to be a member of the OECD both at the time of conclusion of the treaty with India as well as at the time of applicability of MFN clause. Therefore, it is clarified that for the applicability of the MFN clause, the third State has to be an OECD Member State on the date of the conclusion of DTAA with India.</p> <p>It may also be pointed out that the MFN clause in these DTAA's clearly states that the reduced rate takes effect from the date of entry into force of Indian DTAA with the third State. Thus, the declaration in the decree/bulletin/publication of The Netherlands, France, and the Swiss Confederation to make the reduced rate effective from the date of the third State becoming member of OECD subsequent to the entry into force of a DTAA is not in accordance with the relevant provision of the MFN clause in the Protocol. In fact, these countries could not have made it effective from the date of entry into force of Indian DTAA with the third State as the third State was not a member of the OECD on such date of entry into force. <i>This makes it clear that the intention of the MFN clause in the Protocol of the DTAA's is not to give the benefit of India's DTAA with the third State which was not a member of OECD when India entered into DTAA with it.</i></p>	
5.	<p><b>Central Government notifies provisions of DTAA with 'Chile' [Notification No. 24 Dated May 3, 2023]</b></p> <p>An Agreement and Protocol between the Government of the Republic of India and the Government of the Republic of Chile for the elimination of double taxation and the prevention of fiscal evasion and avoidance with respect to taxes on income, was signed at Chile on the 9th day of March, 2020.</p> <p>The said Agreement and Protocol entered into force on the 19th day of October, 2022, being the date of the later of the notifications of the completion of the procedures required by the respective laws of the Contracting States for entry into force of the said Agreement and Protocol.</p> <p>Sub-paragraph (a) of paragraph 2 of Article 30 of the said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April next following the date on which the Agreement enters into force;</p> <p>Now, therefore, the Central Government notifies that all the provisions of said Agreement</p>	<p><a href="https://incometaxindia.gov.in/communication/notification/notification-24-2023.pdf">https://incometaxindia.gov.in/communication/notification/notification-24-2023.pdf</a></p>



	and Protocol shall be given effect to in the Union of India.	
6.	<p><b>Reducing the time provided for furnishing Transfer Pricing report</b></p> <p>Section 92D of the Act, inter-alia, provides that every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the information and documents as provided under rule 10D of the Income-tax Rules, 1962 (the Rules).</p> <p>As per sub-section (3) of section 92D of the Act, the Assessing Officer (AOs) or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish any information or document, as provided under rule 10D of the Rules, within a period of 30 days from the date of receipt of a notice issued in this regard. It has been further provided that on an application made by the assessee the time period of 30 days may be extended by an additional period of 30 days.</p> <p>It has been represented that in several instances due to limited time available for TP proceedings it may not be practically possible to provide minimum 30 days for producing these information or documents which in any case is already in possession of the assessee. Accordingly, the time period allowed for submission of information or documents in respect of international transactions or a specified domestic transaction is required to be rationalised so as to provide the AOs a reasonable amount of time to examine the information/documents submitted and complete the pending proceedings.</p> <p>In view of the above, an amendment has been made in sub-section (3) of section 92D of the Act to provide that,</p> <ol style="list-style-type: none"> <li>i. the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person referred to in clause (i) of sub-section (1) of section 92D of the Act i.e., who has entered into an international transaction or specified domestic transaction, to furnish any information or document referred therein, within a period of ten days from the date of receipt of a notice issued in this regard; and</li> <li>ii. the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person who has entered into an international transaction or specified domestic transaction, extend the period of ten days by a further period not exceeding thirty days.</li> </ol>	Amendment vide Finance Act, 2023

## Lesson 22

### Income Tax Implication on specified transactions

Sr. No.	Amendments to Regulations /Rules /Act /Circular /Notification	Weblink (For Details)			
1.	<p><b>Income-tax (16th Amendment) Rules, 2021 [Notification No. 68 Dated May 24, 2021]</b></p> <p>The Central Board of Direct Taxes on 24th May 2021 has published the Income- tax (16th Amendment) Rules, 2021 which has notified a new rule for computation of fair value of capital assets in slump sale. As per the Amendment a new rule 11UAE has been inserted which provides two formulae for calculation of fair market value of the capital asset.</p> <p><i>The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined and FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale.</i></p>	<a href="https://www.incometaxindia.gov.in/communications/notification/notification-68-2021.pdf">https://www.incometaxindia.gov.in/communications/notification/notification-68-2021.pdf</a>			
2.	<p><b>Cost Inflation Index for FY 2021-22 [Notification No. 73 Dated June 15, 2021]</b></p> <p>The Central Board of Direct Taxes (CBDT) has notified the cost inflation index (CII) for FY 2021-22 as "317" via a notification dated June 15, 2021. CII is used to calculate the inflation adjusted cost price of an asset.</p> <p><i>Accordingly, the above inflation adjusted price then is used to arrive at long-term capital gains or long-term losses.</i></p>	<a href="https://www.incometaxindia.gov.in/communications/notification/notification-73-2021.pdf">https://www.incometaxindia.gov.in/communications/notification/notification-73-2021.pdf</a>			
3.	<p><b>Cost Inflation Index FY 2022-23 [Notification No. 62 Dated June 14, 2022]</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Cost Inflation Index</td> <td style="width: 33%; text-align: center;">FY 2022-23</td> <td style="width: 33%; text-align: center;">331</td> </tr> </table> <p><i>Accordingly, the above inflation adjusted price then is used to arrive at long-term capital gains or long-term losses.</i></p>	Cost Inflation Index	FY 2022-23	331	<a href="https://incometaxindia.gov.in/communications/notification/notification-62-2022.pdf">https://incometaxindia.gov.in/communications/notification/notification-62-2022.pdf</a>
Cost Inflation Index	FY 2022-23	331			
4.	<p><b>Cost Inflation Index for FY 2023-24 [Notification No. 21 Dated April 10, 2023]</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Cost Inflation Index</td> <td style="width: 33%; text-align: center;">FY 2023-24</td> <td style="width: 33%; text-align: center;">348</td> </tr> </table> <p><i>Accordingly, the above inflation adjusted price then is used to arrive at long-term capital gains or long-term losses.</i></p>	Cost Inflation Index	FY 2023-24	348	<a href="https://incometaxindia.gov.in/communications/notification/notification-21-2023.pdf">https://incometaxindia.gov.in/communications/notification/notification-21-2023.pdf</a>
Cost Inflation Index	FY 2023-24	348			
5.	<p><b>Tax avoidance through distribution by business trusts to its unit holders</b></p> <p>Finance (No.2) Act, 2014 introduced a special taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts]. The special regime was introduced in order to address the challenges of financing and investment in infrastructure. The business trusts invest in special purpose vehicles (SPV) through equity or debt instruments.</p> <p>Keeping in mind the business structure, the special taxation regime under section</p>	Amendment vide Finance Act, 2023			

115UA of the Act, inter-alia, provides a pass-through status to business trusts in respect of interest income, dividend income received by the business trust from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT. Such income is taxable in the hands of the unit holders unless specifically exempted.

Sub-section (1) of section 115UA of the Act, inter-alia, provides any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by the business trust.

Further, Sub-section (3) of section 115UA of the Act, inter-alia, provides that if the “distributed income” received by a unit holder from the business trust is of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act i.e., is either rental income of the REIT or interest or dividend received by the business trust from the SPV, then, such distributed income or part thereof shall be deemed to be income of such unit holder.

It has been noticed in certain cases that business trusts distribute sums to their unit holders which are categorised in the following four categories: (a) Interest; (b) Dividend; (c) Rental income; (d) Repayment of debt.

As has been stated above, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder. However, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder.

It may be noted that dual non-taxation of any distribution made by the business trust i.e. which is exempt in the hands of the business trust as well as the unit holder, is not the intent of the special taxation regime applicable to business trusts.

In view of the above, an amendment has been made to make such sum received by unit holder taxable in his hands. However, provision is also proposed for a situation when the sum received by unit holder represents redemption of unit held by him. Hence,

- i. insertion of clause (xii) in sub-section (2) of section 56 of the Act to provide that income chargeable to income-tax under the head “income from other sources” shall also include any sum, received by a unit holder from a business trust, which-
  - (a) is not in the nature of income as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act; and
  - (b) is not chargeable to tax under sub-section (2) of section 115UA of the Act;

	<ul style="list-style-type: none"><li>ii. insertion of a proviso to the said clause to provide that where the sum received by a unit holder from a business trust is for redemption of unit or units held by him, the sum received shall be reduced by the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received;</li><li>iii. insertion of sub-section (3A) in section 115UA of the Act to provide that the provisions of sub - sections (1), (2) and (3) of this section, shall not apply in respect of any sum, as referred to in clause (xii) of sub-section (2) of section 56 of the Act, received by a unit holder from a business trust;</li><li>iv. insertion of sub-clause (xviic) in clause (24) of section 2 of the Act to provide that income shall include any sum referred to in clause (xii) of sub-section (2) of section 56 of the Act.</li></ul>	
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