S. No.	Case Law	
1.	***Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 (SC)***	
	Issue	**Analysis and Decision**
	Can the powers under section 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits?	**Relevant Provision of Income-tax Act, 1961**: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record. Such amendment may be *suo moto* or if the mistake is brought to its notice by the assessee or the Assessing Officer. **Facts of the Case:** The Department filed an appeal before the Tribunal against the order of Commissioner (Appeals). By a detailed order dated September 6, 2013, the Tribunal allowed the Department's appeal. Against this order, the assessee filed a miscellaneous application for rectification u/s 254(2). The contentions of the applicants in the miscellaneous applications, briefly summarized, were that in the initial order of the Tribunal on the income-tax appeals dated September 6, 2013, there are inadvertent errors and which need to be modified/rectified. The first main heading 'Agreement and general terms and conditions of purchase'. The complaint of the assessee is that it was not considered in arriving at the final conclusion. Then comes heading No. 2 which reads thus: 'Mistake in reading the ratio of the Delhi High Court's decision in the case of *DIT v. Ericsson A. B. reported in [2012] 343 ITR 470*'. The third main heading is 'Ignoring the decisions of the co-ordinate Benches and not constituting larger Bench in case a different view is taken'. Such application was made to the Tribunal seeking correction of the mistakes which are styled as 'apparent from the record'. On being served with such applications, the petitioner-Department raised an objection to the maintainability thereof. Simultaneously, the assessee also filed an appeal before the High Court against the Tribunal's order dated

		September 6, 2013. By order dated November 18, 2016, the Tribunal allowed the assessee's miscellaneous application filed under section 254(2) and recalled its original order dated September 6, 2013. Immediately thereafter, the assessee withdrew the appeal preferred before the High Court against the original order dated September 6, 2013. Against the order passed by the Tribunal allowing the miscellaneous application under section 254(2) of the Act and recalling its order dated September 6, 2013, the Department preferred a writ petition before the High Court. The High Court dismissed the writ petition observing that, *inter alia*, the Department itself had gone into the merits of the case in detail before the Tribunal and the parties had filed detailed submissions based on which the Tribunal passed its order recalling its earlier order. **Analysis**: The order dated November 18, 2016 passed by the Tribunal recalling its earlier order dated September 6, 2013 was beyond the scope and ambit of the powers u/s 254(2). While allowing the application u/s 254(2) and recalling its earlier order dated September 6, 2013, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). A detailed order was passed by the Tribunal on September 6, 2013 holding in favour of the Department. That order could not have been recalled by the Appellate Tribunal in exercise of powers u/s 254(2). If the assessee was of the opinion that the order passed by the Tribunal was erroneous, either on the facts or in law, the only remedy available to the assessee was to prefer an appeal before the High Court. In this case, the assessee had already filed appeal before the High Court, and the same was withdrawn by it after the Tribunal, by order dated November 18, 2016, recalled its earlier order dated September 6, 2013. **Decision**: The order passed by the Tribunal dated November 18, 2016 recalling its earlier order dated September 6, 2013 was unsustainable, and ought to have been set aside by the High Court.

		Note *– In this case, the Supreme Court directed that the original order passed by the Tribunal dated September 6, 2013 passed in the respective appeal preferred by the Department be restored; and that the assessee may prefer appeal before the High Court against the original order dated September 6, 2013.*
2.	***CIT v. Reliance Energy Ltd. (2022) 441 ITR 346 (SC)***	
	Issue	**Analysis and Decision**
	Does profit-linked deduction under Chapter VI-A have to be restricted to income computed under the head "Profits and gains of business or profession"?	**<u>Relevant provisions of Income-tax Act, 1961</u>:** Section 80-IA(1) provides for deduction@100% of the profits and gains derived from eligible business referred to in section 80-IA(4), where the gross total income of an assessee includes any profits and gains derived by an undertaking or enterprise from such eligible business. Section 80-IA(5) requires computation of profits and gains of such eligible business as if such eligible business is the only source of income of the assessee for the purpose of determining the quantum of deduction. Section 80AB provides that for the purpose of allowing deduction under any section included in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of the Act (before making any deduction under Chapter VI-A) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income. This is notwithstanding anything contained in the respective sections of Chapter VI-A. Section 80A(1) stipulates that in computation of the "total income" of an assessee, the deductions specified in section 80C to section 80U shall be allowed from his "gross total income". Section 80A(2) provides that the aggregate amount of deductions under Chapter VI-A shall not, in any case, exceed the gross total income.

		Analysis: A plain reading of section 80AB shows that the provision pertains to determination of the quantum of deductible income in the "gross total income". Section 80AB cannot be read to be curtailing the width of section 80-IA. It is relevant to take note of section 80A(1) which stipulates that in computation of the "total income" of an assessee, deductions specified in section 80C to section 80U shall be allowed from his "gross total income". Section 80A(2) provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the "gross total income" of the assessee. Thus, section 80AB which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of "net income". The essential ingredients of section 80-IA(1) are : (a) the "gross total income" of an assessee should include profits and gains; (b) those profits and gains should derived by an undertaking or an enterprise from a business referred to in sub-section (4). (c) the assessee is entitled to deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive assessment years; and (d) in computing the "total income" of the assessee, such deduction shall be allowed. The import of section 80-IA is that the "total income" of an assessee is computed by taking into account the allowable deduction in respect of the profits and gains derived from the "eligible business". The scope of sub-section (5) of section 80-IA is limited to determination of quantum of deduction under sub-section (1) of section 80-IA by treating "eligible business" as the "only source of income". Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to income under the head "Profits and gains of business and profession". For the purpose of calculating profit-linked deduction under any section of Chapter VI-A, loss sustained in other divisions or units cannot be taken into account, as only profits from the eligible business have to be taken into

		account as if it was the only source of income. Profits and gains from eligible business cannot be reduced by the loss suffered in any other business owned by the assessee. **Decision:** The net profit made by the assessee from the "eligible business" covered under sub-section (4) (i.e., from the assessee's business unit involved in generation of power) represented income from the "eligible business" under section 80-IA and was the only source of income for the purposes of computing deduction under section 80-IA. The deduction admissible under section 80-IA could not be limited to income under the head "Profits and gains of business or profession", by setting-off losses from non-eligible business against profits from eligible business. **Note** – The issue arises in a case where loss from non-eligible business is being set-off against profits from eligible business, which results in income under the head "Profits and gains of business and profession" being lower than the profits from eligible business. In such a case, deduction under Chapter VI-A in respect of profits from eligible business would not be restricted to income computed under the head "Profits and gains of business and profession". The same would however be restricted to gross total income as per the requirement in section 80A(2). For example, let us take the case of XYZ Ltd., an Indian company, for P.Y.2021-22. The following are the particulars relating to the said company - (i) Profits from eligible business - ₹90 lakhs, (ii) Loss from non-eligible business - ₹20 lakhs (which is set-off against profits from eligible business) (iii) Income under the head "Profits and gains of business or profession" – ₹70 lakhs [₹90 lakhs – ₹20 lakhs] (iv) Gross total income – ₹85 lakhs In this case, assuming deduction under section 80-IA is the only deduction under Chapter VI-A for XYZ Ltd., the same would **not** be restricted to ₹70 lakhs (being the income under the head "Profits and gains of business or profession"). However, the same would be restricted to ₹85 lakhs, being the gross total income as per the requirement in section 80A(2).

		If, in the above example, the gross total income was ₹95 lakhs (instead of ₹85 lakhs), then, the entire profits of ₹90 lakhs from eligible business would be allowed as deduction u/s 80-IA. This is the crux of the above Supreme Court ruling.
3.	***Apex Laboratories Pvt. Ltd. v. DCIT (2022) 442 ITR 1 (SC)***	
	Issue	**Analysis and Decision**
	Are expenses incurred by pharmaceutical companies in providing incentives to medical practitioners, which are in violation of the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, allowable as deduction u/s 37 in the hands of the pharmaceutical companies?	**Relevant provision of the Income-tax Act, 1961** Section 37 is a residuary provision for claiming deduction while computing income under the head "Profits and gains of business or profession". Any business or professional expenditure which does not ordinarily fall under sections 30 to 36, and which is not in the nature of capital expenditure or personal expenses, can be claimed under this provision. *Explanation 1* thereto, however, clarifies that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall **not** be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. **Analysis:** By an amendment to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 published in the Official Gazette on December 14, 2009, medical practitioners were prohibited from accepting emoluments in the form of, *inter alia*, gifts, travel facilities, hospitality, cash or monetary grants. The 2002 Regulations also lay down corresponding action or sanctions which can be taken against, or imposed upon, the medical practitioner for violation of each stipulation, based on the monetary value thereof. Thus, acceptance of "freebies" given by pharmaceutical companies is clearly an offence on the part of the medical practitioner, punishable with varying consequences. The CBDT Circular No. 5 of 2012 dated August 1, 2012 *(2012) 346 ITR (St.) 95* clarified that any expense incurred in providing incentives in violation of the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) in the hands of pharmaceutical companies

		being an expense prohibited by law and that the sum equivalent to the value thereof enjoyed by the medical practitioner or professional associations would be taxable as business income or income from other sources, as the case may be, depending on the facts of each case. The circular, being clarificatory in nature, was effective from the date of implementation of the 2002 Regulations, i.e., from December 14, 2009. Interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the law; the other is to shed light and give shape to the intent of the law maker. And, in this process the courts' responsibility lies in discerning the social purpose which the specific provision subserves. It is only logical that when acceptance of "freebies" is punishable by the Medical Council of India (the range of penalties and sanction extending to a ban imposed on the medical practitioner), pharmaceutical companies cannot be granted the tax benefit for providing such "freebies", and thereby (actively and with full knowledge) enabling the commission of the act which attracts such penalties. Even if the pharmaceutical companies' contend that they do not indulge in any illegal activity by committing an offence as there is no corresponding penal provision in the 2002 Regulations applicable to them, there is no doubt that their actions fall within the purview of "prohibited by law" in *Explanation 1* to section 37(1). **Decision:** In the present case too, the incentives (or "freebies") given by the Pharmaceutical company, to the doctors, had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded participation of the assessee – Pharmaceutical company, i.e., the provider or donor, was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., Pharmaceutical company. Thus, pharmaceutical companies' gifting freebies to

		doctors is clearly "prohibited by law", and not allowed to be claimed as a deduction under section 37(1). Doing so would wholly undermine public policy.
4.	***Wipro Finance Ltd. v. CIT (2022) 443 ITR 250 (SC)***	
	Issue	**Analysis and Decision**
	Would the loss incurred in foreign currency fluctuation at the time of repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure? Can the Tribunal entertain a fresh claim for the first time in exercise of its powers under section 254?	**Relevant provision of law**: Under section 37, any expenditure (not being in the nature of expenditure described in sections 30 to 36), and **not** being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing income chargeable under the head "Profits and gains of business or profession". Section 254(1) empowers the Appellate Tribunal to pass such orders as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. **Facts of the case**: The assessee-company, which was in the leasing business, obtained a loan in foreign currency from Commonwealth Development Corporation (CDC), having its registered office in the United Kingdom, to be utilised by the assessee for financing the procurement of capital equipment by existing Indian enterprises on hire purchase or lease basis. While repaying the loan, due to the difference in the rates of foreign exchange, the assessee had to pay a higher amount, resulting in loss to the assessee. For the relevant assessment year, the assessee declared, *inter alia*, a loss of ₹1.11 crores owing to fluctuation in the rates of foreign exchange. The assessee in its return had taken a conscious explicit plea with regard to part of the claim being ascribable to capital expenditure (₹2.46 crores) and partly to revenue expenditure (₹1.11 crores). Thereafter, for the first time before the Tribunal it pleaded that the entire claim must be treated as revenue expenditure. The Tribunal was conscious that this claim was made by the assessee for the first time before it and the same was contrary to the stand taken in the return filed by the assessee for the assessment year including the notings made by the officials of the assessee. Yet, the Tribunal entertained the

		claim as permissible, relying on the dictum of the court in *National Thermal Power Co. Ltd. v. CIT* [*1998] 229 ITR 383 (SC),* wherein it was held that the Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. Accordingly, in this case, the Tribunal held that the entire loan and the utilisation thereof was in trading operations of the company more profitably leaving the fixed capital untouched and hence the expenditure was on revenue account and allowable. The Tribunal allowed the entire claim of ₹ 3.57 crores. **Analysis:** The activity of the assessee of financing existing Indian enterprises for procurement or acquisition of plant, machinery and equipment on lease and hire purchase basis, was an independent transaction or activity being the business of the assessee. The transaction of loan between the assessee and CDC was in the nature of borrowing money by the assessee, which was necessary for carrying on its business of financing. It was not for creation of an asset of the assessee as such or acquisition from a country outside India for the purpose of its business. In such a scenario, the assessee would be justified in availing of deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37. The loan was wholly and exclusively used for the purpose of business of financing existing Indian enterprises, which in turn, had to acquire plant, machinery and equipment to be used by them. It was a different matter that they may do so because of the leasing and hire purchase agreement with the assessee. That would, nevertheless, be an activity concerning the business of the assessee. The Supreme Court held that the analysis and the conclusion arrived at by the Tribunal in respect of the claim of the assessee were correct. As regards the restriction in powers to accept a new claim for the first time, such limitation on accepting new claims would apply to the "assessing authority", but would not

		impinge upon the plenary powers of the Tribunal bestowed under section 254. **Decision:** As a result of allowing the entire claim of the appellant to the tune of ₹ 3.57 crores being revenue expenditure, suitable amendment will have to be effected in the final assessment order passed by the Assessing Officer for the concerned assessment year, thereby treating the consequential benefits such as depreciation availed of by the appellant-assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalized (being ₹ 2.46 crores), as unavailable. ***Note*** *– The crux of this case is that the assessee was engaged in leasing business. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease from it. For such financing, the assessee had obtained loan in foreign currency and incurred loss on account of currency fluctuation while repaying the loan. It was held that since the loan was borrowed for the financing activity, which was an activity concerning the business of the assessee, the loss was allowable under section 37. It was not a loan borrowed for acquisition of asset, in which case, the loss would have had to be adjusted against the actual cost of the asset.*

STATUTORY UPDATE FOR NOVEMBER, 2022 EXAMINATION

The **October 2021 edition** of the Study Material, based on the provisions of direct tax laws, as amended by the **Finance Act, 2021**, and significant notifications/circulars issued upto 31st October, 2021, is relevant for November 2022 examination. The relevant assessment year for November 2022 examination is **A.Y.2022-23**. The **significant notifications/circulars issued between 1st November, 2021 and 30th April 2022**, which are also relevant for November 2022 examination, but not covered in the October 2021 edition of the Study Material, are given hereunder:

PART – I: DIRECT TAX LAWS

Chapter 7: Capital Gains & Chapter 11: Deductions from Gross Total Income

Guidelines u/s 10(10D) of the Income-tax Act, 1961 [Circular No. 2/2022 dated 19.01.2022]

Section 10(10D) provides for exemption of the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to the condition that the annual premium does not exceed 10% of actual capital sum assured. However, there was no cap on the amount of annual premium paid by any person during the term of the policy.

In order to deter the practice of high net worth individuals from claiming exemption u/s 10(10D) by investing in ULIPs with huge premium, additional condition has been stipulated u/s 10(10D) in respect of ULIPs issued on or after 1.2.2021.

For this purpose, ULIP means a life insurance policy which has components of both investment and insurance and is linked to a unit defined under IRDA (ULIP) Regulations, 2019 issued by IRDA under the Insurance Act, 1938 and the IRDA Act, 1999.

In case where an assessee has a Single ULIP issued on or after 1.2.2021 - Exemption u/s 10(10D) would **not** be available with respect to any ULIP issued on or after 1.2.2021, if the amount of premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such ULIP. Such ULIP would be a specified ULIP, which is a capital asset.

In case where an assessee has multiple ULIPs issued on or after 1.2.2021 - In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), exemption u/s 10(10D) would be available in respect of any of those ULIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be specified ULIPs, which are capital assets under section 2(14)(c). However, to get exemption u/s 10(10D), the condition of annual premium not exceeding 10% of the actual capital sum assured also needs to be satisfied.

Exemption in case of death of a person - In case any sum is received on the death of a person, exemption u/s 10(10D) would be available irrespective of the annual premium payable of the ULIP.

In case any difficulty arises in giving effect to the provisions of this clause, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Accordingly, the CBDT has with the approval of the Central Government, issued the following guidelines vide this Circular –

Situation 1: No sum including any sum allocated by way of bonus (such sum hereinafter referred as "consideration") is received by the assessee on any ULIPs which are issued on or after 1.2.2021 (such ULIPs hereinafter referred as "eligible ULIPs") during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs in an earlier previous year but has not been claimed exempt. In such a situation, the exemption u/s 10(10D) would be determined as under:

I. <u>Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only</u>

Circumstance	Eligibility for exemption u/s 10(10D)
▪ If the amount of premium payable on such eligible ULIP does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium does not exceed 10% of actual capital sum assured.	Such consideration would be eligible for exemption u/s 10(10D) **[Refer Example 1 given below]**
▪ If the amount of premium payable on such eligible ULIP > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP	Such consideration would **<u>not</u>** be eligible for exemption u/s 10(10D) **[Refer Example 2 given below]**

Example 1:

ULIP	A
Date of issue	1.4.2021
Annual premium	2,50,000
Sum assured	25,00,000
Consideration received as on 01.11.2031 on maturity	32,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium payable on the policy does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

Example 2:

ULIP	A
Date of issue	1.4.2021
Annual premium	5,00,000
Sum assured	50,00,000
Consideration received as on 01.11.2031 on maturity	60,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would **not** be exempt u/s 10(10D) in A.Y. 2032-33 since the annual premium payable on the eligible ULIP exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIPs

Circumstance	Eligibility for exemption u/s 10(10D)
If the aggregate of the amount of premium payable on such eligible ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs and the annual premium ≤ 10% of actual capital sum assured.	Such consideration would be eligible for exemption under u/s 10(10D) **[Refer Example 3 given below]**
If the aggregate of the amount of premium payable on such eligible ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP.	Consideration in respect of any of those eligible ULIPs whose aggregate amount of premium payable does not exceed ₹ 2,50,000 for any of the PYs during their term would be eligible for exemption u/s 10(10D), provided their annual premium ≤ 10% of actual capital sum assured. **[Refer Examples 4 and 5 given below]**

Example 3:

ULIP	A	B
Date of issue	01.04.2021	01.04.2021
Annual premium	1,00,000	1,50,000

Sum assured	10,00,000	15,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000	18,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP "A" and ULIP "B" does not exceed ₹ 2,50,000 during the term of these policies.

Further, annual premium payable in respect of ULIP "A" and ULIP "B" does not exceed 10% of actual capital sum assured. Therefore, the consideration received under ULIP "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33.

Example 4:

ULIP	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2021
Annual premium	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	15,00,000	30,00,000
Consideration received as on 1.11.2031 on maturity	12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.			

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and also does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under ULIP "C" alone would **not** be exempt u/s 10(10D) in A.Y. 2032-33.

Example 5:

ULIP	X	A	B	C
Date of issue	1.4.2020	1.4.2021	1.4.2021	1.4.2021
Annual premium	2,50,000	1,00,000	1,50,000	3,00,000
Sum assured	25,00,000	10,00,000	15,00,000	30,00,000

Consideration received as on 01.11.2030 on maturity	30,00,000			
Consideration received as on 01.11.2031 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration received under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2031-32 since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.2.2021, limit of ₹ 2,50,000 of amount of premium payable is not applicable.

The aggregate of annual premium payable for ULIP "A", ULIP "B" and ULIP "C" (being ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under ULIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2032-33.

Situation 2: Consideration has been received by the assessee under any one or more eligible ULIPs during any P.Y. preceding the current P.Y. and it has been claimed to be exempt u/s 10(10D). Such eligible ULIPs are referred as "Earlier Exempt Eligible ULIPs (EEE ULIPs)" in this paragraph and corresponding examples and reference to eligible ULIPs shall not include EEE ULIPs. The exemption u/s 10(10D) would be determined as under:

I. <u>Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only</u>

Circumstance	Eligibility for exemption u/s 10(10D)
▪ If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium in respect of eligible ULIP does not exceed 10% of actual capital sum assured.	Consideration under such eligible ULIP would be eligible for exemption u/s 10(10D) **[Refer Example 6]**

▪ If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP	Consideration under such eligible ULIP would **not** be eligible for exemption u/s 10(10D) **[Refer Example 7]**

Example 6:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	50,000
Sum assured	20,00,000	5,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		6,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "A" will also be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP "A" and ULIP "X" does not exceed ₹ 2,50,000 for the P.Ys. 2022-23 to 2031-32 and the annual premium of ULIP "A" does not exceed 10% of actual capital sum assured.

Example 7:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	1,00,000
Sum assured	20,00,000	10,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		12,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "A" will **not** be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP "A" and ULIP "X" (both ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIP

▪ If aggregate of the amount of premium payable on such eligible ULIPs and EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs and annual premium in respect of eligible ULIPs also does not exceed 10% of actual capital sum assured.	Consideration received would be eligible for exemption under u/s 10(10D)
▪ If aggregate of the amount of premium payable on such eligible ULIPs and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs.	Consideration in respect of any of those eligible ULIPs (whose aggregate amount of premium along with the aggregate amount of premium of EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during their term) would be eligible for exemption u/s 10(10D) **[Refer Examples 8, 9 and 10 given below]**

Example 8:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	2,00,000	1,00,000	1,50,000	3,00,000
Sum assured	20,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" along with the premium for ULIP "X" exceeds ₹ 2,50,000 during the term of these policies. Hence, the consideration received under ULIPs "A", "B" and "C" will **not** be exempt u/s 10(10D) in A.Y. 2033-34.

Alternative treatment: If the consideration under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then, the consideration received under ULIP "A" and ULIP "B" would be exempt u/s 10(10D) in A.Y.2033-34 since the aggregate of the annual premium payable for the ULIPs "A" and "B" together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

Example 9:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 1.11.2031 on maturity	12,00,000			
Consideration received as on 1.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in any earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" along with the premium for ULIP "X" exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" **or** "B" (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2033-34.

If the consideration received under ULIP "A" claimed to be exempt as aggregate of the annual premium payable for ULIP "X" and "A" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "B" would not be exempt.

If the consideration received under ULIP "B" claimed to be exempt as aggregate of the annual premium payable for ULIP "X" and "B" did not exceed ₹ 2,50,000 for any of the

PYs., the consideration received under ULIP "A" would not be exempt. Exemption for consideration received under ULIP "B" is preferred as it is more beneficial to the assessee.

Alternative treatment: If the consideration under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then the consideration received under ULIP "A" and ULIP "B" would be exempt u/s 10(10D) in A.Y. 2033-34 since the aggregate of the annual premium payable for the ULIPs "A" and "B" together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

It may be noted that in every case, the consideration received for ULIP "C" would not be exempt u/s 10(10D).

Example 10:

ULIP	X	Y	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on surrender as on 1.7.2025	6,00,000				
Consideration received on maturity as on 1.11.2031		12,00,000			
Consideration received as on 1.11.2032 on maturity			12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in any earlier P.Y. preceding the P.Y.2032-33, other than ULIPs "X" and "Y".					

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y.2026-27, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "Y" would be exempt u/s 10(10D) in A.Y. 2032-33, since the aggregate of annual premium payable for ULIP "X" and "Y" does not exceed ₹ 2,50,000 and annual premium payable for ULIP "Y" does not exceed 10% of actual capital sum assured.

The consideration received under ULIPs "A", ULIP "B" and ULIP "C" would not be exempt u/s 10(10D) in A.Y. 2033-34, since aggregate of annual premium payable for these three policies and ULIP "X" and "Y" exceeds ₹ 2,50,000.

Alternative treatment: If the consideration on surrender under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2026-27 by the assessee, then the consideration received under ULIP "Y" would be exempt and the consideration received under ULIP "A" **or** ULIP "B" (any one) can be exempt u/s 10(10D) in A.Y. 2033-34. If the consideration received under ULIP "A" claimed to be exempt, as aggregate of the annual premium payable for ULIP "Y" and "A" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "B" would not be exempt.

If the consideration received under ULIP "B" is claimed to be exempt as aggregate of the annual premium payable for ULIP "Y" and "B" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "A" would not be exempt. Exemption for consideration received under ULIP "B" is preferred as it is more beneficial to the assessee.

If the consideration on surrender of ULIP "X" and on maturity of ULIP "Y" were not claimed to be exempt under section 10(10D) in A.Y.2026-27 and A.Y.2032-33, respectively, then consideration received under both ULIP "A" and ULIP "B" would be exempt in A.Y.2033-34 (being ULIPs issued on or after 1.2.2021, whose aggregate consideration does not exceed ₹ 2,50,000).

It may be noted that, in every case, consideration received under ULIP "C" would not be exempt under section 10(10D).

***Note** – (1) Some examples [Examples 6 and 7] and some alternative treatments which have been given above are based on the discussion contained in the Circular although they do not form part of the text of the Circular.*

(2) The ULIP related provisions under section 2(14), section 45(1B) and section 112A (definition of equity oriented fund in page 7.6) discussed in Chapter 7 Capital Gains and the ULIP related provisions under section 10(10D) discussed along with deduction u/s 80C in Chapter 11 Deductions from gross total income in the October, 2021 edition of the Study Material, have to be read along with the above Circular and Notification No.8/2022 dated 18.1.2022 discussed below.

Computation of Capital Gains under section 45(1B) [Notification No. 8/2022 dated 18.01.2022]

Section 45(1B) provides that where any person receives, at any time during any previous year, any amount, under a ULIP issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy, then, any profits or gains arising from receipt of such amount by such person would be chargeable to income-tax under the head "Capital gains" and would be deemed to be the income of the such person for the previous year in which such amount was received.

It may be noted that where more than one ULIP is issued to a person on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous

years during the term of any such ULIP(s), the consideration under any of those ULIPs, at the option of the assessee, whose aggregate premium does not exceed ₹ 2,50,000 for any of the previous years during their term, would be eligible for exemption u/s 10(10D)[1]. Any amount received under any other ULIP(s) issued on or after 1.2.2021 (referred to as specified ULIPs) would be taxable u/s 45(1B). A specified ULIP has been defined as a ULIP to which exemption under section 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof. Such specified ULIP has been included in the definition of capital asset under section 2(14). The income from such specified ULIPs taxable is to be calculated in such manner as may be prescribed.

Accordingly, the CBDT has, vide this notification, notified Rule 8AD to compute capital gains on such specified ULIPs. Where any person receives at any time during any previous year any amount under such specified ULIP, including the amount allocated by way of bonus on such policy, then, —

	Situation	Capital gains arising from receipt of amount during the previous year in which such amount is received
(i)	Where the amount is received for the first time under such specified ULIP during the previous year,	**A-B** **A** = the amount received for the first time under such specified ULIP during the previous year, including the amount allocated by way of bonus on such specified policy; and **B** = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "A"
(ii)	where the amount is received under such specified ULIP during the previous year, at any time after the receipt of the amount as referred to in (i)	**C-D** **C** = the amount received under such specified ULIP during the previous year, at any time after the receipt of the amount as referred to in (i) above, including the amount allocated by way of bonus on such policy. ***Note*** *- The amount which has already been considered for calculation of taxable amount during the earlier previous year(s) would not be included in "C".* **D** = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "C" as reduced by "B" i.e., the premium that has already been considered for calculation of taxable amount during the earlier previous year(s).

[1] Subject to fulfilment of other conditions under section 10(10D).

The capital gains as computed in above table would be deemed to be the capital gains arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

Chapter 15: Deduction, Collection and Recovery of Tax

Guidelines u/s 194-O, 194Q and 206C(1-l) [Circular No. 20/2021 dated 25.11.2021]

E-auction services carried out through electronic portal:

The provisions of section 194-O would **not** apply in relation to e-auction activities carried out by e-auctioneers, if all the facts listed in (a) to (f) below are satisfied:

a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the **price discovery only** which is reported to the client.

b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.

c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and **price discovery only acts as the starting point** for negotiation and conclusion of purchase/sale.

d) The e-auctioneer is **not responsible for facilitating the purchase and sale of goods** for which e-auction was conducted on its electronic portal except to the extent of price discovery.

e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the **e-auctioneer does not have any information about the quantum and the schedule of payment** which is decided mutually by the client and the counterparty.

f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O.

If any of these facts are not satisfied, then, the clarification given above will not apply. Further, the buyer and seller would still be liable to deduct/collect tax as per the provisions of section 194Q and 206C(1H), as the case may be.

Adjustment of various state levies and taxes other than GST:

Treatment of tax deduction on GST component included in the invoice has been clarified vide CBDT Circular No. 13/2021 dated 30.6.2021. This circular gives clarification in case of purchase of goods which are not covered within the purview of GST, but which are subject to VAT/Sales tax/Excise duty/CST.

	Condition	Amount on which tax is to be deducted u/s 194Q
(i)	Where tax is deducted at the **time of credit** of amount in the account of the seller **and** In terms of the agreement or contract between the buyer and seller, component of VAT/Sales tax/Excise duty/CST is **indicated separately** in the invoice	**Tax has to be deducted on the amount credited (without including such VAT/Sales tax/Excise duty/CST**)
(ii)	Where tax is deducted on payment basis (if payment is earlier than the credit)	Tax has to be deducted on the whole amount (since it is not possible to identify the payment with the tax component to be invoiced in the future)
(iii)	In case of purchase returns, where the money is refunded by the seller	Tax deducted earlier u/s 194Q on such purchase (which is now returned) may be adjusted against the next purchase from the same seller
(iv)	In case of purchase returns, where goods are replaced by the seller	No adjustment is required.

Applicability of section 194Q in cases where exemption has been provided under section 206C(1A)

Section 194Q does not apply in respect of transactions where tax is collectible u/s 206C [except sale of goods under section 206C(1H)]. Section 206C(1H) requires collection of tax at source in respect of sale of goods other than goods which have been covered u/s 206C(1)/ (1F)/(1G).

In accordance with section 206C(1A), tax is not required to be collected in the case of a resident buyer who furnishes declaration to the effect that the goods u/s 206C(1) are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

In case of goods which are covered u/s 206C(1) but exempted u/s 206C(1A), tax would not be collectible u/s 206C(1)/(1H).

It is clarified that the provisions of section 194Q will apply in such cases covered under section 206C(1A) and the buyer is to be liable to deduct tax u/s 194Q, if the conditions specified therein are fulfilled.

Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation

To be considered as a buyer for the purposes of 194Q, such person should be carrying out a business/commercial activity; and the total sales, gross receipts or turnover from such business/commercial activity should be more than ₹ 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

	Issue	Would TDS u/s 194Q be attracted?
(i)	Can Department of Government be a "buyer" for the purposes of section 194Q? - If it is carrying on business/commercial activity - If it is not carrying on any business/commercial activity	Yes (subject to fulfillment of other conditions) No, since it will not be considered as a buyer
(ii)	Can Department of Central/State Government be considered as "seller" for the purpose of section 194Q?	No [Hence, no tax can be deducted u/s 194Q by the buyer]

Note - A Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, would, however, be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.

Non-applicability of provisions of section 206C(1G) to a non-resident individual visiting India [Notification No. 20/2022 dated 30.03.2022]

Tax is collectible u/s 206C(1G) by -

- an authorised dealer who receives amount under LRS of RBI for overseas remittance from a buyer, being a person remitting such amount out of India; **and**
- a seller of an overseas tour package who receives any amount from the buyer who purchases the package.

However, TCS u/s 206C(1G) would **not** be applicable, if the buyer is an individual who:

- is **not** a resident in India [in terms of section 6(1) and (1A)]; **and**
- who is **visiting India**.

Requirement of filing return of income u/s 139(1) by certain persons, when the quantum of prescribed transactions exceed the prescribed monetary threshold [Notification No. 37/2022 dated 21.04.2022]

Clause (iv) to seventh proviso of section 139(1) provides that a person (other than a company or a firm) who is not required to furnish a return u/s 139(1) has to furnish return on or before the due date if the person fulfills such other conditions as may be prescribed.

Rule 12AB has been inserted vide this notification to prescribe the following other conditions for furnishing return u/s 139(1). Accordingly, the persons referred to in column (2) of the table below have to furnish their return u/s 139(1), in cases where the amount of prescribed transaction (sales/turnover/gross receipts/TDS +TCS/aggregate of savings bank deposits, as the case may be) referred to in column (3) exceed (> or ≥, as the case may be) the prescribed monetary threshold in the corresponding row of column (4) of the table below:

	Case	Prescribed transaction(s)	Prescribed Monetary threshold
(1)	**(2)**	**(3)**	**(4)**
(i)	A person carrying on **business**	His **total sales, turnover or gross receipts**, as the case may be, in the business	> **₹ 60 lakhs** during the relevant P.Y.
(ii)	A person carrying on **profession**	His **total gross receipts** in profession	> **₹ 10 lakhs** during the relevant P.Y.
(iii)	(a) A resident individual who is aged **≥ 60 years** at any time during the relevant P.Y.	The **aggregate of TDS and TCS** in his case	≥ **₹ 50,000** during the relevant P.Y.
	(b) Any other person	The **aggregate of TDS and TCS** in his case	≥ **₹ 25,000** during the relevant P.Y.
(iv)	A person having **savings bank account**	The **deposit in one or more savings bank** account of the person, in aggregate	≥ **₹ 50 lakh**s during the relevant P.Y.

Fee for subsequent intimation of Aadhaar [Notification No. 17/ 2022 dated 23.03.2022]

Under section 234H, where a person, who is required to intimate his Aadhar Number under section 139AA(2), fails to do so on or before the notified date i.e., ***31st March, 2022***, he would

be liable to pay such fee, as may be prescribed, at the time of making intimation under section 139AA(2) after 31st March, 2022. However, such fee shall not exceed ₹ 1,000.

As per section 139AA(2), every person who has been allotted PAN as on 1st July, 2017 and eligible to obtain Aadhar Number, is required to intimate his Aadhaar number to the prescribed authority in the prescribed form and manner.

Accordingly, the CBDT has, vide notification no. 17/2022 dated 29.3.2022, inserted Rule 114(5A) to provide that if such person fails to do so by the date notified in section 139AA(2) i.e., 31st March, 2022, then, at the time of subsequent intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of fee, an amount equal to, —

(a) ₹ 500, in a case where such intimation is made within three months from the date referred in section 139AA(2) i.e., by 30.06.2022; and

(b) ₹ 1,000, in all other cases.

Clarification with respect to relaxation of provisions of Rule 114AAA prescribing the manner of making PAN inoperative [Circular No. 7/2022 dated 30.03.2022 read with Notification No. 17/ 2022 dated 23.03.2022]

Section 139AA(2) makes it mandatory for every person who has been allotted a PAN as on 1st July, 2017 to intimate his Aadhaar Number so that the Aadhaar and PAN can be linked. This is required to be done on or before a notified date, failing which the PAN would become inoperative.

Accordingly, in case of failure to intimate the Aadhaar Number by 31.03.2022, the PAN allotted to the person would be made inoperative. Further, section 234H provides that where a person who is required to intimate his Aadhaar under section 139AA(2) fails to do so on or before a notified date, he would be liable to pay a fee not exceeding ₹ 1,000, as may be prescribed, at the time of making intimation under section 139AA(2) after the said date.

Further, Rule 114AAA provides that if PAN of a person has become inoperative, he will not be able to furnish, intimate or quote his PAN and would be liable to all the consequences under the Act for such failure. This will have a number of implications such as:-

(i) The person would not be able to file return using the inoperative PAN

(ii) Pending returns will not be processed

(iii) Pending refunds cannot be issued to inoperative PANs

(iv) Pending proceedings as in the case of defective returns cannot be completed once the PAN is inoperative

(v) Tax will be required to be deducted at a higher rate as PAN becomes inoperative

In addition to the above, the tax payer might face difficulty at various other fora like banks and other financial portals, as PAN is one of the important KYC criterion for all kinds of financial transactions.

As per Rule 114AAA(2), where a person, whose PAN has become inoperative under Rule 114AAA(1), is required to furnish, intimate or quote his PAN, it would be deemed that he has not furnished, intimated or quoted the PAN, as the case may be, in accordance with the provisions of the Act. Consequently, he would be liable for all the consequences under the Act for not furnishing, intimating or quoting the PAN.

In order to have smooth application of section 234H and existing rule 114AAA, it is clarified that the impact of Rule 114AAA(2) would come into effect from 1st April, 2023; and the period from 1st April, 2022 to 31st March, 2023, would be the period during which Rule 114AAA(2) would not have its negative consequences.

However, the tax payer would be liable to pay a fee in accordance with section 234H read with Rule 114(5A).

Taxation of income from retirement benefit account maintained in a Notified Country - Section 89A [Notification No. 24/2022 dated 04.04.2022]

The Finance Act 2021 has inserted section 89A providing for relief from taxation of income from retirement benefit account maintained in a **notified country**. Accordingly, where a **specified person** has income accrued in a **specified account**, such income would be taxed in such manner and in such year as may be prescribed.

Meaning of certain terms:

Terms	Meaning
Notified country	A country notified by the Central Government. So far, vide notification no.25/2022, Canada, USA and UK have been notified by the Central Government.
Specified account	An account maintained in a notified country by the specified person in respect of his retirement benefits and the income from such account is not taxable on accrual basis but is taxed by such country at the time of withdrawal or redemption.
Specified person	A person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country.

Accordingly, the CBDT has, vide Notification No.24/2022 dated 4.4.2022 inserted Rule 21AAA providing for taxation of income from retirement benefit account maintained in a notified country.

Option to be exercised by specified person - Where a specified person has income accrued in a specified account(s) during P.Y.2021-22 or thereafter, then, at the **option of the specified person**, such income would be included in the total income of the previous year relevant to the assessment year in which income from the said specified account(s) is taxed **at the time of withdrawal or redemption**, as the case may be, in the notified country. The option has to be exercised for all the specified accounts maintained by the specified person.

Exclusions from total income of specified person - Where the option has been exercised by a specified person, the total income of the specified person for the previous year in which income is taxable would **not** include the income which:

- has already been included in the total income of such specified person in any of the earlier previous years during which such income accrued and tax thereon has been paid under the Act; or
- was not taxable in India, in the previous year during which such income accrued, on account of,
    - such specified person being a non-resident, or resident but not ordinarily resident, during that previous year; or
    - application of the DTAA, if any.

Foreign tax, if any, paid on such income would be ignored for the purposes of computation of the foreign tax credit under Rule 128.

Option once exercised cannot be withdrawn - The option has to be exercised in the prescribed form, which has to be furnished electronically under digital signature or electronic verification code on or before the due date u/s 139(1). The option once exercised for a specified account(s) in respect of a previous year in the prescribed form would apply to all subsequent previous years and cannot be subsequently withdrawn for the previous year for which the option was exercised or any previous year subsequent to that previous year (except in case where the specified person becomes a non-resident in any subsequent previous year).

Consequences when specified person becomes non-resident in a subsequent previous year - In case the specified person, after exercising option in the prescribed form for any previous year, say, P.Y.2021-22, becomes a non-resident during any subsequent previous year, say, P.Y.2024-25, (referred to as the relevant previous year) then, the option exercised above would be deemed to have never been exercised with effect from the relevant previous year, i.e., from P.Y.2024-25. The income which has accrued in the specified account(s) during the previous year, beginning with the previous year in which option was exercised (P.Y.2021-22) till the previous year immediately preceding the relevant previous year (i.e., upto P.Y.2023-24) would be taxable during the previous year immediately preceding the relevant previous year (i.e., in the P.Y.2023-24). The tax on such income has to be paid on or before

the due date for furnishing the return of income for the relevant previous year (due date for P.Y. 2024-25).

Chapter 19: Dispute Resolution

Dispute Resolution Committee and E-Dispute Resolution Scheme, 2022 [Notification No. 26/2022 and 27/2022 dated 05.04.2022]

In order to provide early tax certainty to small and medium taxpayers, a new scheme of Dispute Resolution has been formulated with effect from 1st April, 2021 for constitution of one or more Dispute Resolution Committees (DRCs). Under section 245MA, the Central Government is empowered to constitute one or more dispute resolution committees, in accordance with the Rules made under the Act.

Accordingly, Part IX-AA Dispute Resolution Committee has been inserted in the Income-tax Act, 1961, which comprises of Rules 44DAA, 44DAB, 44DAC and 44DAD.

Rule 44DAA – Constitution of Dispute Resolution Committee

(1) **Constitution of DRC** - The Central Government would constitute a Dispute Resolution Committee (DRC) for every region of Principal Chief Commissioner of Income-tax for dispute resolution.

(2) **Composition of DRC** - Each DRC would consist of 3 members, as under:-

   i. 2 members would be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for five years or more; and

   ii. 1 serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board.

(3) **Time period** - The members would be appointed by the Central Government for a period of 3 years.

(4) **Fee to be paid to member -** The Central Government may fix a sum to be paid as fee to a member, who is retired officer, on a per case basis, along with a sitting fee, so decided by the Board.

(5) **Decision of DRC** - The decision of the DRC shall be by majority.

(6) **Removal of member** - The Central Government may remove any member from the DRC after recording reasons in writing and after giving an opportunity of being heard.

Rule 44DAB – Application for resolution of dispute before the DRC

Such persons or class of persons, as may be specified by the Board, and who fulfill the specified conditions may opt for dispute resolution under Chapter XIX-AA in respect of dispute

arising from any variation in the specified order in his case. Such person has to make an application for resolution of dispute before the DRC in the prescribed form accompanied by a fee of ₹ 1,000.

Meaning of specified condition - Person fulfilling the specified conditions means –

(i) a person in respect of whom the conditions mentioned in (I) specified in pages 19.3 and 19.4 of the Study Material are satisfied; **and**

(ii) proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have **not** been initiated for the assessment year for which resolution of dispute is sought.

Time limit for filing application - Such application has to be filed –

	Case	Time limit
(i)	In cases where appeal has already been filed and is pending before the Commissioner (Appeals)	within such time from the date of constitution of the Dispute Resolution Committee, as may be specified by the Board
(ii)	in any other case	within one month from the date of receipt of **specified order**

Meaning of specified order

"Specified order", in relation to a dispute under section 245MA, means:—

(a) a draft order as referred to in section 144C(1) in respect of a person in whose case variation arises as a consequence to order of the TPO passed under section 92CA(3) or a non-corporate non-resident;

(b) an intimation under section 143(1) after processing income-tax returns or under section 200A(1) after processing of TDS statements or section 206CB(1) after processing of TCS statements, where the assessee or the deductor or the collector objects to the adjustments made in the said order;

(c) an order of assessment or reassessment, except an order passed in pursuance of directions of the Dispute Resolution Panel;

(d) a rectification order made under section 154 having the effect of enhancing the assessment or reducing the loss; or

(e) an order made under section 201 or an order made under section 206C(6A) deeming a person as an assessee-in-default for failure to deduct/collect tax at source or remit the same as required under the Act, after deduction/collection [the variation in the specified

order relating to default in deduction or collection of tax at source would refer to the amount on which tax has not been deducted or collected in accordance with the Act]

and in respect of which the following conditions are satisfied, namely:—

(A) the aggregate sum of variations proposed or made in such order does not exceed ₹ 10 lakh;

(B) the return has been furnished by the assessee for the assessment year relevant to such order and the total income as per such return does not exceed ₹ 50 lakhs; and

(C) the order in the case of the assessee is not based on,—

(I) search initiated under section 132 or requisition made under section 132A in the case of the assessee or any other person; or

(II) survey carried out under section 133A; or

(III) information received under an agreement referred to in section 90 or 90A.

Screening of application by DRC

(i) **Examination of application** - The DRC has to examine the application with respect to the specified conditions and criteria for specified order. Upon such examination, where the DRC considers that the application for dispute resolution should be rejected, it has to serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.

(ii) **Provision of opportunity of being heard** - The assessee can request for an opportunity of being heard. If the DRC receives a request from the assessee, it has to provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible.

(iii) **Furnishing response to SCN within the specified date** -The assessee has to furnish a response to the show-cause notice referred to in (i) above within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC;

(iv) **Rejection of application by DRC** - The DRC may, after considering the response furnished by the assessee, reject the application or proceed to decide the application on merits in accordance with the procedure laid out in (v) and (vi) below. Where no such response is furnished by the assessee, the DRC may reject the application [In such a case, the assesee may file an appeal to the Commissioner (Appeals). The period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal].

(v) **Communication of decision of DRC to assessee** - The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, has to be communicated to the assessee on his registered e-mail address;

(vi) **Submission of proof of withdrawal of appeal/application before DRP** - Within 30 days of receipt of the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of appeal filed under section 246A or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey that there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

Procedure to be followed by the DRC

(i) **Calling for records for further examination** - Upon admission of the application and subsequent to the receipt of the response of the assessee, the DRC may call for records from the income-tax authority and further examine, as it may deem fit, with respect to the issues covered in the application;

(ii) **Seeking report from Assessing Officer** - The DRC may seek a report from the Assessing Officer on the issues covered in the application or on any other issue arising during the course of proceedings;

(iii) **Calling for further information** - The DRC may before disposing off the application, call for further information from the assessee or any other person by sending an email to his registered email address;

(iv) **Submission of response within specified time** - The assessee has to electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf;

(v) **Decision of DRC** - After considering the material available on record, including any further information or evidence received from the assessee, income-tax authority or any other person, the DRC may decide —

(a) to **make modifications to the variations in specified order**, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of rule 44DAC, and pass an order of resolution, accordingly; or

(b) to **not make modifications to the variations in the specified order**. However, the DRC may decide to waive penalty and grant immunity from prosecution provisions in accordance with the provisions of rule 44DAC, and pass an order of resolution accordingly. Such an order will be treated as an order not prejudicial to the interest of the assessee; or

(c) to **not make any modification to the specified order, and pass an order disposing off the application**. Such an order will be treated as an order 'not prejudicial to the interest of the assessee',

within six months from the end of the month in which application for dispute resolution is admitted by the DRC. The order of the DRC for the resolution of a dispute has to be in accordance with the provisions of the Act.

(vi) **Serving copy of order to AO and assessee** - The DRC has to serve a copy of the order of resolution or order disposing off the application, as the case may be, upon the assessee and also the Assessing Officer for giving effect to the same, if so required;

(vii) **No appeal or reference will lie against the modified order -** Where the specified order is an order of the eligible assessee as referred to in section 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order**.**

(viii) **Serving copy of modified order to assessee –** The Assessing Officer has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.

(ix) **Assessee to furnish proof of payment of demand** -The assessee has to furnish proof of payment of the said demand to the DRC and also to the Assessing Officer.

(x) **Grant of immunity from prosecution and waiver of penalty** – The DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC.

Termination of dispute resolution proceedings

The DRC may, at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings if, -

(i) the assessee fails to cooperate during the course of dispute resolution proceedings; or

(ii) the assessee fails to respond to, or submit any information in response to, a notice issued to him; or

(iii) the Committee is satisfied that the assessee has concealed any particular material to the proceedings or had given false evidence.

(iv) the assessee fails to pay the demand as required in notice of demand.

Where the dispute resolution proceedings are terminated, the DRC has to intimate the income-tax authority for taking necessary action as per the provisions of the Act.

Rule 44DAC – Power to reduce or waive penalty imposable or grant immunity from prosecution or both under the Income-tax Act, 1961

Conditions for grant of waiver of penalty or immunity from prosecution - The DRC, upon receipt of confirmation from the assessee of payment of demand, should grant to the person who made the application for dispute resolution under section 245MA, waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has,

- **paid the tax due on the returned income in full** if available; and
- **co-operated with the DRC** in the proceedings before it.

Reasons to be recorded in writing - The DRC would grant such waiver of penalty or immunity from prosecution or both, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing.

No immunity if prosecution proceedings were initiated before application - No immunity would, however, be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application for dispute resolution from the assessee fulfilling the specified conditions.

Withdrawal of immunity - An immunity granted to a person would stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of the Income-tax Act, 1961 would apply as if such immunity or waiver had never been granted.

PART – II: INTERNATIONAL TAXATION

Chapter 2: Non-resident Taxation

Computation of exempt income of specified fund, attributable to the investment division of an offshore banking unit for the purposes of section 10(4D) [Notification No. 6/2022 dated 14.01.2022]

Section 10(4D) provides an exemption to a specified fund on certain income accrued or arisen to or received by it to the extent such income accrued or arisen to, or is received, *inter alia,* is attributable to the investment division of offshore banking unit computed in the prescribed manner.

Accordingly, Rule 21AJA has been inserted to provide for the manner of computation of exempt income of specified fund, attributable to the investment division of an offshore banking

unit for the purposes of section 10(4D). For the purposes of section 10(4D), income of specified fund attributable to the investment division of an offshore banking unit has to be computed in accordance with the following formula -

Exempt Income of offshore banking unit =A+B+C+D

A	Any income accrued or arisen to, or received by the eligible investment division as a result of transfer of a capital asset referred to in section 47(viiab) held by it, on a recognised stock exchange located in any International Financial Services Centre (IFSC) and where the consideration for such transaction is paid or payable in convertible foreign exchange. **Note** - Capital assets referred to in section 47(viiab) are - (i) Bonds of an Indian company issued in accordance with notified scheme of Central Government or bonds of a public company sold by the government and purchased by the fund in foreign currency (ii) Global Depository Receipt (created by the Overseas Depository Bank outside India or in an IFSC and issued to investors against the issue of – (a) ordinary shares of issuing company, being a company listed on a recognized stock exchange in India; or (b) foreign currency convertible bonds of issuing company; or (c) ordinary shares of issuing company, being a company incorporated outside India, if such depositary receipt or certificate is listed and traded on any IFSC. (iii) Rupee denominated bond of an Indian company; or (iv) Derivative (v) Other notified securities, which include the following securities listed on a recognized stock exchange located in any IFSC – - Foreign currency denominated bond - Unit of a mutual fund - Unit of a business trust - Foreign currency denominated equity share of a company - Unit of Alternative Investment Fund
B	Any income accrued or arisen to, or received by the eligible investment division as a result of transfer of securities held by it (other than shares in a company resident in India)

C	Any income accrued or arisen to, or received by the eligible investment division from securities held by it and issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India
D	Any income accrued or arisen to, or received by the eligible investment division from a securitisation trust which is chargeable under the head "profits and gains of business or profession"
Any expenditure incurred for the purposes of making or earning income referred to in items A or B or C or D would not be allowed as deduction from income from any other activity or source under any provision of the Act, irrespective of the fact that such expenditure has not been allowed as deduction against income referred to in items A or B or C or D, as the case may be.	

The eligible investment division has to furnish an annual statement of exempt income in the prescribed form electronically under digital signature on or before the due date specified u/s 139(1).

"Specified Fund" means, *inter alia,* investment division of an offshore banking unit, which has been

(a) granted a certificate of registration as a Category-I foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992 and which has commenced its operations on or before 31.3.2024; and

(b) fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed

Accordingly, an investment division of an offshore banking unit has to fulfill the following prescribed conditions to claim exemption:

a) it has to maintain separate accounts for the registered investment division reflecting the true and fair accounts of all transactions relating to the investment division and which would ensure that direct and indirect expenses relating to the incomes are properly recorded, accounted for, and apportioned to these activities;

b) it has to get the accounts, as specified in (a) above, audited by an accountant before the specified date i.e., one month prior to the due date u/s 139(1). Such accountant has to furnish by that date the report of such audit in the prescribed form electronically under digital signature;

c) it has to maintain proper documentation in respect of, —

1. inbound remittance for buying and selling the investments; and

2. the use of inward remittance made to India;

d) it has to maintain bank statement of all accounts of the registered investment division;

e) it has to maintain contract notes relating to purchase and sale of securities by the registered investment division; and

f) it has to maintain a statement of securities issued by the custodian.

Section 115AD provides for taxation of income of a specified fund which includes income in respect of securities (other than income on units of Mutual Fund specified u/s 10(23D) or units of UTI) and short term or long term capital gain arising from the transfer of such securities. Where the specified fund is investment division of an offshore banking unit, the provisions of section 115AD would apply to the extent of income that is attributable to the investment division of such banking units, calculated in prescribed manner.

Accordingly, Rule 21AJAA has been inserted to provide for the manner of determination of income of specified fund, attributable to the investment division of an offshore banking unit for the purposes of section 115AD

For the purposes of section 115AD(1B), income of specified fund, being the investment division of an offshore banking unit has to be computed in accordance with the following formula -

A+B+C+D+E+F

A	Long term capital gain on transfer of securities (other than units of Mutual Fund specified u/s 10(23D) or units of UTI) referred to in section 112A, accrued or arisen to, or received by the eligible investment division and held by such investment division
B	Long term capital gain on transfer of securities (other than units of Mutual Fund specified u/s 10(23D) or units of UTI) other than those referred to in section 112A, accrued or arisen to, or received by the eligible investment division and held by such investment division
C	Short term capital gain on transfer of securities (other than units of Mutual Fund specified u/s 10(23D) or units of UTI) referred to in section 111A, accrued or arisen to, or received by the eligible investment division and held by such investment division;
D	Short term capital gain on transfer of securities (other than units of Mutual Fund specified u/s 10(23D) or units of UTI) other than those referred to in section 111A, accrued or arisen to, or received by the eligible investment division and held by such investment division
E	Income from securities referred to in section 194LD (Rupee denominated bonds of Indian company/government securities/municipal debt securities issued on or before 30.6.2023) held by the eligible investment division;

F	Income from securities, held by the eligible investment division other than - Income on units of Mutual Fund specified u/s 10(23D) or UTI - Interest referred to in section 194LD
Any expenditure incurred for the purposes of making or earning income referred to in items A or B or C or D or E or F would not be allowed as deduction from income from any other activity or source, irrespective of the fact that such expenditure has not been allowed as deduction against income referred to in items A or B or C or D or E or F, as the case may be.	

The eligible investment division has to furnish an annual statement of income, eligible for taxation u/s 115AD(1B) in the prescribed form electronically under digital signature on or before the due date specified u/s 139(1).

Conditions for claiming exemption u/s 10(4E) [Notification No. 136/2021 dated 10.12.2021]

Under section 10(4E), any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC would be exempt, subject to fulfillment of the prescribed conditions.

Accordingly, vide this notification, the conditions to be fulfilled for claiming such exemption are specified hereunder -

- the non-deliverable forward contract is entered into by the non-resident with an offshore banking unit of an IFSC which holds a valid certificate of registration granted under IFSC Authority (Banking) Regulations, 2020 by the IFSC Authority; and
- such contract is **not** entered into by the non-resident through or on behalf of its permanent establishment in India [The offshore banking unit (i.e., a banking branch unit located in an IFSC) has to ensure that this condition is complied with].

Meaning of "non-deliverable forward contract" - A contract for the difference between an exchange rate agreed before and the actual spot rate at maturity, with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency.

Computation of exempt income of specified fund for the purposes of section 10(23FF) [Notification No. 138/2021 dated 27.12.2021]

Section 10(23FF) exempts any income of the nature of capital gains, arising or received by a non-resident or a specified fund, which is on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units

held by non-resident (not being a permanent establishment of a non-resident in India) **in such manner as may be prescribed.** Such shares were transferred from the original fund, or from its wholly owned special purpose vehicle, to the resultant fund in relocation, and capital gains on such shares would not have been chargeable to tax had the relocation not taken place.

Accordingly, vide this notification, new Rule 2DD has been inserted to provide that, for the purpose of section 10(23FF), income of the nature of capital gains, arising or received by a specified fund, which is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) in such specified fund has to be computed as under

$$\text{Exempt Income u/s 10(23FF)} = A \times \frac{B}{C}$$

A	Income of the nature of capital gains, arising or received by a specified fund, which is on account of transfer of shares of a company resident in India, by the specified fund and where such shares were received by the specified fund, being resultant fund, in relocation from the original fund, or from its wholly owned special purpose vehicle, and where such capital gains would not be chargeable to tax if the relocation had not taken place
B	Aggregate of daily 'assets under management' of the specified fund which are held by non-resident unit holders (not being the permanent establishment of a non-resident in India), from the date of acquisition of the share of a company resident in India by the specified fund to the date of transfer of such share.
C	Aggregate of daily total 'assets under management' of the specified fund, from the date of acquisition of the share of a company resident in India by the specified fund to the date of transfer of such share.

Note *- "Assets under management" means the closing balance of the value of assets or investments of the specified fund as on a particular date.*

Income shall be exempt only when the specified fund furnishes an annual statement of exempt income in the prescribed form electronically under digital signature on or before the due date specified u/s 139(1). Where such form is not filed by the specified fund, the exempt income would be NIL.

Further, such annual statement in prescribed form has to be certified by an accountant before the specified date [one month prior to the due date u/s 139(1)] and such accountant has to furnish by that date, the certificate in the prescribed form electronically under digital signature.

Clarification regarding the Most-Favoured-Nation (MFN) clause in the Protocol to India's DTAAs with certain countries [Circular No.3/2022 dated 3.2.2022]

The Protocol to India's DTAAs with some of the countries, especially European States and OECD members (The Netherlands, France, the Swiss Confederation, Sweden, Spain and Hungary) contains a provision, referred to as the Most-Favoured-Nation (MFN) clause. Though each MFN clause in these DTAAs has a different formulation, the general underlying provision is that if after the signature/ entry into force (depending upon the language of the MFN clause) 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.

Through this circular, the CBDT clarifies that the applicability of the MFN clause and benefit of the lower rate or restricted scope of source taxation rights in relation to certain items of income (such as dividends, interest income, royalties, Fees for Technical Services, etc.) provided in India's DTAAs with the third States will be available to the first (OECD) State **only when all the following conditions are met**:

(i) The second treaty (with the third State) is entered into after the signature/ Entry into Force (depending upon the language of the MFN clause) of the treaty between India and the first State;

(ii) The second treaty is entered into between India and a State which is a member of the OECD **at the time of signing the treaty with it**;

(iii) India limits its taxing rights in the second treaty in relation to rate or scope of taxation in respect of the relevant items of income; and

(iv) **A separate notification has been issued by India, importing the benefits of the second treaty into the treaty with the first State**, as required by the provisions of section 90(1) of the Income-tax Act, 1961.

If **all the conditions enumerated in (i) to (iv) are satisfied**, then, the lower rate or restricted scope in the treaty with the third State is imported into the treaty with an OECD State having MFN clause from the date as per the provisions of the MFN clause in the DTAA, after following the due procedure under the Indian tax law.

However, notwithstanding the clarification given above, where in the case of a taxpayer there is any decision by any court on this issue favourable to such taxpayer, this Circular will not affect the implementation of the court order in such case.