



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)



Women Members Excellence Committee

Organises

यशस्विनी - An IDOL- Live Webinar



CA. Priti Paras Savla
Chairperson, WMEC, ICAI



CA. Kemisha Soni
Vice Chairperson, WMEC, ICAI

**NEW TAX
REGIME
VS.
OLD TAX
REGIME
- A STUDY
AND
ISSUES IN
PRESUMPTIVE
TAXATION**

**WOMEN & YOUNG
MEMBERS
EXCELLENCE
COMMITTEE**

ICAI

WEDNESDAY

29.05.2024

SYNOPSIS

▶ NEW TAX REGIME

- Default tax regime - s.115bac (1A)
- Rates of tax
- Rates of surcharge
- S. 87A – rebate
- Denial of exemptions
- Denial of Popular Deductions under Chapter VI A
- Eligible Deductions
- Denial of Set- off of Loss
- Switch between NTR and OTR
- Insertion of new Rule 21AGA
- What is Form 10IEA?
- NTR v. OTR : Breakeven point analysis
- Other Points

▶ Presumptive Taxation – s. 44AD & s. 44ADA

- Important Issues

Nina P. Kapasi
Chartered Accountant

DEFAULT TAX REGIME - s.115BAC(1A)

- ▶ New tax regime default tax regime as compared to Old tax regime under earlier s.115BAC
- ▶ W.e.f. 01.04.2024 relevant to A.Y. 2024-25
 - New avatar of earlier NTR – 2.0
- ▶ Introduction of new section- s.115BAC(1A)
 - Applicable to Individual & HUF
 - Also made applicable to BOI / AOP (other than co-operative society) and Artificial Juridical Person as per s. 2(31)(vii)
 - Need not be 'Resident' only

RATES OF TAX – NEW REGIME

► Rate of Tax for Individuals & HUF – s. 115BAC

A.Y. 2023-24		A.Y. 2024-25	
Total Income (Rs.)	Rate of Tax (%)	Total Income (Rs.)	Rate of Tax (%)
Up to Rs 2,50,000	NIL	Up to Rs 3,00,000	NIL
From Rs 2,50,001 to Rs 5,00,000	5%	Rs 3,00,001 to Rs 6,00,000	5%
From Rs 5,00,001 to Rs 7,50,000	10%	Rs 6,00,001 to Rs 9,00,000	10%
From Rs 7,50,001 to Rs 10,00,000	15%	Rs 9,00,001 to Rs 12,00,000	15%
From Rs 10,00,001 to Rs 12,50,000	20%	Rs 12,00,001 to Rs 12,50,000	20%
From Rs 12,50,001 to Rs 15,00,000	25%	Rs 12,51,000 to Rs.15,00,000	20%
Above Rs 15,00,000	30% 1,87,500	Above Rs 15,00,000	30% 1,50,000

- No separate threshold for Senior and Super Senior Citizen
- AMT not leviable
- SC and H & EC leviable where applicable
- Income such as LTCG and STCG (STT Paid), etc will be continued to be taxed as per the normal provisions

RATES OF SURCHARGE

- Surcharge for Individuals, HUF, AOP, BOI and AJP is as under;

Income	Surcharge (as per old tax regime)	Surcharge (as per new tax regime)
> 50 Lakhs ≤ 1 Crores	10%	10%
> 1Crores ≤ 2 Crores	15%	15%
> 2 Crores ≤ 5 Crores	25%	25%
Above 5 Crores	37%-effective rate 42.74%	25%-effective rate 39 %
Surcharge on tax computed on Capital Gains u/s. 111A, 112 & 112A and Dividend Income	15%	15%

s. 87A – REBATE

- ▶ Only applicable to **Resident Individual**
- ▶ Not available to other types of assesseees such as HUF, AOP, BOI etc.
- ▶ Not available to individual who is not 'resident'
- ▶ Under NTR - If NTI = < Rs. 7 Lakhs
 - 100% of tax or
 - Rs. 25,000 whichever is lower
- ▶ First time Marginal Relief provided for Rebate
- ▶ Under OTR
 - If NTI does not exceed Rs.5 Lakhs
 - 100% of tax or
 - Rs. 12,500 whichever is lower
- ▶ No marginal relief

DENIAL OF EXEMPTIONS/DEDUCTIONS

► Not Available :

Sections	Particulars
10(5)	Leave Travel Allowance
10(13A)	House Rent Allowance (HRA)
10(32)	Minor child income allowance
10(14)	Other special allowances
10(17)	Allowances to MPs/MLAs
10AA	Exemptions to newly established SEZ's
16(ii) & (iii)	Entertainment allowance, Professional tax
24(b)	Interest on borrowed capital for SOP or vacant property

DENIAL OF EXEMPTIONS/DEDUCTIONS –Part II

Sections	Particulars
32(1) (iia)	Additional depreciation
32AD	Investment in new plant or machinery in notified backward areas
33AB	Tea, coffee and rubber development account
33ABA	Site Restoration Fund
35(2AA)(1)	Deduction for expenditure on scientific research
35AD	Deduction in respect of expenditure on specified business
35CCC	Expenditure on agricultural extension project ⁹

Denial of Popular Deductions under Chapter VI-A

- ▶ u/s.80C – LIC, PPF, School Fees, PF, ELSS, Housing Loan Repayment – Rs.150,000
- ▶ u/s.80D- Mediclaim- 25000 or 50,000 for Senior Citizen
- ▶ u/s.80E- Interest on education loan
- ▶ u/s.80G- Donation
- ▶ u/s.80Q Royalty income of Authors on Book
- ▶ u/s.80TTA Interest on Savings Bank account
- ▶ u/s. 80 TTB Interest on deposits with Post Office, Banks
- ▶ u/s. 80U- in respect of handicapped dependents
- ▶ Not only Tax incentives, but lead to strong financial planning and retirement planning

Eligible Deductions

- ▶ Few Chapter VI-A Deductions are eligible
 - 80CCD(2) – Deduction in respect of Employer’s contribution to NPS
 - 80CCH - Deduction in respect of contribution to Agniveer Corpus Fund
 - 80JJAA - Deduction in respect of employment of new employees
 - 80LA(1A) -in respect of certain incomes of International Financial Services Centre on fulfillment of prescribed conditions

Deductions eligible under NTR

- ▶ Standard Deduction u/s.16(i) of Rs.50,000
 - though no deduction for professional tax
- ▶ Family Pension Income
 - a deduction of Rs. 15,000, or one-third of the family pension, whichever is lower.
- ▶ Interest on Home Loan for Let-Out Property (Section 24b)
 - with no upper limit on the deduction amount.
- ▶ Depreciation in case of Block of Assets as per s.32(1)(i) and (ii) available.
 - However, no allowance for Additional Depreciation u/s.32(1)(iia)

Denial of set off of Loss

- ▶ Set off any loss,
 - Unabsorbed Depreciation if such depreciation is attributable to Addl Depreciation u/s. 32(1)(iia),
 - House Property loss with any other head of income
- ▶ House property Loss or Unabsorbed Additional Depreciation shall be deemed to have been given full effect to and no further deduction for such loss or depreciation
- ▶ Unabsorbed Additional Depreciation, where assessee was in OTR till AY 2023-24 and now in NTR for AY 2024-25, adjustment shall be made to the WDV of such block of assets as on the 1.04.2023

SWITCH BETWEEN THE DEFAULT TAX REGIME AND OLD TAX REGIME

► **Non- business taxpayers**

- can switch between the old and new tax regimes every year at the time of filing tax returns
- ROI to be filed within due date u/s. 139(1)
- Possible to revise tax return u/s.139(5) by switching to NTR

► **In case of assessee having Business income**

- need not be taxable business income. Share of profit exempt u/s.10(2) will also consider business income
- to file Form 10-IEA before the due date of filing the return
 - Return need not be filed by due date
- can only switch once between both the tax regimes excluding when the option was first exercised

AY	Option	Option
2024-25	NTR	OTR
2025-26	OTR	NTR
2026-27	NTR	NTR- Cannot Change to OTR(unless no business income)
2027-28	NTR(can't change unless no business income)	NTR

INSERTION OF NEW RULE 21AGA

- ▶ Relevant to AY 2024-25
- ▶ Opting out from the new tax regime
 - must furnish Form 10-IEA
 - By a person having income under PGBP
 - on or before the due date specified under section 139(1)
 - furnished electronically either under a digital signature or electronic verification code
 - Person not having income under PGBP
 - opt-out from the new tax regime by exercising the option in the return of income to be furnished u/s. 139(1)
- ▶ Re-entering into new tax regime
 - furnishing Form 10-IEA, if has income from business or profession
 - furnishing return of income, if has no income from business or profession, however, for NTR not necessary to file return by due date

WHAT IS FORM 10-IEA?

- ▶ In case of persons having business income- OTR can be opted by electronically filing Form 10IEA
- ▶ By login into the Income tax portal> Select E File>Select relevant Assessment Year>Select Income tax return form>Select tax regime-Old tax regime> Upload and generate Electronic Acknowledgment No.
- ▶ Form 10-IEA to be submitted before the due date of filing of income tax return
- ▶ On receipt of acknowledgement no.,
 - mention this number while filing an ITR
 - it should be preserved, used for tracking the status and referred in future communication.

New vs Old Regime: Break Even Point Analysis

- ▶ For Individuals and HUFs having taxable annual income
- ▶ Upto Rs. 7 Lakhs and above Rs. 5 Crores, respectively
 - Choice of opting new tax regime is beneficial
- ▶ Between 7 Lakhs to Rs. 15.5 Lakhs
 - The figures of available deduction which are required to be claimed in the OTR to break even with the reduced liability in the NTR is tabulated below ;

Income Levels	Deduction Amount	Income tax under Old Regime	Income tax under New Regime
Upto 5,00,000	Nil Tax under both regimes	Nil	Nil
6,00,000	87500	15000	Nil
7,00,000	137500	25000	Nil
8,00,000	187500	35000	35000
9,00,000	237500	45000	45000
10,00,000	262500	60000	60000
11,00,000	287500	75000	75000
12,00,000	312500	90000	90000
13,00,000	312500	110000	110000
14,00,000	341000	130000	130000
15,00,000	375000	150000	150000

OTHER POINTERS

- ▶ Salaried individuals: Opting for OTR
 - will be required to submit their investment declarations forms to their employers at the beginning of the FY only
 - TDS will be deducted at OTR
 - However, can still file as NTR and validly claim TDS
- ▶ Tax Calculator launched by Income tax dept.
 - Assist choosing wisely between the NTR and OTR
 - <https://incometaxindia.gov.in/Pages/tools/115bac-tax-calculator-finance-bill-2023.aspx>

PRESUMPTIVE TAXATION

INTRODUCTION

- ▶ Section 44AD-Small Business/Traders for Turnover upto Rs. 2 Crores
- ▶ Section 44ADA – Professionals - Gross receipts up to Rs. 50 Lakhs
- ▶ Section 44AE - Truck owners owning not more than 10 trucks
- ▶ Section- 44B – Shipping
- ▶ Section 44BB – Exploration etc., of mineral oils.
- ▶ Section 44BBA – Operation of Aircraft
- ▶ Section 44BBB – Civil Construction etc., of certain power projects (in case of foreign companies)
- ▶ Section 44C – Deduction of Head Office Expenses
- ▶ Section 44D & 44DA - Royalty or Fees for technical services (in case of foreign companies and non-residents)
- ▶ Section 44DB – Reorganisation of Co-operative Banks

S. 44AD – SMALL BUSINESS ASSEESSEES - I

- ▶ Eligible Assesseees;
 - Resident Individuals, Resident HUFs and Resident Partnership Firms (not LLPs) engaged in any eligible business
- ▶ Turnover & Gross receipts Upto 2 crore. W.e.f. AY 2024-25, if cash receipts during previous year $\leq 5\%$ of total turnover, turnover upto 3 Crore
- ▶ Chooses to declare his income under Presumptive Scheme
- ▶ Turnover – whether includes GST etc.
- ▶ Eligible Business does not include:
 - Business of Plying, hiring or leasing of goods carriages covered u/s. 44AE
 - Any profession referred to u/s. 44ADA
 - Commission or Brokerage
 - Agency Business

S. 44AD – SMALL BUSINESS ASSESSEES - II

- ▶ Estimated Income
 - 6% of the Turnover received by account payee cheque/ bank draft or ECS before the due date of filing the return of income i.e. 31st July
 - 8% of the turnover not covered above in (a) above.
 - Or as the case may be higher income as claimed to have been earned by the assessee
- ▶ Non-admissibility Of Business Deductions.
 - All deductions u/s. 30 to 38 including depreciation
 - deemed to have been allowed.
- ▶ No Deduction Of Interest And Salary To Partners
 - Up to A.Y. 2016-17 allowed
 - From A.Y. 2017-18 not allowed.
 - If salary and Interest received by partners whether taxable in their hands, though not allowed in firm's hands?
- ▶ Deduction Under Chapter VI-A Allowable
 - Deductions u/s. 80C to 80 U are allowed.

S. 44AD – SMALL BUSINESS ASSEESSEES - III

- ▶ Books of account need not be maintained
 - No Books of Account – No Audit – Basic Records to be maintained – Cash memos/bills, Cash Book – to ascertain the turnover – to ascertain the receipts by cash or any other mode. Opening balances required for future years if the assessee returns to the normal computation provisions; WDV is required for assets
- ▶ Lower income may be declared
 - If lower income declared in subsequent year – not eligible to claim benefit of section 44AD for next five years. If the total income exceeds the basic limit the accounts are to be necessarily audited u.s 44AB.
- ▶ Tax liability and advance tax
 - Tax to be paid at applicable rates. Advance tax to be paid on 15th March in one instalment. If paid fully, no liability us.234C

S. 44ADA - SMALL PROFESSIONALS - I

- ▶ From A.Y 2017-18 onwards
- ▶ Applicability
 - Resident Assessee engaged in profession referred in section 44 AA(1)
 - Gross Receipts during PY do not exceed Rs. 50 Lakhs.
 - Raised to 75 Lakhs provided not more than 5% of gross receipts during PY are in cash
- ▶ For the following professionals referred to u/s 44AA(1):
 - Legal
 - Medical
 - Engineering
 - Architecture
 - Accountancy
 - Technical Consultancy
 - Interior Decoration Other notified Professions:
 - Authorized Representative
 - Film Artist
 - Company Secretary
 - Information Technology

S. 44ADA - SMALL PROFESSIONALS - II

- ▶ Estimated Income
 - 50% of Gross Receipts as professional income
 - Or as the case may be higher income as claimed to have been earned by the assessee
 - Other income including business income if any, to be computed in the normal course.
- ▶ Non-Admissibility Of Business Deductions
 - All deductions u/s. 30 to 38 including depreciation – deemed to have been allowed.
- ▶ No deduction of interest and salary to partners
 - The scheme is silent about the Salary and Interest to partners; It is specifically not allowed in 44AD and allowed in 44AE. If paid whether will be allowed?
 - If not allowed whether can it be taxed in Partners' hands
- ▶ Deduction under chapter VI-A allowable
 - Deductions u/s 80C to 80 U are allowed.

S. 44ADA - SMALL PROFESSIONALS - III

- ▶ Books of account need not be maintained
 - No Books of Account – No Audit – Basic Records to be maintained – Cash memos/bills, Cash Book – to ascertain the turnover – Opening balances required for future years if the assessee returns to the normal computation provisions; w.d.v. is required for assets
- ▶ Lower income may be declared
 - Even if lower income declared in subsequent year, there is no restriction to come back to presumptive taxation in the subsequent years.
- ▶ Tax liability and advance tax
 - Tax to be paid at applicable rates. Advance tax to be paid on 15th March in one instalment.

IMPORTANT ISSUES - I

- ▶ **If an assessee declares his business/professional income in term of Sec. 44AD(1)/44ADA (1), can there be a separate disallowance u/s. 40A(3) for payment exceeding specified limit is made in cash?**
 - No.
 - Section 28 to 43C would not apply if the assessee opts for 44AD/44ADA as the case may be.
 - ITO v. Mark construction [2012] 23 taxmann.com 398/53 SOT 22 (Kol.)

- ▶ **Mr. X engaged in the supply of labour for civil construction has not recorded certain receipts in his books though they are reflected in Form No. 26AS. AO wants to add the entire difference. Is he right ?**
 - No.
 - Only profit @ 8% of such recorded receipts can be added as income.
 - Hamid Khan v. ITO [2014] 49 taxmann.com 219/65 SOT 185 (Jodhpur - Trib.)

IMPORTANT ISSUES -II

- ▶ **After accepting business income declared by the assessee at 8% of sales can the AO make a separate addition u/s. 69C or ask the assessee to prove that expenditure to the extent of 92% was actually incurred?**
 - No,
 - *Nandlal Popli v. Dy. CIT [2016] 71 taxmann.com 246/160 ITD 413 (Chandigarh - Trib.)*
- ▶ **Mr. X declares income on presumptive basis as under. Cash sales Rs. 8,00,000 (8% of Rs. 1 crore) Payment received through banking Channel = Rs. 3,00,000 (6% of Rs. 50L). However, it is found that cash of Rs. 3,00,000 was received in violation of provisions of Sec. 269ST. Is he liable to penalty u'/s. 271 DA ?**
 - Yes, Merely because income is offered to tax at 8% u/s. 44AB assessee cannot avoid liability to penalty u/s. 271DA for violation of Sec. 269ST.

IMPORTANT ISSUES -III

- ▶ **Whether Sec. 43B would be applicable when business income is declared u/s. 44AD ?**
 - Yes, Because though Sec. 44AD overrules Sec. 28 to Sec. 43C, Sec 43B is a Non Obstante clause which over rules all other provisions of the Act. Thus, there could be disallowance of Statutory and Other liabilities referred to in Sec. 43B remaining unpaid till the due date for filing ITR u/s. 139 (1) of the Act.
 - Good Luck Kinetic v. ITO [2015] 58 taxmann.com 267/69 SOT 416 (Panji - Trib.).
- ▶ **Whether TDS provisions are applicable where income is declared on presumptive basis by Individuals and HUFs ?**
 - Yes, If the turnover in business exceeds 1 Cr. or in case of profession Rs. 50 lacs in the immediately preceding financial year.
 - F.A. 2020 has amended the Sec. 44AB w.e.f. A.Y. 2020-21 and removed the reference to the limits specified in Clause (a) and (b) of Sec. 44AB.

IMPORTANT ISSUES -IV

- ▶ **Can an assessee set off brought forward business loss/unabsorbed depreciation against business income declared u/s. 44AD ?**
 - The assessee can set off b/fd. Business Loss against income declared u/s. 44AD.
 - Note that Sec. 44AD does not override Chapter VI of the Act which deals with Set Off and Carry Forward of losses.
 - Unabsorbed Depreciation part of current depreciation and depreciation is deemed to have been allowed in the past. So, no separate deduction

IMPORTANT ISSUES -V

- ▶ **Whether additions can be made (where the assessee has declared income in terms of Sec.44AD) u/s. 68 to 69A, 69B and 69C ?**
 - Yes :
 - Declaration of income on presumptive basis does not mean that the assessee can show savings/investment higher than income declared. He must satisfactorily explain sources of such excess.
 - Replies to issue raised are;
 - **U/s. 68** - Addition cannot be made if books of accounts are not maintained Passbook issued by the bank is not a book of the accounts. Please see, CIT v. Bhaichand N. Gandhi [1982] 11 Taxman 59/[1983] 141 ITR 67 (Bom.)
 - **Sec. 69 to 69C** - If the income declared is sufficient, no addition could be made. Sources of excess investment savings, expenditure should be explained satisfactorily to avoid any addition. Please see, CIT v. Surinder Paul Anand [2010] 192 Taxman 264 (Punj. & Har.)
 - Again, if the excess could be linked up with business receipts, one may contend that only NP rate be applied and should be taxed under the head Business/Profession only and NOT under Other Sources. Please see, ITO v. Seema Khanna [IT Appeal No. 6281 (Delhi) of 2015, dated 31.08.2016.
 - In such case, also the applicability of enhanced rate u/s. 155BBE could also be avoided.

IMPORTANT ISSUES -VI

► **Mr. X a partner in a firm receives interest and remuneration taxable as business income in his hands. Can such partner declare 8 % of such receipts u/s. 44AD r.w.s. 28 (v) ?**

- No.
- Such receipts do not constitute gross receipts (turnover from eligible business) in his hands. Please see, Anandkumar v. Asstt. CIT [2020] 122 taxmann.com 252/[2021] 278 Taxman 342/430 ITR 391 (Mad.)
- This would also mean that such receipts cannot be considered to be turnover/gross receipts for the purpose of Sec. 44AB in the hands of such partner.

The background features a solid light blue area on the right side. On the left, there are several overlapping, semi-transparent geometric shapes in shades of orange and light blue, creating a dynamic, layered effect. The text 'THANK YOU' is centered on the white background on the left side.

THANK
YOU