



CS- Professional *(Module-I)*



Advanced Tax Laws & Practice

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CHAPTER 1: CORPORATE TAX PLANNING AND TAX MANAGEMENT

CONCEPT OF TAX PLANNING

Introduction	Tax planning can be defined as an arrangement of one's financial and business affairs by taking legitimately in full benefit of all deductions, exemptions, allowances and rebates so that tax liability reduces to minimum.
Example	A deposits 45,000 in PPF account so as to reduce his tax payable. This is an example of legitimate tax planning through which tax is reduced.
Tax evasion	Tax evasion means avoiding tax by illegal means. Generally, it involves suppression of facts, falsifying records, fraud or collusion. It is an attempt to evade tax liability with the help of unfair means. Tax evasion is illegal and would result in punishment by way of penalty, fines and sometimes prosecution
Tax Avoidance	Tax avoidance means taking undue advantage of the loopholes, lacunae or drafting mistakes for reducing tax liability and thus avoiding payment of tax which is lawfully payable. Generally, it is done by twisting or interpreting the provisions of law and avoiding payment of tax. Tax avoidance takes into account the loopholes of law. Example: Sale and leaseback of assets, so that the depreciation is diverted but the asset remains with assessee
Tax Planning	Tax planning means reducing tax liability by taking advantage of the legitimate concessions and exemptions provided in the tax law. It involves the process of arranging business operations in such a way that reduces tax liability. Example: Investment in 80C, 80CCD, or reinvestment u/s 54, 54EC etc.
Tax Management	Tax management involves the compliance of law regularly and timely as well as the arrangement of the affairs of the business in such a manner that it reduces the tax liability. Functions under tax management includes maintenance of accounts, filing of return, deduction and deposit of TDS on timely basis, payment of tax on time. Poor tax management can lead to imposition of interest, penalty, prosecution. Losses may not be carried forward and set off if return of loss is not filed by due date. Tax management emphasizes on compliance of legal formalities for minimization of taxes while tax planning emphasis on minimization of tax burden

TAX AVOIDANCE V/S TAX EVASION

Aspect	Tax Evasion	Tax Avoidance	Tax Planning
Meaning	Method of evading or reducing tax liability by dishonest means Methods of tax evasion include - *Concealing of Income; *Overstating Expenses; *Manipulating accounts; *Violating Rules.	Method to reduce or minimize tax liability by exploiting or taking advantages of a loop holes in the law. It does not give rise to any critical offence.	It is the arrangement of financial activities to minimize the tax incidence by making use of all beneficial provisions of the Income Tax Law.
Objective	To reduce tax bill by any means whether legal or illegal	To reduce tax bill following script but not moral of law	To reduce tax bill following script & moral of law
Effect	Result of illegality, suppression, misrepresentation and fraud.	Result of actions none of which is illegal or forbidden either singly or in any combination.	Result of availing the benefits under various beneficial provisions of Law.
Legality	Illegal	Technically Legal	Legal
Permissibility	Note Permissible	Decided on the basis of - a) Facts and circumstances of each case; and b) General principles of conscience and justice.	Legally permissible under all circumstances.
Violation of Law.	Involves blatant violation of law.	No violation of laws. Loop holes in law are taken advantage of by circumventing certain provisions.	No violation or circumvention of the provisions of tax laws.
Penalties	Heavy penalty including prosecution.	Does not invite any penalty	No Penalties.
Benefit	No benefit arises but	Benefit arises in short	Benefit arises in short run as

	causes penalty and prosecution	run but not in long run	well as in long run
Requirement	It is forbidden	It is to be avoided	It is valid
Practice	It is a practice of tax concealment	It is a practice of tax saving	It is a practice of tax saving

OBJECTIVES OF TAX PLANNING

1	<p><u>Reduction of tax liability:</u> One of the supreme objectives of tax planning is the reduction of the tax liability of the taxpayer and the resultant saving of the earnings for a better enjoyment of the fruits of the hard labour. By proper tax planning, a taxpayer can oblige the administrators of the taxation laws to keep their hands off from his earnings.</p>
2	<p><u>Minimization of litigation:</u> Where a proper tax planning is resorted to by the taxpayer in conformity with the provisions of the taxation laws, the chances of unscrupulous litigation are certainly to be minimized and the tax-payer may be saved from the hardships and inconveniences caused by the unnecessary litigations which more often than not even knock the doors of the supreme judiciary.</p>
3	<p><u>Productive investment:</u> The planning is a measure of awareness of the taxpayer to the intricacies of the taxation laws and it is the economic consciousness of the income-earner to find out the ways and means of productive investment of the earnings which would go a long way to minimize his tax burden. The taxation laws offer large avenues for the productive investment of the earnings granting absolute or substantial relief from taxation. A taxpayer has to be constantly aware of such legal avenues as are designed to open floodgates of his well-being, prosperity and happiness. When earnings are invested in the avenues recognised by law, they are not only relieved of the brunt of taxation but they also converted into means of further earnings.</p>
4	<p><u>Healthy growth of economy:</u> The saving of earnings is the only basement upon which the economic structure of human life is founded. A saving of earnings by legally sanctioned devices is the prime factor for the healthy growth of the economy of a nation and its people. An income saved and wealth accumulated in violation of law are the scours on the economy of the people. Generation of black money darkens the horizons of national economy and leads the nation to avoidable economic destruction. In the suffocating atmosphere of black money,</p>

a nation sinks with its people. But tax planning is the generator of a superbly white economy where the nation awakens in the atmosphere of peace and prosperity, a phenomenon undreamt of otherwise.

- 5** **Economic stability:** Under tax planning, taxes legally due are paid without any headache either to the taxpayer or to the tax collector. Avenues of productive investments are largely availed of by the taxpayers. Productive investments increase contours of the national economy embracing in itself the economic prosperity of not only the taxpayers but also of those who earn the income not chargeable to tax. The planning thereby creates economic stability of the nation and its people by even distribution of economic

IMPORTANCE OF TAX PLANNING

Tax planning is important for reducing the tax liability. However, there are other factors also, because of which tax planning is considered as very important:

- | | |
|----------|--|
| 1 | <u>Timing is crucial for claiming deductions:</u>
Where an assessee has not claimed all the deductions and relief, before the assessment is completed, he is not allowed to claim them at the time of appeal. It was held in <i>CIT v. Gurjargravures Ltd.</i> (1972) 84 ITR 723 that if there is no tax planning and there are lapses on the part of the assessee, the benefit would be the least |
| 2 | <u>Tax planning exercise is more reliable:</u>
Tax planning exercise is more reliable since the Companies Act, 2013 and other allied laws narrow down the scope for tax evasion and tax avoidance techniques, driving a taxpayer to a situation where he will be subjected to severe penal consequences. |
| 3 | <u>Incentives by Government to promote activities of public interest:</u>
Presently, companies are supposed to promote those activities and programmes, which are of public interest and good for a civilised society. In order to encourage these, the Government has provided them with incentives in the tax laws. Hence a planner has to be well versed with the law concerning incentives |
| 4 | <u>Adequate time for tax planning:</u>
With increase in profits, the quantum of corporate tax also increases and it necessitates the devotion of adequate time on tax planning. |
| 5 | <u>Enables to bear burden of taxes during inflation:</u>
Tax planning enables a company to bear the burden of both direct and indirect taxation during inflation. It enables companies to make proper expense planning, capital budget planning, sales promotion planning etc. |
| 6 | <u>Capital formation attracts huge deduction:</u>
Capital formation helps in replacing the technologically obsolete and outdated plant and machinery and enables the carrying on of manufacturing operation with a new and more |

sophisticated system. Any decision of this kind would involve huge capital expenditure which is financed generally by ploughing back the profits, utilisation of reserves and surplus along with the availing of deductions are revenue expenditure incurred for undertaking modernisation, replacement, repairs and renewal of plant and machinery etc. Availability of accumulated profits, reserves and surpluses and claiming such expenses as revenue expenditure are possible through proper implementation of tax planning techniques.

7 Money saved is money earned:

In these days of credit squeeze and dear money conditions, even a rupee of tax decently saved may be taken as an interest free loan from the Government which perhaps an assessee need not repay.

PRACTICAL QUESTIONS**Illustration 1**

Specify with brief reasons, whether the following acts can be considered as (i) Tax Management, or (ii) Tax Planning, or (iii) Tax Evasion.

Question	Reason	Answer
(a) P deposits Rs. 50,000 in PPF Account so as to reduce Total Income from Rs. 3,40,000 to Rs. 2,90,000	Tax Planning	Reducing liability by use of beneficial provisions of law
(b) PQR Industries Ltd installed an Air Conditioner costing Rs. 75,000 at the Residence of a director as per terms of his appointment, but treats it as fitted in Quality Control Section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation	Tax Evasion	Reducing tax liability by dishonest means.
(c) SQL Ltd maintains a register of Tax Deduction at Source effected by it to enable timely compliance.	Tax Management	Objective is to ensure comply with law
(d) R Ltd. issues a Credit Note for Rs. 40,000 for brokerage payable to Suresh, who is son of R, Managing Director of the Company. The purpose of this is to increase him Income from Rs. 1,40,000 to Rs. 1,80,000 and reduce its Income correspondingly.	Tax evasion	Making use of Loopholes in the Provisions of Law.

Illustration 2

Specify with brief reasons, whether the following acts can be considered as (i) Tax Management, or (ii) Tax Planning, or (iii) Tax Evasion.

Solution

Question	Reason	Answer
(1) An Individual Taxpayer making Tax Saver Deposit of Rs. 1,00,000 in a Nationalized Bank	Tax Planning	Reducing liability by use of beneficial provisions of law.
(2) A Partnership Firm obtaining declaration from Lenders / Depositors Form No. 15G/15H and forwarding the same to Income-Tax Authorities.	Tax Management	Objective is to insure comply with law

(3) A company installed an Air-Conditioner Cost Rs. 75,000 at the residence of a Director as per terms of his appointment but treats it as fitted in Quality Control Section in the Factory. This is with the objective to treat it as plant of the purpose of computing depreciation	Tax Evasion	Reducing tax liability by dishonest means
(4) RR Ltd Issued Credit Note for Rs. 80,000 as Brokerage payable to Mr. Ramana who is the son of the Managing Director of the company. The purpose is to increase the Total Income of Mr. Ramana from Rs. 4,00,000 to Rs. 4,80,000 and reduce the income of RR Ltd correspondingly.	Tax Evasion	Making use of Loopholes in the Provisions of Law
(5) A company remitted Provident Fund Contribution of Both its own Contribution and employees contribution on monthly basis before due date	Tax Management	Objective is to insure comply with law

DIVERSION OF INCOME AND APPLICATION

1	Diversion of income	When income is diverted before it accrues to the assessee due to overriding title then it is called diversion of income. It is not taxable in the hands of assessee.
2	Application of income	When income is applied after it accrues to the assessee due to overriding title then it is called application of income. It is taxable in the hands of assessee.
3	Example	<p>1. An employee instructs his employer to pay a certain portion of his salary to a charity and claims it as exempt as it is diverted by overriding charge/title</p> <p>In the above case income is not diverted because the instruction given by the employee to employer is not having overriding title. Further here income is first accrued to assessee then applied. Hence it is called application of income and taxable in hands of assessee.</p> <p>2. A, B and C are co-authors. Entire royalty of Rs.900000 was received by A, Who in turn paid Rs.300000 each to B and C. Such a payment is diversion of income.</p>

ESSENTIALS OF TAX PLANNING**Successful tax planning techniques should have following attributes/requisites:**

1	<u>Upto date knowledge of tax laws:</u> It should be based on upto date knowledge of tax laws. Also, assessee must be aware of judgements of the courts. In addition, one must keep track of the circulars, notifications, clarifications and administrative instructions issued by the CBDT from time to time
2	<u>Disclosure and furnishing of information to Income-tax department:</u> The disclosure of all material information and furnishing the same to the income tax department is an absolute prerequisite of tax planning as concealment in any form would attract the penalty clauses - the penalty often ranging from 100% to 300% of tax sought to be evaded.
3	<u>Planning to be within the framework of law:</u> Whatever is planned should not only satisfy the requirements of legal provisions as stated but should also be within the framework of law. It means that the use of sham transactions and colourable devices, which are entered into just with a view to circumvent the legal provisions, must be avoided. A genuine tax planning device, aimed at carrying out the rules of law and courts' decisions and to overcome heavy burden of taxation, is fully valid

TYPES OF TAX PLANNING

The tax planning exercise ranges from devising a model for specific transaction as well as for systematic corporate planning. These are

Short range and long range tax planning	a	Short range planning refers to year to year planning to achieve some specific or limited objective. For example, an individual assessee whose income is likely to register unusual growth in particular year as compared to the preceding year, may plan to subscribe to the PPF/NSC's within the prescribed limits in order to enjoy substantive tax relief. By investing in such a way, he is not making permanent commitment but is substantially saving in the tax. It is one of the examples of short range planning.
	b	Long range planning involves charting out a plan at the beginning of the income year to be followed around the
	c	year. This type of planning may not benefit immediately as in case of short term tax planning but it is likely to help in long run. For example, when an assessee transfers his equity shares to his minor son, he knows that the income from the shares will be clubbed with his own income. But clubbing would also cease after minor attains majority. Also if bonus shares are issued by the company, income from such bonus shares

		shall not be taxable in hands of assessee (i.e. transferor).
Permissive tax planning		It involves making plans which are permissible under different provisions of tax laws. Tax laws of our country offer many exemptions and incentives. Planning to take advantage different tax concessions and incentives and deductions etc
Purposive tax planning		It involves making plans with specific purpose to ensure the availability of maximum benefits to the assessee
	a	Through correct selection of investment
	b	Making suitable plan for replacement of assets
	c	Varying the residential status
	d	Diversifying business activities and incomes etc.
<p>It is based on the measures which circumvent the law. The permissive tax planning has the express sanction of the Statute while the purposive tax planning does not carry such sanction. For example, under Section 60 to 65 of the Act, the income of the other persons is clubbed in the income of the assessee. If the assessee is in a position to plan in such a way that these provisions do not get attracted, such a plan would work in favour of the tax payer because it would increase his disposable resources. Such a tax plan would be termed as 'Purposive tax planning'</p>		

AREAS OF CORPORATE TAX PLANNING

TAX PLANNING BASED ON NATURE OF ORGANISATION

Organizational Forms - Individual, HUF, Firm and Company


Particulars	Individuals	HUF	Firm	Company
Basic exemption	Rs. 2,50,000 / Rs. 3,00,000 / Rs. 5,00,000 depending on age of Assessee	Rs. 2,50,000	No Basic Exemption	No Basic Exemption
Rate of tax	Slab Rate of Tax, refer Chapter 1	Slab rate of tax. Refer chapter 1	Fixed rate of tax. 30%	Fixed rate of tax. Domestic Co. 30%, foreign Co. 40%
Aggregation of Agri. Income	Applicable	Applicable	Not Applicable	Not Applicable
Heads of Income	All heads	Except salaries	Except salaries	Except salaries
Interest on capital	Personal nature. Not allowable	Personal nature. Not allowable	Allowable subject to Sec. 40(b)	Not applicable. But dividends subject to dividend distribution tax
Remuneration	Properties salary. Personal nature. Not allowable	Karta entitled for Remuneration, subject to 40A(2).	Remuneration to partners subject to Section 40(b)	Directors Remn. Subject to section 40A(2)
Restriction as to payment to relative	Restrictions Applicable	Restrictions Applicable	Restrictions Applicable	Restrictions Applicable
Share of Income	Income taxable in the Capacity of Individual	Share income of a member exempt u/s 10(2).	Share income of a partner exempt u/s 10(2A)	Dividend exempt in shareholders hands u/s 10(34)

LOCATION OF BUSINESS

Tax planning is relevant from location point of view. There are certain locations which are given special tax treatment. Some of these are as under:

1	<u>Newly established undertaking in free trade zones etc.:</u> Full exemption under Section 10A is available in the case of a newly established Industrial undertaking in free trade zones, etc. (not allowed w.e.f. AY 2012-13).
2	<u>Newly established units in SEZ:</u> Full exemption under Section 10AA for initial five years, 100% for subsequent five years and further deduction of 50% for a further period of five years in case of a newly established units in SEZ on or after 1.4.2005.
3	<u>Newly established 100% EOU:</u> Full exemption under Section 10B for 10 years in the case of a newly established 100% export-oriented undertaking. (Not allowed w.e.f. AY 2012-13).
4	<u>Developer of SEZ:</u> Deduction under Section 80-IAB in respect of profits and gains by an undertaking or an enterprise engaged in the development of SEZ.
5	<u>Industrial undertaking in industrially backward state or district:</u> Deduction under Section 80-IB is allowed in the case of a newly set up industrial undertaking in an industrially backward State or district
6	<u>Industrial undertaking in certain special category States:</u> Deduction under Section 80-IC is available in case of newly set up industrial undertaking or substantial expansion of an existing undertaking in certain special category States
7	<u>Hotels and convention centres in specified area:</u> Deduction under Section 80-ID is allowed in respect of profits and gains from business of hotels and convention centres in specified area or a hotel at world heritage sites
8	<u>North-eastern States:</u> Deduction under Section 80-IE is allowed in respect of certain undertakings in North-Eastern States

TAX PLANNING WITH REFERENCE LOCATION & NATURE OF A BUSINESS**SPECIAL PROVISIONS IN RESPECT OF NEWLY ESTABLISHED UNITS IN SPECIAL ECONOMIC ZONES**

A)	<p>General</p> <p>According to this section deduction of profit & gains derived from export of articles / things / services shall be allowed from the total income of the assessee.</p> 
B)	<p>Who is eligible for deduction?</p> <p>Deduction u/s. 10AA is available to all assessee. Provided such undertaking is engaged in the export of article or things or providing any service.</p>
C)	<p>Essential condition to claim deduction.</p> <p>The unit in SEZ begins to mfg. or produces articles or things or provide services on or after 1/4/2005 but before 31/3/2021</p>
2)	<p>It is not formed by splitting up or reconstruction of a business already in existence. But if new undertaking is set up in an old building deduction is allowed.</p> <p>Exception:</p> <p>The condition will not apply where the business is re-established, reconstructed or revived by the same assessee after the business of any undertaking carried out on by him in India is discontinued due to extensive damage to, or destruction of any building, machinery, plant or furniture owned by the assessee as a direct result of flood, typhoon, cyclone, earthquake, civil disturbance etc.</p>
3)	<p>Such new undertaking should not be formed by machinery or plant previously used for any purpose subject to following exception.</p> <p>i) Machinery or plant used outside India but not by the assessee is allowed Provided.</p> <ul style="list-style-type: none"> * Such machinery was not previously in India * Such machinery or plant is imported into India * No deduction on account of depreciation has been allowed to any assessee before the installation of the machinery or plant by the assessee <p>ii) Total value of plant or machinery transferred to new business does not exceed 20% of the total value of the machinery or plant used in that business.</p>

4)	The assessee has exported goods or provided services out of India from the SEZ.
5)	Books of account of the tax payer should be audited. The assessee should submit audit report in Form No 56F along with the return of income.
6)	<p><u>Amount of deduction</u></p> $\frac{\text{Profits of the business} \times \text{Export turnover of Undertaking}}{\text{Total turnover of the business carried on by the undertaking.}}$ <p>"Export Turnover" means the consideration received in, or brought into India by the assessee in convertible foreign exchange within 6 months from the end of the PY or such time as may be extended by the RBI, but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India".</p>
7)	<p><u>Period for which deduction is available</u></p> <p>For first 5 years - 100% of profit derived from the export business Next 5 years - 50% of profit derived from the export business Next 5 years - 50% of profit derived from the export business or amount transferred to reserve whichever is less subjects to following conditions: An equivalent amount is debited to the profit & loss a/c. of P.Y. & credited to SEZ reinvestment allowance reserve account/special reserve account. Such reserve to be utilized for</p> <p><u>Acquiring new Plant & Machinery</u></p> <p>Such plant & machinery should be put to use before the expiry of 3 years. From the end of the year in which the special reserve a/c. was created. Until the acquisition of new plant & machinery the special reserve a/c can be utilized for business purpose other than payment of dividend and creating asset outside India, remittance outside India as a profit.</p>
8)	<p><u>Withdrawal of deduction</u></p> <p>Sub-sec (1C): Where any amount credited to SEZRAA: -</p> <p>(a) Has been mis utilized, the amount so utilized shall be deemed to be the profits in the year in which it was so utilized, or</p> <p>(b) Has not been utilized before the expiry of 3 years, the amount not so utilized, shall be deemed to be the profits in the year immediately following the period of 3 years.</p>
9)	<p><u>Carry forward of losses</u></p> <p>Loss referred to u/s 72 or 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.</p> <p>Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in section 35AD, for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business</p>

for the same or any other assessment year.

SECTION 80-IAB: DEDUCTION IN RESPECT OF PROFITS AND GAINS BY AN UNDERTAKING OR ENTERPRISE ENGAGED IN DEVELOPMENT OF SPECIAL ECONOMIC ZONE

a	Applicable to all assessee
b	The taxpayer is a Developer of Special Economic Zone
c	The Gross Total income includes Profit from business of developing SEZ
d	SEZ is notified after 1-4-2005

Amount of Deduction:

100% deduction for 10 out of 15 years beginning with the year when the SEZ was notified by the Govt

PROFITS AND GAINS FROM BUSINESS OF HOTELS AND CONVENTION CENTERS IN SPECIFIED AREA SEC 80ID

Assessee: Any undertaking, engaged in the business of hotel (2,3, or 4 star) located in the specified district having a world heritage site, if such hotel is constructed and has started or starts functioning at any time during the period 1-4-2008 to 31-3-2013.

Deduction = 100% of the profit and gains derived from such business for 5 consecutive AYS beginning from initial assessment year.

CERTAIN UNDERTAKINGS IN NORTH – EASTERN STATES SEC. 80IE

Assessee: Any undertaking which has, during the period 1/4/2007 to 31/3/2017, begun or beings, in any of the North-Eastern States

1	To manufacture or produce any eligible article or thing
2	To undertake substantial expansion to manufacturer or produce any eligible article or thing
3	To carry on any eligible business.

Deduction = 100% of the profits and gains derived from such business for 10 consecutive AYS commencing with the initial assessment year

For the purpose of this section

1	“North-Eastern States” means the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura
2	“Substantial expansion” means increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year),

	as on the first day of the previous year in which the substantial expansion is undertaken;
3	"Eligible article or thing" means the article or thing other than the following:
a	Goods falling under chapter 24 of the first schedule to the CETA 1985 which pertains to Tobacco and manufactured tobacco substitutes;
b	Pan masala as covered under chapter 21 of the first schedule to the CETA 1985
c	Plastic carry bags of less than 20 microns; and
d	Goods falling under chapter 27 of the first scheduled to the CETA 1985, produced by petroleum oil or gas refineries
4	"Eligible business" means the business of
a	Hotel (not below two star category);
b	Adventure and leisure sports including ropeways
c	Providing medical and health services in the nature of nursing home with a minimum capacity of twenty-five beds
d	Running an old-age home
e	Operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medicine, civil aviation related training, fashion designing and industrial training
f	Running information technology related training centre
g	Manufacturing of information technology hardware; and
h	Bio - technology

TAX PLANNING BASED ON NATURE OF BUSINESS

1	Tea Development Account, Coffee Development Account and Rubber Development Account [Section 33AB];
2	Site Restoration fund [Section 33ABA];
3	Specified business eligible for deduction of Capital Expenditure [Section 35AD];
4	Amortization of certain preliminary expenses [Section 35D];
5	Expenditure on prospecting for certain minerals [Section 35E]
6	Special reserve created by a financial corporation under Section 36(1)(viii)
7	Special provisions for deduction in the case of business for prospecting for mineral oil [Section 42 and 44BB];
8	Special provisions for computing profits and gains of business on presumptive basis [Section 44AD];
9	Special provisions in the case of business of plying, hiring or leasing goods carriages [Section 44AE];
10	Special provisions in the case of shipping business in the case of non-residents [Section

	44B];
11	Special provisions in the case of business of operation of aircraft [Section 44BBA];
12	Special provisions in the case of certain turnkey power projects [Section 44BBB];
13	Special provisions in the case of royalty income of foreign companies [Section 44D];
14	Special provisions in case of royalty income of non-residents [Section 44DA];
15	Certain income of offshore banking units and International financial service centre [Section 80-LA];
16	Profits and gains of industrial undertakings or enterprises engaged in Infrastructure development etc.[Section 80-IA].
17	Profits and gains of an undertaking or an enterprise engaged in development of SEZ [Section 80-IAB];
18	Profits and gains from certain industrial undertaking other than infrastructure development [Section80-IB];
19	Special provisions in respect of certain undertakings or enterprises in certain category States [Section 80-IC];
20	Deduction in respect of profits and gains from business of hotels and convention centres in specified area or a hotel at world heritage site [Section 80-ID].
21	Special provisions in respect of certain undertakings in North-Eastern States. [Section 80-IE];
22	Profits and gains from the business of collecting and processing of bio-degradable waste [Section80JJA
23	Employment of new workmen [Section 80JJAA]
24	Special tax rates under Section 115A, 115AB, 115AC, 115AD, 115B, 115BB, 115BBD, 115BA and 115D

TAX PLANNING WITH RESPECT TO CORPORATE RESTRU

The following suggestions could be useful for tax planning in respect of amalgamation, merger, demerger etc

1	Planning to carry forward and set off of unabsorbed losses an unabsorbed depreciation: Since the unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward or set off in the hands of the amalgamated company, except in the cases prescribed under section 72A of the Act, it is suggested
a	That the scheme of the amalgamation can be put off till such time the full benefit of set off is availed of by the amalgamating company; and
b	That the loss carrying company should absorbed or take over the business of profit making company. In other words, the profit making company should merge itself with

	the loss incurring company. This would help in carrying forward the benefits of all unabsorbed losses and depreciation for set off against the profits derived from the business of the profit making company
2	<p><u>Allow ability of bad debts in amalgamation scenario:</u> To save from disallowance of the debts of the amalgamating company, company which subsequently become bad in the hands of the amalgamated company, the amalgamated company should plan to make suitable provision for the expected losses on account of bad debts at the time of fixing the consideration while taking over business of the amalgamated company,</p> <p>However, in view of the Court judgment of CIT v. T. Veerbhadra Rao (1985) 22 Taxman 45, the bad debts are not allowed to an assessee by of personal relief but to a business. So, it is possible for the amalgamated company to claimed bad debts even in respects of debts taken over from the amalgamating company</p>
3	<p><u>Amalgamation of a unlisted company with a listed company:</u> A company whose shares are not quoted on a recognised stock exchange may avail the benefit to amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help is shareholders to take the advantage of the quote price of their shares in the stock exchange while determining their liability for wealth tax purpose</p>
4	<p><u>Amalgamation of a company holding immovable properties with an Industrial company:</u> A company holding investments in immovable properties may avail the benefit of non-applicability of the provisions of the Urban Land Ceiling Act by amalgamating itself with an Industrial company</p>
5	<p><u>Amalgamation of loss incurring company and profit making company to reduce tax incidence:</u> A loss incurring company and a profit making company may merge in order to reduce the overall incidence of liabilities of tax under the Income-tax Act, 1961</p>
6	<p><u>Reverse merge:</u> In case the conditions provided under section 2(1B) and 72A of the Act are not satisfied, it may be suggested that the profit making company should merge itself with the loss making company, so that the loss making company does not lose its existence and also enjoys all other benefits</p>
7	<p><u>Reduction of dissenting shareholders to complete amalgamation:</u> Under Section 2(1B) of the Act, it is provided that for availing the benefits of amalgamation, atleast 75% of the shareholders of the amalgamating company should become shareholders of the amalgamated company. In case more than 25% of the shareholders are not willing to become shareholders of the amalgamated company, it is proposed that the amalgamating company may persuade the other shareholders who may be willing, to purchase the shares in the amalgamated company to acquire the shares of the remaining shareholders so that the percentage of dissenting shareholders does not exceed 25%. Alternatively, the amalgamated company prior to amalgamation may purchase shares for such dissenting shareholders to go below the</p>

specified percentage of 25%

WHAT ARE THE TAX IMPLICATIONS IN CASE OF AMALGAMATION OR DEMERGER OF UNDERTAKINGS?

Ans: The following table exhibits tax implications in case of amalgamation / demerger of undertakings:

Section	Provisions applicable on fulfilment of conditions specified under respective sections in respect of :	Whether provision applies in case of :	
		Amalgamation	Demerger
35	Transfer scientific research asset in course of amalgamation: The provisions continue to apply to amalgamated company.	Yes	NA
35AAB	Transfer of telecommunication license: Expenditure can be carried forward and claimed by successor company.	Yes	Yes
35D	Preliminary Expenses can be carried forward and claimed by successor company.	Yes	Yes
35DD	Expenditure on amalgamation or demerger is allowable in 5 equal annual instalments.	Yes	Yes
35DDA	Expenditure on Voluntary Retirement Scheme can be carried forward and claimed by successor company.	Yes	Yes
35E	Expenditure on prospecting etc. for mineral can be carried forward and claimed.	Yes	Yes
36(1)(ix)	Transfer of asset purchased for family planning in course of amalgamation: The provisions continue to apply to amalgamated company.	Yes	NA
41(1)	Subsequent receipt of an already claimed deduction is taxable in hands of successor.	Yes	Yes
42	Deduction in respect of business of prospecting etc. of mineral oil can be carried forward and claimed by successor company.	Yes	Yes
43(1)	Actual cost of transferor is actual cost to transferee company.	Yes	Yes
43(6)	WDV of block of assets in hands of transferor is WDV in hands of transferee company.	Yes	Yes

43C	Special provision for computation of cost of capital asset transferred by amalgamating company as stock-in-trade.	Yes	Yes
47	Transfer of capital assets by transferor company to transferee company is exempt. Transfer by shareholder of shares in amalgamating company to amalgamated company is exempt. Similarly, transfer or issue of shares by resulting company to shareholders of demerged company does not entail capital gains tax liability.	Yes	Yes
72A	Unabsorbed business losses and unabsorbed depreciation of transferor company are allowed in hands of transferee company.	Yes	Yes
79	Provisions relating to set off and carry forward or losses in case of private companies are relaxed in case of amalgamation and demerger.	Yes	Yes
801B-80IE & 10AA	Deduction is available in case the transferor company transfers the undertaking, which is eligible for deduction, to the transferee company in course of amalgamation or demerger.	Yes	Yes

TAX PLANNING WITH REGARD TO FINANCIAL MANAGEMENT DECISIONS

CAPITAL STRUCTURE

Importance in selection of capital structure: Before setting up a new project, an important decision about the type of capital structure has to be taken. While selecting a particular capital structure, the entrepreneur has to keep in view the following considerations

- | | |
|---|--|
| a | Serving the capital base with consistent dividend policy |
| b | Cost of capital to be raised from the market |
| c | Chargeability or otherwise of taxes, i.e., direct and indirect taxes |
| d | Keeping a margin for ploughing back of profits for future plan towards diversification, expansion, modernisation and other development aspects |

Means of financing: Generally, the following means of finance are available for new projects

- | | |
|---|---|
| a | Equity share capital |
| b | Debentures / Loans and borrowings / Lease Finance |

Capital mix: A capital structure is said to be optimum when it has a mix of deb: equity that will yield the lowest weighted average cost of capital. At the same time capital mix should not have high

debt equity ratio. A high debt/equity ratio has its advantages and disadvantages

Illustration 3

2014- DEC-1 (a) Virat Ltd. is widely held company. it is currently considering a major expansion of its production Facilities and the following alternatives are available:

Particulars	Alt-1	Alt-2	Alt-3
Share capital	50,00,000	20,00,000	10,00,000
14% debenture	-	20,00,000	15,00,000
18% loan from bank	-	10,00,000	25,00,000

Expected rate of return before tax is 30%. Rate of dividend of the company since 1995 has not been less than 22% and date of dividend declaration' is 30th June every year. Which alternative should the company opt with reference to tax planning? (5 marks)

Solution

Analysis of Financing Options for expansion of Virat Ltd. .

Analysis of Financing Options for X Ltd.

Particulars	Amount in		
	Option 1	Option 2	Option 3
Share Capital			
14% Debentures			
Bank Loan@18%			
Total Capital			
PBIT (Expected Rate of Return @ 30% of total Capital)			
Less: Interest on debenture @ 14%			
Less: Interest on bank loan @ 18%			
Profit Before Tax			
Tax @ 31.2% on PBT			
Net Profit After Tax			
Rate of Return in %			
(Net profit/Share Capital)			

Since, Alternative 3 offers the maximum rate of return, with reference to tax planning company should opt it.

Illustration 4

2017- JUNE [2] (c) Ravi Glass Ltd., a widely held company is considering for major expansion of its activities for which an additional investment of 3 Crores is required. The company has following three options/alternatives for the financing of proposed additional investment of 3 crores:

- i) ' By issue of Equity shares and raise the equity share capital only:
- ii) 2 crores from issue of Equity shares and 1 crore by issue of 15% debentures. .
- iii) 1 crore from issue of Equity shares, 1 crore from issue of 15% debentures and remaining 1 crore by taking a bank loan on interest payable at 15% p.a..

The expected rate of return on the new investment has been worked out at 30%. The corporate rate of tax for the time being on the income is 31.2%. Company has proposed to declare the total net profits as dividend

You are required to suggest the company which is the best alternative to be undertaken for the purpose of proposed investment. Assume that no other taxes are being payable/to be charged on the distributed profits. (5 marks)

Solution

Particulars	Amount in		
	Option 1	Option 2	Option 3
Share Capital			
15% Debentures			
Debt 15%			
Total Capital			
PBIT (Expected Rate of Return @ 30% of total Capital employed)			
Less: Interest on debenture @ 15%			
Less: Interest on bank loan @ 15%			
Profit Before Tax			
Tax @ 31.2% on PBT			
Net Profit After Tax			
Expected Rate of Return to Share Holders			

Conclusion: The company is paying its entire net profit as dividend and the rate of return on equity is highest in the case of third alternative. Therefore, the company should opt for the third alternative.

TAX PLANNING WITH REFERENCE TO SPECIFIC MANAGEMENT DECISIONS**LEASE OR BUY DECISIONS**

In recent years, leasing has become a popular source of financing in India. From the lessee's point of view, leasing has the attraction of eliminating immediate cash outflow, and the lease rentals can be claimed as admissible expenditure against the business income. On the other hand, buying has the advantages of depreciation allowance interest on borrowed capital being tax-deductible. Thus, an evaluation of the two alternatives is to be made in order to take a decision.

Disadvantages of lease finance; before opting for a lease decision one has to keep in mind the following disadvantages

1	Leased assets are not owned assets and therefore, the asset cover to equity comes down due to increased dependence on lease finance
2	Financial ratios are also distorted due to greater dependence on lease finance
3	Lease rent payments are made out of working capital funds which means that fixed assets are financed out of short-term funds
4	The asset taken on lease is taken back by the lessor at the expiry of lease period. Thus, he will be bothered about finding alternative asset at the expiry of lease period

MAKE OR BUY DECISION

The leasing or buying decision is taken only when it is finalised that a particular asset is to be acquired. In most of the industries, the conception of establishing a new project itself involves acquisition of fixed assets. In assembling industry different components are assembled to make a product. Now a decision regarding the manufacturing of these components is to be taken. It is decided whether the product/part/ component of product should be bought from the market or should be manufactured by having necessary manufacturing facilities. The main consideration affecting such a decision is cost. In a make or buy decision, the variable cost of making the product or part /component of product is compared with its purchase price prevailing in the market.

Where the manufacturing of the product requires additional fixed cost also: Since; in this case, the assessee will have to incur the additional fixed cost it will form part of the cost of manufacturing of the product.

Illustration 5

What are tax benefits available, where the asset is acquired on lease or purchase by own fund.

Solution**Purchase vs. lease**

- (1) In case of purchase, depreciation is allowed under section 32, while depreciation will not be allowed u/s 32 in case of lease. This principal has also been upheld by the Hon. Supreme Court in the case of ICDS Ltd. Vs CIT (2013) 350 ITR 527,
- (2) In case of Lease, revenue expenditure i.e., lease rent will be allowed as deduction u/s 37(1). Repairs are also allowable under section 31.
In case of purchase, insurance premium, current repairs are allowed as deduction u/s 31. Further, interest on borrowed funds is deductible under section 36.
- (3) Purchase of machinery would create a tangible asset which can also be mortgage in the hours of need. While it is not so in case of Lease.

Illustration 6

2015-dec-1 (B) From the following information, advice as to which shall be a better option, i.e., repair or replacement of machine:

- The cost of repair is 90,000 and the machine will work for 4 years.
- An expenditure of shall be incurred on the purchase of new machine and the scrap value of machine after 10 years would be 72,000.
- On purchase of new machine the production will increase and the profit of the organization will increase from* to 1500,000 per year.
- Rate of interest is 15% (on purchase). -
- The old machine can be sold at present for 1.5 Lakhs and after 4 years it would be sold for 30,000
- The rate of income-tax is 31.2% and no surcharge is payable. Health and Education cess is applicable as per rules. (5 marks)

Solution

- 1) Annual Repairing expenses = $90,000/4 = 22,500$
- 2) Depreciation on new machinery = $(\text{Cost} - \text{Scrap value})/\text{Life of asset}$
 $= (18,00,000 - 72,000)/10$
 $=$
- 3) Depreciation on old machinery = $(\text{Present value} - \text{Sale value}) \text{ Balance life.}$
 $= (1,50,000 - 30,000) /4$
 $=$

Comparative Statement Showing After Tax Profit From Different Alternatives

Particulars	Repair amount	Replacement amount
Annual Repairing expenses (Note 1)		
Depreciation on new machine (Note 2)		
Interest on 18,00,000 @ 15% p.a		
Depreciation on old machine (Note 3)		
Total Expenses		
Expected Profit		
Less: Total Expenses		
Net profit before tax		
Less: Income Tax @ 31.2%		
(Tax @ 30% + Health & Edu. cess @ 4%)		
Profit After Tax		

It is better to replace old machinery with a new one.

Illustration 7

XYZ Ltd, needs a component in an assembly operation. It is contemplating the proposal to either make or buy the aforesaid component.

1. If the company decides to make the product itself, then it would need to buy a second hand machine for Rs. 8 lakh which would be used for 5 years, manufacturing costs in each of the five years would be. Rs. 12 lakh, Rs. 14 lakh, Rs. 16 lakh, Rs. 20 lakh and Rs. 25 lakh respectively. The relevant depreciation rate is 15 per cent. The machine would be sold for Rs. 1 lakh at the beginning of the sixth year.
2. If the company decides to buy the component from a supplier the component would cost Rs. 18 lakh, Rs. 20 lakh, Rs. 22 lakh, Rs. 28 lakh and Rs. 34 lakh respectively in each of the five year.

The relevant discounting rate and tax rate are 14 per cent and 32.445% per cent respectively. Additional depreciation is not available. Should XYZ Ltd. Make the component or buy from outside?

Solution

Alternate 1: Make the component

Year	Depreciation Rs.	WDV Rs.
1		
2		
3		
4		
5		

Computation of short - term capital loss

	Rs
Sales consideration	
Less: Cost of acquisition	
Short term capital loss	

Year	Manufacturing cost Rs	Depreciation Rs	Tax saving Rs	Cash out flow from operations (COFO) Rs
1				
2				
3				
4				
5				

Discount cash flow analysis of make proposal

	Year	PVF / A	Cash outflow	PV Rs
Investment				
Cash outflow				
Cash outflow				
Cash outflow				
Cash outflow				
Cash outflow				
Sale of machine				

Alternate 2: Buy the component

Year	Purchase cost Rs	Tax saving Rs	Cash outflow from operations (COFO) Rs
1			
2			
3			
4			
5			

Discounted cash flow analysis of buy proposal

	Year	Cash outflow Rs	PVF / A	PV Rs
Cash outflow	1			
Cash outflow	2			
Cash outflow	3			
Cash outflow	4			
Cash outflow	5			

Decision - The above analysis shows that there are considerable savings in making the component, amounting to Rs. 9,31,447 (i.e., Rs. 54,20,479 - Rs. 44,89,032). Hence, it is beneficial to manufacture the component. Moreover, XYZ Ltd. Will have a short term capital loss of Rs. 2,54,964 after the end of the fifth year. It has an equal amount of short term capital gain also this will result in tax savings of Rs. 82,732 at the current corporate tax rate (i.e., Rs. 2,54,964 × 32.445%).

TAX PLANNING WITH RESPECT TO NON- RESIDENT ASSESSEE

Suggested tax planning measures for Non-residents (NRs) are:

1	<p>Exemptions to Non Resident Companies: There are many exemptions available to Foreign Companies under Section 10. A Foreign company can plan their taxes keeping these exemptions in mind. Few examples of such exemptions are as under:</p> <p>Income of foreign companies providing technical services in projects connected security of India [Section 10(6C)]</p> <p>Income received in India on account of Sale of crude oil as per the agreement approved by the Central Government [Section 10(48)].</p> <p>Income accrue or arise in India on account of storage of crude oil in India and sale of crude oil therefrom in India as per the agreement approved by Central Government [Section 10 (48A)]</p> <p>Income accrue or arise in India on account of Sale of leftover stock after the expiry of agreement approved by Central Government [Section 10(48B)]</p>
2	<p>Agents to retain sufficient money of NR to meet its tax liability in India: All those dealing with NRs must keep in view the provisions of Sections 162 and 163. They should retain sufficient amounts with them to be paid on behalf of the NR towards his tax liability, so that they are not obliged to pay such taxes on their own account</p>
3	<p>NR to be aware about tax deduction by Agent to plan accordingly: A NR must be very clear as regards his tax liability through agent. He must be aware that the agent will deduct some amount out of the amount payable to the NR</p>

WHO MAY REGARD AS AGENT (SEC 163)

Representative Assessee / Agent of a Non-Resident

1	Representative Assessee of Non - Resident (Section 160): In respect of Income of a Non - Resident specified in Section 9(1), his Agent, including a person deemed to be his agent under section 163, will be treated as a Representative Assessee, after giving him an opportunity of being heard.
2	Agent of a Non - Resident (Section 163): Agent, in relation to a Non - Resident, includes the following persons in India:
a	Person employed by or on behalf of the Non - Resident
b	Person who has any business connection with the Non - Resident
c	Person from or through whom the Non - Resident is in receipt of any income, whether directly or indirectly
d	Trustee of the Non - Resident
e	Person who has acquired Capital Asset in India by means of a transfer from the Non - Resident, whether such person is a Resident or Non - Resident.
3	Broker of Non - Resident is not regarded as Agent, if the following conditions are fulfilled
a	The Broker in India does not deal directly with or on behalf of the Non - Resident Principal
b	He deals with or through a Non - Resident Broker
c	The transactions are carried on in the ordinary course of business of the Resident Broker, and
d	The Non-Resident Broker carries on such business in ordinary course of his business as Broker and not as Principal
4	Liability of Agent (Section 161)
a	He shall have same duties, responsibilities and liabilities as if the Income were received by him or accruing or in favour of him beneficially
b	Assessment shall be deemed to be made upon him in respective capacity only,
c	Tax shall be levied and recovered from him in the same manner as on the person represented by him
5	Rights of Agent (Section 162)
a	To be given opportunity of being heard by the AO, before being treated as Agent,
b	To recover amounts paid under the Act, from the outsider, i.e. Principal
c	To retain amounts paid under Wealth Tax Act, based on Certificate from AO

TAX PLANNING WITH REFERENCE TO EMPLOYEES' REMUNERATION

As focus of this chapter is restricted to corporate tax planning, therefore, we shall discuss tax planning for employee's remuneration from the point of employer only. A company is allowed full deduction in respect of salary, allowances, bonus or any other remuneration paid to the employee as per method of accounting followed by it.

An Employer corporate should take following points in consideration with respect to employees remuneration:

1	Residential accommodation to an employee
2	Accommodation owned by employer- following expenses are allowed
3	Current repairs, Insurance premium and rates and taxes of premises under section 30. However, deduction of rates and taxes is subject to Section 43B
4	Depreciation of such premises u/s 32
5	Following expenses are allowed if accommodation is hired
a	Current repairs, Rent, Insurance premium and rates and taxes. Rates and taxes deduction is subject to section 43B
b	If furniture is provided in accommodation then depreciation is allowed in case of owned furniture and actual hire charges paid or payable are allowed in case of hired furniture
c	Bonus or commission paid to employees is allowed as deduction under section 36(1)(ii), if it is not otherwise payable as distribution of profits to employees. Also this deduction is subject to Section 43B
d	Salary to research personnel (excluding perquisites) for 3 years prior to date of commencement of business is allowed as deduction in year of commencement of business to the extent allowed by prescribed authority. In this case research should be related with business of assessee
e	Amount contributed by employer to RPF or Approved superannuation fund account or to National pension scheme or Approved Gratuity fund account of an employee is allowed as deduction if contributed till due date. (subject to Section 43B)
f	Amount deducted by employer from salary of employee for contributing it to employee benefit scheme such as EPF etc. then such amount shall be added into the income of employer u/s 2(24)(x). However if employer deposits this amount to employee's benefit fund in due time then such amount is allowed as deduction u/s 36(1)(va)
g	Any payment made under the head salaries to an employee outside India or to a non resident shall not be allowed as deduction u/s 40(a)(iv) if, neither tax is paid thereon nor deducted on it as TDS
h	If employer pays tax on non-monetary perquisite provided to employee (which is chargeable in hands of employee) then such tax paid by employer is exempt in hands of

	employee u/s 10(10CCC), however, deduction shall be disallowed to the employer u/s 40(a)(v) in respect of such tax paid by employer on behalf of employee
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PLANNING IN THE CONTEXT OF COURT RULINGS AND LEGISLATIVE AMENDMENTS

The tax planner while planning his affairs or that of his clients must take into account not only the relevant legal provisions, but also the judicial pronouncements of Appellate Tribunals, High Courts and Supreme Court. He should also take into consideration all relevant rules, notifications, circulars etc.

As for circulars, since they are in the nature of administrative or executive instructions, the possibility that they might be withdrawn by the CBDT (Board) at any time, should also be taken into account. They may be challenged in the courts although, otherwise they are binding at the administrative level. In cases where the circulars are based on an erroneous or untenable footing, they are liable to be quashed by the Courts.

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