

Provided that where more than one price may be determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

(a) the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2); or 5

(b) any information and document relating to an international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or

(c) the information or data used in computation of the arm's length price is not reliable or correct; or 10

(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him: 15

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer. 20

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:

Provided that no deduction under section 10A or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section. 25

Maintenance, keeping of information and document by persons entering into an international transaction.

92D. (1) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section. 30

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days. 35

Report from an accountant to be furnished by persons entering into international transaction.

92E. Every person who has entered into an international transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. 40

Definitions of certain terms relevant to computation of arm's length price, etc.

92F. In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires—

(i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

(ii) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions; 45

(iii) "enterprise" means a person who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind, or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same 50
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place where the enterprise is located or at a different place or places;

(iv) "specified date" means,—

(a) where the assessee is a company, the 31st day of October of the relevant assessment year;

5 (b) in any other case, the 31st day of July of the relevant assessment year;

(v) "transaction" includes an arrangement, understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.'.

10 **45.** In section 94 of the Income-tax Act, with effect from the 1st day of April, 2002,—

Amendment of section 94.

(a) after sub-section (6) but before the *Explanation*, the following sub-section shall be inserted, namely:—

"(7) Where—

15 (a) any person buys or acquires any securities or unit within a period of three months prior to the record date;

(b) such person sells or transfers such securities or unit within a period of three months after such date;

(c) the dividend or income on such securities or unit received or receivable by such person is exempt,

20 then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of dividend or income received or receivable on such securities or unit, shall be ignored for the purposes of computing his income chargeable to tax.";

(b) in the *Explanation* occurring at the end,—

25 (i) after clause (a), the following clause shall be inserted, namely:—

'(aa) "record date" means such date as may be fixed by a company or a Mutual Fund or the Unit Trust of India for the purposes of entitlement of the holder of the securities or the unit-holder, to receive dividend or income, as the case may be;';

(ii) after clause (c), the following clause shall be inserted at the end, namely:—

30 '(d) "unit" shall have the meaning assigned to it in clause (b) of the *Explanation* to section 115AB.'.

15 of 1992. **46.** In section 115AB of the Income-tax Act, in the *Explanation*, in clause (a), for the words "Central Government", the words and figures "Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992," shall be substituted with effect from the 1st day of June, 2001.

Amendment of section 115AB.

47. For section 115AC of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2002, namely:—

Substitution of new section for section 115AC.

'115AC. (1) Where the total income of an assessee, being a non-resident, includes—

40 (a) income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or

(b) income by way of dividends, other than dividends referred to in section 115-O, on Global Depository Receipts—

45 (i) issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, against the initial issue of shares of an Indian company and purchased by him in foreign currency through an approved intermediary; or

(ii) issued against the shares of a public sector company sold by the Government and purchased by him in foreign currency through an approved intermediary; or

50 (iii) re-issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, against the existing shares of an Indian company purchased by him in foreign currency through an approved intermediary; or

Tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.

(iv) issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, and purchased by him in foreign currency through an approved intermediary, against the shares of an Indian company arising out of disinvestment by such company in its subsidiary company, and the shares of both such Indian companies are listed in a recognised stock exchange in India; or

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(c) income by way of long-term capital gains arising from the transfer of bonds referred to in clause (a) or, as the case may be, Global Depository Receipts referred to in clause (b),

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income by way of interest or dividends other than dividends referred to in section 115-O, as the case may be, in respect of bonds referred to in clause (a) or Global Depository Receipts referred to in clause (b), if any, included in the total income, at the rate of ten per cent.;

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(ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (c), if any, at the rate of ten per cent.; and

(iii) the amount of income-tax with which the non-resident would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a), (b) and (c).

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(2) Where the gross total income of the non-resident—

(a) consists only of income by way of interest or dividends other than dividends referred to in section 115-O in respect of bonds referred to in clause (a) of sub-section (1) or, as the case may be, Global Depository Receipts referred to in clause (b) of that sub-section, no deduction shall be allowed to him under sections 28 to 44C or clause (i) or clause (iii) of section 57 or under Chapter VI-A;

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(b) includes any income referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the assessee.

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(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being bonds or Global Depository Receipts referred to in clause (c) of sub-section (1).

(4) It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

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(a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clauses (a) and (b) of sub-section (1); and

(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

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(5) Where the assessee acquired Global Depository Receipts or bonds in an amalgamated or resulting company by virtue of his holding Global Depository Receipts or bonds in the amalgamating or demerged company, as the case may be, in accordance with the provisions of sub-section (1), the provisions of that sub-section shall apply to such Global Depository Receipts or bonds.

Explanation.—For the purposes of this section,—

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(a) “approved intermediary” means an intermediary who is approved in accordance with such scheme as may be notified by the Central Government in the Official Gazette;

(b) “Global Depository Receipts” shall have the same meaning as in clause (a) of the *Explanation* to section 115ACA.

Amendment
of section
115ACA.

48. In section 115ACA of the Income-tax Act, for sub-section (1), the following sub-section shall be substituted, namely:—

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‘(1) Where the total income of an assessee, being an individual, who is a resident and an employee of an Indian company engaged in specified knowledge based industry or service, or an employee of its subsidiary engaged in specified knowledge based industry or service (hereafter in this section referred to as the resident employee), includes—

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(a) income by way of dividends, other than dividends referred to in section 115-O, on Global Depository Receipts of an Indian company engaged in specified knowledge based industry or service, issued in accordance with such Employees’ Stock Option Scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf and purchased by him in foreign currency; or

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(b) income by way of long-term capital gains arising from the transfer of Global Depository Receipts referred to in clause (a),

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income by way of dividends, other than dividends referred to in section 115-O, in respect of Global Depository Receipts referred to in clause (a), if any, included in the total income, at the rate of ten per cent. ;

(ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, at the rate of ten per cent. ; and

(iii) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

Explanation.—For the purposes of this sub-section,—

(a) “specified knowledge based industry or service” means—

(i) information technology software;

(ii) information technology service;

(iii) entertainment service;

(iv) pharmaceutical industry;

(v) bio-technology industry; and

(vi) any other industry or service, as may be specified by the Central Government, by notification in the Official Gazette;

(b) “subsidiary” shall have the meaning assigned to it in section 4 of the Companies Act, 1956 and includes subsidiary incorporated outside India.’

49. In section 115BB of the Income-tax Act, in clause (i), for the words “forty per cent.”, the words “thirty per cent.” shall be substituted with effect from the 1st day of April, 2002. Amendment of section 115BB.

50. In section 115-O of the Income-tax Act, in sub-section (1), for the words “twenty per cent.”, the words “ten per cent.” shall be substituted with effect from the 1st day of June, 2001. Amendment of section 115-O.

51. In section 115P of the Income-tax Act, for the words “one and one-half per cent.”, the words “one and one-fourth per cent.” shall be substituted with effect from the 1st day of June, 2001. Amendment of section 115P.

52. In section 115R of the Income-tax Act, in sub-sections (1) and (2), for the words “twenty per cent.”, the words “ten per cent.” shall be substituted with effect from the 1st day of June, 2001. Amendment of section 115R.

53. In section 115S of the Income-tax Act, for the words “one and one-half per cent.”, the words “one and one-fourth per cent.” shall be substituted with effect from the 1st day of June, 2001. Amendment of section 115S.

54. In section 139 of the Income-tax Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 139.

‘(1) Every person,—

(a) being a company; or

(b) being a person other than a company, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that a person referred to in clause (b), who is not required to furnish a return under this sub-section and residing in such area as may be specified by the Board in this behalf by notification in the Official Gazette, and who at any time during the previous year fulfils any one of the following conditions, namely:—

(i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or

(ii) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

(iii) is a subscriber to a telephone; or

(iv) has incurred expenditure for himself or any other person on travel to any foreign country;
or

(v) is the holder of a credit card, not being an “add-on” card, issued by any bank or institution;
or

(vi) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,
shall furnish a return, of his income during the previous year, on or before the due date in the
prescribed form and verified in the prescribed manner and setting forth such other particulars as
may be prescribed: 5

Provided further that the Central Government may, by notification in the Official Gazette, specify
the class or classes of persons to whom the provisions of the first proviso shall not apply:

Provided also that every company shall furnish on or before the due date the return in respect of
its income or loss in every previous year. 10

Explanation 1.—For the purposes of this sub-section, the expression “motor vehicle” shall have
the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988. 59 of 1988.

Explanation 2.—In this sub-section, “due date” means,—

(a) where the assessee is a company, the 31st day of October of the assessment year; 15

(b) in the case of a person other than a company, referred to in the first proviso to this sub-
section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.

Explanation 3.—For the purposes of this sub-section, the expression “travel to any foreign country”
does not include travel to the neighbouring countries or to such places of pilgrimage as the Board
may specify in this behalf by notification in the Official Gazette.’. 20

Amendment
of section
139A.

55. In section 139A of the Income-tax Act, with effect from the 1st day of June, 2001,—

(a) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) Every person receiving any sum or income or amount from which tax has been deducted
under the provisions of Chapter XVIIIB, shall intimate his permanent account number to the person
responsible for deducting such tax under that Chapter: 25

Provided that nothing contained in this sub-section shall apply to a non-resident referred to in
sub-section (4) of section 115AC, or sub-section (2) of section 115BBA, or to a non-resident
Indian referred to in section 115G:

Provided further that a person referred to in this sub-section, shall intimate the General Index
Register Number till such time permanent account number is allotted to such person. 30

(5B) Where any sum or income or amount has been paid after deducting tax under Chapter
XVIIIB, every person deducting tax under that Chapter shall quote the permanent account number
of the person to whom such sum or income or amount has been paid by him—

(i) in the statement furnished in accordance with the provisions of sub-section (2C) of section
192; 35

(ii) in all certificates furnished in accordance with the provisions of section 203;

(iii) in all returns prepared and delivered or caused to be delivered in accordance with the
provisions of section 206 to any income-tax authority:

Provided that the Central Government may, by notification in the Official Gazette, specify different
dates from which the provisions of this sub-section shall apply in respect of any class or classes
of persons: 40

Provided further that nothing contained in sub-sections (5A) and (5B) shall apply in case of a
person whose total income is not chargeable to income-tax or who is not required to obtain
permanent account number under any provision of this Act if such person furnishes to the person
responsible for deducting tax, a declaration referred to in section 197A in the form and manner
prescribed thereunder to the effect that the tax on his estimated total income of the previous year
in which such income is to be included in computing his total income will be *nil*. 45

(5C) Every buyer referred to in section 206C shall intimate his permanent account number to
the seller referred to in that section. 50

(5D) Every seller collecting tax in accordance with the provisions of section 206C shall quote
the permanent account number of every buyer referred to in that section—