Issues in Taxation of Income (Non-Corporate)

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Types of Income :

An Assessee may be subject to one of the following five types of income :

1. **Salary income -** this includes all income earned from salary, commission in lieu of Salary etc.

   Issue : My company does not provide me HRA and Coveyance Allowance. I pay house rent can I get deduction for the same. What about conveyance can I claim 1,600 p.m.?

2. **Property Income –** this includes income from self occupied property, income from having more than one house, rented property etc.

   Issue : If the tax payer constructed a house property by borrowing interest free loan; and he had to take interest bearing loan to repay the above interest free loan, whether interest paid on such loan is allowed ?

   Issue : When the owner of the building gets along-with the rent, rent or hire of other assets (furniture) or charges for different services provided in the building, then in which head these will be taxable?

3. **Business & Profession income –** this includes income from all types of business may be retails, whole sale, Manufacturing, all types of professions such as Doctors, Chartered Accountants, Lawyers etc.

Issue : What would be the nature of the repair and maintenance expenditure incurred on a machine – Lead to increase in the economic life of Machinery, Revenue or Capital?

Issue : What would be the nature of the repair and reconditioning expenditure incurred on a Machine which broke down years ago – Revenue or Capital?

Issue : An individual who is a partner in a firm, that firm fall under tax audit so it has to filing return before 30-09 of Assessment year, then which date of filing return apply to a partner if he is not fall under tax audit?

4. **<u>Capital gains</u> -** this refers to income resulting from the appreciation of a capital asset (e.g., stocks, real estate, coins). Capital gains are not realized until the asset is sold. Capital gains are classified as either short- or long-term:
    - Short-term **–** for assets being a security held for 12 months or less and is taxed at flat rate of 15%, for other assets held for 36 months or less is considered short-term capital gains and is taxed at ordinary income rates.

    - Long-term **-** assets being a security held for longer than 12 months exempt from tax if certain conditions fulfilled for other assets held for more than 36 months benefit of indexation & reduced tax rates. In 2016, taxpayers has to pay tax @ 20% (+SC+EC+SHEC).

Why there Issues arises in treatment of Income as Capital Gains or Business Income relating to Shares & Securities?

TAX ON SHORT-TERM CAPITAL GAINS [SECTION 111A]

(i) Any short term capital gain arising from the transfer of an equity share in a company or a unit of an equity oriented fund shall be liable to tax @15% (10% up to A.Y. 2008-09) if the following conditions are satisfied:

a) The transaction of sale should take place through a recognised Stock Exchange; and

b) Such transaction is chargeable to securities transaction tax (STT)

If the total income of an assessee includes such short term capital gain and other income, the tax payable by the assessee in such a case shall be the aggregate of-

a) The amount of income-tax calculated on such short term capital gains @15% and

b) The amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee.

(ii) In the case of an individual or a HUF, being a resident, where the total income as reduced by such short term capital gain is below the basic exemption limit, then the short term capital gain shall be reduced by the amount of basic exemption limit not exhausted by any other income and only the balance short term capital gain shall be chargeable to tax @15%. For a non-resident assessee adjusting of basic exemption limit against short term capital gains not be applicable, hence the entire amount of short term capital gain shall be subject to tax @15%. Where assessee paying special rate of tax then he is not entitled to claim any deduction provided under Chapter VI-A in respect of such capital gain.

(iii) The short term capital gain other than above shall be chargeable as per Normal Slab of Income of the Assessee.

Consistency in taxability of income/loss arising from transfer of unlisted shares under Income-tax Act, 1961-regd.-

1. Regarding characterisation of income from transactions in listed shares and securities, Central Board of Direct Taxes (CBDT) had issued a clarificatory Circular no.6/2016 dated 29th February, 2016, wherein with a view to reduce litigation and maintain consistency in approach in assessments, it was instructed that income arising from transfer of listed shares and securities, which are held for more than twelve months would be taxed under the head 'Capital Gain' unless the tax-payer itself treats these as its stock-in-trade and transfer thereof as its business income. It was further stated that in other situations, the issue was to he decided on the basis of existing Circulars issued by the CBDT on this subject.

2. Similarly, for determining the tax treatment of income arising from transfer of unlisted shares for which no formal market exists for trading, a need has been felt to have a consistent view in assessments pertaining to such income. It has, accordingly, been decided that the income arising from transfer of unlisted shares would be considered under the head 'Capital Gain', irrespective of period of holding, with a view to avoid disputes/litigation and to maintain uniform approach.

3. It is, however, clarified that the above would not be necessarily applied in the situations where:

i. the genuineness of transactions in unlisted shares itself is questionable; or

ii. the transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or

iii. the transfer of unlisted shares is made along with the control and management of underlying business and the Assessing Officer would lake appropriate view in such situations.

<u>Amendment to Section 50C</u>

Section 50C has been amended where the date of an agreement fixing the value of consideration and the date of registration are not same, the stamp duty value may be taken as on the date of the agreement for transfer (and not as on the date of registration) for such transfer. However, this exception shall apply only in those cases where amount of consideration (or part thereof) has been received by way of an account payee cheque/draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer. This amendment is applicable from AY 2017-18 for earlier years one can take the shelter of different available judicial ruling.

Taxability Under Section 54 on Purchases of new House Property

It was observed that the basic purpose behind Section 54 is to ensure that the assessee is not taxed on the capital gains, if he replaces his house with another house and spends money earned on the capital gains within the stipulated period.

The view we have taken gets support from sub-section (2) to Section 54. The aforesaid sub-section requires the assessee to deposit unspent amount not utilized by the assessee for purchase or construction of a new asset before the date of furnishing of return, in a specified account. It further states that the amount, if already utilized for purchase or construction of the new asset with the amount so deposited will be deemed to be cost of a new asset subject to the proviso. The word „purchase‟ is used in sub -section (2) and indicates that the said word is not restricted or confined to registered sale deed or even possession but has a wider connotation. The proviso supports the aforesaid interpretation and stipulates that the **amount deposited but not utilized wholly or partly for purchase or construction of new asset within the specified period will be charged to tax under Section 45 in the previous year in which the period of three years from the date of transfer of original asset expired. The period of three years is stipulated as this is the longer period specified in the sub-section (1) to Section 54. It is only the balance amount which is not utilized which is to be brought and charged to tax. The entire amount of sale consideration or the capital gains is not to be brought to tax, but the unspent amount/figure is taxed.**

5. **<u>Other sources of Income</u>** – this includes all the income which could not be classified in any of the above heads of Income.

Issue : Whether Dividend Income are to be included in total taxable income chargeable to tax?

<u>Taxability of Dividend : Amendment to Section 10(34)</u>

Section 10(34) has been amended to provide that any income by way of dividend in excess of Rs. 10 Lakh shall not be exempt from tax in case of a resident individual, resident HUF or a resident firm w.e.f AY 2017-18. The recipient of dividend in such case is chargeable to tax at the rate of 10% (+SC+EC+SHEC) under section 115BBDA.

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Advance Tax Payment: Due Dates and Interest on Late Payment

If the Income Tax Liability of any taxpayer is more than Rs. 10,000 in a financial year, then he/she is liable to pay such tax in installments during the year itself rather than paying this tax at the end of the year. This tax which is payable during the year is called “Advance Tax” or “pay as you earn tax” as tax is liable to be paid at the time the income is earned i.e. during the year rather than paying this tax at the end of the year

Payment of Advance Tax With effect from 1st June 2016, Advance Tax is liable to be paid as per the following schedule In case of All Assessees

Advance Tax Payment: Due Dates and Interest on Late Payment

Due Date of Installment Amount Payable

1. On or before 15th June Not less than 15% of the Advance Tax Liability

2. On or before 15th Sep Not less than 45% of the Advance Tax Liability as reduced by the amount, if any, paid in earlier installment

3. On or before 15th Dec Not less than 75% of the Advance Tax Liability as reduced by the amount, if any, paid in earlier installments

4. On or before 15th Mar 100% of the Advance Tax Liability as reduced by the amount, if any, paid in earlier installments

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THE INCOME DECLARATION SCHEME 2016

The Income Declaration Scheme 2016

The Income Declaration Scheme 2016 as introduced by Finance Bill 2016

A. Applicability

- Any person who has not paid full taxes in past, on or after 01.06.2016 but before a date to be notified by the CG in the official gazette (Hon’ble FM in his budget speech mentioned to keep the scheme open upto 30.09.2016), may make a declaration of undisclosed income of any F.Y. upto 15-16

B. Tax, Surcharge and Penalty

- Tax, surcharge and penalty totaling in all to 45% [30% tax + 7.5% surcharge + 7.5% penalty] of such undisclosed income declared is to be paid.

- If income is declared in form of investment in any asset, FMV as on 01.06.2016 shall be deemed to be the undisclosed income. Manner of computing FMV will be prescribed.
- No deduction is allowable against the undisclosed income declared.
- Payment shall be made on or before a date to be notified by the Central Government in the Official Gazette (in budget speech it is mentioned 2 months of declaration).
- Tax once paid by the declarant shall be non-refundable.
- Non-payment up to the date so notified shall render the declaration made under the scheme void.
- In cases where any declaration has been made but no tax and penalty has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

C. Cases not eligible for the scheme

- where notices have been issued u/s 142(1) or 143(2) or 148 or 153A or 153C, or
- where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- where information is received under an agreement with foreign countries regarding such income,
- cases covered under the Black Money Act, 2015, or
- persons notified under Special Court Act, 1992, or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

D. Immunity

- Exemption from wealth-tax in respect of assets specified in declaration
- No scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken
- Immunity from prosecution under Income-tax Act and Wealth-tax provided.
- Immunity from the Benami Transactions (Prohibition) Act, 1988 provided

Note:

(a) The declaration shall be treated as void where the same is made by misinterpretation or suppressions of facts.

(b) Nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.

(c) Only one Application can be filed by a person.

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THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

The Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 as introduced in Union Budget 2016-17

- **Eligibility**

A declarant can file a declaration in relation to tax arrears or specified tax in respect of which appeal is pending before the CIT(A).

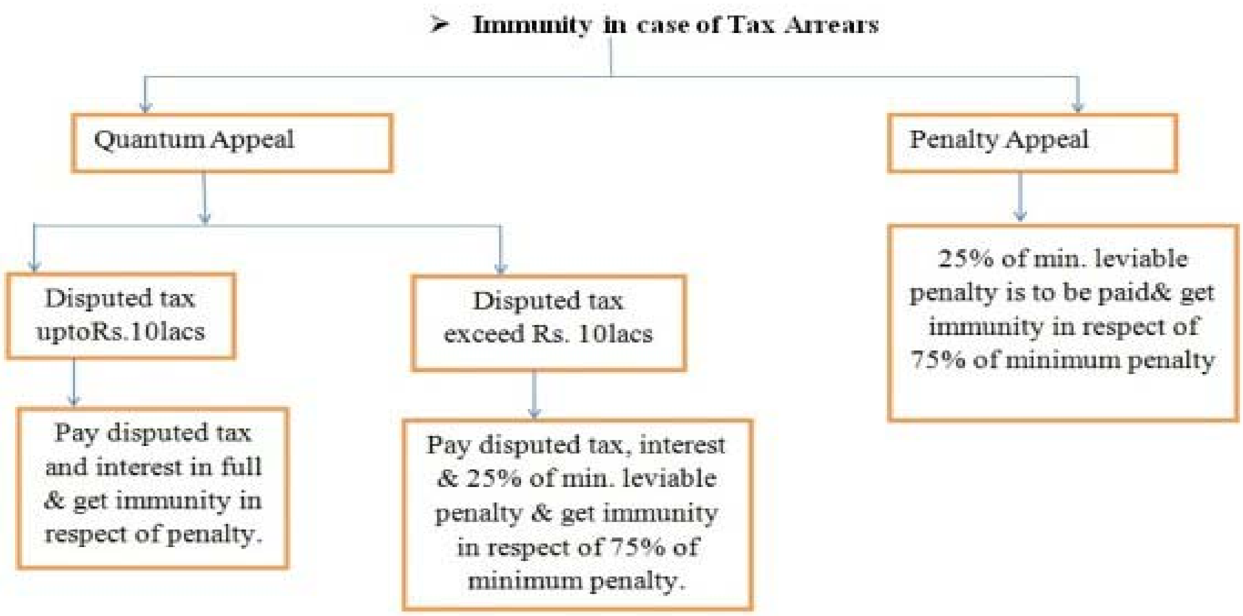
- **Tax Arrear**

Amount of tax, interest or penalty determined under the IT Act or WT Act, in respect of which appeal is pending before the CIT(A) or CWT(A) as on 29.02.2016. The pending appeal could be against an assessment order or a penalty order

- **Specified Tax**

Tax determined in consequence of or is validated by an amendment made with retrospective effect in IT Act or WT Act, for a period prior to the date of Enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016.

- **Immunity**



*Immunity in case of specified Tax – only payment of disputed tax is to be done and get full immunity from interest and penalty.

*Immunity from prosecution is available in both the above cases.

Scheme shall not apply in following cases:-

cases where prosecution has been initiated before 29.02.2016.

search or survey cases where the declaration is in respect of tax arrears

cases relating to undisclosed foreign income and assets

cases based on information received under DTAA u/s 90 or 90A where the declaration is in respect of tax arrears

Person notified under Special Courts Act, 1992

Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of CorruptionAct or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

Procedure

Declarant to file declaration to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed

The designated authority shall within 60 days from the date of receipt of declaration, determine the amount payable by the declarant

The declarant shall pay such sum within 30 days of passing such order and furnish a proof of such sum

Any amount paid in pursuance of declaration shall not be refundable

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Tax on Non Compete Fees & Exclusivity Rights in case of Profession

Clause 12 of Finance Bill 2016

Clause 12 of the Bill seeks to amend section 28 of the Income-tax Act relating to “Profits and gains of business or profession”.

Clause (va) of the aforesaid section, inter alia, provides that any sum, whether received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any business, is chargeable to tax as business income for business entities.

It is proposed to amend the said clause so as to provide that any sum received or receivable, in cash or kind, under an agreement, for not carrying out any activity in relation to any profession, shall also be income chargeable to income-tax under the head "Profits and gains of business or profession".

This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

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The changes to the Rules with effect from 1st January, 2016

The above changes in the rules are expected to be useful in widening the tax net by non-intrusive methods. They are also expected to help in curbing black money and move towards a cashless economy.

A chart highlighting the key changes to Rule 114B of the Income-tax Act is attached.

Sl.	**NATURE OF TRANSACTION**	**MANDATORY QUOTING OF PAN (RULE 114B)**	
		Existing requirement	**New requirement**
1.	Immovable property	Sale/ purchase valued at Rs.5 lakh or more	i. Sale/ purchase exceeding Rs.10 lakh; ii. Properties valued by Stamp Valuation authority at amount exceeding Rs.10 lakh will also need PAN.
2	Motor vehicle (other than two wheeler)	All sales/purchases	No change
3.	Time deposit	Time deposit exceeding Rs.50,000/- with a banking company	i. Deposits with Co-op banks, Post Office, Nidhi, NBFC companies will also need PAN; ii. Deposits aggregating to more than Rs.5 lakh during the year will also need PAN
4.	Deposit with Post Office Savings Bank	Exceeding Rs.50,000/-	Discontinued
5.	Sale or purchase of securities	Contract for sale/purchase of a value exceeding Rs.1 lakh	No change
6.	Opening an account (other than time deposit) with a banking company.	All new accounts.	i. Basic Savings Bank Deposit Account excluded (no PAN requirement for opening these accounts); ii. Co-operative banks also

			to comply
7.	Installation of telephone/ cellphone connections	All instances	Discontinued
8.	Hotel/restaurant bill(s)	Exceeding Rs.25,000/- at any one time (by any mode of payment)	Cash payment exceeding Rs.50,000/-.
9.	Cash purchase of bank drafts/ pay orders/ banker's cheques	Amount aggregating to Rs.50,000/- or more during any one day	Exceeding Rs.50,000/- on any one day.
10.	Cash deposit with banking company	Cash aggregating to Rs.50,000/- or more during any one day	Cash deposit exceeding Rs.50,000/- in a day.
11.	Foreign travel	Cash payment in connection with foreign travel of an amount exceeding Rs.25,000/- at any one time (including fare, payment to travel agent, purchase of forex)	Cash payment in connection with foreign travel or purchase of foreign currency of an amount exceeding Rs.50,000/- at any one time (including fare, payment to travel agent)
12.	Credit card	Application to banking company/ any other company/institution for credit card	No change. Co-operative banks also to comply.
13.	Mutual fund units	Payment of Rs.50,000/- or more for purchase	Payment exceeding Rs.50,000/- for purchase.
14.	Shares of company	Payment of Rs.50,000/- or more to a company for acquiring its shares	i. Opening a demat account; ii. Purchase or sale of shares of an unlisted company for an amount exceeding Rs.1 lakh per transaction.
15.	Debentures/ bonds	Payment of Rs.50,000/- or more to a company/ institution for acquiring its debentures/ bonds	Payment exceeding Rs.50,000/-.
16.	RBI bonds	Payment of Rs.50,000/-or more to RBI for acquiring its bonds	Payment exceeding Rs.50,000/-.
17.	Life insurance premium	Payment of Rs.50,000/- or more in a year as premium to an insurer	Payment exceeding Rs.50,000/- in a year.
18.	Purchase of jewellery/bullion	Payment of Rs.5 lakh or more at any one time or against a bill	Deleted and merged with next item in this table
19.	Purchases or sales of goods or services	No requirement	Purchase/ sale of any goods or services exceeding Rs.2

			lakh per transaction.
20.	Cash cards/ prepaid instruments issued under Payment & Settlement Act	No requirement	Cash payment aggregating to more than Rs.50,000 in a year.

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Presumptive Tax Scheme for Business and Profession

The Finance Act, 2016 includes various amendments that aim at helping professionals and small businesses. One of them is about presumptive taxation, the required paperwork for which was a matter of concern for many professionals such as doctors, lawyers, chartered accountants and others.

The Finance Act has made things simpler for professionals by reducing the amount of effort needed to estimate the income for the year and also to file the return on this.

For taxation purpose, most businesses and professionals have to maintain books of accounts, which are then evaluated at end of each financial year. A profit and loss statement is prepared and tax on income, if any, is paid accordingly. However, there is a special scheme— Presumptive Taxation Scheme (PTS)—under which one can file the return and pay tax on the basis of 'presumed' income.

Under PTS, eligible professionals and businesses can compute income on an estimated basis under section 44ADA and 44AD of the Income Tax Act, 1961, respectively, at a minimum prescribed rate. Businesses already had this provision, but from the current financial year, the threshold under PTS for eligible businesses has been raised from Rs.1 crore to Rs.2 crore. Professionals with less than Rs.50 lakh of gross receipts in a financial year are also now under the umbrella of PTS.

Eligible businesses

The scheme can be adopted by an eligible resident individual, a resident Hindu undivided family (HUF) and resident partnership firm. However, limited liability partnership (LLP) firms are not allowed to adopt this scheme. Also, those who claim benefits for their businesses on the basis of those being in free or special economic zones or in backward areas can't avail of PTS. Even those who are earning income in the nature of commission or brokerage (such as insurance agents or mutual fund advisers) cannot adopt the scheme.

From the assessment year 2017-18, the scheme will cover businesses having a total turnover of less than Rs.2 crore during the financial year. "However, business of plying, hiring or leasing goods carriages referred to in another

PTS under section 44AE, are not allowed to adopt this scheme,".

Under PTS, if the above mentioned conditions are satisfied, the eligible businesses can estimate their income at the rate of 8% of the total turnover. For instance, if the turnover of the business is Rs.1.75 crore in the financial year and the owner decides to compute income on an estimated basis for filing income tax returns, business income chargeable to tax so calculated would be Rs.14 lakh (8% of Rs.1.75 crore). However, the assessee is allowed to willingly declare income at a higher rate than the minimum of 8% of the total turnover. So, it is on the business owner's discretion to declare that the profit margin in the business is more than the mandatory 8%. Tax will be paid accordingly. So, in the above example, an income of more than Rs.14 lakh on a total turnover of Rs.1.75 crore can be declared.

Eligible professionals

PTS has now been extended to professionals by inserting a new section—44ADA—in the Act. "Those who are governed or regulated by an institute or body such as doctors, lawyers, architects, interior designers and others can file returns under the scheme,".

According to the new section, eligible professionals, whose gross receipts are below Rs.50 lakh against the rendered services in a financial year, can file tax returns under PTS. For this, 50% of the total receipts during the fiscal will be considered as profit and will get taxed under the income tax head of "profits and gains of business or profession". For instance, if the receipts of a professional during the year amount to Rs.40 lakh, and she chooses to files her tax return under PTS, her taxable income will be considered at a minimum of Rs.20 lakh. But she can voluntarily declare an income that's more than the mandatory 50% of the total receipts.

What is considered turnover or receipt?

Under PTS, you can only take into consideration gross turnover or receipts. But it is not clear as to what should be considered as receipts and what should not be. "It depends more on what kind of accounting method you use,".

"If you operate under the accrual system, take only those sales where you delivered the goods or completed the service within the specified time period you are considering. If you operate on cash basis, recognise only the sales where you received payment within the time period,".

That means that you can either take into account only the amount of goods or services delivered during the year, irrespective of whether the related payment has been received or not. In other case you can take into account only cash sales, accrued income (income earned but not received) can be taken into consideration in the year it is received.

"The term 'gross receipts' has not been defined in the Act, but it includes all receipts in cash or kind, arising from carrying on of business or profession, assessable as income under the Act," .

Service tax and cess

Along with the fee charged for the service provided, professionals also collect service tax and cess as part of the bill. But will the service tax and cess components, which the professional has to pass on to the government, also be considered as receipts?

"Since gross receipts are not defined, there is not enough clarity on this. (But) as a matter of principle, service tax and cess should not be included in the gross receipts,".

The argument here is that since service tax and applicable cess are payable to the government by the service provider, only the service fee should be treated as receipt.

Not allowed to claim

Professionals and businesses availing the benefits of PTS can't claim tax deduction under sections 30 to 38 of the Act, which would include deduction on expenses such as rent of the shop or office, insurance premium of goods and machines, interest on borrowed capital, employer's contribution to provident fund, depreciation on assets and machinery, and so on. Under PTS, it is deemed that deductions for such expenses have been factored in.

This means that if the receipts of a professional during the year amount to Rs.40 lakh, then Rs.20 lakh (50%) would be considered to cover cost of office, maintenance, travel, telephone and so on. The remaining Rs.20 lakh will get taxed at the applicable slab rate. In case of a firm, deduction can be claimed for salary and interest to partners.

No advance tax payment

All professionals and businesses generally have to adhere to advance tax payment rules. According to section 208 of the Act, if the total estimated tax on their incomes for the relevant financial year is expected to be more than Rs.10,000 per annum, advance tax has to be paid. One has to pay 15% of the estimated income tax by 15 June, 45% by 15 September, 75% by 15 December and the rest by 15 March of the relevant financial year.

However, with PTS, the assessee is exempt from paying advance tax. This means that she does not have to estimate her income four times a year and pay advance tax accordingly. Instead, she has to go through the exercise only once.

The main aim of PTS is to reduce tax compliance burden and cost of maintaining books of account for professionals and small businesses. While some points are still to be clarified, the scheme is a move forward.

================================ **T H A N K S** ==================================