



# **CTC Direct Tax Study Circle**

**Webinar on Provisions relating to Reconstitution & Dissolution of Partnership Firms along with relevant rules & guidelines**

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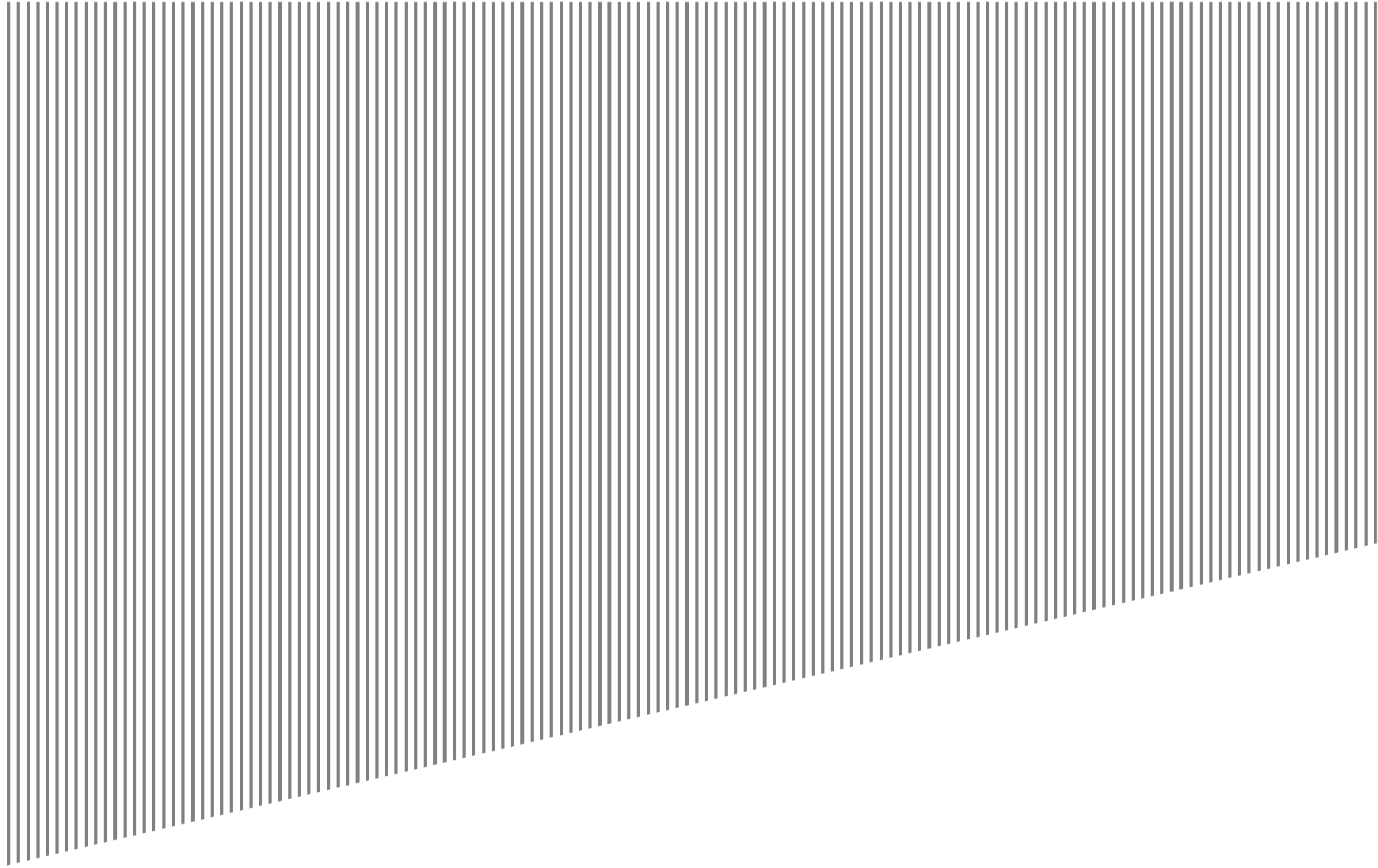
29<sup>th</sup> July 2021

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- ▶ Way forward on the amended provisions

# Erstwhile scheme of taxation before Finance Act, 2021



# Erstwhile scheme of taxation up to AY 2020-21

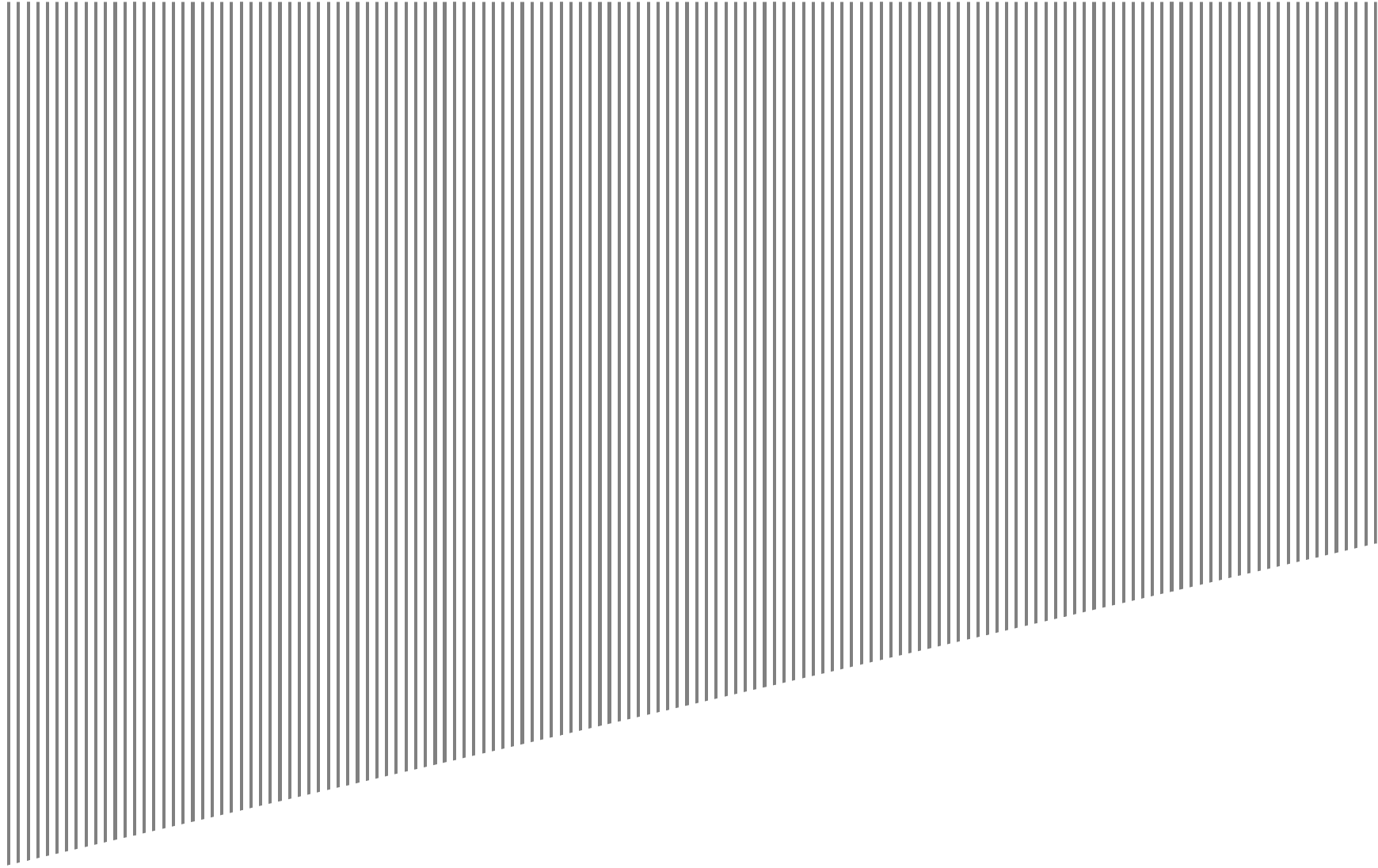
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- ▶ S.45(4) provides for capital gains taxation in hands of firm, on transfer of capital asset to partners, by way of distribution, on dissolution or otherwise
  - ▶ Capital gains = FMV\* of capital asset on the date of distribution minus cost/WDV
- ▶ Besides taxation on dissolution, Firm also exposed taxation on distribution of CA on retirement of partner
  - ▶ Term “or otherwise” in s. 45(4) also includes retirement and triggers s.45(4) - A.N. Naik Associates [2004] 136 Taxman 107 (Bom HC)
  - ▶ However, contrary view expressed by Madras HC in case of National Company v. ACIT [2019] [105 taxmann.com 255] that division of assets on retirement does not trigger s.45(4)
- ▶ However, settlement of Retired partner’s account in cash (even beyond his capital balance) is not hit by s.45(4) in the hands of the firm
- ▶ No tax incidence in the hands of retired partner on receipt of cash or capital asset
  - ▶ What partner receives is his share in the firm and not any consideration for 'transfer' of his partnership interest
  - ▶ Dynamic Enterprises (359 ITR 83)(Kar)(FB); Pipelines India (238 Taxman 9)(Mad); Electroplast Engineers (263 Taxman 120)(Bom)

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*\*FMV defined in s.2(22) as open market price (where such price is not ascertainable, reference is to be drawn to rules)*

# New scheme of taxation vide Finance Act, 2021



# Rationale for new scheme of taxation

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▶ FM's speech:

*“Taxability of surplus amount received by partners:*

*In order to provide certainty, it is proposed to rationalise the provisions relating to taxation of the assets or amount received by partners from the partnership firm in excess of their capital contribution”*

▶ EM to FB 2021 introduces amendment as a “rationalisation” measure

▶ As per EM, there is uncertainty regarding applicability of s. 45(4) to a situation where assets are revalued or self-generated assets are recorded in the books of firm, and payment is made to partner in excess of his capital contribution

▶ FB 2021 had proposed existing s.45(4) to be substituted by new s.45(4) and (4A)

▶ At the enactment stage of FB 2021, a revamped version of these provisions was introduced, with introduction of new s.9B and substitution of s.45(4)

# Section 9B

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- ▶ Provides for taxation on firm, by deeming receipt of capital asset or SIT or both by specified person (partner) from specified entity (firm) in connection with dissolution or reconstitution as a **deemed transfer**
  - ▶ Firm is taxable much in the same manner as firm would have transferred such assets in favour of an outsider
- ▶ Any profits and gains arising from such deemed transfer is deemed to be the income of firm
  - ▶ Chargeable as capital gains or business income in accordance with provisions of ITL
- ▶ FMV of capital asset or SIT or both on date of such receipt by partner is deemed to be full value of consideration received or accruing
- ▶ Placement of s.9B in ITL is not very clear

# Section 45(4)

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- ▶ Levies capital gains tax on realization by partner in excess of his capital account balance, in connection with reconstitution
  - ▶ Gains are computed from partner's perspective but are taxable in hands of firm
- ▶ If a partner receives any money or capital asset or both from a firm in connection with reconstitution of firm, firm shall be liable to pay capital gains tax as per following formula:

$A = B + C - D$ , where

- ▶ A = Capital gains chargeable as income of firm
- ▶ B = Value of any money on the date of such receipt
- ▶ C = FMV of capital asset on the date of such receipt
- ▶ D = Partner's capital account balance (represented in any manner) in books of firm at time of its reconstitution (without taking into account increase (a) due to revaluation of any asset or (b) due to self-generated goodwill/asset)

Capital gains (A) will be nil if result of formula is negative

- ▶ Self-generated goodwill or asset means that:
  - ▶ which has been acquired without incurring any cost for purchase or
  - ▶ which has been generated during the course of the business or profession

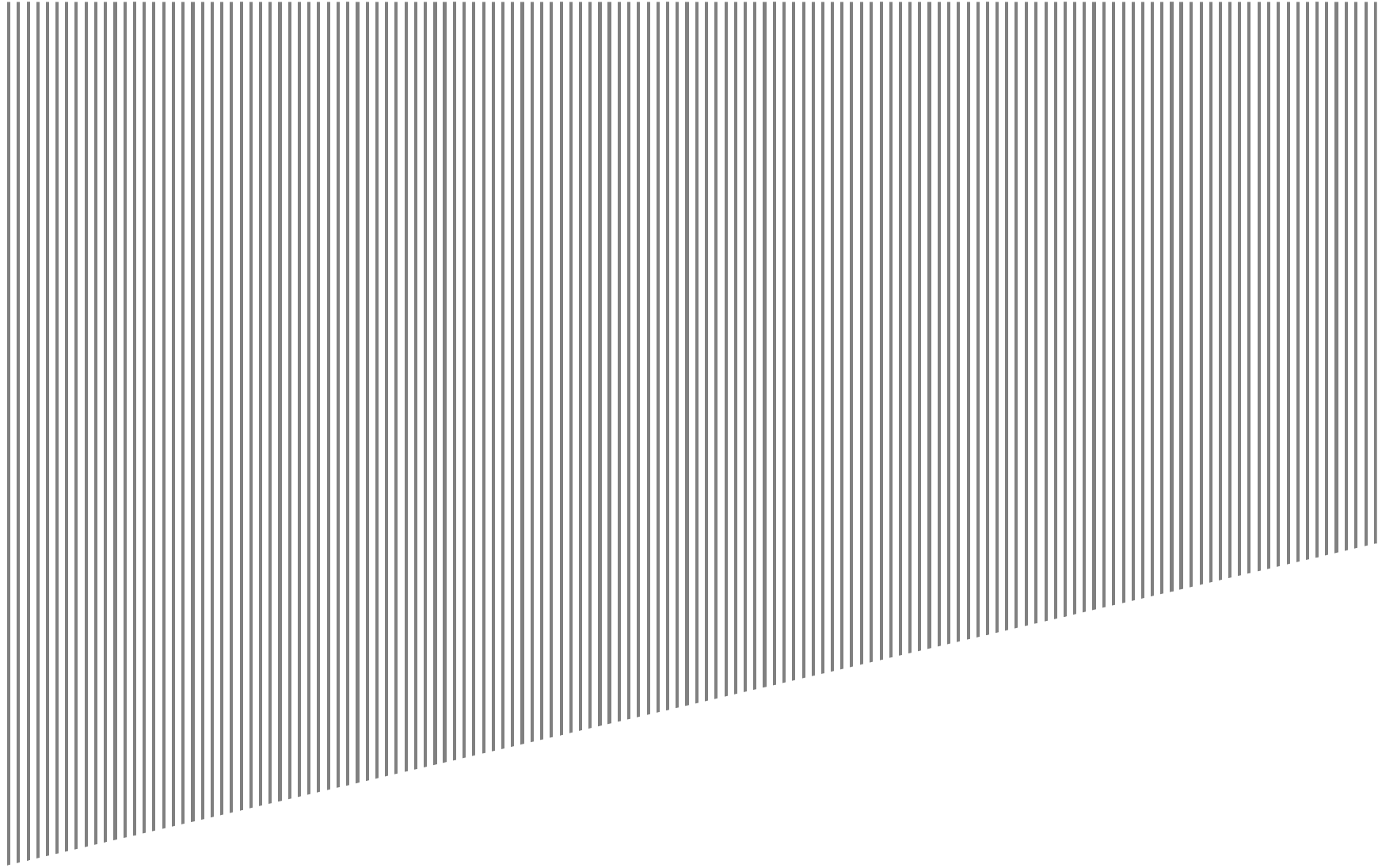


# Aspects common to section 9B and 45(4)

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- ▶ ‘Specified entity’ means firm/LLP/AOP/BOI - not being a company or a cooperative society
- ▶ ‘Specified person’ means a person, who is a partner of firm or member of AOP/BOI in any previous year
- ▶ When a capital asset is received by a partner from a firm in connection with reconstitution of firm, s.45(4) shall operate in addition to s.9B and taxation u/s. 9B shall be worked out independently
- ▶ “Reconstitution” of the firm means, where:
  - ▶ One or more partners cease to be partners; or
  - ▶ One or more new partners are admitted in such circumstances that one or more persons who were partners before the change, continue as such after the change; or
  - ▶ All the partners continue with a change in their respective shares or in the shares of some of them
- ▶ Difficulty in giving effect to the above provisions can be removed by issuance of guidelines by CBDT – to be placed before both Houses of Parliament and binding on both taxpayer and tax authority
  - ▶ CBDT issued guidelines via Circular No. 14/2021 dated 2 July 2021

# Comparative analysis of erstwhile s.45(4), new s.9B and s.45(4)



# Comparative analysis

S.N.	Parameters	Erstwhile s. 45(4)	New s. 9B	New s. 45(4)
1.	Taxable entity	Firm*	Firm*	Firm*
2.	Event of trigger of taxability	Transfer of capital asset by way of distribution, on dissolution or otherwise of firm	Receipt of capital asset or stock in trade or both by partner in connection with dissolution or reconstitution of firm	Receipt of money or capital asset or both by partner in connection with reconstitution of firm
3.	Year of taxability	Transfer of capital asset	Receipt by partner	Receipt by partner
4.	Head of income	Capital gains	Capital asset – Capital gains Stock in trade – Business income	Capital gains - as per formula $A = B + C - D$
5.	Quantum of consideration	FMV of capital asset on date of transfer	FMV of capital asset or stock in trade or both on date of receipt by partner	Value of money (B) + FMV of capital asset (C) on date of receipt by partner

\* While the above table is based on partnership firm and partner, it will apply equally to AOP/BOI and their members

# Comparative analysis

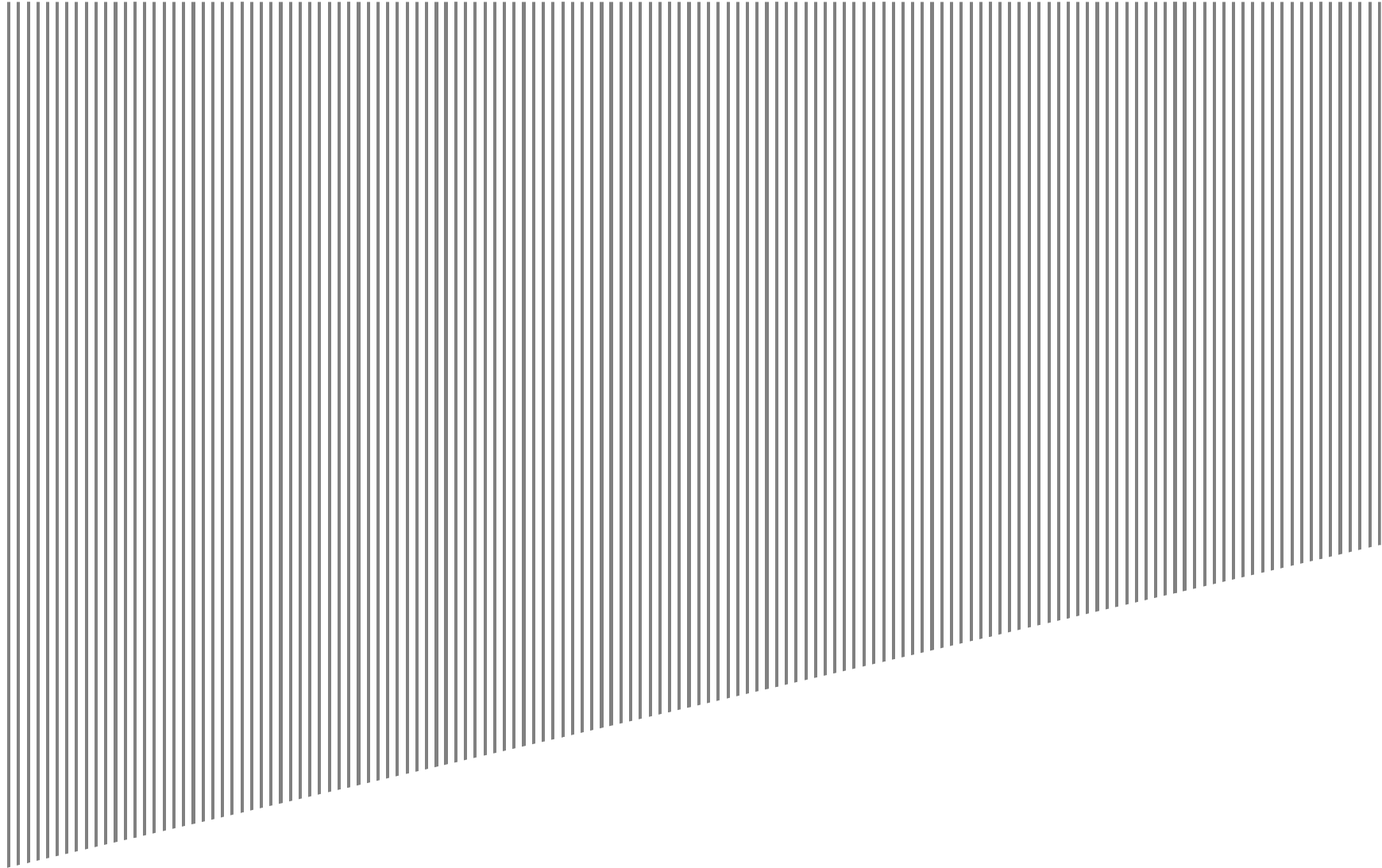
S.N.	Parameters	Erstwhile s. 45(4)	New s. 9B	New s. 45(4)
6.	Cost of acquisition	As per s.48/49 in respect of capital asset transferred	As per s.48/49 in respect of capital asset transferred	Partner's capital account balance (represented in any manner)** at the time of reconstitution
7.	Treatment of loss	Loss admissible	Loss admissible	Not admissible
8.	Interplay between different provisions	Not applicable	Not specified	S.45(4) shall operate in addition to s.9B and both shall be worked out independently
9.	Reduction from sale consideration due to capital gains taxation in hands of firm	Not applicable as capital asset is no longer with firm	Not applicable	S.48 (iii) contemplates reduction from sale consideration on transfer of remaining capital assets, as per prescribed rules (refer later case studies)

\*\* Without taking into account increase (a) due to revaluation of any asset or (b) due to self-generated goodwill/asset)

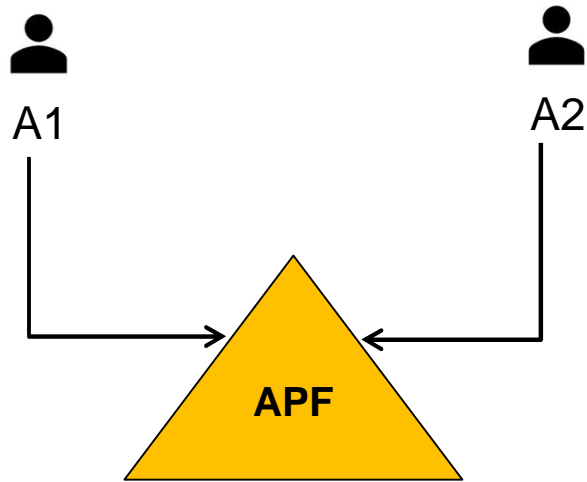
# Comparative analysis

S.N.	Parameters	Erstwhile s. 45(4)	New s. 9B	New s. 45(4)
10.	Cost of capital asset in hands of recipient partner	FMV based on general principles	FMV based on general principles	FMV based on general principles, also supported by CBDT guidelines
11.	Definition of 'reconstitution', 'specified entity' and 'specified person'	Not applicable – Refer back to judicial conflict on whether 'retirement' falls within scope of s.45(4)	Includes retirement, admission or change in profit sharing ratio	Borrowed from s.9B
12.	CBDT's power to issue guidelines to remove difficulties	Not applicable	Exists – Binding on both tax authority and taxpayers on placing before both Houses of Parliament	Exists – Provided in s.9B

# Case studies to understand operation of s.9B and s.45(4)



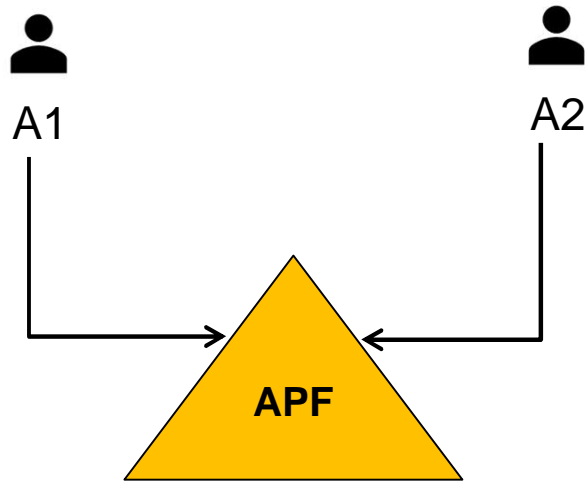
# #1 – In-specie distribution on dissolution



Indicative balance sheet			
Capital		Land (FMV 1L)	10,000
A1	5,000		
A2	5,000		
<b>Total</b>	<b>10,000</b>	<b>Total</b>	<b>10,000</b>

- ▶ APF has two equal partners A1 and A2
- ▶ Capital of A1 and A2 is 5,000 each and is represented by land acquired by firm in past by investing capital of 10,000 contributed by partners
- ▶ Land is held as a long-term capital asset
- ▶ Firm is to be dissolved as its purpose is frustrated
- ▶ On dissolution, land is distributed equally between A1 and A2
- ▶ FMV of land as on the date of receipt is 1 L
- ▶ Tax implications u/s. 45(4) (under old regime)
  - ▶ FMV as on date of transfer adopted for taxation u/s. 45(4) in hands of firm
  - ▶ Capital gains is ₹ 90,000 [FMV of 1L (-) cost of acquisition of 10,000 (ignoring indexation)]
- ▶ See next slide for tax implications u/s. 9B and s.45(4) (new regime)

# #1 – In-specie distribution on dissolution



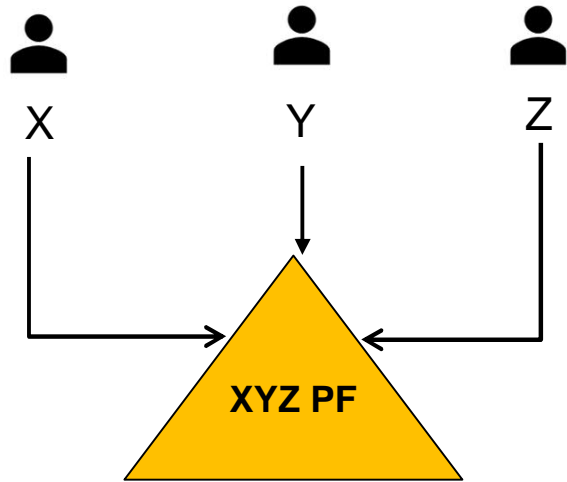
Indicative balance sheet			
Capital		Land (FMV 1L)	10,000
A1	5,000		
A2	5,000		
<b>Total</b>	<b>10,000</b>	<b>Total</b>	<b>10,000</b>

Particulars	S.9B	S.45(4)
FMV of land	1,00,000	N.A
Less:- Cost of acquisition (ignoring indexation)	10,000	N.A
LTCG in hands of firm	90,000	N.A

- ▶ S.45(4) not applicable to dissolution
- ▶ Effectively, no difference between old regime and new regime



# #2 – Cash pay out on retirement



Indicative balance sheet			
X Capital	500	Land (FMV 2,100)	1,500
Y Capital	500		
Z Capital	500		
<b>Total</b>	<b>1,500</b>	<b>Total</b>	<b>1,500</b>

- ▶ XYZ PF has 3 partners having equal PSR and equal capital contribution
- ▶ XYZ PF has land acquired at cost of 1,500 whose FMV is 2,100
- ▶ Land is held as a long-term capital asset
- ▶ X retires from the firm and his account is settled in cash after taking into account FMV of land
- ▶ In order to settle X's share, continuing partners Y and Z bring in cash
- ▶ X is paid 700 against his capital balance of 500 (ignoring revaluation)
  - ▶ 700 is represented by capital of 500 plus 1/3<sup>rd</sup> share in value appreciation of 600
- ▶ Refer next slide for tax implications

# #2 – Cash pay out on retirement

## ▶ Tax implications under old regime

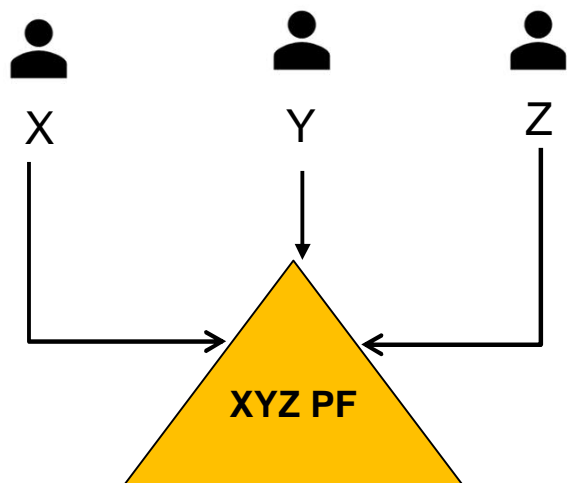
- ▶ Erstwhile s.45(4) provided for capital gains taxation in hands of firm, on transfer of capital asset to partners, by way of distribution, on dissolution or otherwise
- ▶ Cash payment to settle account of retiring partner does not result in transfer of capital asset by firm
- ▶ Cost of land continues to be historical cost of 1,500
- ▶ No taxation also in the hands of retiring partner as what he receives is always belonging to him

## ▶ Tax implications under new regime

Particulars	S.9B	S.45(4)
Money received (B)	N.A	700
FMV of capital asset received (C)	N.A	N.A.
Capital balance (D)	N.A	(500)
Capital gains in hands of firm (A)	N.A	200

- ▶ S.9B does not trigger as no capital asset/SIT is distributed to partner
- ▶ Amount of 200 is attributed to revaluation of land
  - ▶ S.48(iii) - Reduce 200 from sale consideration on transfer of land in future by firm
  - ▶ Say, if firm sells land for 2,100, cost of acquisition (ignoring indexation) is 1,500 and amount attributed is 200, net CG = 400

# #3 – Distribution of capital asset on retirement



Indicative balance sheet			
X Capital	500	Land (FMV 2,100)	1,500
Y Capital	500		
Z Capital	500		
<b>Total</b>	<b>1,500</b>	<b>Total</b>	<b>1,500</b>

- ▶ Facts are same as #2, however, X's account is settled by distribution of one-third land against his capital balance of 500
  - ▶ FMV of one-third land is 700 ( $2,100 \times 1/3$ ), which is represented by capital of 500 plus 1/3rd share in value appreciation of 600
- ▶ **Tax implications under old regime**
  - ▶ Judicial conflict whether distribution of capital asset on retirement is covered by old s.45(4)
  - ▶ If old s.45(4) applies, firm pays tax on capital gains of 200 (ignoring indexation)
  - ▶ Cost of remaining two-third land continues to be historical cost of 1,000
  - ▶ No separate taxation in the hands of retiring partner.

# #3 – Distribution of capital asset on retirement

Particulars	S.9B	S.45(4)
Money received	-	- [B]
FMV of capital asset received	700	700 [C]
Cost of one-third land	500	-
Partner's capital balance	-	566* [D]
Capital gains in hands of firm	200	134 [A = B + C – D]

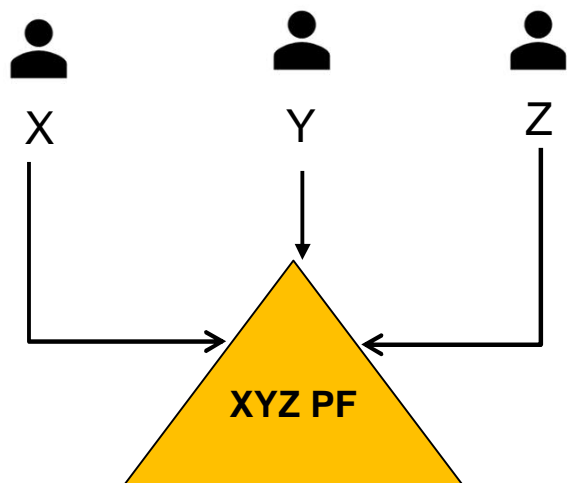
X's capital account			
Particulars	Debit	Particulars	Credit
Distribution of one-third land to X	700	Opening balance	500
Closing balance	-	X's share on revaluation of land (2,100–1,500x1/3)	200
<b>Total</b>	<b>700</b>	<b>Total</b>	<b>700</b>

Realised profit - 66  
 (700 - 500 x 1/3)

Unrealised profit – 134  
 (1,400 – 1,000 x 1/3)

- ▶ As per CBDT's guidelines, retiring partner's share of value appreciation in capital asset distributed to him (viz. 66) is includible in his capital account balance [D]
- ▶ S.48(iii) - Reduce 134 from sale consideration on transfer of two-third land in future by firm
- ▶ Say, if firm sells two-third land for 1,400, cost of acquisition (ignoring indexation) is 1,000 and amount attributed is 134, net CG = 266
- ▶ Thus, there is no double taxation; taxation u/s. 45(4) merely represents timing difference.

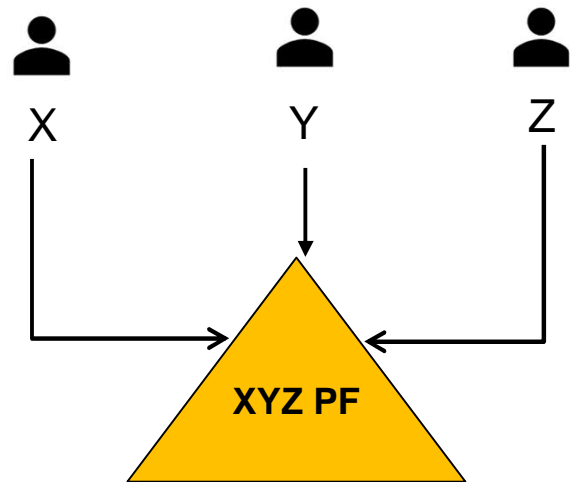
# #4 – Distribution of stock in trade on retirement



Indicative balance sheet			
X Capital	500	Land (FMV 2,100)	1,500
Y Capital	500		
Z Capital	500		
<b>Total</b>	<b>1,500</b>	<b>Total</b>	<b>1,500</b>

- ▶ XYZ PF has 3 partners having equal PSR and equal capital contribution
- ▶ XYZ PF has land acquired at cost of 1,500 whose FMV is 2,100
- ▶ Land is held as a stock-in-trade
- ▶ X retires from the firm and his account is settled by distribution of one-third land as against his capital balance of 500
  - ▶ FMV of one-third land is 700 (2,100 x 1/3), which is represented by capital of 500 plus 1/3rd share (200) in value appreciation of 600
- ▶ **Tax implications under old regime**
  - ▶ In absence of provision along the lines of s. 45(4), transfer of SIT on retirement does not amount to “transfer” from firm to partner. Arguably, firm not liable to business taxation
  - ▶ Partner also not liable. It is realisation of pre-existing right
  - ▶ ACIT v. Agrawal Timber and Bans Co. [1983] 144 ITR 46 (MP); and CIT v. Anant Narhar Nimkar (HUF) [1997] 224 ITR 221 (Gujarat)

# #4 – Distribution of stock in trade on retirement



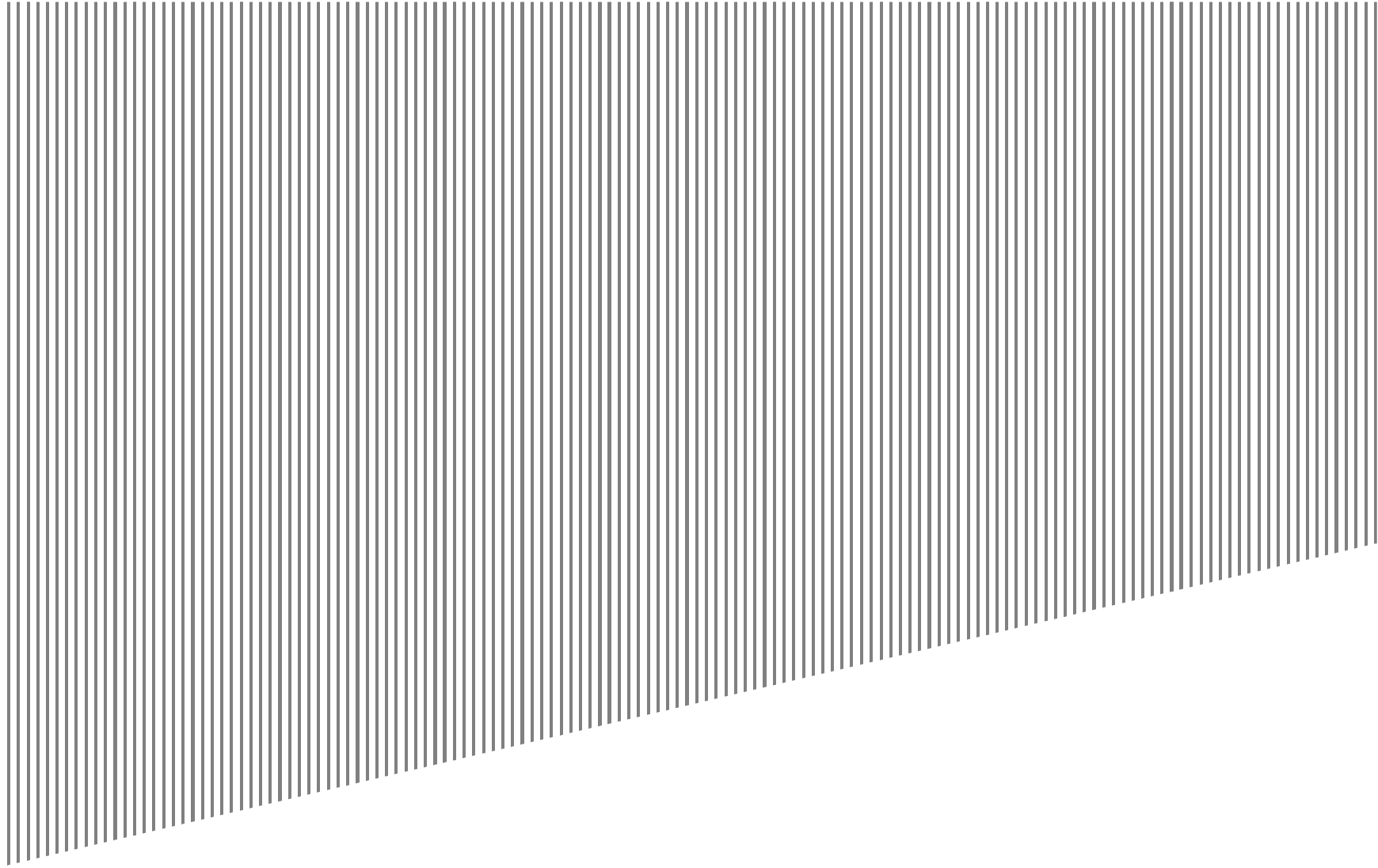
Indicative balance sheet			
X Capital	500	Land (FMV 2,100)	1,500
Y Capital	500		
Z Capital	500		
<b>Total</b>	<b>1,500</b>	<b>Total</b>	<b>1,500</b>

## ► Tax implications under new regime

Particulars	S.9B
FMV of SIT	700
Cost of land	(500)
Business income in hands of XYZ PF	200

- S.45(4) is inapplicable to case of distribution of SIT as its applicability is restricted to distribution of any money or capital asset.
- Consequently, s. 48(iii) will also not apply

# Some illustrative issues



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- ▶ Is tax u/s. 45(4) triggered upon partner retiring from the firm, or upon actual receipt from firm?
- ▶ Whether s.45(4) is prospective or retrospective?
- ▶ Whether s.9B is prospective or retrospective?
- ▶ Impact of retirement of partner at book value
- ▶ Impact of partner's capital account turning negative by ignoring revaluation
- ▶ Waiver of debit balance in partner's capital account on retirement
- ▶ Is s.45(4) applicable on receipt by legal representative of deceased partner?
- ▶ Impact of conversion u/s. 47(xiii) or Chapter XXI post retirement
- ▶ Withdrawal of firm's property by partners in their PSR
- ▶ Some illustrative issues



# Issue 1: Is tax u/s. 45(4) triggered upon partner retiring from the firm, or upon actual receipt from firm?

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- ▶ A partner retires in March 2021 whose account is settled in March 2022 by cash payment. Whether s.45(4) triggers in FY 2020-21 or FY 2021-22?
- ▶ **View 1:- Once a partner retires and entitlement is determinate as a creditor, charge u/s. 45(4) is triggered:-**
  - ▶ As per Indian Partnership Act, immediately upon retirement, a debt (viz. right to receive) is perfected in favour of retiring partner [Pamuru Vishnu Vinodh Reddy v. Chillakuru Chandrasekhara Reddy & Ors. C. A. No. 6519 of 1994, 17 February 2003]
  - ▶ Perfection of a debt in lieu of partnership interest is a constructive receipt by partner from firm
  - ▶ Word 'receipt' extends to credit to the account of the concerned person - Standard Triumph Motor Co. Ltd. v. CIT (1993)(67 Taxman 160)(SC)
  - ▶ Partner may enjoy interest on such debt, partner may monetise such debt by assignment in favour of bank
  - ▶ In many instances such as in the context of s.32AB(3)(ii)/(iii), the legislature itself uses the words "paid" and "payable" interchangeably
  - ▶ Specific references in ITL have been made to 'actual receipt' wherever the legislature intended the point of taxation to be as such, for instance, in s.43B and s.43D - S.45(4) refers to "received" and not "actually received"

# Issue 1: Is tax u/s. 45(4) triggered upon partner retiring from the firm, or upon actual receipt from firm?

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- ▶ **View 2:- Word ‘receives’ refers to actual receipt by the partner from the firm; acknowledgement of debt in favour of retiring partner is insufficient:-**
  - ▶ Clear reference is to ‘received’ in s.45(4) which is different than ‘receivable’
  - ▶ S.45(4) uses a phraseology which is aligned to other receipt-based taxation provisions like s.45(1A) or s.46(2) or s.45(5) - Delhi ITAT\* held that taxation u/s. 45(1A) is in year of actual receipt
  - ▶ SC in Moon Mills Ltd. (1966) (59 ITR 574) drew clear distinction between ‘received’ and ‘receivable’ and upheld taxation in year of actual receipt in the context of balancing charge provision in 1922 Act which provided for taxation of insurance money “received”
  - ▶ SC decision in Standard Triumph is distinguishable on facts, as in that case, debtor was holding the money in India on behalf of creditor – in present case, amount is not at disposal of partner, his ability to assign such debt to a bank is not reflective of receipt from firm
  - ▶ SC in Toshoku Ltd. [1980] 125 ITR 525 (SC) held that mere credit entry would not suffice to answer to the requirement of receipt
  - ▶ Even old s.45(4) triggered charge only on distribution of CA and not on dissolution\*\*

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*\*Syndicate Printers Ltd. (2009) (27 SOT 404) \*\*CIT v. Vijayalakshmi Metal Industries [2003] 132 TAXMAN 49;*

# Issue 2: Whether s.45(4) is prospective or retrospective?

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- ▶ Partner retires in March 2020, but his account is settled in April 2020 by cash payment\* – Is s.45(4) triggered, which is effective from AY 2021-22?
- ▶ **View 1:- S.45(4) applies**
  - ▶ It is deeming fiction of receipt-based taxation, like ss.45(1A) and 46(2) – Since receipt by partner from firm is post 1 April 2020, s.45(4) applies
  - ▶ No grandfathering of past reconstitution unlike s.2(22)(e) which applied to payments post 31 May 1987, s.43C applied only to sale of asset post 29 February 1988
  - ▶ S.46(2) was applied in respect of distributions by liquidator post 1 April 1961, while earlier distributions were exempt
    - ▶ Capital gains computed by deducting full cost of acquisition of shares against distributions post 1 April 1961 - CIT v. Inland Agencies (P.) Ltd. [1982] 11 Taxman 218 (Madras HC)\*\*
  - ▶ Merely because determination of cost [viz. component D] is to relate back to pre-2020 date is not a good defence - even under a normal case, determination of cost is linked to FMV as on 1 April 2001

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\* Controversy applies equally to settlement by distribution of capital asset in April 2020

\*\*See illustratively, CIT v. A. F. Harvey Ltd. [1990] 51 Taxman 238 (Mad), Cables & Wireless Ltd. [1977] 107 ITR 293 (Bom)

# Issue 2: Whether s.45(4) is prospective or retrospective?

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- ▶ **View 2:- S.45(4) does not apply**
  - ▶ ‘Reconstitution’ is defined as where a person “ceases” to be a partner of firm – where such cessation took place before introduction of law, it is not ‘reconstitution’
  - ▶ S.45(4) only shifts timing of taxation to actual receipt – basis of taxation continues to be accrual – which, in the present case, happened in March 2020
  - ▶ Receipt as also its connection with reconstitution are twin requirements for satisfaction of charge, which is triggered only when both these events occur after April 2020
  - ▶ Very clear provisions (along the lines of Explanations 5 to 7 to s.9(1)(i) for indirect transfer) are needed to trigger charge in respect of past non-taxable events
  - ▶ Analogy of s.46(2) cannot be applied as liquidation of a company is a continuing event while the retirement / reconstitution is a snapshot event
  - ▶ While receipts pre April 2020 would go untaxed, entirety of partner’s capital account balance may come up for deduction against receipts post April 2020, which may give rise to absurd results

# Issue 3: Whether s.9B is prospective or retrospective?

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- ▶ Partner retires in March 2020, but his account is settled in April 2020 by distribution of capital asset – Is s.9B triggered, which is effective from AY 2021-22?
- ▶ **View 1:- S.9B applies**
  - ▶ S.9B concerns taxability on the part of the firm w. r. t. parting of CA or SIT
    - ▶ If retirement in March 2020 resulted into creation of a debt against firm, settlement of such debt by transfer of CA or SIT represents consideration accruing to firm
    - ▶ Distribution of CA or SIT is in lieu of sale in open market and payment of cash
  - ▶ There is repetitive emphasis in s.9B for treating event of receipt as “deemed transfer”; such deemed transfer occurs in year in which CA or SIT is received by partner from the firm
  - ▶ View 2 results in frustrating charge which already got created under old s.45(4) - legislative intent of s.9B is to expand the scope rather than to sacrifice the charge
- ▶ **View 2:- S.9B does not apply**
  - ▶ Retirement in March 2020 could not have resulted into creation of a debt against firm – legally, a partner can never be creditor of the firm; he is creditor of other partners
  - ▶ In absence of saving clause for past reconstitution, lacuna in legislation cannot justify the trigger of charge
  - ▶ View 1 may result in s.9B being applied even to dissolution pre 1 April 1987 (which was tax neutral) and create double whammy in absence of cost step-up to partner u/s. 49(1)(iii)(b)

# Issue 4: Impact of retirement of partner at book value

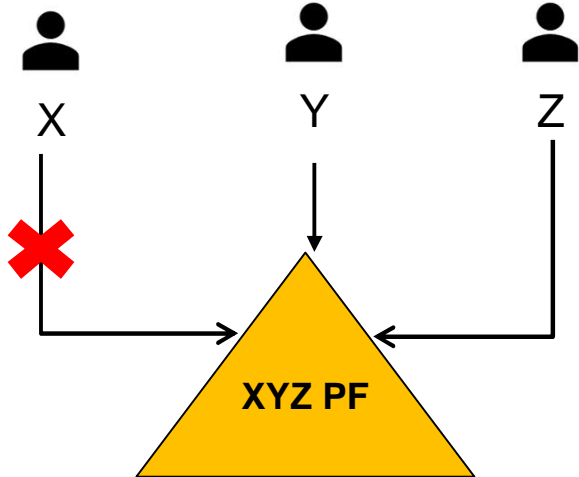
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- ▶ Settlement at an amount equivalent to partner's capital balance may not attract capital gains tax implications u/s. 45(4)
  - ▶ If such settlement is as per long standing terms of partnership deed, such settlement merely reflects working out of pre-existing rights
- ▶ In a different scenario, suppose, there is retirement and partner retires by withdrawing only capital balance at book value - despite there being higher entitlement basis partnership deed
  - ▶ Actual receipt by partner from firm is relevant - S.45(4) does not have any deeming fiction for taxation w. r. t. fair value of partnership interest
  - ▶ S.56(2)(x) implications in hands of continuing partners?
    - ▶ No transfer of specified property is effected by retired partner in favour of continuing partners
    - ▶ Settlement of retired partner without taking into account value of goodwill does not result in any transfer or settlement by such retired partner in favour of continuing partners under Gift-tax Act - assets and goodwill of firm continue to remain those of firm [CGT v T M Louiz [2000] 245 ITR 831 (SC)]
    - ▶ During subsistence of firm, no partner has any specific interest in any property of firm – while partners have certain rights on dissolution/retirement, properties remain that of firm and not of partners\*

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\* *Addanki Narayanappa & Anr v. Bhaskara Krishtappa & Ors AIR 1966 SC 1300; S. V. Chandra Pandian and Ors. v. S. V. Sivalinga Nadar and Ors. [1993 SCR(1) 58*

# Issue 5: Impact of partner's capital account turning negative by ignoring revaluation



Indicative balance sheet			
X Capital	1,000	Land (FMV 9,000)	3,000
Y Capital	1,000		
Z Capital	1,000		
<b>Total</b>	<b>3,000</b>	<b>Total</b>	<b>3,000</b>

- ▶ XYZ LLP has 3 partners having equal PSR and equal capital contribution
- ▶ In year 1, partner X desires to withdraw cash from his capital account for personal purposes
  - ▶ In year 1, land is revalued by firm and revaluation profit of 6,000 is credited in equal proportion to capital account of all three partners
  - ▶ Out of total credit balance in partner's capital account of 3,000 (viz. 1,000 capital contribution and 2,000 revaluation), partner X withdraws cash of 2,500 in year 1
- ▶ In year 2, partner X retires from LLP
- ▶ Amount payable to X on retirement is determined at 500, which is payable in cash in year 2
- ▶ Since retiring partner's account is settled in cash, s.9B does not trigger
- ▶ Refer next slide for s.45(4) implications

# Issue 5: Impact of partner's capital account turning negative by ignoring revaluation

Particulars	If no withdrawal in year 1	Post withdrawal in year 1
Money received in connection with reconstitution	3,000 [B]	500 [B]
FMV of capital asset received	- [C]	- [C]
Partner's capital balance at the time of reconstitution	(1,000) [D]	(- 1,500*) [D]
Capital gains u/s. 45(4) in hands of firm	2,000 [A = B + C – D]	2,000 [A = B + C – D]

*\*Compute without taking into account increase due to revaluation of any asset*

X's capital account per books (post revaluation)			
Particulars	Debit	Particulars	Credit
<b>Year 1</b>			
To Withdrawal in year 1	2,500	By Opening b/f	1,000
To Closing c/f	500	By X's share on revaluation of land	2,000
<b>Total</b>	<b>3,000</b>	<b>Total</b>	<b>3,000</b>
<b>Year 2</b>			
		By Opening b/f	500

Memorandum capital a/c (ignoring revaluation)			
Particulars	Debit	Particulars	Credit
<b>Year 1</b>			
To Withdrawal in year 1	2,500	By Opening b/f	1,000
		By X's share on revaluation of land	Ignored *
		By Closing c/f	1,500
<b>Total</b>	<b>2,500</b>	<b>Total</b>	<b>2,500</b>
<b>Year 2</b>			
To Opening b/f	1,500		



# Issue 6: Waiver of debit balance in partner's capital account on retirement

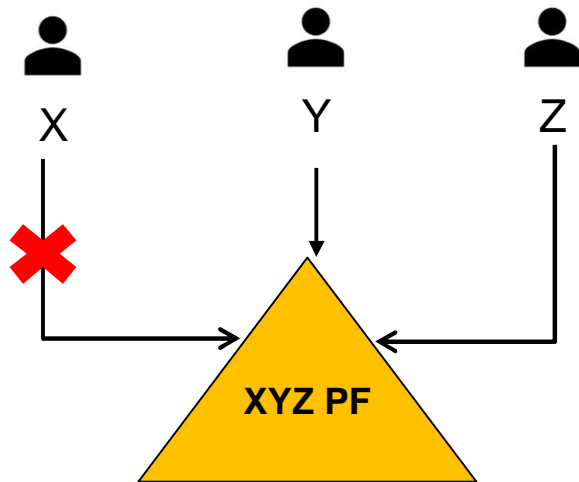
- ▶ In earlier case study, assume that partner X withdraws cash of 3,500 in year 1 for personal purposes, against his capital balance of 3,000 (post revaluation)
- ▶ Firm waives of 500 due from partner X and also, nothing further is paid to partner
  - ▶ CIT v. Mahindra And Mahindra Ltd. [2018] 93 taxmann.com 32 (SC): “waiver of loan by the creditor results in the debtor having extra cash in his hand. It is receipt in the hands of the debtor.”
- ▶ Hence, waiver of 500 by firm results in receipt of extra cash in hands of partner from firm

Particulars	Amount
Money received in connection with reconstitution	500 [B]
Partner's capital balance at the time of reconstitution	(2,000) [D]
Capital gains u/s. 45(4) in hands of firm	2,500 [A = B + C – D]

- ▶ Memorandum Capital Account of Partner X (ignoring revaluation) is as under:-

Memorandum Capital Account of Partner X			
Particulars	Debit	Particulars	Credit
Year 1			
To Withdrawal in year 1	3,500	By Opening b/f	1,000
		By X's share on revaluation of land	Ignored*
		By Closing c/f	2,500
<b>Total</b>	<b>3,500</b>	<b>Total</b>	<b>3,500</b>
Year 2			
To Opening b/f	2,500	By P&L account (waiver in year 2)	500
		By Closing c/f	2,000

# Issue 7: Is s.45(4) applicable on receipt by legal representative of deceased partner?



Indicative balance sheet			
X Capital	1,000	Land (FMV 9,000)	3,000
Y Capital	1,000		
Z Capital	1,000		
<b>Total</b>	<b>3,000</b>	<b>Total</b>	<b>3,000</b>

- ▶ XYZ PF has 3 partners having equal PSR and equal capital contribution
- ▶ Partner X expires
- ▶ As per partnership deed, account of deceased partner X is to be settled at fair value in favour of his legal heir without admitting him as partner
- ▶ Continuing partners Y and Z bring in cash for payment to legal heir of X
- ▶ While there is no dispute that death of partner gives rise to reconstitution of the firm; limited issue is whether s.45(4) gets triggered when the legal heir receives settlement of deceased partner's capital account.
- ▶ S, 45(4) states 'where **a specified person receives** money.....from specified entity...'
- ▶ 'Specified person' is defined to mean **a person who is partner of a firm.....**

# Issue 7: Is s.45(4) applicable on receipt by legal representative of deceased partner?

## ▶ View 1:- S.45(4) applies

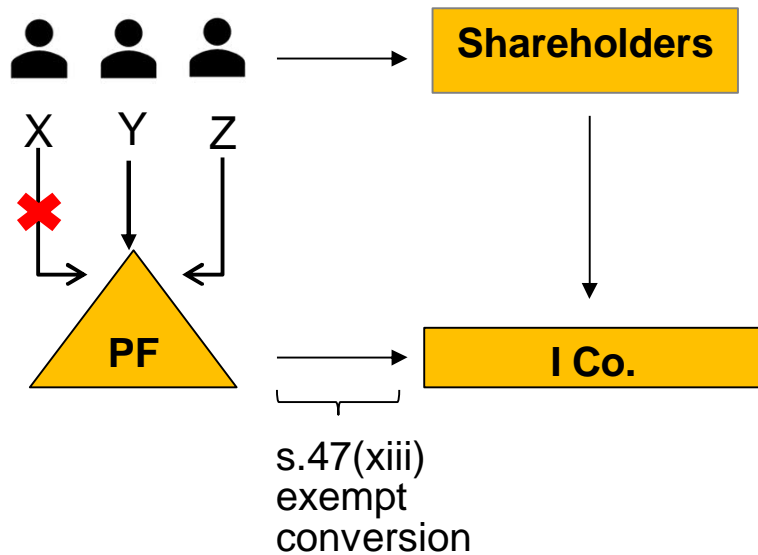
- ▶ Legal heir steps into shoes of deceased partner - payment is made to legal heir pursuant to right conferred on deceased partner in terms of partnership deed
- ▶ Concept of 'substituted assessee' enshrined in s.49(1) of ITR – to also be read into s.45(4)
- ▶ C.V. Ramanathan v. CIT [1980] 125 ITR 191 (Madras) – exemption u/s. 54 allowed to deceased taxpayer even where the investment in new house was made by son of deceased taxpayer

## ▶ View 2:- S.45(4) does not apply

- ▶ Legal heir was never admitted into partnership – hence, is not a 'specified person' – charge fails in absence of receipt by a 'specified person' –
- ▶ Being a charging provision, strict interpretation required
- ▶ S.159/168 provide taxing deceased person's income in hands of legal representatives/executor – such provisions are inapplicable to present case as taxation u/s. 45(4) is in hands of firm
- ▶ A specific provision along the lines of Explanation (iii) to s.45(5) is needed for taxing receipt by legal heir
- ▶ Interest paid by firm to estate of deceased partner administered by trustee, is not hit by s.40(b) as such trustee was never admitted as a partner in firm [Colombo Stores (1984)(17 Taxman 183)(Madras HC)]

Where firm having 2 partners is dissolved due to death of one partner, and business is continued by legal heir with surviving partner, there may be emergence of AOP/BOI

# Issue 8: Impact of corporatisation of firm u/s. 47(xiii) or Chapter XXI post retirement



Indicative balance sheet			
X Capital	1,000	Land (FMV 9,000)	3,000
Y Capital	1,000		
Z Capital	1,000		
<b>Total</b>	<b>3,000</b>	<b>Total</b>	<b>3,000</b>

- ▶ XYZ LLP has 3 partners having equal PSR and equal capital contribution
- ▶ Partner X retires w. e. f. 1 January 2021
- ▶ Value of X's interest is determined at 3,000, which is payable in cash by LLP to X at the end of three years, i.e. on 31 December 2023
- ▶ X is recognized in books of LLP as a creditor
- ▶ Post retirement, remaining partners decide to carry on business in the form of a corporate structure
- ▶ On 31 March 2021, Y and Z form a company 'I Co.', infuse capital therein, and I Co. purchases business from LLP for a lump sum consideration – such conversion is exempt u/s. 47(xiii)
- ▶ On 31 December 2023, I Co. discharges the debt in favor of X by payment of cash
- ▶ Assuming charge u/s. 45(4) is triggered on actual receipt, can such charge trigger even where debt is repaid by I Co. and not by LLP?

# Issue 8: Impact of corporatisation of firm u/s. 47(xiii) or Chapter XXI post retirement

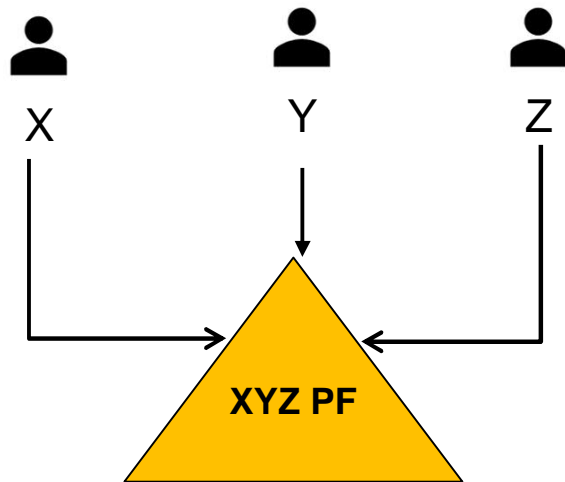
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- ▶ S, 45(4) triggers charge “where specified person receives money .....from a specified entity.....”
- ▶ At the stage of conversion in year 1, retired partner receives debt owed by I Co. in lieu of debt owed by firm/LLP – retired partner does not receive any money from the firm/LLP
- ▶ At the stage of discharge of debt by I Co. in year 3, retired partner receives money from I Co. which is not a ‘specified entity’
- ▶ Charging provisions require strict construction – absence of receipt by partner from ‘specified person’ may frustrate the charge?

## **Additionally, corporatisation u/s. 47(xiii) involves novation of debt as inter-vivos transfer**

- ▶ Novation involves discharge of original debt due by LLP and substitution by fresh debt due by ICo.
- ▶ Such discharge is not by way of repayment but by way of a mutual agreement

# Issue 9: Withdrawal of firm's property by partners in their PSR



Indicative balance sheet			
X Capital	1,000	Business (FMV 6,000)	2,000
Y Capital	1,000	Land (FMV 3,000)	1,000
Z Capital	1,000		
<b>Total</b>	<b>3,000</b>	<b>Total</b>	<b>3,000</b>

- ▶ XYZ PF has 3 partners having equal PSR
- ▶ XYZ PF has two assets, one being business with book value of 2,000 (whose FMV is 6,000) and another being land with book value of 1,000 (whose FMV is 3,000)
- ▶ For diverse commercial and social considerations and for bona fide reasons of long-term sustenance of partnership relations, a decision is taken to distribute certain firm's properties
- ▶ Accordingly, Land B (having FMV of 3,000) is distributed to X against his entitlement of 3,000
- ▶ Firm debits book value of Land B against X's capital account balance
- ▶ In absence of any dissolution/reconstitution, s.45(4)/s.9B may not trigger in hands of PF
- ▶ Whether s.45(1) triggers in hands of firm? If yes, whether consideration is debit to partner's capital account? Whether s.50C applies?

# Issue 9: Withdrawal of firm's property by partners in their PSR

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## ▶ View 1:- S.45(1) may not trigger in hands of firm:-

- ▶ Despite s.14 and s.15 of Indian Partnership Act, firm is not a separate legal entity but a compendium of partners, firm cannot function without partners, and as a result, real owners of firm's property are partners who are effective co-owners in their profit sharing ratio
  - ▶ Upon distribution, co-owned property is converted into exclusive property
  - ▶ For determining whether an asset withdrawn from firm is long-term or short-term in hands of partner post such withdrawal, holding period of firm was considered [CIT v. Kamala Devi [1997] 227 ITR 701 (Madras HC) and Ratansi Narayan Patel v. CIT [1988] 173 ITR 547 (MP HC)]
- ▶ During subsistence of firm, there can be 'distribution' of property in profit sharing ratio, as contradistinguished from 'sale' of property for a specified consideration - [Burlingtons' Exports v. ACIT [1993] 45 ITD 424 (Mumbai ITAT)]

# Issue 9: Withdrawal of firm's property by partners in their PSR

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## ▶ View 2:- Capital gains u/s. 45(1) r. w. s. 50C are attracted:-

- ▶ S.14 and s.15 of Indian Partnership Act provides that firm can acquire and own assets\*
    - ▶ No partner has any specific or exclusive interest in any property of firm, even to the extent of his profit share; while partners have certain rights on dissolution/retirement, properties remain that of firm and not of partners
  - ▶ Once partner acquires exclusive rights in any property of firm, there is effective transfer or extinguishment of firm's interest in such property hitherto owned by firm\*\*
  - ▶ Transfer of property to partners during subsistence of firm is different from distribution of property to partners on dissolution or retirement – also, in former case, debit to partner's capital balance may be regarded as consideration in hands of firm [B.T. Patil & Sons v. CGT [2001] 114 Taxman 301 (SC)]
- ▶ Partner can also face consequences u/s. 56(2)(x) if specified property such as land is withdrawn where debit to his capital account is less than stamp duty value

In case of withdrawal from LLP, View 2 becomes stronger as LLP Act regards LLP as a body corporate, capable of acquiring, owning, holding disposing of property

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\* *Addanki Narayanappa & Anr v. Bhaskara Krishtappa & Ors AIR 1966 SC 1300; S. V. Chandra Pandian and Ors. v. S. V. Sivalinga Nadar and Ors. [1993 SCR(1) 58*

\*\* *A.S. Krishna Setty & Sons v. ACIT [1975] 100 ITR 587 (Karnataka HC); B.T. Patil & Sons v. CGT [1996] 89 TAXMAN 598 (Karnataka HC); CIT v. Bharani Pictures (1980) 3 Taxman 478 (Madras HC)*



# Certain Additional points

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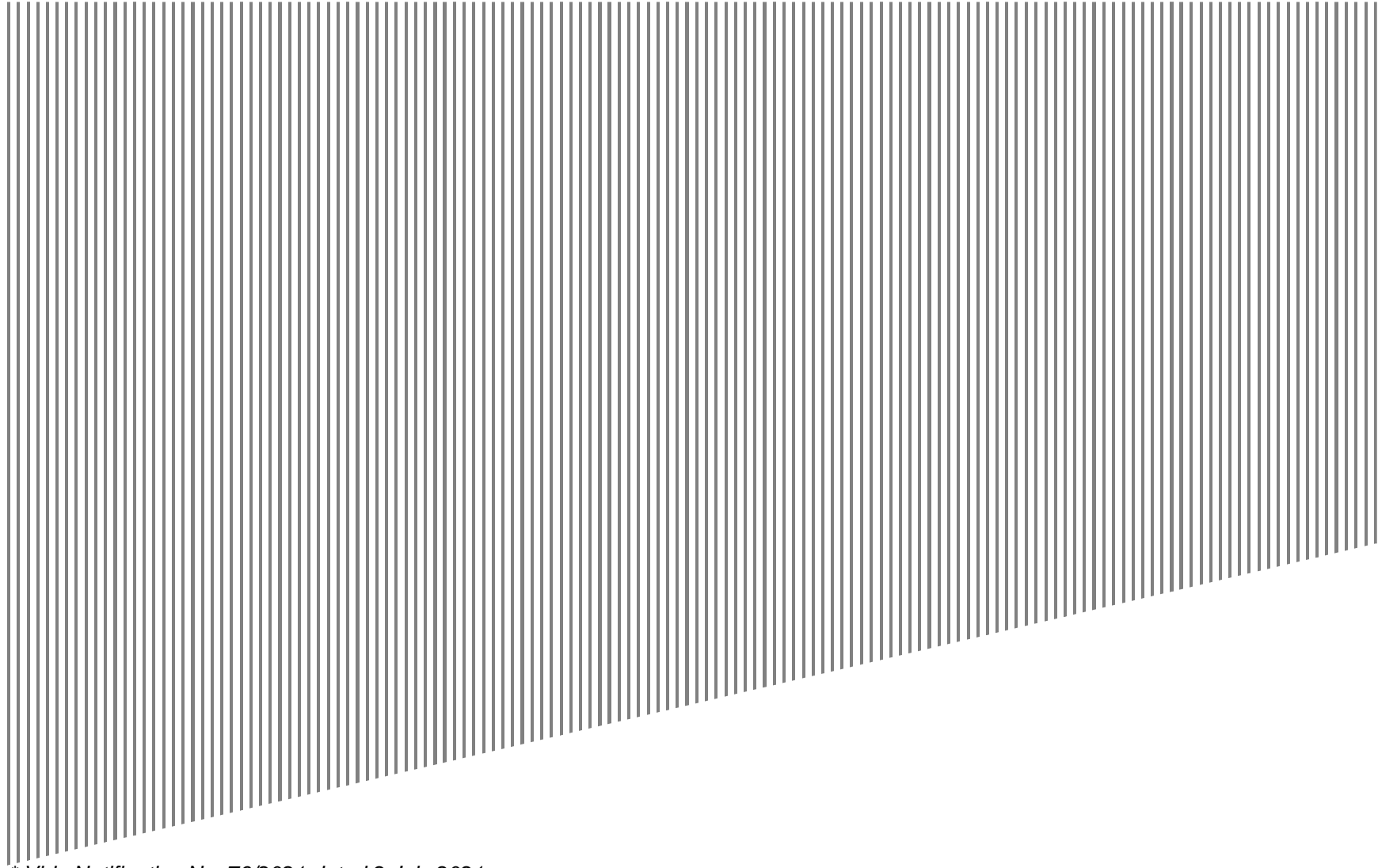
- ▶ S.9B and s.45(4) are independent charging provisions; absence of back up amendment to definition of ‘transfer’ u/s. 2(47) or ‘income’ u/s. 2(24) may not frustrate the charge
- ▶ S.9B(3) deems FMV of capital asset or SIT as full value of consideration received or accruing as a result of deemed transfer - where stamp duty value is > FMV, whether the same substitutes FMV?
  - ▶ Arguably, no - S.9B(3) begins with the words “for the purposes of this section” – such a specific provision for ascertaining sale consideration shall prevail over all other general provisions such as s.43CA or s.50C
- ▶ As per s.45(4), partner’s capital account can be “represented in any manner” in the books of the firm
  - ▶ In the context, both fixed capital and fluctuating capital account will be considered for s.45(4)
  - ▶ However, an account created due to loan is, strictly speaking, not a “capital account”

# Certain Additional points

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- ▶ If retiring partner is from a jurisdiction that has favourable capital gains article in tax treaty with India, can firm suggest that s.45(4) charge is not attracted as firm and partners are alternative taxpayers and if partner is treaty protected, there can be no taxation on firm?
  - ▶ For example, Article 13(5) of India-Netherlands treaty provides that “Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident”
- ▶ Firm may convert CA into SIT before distribution to partner upon reconstitution – such conversion may avoid duplicated taxation u/s. s.45(4) subject to GAAR
  - ▶ Upon distribution to partner, firm attracts taxation u/s. 45(2) w. r. t. FMV on date of conversion
  - ▶ S.9B impact is confined to appreciation beyond aforesaid FMV
  - ▶ Since receipt by partner is SIT which is neither money nor capital asset, s. 45(4) will not trigger.

# Rules prescribed for capital gains chargeable u/s. 45(4) – Rule 8AA(5) and 8AB\*



\* Vide Notification No. 76/2021 dated 2 July 2021

# General principles for attribution of s.45(4) capital gains

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- ▶ S.45(4) taxes realisation in excess of partner's capital account balance, which represents such partner's share in value appreciation of remaining capital assets of firm
- ▶ Since such value appreciation is already taxed u/s. 45(4) at the time of reconstitution, s.48(iii) provides for attributing s.45(4) capital gains to remaining capital assets of firm
- ▶ Amount so attributed is reduced from sale consideration as and when such remaining capital assets are transferred by firm
- ▶ Aforesaid principle is equally applicable to capital asset forming part of block of assets
  - ▶ At the time of transfer, amount so attributed to depreciable capital asset is reduced from moneys payable (or sale consideration, if s.50 applies) and only net amount is reduced from WDV (or charged as short-term capital gains, if s.50 applies)
- ▶ However, 'actual cost' remains intact - no depreciation or indexation benefit is available on amount so attributed

# Manner of attribution of s.45(4) capital gains – Rule 8AB

Where s.45(4) capital gains relates to	Basis of attribution:	
Capital asset received by partner from firm	No attribution	
Revaluation of any capital asset of firm (other than above)	S.45(4) capital gains x	A
		C
Valuation of self-generated goodwill/asset of firm	S.45(4) capital gains x	B
		C
Does not relate to any of the above	No attribution	

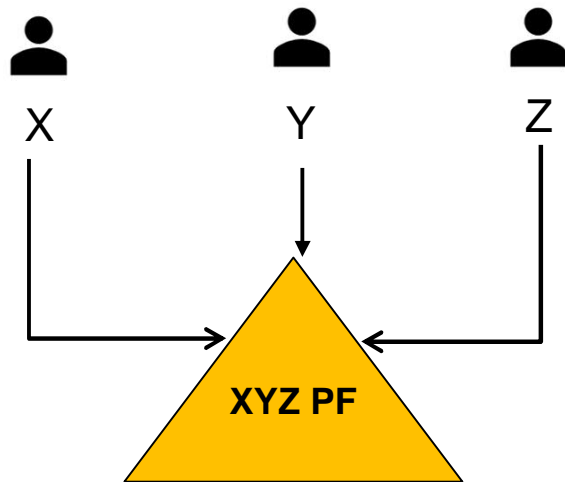
- ▶ A = Increase in value of such remaining capital asset because of revaluation
- ▶ B = Recognition of value of such self-generated goodwill/asset because of valuation
- ▶ C = Aggregate of increase in value of all capital assets because of revaluation, or recognition of value of all self-generated goodwill/assets because of valuation
- ▶ **Conditions:**
  - ▶ Revaluation should be based on a valuation report obtained from a valuer who is eligible to be appointed as a registered valuer under Wealth Tax Act, 1957
  - ▶ Firm to furnish details in prescribed form on or before the due date of filing ROI

# Whether s.45(4) capital gains are short-term or long-term – Rule 8AA(5)

S.N.	Where s.45(4) CG are attributed, in whole or in part, to	Nature of CG chargeable u/s. 45(4)
1	Capital asset which is short-term under ITL, at the time of taxation of s.45(4) capital gains <i>(identify asset by tenure)</i>	STCG*
2	Capital asset forming a part of block of assets <i>(by class of asset)</i>	
3	Self-generated goodwill/asset <i>(by class of asset)</i>	
4	Any other capital asset not covered above and, which is long-term capital asset under ITL, at the time of taxation of s.45(4) capital gains <i>(identify asset by tenure)</i>	LTCCG

*\*shall be deemed to be from transfer of short term capital asset*

# Illustrative example – Cash pay out on retirement



Indicative balance sheet			
X Capital	500	Land (FMV 2,100)	1,500
Y Capital	500	Goodwill (FMV 3,000)	-
Z Capital	500		
<b>Total</b>	<b>1,500</b>	<b>Total</b>	<b>1,500</b>

- ▶ XYZ PF has 3 partners having equal PSR and equal capital contribution
- ▶ XYZ PF has land acquired at cost of 1,500 whose FMV is 2,100
- ▶ Land is held as a long-term capital asset
- ▶ Firm also has self-generated goodwill of 3,000
- ▶ X retires from the firm and his account is settled in cash after taking into account FMV of land and self-generated goodwill
- ▶ In order to settle X's share, continuing partners Y and Z bring in cash
- ▶ X is paid 1,700 against his capital balance of 500 (ignoring revaluation)
  - ▶ 1,700 is represented by capital of 500 plus 1/3<sup>rd</sup> share in value appreciation of 3,600 (600+3000)
- ▶ Refer next slide for tax implications

# Illustrative example – Cash pay out on retirement

Particulars	S.9B	S.45(4)
Money received	Not applicable as no capital asset or SIT is distributed	1,700 [B]
FMV of capital asset received		- [C]
Partner's capital balance		500* [D]
Capital gains in hands of firm		1,200 [A = B + C – D]

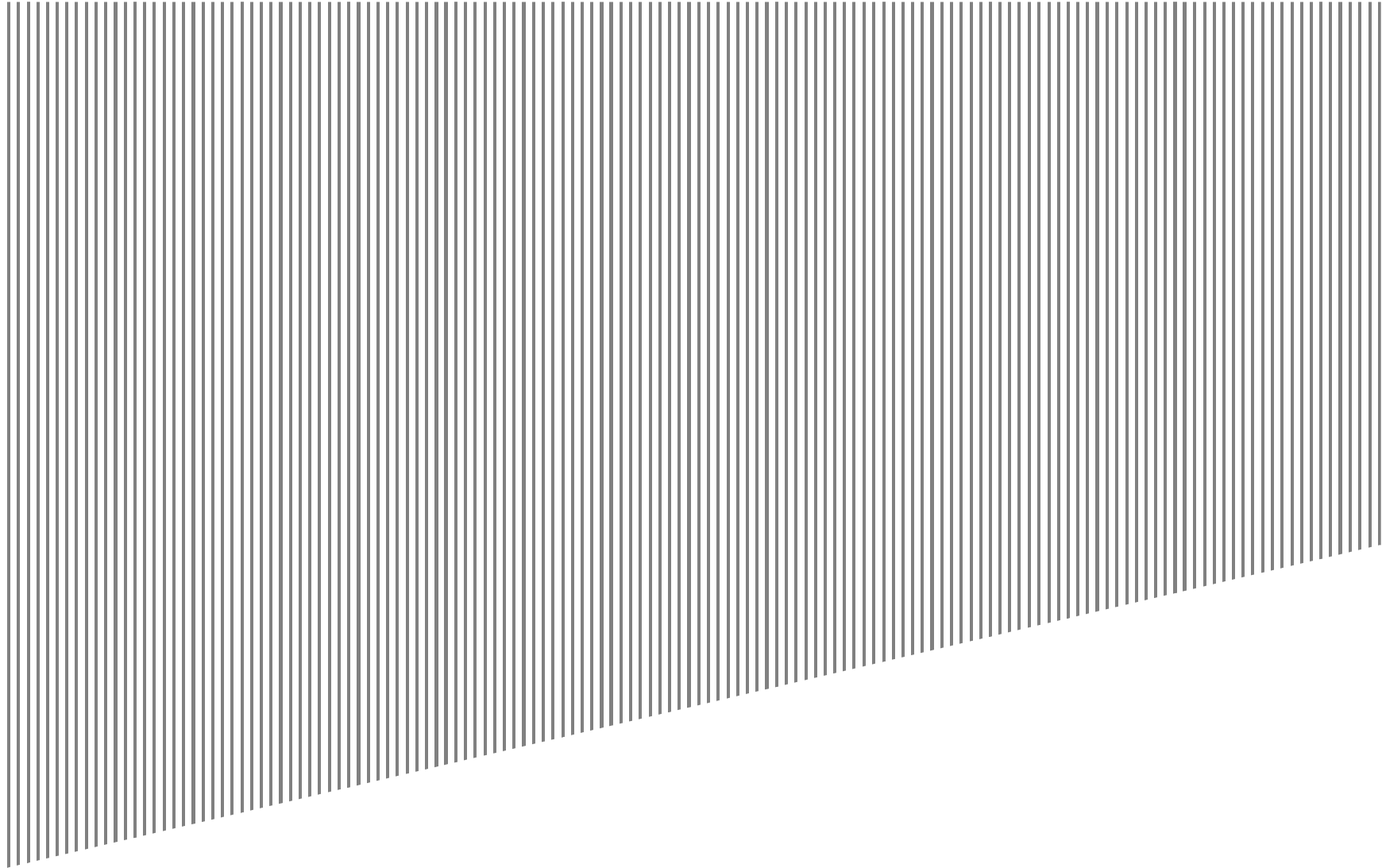
Where s.45(4) capital gains relates to	Basis of attribution		Calculation	Nature of s.45(4) CG	CG on future transfer
Revaluation of land	S.45(4) CG x	A	$1,200 \times \frac{600}{3,600}$	200 LTCG	400 LTCG (2,100-1,500-200)
		C			
Valuation of self-generated goodwill	S.45(4) CG x	B	$1,200 \times \frac{3,000}{3,600}$	1,000 STCG	2,000 LTCG (3,000-1,000)
		C			

- ▶ A = Increase in value of such remaining capital asset because of revaluation
- ▶ B = Recognition of value of such self-generated goodwill/asset because of valuation
- ▶ C = Aggregate of increase in value of all capital assets because of revaluation, or recognition of value of all self-generated goodwill/assets because of valuation

In case of decline in value of assets, rules do not offer any guidance – however, if assets are impaired in books under accounting standards, no controversy arises



# Some illustrative issues relating to rules



# Canons of interpretation\*

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- ▶ Power to prescribe rules given to Central Government falls within the realm of ‘delegated legislation’
- ▶ Delegated legislation cannot provide anything which is contrary to provisions of the Act
- ▶ Rules cannot override the Act either by exceeding the authority or by making provisions which are contrary to or inconsistent with the Act
- ▶ Central Government has to strictly act within the authority delegated to it in consonance with the object of such delegation
- ▶ However, while deciding on validity of rules, there is a rebuttable presumption that rules are intra vires – unless the same is struck down by Supreme Court or High Court\*\*

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\* Refer, illustratively, *J. K. Industries Ltd & Anr v. UOI* (2007) 297 ITR 176 (SC)

\*\* *CIT v. Ved Parkash* [1989] 178 ITR 332 (P&H HC); *CIT v. Shah Electrical Corpn.* [1994] 207 ITR 350 (Gujarat HC) – also held in *J. K. Industries Ltd & Anr v. UOI* (supra)

# Whether rule 8AA(5) prescribed is under the authority of the Act?

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- ▶ Act does not empower CBDT to prescribe rules to determine nature of s.45(4) capital gains
  - ▶ S.48(iii) – Prescribe manner of calculating amount which is attributable to the capital asset being transferred by the firm and not nature of capital gains under s. 45(4)
- ▶ S.2(42A) only empowers CBDT to prescribe period of holding of capital asset and not nature of CG, that too, w.r.to date of transfer
  - ▶ Further, s.45(4) itself does not specify nature of capital asset nor it refers to transfer of asset—profits and gains under s.45(4) arise from receipt by partner from firm; and not by transfer of capital asset. Consequently, it may be difficult to link s. 45(4) with s. 2(42A)
- ▶ Is Rule 8AA(5) authorised by powers under s.9B(4)?
  - ▶ Was there a difficulty? Does the rule remove the difficulty? Can difficulty be removed in a manner contrary to provisions of the Act?
  - ▶ Powers to remove difficulty can be exercised in a manner consistent with the scheme and essential provisions of the Act, and for purpose for which it is conferred – such power is not uncontrolled or unfettered\*

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*\*Straw Products Ltd. [1968] 68 ITR 227 (SC); Madeva Upendra Sinai [1975] 98 ITR 209 (SC)*

# Does Rule 8AA(5) conflict with the Act?

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- ▶ Capital gains u/s. 45(4) attributable to self-generated goodwill/asset are deemed as STCG, even if such self-generated goodwill/asset is held for > 3 years by firm and qualifies as LTCA in hands of firm
  - ▶ If s.45(4) only results in preponing capital gains tax liability to the point of realization by partner as compared to sale of LTCA by firm, whether deeming s.45(4) capital gains as STCG is contrary and ultra vires Act?
  - ▶ Rule 8AA(5) states that s.45(4) capital gains attributable to self-generated goodwill/asset or depreciable assets “shall be deemed to be from transfer of short term capital asset” – whether such deeming fiction is limited only to s.45(4), so as to deny indexation benefit? Whether benefit of s.112, s.54EC can still be availed for an asset which is otherwise long term in nature by relying on SC decision of CIT v. Dempo Company Ltd. [2016] 74 taxmann.com 15?

# Non determination of nature of capital gains under s. 45(4)- whether charge fails?

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- ▶ S. 45(4) provides for taxation of money or capital asset received by partner from firm in connect with reconstitution as 'capital gains'.
  - ▶ Section does not provide any guidance on nature of CG whether short term or long term
  - ▶ ITA provides for different tax treatment for STCG and LTCG.
  - ▶ Rule 8AA(5) seeks to provide manner of determination of nature of capital gains basis underlying capital asset retained by the firm-subject to valuation report.
- ▶ If charge is inadequate or there is ambiguity in determination of components of tax, charge may fail– Govindsaran Gangasaran v CST [1985] 155 ITR 144 (SC)
  - ▶ Where the rate is not stipulated or it cannot be applied with precision, it would be difficult to tax a person - CIT v. Vatika Township (P.) Ltd. [2014] 227 Taxman 121 (SC)
- ▶ Under following circumstances, it may be difficult or not possible to ascertain nature of capital gains under s. 45(4):
  - ▶ No specific mandate on firm to obtain a valuation report - If no valuation report is obtained, nature of capital gains (whether short-term or long-term) u/s. 45(4) remains undetermined?
  - ▶ In case where retired partner receives cash from firm which is wholly attributable to value appreciation in SIT retained by the firm, capital gains taxed under s.45(4) is not attributed to any capital asset of firm. Consequently, Rule 8AA(5) fails.

# Whether Rule 8AA(5) is applicable to receipt in connection with reconstitution in A.Y. 2021-22?

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- ▶ Rules are silent on the effective date
- ▶ Website of Income-tax Department suggests that the rules are effective from 2 July 2021
- ▶ Principles of law relevant for ascertaining effective date :
  - ▶ In absence of any effective date specified in notification, notification shall apply from date of publication in Official Gazette\*
  - ▶ Law to be applied for determining tax liability is the law in force as on the first day of relevant assessment year, unless otherwise stated or implied\*\*
- ▶ Ambiguity survives on applicability of rules for receipts in A.Y. 2021-22 (previous year 2020-21)
- ▶ **View 1: Rules are applicable even to receipts in A.Y. 2021-22**
  - ▶ Rules which effectuate the purposes for which the statute was enacted, are effective from the date on which the statute has become operative\*\*\*
- ▶ **View 2: Charge fails?**
  - ▶ CBDT could have notified rules retrospectively, but chose not to do so
- ▶ **View 3: Charge survives, but compute capital gains by reference to life of partnership interest?**

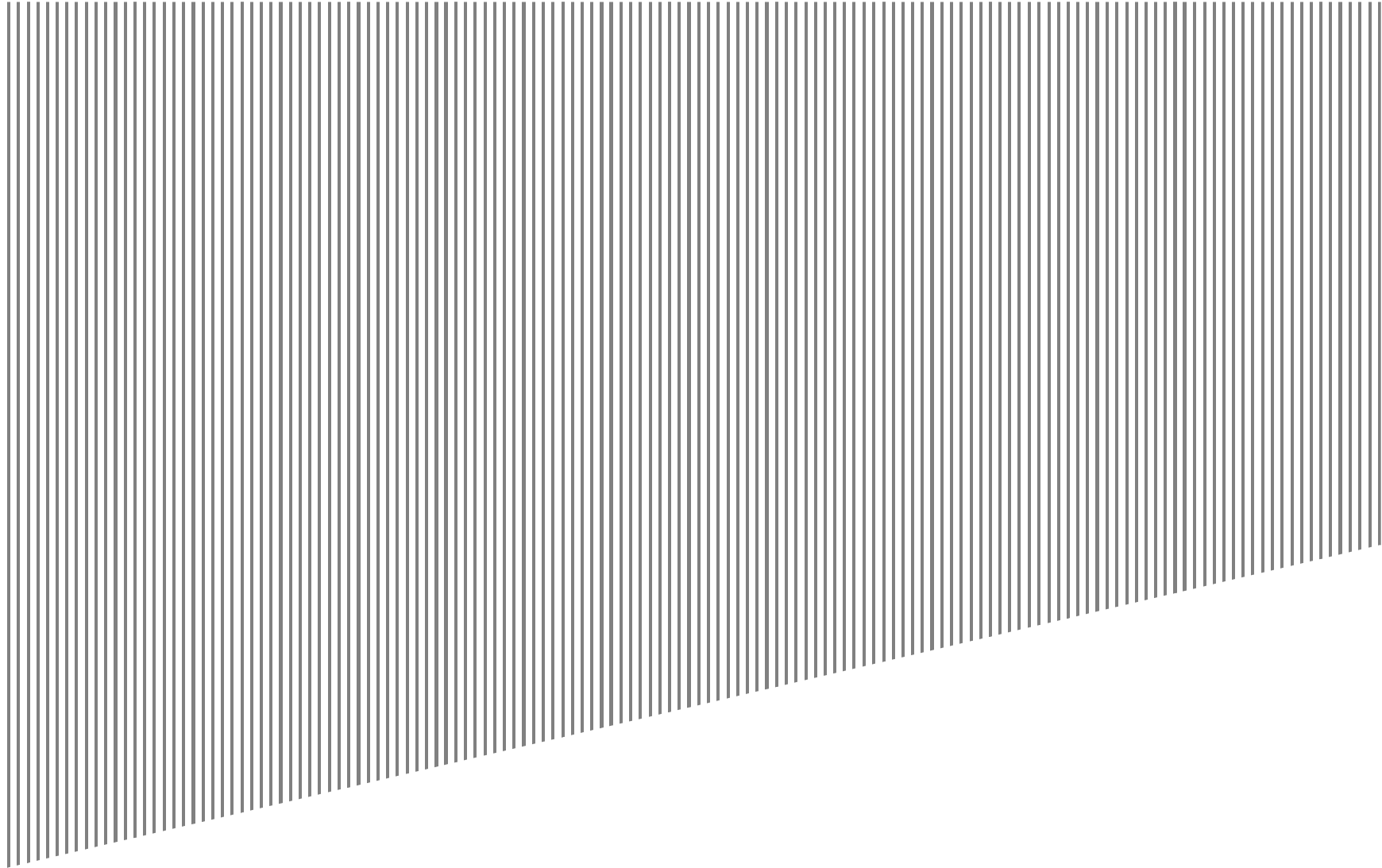
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\**UOI v. Ganesh Das Bhojraj (2000) 244 ITR 691 (SC), UOI v. Param Industries Ltd. [2015] 321 ELT 192 (SC)*

\*\* *CIT v. Isthmian Steamship Lines [1951] 20 ITR 572 (SC)*

\*\*\* *S.A.L. Narayan Row v. Ishwarlal Bhagwandas [1965] 57 ITR 149 (SC)*

# Way forward on the amended provisions.....



# Way forward on the amended provisions.....

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- ▶ Terms of partnership/LLP agreement may need revisit to ascertain basis of determination of value of outgoing partner; mode and manner of settlement of account of outgoing partner; commercial understanding on sharing of tax liability under s. 45(4) r.w.s.48(iii) etc.
- ▶ To withstand inquiry by tax authority into correctness of entries and debits posted to outgoing partner's capital account, firm may consider to independently undertake statutory audit of its accounts to substantiate position at the time of reconstitution.
- ▶ To be vigilant on any act of revaluation done in past and its impact on capital balance of partners.
- ▶ Evaluate possible transition of credit available in terms of s. 48(iii) to successor in case of any act of disposal of firm's capital asset or business by way of gift or proposal for converting firm into company under tax neutral mode etc, post retirement of partner/s.
- ▶ Evaluate impact on credit under s. 48(iii) vis-à-vis mode of transfer of firm's business- whether slump sale or itemise sale.
- ▶ Where a view is taken that amendments are applicable retrospectively to AY 2021-22, taxpayer may apply for waiver of interest u/s. 234C for shortfall on non-payment of advance tax liability



# Thank You!

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