

Taxation of Share and Derivative Transactions

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Tax rates for different securities

1. Listed Equity Shares & Equity Oriented Mutual Funds

Period of Holding	Short term/long term	Tax Rate
Up to 12 months	Short Term	15%
More than 12 months	Long Term	10% (Without Indexation) Exceeding Rs. 1 Lakhs

2. Unlisted Equity Shares

Period of Holding	Short term/long term	Tax Rate
Up to 24 months	Short Term	Normal/ slab rates
More than 24 months	Long Term	20%

Tax rates for different securities

3. Listed Bonds/ Debentures

Period of Holding	Short term/long term	Tax Rate
Up to 12 months	Short Term	Normal/ slab rates
More than 12 months	Long Term	10% (Without Indexation)

4. Unlisted Bonds/ Debentures

Period of Holding	Short term/long term	Tax Rate
Up to 36 months	Short Term	Normal/ slab rates
More than 36 months	Long Term	20% without indexation

Guidelines for AO to determine business income or capital gain

As per CBDT circular No. 4/2007, Dated 15-6-2007

1. Whether the shares purchased were held and valued as stock-in-trade.
2. Whether there were substantial transactions. In this context, the magnitude of the transactions, ratio between purchases and sales, entries in the books of account; will be relevant.
3. Whether the object of investment in shares was to derive income by way of dividends or realizing profits by the purchase and sale thereof.
4. The CBDT advises that a tax payer may have to maintain two portfolios viz.
 - (i) The investment portfolio comprising securities which are to be treated as capital assets; and
 - (ii) Trading portfolios comprising stock-in-trade which are to be treated as trading assets.

Transaction in shares – Business or investment

As per CBDT circular no. 6/2016 dated 29-2-2016

- Where the assessee himself, irrespective of the period of holding of listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/ securities would be treated as a business income.
- In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer – if the assessee desires to treat such income on sale of Shares as Capital Gains – the same shall not be put to dispute by the Income Tax Officer. In other words, the assessee is allowed to treat shares which were held for more than 12 months as Long Term Capital Gains.
- However, this stand, once taken by the assessee in a particular assessment year shall remain applicable in subsequent assessment years also and the taxpayer shall not be allowed to adopt a different/ contrary stand in subsequent assessment years.

Section 43(5)

(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

- (a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or
- (b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

Section 43(5)

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; or

(d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; or

(e) an eligible transaction in respect of trading in commodity derivatives carried out in a 78[recognised stock exchange], which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013),

shall not be deemed to be a speculative transaction:

Section 43(5)

Following stock exchanges are notified as recognized stock exchanges for trading in derivatives by CBDT.

1. NSE & BSE
2. United Stock Exchange of India Ltd
3. India International Exchange (IFSC Ltd)

For Commodities

1. NCDEX
2. MCX
3. Universal Commodity Exchange Ltd
4. Ace derivatives & Commodity Exchange Ltd
5. Indian Commodity Exchange Ltd
6. National Stock Exchange Ltd

Determination of Turnover in F&O cases

The method for determination of turnover is not provided under the Income Tax Act, 1961. However, as per generally accepted accounting practice and as per ICAI Guidance Note on Tax Audit, it should be as follows:

- The total of favourable and unfavourable differences (Profit/Loss) shall be taken as turnover (In other words, all the differences, whether positive or negative are aggregated for calculating the turnover).
- Premium received on sale of options is also to be included in turnover.
- In respect of any reverse trades entered, the difference thereon, should also form part of the turnover

Examples of the calculations are provided in the next slide.

Determination of Turnover in F&O cases

Example 2 – Option Trading

Options	Units	Buying Rate	Selling Rate	Difference	Premium Received	Turnover
(A)	(B)	(C)	(D)	[E= (B) x (D-C)]	(F= D x B)	(G)
Nifty 18200 CE	100	300	210	Rs. - 9,000	Rs. 21000	Rs. 30,000
Tata Power 240 PE	500	45	70	Rs. 12,500	Rs. 35,000	Rs. 47,500
Bank Nifty 38500 CE	125	348	300	Rs. - 6,000	Rs. 37,500	Rs. 43,500
Total Turnover						Rs. 1,21,000

Section 44AA

44AA. (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,— (i) if his income from business or profession exceeds [one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [ten lakh] rupees in any one of the three years immediately preceding the previous year; or (ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [one lakh twenty] thousand rupees or

Section 44AA

(iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under [section 44AE] 40 [or section 44BB or section 44BBB], as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such [previous year; or]]

(iv) where the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,] keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act.

Section 44AA

Provided that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "one lakh twenty thousand rupees", the words "two lakh fifty thousand rupees" had been substituted :

Provided further that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted.

Section 44AB

44AB. Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds [**one crore rupees**] in any previous year

[**Provided** that in the case of a person whose—

(a) **aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and**

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment: this clause shall have effect as if for the words "**one crore rupees**", **the words** "**ten crore rupees**" had been substituted; or]

Section 44AB

(b) carrying on profession shall, if his gross receipts in profession exceed [fifty] lakh rupees] in any

[Provided further] that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]
[previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [section 44AE] [or section 44BB or section 44BBB], as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any [previous year; or]]

Section 44AB

(d) carrying on the [profession] shall, if the profits and gains from the [profession] are deemed to be the profits and gains of such person under [section 44ADA] and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his [profession] and his income exceeds the **maximum amount which is not chargeable to income-tax in any [previous year; or]**

[(e) **carrying on the business shall, if the provisions of sub- section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,**] get his accounts of such previous audited by an accountant before the specified date and [furnish by] that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Section 44AB

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Section 44AD

44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed] during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

Section 44AD

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

Section 44AD

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or
- (iii) a person carrying on any agency business.

Illustrations

Question 1 - Mr X started trading in F&O for the first time during FY 2020-21. Turnover during the year is 75 lacs and he made a loss of 2 lacs.

Question 2 - Mr X started trading in F&O for the first time during FY 2020-21. Turnover during the year is 4 crores and he made a loss of 20 lacs.

Illustrations

Question 3 - Mr X started trading in F&O for the first time during FY 2020-21. Turnover during the year is 12 crores and he made a profit of 10 lacs.

Question 4 - Mr X started trading in F&O for the first time during FY 2019-20 and declared profit at the presumptive rate of 8%/6% as applicable (for F&O traders it is generally 6%). During the year 2020-21 turnover from F&O trading was 10 lacs and he incurred a loss of 2 lacs and Mr X does not have any other income during the year.

Mr. X wants to declare and claim the loss of 2 lacs.

Illustrations

Question 5 - Same facts as discussed in Example 4 except that Mr X has income of 10 lacs during the year.

FAQs

S. No.	Question	Answer
1	F&O Turnover is Rs. 3 Crores in AY 2021-22, is tax audit required?	No, as there being no cash transactions, limit for tax audit is Rs. 10 Crores.
2	F&O Turnover is Rs. 80 Lacs & there is a net loss from it, is tax audit required?	No, as the assessee never availed s. 44AD earlier, hence provisions of s. 44AB(e) are not applicable.
3	Salaried employee having no other income, F&O loss is disallowed, why?	This is so as under section 71(2A) loss from business is not allowed to be set-off against salary income.
4	Salaried Individual, having F&O loss, which ITR would be filed?	ITR -3, filing the profit & loss and balance sheet of F&O business.
5	Can an individual claim benefit of s. 44AD in F&O trading?	Yes, there is no restriction, however disclose the actual profits which may be more than 6%.
6	Can an assessee claim expenses against F&O gains?	Yes, actual expenses can be claimed which would include STT, brokerage, cess, etc.

Thank you!