

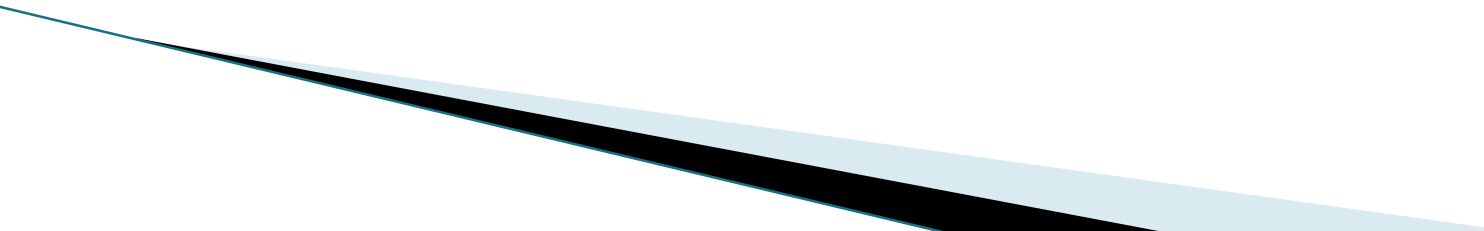
TAXATION OF FUTURES, OPTIONS AND DERIVATIVES

CA Milind Phadke

May 25, 2025

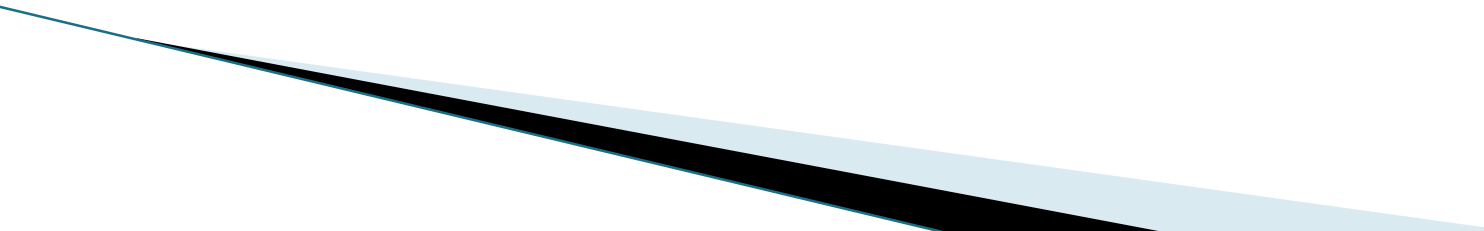
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Scope

- ✿ Meaning of Futures & Options and Derivatives
 - ✿ Tax treatment
 - ✿ Concept of turnover
 - ✿ Applicability of Tax Audit
 - ✿ Other related important points
 - ✿ Related Case laws
- 

Definition of Securities

Explanation 2(b) of Section 2(14)(ii) of the Income Tax Act, 1961 refers “the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the **Securities Contracts (Regulation) Act, 1956** (42 of 1956)⁵³;



Section 2 (h) of the SECURITIES CONTRACTS (REGULATION) ACT, 1956 –

“Securities” — includes

- (i) **Shares**, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
 - (ia) **derivative**;*
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;*
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - (id) **units** or any other such instrument issued to the investors under **any mutual fund scheme**;*
- (ii) Government securities;*
 - (iia) such other instruments as may be declared by the Central Government to be securities;*
- (iii) **Rights or interest in securities**;*

Derivatives

✿ Section 2(ac) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), “derivative” includes—

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;

(C) commodity derivatives; and

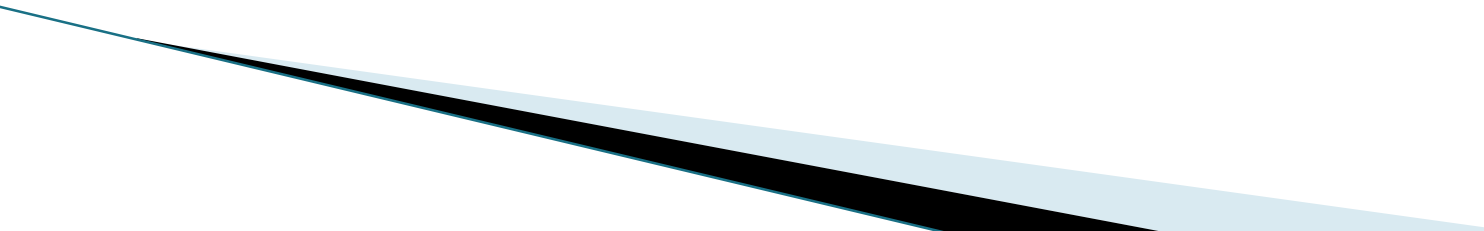
(D) such other instruments as may be declared by the Central Government to be derivatives;



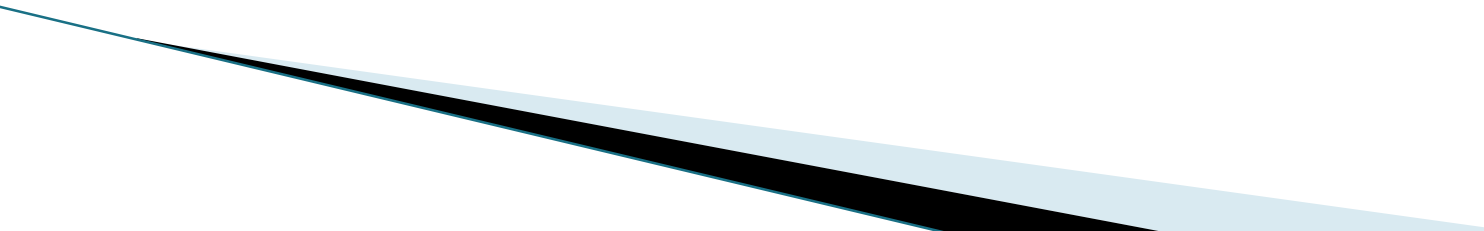
Derivatives

- Section 2(bc) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), “Commodity derivative” means a contract —
 - (i) for the *delivery* of such goods, as may be *notified* by the Central Government in the Official Gazette, and which is *not a ready delivery* contract; or
 - (ii) *for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events*, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac);]

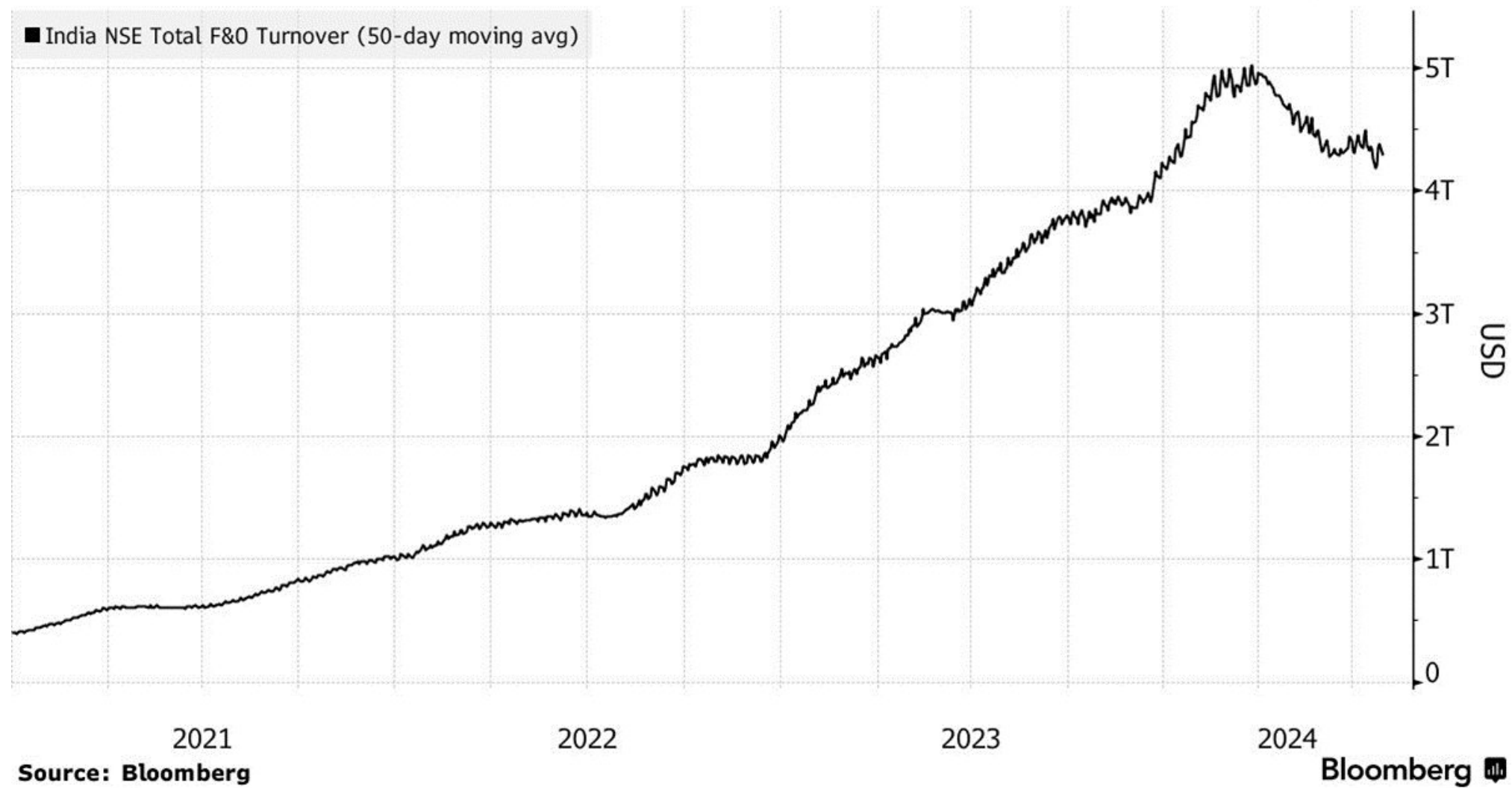
Derivatives

- Section 2(ea) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), "ready delivery contract" means
 - a contract which provides for the delivery of goods and the payment of a price therefor, either *immediately*, or within such period *not exceeding eleven days* after the date of the contract
 - Notified Commodities
 - Notification No. S.O. 3068(E) dated September 27, 2016 , [Notification No. S.O. 1002\(E\)](#), Dated: 01.03.2024
 - E.g. Cereals Pulses, oil seeds, spices, Metals
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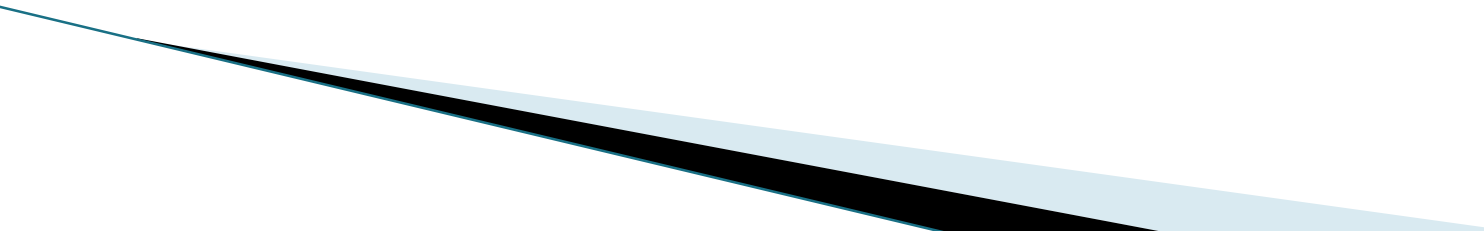
Evolution of Derivative Market

- F&O trading started on June 12,2000
 - Rs 1,650 lakh crore in FY18 to Rs 79,927 lakh crore in FY24,
 - Retail Investor volume – 2% in 2018 to 41% in 2024
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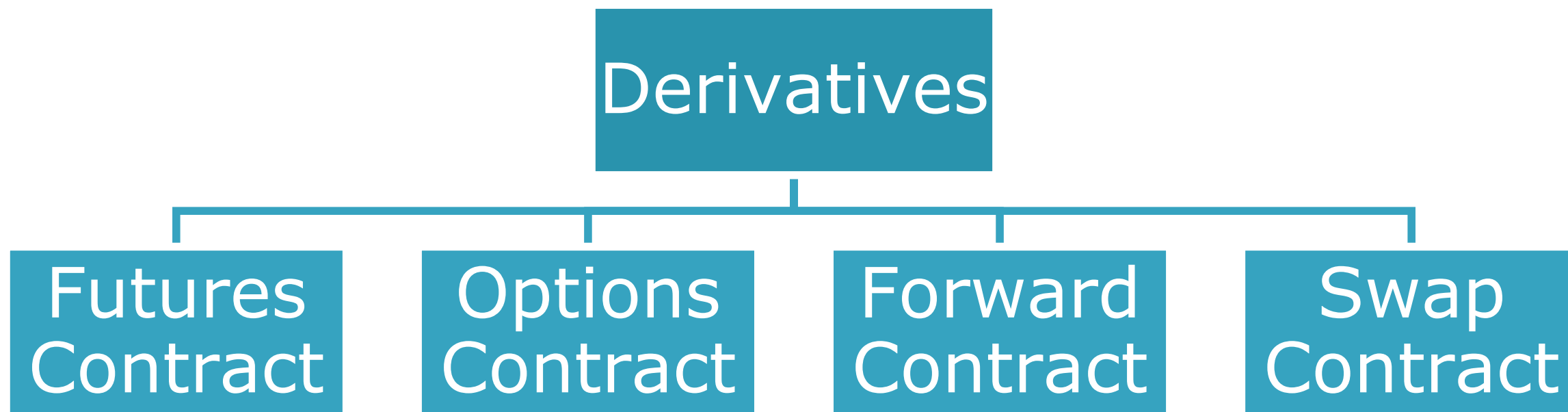
India's Derivative Turnover Hit A Record Earlier This Year



Futures

- Futures contracts:
 - Agreement to buy or sell an asset at a predetermined price on a specific future date.
 - Traded on exchanges like Multi Commodity Exchange (MCX) and National Commodity and Derivatives Exchange (NCDEX)
 - Types of Futures – Commodity, Currency, Stock, Index, Interest rate
- 

Types Of Derivatives



Elements Of Future Contracts

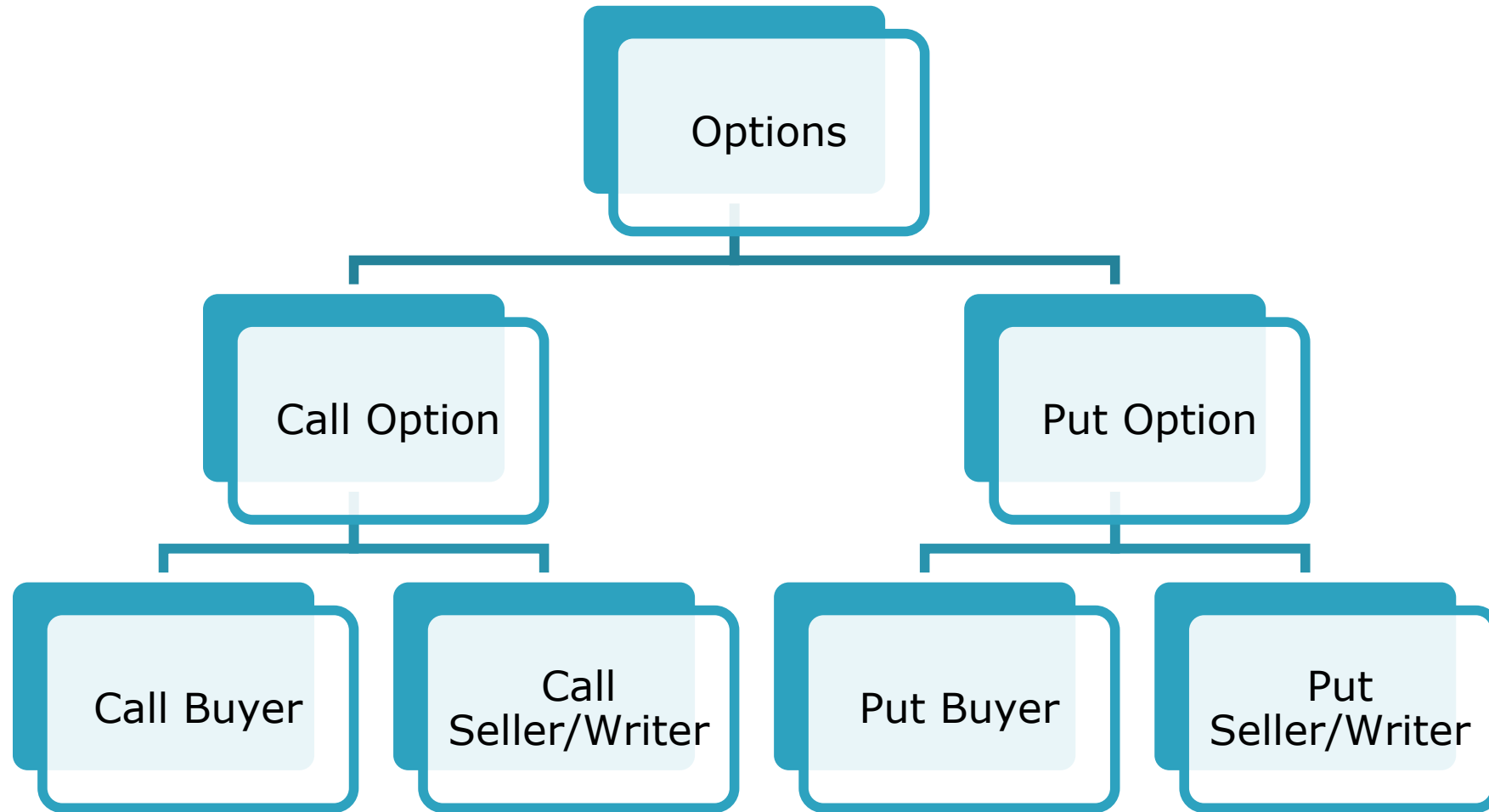
Underlying Assets	Lot Size	Strike Price	Expiry Date	Margin Money
<ul style="list-style-type: none">• An Underlying Asset of the derivative contract is the one that is to be bought or sold on a future date.	<ul style="list-style-type: none">• Minimum quantity of shares to be purchased or sold• Defined by SEBI	<ul style="list-style-type: none">• The predetermined price at which you buy or you sell an underlying asset	<ul style="list-style-type: none">• Pre determined date• The last Thursday of each month• Actual Delivery if not squared off	<ul style="list-style-type: none">• Margin money is a deposit to secure a futures position while it is open

Options

➤ Options :

- An option is a financial contract that gives the buyer the right, but not the obligation, to buy or sell an asset (like stocks) at a predetermined price before a specific date. The option buyer pays a fee (called a PREMIUM) to seller for this right
- Call option A call option allows the holder to buy the underlying asset (e.g., stock, index) at the strike price before or on the expiration date
- Put Option -A put option allows the holder to sell the underlying asset at the strike price before or on the expiration date

Types Of Options



Bullish/Flat Market

Call Buyer

- A buyer thinks the price of a stock will increase.
- The buyer has the right to buy the stock at the strike price at a certain time (expiration date).
- They pay a premium.

Put Seller/ writer

- The writer receives a premium from the buyer.
- If the buyer exercises their option, the writer will buy the stock at the strike price.
- If the buyer does not exercise their option, the writer's profit is the premium

Bearish/Flat Market

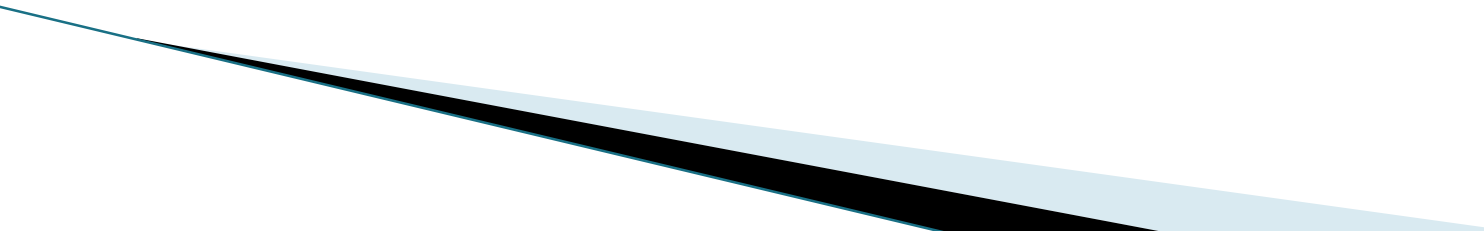
Put Buyer

- A buyer thinks the price of a stock will decrease – Bearish
- The buyer has the right to sell the stock at the strike price.
- They pay a premium that they will never get back, unless it is sold before it expires.

Call Seller/ writer

- The writer receives a premium from the buyer.
- If the buyer exercises their option, the writer will sell the stock at the strike price.
- If the buyer does not exercise their option, the writer's profit is the premium

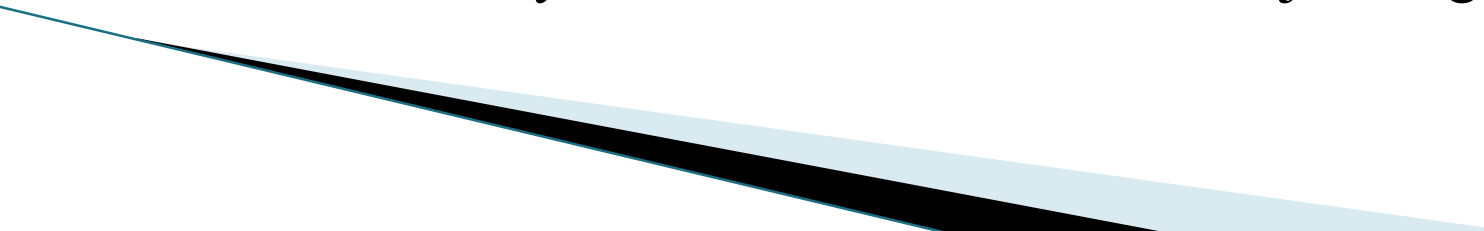
Tax treatment

- Section 43(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
 - Intraday trading is categorized under speculative activity.
- 

Deemed to be non speculative transaction :

Proviso to section 45

Following transactions are deemed to be non speculative transactions :

- (a) a forward contract in respect of raw materials or merchandise 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
 - (c) a contract entered into by a member of a forward market or a stock exchange in course of any transaction in the nature of jobbing or arbitrage
- 

Deemed to be non speculative transaction :

- (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 recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013),
- Note :
- **Non-speculative transactions :** Income from trading futures & options on recognized exchanges (equity, commodity, & currency) is categorized under non-speculative transactions.

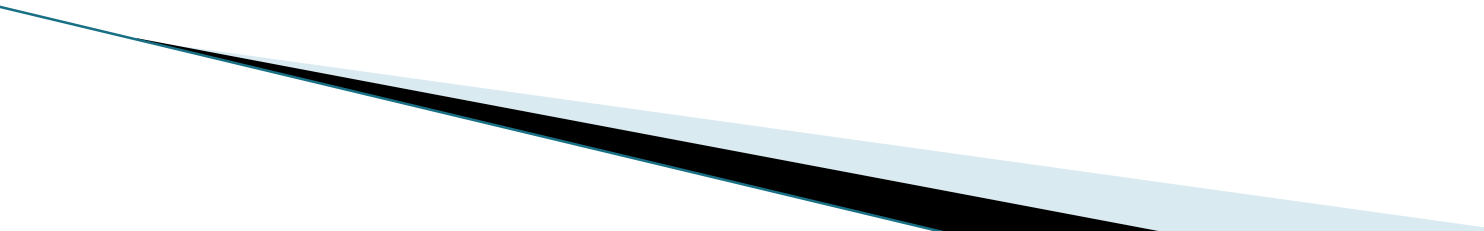
Deemed to be non speculative transaction :

- **Explanation 1 – [for Derivatives transactions clause (d)]**
- **An eligible transaction means any transaction**
 - - carried out *electronically* on screen-based systems through a *stock broker* or sub-broker or other intermediary or by banks or mutual funds on a *recognised stock exchange*; and
 - - which is supported by a time *stamped contract note* issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the *unique client identity number* allotted under any Act referred to in sub-clause (A) and permanent account number allotted under this Act;
- "recognised stock exchange" means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose.

Deemed to be non speculative transaction :

- **Explanation 2 – [for Commodity Derivatives transactions clause (e)]**
- "commodity derivative" shall have the meaning as assigned to it in Chapter VII of the Finance Act, 2013
- **An eligible transaction means any transaction**
 - - carried out *electronically* on screen-based systems through a *member* or a registered intermediary on a *recognised stock exchange*; and
 - - which is supported by a time *stamped contract note* issued by *member or such intermediary* to every client indicating in the contract note the *unique client identity number* allotted under any Act referred to in sub-clause (A), **unique trade number** and permanent account number allotted under this Act;
 - "recognised stock exchange" means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose.

Recognised stock exchange

- As per Section 2 (f) of Securities and Contracts Regulation Act -
 - "Recognised stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4.
- 

Name of all the Recognized stock exchange in India

1. BSE Ltd
 2. Calcutta Stock exchange ltd.
 3. Metropolitan Stock Exchange of India Ltd.
 4. Multi Commodity Exchange of India Ltd.
 5. National Commodity & Derivatives Exchange Ltd.
 6. National Stock Exchange of India Ltd.
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Calculation of Turnover of Derivatives

★ Para 5.10 (b) of the **REVISED (2023)** Guidance note on Tax Audit under Sec 44AB of the Income Tax Act 1961-

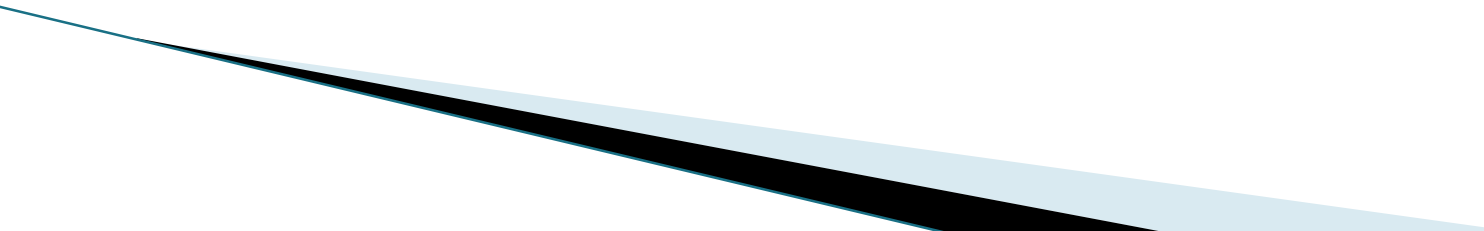
The turnover of Derivatives, Future and options is to be determined as follows:

- ★ (i) The total of favourable and unfavourable differences shall be taken as turnover.
- ★ (ii) Premium received on sale of options is also to be included in turnover.
However, where the premium received is included for determining net profit for transactions, then such net profit should not be separately included.

Calculation of Turnover of Derivatives

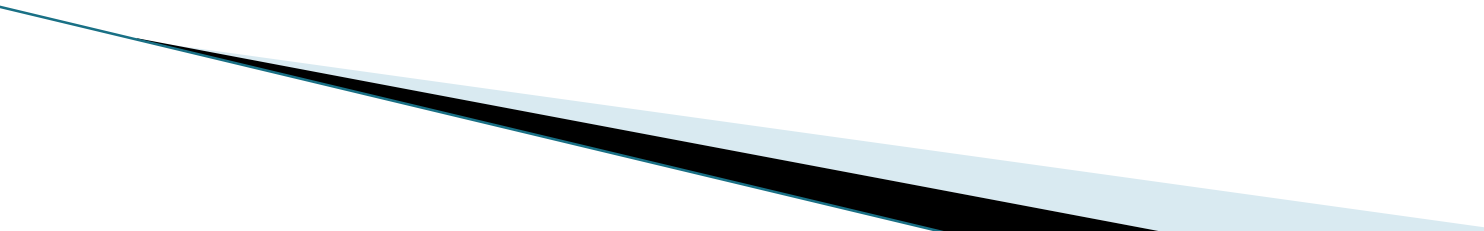
(iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover

(iv) In case of an **open position** as at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been **actually squared off**



Calculation of Turnover of Derivatives

v. In case of delivery based settlement in a derivatives transaction, the *difference between the trade price and the settlement price* shall be considered as turnover. Further, in the hands of the transferor of underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade



Illustration

For every trade, contract notes are issued which show the value of derivative bought or sold. Turnover will be the difference between squared off position.

Example:

AB bought one lot of ABC Ltd. at 2.0 lakhs and sold it for 2.8 lakhs (Profit = Rs 80,000)

AB bought one lot of PQR Ltd. at 3.5 lakhs and sold it for 3.00 lakhs (Loss = Rs 50,000)

Net Profit is Rs 30,000 and the turnover is $\text{Rs } 80,000 + \text{Rs } 50,000 = \text{Rs. } 1,30,000$



Future- Seller or Buyer									
Sr. No.	Symbol	Units	Lots	Buying Rate	Selling Rate	Buy Amount	Sell Amount	Profit or Loss	Turnover
1	NIFTY	50	100	15,600	15,800	7,80,00,000	7,90,00,000	10,00,000	10,00,000
2	BANKNIFTY	25	100	15,750	15,600	3,93,75,000	3,90,00,000	-3,75,000	3,75,000
						11,73,75,000	11,80,00,000	6,25,000	13,75,000
Options Seller-Option held till expiry									
Sr. No.	Transaction	Strike Price	Market Price on Expiry Date	Gross Profit or (Loss)	Premium received	Net Profit or (Loss)	Absolute Profit or Loss	Turnover before Revision of Guidance Note	Turnover After Revision of Guidance Note
A	B	C	D	E	F	G	H = Absolute G	I = F + H	
1	Call Option Sold	15,000	16,000	-1,000	300	-700	700	1,000	700
2	Call Option Sold	15,000	14,500	0	300	300	300	600	300
3	Put Option Sold	16,000	16,700	0	350	350	350	700	350
4	Put Option Sold	16,000	14,000	-2,000	350	-1,650	1,650	2,000	1,650
					1,300		3,000	4,300	3,000
Options Buyer-Option held till expiry									
Sr. No.	Transaction	Strike Price	Market Price on Expiry Date	Gross Profit or Premium on sale of option	Premium paid	Net Profit or Loss	Absolute Profit or Loss	Turnover	Turnover After Revision of Guidance Note
A	B	C	D	E	F	G = E - F	H = Absolute G	I = E + H	
1	Call Option Bought	15,000	16,000	1,000	300	700	700	1,700	700
2	Call Option Bought	15,000	14,500	0	300	-300	300	300	300
3	Put Option Bought	16,000	16,700	0	350	-350	350	350	350
4	Put Option Bought	16,000	14,000	2,000	350	1,650	1,650	3,650	1,650

Maintenance of books of accounts under section 44AA subject to section 44AD

	Income	Turnover
Individual & HUF	2,50,000	25,00,000
Other than Individual & HUF	1,20,000	10,00,000



Applicability of audit

Tax audit applicable u/s 44AB (a) if—

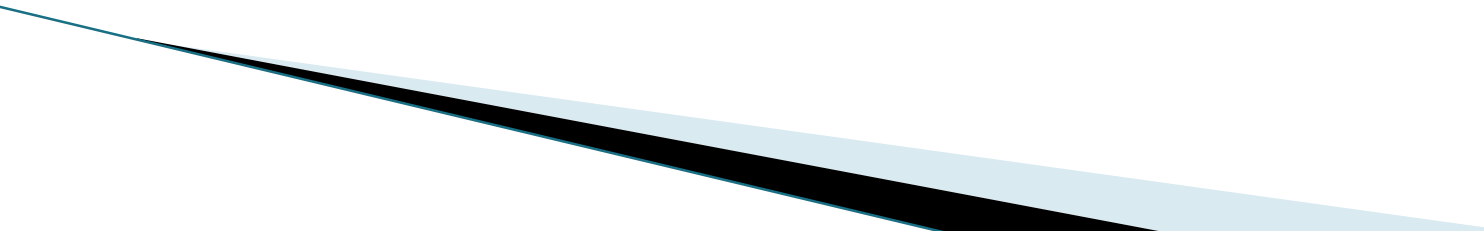
- Turnover from such trading exceeds Rs. 1 crore.
- Effectively Rs. 10 Cr limit as all transactions are executed through banking channel.
- Tax audit applicable u/s 44AD if
- In case of profit is less than 6% of the turnover.

Regular Vs 44AD

- Assessee may file return as taxable profits from the business
 - Needs to prepare financials and declare actual profit or loss
 - No need for Tax audit in case of loss in any year, provided turnover limit as per section 44AB is observed
-
- U/s 44AD – Turnover less than 3 Cr
 - May declare profit under presumptive taxation subject to conditions
 - May declare profit @6% ??? – or actual profit
 - Need not maintain financials
 - Need for audit in case of loss or profit less than 6%

Case	Opted for 44AD –Turnover	Declaring profit	Applicability of Audit u/s 44AB	Maintenance of Books of Accounts
1	Yes -Turnover is less than Rs. 2Cr	According to 44AD	No	No
2	Yes -Turnover is less than Rs. 2Cr	Less than 8% or 6% as the case may be or declaring loss	Yes	Yes
3	No -Turnover is less than limit given under 44AB(10 Crores)	Profit or loss whatever is the case	No	Yes –if limit u/s 44AA crossed (Total income 2,50,000 Or Gross receipts 25,00,000)
4	No -Turnover is more than limit given under 44AB (10 Crores)	Profit or loss whatever is the case	Yes	Yes

Other points: Expenses

- ✿ Related to F&O activity like all charges, brokerage, STT, etc
 - ✿ Any course fees or subscription charges or consultancy charges
 - ✿ Interest on borrowed funds exclusively used for F&O
 - ✿ Establishment expenses for carrying out the F&O business
- 

Other points: Set off and carry forward of losses

- ✿ Being business loss, can be set off against other business income, House property, capital gain and Other sources.
- ✿
- ✿ Can be carried forward for 8 years and only against business income
- ✿ Return must be filed within due date of carry forward of losses
- ✿ Tax audit applicable if opt for presumptive u/s44AD in any of previous 4 years

Carry Forward & Set Off Of Losses

Sr. No.	Particulars	Intraday	Futures & Options
1	Nature of Transaction	Speculative	Non-speculative
2	Set off during the year <ul style="list-style-type: none">Intra head :Inter head :	<ul style="list-style-type: none">Speculation loss can only be set off against Speculative Gain	<ul style="list-style-type: none">Non-speculation loss can be set off against any gain under head Business profession including Gain from Speculation businessCan be set off against gain under any head except Salary
3	Carry Forward	Can be carried forward for 4 years preceding previous year in which loss is incurred	Can be carried forward for 8 years preceding previous year in which loss is incurred

Other points: Tax rates and Tax regime

- No special rates for F&O
- Slab rates for Individual and HUF
- Applicable rates for LLP, Firm (30%) and
- Companies (22% or 25%)

Selection of Tax regime –

In case of salaried person - being F&O income shown under business head, restriction on switch over between old and new regimes.



Other points: Non Resident

Type	USA	UK	UAE
Shares	<p>ARTICLE 13 GAINS Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.</p>	<p>ARTICLE 14 CAPITAL GAINS Except as provided in Article 8 (Air transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.</p>	<p>ARTICLE 13 CAPITAL GAINS 1. alienation of immovable property 2. alienation of movable property 3. Shares of company principally holding immovable property 4. Gains from the alienation of shares other than those mentioned in paragraph 3 in a company which is a resident of a Contracting State may be taxed in that State.</p>

Other points: Non Resident

Type	USA	UK	UAE
Mutual fund	same	same	5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 above shall be taxable only in the Contracting State of which the alienator is a resident.
F & O	For corporates, non corporates and Individual assesseees Articles related to - Business - PE - Independent Services - Other income PAN, D MAT, SEBI permission,		

Other points:

- ★ **Important documents** required for compilation –
 - ★ A. Contract Notes
 - ★ B. Broker's ledger account
 - ★ C. Bank statement
 - ★ D. Statement of Open Contracts and completed contracts
 - ★ Tax Profit and loss statement generated by broker
- ★ Applicable code for nature of business in ITR – 13018 Other financial services

Case Laws

- ❖ *Snowtex Investment Ltd. vs. Principal Commissioner of Income-tax, Central-2, Kolkata* [2019] 105 taxmann.com 282 (SC)/[2019] 265 Taxman 3 (SC)/[2019] 414 ITR 227 (SC)[30-04-2019]
- ❖ NBFC trading in derivatives and shares. **Losses from trading in shares** were set off against **profit from derivatives**
- ❖ AO as confirmed by Commissioner(appeals), did not allow setting of speculation loss from shares against Derivatives (business income)
- ❖ Tribunal upheld the assessee s claim of setting such losses stating that the character of the trading in shares and derivatives is same
- ❖ High Court upheld AO position and supreme court confirmed High Court decision

Case Laws

- ***Snowtex Investment Ltd. vs. Principal Commissioner of Income-tax***, Central-2, Kolkata [2019] 105 taxmann.com 282 (SC)/[2019] 265 Taxman 3 (SC)/[2019] 414 ITR 227 (SC)[30-04-2019]
- from 1 April 2015, the explanation to Section 73 reads as follows
- '*Explanation* - Where any **part of the business of a company** (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", or a company the principal business of which is the ***business of trading in shares*** or banking or the granting of loans and advances) **consists in the purchase and sale of shares of other companies**, such company shall, for the purposes of this section, be **deemed to be carrying on a speculation business** to the extent to which the **business consists of the purchase and sale of such shares.**'
- Prior to amendment these words were missing.
- Principle business of the NBFC was trading in shares
- So amendment in section 73 made in 2014 could not be prospective with amendment in section 43(5) made in 2006

Case Laws

★ Deputy Commissioner of Income-tax vs. Quant Securities (P.) Ltd. [2022]
145 taxmann.com 355 (Mumbai - Trib.)[02-09-2022]

★ Assessee's **income from other sources** was much **more than his income from business of share broking**, assessee's case would squarely **fall under exception** clause provided in Explanation to section 73 and, accordingly, loss incurred on shares and derivatives **could not be treated as speculation loss**

Case Laws

- ✿ **PKS Holdings vs. Principal Commissioner of Income-tax [2025] 174 taxmann.com 106 (SC)[21-04-2025]**
- ✿ Assessee claimed loss on purchase and sale of shares and securities as business loss - High Court by impugned order held that since Assessing Officer clearly found that transactions of purchase and sale of shares were made on same date and no delivery of shares took place and transactions were intra-day share speculation, loss was to be treated as speculative loss and same was to be disallowed -

Case Laws

- **Swan Petrochemicals (P.) Ltd. vs. Deputy Commissioner of Income-tax (Central) [2024] 166 taxmann.com 292 (Indore - Trib.)[16-07-2024]**
- Assessee claimed loss on commodity derivatives on MCX as business loss.
- AO treated it as bogus transactions as the same were carried out by way of manipulated synchronized trading
- The assessee has not disputed the fact to the extent that the transactions carried out on MCX resulting loss of Rs. 44.57 lakhs are speculative transactions
- Assessee contended that speculative loss was wrongly claimed as business loss.
- Held it is **not a case of *bona fide* claim** of assessee being speculative loss is **mistakenly** set off against business income but the assessee has consciously claimed the speculative loss as business loss
- the said claim is impermissible resulting furnishing of incorrect particulars of income by the assessee in the return of income and **penalty order in this behalf was upheld**

Case Laws

Sharad Shivnarayan Kasat DCIT Vs Circle-1, Jalgaon ITA No.1273/PUN/2024

Facts

- Assessee is mainly engaged in share trading Futures and Options
- AO noticed that assessee has received bogus losses/fictitious losses in Equity/Derivative trading from a broker Skung Tradelink Ltd.
- Survey was conducted at Skung Tradelink Ltd.
- Director of Skung Tradelink Ltd. has stated in the statement that he provided the fictitious/arranged profit/loss through the F&O trading. Assessee is one of the beneficiaries.
- Assessee's claim - transactions/trading was done on BSE through banking channel and all charges/fees were paid to BSE and duly supported by contract notes
- .CIT(A) has specifically dealt with SEBI report that the trading and reverse trading were done within few seconds to book fictitious loss being arranged by certain parties
- **Held – disallowance of such loss by AO was correct**

Case Laws

- Principal Commissioner of Income-tax, Kochi-1 vs. Dewa Projects (P.) Ltd. [2025] 170 taxmann.com 44 (Kerala)/[2025] 303 Taxman 387 (Kerala)[02-12-2024]
- Set off loss from derivatives against profit from other normal business**
- Once provisions of section 43(5), as amended, came to treat a trade in derivatives as not a speculative transaction when it was carried out on a recognised stock exchange, then effect of that amendment was to treat transaction in derivatives as merely a business transaction
- , a loss in derivative business would consequently be a business loss for purposes of section 72, and a set off of **such business loss would have to be permitted against profits and gains of business as computed in terms of Act**
- disallowance of set off by Assessing Officer was clearly illegal
- Similar case law**
- Kippy Engineering (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 153 taxmann.com 105 (Kolkata - Trib.)/[2023] 202 ITD 87 (Kolkata - Trib.)[23-06-2023]
- Souvenir Developers (I) (P.) Ltd. vs. Union of India [2022] 138 taxmann.com 187 (Bombay)/[2022] 287 Taxman 338 (Bombay)/[2022] 444 ITR 167 (Bombay)[06-05-2022]

Case Laws

■ **2024] 164 taxmann.com 501 (Cuttack - Trib.)/[2024] 208 ITD ...**

- **assessee claimed loss on account of trading in derivatives**
- **no evidence whatsoever was produced by assessee to show that transaction generated loss was in respect of derivatives only and that it was transacted through recognised Stock Exchange**
- **AO and CIT appeal passed order treating the loss as speculative loss**

Held - issue was to be restored to Assessing Officer to specifically examine same whether derivatives had been dealt with by assessee and whether such derivatives were transacted through recognised stock exchange as defined in section 43(5)(d)

Case Laws

- **Ambicaa Sales Corporation vs. Principal Commissioner of Income-tax [2024] 159 taxmann.com 631 (Bangalore - Trib.)/[2024] 205 ITD 412 (Bangalore - Trib.)[18-01-2024]**
 - **assessee was a dealer in gold and silver bullion and it suffered loss through MCX transactions for hedging its stock-in-trade,**
 - **MCX transactions for hedging loss was not covered under speculative transaction and MCX transactions were done in normal course of business of assessee**
 - **Held - loss suffered was business loss**
- **Similar case laws**
 - **Deputy Commissioner of Income-tax vs. Blue Berry Trading Co. (P.) Ltd. [2022] 143 taxmann.com 140 (Mumbai - Trib.)/[2022] 197 ITD 401 (Mumbai - Trib.)[08-08-2022]**
 - **Ramesh Verma vs. ACIT [2022] 140 taxmann.com 24 (Lucknow - Trib.)/[2022] 195 ITD 545 (Lucknow - Trib.)[18-05-2022]**

Case Laws

- ACIT vs. Gimpex (P.) Ltd. [2023] 154 taxmann.com 398 (Chennai - Trib.)/[2023] 202 ITD 784 (Chennai - Trib.)[09-08-2023]
- Assessee, an exporter, entered into forward contracts with banks to safeguard against foreign exchange fluctuations on its revenue receipts from foreign parties and it suffered loss on account of cancellation of forward contracts on realizing export proceeds
- subject loss on forward contracts was business loss of assessee and Assessing Officer was wrong in treating same as speculative in nature
- Similar case laws
- Inventurus Knowledge Services (P.) Ltd. vs. Income-tax Officer, 5(2)(1), Mumbai [2016] 65 taxmann.com 94 (Mumbai)/[2016] 45 ITR(T) 57 (Mumbai)/[2016] 156 ITD 727 (Mumbai)/[2016] 177 TTJ 269 (Mumbai)[21-10-2015]
- Principal Commissioner of Income-tax vs. Simon India Ltd. [2022] 145 taxmann.com 389 (Delhi)/[2023] 450 ITR 316 (Delhi)[02-12-2022]
- Principal Commissioner of Income Tax, Bengaluru vs. Mphasis Ltd. [2021] 128 taxmann.com 138 (Karnataka)/[2021] 281 Taxman 206 (Karnataka)[24-02-2021]

Case Laws

- ★ Assistant Commissioner of Income-tax vs. Coastal Energy (P.) Ltd. [2024] 168 taxmann.com 564 (Chennai - Trib.) [25-10-2024]
- ★ "speculative transaction - transaction must be settled on a net-net basis
- ★ Fact of the case - the contracts are settled by actual delivery and not on a net-to-net basis and hence the same does not fall within the meaning of "speculative transaction" as mentioned in section 43(5).
- ★ both the provision for foreign exchange fluctuations and loss on forward contract are allowable as expenditure in the impugned year

Case Laws

- **Aadinath Securities (P.) Ltd vs. Income-tax Officer [2024] 166 taxmann.com 477 (Mumbai - Trib.)[05-06-2024]**
 - Assessing Officer issued a notice under section 148 on ground that he had information that assessee had entered into certain fictitious transactions
 - he had made an addition of ₹ 1.27 crores under provisions of section 68 by holding that assessee had failed to offer this income derived by it and hence same had escaped assessment within meaning of section 147
 - that assessee had duly recorded derivative gain in its financial statements returned for year under consideration
 - **Whether since entire observations/basis of assessment was factually incorrect and since assessment had been reopened on wrong facts, impugned assessment order was to be quashed - Held, yes**
 - **Famous case of a farmer getting demand notice for 69 Cr against loss of 68 lacs**

Case Laws

[2025] 171 taxmann.com 139 (Gujarat)[24-12-2024]

- Assessee earned income from trading in shares, commodities, derivatives etc. - Such income was accepted by department and assessment was completed under section 143(3)
- After four years, Assessing Officer issued reopening notice against assessee on ground that information was received from system (insight portal) as per which, assessee had entered into derivatives transactions of Rs. 1.10 crores from JSL but it was found that assessee had not shown any income from derivatives in return of income
- It was noted that assessee had disclosed particulars of profits under head of 'future and options' –
- No verification of material on record was made by Assessing Officer and there was no independent opinion that any income had escaped assessment due to any failure on part of assessee in not disclosing fully and truly all material facts necessary for assessment
- **Whether therefore, notice for re-opening being based on change of opinion and without tangible material, was to be quashed - Held, yes**

Other points:

Interplay between

Futures and options

Short term capital Gain (STT)

Long Term capital gain (STT)



various cases

Taxation of VDA

(47A) "virtual digital asset" means

- (a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically
- (b) a non-fungible token or any other token of similar nature, by whatever name called
- (c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify
- (d) *any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not such asset is included in sub-clause (a) or sub-clause (b) or sub-clause (c) ## inserted by finance Act 2025*

Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein

Taxation of VDA

Explanation.—For the purposes of this clause

- (a) "non-fungible token" means such digital asset as the Central Government may, by notification in the Official Gazette, specify
- (b) the expressions "currency", "foreign currency" and "Indian currency" shall have the same meanings as respectively assigned to them in clauses (*h*), (*m*) and (*q*) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

Taxation of VDA

- Tax Rate - Special tax rate of 30% (exclusive of surcharge and cess) applicable
- Computation – Income to be computed without taking effect of:
 - Any deduction in respect of any expenditure (other than cost of acquisition) incurred for such transfer; or
 - Any allowance or set off of any loss.
 - Transaction wise taxation ignoring loss on any transaction available for set off
- Inter-head set off / Deduction
 - Loss from transfer of VDAs shall not be permitted to be set off against income computed under any other head under the ITA. The loss shall not be allowed to be carried forward to succeeding assessment years as well.
 - Response in Rajya Sabha from MoS, Finance – (1) losses from sale of one VDA will not be allowed to offset gains from another VDA, and (2) infrastructure cost for mining is treated as a capital expenditure which will not be allowed as deduction under section 115BBH.

Taxation of VDA

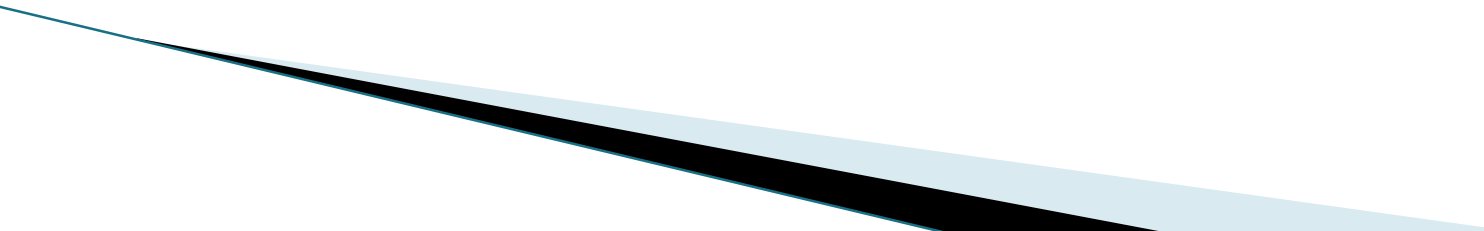
✿ Characterisation

- Characterization should largely not matter as no deductions or set off or carry forward of losses are permitted under section 115BBH. However, for non-residents who may claim treaty relief, characterization may still be relevant.
- ITR forms provide that income from transfer of VDAs can either be business income / capital gains. Hence, puts an end to characterization issues under the ITA (such as possibility to characterise income under the head of IFOS).
-

Schedule VDA

Schedule VDA	Income from transfer of Virtual Digital Assets (Note: Details of every transaction are to be filled, wherein every 'transfer' is a transaction)					
Sl. No.	Date of Acquisition	Date of Transfer	Head under which income to be taxed (Business/Capital Gain)	Cost of Acquisition (In case of gift; a. Enter the amount on which tax is paid u/s 56(2)(x) if any b. In any other case cost to previous owner)	Consideration Received	Income from transfer of Virtual Digital Assets (enter nil in case of loss) (Col. 6 – Col. 5)
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
Add Rows						
A. Total (Sum of all Positive Incomes of Business Income in Col. 7)						(Item No. 3f of Schedule BP)
B. Total (Sum of all Positive Incomes of Capital Gain in Col. 7)						(Item No. C2 of Schedule CG)

Deduction of Tax at Source [Section 194S]

- Deductor : Any person responsible for paying any sum by way of consideration for the transfer of a virtual digital asset is required to deduct tax at source
 - Deductee : Tax is required to be deducted under this provision if the amount is payable to a resident person.
 - **Rate of TDS** : 1% subject to section 206AA
 - **Time of deduction** : at the time of payment by any mode or at the time of credit whichever is earlier
 - **Amount on which tax is to be deducted** : the gross amount of consideration paid to the resident
 - Including cases of consideration is wholly or partly in kind, exchange
 - **Exemption from deduction of tax at source** : **Consideration is below Rs. 10,000**
 - **Consideration is below Rs. 50,000** : Individual or HUF having no PGBP income or less than Tax audit limit in immediately preceding FY
- 

Determination of fair market value of virtual digital assets

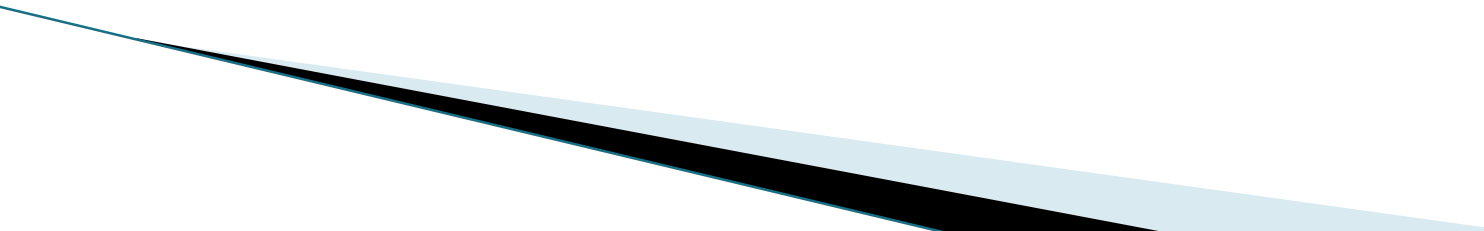
The fair market value of the virtual digital asset for taxability under Section 56(2)(x) shall be determined in accordance with Rule 11UA.

If purchased from registered dealer

In case the virtual digital assets are purchased on the valuation date from a registered dealer, the invoice value of such asset shall be its fair market value.

If received in other mode

In case the virtual digital assets are received by any other mode (*i.e.*, mining, etc.) the fair market value of such asset shall be estimated to be the price that it would fetch if sold in the open market on the valuation date. If the value of such asset exceeds Rs. 50,000, then the assessee may obtain the report of the registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.



Income Tax - Other Recent Changes

Finance Act 2025

I. Reporting Framework under ITA

- A new reporting framework is proposed to be implemented by the Finance Act, 2025 for prescribed virtual asset service providers to provide certain information on 'crypto-asset' transactions and their users (including undertaking some due diligence measures), for the purpose of implementing the OECD Crypto Asset Reporting Framework (CARF) (pursuant to the G20 Leader's New Delhi Declaration September 2023).
- The CARF provides for the automatic exchange of tax-relevant information on crypto-assets between different reporting jurisdictions. To achieve uniformity in implementation it is likely that such rules will be broadly based on the rules and guidance provided in the CARF.
- Several key details remain to be defined, such as who will be the reporting entities (including whether non-resident entities would be covered), nature of information, manner in which such information would be maintained, date of the reporting obligation and other ancillary details will be prescribed in separate rules to be outlined by the government.
- It has also expanded the VDA definition to include 'crypto-assets' to align with CARF framework (as discussed in slide 5). This may impact tax aspects such as on income from transfer of 'crypto-assets' being subject to flat 30% tax and 1% withholding tax liability (including for crypto derivatives).
- Other approaches for reporting – characterized as ordinary income / capital gains (no specific crypto related disclosure), mandatory forms for disposals / transfer of VDAs, reporting obligation for brokers.

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Thank You

A decorative graphic in the bottom-left corner consisting of a black triangle pointing upwards and to the right, with a light blue triangle layered behind it, also pointing in the same direction.