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TAX LAWS

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CHAPTER 1

INTRODUCTION TO TAXATION

DIRECT VS INDIRECT TAXES

Types of Taxation

DIRECT

Income Tax, Corporation Tax, Capital Gains Tax, Capital Acquisitions Tax

Advantages	Disadvantages
<ul style="list-style-type: none"> Based on principle of equity, certainty and economy Convenient to taxpayer Acts as automatic stabiliser 	<ul style="list-style-type: none"> As it rises, work is discouraged (absenteeism becomes a problem) Tax evasion rises Can discourage investment

INDIRECT

GST, Excise Duties, Custom Duties, Stamp Duties

Advantages	Disadvantages
<ul style="list-style-type: none"> Cost of Collection is low (Economy) Easier to extract from the public (less sensitive) Doesn't discourage work Act as automatic stabiliser 	<ul style="list-style-type: none"> Inflationary/ deflationary Not equitable Hard to predict yield (based on assumptions of consumer spending)

Direct Taxes: Taxes which are directly levied on Income of the person and its burden can not be shifted; for example Income Tax.

Indirect Taxes: Indirect taxes are imposed on price of goods or services. Person paying the indirect tax can shift the incidence to another person; for example GST or Customs Duty. To have a better understanding of the Direct and Indirect Taxes, let us understand the differences between the two: D

PERSON [SECTION 2(31)] : Income-tax is charged in respect of the total income of the previous year of every person. Hence, it is important to know the definition of the word person. As per section 2(31), Person includes :

Person

- Individual
- Hindu undivided Family (HUF)
- Company
- Firm & LLP
- AOP & BOI
- local authority
- Every other artificial and Judicial Person

- **Individual :** An individual is a natural human being i.e. male, female, minor or a person of sound or unsound mind.
- **HUF :** Under Income Tax Act, 1961 a Hindu Undivided Family (HUF) is treated as separate entity for the purposes of assessment. It consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters and also a stranger who has been adopted by the family. Members of the HUF are called as co-parceners which includes the head of the HUF who is called as

Karta. A Hindu Coparcenary includes those persons who acquire an interest in joint family property by birth. The relation of a HUF does not arise from a contract but arises from status. Only the coparceners have a right to partition. However, other female members of the family, for example, wife or daughter-in-law of a coparcener are not eligible for such coparcenary rights. Jain undivided families and Sikh undivided families would also be assessed as a HUF.

- **Company** : It include Domestic company, Foreign company, company in which public are substantially interested. Section 2(17) defines the term company to mean :
- i. any Indian company, or
 - ii. any body corporate incorporated by or under the laws of a country outside India i.e. a foreign company, or
 - iii. any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income Tax Act, 1922 or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or
 - iv. any institution, association or body, whether incorporated or not and whether Indian or non Indian, which is declared by general or special order of the CBDT to be a company only for such assessment year or assessment years as may be specified by the order of CBDT.

Classes of Companies

1. Domestic Company

- indian Company
- Company which has made arrangement for declaring and paying dividend within India out of the income chargeable to tax in India.

2. Foreign Company

- a company which is not a domestic company

- **Firm** : It includes a partnership firm whether registered or not and shall include a Limited Liability Partnership as defined in the Limited Liability Partnership Act, 2008.

According to Section 4 of the Partnership Act, 1932 persons who have entered into partnership with one another are called individually, 'partners' and collectively 'a firm'

- **Association of Person** : Two or more persons join in for a common purpose or common action to produce income, profits or gains.

It may consist of individuals, HUF, companies, firms, etc. as members

The object must be to produce income. It is not enough that the persons receive the income jointly

- **Body of Individuals** : denote the status of persons who are assessable in like manner and to the same extent as the beneficiaries individually
- Only individuals can be the members
 - Individuals join together for common purposes

Is there any difference between BOI and AOP ?

The difference between Association of persons and body of individuals is that whereas an association implies a voluntary getting together for a definite purpose, a body of individuals would be just a body without an intention to get-together. Moreover, the members of body of individuals can be individuals only whereas the members of an association of persons can be individual or non-individuals (i.e. artificial persons).

A local authority

It means a municipal committee, district board, body of port commissioners, or other authority legally entitled to or entrusted by the Government with the control and management of a Municipal or local fund

Every artificial, juridical person, not falling within any of the above categories

This is a residuary clause. If the assessee does not fall in any of the first six categories, he is assessed under this clause. Generally, a statutory corporation, deity or charitable institution or an endowment for charitable or religious purposes falls under artificial juridical person.

ASSESSEE [SECTION 2(7)]

- In layman language tax payer is assessee, he may be the person of any of the above categories
- As per Section 2(7) of Income Tax Act, assessee is A person
 - By whom any tax or
 - any other sum of money

is payable under Income Tax Act. It includes every person :

- (a) in respect of whom any proceeding under Income Tax Act has been taken for assessment of
 - his income or
 - fringe benefits or
 - the income of any other person in respect of which he is assessable or
 - the loss sustained by him or by such other person or
 - the amount of refund due to him or to such other person
- (b) who is deemed to be an assessee under any provision of Income Tax Act;
- (c) who is deemed to be an assessee in default under any provision of Income Tax Act;

Accordingly, assessee is a person by whom tax or any other sum is payable under the Act. The expression “other sum of money” includes

- fine, interest, penalty and tax or
 - person to whom any refund of tax etc. is due under the Act or
 - if any proceeding under the Act has been taken against any person, he is also an assessee.
- Remember, the proceedings must be initiated under the provisions of the Act. In other words, a single enquiry letter

ASSESSMENT YEAR [SECTION 2(9)]

“Assessment year” means the period of twelve months commencing on 1st April every year. Therefore, the period beginning on 1st April of one year and ending on 31st March of the next year. Income of previous year of an assessee is taxed during the following assessment year at the rates prescribed by the relevant Finance Act.

Exception to the General Rule : In the following situation, the Income of previous year of an assessee is assessed in the previous year itself:

1. Income of Non-Resident from Shipping: [Section 172]- A non resident who is carrying on a shipping business and earns income any port in India, shall be charged to tax before the ship is allowed to leave Indian Port. Hence income is deemed and computed at a presumptive rate of 7.5% of the amount of the fare/freight charged by the non-resident ship from the Indian port.
2. Income of persons leaving India either permanently or for long duration: [Section 174]- When it appears to the Assessing Officer (A.O.) that an individual may leave India and has no intentions of returning back during an assessment year, then the income is charged to tax during the same Assessment year.
3. Income of bodies formed for short duration: [Section 174A]- When it appears to the Assessing Officer (A.O.) that any organization is formed for a particular event and is likely to be dissolved during the current assessment year.

4. Income of person trying to transfer his assets with a view to avoid tax: [Section 175]- When it appears to the Assessing Officer (A.O.) that during the current assessment year any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.
5. Income of discontinued business: [Section 176]- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

PREVIOUS YEAR [SECTION 3]

Income tax is payable on the income which is earned during the Previous Year and it is assessed in the immediately succeeding financial year which is called an Assessment Year.

All assesses are required to follow a uniform previous year i.e. The Financial Year (1st April to 31st March) as their Previous year. Although assessee may maintain books of accounts on calendar year basis (1st January to 31st December) but his previous year for income tax purposes shall be the Financial year.

Each financial year is both, a previous year as well as an assessment year. It is the previous year for the income earned during the financial year and assessment year for the income earned during the preceding previous year. For example financial year 2020-21 is the previous year for the income earned during the financial year 2020-21 and assessment year for the income earned during the previous year 2019-20.

In case of newly set up business or profession or a source of income newly coming into existence, the first previous year will be the period commencing from the date of setting up of business/profession or as the case may be, the date on which the source of income newly comes into existence and ending on the immediately following March, 31.

Examples of previous year in the case of newly set-up business/profession

INDIA [SECTION 2(25A)]

The term 'India' means –

- i) the territory of India as per Article 1 of the Constitution,
 - ii) its territorial waters, seabed and subsoil underlying such waters,
 - iii) continental shelf,
 - iv) exclusive economic zone or
 - v) any other specified maritime zone and the air space above its territory and territorial waters.
- Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

MAXIMUM MARGINAL RATE AND AVERAGE RATE OF TAX

As per section 2(10), "Average Rate of income-tax" means the rate arrived at by dividing the amount of income tax calculated on the total income, by such total income.

Section 2(29C) defines "Maximum Marginal Rate" to mean the rate of income-tax (including surcharge on the income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, AOP or BOI, as the case may be, as specified in Finance Act of the relevant year.

Computation of Total Income and Tax Liability of various entities

For calculation of income, amount received is classified under 5 heads of income; it is then to be adjusted with reference to the provisions of the Income Tax laws in the following manner.

Particulars	Amount (Rs.)
Income under the head:	
Income from Salaries	XXX
+ Income from House Property	XXX
+ Profits and gains of business or profession	XXX
+ Capital gains	XXX
+ Income from other sources	XXX
Adjustment in respect of:	
+ Clubbing of Income	XXX
– Set off and carry forward of losses	(XXX)
= Gross Total Income	XXX
– Deductions under section 80C to 80U (or Chapter VIA)	(XXX)
= Total Income	XXX

The coverage of the lesson would include the Income Tax Treatment with relation to Individual, Hindu Undivided Families (HUF), Firms, Associations of Persons and Cooperative Societies is being discussed. The tax implications, rates of tax and other issues relating to the above persons have been discussed elaboratory

TAX RATES

Calculation of Tax on Income

- Tax rate depends upon the category of person
- Amount of income
- Residential status of person
- Age of individual
- Type of Income

Components of Tax are

Tax + Surcharge + Education Cess + SHEC = Tax Payable

Tax Rates for Different types of person depending upon various parameters :

1. For :

- Resident Individual of the age below 60 years
- Non Residents Individual
- Hindu undivided family
- Association of Persons
- Body of Individuals (other than Co-operative society)
- Artificial Juridical Person

Total Income (Rs.)	Tax Rate	Tax liability (Rs.)
Upto 2,50,000	Nil	Nil
2,50,001 – 5,00,000	5%	5% of (Total Income – 2,50,000)
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000) + 12,500
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,12,500

2. Applicable for :

Resident individual of the age of 60 years or more but less than eighty years at any time during the previous year

Total Income (Rs.)	Tax Rate	Tax liability (Rs.)
Upto 3,00,000	Nil	Nil
3,00,001 – 5,00,000	5%	5% of (Total Income – 3,00,000)
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000) + 10,000
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,10,000

3. Applicable for :

Resident Individual of the age of 80 years or more at anytime during the previous year

Total Income (Rs.)	Tax Rate	Tax liability (Rs.)
Upto 5,00,000	Nil	Nil
5,00,001 – 10,00,000	20%	20% of (Total Income – 5,00,000)
Above 10,00,000	30%	30% of (Total Income – 10,00,000) + 1,00,000

CBDT has clarified vide Circular No. 28/2016 27.07.2016, that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.

Therefore a resident individual, whose 60th / 80th birthday falls on 1st April, 2021 would be treated as having attained the age of 60 years/80 years in the P. Yr. 2020-21.

4. For firm and local authorities:

	Types of person	Tax Rates
I	Firms (including LLP)	30% of total Income
ii	Local Authorities	30% of total Income

Good to Know : Entity or individual other than a company whose adjusted total income exceeds Rs. 20 lakhs is liable to pay Alternate Minimum tax @ 18.5%.

5. For Company

Domestic Company	Assessment Year 2021-22
- Where it opted for Section 115BA	25%
- Where it opted for Section 115BA [This benefit shall be available when total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Income-tax Act.]	22%
- Where it opted for Section 115BAB [This regime shall be available only for the manufacturing companies incorporated in India on or after 01-10-2019. Hence, old companies will not be able to take the benefit of this section.]	15%
- Where it has not opted for Section 115BAA and the Total Turnover or Gross receipts of the company in the last previous year does not exceeds 400 crore rupees	25%
- Any other domestic company	30%
Foreign Company	40%

Good to Know : A company is liable to pay MAT @ 15%.

6. For Co-operative Society :

	Income Slabs	Tax Rates
i	Where the taxable income does not exceed Rs. 10,000/-	10% of the income
ii	Where the taxable income exceeds Rs. 10,000/- but does not exceed Rs. 20,000/-	Rs. 1,000/- + 20% of income in excess of Rs. 10,000/-
iii	Where the taxable income exceeds Rs. 20,000/-	Rs. 3,000/- + 30% of the amount by which the taxable income exceeds Rs. 20,000/-

Surcharge

Surcharge is an additional tax imposed on certain cases. It is imposed over the basic tax rate calculated on the income.

For example : Suppose total taxable income of an individual of 45 years is Rs. 1,30,00,000, then Base tax will be : Rs. 1,12,500 + 30% of (1,20,00,000)= Rs. 37,12,500.

Surcharge @12%* of Rs. 37,12,500 = Rs. 4,45,500. There are different rate of surcharge prescribed in the following manner :

	Types of person		Surcharge Rates
i	Individuals, HUF, AOP, BOI	If Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10% of income tax
		If income exceeds Rs. 1 crore but does not exceed Rs. 2 crore	15% of income tax
		If income exceeds Rs. 2 crore but does not exceed Rs. 5 crore	25% of income tax
		If total income exceeds Rs. 5 crore	37% of income tax
ii	Firm / Local Authority / Co-operative Society	If income exceeds Rs. 1 crore	12% of income tax
iii	Domestic Companies*	If income exceeds Rs. 1 crore but does not exceed Rs. 10 crores	7% of income tax
		If income exceeds Rs. 10 crore	12% of income tax
iv	Companies other than a domestic company	If income exceeds Rs. 1 crore but does not exceed Rs. 10 crores	2% of income tax
		If income exceeds Rs. 10 crore	5% of income tax

*The rate of surcharge in case of a company opting for taxability under Section 115BAA or Section 115BAB shall be 10% irrespective of amount of total income.

Cess

- Governments resort to imposition of cess for meeting specific expenditure
- Education Cess and Senior and Higher Education Cess are additional levy on the basic tax liability + surcharge, if applicable.
- Rate of Education Cess is 2%
- Rate of SHEC is 1%
- Rate of Health Cess is 1%.

Special Tax Regime for Individual and HUFs [Section 115BAC]

The Finance Act, 2020, has provided an option to Individuals and HUF for payment of taxes at the following reduced rates from Assessment Year 2021-22 and onwards:

Total Income (Rs)	Rate
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

Surcharge: Surcharge is levied on the amount of income-tax at following rates if total income of an assessee exceeds specified limits:

Rs. 50 Lakhs to Rs. 1 Crore	Rs. 1 Crore to Rs.2 Crores	Rs. 2 Crores to Rs. 5 Crores	Rs. 5 crores to Rs. 10 Crores	Exceeding Rs. 10 Crores
10%	15%	25%	37%	37%

Note: Marginal relief is available from surcharge.

Health and Education Cess: Health and Education Cess is levied at the rate of 4% on the amount of income-tax plus surcharge.

Alternate Minimum Tax: The assessee opting for this scheme have been kept out of the purview of Alternate Minimum Tax (AMT). Further the provision relating to the computation, carry forward and set off of AMT credit shall not apply to these assesseees.

Conditions to be satisfied:

1. The option to pay tax at lower rates shall be available only if the total income of Individual or HUFs is computed without claiming following exemptions or deductions:

- a) Leave Travel concession [Section 10(5)]
- b) House Rent Allowance [Section 10(13A)]
- c) Official and personal allowances (other than those as may be prescribed) [Section 10(14)]
- d) Allowances to MPs/MLAs [Section 10(17)]
- e) Allowances for income of minor [Section 10(32)]
- f) Deduction for units established in Special Economic Zones (SEZ) [Section 10AA];
- g) Standard Deduction [Section 16(ia)]
- h) Entertainment Allowance [Section 16(ii)]
- i) Professional Tax [Section 16(iii)]
- j) Interest on housing loan [Section 24(b)]
- k) Additional depreciation in respect of new plant and machinery [Section 32(1)(iia)];
- l) Deduction for investment in new plant and machinery in notified backward areas [Section 32AD];
- m) Deduction in respect of tea, coffee or rubber business [Section 33AB];
- n) Deduction in respect of business consisting of prospecting or extraction or production of petroleum or natural gas in India [Section 33ABA];
- o) Deduction for donation made to approved scientific research association, university college or other institutes for doing scientific research which may or may not be related to business [Section 35(1)(ii)];
- p) Deduction for payment made to an Indian company for doing scientific research which may or may not be related to business [Section 35(1)(iia)];
- q) Deduction for donation made to university, college, or other institution for doing research in social science or statistical research [Section 35(1)(iii)];
- r) Deduction for donation made for or expenditure on scientific research [Section 35(2AA)];
- s) Deduction in respect of capital expenditure incurred in respect of certain specified businesses, i.e., cold chain facility, warehousing facility, etc. [Section 35AD];
- t) Deduction for expenditure on agriculture extension project [Section 35CCC];
- u) Deduction for family Pension [Section 57(iia)]
- v) Deduction in respect of certain incomes other than specified under Section 80JJAA, 80CCD(2) and deduction under section 80LA for Unit located in IFSC [Part C of Chapter VI-A].

2. Total income of the assessee is calculated after claiming depreciation under section 32, other than additional depreciation, and without adjusting brought forward losses and depreciation from any earlier year (if such loss or depreciation pertains to any deduction under the aforesaid sections). Further, loss under the head house property can't be set off against other heads of Income. Moreover, such loss and depreciation will not be carried forward.

3. If the assessee has any unabsorbed depreciation, relating to additional depreciation, which has not been given full effect, the corresponding adjustment shall be made to WDV of the block of assets in the prescribed manner.
4. In case the assessee has business or professional income, this option shall be exercised on or before the due date for furnishing the returns of income.
5. Once the assessee has exercised the option for any previous year, it cannot be subsequently withdrawn for the same or any other previous year. The option once exercised for any previous year can be withdrawn only once in subsequent previous year (other than the year in which it was exercised) and thereafter, he shall never be eligible to exercise this option again except where such person ceases to have any business income.
6. If assessee does not have business or professional income, the option must be exercised along with the return of income for every previous year. If an assessee, after opting for Section 115BAC, claims any of prescribed deduction or allowance in any previous year, then the option to pay tax at concessional rate shall become invalid for that year.

Rebate under section 87A

An assessee, being an individual resident in India, whose total income does not exceed Rs. 5,00,000 shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to 100% of such income-tax or an amount of Rs. 12,500, whichever is less.

Steps involved in calculation of Tax on Total Income

Particulars	Amount Rs
Tax on Special Incomes @ specified tax rates (Long term capital gains @ 20%; Casual Income @ 30% and Short term capital gains (on Securities transaction tax paid securities) @ 15%;	XXX
Add : Tax on Balance Income @ Slab Rate/Flat Rate (as applicable)	XXX
Total Tax	XXX
Add : Surcharge, if any	XXX
Less : Marginal Relief, if applicable	(XXX)
Tax including Surcharge	XXX
Add : Education Cess @ 2% on tax including surcharge	XXX
Add : SHEC @ 1% on tax including surcharge	XXX
Add : Health Cess @ 1% on tax including surcharge	XXX
(Combinedly Health and Education Cess on income tax is levied @ 4%)	XXX
Tax liability	
Add : Interest under Section 234A/234B/234C	
Net tax liability	
Less : Taxes paid by way of :	(XXX)
– Tax deducted at source (TDS)	(XXX)
– Advance tax	(XXX)
– Self Assessment Tax	(XXX)
– Double Taxation Relief	XXX
Tax Payable/Refundable	

CHAPTER 2**RESIDENTIAL STATUS [SECTION 6]**

Total income of an assessee cannot be computed unless the person's residential status in India during the previous year is known. Thus, determining residential status of a person is important for calculating tax liability of a person. Section 6 of the Income tax Act prescribes the tests to be applied to determine the residential status of all tax payers for purposes of income-tax. An assessee's residential status must be determined with reference to the previous year in respect of which the income is sought to be taxed.

Residential status of a person could be :

1. According to the Residential Status, the assessee could be either be:
 - Resident in India
 - Non-Resident in India
2. If Individual or HUF is a resident in India, they will be either:
 - Resident and Ordinarily Resident in India (ROR)
 - Resident but not Ordinarily Resident in India (RNOR)
3. In case of person other than Individual and HUF, it will either be:
 - Resident in India
 - Non-Resident in India

There are different test to be applied for different types of person, let us understand test for each category of person :

TEST OF RESIDENCY FOR INDIVIDUALS**Basic Condition for a person to be Resident**

Under Section 6(1) of the Income-tax Act, an individual is said to be resident in India in any previous year if he:

- (a) is in India in the previous year for a period or periods amounting in all to one hundred and eighty-two days or more i.e., he has been in India for at least 182 days during the previous year; or,
- (b) has been in India for at least three hundred and sixty-five days (365 days) during the four years preceding the previous year and has been in India for at least sixty days (60 days) during the previous year.

Exception to the basic condition

In the case of following individual –

- (a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India,

Rule 126 Computation of period of stay in India in certain cases

An individual, being a citizen of India and a member of the crew of a ship, the period of stay in India in respect of an eligible voyage shall not include the period beginning from the date of joining till the date of signing off as mentioned in the Continuous Discharge Certificate under the Merchant Shipping Act, 1958 "eligible voyage" shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where –

- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and
 - (ii) for the voyage having originated from any port outside India, has as its destination any port in India.
- (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year,