1. INTRODUCTION

Before one can embark on a study of the law of income-tax, it is absolutely vital to understand some of the expressions found under the Income-tax Act, 1961. The purpose of this Chapter is to enable the students to comprehend basic expressions. Therefore, all such basic terms are explained and suitable illustrations are provided to define their meaning and scope.

1. OBJECTIVES

- After going through this lesson you should be able to understand:
- Importance and History of Income Tax in India
- Meaning of Person and Assesse
- Definitions of various Terms used in Income Tax
- What is regarded as 'Income' under the Income-tax Act
- What is 'Gross Total Income'
- Concept of Assessment Year and Previous Year
- How to charge tax on income
- Income-tax rates

2. Importance , History, Present Act

IMPORATANCE

The Taxation Structure of the country can play a very important role in the working of our economy. Some time back the emphasis was on higher rates of Tax and more incentives. But recently, the emphasis has shifted to Decrease in rates of taxes and withdrawal of incentives. While designing the Taxation structure it has to be seen that it is in conformity with our economic and social objectives. It should not impair the incentives to personal savings and investment flow and on the other hand it should not result into decrease in revenue for the State.

In our present day economy structure Income Tax plays a vital role as a source of Revenue and a measure of removal economic disparity. Our Taxation structure provides for Two types of Taxes --- DIRECT and INDIRECT ; Income Tax , Wealth Tax and Gift Tax are Direct Taxes whereas Sales Tax and Excise Duties are Indirect Taxes.

HISTORY

The Income Tax was introduced in India for the first time in 1860 by British rulers following the mutiny of 1857. The period between 1860 and 1886 was a period of experiments in the context of Income Tax. This period ended in 1886 when first Income Tax Act came into existence. The pattern laid down in it for levying of Tax continues to operate even to-day though in some changed form. In 1918, another Act- Income Tax Act, 1918 was passed but it was short lived and was replaced by Income Tax Act, 1922 and it remained in existence and operation till 31st. March, 1961.

PRESENT ACT

On the recommendation of Law Commission & Direct Taxes Enquiry Committee and in consultation with Law Ministry a Bill was framed. This Bill was referred to a select committee and finally passed in Sept. 1961. This Act came into force from 1st.April 1962 in whole of the country. Income Tax Act, 1961 is a comprehensive Act and consists of 298 Sections. Sub-Sections running into thousands Schedules, Rules, Sub-Rules, etc. and is supported by other Acts and Rules. This Act has been amended by several amending Acts since 1961. The Annual Finance Bills presented to Parliament along with Budget make far-reaching amendments in this Act every year.

3. MEANING OF "TAX MANAGEMENT"

"… A Business who stays aloof of tax matters cannot remain competitive. Tax laws are an economic reality in the Business world. A Tax Dollar is just as real one derived from other source."

Tax Management is now an integral part of business management. It involves not only due compliance of law in timely and regular manner, but also arranging the affairs in such a manner that it reduces the tax liability burden. Specifics are :

- Filling of Return
- Maintenance of Accounts
- Getting the Accounts Audited.
- Complying with the notices of Income Tax Department.
- Payment of Advance Tax
- Timely deduction of Tax at Source and its payment.

4. PERSON [Section 2(31)]

The word "Person" is a very wide term and embraces in itself the following :

- **Individual :** It refers to a natural human being whether Male or Female , Minor or Major.
- **Hindu Undivided Family (HUF) :** It is a relationship created due to operation of Hindu Law. The Manager of HUF is called " Karta" and its member are called 'Coparceners'.
- **Company :** It is an artificial person registered under Indian Companies Act 1956 or any other Law.
- **Firm :** It is an entity which comes into existence as a result of partnership agreement. The Income Tax accepts only these entities as Firms which are accessed as Firms under Section 184 of the Act.
- **Association of Persons (AOP) or Body of Individuals (BOI) :** Co-operative societies, MARKFED, NAFED, etc are the example of such persons. When persons combine together to carry on a joint enterprise and they do not constitute partnership under the ambit of law, they are assessable as an Association of Persons. An A.O.P. can have firms, companies, associations and individuals as its members. A Body of Individual (B.O.I.) cannot have non-individuals as its members. Only natural human being can be members of a Body of Individuals.
- **Local Authority :** Municipality, Panchayat, Cantonment Board, Port Trust etc. are called Local Authority.
- **Artificial Judicial Person :** Statutory Corporations like Life Insurance Corporation, a University etc. are called Artificial Judicial Persons.

These are seven categories of person chargeable to tax under the Act. The aforesaid definition is inclusive and not exhaustive . Therefore, any person, not falling in the above-mentioned seven categories, may still fall in the four corners of the term “Person” and accordingly may be liable to tax under Sec.4.
Example:
Determine the status of the following :

1. Delhi University
2. Microsoft Ltd.
3. Delhi Municipal Corporation
4. Swayam Education Pvt. Ltd.
5. Axsis Bank Limited.
6. ABC Group Housing Co-operative Society.
7. DC & Co., firm of Mr. Dust and Mr. Clean
8. A joint family of Mr.Dirty, Mrs. Dirty and their sons Mr. Dust and Mr. Clean
9. X and Y who are legal heirs of Z (Z died in 1995 and X and Y carry on his business without entering into partnership).

Solutions :

1. Artificial Judicial Person
2. a Company
3. a local authority
4. a company
5. a company
6. an association of person
7. a firm ;
8. a Hindu Undivided Family
9. an association of persons.

5. Assesse [Section 2(7)]

Assesse means a person by whom any tax or any other sum of money is payable under this Act and includes the following:

(i) Every person in respect of whom any proceeding under the Income-tax Act has been taken: a. for the assessment of his income or the income of any other person in respect of which he is assessable; or	(ii) A person who is deemed to be an Assesse under any provisions of this Act i.e. a person who is treated as an Assesse. This would include the legal representative of a deceased person or the legal guardian of minor if minor is taxable separately.	(iii) Every person who is deemed to be an Assesse in default under any provisions of this Act. A person is said to be an Assesse in default if he fails to comply with the duties imposed upon him under the Income-tax Act. For example: a person, paying interest to another person, is responsible for

b. to determine the loss sustained by him or by such other person; or c. to determine the amount of refund due to him or to such other person.		deducting tax at source on this amount and to deposit the tax with the Government. If he fails in either of these duties i.e., if he does not deduct the tax, or deducts the tax but does not deposit it with the Government, he shall be deemed to be an Assese in default.

1. Every Assese is a 'person', but every person need not be an 'Assese'. For example, X, an individual has earned total income of Rs. 2,40,000 in the previous year. He is a person but not an Assese because his total income is less than the maximum exemption limit of Rs. 2,50,000 and no tax or any other sum is due from him.
2. A person may not have his own assessable income but may still be an Assese. For example, an Assese, who has earned an income of Rs. 1,45,000 in a previous year, fails to deduct the tax at source on salary paid by him, which he was required to do under the Act, shall be deemed to be an Assese in default. Although, he is not assessable in respect of his own income, as it is below the maximum exemption limit, but shall still be an Assese for not deducting the tax at source, which he was obliged to do.

Example :

- Income of Mr. You (age : 30 years) is Rs. 1,45,000 for the assessment year 2018-19. he does not file his return of income because his income is not more than the amount of exempted slab. Income-Tax Department does not take any action against him. He is not an “Assese” because no tax or any other sum is due from him.
- Income of Mr. Me (age: 35 years) is Rs.1,60,000 for the assessment year 2018-19. He does not file his return of income. Since he is supposed to file his return of income (income being more than exempted slab of Rs.1,50,000) . he is an “Assese”.
- Income of Mr. S (age : 50 years) is Rs. 70,000 for the assessment year 2018-19. He files his return of income (even if his taxable income is less than Rs.1,50,000). Assessment order is passed by the Assessing Office without any adjustment. Mr.S is an “ Assese”.
- Income of Mr. Ram (age : 25 years) is less than Rs.1,50,000 for the assessment year 2009-10. He files his return of income to claim Refund of Tax deducted by XYZ Ltd. on interest paid to him. B is an “Assese”.
- Income of MR. Clean (age : 30 years) is less than Rs.1,50,000 for the assessment year 1018-19. He does not file his return of income. During 2018-19 , he has paid salary of Rs.2,40,000 to an employee. Though he is supposed to deduct TDS (Tax deducted at Source), yet due to ignorance of law, no tax deducted by him. In this case, Mr. Clean is an “Assese” as he has failed to deduct tax at source. This rule is applicable even if his own taxable income is below Rs.1,50,000.

Types of Assesse

Let us understand what the various categories of Assesses as laid down in the Act are and who all belong to the respective categories of being an Assesse:

1. **Normal Assesse:**

A normal Assesse is an individual who is liable to pay taxes for the income earned by him for a particular financial year. Each and every Individual who has paid taxes in preceding years against the income earned or losses incurred by him is liable to make payments to the government in the form of tax. Any individual who is supposed to make payments to the government in the form of interest or penalty or anybody who is entitled to tax refund under the IT Act is an Assesse. All such individuals are grouped under the category of Normal Assesse.

2. **Representative Assesse:**

Many times, it so happens that an individual is liable to pay taxes for income or losses incurred not only by him, but also for income or losses incurred by a third party. Such an individual is known as Representative Assesse. Basically, he acts as a representative for people who themselves are not in a position to file and pay their taxes themselves. Generally, the people who need representatives are non-residents, minors or lunatics. And the people representing them are either their agents or guardians. Such people are deemed to be Representative Assesses

3. **Deemed Assesse:**

Deemed Assesse is an individual who is put in a position to pay taxes for some other person by the legal authorities. Generally, the individuals who are treated as Deemed Assesses are:

- The executors or the legal heir of the property of a deceased person, who in written has passed on his property to the executor, is treated as a Deemed Assesse.
- The eldest son or any other legal heir of a deceased individual (who has expired without writing his will) is treated as a Deemed Assesse.
- The guardian of a minor, a lunatic or an idiot is treated as a Deemed Assesse.
- The agent of a Non-Resident Indian (having Income Sources in India) is treated as a deemed Assesse.

4. **Assesse-in-default:**

An Assesse-in-default is an individual who has failed to fulfill his legal duty of paying tax to the government. An employer is deemed to be an Assesse in default if he fails to submit the TDS deducted by him to the government. An employer is supposed to disburse salary to his employees after deducting TDS from their salary and submit the same to the government. However, if he fails to do so then he is treated as an Assesse-in-default.

6. Meaning Of “INCOME” [Section 2(24)]

The Definition given u/s 2 (24) is inclusive and not exhaustive. According to English dictionary, the term “Income” means periodical monetary return coming in regularly from definite sources like one’s business, Land, Work, Investments etc.”.

It’s nowhere mentioned that “Income” refers to only monetary return. It includes value of Benefits and Perquisites.

The term “Income” includes not only what is received by using the property but also the amount saved by using it himself. Any thing which is convertible into income can be regarded as source of accrual of income.

“ Income includes “ :

- **Profit and Gains :** For instance, Profit generated by a businessman is taxable as “Income”.
- **Dividend** : For instance, “Dividend” declared/paid by a company to a shareholders is taxable as “ income” in the hands of shareholders .
- **Voluntary contribution received by a Trust :** In the hands of a Trust, income includes voluntary contributions received by it. This rule is applicable in the following cases..
    - Such contribution is received by a trust created wholly or partly for charitable or religious purpose ; or
    - Such contribution is received by a scientific research association ; or
    - Such contribution is received by any fund or institution established for charitable purposes ; or
    - Such contribution is received by any university or other educational institutions or hospital.

Example :
ABC Trust is created for public charitable purposes. On Dec, 15, 2008 it receives a sum of Rs.2 Lakh as voluntary contribution from a business house . Rs. 2 Lakh would be included in the income of the Trust.

- The value of any Perquisites or Profit in lieu of Salary taxable in the hand of employee.

Example:
Mr. You is employed by XYZ Ltd. Apart from Salary , he has been provided a Rent-Free House by the employer . the value of perquisites is respect of the Rent-Free House is taxable as “Income” in the hands of Mr. You..

- Any Special Allowance or Benefit : All type of special allowance are given/allow to the Assesse to meet the expenses exclusively, wholly and necessarily for the duties he performed for the office or employment is treated as “Income”.

Example:
Mr. You is employed by XYZ Ltd. He gets Rs.5,000 per month as conveyance allowance other than Salary .Rs. 5,000 per month is treated as " Income".

- Value of any Benefit or Amenity, whether convertible into money or not.
- Any Capital Gain taxable u/s 45 is treated as "Income"

Example:
Mr. You owns a House Property. On its transfer, he generates a Capital Profit of Rs.1,20,000. it is treated as "Income" even if it is Capital Profit.

- Any winning from Lotteries (it included winning from prizes awarded) , Winning from Crossword Puzzles, winning from Races including Horse Race, winning from Card Games and other similar Games, winning from gambling or betting.

Example:
Mr. You wins a sum of Rs. 50,000 from gambling. Rs.50,000 is treated as " Income" of Mr. You.

- Any sum received by the Assesse on account of his employer's contributions to any Provident Fund, Superannuation Fund or any other Fund for the welfare of such employees in the business.
- Amount exceeding Rs.50,000 by way of Gift.

FEATURES OF "INCOME'

The following features of income can help a person to understand the concept of income.

1. Definite Source : Income has been compared with a fruit of a tree or a crop from the field. Fruit comes from a tree and crop from fields. Thus the source of income is definite in both cases. The existence of a source for income is somewhat essential to bring a receipt under the charge of tax.
2. Income must come from Outside : No one can earn income from himself. There can be no income from transaction between head office and branch office. Contributions made by members for the mutual benefit and found surplus cannot be termed as income of such group.
3. Tainted Income : Income earned legally or illegally remains income and it will be taxed according to the provisions of the Act. Assessment of illegal income of a person does not grant him immunity from the applicability of the provisions of other Act. Any expenditure incurred to earn such illegal income is allowed to be deducted out of such income only.
4. Temporary or Permanent : Whether the income is permanent or temporary, it is immaterial from the tax point of view.
5. Voluntary Receipt : The receipts which do not arise from the exercise of a profession or business or do not amount to remuneration and are made for reasons purely of personal nature are not included in the scope of total income.

6. Dispute regarding the Title : In case a person is receiving some income but his title to such receipts is disputed, it will not free him from tax liability. The receipt of such income has to pay tax.
7. Income in Money or Money's worth : The income may be in Cash or in kind. It is taxable in both cases.

TAX TREATMENT OF "INCOME'

For the purposes of treatment of income for tax purposes it can be divided into 3 categories :

A. Taxable Income : These incomes form part of total income and are fully taxable. These are treated u/s 14 to 69 of the Act. These are Salaries, Rent, Business Profits, Professional Gain, Capital Gain, Interest, Dividend, Winning from Lotteries, Races etc.

B. Exempted Incomes : These incomes do not from part of total income either fully or partially . hence, No Tax is payable on such incomes. These incomes are given u/s 10(1) to 10(32) of the Act.

C. Rebateable (Tax Free) Incomes : These incomes form part of total income and are fully taxable. Tax is calculated on total income out of which a Rebate of Tax at average Rate is allowed . The Rebateable incomes given u/s 86 of the Act are :

- Share of income received by a member of an association of persons provided the total income of such AOP is assessed to tax at the rates applicable to an individual.
- Share of income received by a partner of a firm assessed as an association of persons (PFAOP) provided the total income of such PFAOP is assessed to tax at the rates applicable to an individual.

7. GROSS TOTAL INCOME (GTI) & TOTAL INCOME

U/s 14 the term "Gross Total Income" [GTI] means aggregate of incomes computed under the following Five heads :

- Income under the head "Salaries"
- Income under the head " House Property"
- Income under the head "Profit and Gains of Business or Profession".
- Income under the head "Capital Gain".
- Income under the head " Other Sources".

After aggregating income under various heads, losses are adjusted and the resultant figure is called " Gross Total Income" [GTI]
From Gross Total Income , Deductions u/s 80 are allowed. The resultant figure is called "Total Income " on which Rates of Taxes are applied

8 ASSESSMENT YEAR [Section 2 (9)]

“ Assessment Year” means the period of 12 months commencing on the 1st day of April every year.
In India, the Govt. maintains its accounts for a period of 12 months i.e. 1st April to 31st March every year. As such it is known as Financial Year. The Income Tax department has also selected same year for its Assessment procedure.

The Assessment Year is the Financial Year of the Govt. of India during which income a person relating to the relevant previous year is assessed to tax. Every person who is liable to pay tax under this Act, files Return of Income by prescribed dates. These Returns are processed by the Income Tax Department Officials and Officers. This processing is called Assessment. Under this Income Returned by the Assesse is checked and verified.

Tax is calculated and compared with the amount paid and assessment order is issued. The year in which whole of this process is under taken is called Assessment Year.

At present the Assessment Year 2008-2009 (1-4-2018 to 31-3-2019) is going on.

Example-
Assessment year 2018-19 which will commence on April 1, 2018, will end on March 31, 2019.

Income of Previous Year of an Assese is taxed during the next following Assessment Year at the rates prescribed by the relevant Finance Act

9. PREVIOUS YEAR [Section 3]

As the word ‘Previous’ means ‘coming before’ , hence it can be simply said that the Previous Year is the Financial Year preceding the Assessment Year e.g. for Assessment Year 2008-2009 the Previous Year should be the Financial Year ending 31st March 2008.

- **Previous Year in case of a continuing Business :**

It is the Financial Year preceding the Assessment Year. As such for the assessment year 2008-2009, the Previous Year for continuing business is 2007-2008 i.e. 1-4-2007 to 31-3-2008.

- **Previous Year in case of newly set up Business :**

The Previous Year in case of newly started business shall be the period between commencement of business and 31st March next following . e.g. in case of a newly started business commencing its operations on Diwali 2007, the Previous Year in relation to Assessment Year 2008-2009. shall be the period between Diwali 2007 to 31 March 2008.

- **Previous Year in case of newly created source of income :**

In such case the Previous Year shall be the period between the day on which such source comes existence and 31st March next following.

Sl. No.	Income	Section	Previous Year
1.	Cash Credit	[68]	Financial Year in which found to be entered.
2.	Unexplained Investment	[69]	Financial Year preceding the Assessment Year
3.	Unexplained Bullion, Cash, Jewelley	[69A]	Financial Year in which found in the possession of the Assesse.
4.	Partly explained Investment	[69B]	Financial Year in which Investment was made.
5.	Unexplained Expenditure	[69C]	Financial Year in which expenditure was incurred.
6.	Payment of Hundi, Money in Cash	[69D]	Financial Year in which such payment was made.

10. When Income Of Previous Year Is Not Taxable In The Immediately Following Assessment Year .

The rule that the income of the previous year is taxable as the income of the immediately following assessment year has certain exceptions. These are:

1. Income of non-residents from shipping business [Section 172] ;
In case a Non-Resident Shipping Company, which has no representative in India, earns income by carrying passengers, livestock, mail or goods loaded from any Indian Port, such Ship will have to pay Tax on such Income, otherwise the Ship will not be allowed to leave the Port till the tax on such income has been paid or alternative arrangements to pay tax are made. Such income will be assessed to paid tax at current year's rates.

2. Income of persons leaving India either permanently or for a long period of time [Section 174] ;
In case I.T.O. has the reasons to believe that an individual will leave India with having no intention of retuning to India during the current assessment year, the total income of such individual will be taxable in the current assessment year for the period between the expiry of last previous year and till the date of his departure.

3. Income of a person trying to transfer his assets with a view to avoiding payment of tax. [Section 175]

4. Income of a discontinued business [Section 176]
In these cases, income will be taxed in the same year it is earned.

These exceptions have been incorporated in order to ensure smooth collection of income tax from the aforesaid taxpayers who may not be traceable if tax assessment procedure is postponed till the commencement of the normal assessment

On the basis of the aforesaid discussion, it can be said that a financial year plays a double role—it is a Previous Year as well as an Assessment Year.

11. What Are Different Heads Of Income According To Income Tax Act. ?

There are 5 different Income heads. The Income under each head will be charged to Income Tax. Thus the tax will be computed on the basis of total income.

1. Salaries including Allowances, value of Perquisites, Profits in lieu of salary and Pensions.
2. Income from House Property whether residential, commercial or let out.
3. Profits & Gains of Business / Profession.
4. Capital Gains - Short & Long Term.
5. Income from other Sources including Bank Interest, Interest on Securities, Lotteries, Cross word Puzzles, Races, Games, Gift received on or after 1-9-2004 in excess of Rs. 50,000 in cash etc. from unrelated persons.

12. Who All Have To Pay Income-Tax ?

a. Individual including Non-resident, Hindu Undivided Families (HUF), Bodies of Individuals (BOI), Association of Persons (AOP) & Artificial Juridical Persons (such as Deities of Temples) having taxable income exceeding Rs. 1.5 lakh (Rs. 1,80,000 for Resident Women assesses below 65 Years and Rs. 2,25,000 for Resident Senior Citizens.)
b. Societies & Charitable / Religious Trusts having taxable income exceeding Rs.1.5 lakh.
c. All Partnership Firms irrespective of their Income.
d. Co-Op. Societies irrespective of their Income.
e. All Companies irrespective of Income.
f. Local Authorities like, Panchayats, Municipal Corporation etc.

13. How Income-Tax Will Be Charged By The Income Tax Department ?

Income Tax is charged on 5 different heads. Aggregate of taxable income under each head of income is known as Gross Total Income and so
Taxable Income = Gross Total Income - Allowance Deductions.

Deduction of Expenditure :
In computing income under various heads, deduction is allowed towards expenditure incurred in relation to earning the income. However, no deduction shall be allowed in respect of expenditure incurred in relation to incomes exempt from tax.

Computation of Gross Total Income :
It is the aggregate of incomes under various heads of income calculated after set-off of unabsorbed depreciation/loss, carried forward from earlier years.

Set-off and Carry Forward :
Set-off means adjustment of certain losses against the income under other sources / heads. Carry forward implies carrying forward of certain losses for set-off in subsequent years.

Total / Taxable Income :
Total / Taxable Income is computed after deducting permissible deductions under section 80A to 80U, from the Gross Total Income.

Where the Gross Total Income of the Assesses includes Short-Term Capital Gains from transfer of equity shares / units of an equity oriented mutual fund subject to Securities Transaction Tax or any Long-Term Capital Gains, then no deduction shall be allowed against such Capital Gains. On this Taxable Income, Income Tax will be calculated as per the applicable rates.

14. What Is Agricultural Income ?

Sec.10(1) exempts Agricultural Income from Income-Tax. Bu virtue of Sec.2(1)a the expression "Agricultural Income" means :

- Any Rent or Revenue derived from Land which is situated in India and is used for agricultural purposes. [Sec. 2(1A)(a)]
- Any income derived from such land :
  - Use for Agricultural purposes ; or
  - Used for agricultural operations means- irrigating and harvesting , sowing, weeding, digging, cutting etc. It involves employment of some human skill, labour and energy to get some income from land. ; or

According to Sec. 2(1)(a) , if the following 3 conditions are satisfied, income derived from Land can be termed as "Agricultural Income".

Condition-1 : Income derived from Land
It is essential that for any income to be termed as agricultural Land must be effective and immediate source of Income and not indirect and secondary.

As a result, interest on arrears of land revenue, dividend paid by a company out of its profits which included agricultural income also and salary paid to a manager for managing agricultural farms are not agricultural incomes because in all these cases land is not the effective and immediate source of income.

Condition-2 : Land is used for Agricultural Purposes
To term any income as agricultural income, it is necessary that income must be the result of agricultural operations performed on agricultural land. Agriculture means performance of some basic operations— irrigating and harvesting , sowing, weeding, digging, cutting etc. it involves employment of some human skill, labour and energy to get some income form land.

Condition-3 : Land is situated in India
To qualify the exemption u/s 10(1) of the Act, it is necessary that agricultural income must be

derived from land situated in India. In case income is derived from agricultural land situated outside India or is from any non-agricultural land, it will not be exempted u/s 10(1). It is taxable income under the head “Income from other Sources”.

What is the Tax Treatment of Income which is partially Agricultural and partially from Business [Rules 7, 7A, 7B and 8]

For disintegrating a composite business income which is partly agriculture and partly non-agricultural, the following rules are applicable –

Type of Income	Business Income	Agricultural Income
• Tea Business	40%	60%
• Coffee Business	40%	60%
• Rubber Business	40%	65%

Example :
Mr. X owns a Flour Mill and some agricultural Land. During the year 2018-2019 he has shown profit of Rs.25 lacs from the Business of Flour Mill. On scrutiny of accounts it was found that he has used 5,000

Any income accruing or arising to Common quintals of wheat produced in his own Farms and cost of this wheat has not been debited to P & L account. The market price of the wheat during the season was Rs.400 per quintal.. Find out his Agricultural and Business income.

[Hints : Agricultural income Rs.20,00,000 and Business income Rs. 5,00,000]

RESIDENTIAL STATUS AND TAX LIABILITIES

The tax liability under income tax is determined on the basis of residential status of an assessee but not according to the citizenship hence it becomes necessary that firstly the residential status of an assessee should be determined.

On the basis of residential status there are 3 categories of assessees: 1) Resident/Ordinary resident 2) Not ordinarily resident 3) Non resident There are separate rules for different types of assessee like; individual, H.U.F., firm, companies etc. for determination of residential status.

Individual Assessee

1) Resident / Ordinary Resident : - If an individual wants to become resident in India, then he has to fulfill the basic condition as well as two additional conditions:

i) Basic conditions: In the basic conditions, there are two conditions. On satisfying any one of these, it will be assumed that the basic condition is satisfied.

a) The assessee must have lived for at least 182 days in India during the previous year.

OR

b) The assessee must have lived for at least 365 days in 4 years preceding the previous year and at least 60days in 4 years preceding the previous year.

EXCEPTIONS TO THE BASIC CONDITIONS

1. If an assessee is an India citizen and goes aboard for the employment purpose or leaves the country as a member of crew of an Indian ship.
2. If an assessee is an Indian citizen or an Indian origin, living in a foreign country and comes to India on tour during the previous year.

In both these exceptional cases an assessee has to lives for at least 182 days for satisfying the basic condition.

ii) Additional Conditions There are two additional conditions and assessee has to satisfy both of these conditions. These are :

i) An assessee must have been assessed as resident for at least 2 out of 10 years preceding the previous year.

AND

ii) An assessee must have lived for at least 730 days out of 7 year proceeding the previous years.

Thus on satisfying any of the two basic conditions and two additional conditions an individual assessee can be termed as "ordinary resident".

2) Not Ordinarily Resident: If an assessee satisfies the basic condition but fails to satisfy the two additional conditions, then he will be assessed as "not ordinarily resident".

3) Non Resident: If an assessee fails to satisfy even the basic condition, then he will be assessed or" non resident".

Hindu Undivided Family (H.U.F.)

1) Resident : An HUF will be assessed as resident in India if :

a) Management and control of the business is wholly/partly situated in India.

AND

b) "Karta" of the HUF satisfies the two additional conditions.

2) Not Ordinarily Resident : An HUF will be assessed as NOR if:

a) Management and control of the business is wholly/partly situated in India

BUT

b) Karta of HUF does not satisfy the two additional conditions.

3) Non Resident: An HUF will be assessed as nonresident if control and management of the HUF is wholly situated outside in India.

FIRM OR ASSOCIATION OF PERSONS

1) Resident :- A firm or an AOP will be assessed as Resident of India if its control and management is wholly/partially situated in India

2) Non Resident : A firm or an AOP will be assessed as non resident in India if it is wholly/partly controlled and managed from outside India.

COMPANY

1) Resident : A company will be assessed as resident in India if :

i) It is an Indian Company

OR

ii) It is controlled and managed wholly within India.

2) Non-Resident : A company which is neither an Indian company nor it is wholly/partly controlled and managed from outside India, is called as non-resident.

RESIDENTIAL STATUS AND TAX LIABILITIES

The tax liability under income tax is determined on the basis of residential status of an assessee but not according to the citizenship hence it becomes necessary that firstly the residential status of an assessee should be determined.

On the basis of residential status there are 3 categories of assessees:

a) Resident/Ordinary resident
b) Not ordinarily resident
c) Non resident

There are separate rules for different types of assessee like; individual, H.U.F., firm, companies etc. for determination of residential status.

Individual Assessee

1) Resident / Ordinary Resident : - If an individual wants to become resident in India, then he has to fulfill the basic condition as well as two additional conditions:

i) Basic conditions: In the basic conditions, there are two conditions. On satisfying any one of these, it will be assumed that the basic condition is satisfied

a) The assessee must have lived for at least 182 days in India during the previous year.

OR

b) The assessee must have lived for at least 365 days in 4 years preceding the previous year and at least 60days in 4 years preceding the previous year.

EXCEPTIONS TO THE BASIC CONDITIONS

1. If an assessee is an India citizen and goes aboard for the employment purpose or leaves the country as a member of crew of an Indian ship.
2. If an assessee is an Indian citizen or an Indian origin, living in a foreign country and comes to India on tour during the previous year.

In both these exceptional cases an assessee has to lives for at least 182 days for satisfying the basic condition.

ii) Additional Conditions

There are two additional conditions and assessee has to satisfy both of these conditions. These are :

i) An assessee must have been assessed as resident for at least 2 out of 10 years preceding the previous year.
AND
ii) An assessee must have lived for at least 730 days out of 7 year proceeding the previous years.

Thus on satisfying any of the two basic conditions and two additional conditions an individual assessee can be termed as "ordinary resident".

2) Not Ordinarily Resident: If an assessee satisfies the basic condition but fails to satisfy the two additional conditions, then he will be assessed as "not ordinarily resident".

3) Non Resident: If an assessee fails to satisfy even the basic condition, then he will be assessed or" non resident".

Residential Status for Hindu Undivided Family (H.U.F.)

1) Resident : An HUF will be assessed as resident in India if :

a) Management and control of the business is wholly/partly situated in India.
AND
b) "Karta" of the HUF satisfies the two additional conditions.

2) Not Ordinarily Resident : An HUF will be assessed as NOR if:

a) Management and control of the business is wholly/partly situated in India
BUT
b) Karta of HUF does not satisfy the two additional conditions.

3) Non Resident: An HUF will be assessed as non resident if control and management of the HUF is wholly situated outside in India.

FIRM OR ASSOCIATION OF PERSONS

1) Resident :- A firm or an AOP will be assessed as Resident of India if its control and management is wholly/partially situated in India

2) Non Resident : A firm or an AOP will be assessed as non resident in India if it is wholly/partly controlled and managed from outside India.

COMPANY

1) Resident : A company will be assessed as resident in India if :

i) It is an Indian Company

OR

ii) It is controlled and managed wholly within India.

2) Non-Resident : A company which is neither an Indian company nor it is wholly/partly controlled and managed from outside India, is called as non-resident.

Exempted Income

Though a detail discussion has been given in chapter ‘Exemptions from Tax’ regarding exempted income or tax free incomes. Here a brief account of exempted incomes is given for convenience of students to solve the practical problems relating to income from other sources –

1. Agricultural income in India,
2. Share in income of HUF,
3. Share in profit of partnership firm
4. Post office savings bank interest (exempted in case of single name Rs. 3,500 and joint name Rs. 7,000)
5. All type of allowances received by M.P. (Lok Sabha or Rajya Sabha)
6. Daily allowances and constituency allowance received by MLA’s
7. Scholarships
8. Gallantry awards,
9. Interest on Post office CTD accounts (10 or 15 years.)
10. Interest on capital investment Bonds. Relief bonds and Certificates,
11. Dividend from domestic companies and mutual funds, e.g. UTI units income. 12. Family pension received by the family members of armed forces died in operational duties.