

INCOMETAX

As Amended by Finance Act 2013

Income Tax Notes for the Students appearing in CA Exams in May, 2014.
(For CA Final / IPCC / CS Final / Inter / CWA Final / Inter.

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Message from the Desk of Author.



Dear Users / Friends, I believe it is not possible to go through the whole book in a day before the Exam for a student. To make my younger friends easy to have over look in all the contents of Income Tax in the day before Exam I am hereby preparing this handbook to make the students comfortable to seat in the Exam.

This handbook is not beneficial only for the exams but also for the office workings. This book contains all the amendments of Finance Act 2012 along with the updated Case Laws of Direct Taxes.

I am deeply thankful to all my younger Chartered Accountant who adore this profession. I am hopeful that quick reference glance of the provision s of direct taxes through this handbook will prove to be beneficial to all its users.

I dedicate this handbook to the Supreme Power and to my Love.

Slogan for success in CA Profession

Smartwork →>>> Dedication →>>> Commitment + Enthusiasm = Chartered Accountant

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Overview

Direct Tax:

Direct tax means a tax whose burden directly implies on a person i.e. the person who earns has to pay. This tax does not pass on to another person; it means the benefit of direct tax paid by the assessee shall not be allowed to others. Only he (The Person) who pays tax can only get the benefit of the same. eg. Income Tax, Wealth Tax.

Income Tax Act 1961:

'Income Tax' is a tax charged on income earned during the year, i.e. it is an annual charge on income. It is payable on a yearly basis. "Constitution" is the Parent Law and all the Acts enacted in India are subject to the overall framework of the constitution of India and norms laid down therein. Constitution of India has empowered the 'Central Government' of India to levy tax on income and by virtue of this power; the Central Government has enacted Income Tax Act, 1961, by replacing the earlier act called Income Tax Act, 1922.

According to Section 1 of the Income Tax Act, 1961, the act is to be called as "Income Tax Act, 1961" and it extends to the whole of India. It came into force with effect from 01st April, 1962. It is implemented and administered through the rules laid down in the act, circulars issued by the Central Board of Direct Taxes (CBDT) and High Court / Supreme Court decisions on various issues.

Section 2 of the Income Tax Act, 1961 defines various terms and expressions used in the act, but before that one must understand certain terminologies used in these definitions.

(a) **"MEANS":**

When there is the use of word "means" in any definition or explanation or anywhere, then that definition or explanation is self-explanatory and exhaustive (Exhaustive here means complete). It implies that the term so defined means only that what is defined therein and nothing beyond that. e.g.: Definition of "Assessment Year".

(b) **"INCLUDES":**

When an exhaustive (Complete or "Means") definition is not possible or the scope of the definition is widened by the legislature, it uses the term "includes", the term 'includes' means inclusive i.e. whatever contains in the definition, the area of definition is much beyond that. e.g.: Definition of "Income" or definition of "Person".

(c) **"MEANS AND INCLUDES":**

When the definition is completely defined and also specified/covers certain specific items, it includes both the terms "means and includes". For e.g.: definition of "Assessee".

(d) **"ASSESSEE":**

Section 2 (7) of the Income tax act, defines the term "assessee" to mean a Person by whom any tax or any other sum of money is payable under the act and includes:

- i. Every person in respect of whom, any proceeding under the act has been taken up, whether in respect of assessment of his own income or income of any other person,
- ii. A person who is deemed to be an assessee under any provision of the act. e.g.: Representative assessee, Agent of Non-Resident, etc.
- iii. A person who is deemed to be 'an assessee in default' under any provision of the act. e.g.: An employer who fails to deduct tax at source from salary paid by him to his employee.

(e) **“PERSON”:**

As per Section 2 (31), Person includes :-

- i. An Individual,
- ii. A Hindu Undivided Family (H.U.F.),
- iii. A Company,
- iv. A Firm,
- v. An Association of Persons (AOP) or Body of Individuals (BOI).
- vi. A Local Authority
- vii. An Artificial Judicial person

The term ‘Person’ has been defined in an inclusive manner. If one observes the definitions of the terms “assessee” and “person” both, then one will find that every ‘assessee’ is necessarily a ‘person’, but every ‘person’ need not necessarily be an ‘assessee’.

The term ‘Association of Persons (A.O.P.)’ or ‘Body of Individuals (B.O.I.)’ has not been defined anywhere in the Act, but in general sense would mean coming together of more than one person or more than one individual for some common purpose or goal. There are mainly two basic differences between an AOP and BOI. An AOP can be formed by two or more persons, wherein the term ‘person’ would mean the same as defined by section 2(31) and on the other hand BOI can be formed by two or more ‘individuals’ only. And second difference is that an AOP is formed for the purpose or desire to earn income, whereas such intention is not necessary in case of BOI, BOI may be for non-income earning purposes also. For e.g.: Legal Heirs of a deceased person, coming together to receive income from the estate/property belonging to the deceased, will be said to have formed Body of Individuals.

(f) **“PREVIOUS YEAR” (P.Y.):**

As per Income tax act 1961, the term “Previous Year” means the period generally commencing from 1st April, and ends on 31st March in nutshell financial year, however the period 1st April or 31st March can be differ. for e.g.:If a Business or a Profession is set up, the very first Previous Year would begin on the date on which business/profession is set up. For e.g.: If a business is set up on 17th October, 2009, then first previous year would begin on 17th October, 2009 and end on 31st March, 2010 and thereafter, it would begin on 01st April every year and end on 31st March, of the next year, and If an old running business closed on 28th February then the Previous year for that business will be 01st April to 28th February.

Note:

Upto Assessment Year 1988-89, assesseees were allowed to follow any year as their previous year, but from Assessment Year 1989-90 onwards this liberty was withdrawn and now all assesseees are required to follow ‘Financial Year’ as their Previous Year.

(g) **“ASSESSMENT YEAR” (A.Y.):**

Assessment Year has been defined by Section 2 (9), to mean ‘A Financial Year, which immediately succeeds the relevant Previous Year’. For e.g.: For Financial Year 2012-2013, Assessment Year will be 2013-2014. Income of one financial year is taxed in the next year, which is known as ‘Assessment Year’.

(h) **“INCOME”:**

The term ‘Income’ has been defined by Section 2 (24) of the act in an illustrative manner. According to Section 2(24), **‘INCOME’** includes;

- i.) Profits and Gains,

- ii.) Dividend, [Though the term 'income' includes 'dividend', certain dividends are exempt from income tax under section 10(34)]
- iii.) Voluntary contributions received by Charitable or Religious Trust or Institution,
- iv.) Value of any perquisite, Profit in lieu of salary, Special Allowance or any other benefit received by an employee from his employer,
- v.) Export Incentive (e.g.: Duty Drawback),
- vi.) Any Interest, Salary, Bonus, Commission or remuneration received by a partner of a firm from the firm,
- vii.) Capital Gains,
- viii.) Winnings from Lotteries, Crossword Puzzles, Card Games, Races including Horse Races, any other game of any sort or from Gambling or Betting of any nature,
- ix.) Any sum received by the assessee from his employees towards Welfare Fund, Provident Fund, Superannuation Fund, etc.
- x.) Any sum received under KEYMAN INSURANCE POLICY including any Bonus if any, on such policy,
- xi.) Non-Compete Fees, Compensation for not sharing any intangible asset such as Know-how, Patent, Trademark, etc.
- xii.) Any sum referred to in section 56 (2)(v).

Points to be noted:

- (1.) Income from 'Illegal activities' is also an income and hence, is taxable.
- (2.) Income need not be in 'cash', it may even be in 'kind'.
- (3.) Gifts of personal nature is not an income. For e.g.: Gifts received on Birthday or on occasion of Marriage or Festival gifts, etc. But gifts received in the course of profession is an income. For e.g.: Gift received by a doctor from his patient in addition to his professional fees for conducting a successful operation is an income and is taxable, or an award or trophy received by a sportsman like cricketer is also an income chargeable to tax.
- (4.) Income includes 'Loss' also, as loss is a negative income.
- (5.) 'Pin money' (an amount received by wife from her husband towards household expenses, or for her personal expenses, etc.) is not treated as income of wife.

Tax Rates

a) For any other than resident individual, any non-resident individual, every HUF / AOP / BOI / artificial judicial person.

- For First 2 Lac NIL
- For Rs. > 2 Lac to 5 Lac 10 % of Income
- For Rs. >5 Lac to 10 Lac 20 % of Income
- For above Rs. 10 Lac 30 % of Income

b) For Resident Senior Citizen (age 60 years or more but less than 80 years).

- For First 2.5 Lac NIL
- For Rs. > 2.5 Lac to 5 Lac 10 % of Income
- For Rs. >5 Lac to 10 Lac 20 % of Income
- For above Rs. 10 Lac 30 % of Income

c) For Resident Super Senior Citizen (age 80 years or more).

- For First 5 Lac NIL
- For Rs. > 5 Lac to 10 Lac 20 % of Income
- For above Rs. 10 Lac 30 % of Income

d) Co-operative Societies

- For First 10,000/- 10% of Income
- For Rs. >10,000/- but upto Rs.20,000/- 20 % of Income
- For Rs. 20,000/- & above 30 % of Income

e) Firms & LLP.

- Flat Tax rate of 30% on Total Taxable Income.
- Alternate Minimum Tax (AMT u/s 115JC) @ 18.5% of adjusted Total Income (+EC + SHEC).
- Surcharge @10%.

f) Local Authority

- Flat Tax rate of 30% on Total Taxable Income.
- Alternate Minimum Tax (AMT u/s 115JC) @ 18.5% of adjusted Total Income (+EC + SHEC).
- Surcharge @10%.

g) Domestic Companies

- Flat Tax rate of 30% on Total Taxable Income.
- Minimum Alternate Tax (MAT u/s 115JB) @ 18.5% of Book Profit (+EC + SHEC + Surcharge).
- Dividend Tax u/s 115-O @ 15% (+EC + SHEC + Surcharge).

h) Other than Domestic Companies (Foreign Companies).

- @ 50% of on so much of the total income as consist of (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved by the Central Government.
- Flat Tax rate of 40% on Balance Income.

- Minimum Alternate Tax (MAT u/s 115JB) @ 18.5% of Book Profit (+EC + SHEC + Surcharge).

i) Long Term Capital Gains (LTCG).

- Flat tax rate @ 20% after Indexation.

j) Short Term Capital Gains (STCG).

- Flat tax rate @ 15% in case of STCG u/s 111A
- Normal tax rate in case STCG other than u/s 111A.

Notes:

1. w.e.f., from A/y 2013-14, LLP or any other non-corporate assessee are subject to AMT. However for an Individual/HUF/AOP/BOI/artificial judicial person, AMT is applicable only if the total income exceeds Rs.20 Lacs.
2. In case of a company's having total income exceeding Rs.1 crore, the net income tax & surcharge payable shall not exceed the total amount payable as income tax on total income of Rs.1 crore by more than the amount of income that exceeds Rs.1 crore. - Marginal Relief.
3. Surcharge (SC) applicable only if taxable income exceeds Rs. 1 crore for all the assessee i.e. @ 5% Domestic companies & @ 2% for foreign companies & @10% for all others.
4. Tax on LTCG can be taken @ 10% +SC+EC+SHEC in case of transfer of listed shares/ securities/ units.
5. EC & SHEC is applicable @ 1 & 2 % to all assessee on Income Tax +Surcharge.

Residential Status

a) For an Individual ASSESSE.

Conditions for Resident in India.

- An Individual can be a resident in India, if he satisfy any of the following two condition of residential status.
 - 1) Stay in India for a period of 182 days or more during the previous year.
 - 2) Stay in India for a period of 60 days or more during the previous year and 365 days or more during the 4 years immediately preceding the relevant previous year.

Conditions for Resident & ordinarily resident in India.

- An Individual can be a resident & ordinarily resident in India, If he satisfy the following Two (Both) condition.
 - 1) Resident in India for at least 2 years out of 10 previous years immediately preceding the relevant previous year.
 - 2) Stay in India for a period of 730 days or more during the 7 years immediately preceding the relevant previous year.

Notes:

The criteria for stay in India for a period of 60 days or more during the previous year and 365 days or more during the 4 years immediately preceding the relevant previous year as NOT applicable in the following cases:

- ❖ In the case of an Indian citizen or a person of Indian origin who come to India on a visit during the previous year: OR,
- ❖ In the case of an Indian citizen who leaves India during the previous year for the purpose of employment. OR,
- ❖ In the case of an Indian citizen who leaves India during the previous year as a member of crew of an Indian ship.

b) For Hindu undivided family (HUF).

Condition of Resident in India.

- A HUF is resident in India, If the control & management of its affairs are wholly or partly situated in India.

Condition for Non-Resident

- A HUF is non-resident in India, If the control & management of its affairs are wholly situated outside India.

Conditions for Resident & ordinarily resident in India.

- A HUF is resident & ordinarily resident in India, If Karta or Manager satisfies the both the Two conditions as above. (Same condition of ROR of Individual assessee.)

c) Partnership Firm/ LLP/ AOP.

Condition for Resident

- Firm/ LLP/ AOP is **Resident**, If the control and management of its affairs are wholly or partly situated in India.

Condition for Non-Resident

- Firm/ LLP/ AOP is **non-resident**, If the control and management of its affairs are wholly situated outside India.

d) Company assessee.

Foreign Company

Condition for Resident

- A Foreign company is resident in India, If the control and management of its affairs are situated **Wholly** in India.

Condition for Non-Resident

- A Foreign company is non-resident in India, If the control and management of its affairs are situated either **Wholly or Partly** outside India.

e) Domestic/ Indian Company.

- An Indian company is always resident in India.