## Components of Income-tax Law

The income-tax law, which governs the levy of income-tax in India, has the following components –

### (1) Income-tax Act, 1961
- The main source of income-tax law is the Income-tax Act, 1961.
- The Act is divided into sections; the sections are grouped under Chapters. The Act also contains Schedules.
- Many of the sections are further divided into sub-sections, clauses and sub-clauses, which are denoted within brackets.
  
  For example, if we have to refer to section 80D, sub-section (2) clause (b), the same should be written as section 80D(2)(b).

### (2) Income-tax Rules, 1962
- Rules are necessary for carrying out the purposes of the Act.
- The Act gives power to the authority responsible for implementation of the Act to make appropriate rules.
- The Central Board of Direct Taxes (CBDT) governs the administration of Income-tax Act, 1961 in India, for which purpose it frames rules from time to time.
- These rules together form the Income-tax Rules, 1962.

### (3) Annual Finance Act
- The Finance Bill is introduced in the Parliament every year for implementing the tax proposals in the Union Budget.
- When the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.
- The amendments are made every year to the Income-tax Act, 1961 and other tax laws by the Finance Act.
- The First Schedule to the Finance Act contains four parts which specify the rates of tax –
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- Part I of the First Schedule to the Finance Act specifies the rates of tax applicable for the current Assessment Year.
- Part II specifies the rates at which tax is deductible at source for the current Financial Year.
- Part III gives the rates for calculating income-tax for deducting tax from income chargeable under the head “Salaries” and computation of advance tax.
- Part IV gives the rules for computing net agricultural income.

(4) Circulars/Notifications

- Circulars are issued by the CBDT to clarify the meaning and scope of certain provisions contained in the Act.
- Notifications are issued by the Central Government to give effect to the provisions of the Act.

For example, under section 10(15)(iv)(h), interest payable by any public sector company in respect of such bonds or debentures and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf would be exempt. Therefore, the bonds and debentures, interest on which would qualify for exemption under this section are specified by the Central Government through Notifications.

(5) Case law decisions

- The various issues which arise out of the provisions of the Act are decided by judicial forums.
- The decisions of the Courts interpreting the provisions of the law also form an important constituent of income-tax law.

**Note** – Case laws, are however, dealt with only at the Final level and not at the Intermediate (IPC) level.

**Fundamental concepts of income-tax law**

**Income**

The concept of “income” under the Income-tax Act, 1961, is not the same as what is generally understood as “income” in common parlance.

An exhaustive definition is one which confines the scope to what is contained in the definition, whereas an inclusive definition does not limit the scope to what is mentioned in the definition.

The definition of “income” as per section 2(24) of the Income-tax Act, 1961, begins as “income includes ……”. The definition of “income” is, therefore, inclusive and not exhaustive. This implies that the scope of income is not confined only to the income which are mentioned in section 2(24).
<table>
<thead>
<tr>
<th>In Common Parlance</th>
<th>Under the Income-tax Act, 1961</th>
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<tr>
<td>(1) Income is understood as a regular monetary return from specified sources.</td>
<td>Income also includes casual income like winnings from lotteries, crossword puzzles etc.</td>
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<td>(2) Normally, only revenue receipts are considered as income.</td>
<td>Capital gains on transfer of assets are specifically included in the definition of income.</td>
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<td>(3) Income means the actual income i.e., gross receipts less expenditure incurred.</td>
<td>Income is also calculated applying a presumptive rate on gross receipts, in certain cases, for example, an individual carrying on civil construction business with gross receipts of, say, ₹ 80 lakh, can calculate his income by applying the presumptive rate of 8% on ₹ 80 lakh, even though his actual income may be higher.</td>
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<td>(4) Income generally refers to real income.</td>
<td>Even notional income is treated as income, if specifically provided under the Act i.e. annual value of a property which is not actually let out but is deemed to be let out is chargeable to income-tax.</td>
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<td>(5) Income connotes the gross receipts after deducting actual expenditure incurred to earn such receipts.</td>
<td>The deductions specifically provided for under the Income-tax Act, 1961 can alone be reduced to compute income. Also, if there are any restrictions on the quantum of deduction allowable under the Act, the deduction would be allowed subject to such limits. For instance, in case of salary income, transport allowance is allowable as deduction only up to ₹ 1,600 per month, even though the employee may have actually incurred more than ₹ 1,600 p.m. and may be getting a higher transport allowance. Sometimes, deduction may be allowed for a higher sum than actually incurred. For example, weighted deduction @200% is allowable in respect of in-house scientific research expenditure incurred by a company.</td>
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<td>(6) Income is generally considered to belong to the person who receives the same.</td>
<td>The Income-tax Act, 1961 has specific provisions including the income of one person in the hands of the other, in certain circumstances, like including income of a minor child in the hands of the parent.</td>
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**Previous Year & Assessment Year**
Assessment year (A.Y.) means the period of twelve months commencing on the 1st April every year. Assessment year is the financial year following the previous year. Previous year (P.Y.) is the financial year immediately preceding the assessment year, i.e., it is the financial year ending on 31st March, in which the income has accrued/received. In case of a newly set-up business, the previous year would be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly came into existence, and ending on 31st March.

Income earned during the previous year is chargeable to tax in the Assessment year. For example, income earned during the P.Y. 2016-17 is chargeable to tax in the A.Y. 2017-18. Therefore, for the A.Y.2017-18, the relevant previous year is P.Y.2016-17.

**Person [Section 2(31)]**
The levy of income-tax is on every “person”. The definition of “person” is, again, inclusive. It includes an individual, a Hindu Undivided Family (HUF, in short), a company, a firm, an association of persons (AOP) or a body of individuals (BOI), whether incorporated or not, a local authority and every artificial juridical person.

**Assessee [Section 2(7)]**
“Assessee” means a person by whom tax or any other sum of money is payable under the Income-tax Act, 1961. In addition, it includes –
- Every person in respect of whom any proceeding under the Act has been taken for the assessment of –
  - his income; 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.
- Every person who is deemed to be an assessee under any provision of this Act;
- Every person who is deemed to be an assessee-in-default under any provision of this Act.

**Question 1**
Write short note on “Income accruing” and “Income due”. Can an income which has been taxed on accrual basis be assessed again on receipt basis?

**Answer**
‘Accrue’ refers to the right to receive income, whereas ‘due’ refers to the right to enforce payment of the same. For e.g. salary for work done in December will ‘accrue’ throughout the month, day to day, but will become ‘due’ on the salary bill being passed on 31st December or 1st January. Similarly, on Government securities, interest payable on specified dates arise during
the period of holding, day to day, but will become ‘due’ for payment on the specified dates.

Income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation. For example, when interest on bank deposit is offered on accrual basis, amounts received on maturity of such deposit including interest thereon cannot be treated as income again.

**Question 2**

An employee instructs his employer to pay a certain portion of his salary to a charity and claims it as exempt as it is diverted by over riding charge / title – Comment.

**Answer**

In the instant case, it is an application of income and in the nature of foregoing of salary. According to the Supreme Court judgment in *CIT v. L.W. Russel (1964) 52 ITR 91*, the salary which has been foregone after its accrual in the hands of the employee is taxable. Hence, the amount paid by the employer to a charity as per the employee’s directions is taxable in the hands of the employee.

**Question 3**

Describe average rate of tax and maximum marginal rate under section 2(10) and 2(29C) of the Income-tax Act, 1961.

**Answer**

As per section 2(10), "Average Rate of 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.

**Question 4**

Who is an “Assessee”? Who is a “Deemed Assessee”? Who is an “Assessee in Default”? Explain with suitable examples.

**Answer**

**Assessee**

As per section 2(7), assessee means a person by whom tax or any other sum of money is payable under the Income-tax Act, 1961.

In addition, the term includes –

- Every person in respect of whom any proceeding under the Act has been taken for the assessment of –
  - his income; or
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- 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.

- Every person who is deemed to be an assessee under any provision of this Act;
- Every person who is deemed to be an assessee in default under any provision of this Act.

Deemed Assessee

Assessee includes every person who is deemed to be an assessee under the provisions of the Act. For example, section 160(1) defines “Representative assessee”. Section 160(2) states that, every representative assessee shall be deemed to be an assessee for the purposes of the Act.

Assessee in default

A person is said to be an assessee in default if he fails to comply with the duties imposed upon him under the Income-tax Act, 1961. Suppose an employer who pays salary or other person who pays interest, commission, professional fees etc. but does not deduct tax at source and deposit into government treasury, then, he shall be deemed to be an assessee in default. Likewise, under section 218, if a person does not pay advance tax, then, he shall be deemed to be an assessee-in-default.

Question 5

State any four instances where the income of the previous year is assessable in the previous year itself instead of the assessment year.

Answer

The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in a few cases, the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

(i) Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

(ii) Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.

(iii) If an AOP/BOI etc. is formed or established for a particular event or purpose and the
Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year.

(iv) During the current assessment year, if it appears to the Assessing Officer that a 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.

(v) 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.

Exercise

1. The basic source of income-tax law is -
   (a). Income-tax Act, 1961
   (b). Circulars/Notifications issued by CBDT
   (c). Judgments of Courts

2. A domestic company means -
   (a). Only an Indian company
   (b). Only a foreign company which has made the prescribed arrangements for declaration and payment of dividends in India
   (c). Indian company and a foreign company which has made the prescribed arrangements for declaration and payment of dividends in India

3. The rates of income tax are mentioned in -
   (a). Income-tax Act, 1961
   (b). The Annual Finance Acts

4. The surcharge applicable in the case of an individual is -
   (a). 10% of tax payable if total income exceeds ₹1 crore
   (b). 12% of tax payable if total income exceeds ₹1 crore
   (c). 15% of tax payable if total income exceeds ₹1 crore
5. In respect of a resident assessee, who is of the age of 60 years or more but less than 80 years at any time during the previous year 2016-17, -
   (a). Higher basic exemption of ₹ 2,50,000 is available
   (b). Higher basic exemption of ₹ 3,00,000 is available
   (c). Higher basic exemption of ₹ 5,00,000 is available.

6. The rate of tax applicable to a domestic company for A.Y. 2017-18, where turnover/gross receipts does not exceed ₹ 5 crore during the P.Y. 2014-15, is -
   (a). 29%
   (b). 25%
   (c). 30%

7. The surcharge applicable to a domestic company for A.Y. 2017-18 is -
   (a). 5%, if total income exceeds ₹ 1 crore.
   (b). 7%, if the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, and 15%, if the total income exceeds ₹ 10 crore.
   (c). 7%, if the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, and 12%, if the total income exceeds ₹ 10 crore.

8. The surcharge applicable to a foreign company for A.Y. 2017-18 is -
   (a). 5%, if the total income exceeds ₹ 1 crore.
   (b). 2%, if the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore and 5% if the total income exceeds ₹ 10 crore.
   (c). 2%, if the total income exceeds ₹ 10 crore.

9. The rate of tax applicable to a firm for A.Y. 2017-18 is -
   (a). 30%
   (b). 35%
   (c). 40%

10. Where the total income of an artificial juridical person is ₹ 3,10,000, the income-tax payable is ₹ .............. and surcharge payable is ₹ ..............
    (a). ₹ 6,000; surcharge – nil.
    (b). ₹ 11,000; surcharge – ₹ 1100.
    (c). ₹ 93,000; surcharge – ₹ 4650.

11. Define the following terms under the Income-tax Act, 1961 -
   (i) Assessee
12. Write short notes on the following:
   (i) Year of accrual of dividend
   (ii) Marginal relief

13. “Income of a previous year will be charged to tax in the assessment year following the previous year” - Discuss the exceptions to this general rule.


**Answers**

1. a; 2. c; 3. c; 4. c; 5. b; 6. a; 7. c; 8. b; 9. a.; 10. a.