Wealth tax notes

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C H A P T E R 1

SECTION 3 : CHARGE OF WEALTH TAX

- Wealth tax shall be charged for **every assessment year**
- In respect of the **net wealth** on the corresponding **valuation date**
- of every **individual , Hindu Undivided family and company**
- at the rate of **1% of the amount** by which net wealth **exceeds ₹ 30,00,000**

VALUATION DATE FOR PY 2010-11 / AY 2011-12: 31ST MARCH 2011

SECTION 45: WEALTH TAX NOT APLLICABLE

No wealth tax to be levied on the net wealth of:

SHORT FORM TO REMEMBER: C 25 CPM

1.) **C**ooperative Society

2.) Company registered **under section 25 of companies Act, 1956**

3.) Social **Clubs**

4.) Any **Political Party**

5.) Any **mutual fund** specified in section 10(23D) of Income Tax Act

COMPUTATION OF NET WEALTH

Net wealth to be calculated as follows:

Aggregate value of all assets located in India Or outside India belonging to the assessee on Valuation Date as per Sch .III of wealth tax act	**XXX**
Aggregate value of all asset to be included in the Net wealth of assessee (Deemed Assets u/s 4)	**XXX**
Exemption under section 5 of wealth Tax act	**(XXX)**
Debts owed by assessee on the valuation date Which has been incurred in relation to the assets Included in the net wealth of the assessee	**XXX**
NET WEALTH	XXX

☑ While computing **NET WEALTH,** exemption under section 5 is given before the deduction of debt(s).

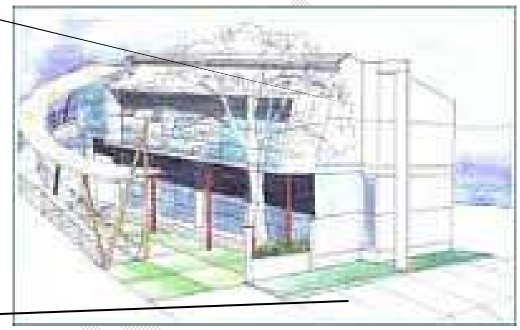
☑ It is also to be noted that **assets & debts located outside INDIA** are excluded from the net wealth **as discussed in SCETION 6.**

SECTION 2(ea) : DEFINITION OF ASSET

ASSET means:

(A)

Building



Land Appurtenant

Any building or land Appurtenant thereto, whether used for
-- Residential Purposes
-- Commercial Purposes [Explanation as under]

Vacant or Rented Building or land Appurtenant

This is covered under Liability of wealth Tax Because land has to be Used for business not for the other purpose.

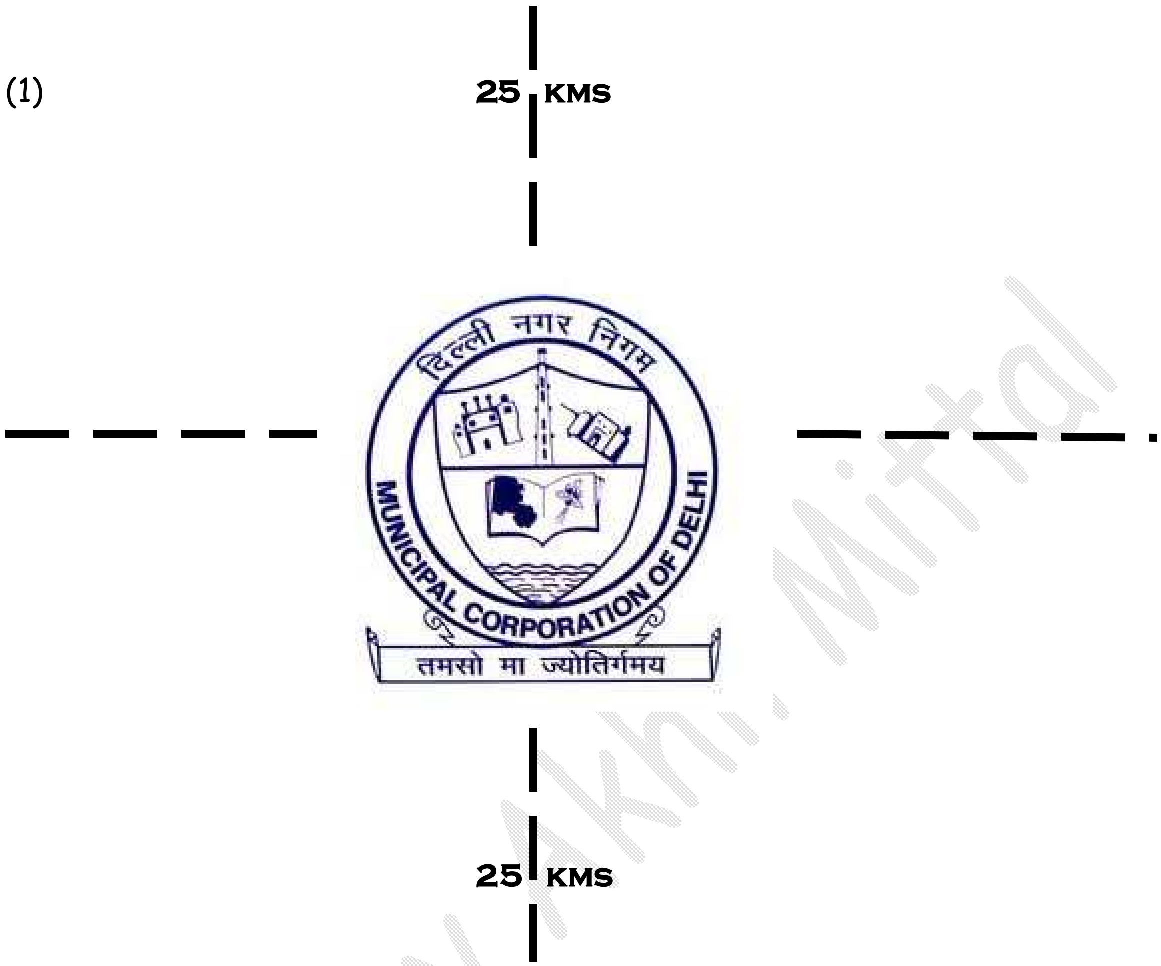
Used for commercial production

This is not liable to wealth tax because assets are here productive assets i.e. used for the business purpose.

-- For the purpose of maintaining a GUEST HOUSE
-- Otherwise.

Important Notes:

(1)



"HOUSE" **includes a** **<u>FARM HOUSE</u>** **situated within 25 Kms**, **from the local limit of municipality. [**Whether known as a municipality, municipal corporation or by any other name) or a cantonment board.**]**

(2) Limit of 25kms is applicable to <u>FARM HOUSE</u>, but NOT ON GUEST HOUSE. As such guest house if located anywhere will be included in computing WEALTH TAX.

(3) "FARM HOUSE" means BUILDING ON AGRICULTURE LAND.

Not to include:

(1) A house exclusively used for **residential purpose** and which is allotted by **a company to an employee/ officer/director** who is in whole time employment, **having a GROSS ANNUAL SALARY of LESS THAN ₹ 5,00,000.**

- ☑ If an employee gross annual salary is ₹ **5,00,000,** then the house will be included in the net wealth of the company.
- ☑ And this exception applicable only if a company gives house to its employees.

(2) Any house for **residential or commercial purpose which forms part of STOCK IN TRADE.**

- ☑ Here house means **"any house".**
- ☑ If any guest house is **held as STOCK IN TRADE** then **guest house** is not an asset.
- ☑ Example: **DLF, PARVSNATH** holding house as its **STOCK IN TRADE.**

(3) Any house which the assessee may occupy for the purpose of any business or profession **carried on by him.**

- ☑ Here exemption is on condition that **assessee himself must carry on the business.** If any other person is carrying on then the house will be part of the asset & hence liable to WEALTH TAX.
- ☑ If assessee give house on **rent to a tenant to carry on a business- ASSET & liable to wealth tax**
- ☑ **Any House means:** Residential or commercial.

Example: **Doctor owns a house with ground floor & first floor.**

Residential purpose → Asset

Business purpose → Not an asset

(4) Any residential property which is **let out for more than 300 days during the previous year.**

☑ If tenant does business and for more than 300 days – **NOT AN ASSET & hence not liable to wealth tax.**

CASE STUDY: RABINDRANATH DHAL

If a person gives a partnership firm a building to carry on a business in which he is a partner, then it will be said that BUILDING IS BEING USED BY THE PARTNER for the purpose of its business or profession and as such since used by partner himself and SO NOT AN ASSET. The asset will not be included in the net wealth o the partner since it is not an asset

(5) **Any property** in the nature of **commercial establishment or complexes.**

(B) MOTOR CARS:

(1) Motor Car **whether imported or Indian,** constitute as ASSET.

(2) Motor car used for **business or for personal use are ASSET.**

Not to include:

(A) Motor Car **used in business** of running them on HIRE. [eg **A person giving car on hire to TAXI DRIVER having yellow number plate].**

(B) Motor car is held as **stock in trade.[e.g. Maruti dealer have stock of CARS].**

<u>Other Important points:</u>

Following are not treated as motor car:

BUSES

TRUCKS

AMBULANCE

2 & 3 WHEELERS

DISPLAY VAN

TRACTORS

(C) JEWELLERY:

Jewellery, bullions, furniture, utensils or any other article made **wholly or partly** of **GOLD, SILVER, PLATINUM** or any other **precious items or** any **alloy containing** one or more precious metals.

Not to include:

(A) Jewellery, bullion etc held as **STOCK-IN-TRADE.** E.g. **jeweler having stock of jewellery.** Personal **jewellery** of the jeweler is **also an ASSET**.

(D) Yachts, boats and aircrafts:

YACHTS

BOATS

AIRCRAFTS

(1) **"Helicopter"** is an aircraft and **hence is an asset**.

(2) **"SHIP"** is neither yachts, boat **hence not an asset**.

(3) If **yachts, boats & aircraft** are held as **stock in trade,** then it can be said that they are used for **commercial purpose** & so **IT IS NOT AN ASSET**.

Now we will understand the meaning of **commercial purpose through an example:**

Mr. A has 2 aircrafts/yachts/boats

1st aircraft/yachts/boat (USED FOR TRANSPORTING PEOPLE AT LARGE)

In this case, people are being transported at large. It means airline co.

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So there in **need of commercial License to be obtained from the Government. [Strict Rules]**

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Rules are there so **in wealth tax Provision, no WEALTH TAX on aircraft/yachts/boat.**

2nd aircraft/yachts/boat (USED FOR PERSONAL PURPOSE)

Here the person has to obtain the **personal license.**

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No strict rule is there by the **government**

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It is considered as an ASSET, so wealth tax to be levied

(E) Urban Land:

☑ Vacant land is also **an asset.**

Not to include:

(1) Land on which **construction of a building is not permissible under any law for the time being in force** in the area in which such land is situated. That is **if law of the area in which land is situated prohibits construction—NOT AN ASSET.**

> Here important point is that **law that prohibits the construction of the must of the AREA in which the land is situated. It will be useless to say that High Court doesn't permit any construction.**

(2) Land occupied by any building **which has been constructed with the** approval of **the appropriate authority.**

Let take an example:

Land Owner — **Land on lease given to**

Mr. A - - - - - - - - - - - - - → Mr. B for 30 years

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Mr. B constructs building On the land

Now practically speaking,

(a) While valuing the value of the building, the value of the land is also included. But here the **building is constructed by Mr. B.** As such the value of land to be included in the net wealth of **Mr. B** not in **wealth of Mr. A.**

(b) Since the land is not included **in the net wealth** of **Mr. A , so** here it is an exclusion that value of land not to be included in the wealth of **LAND OWNER** on which **building has been constructed.**

(3) Any unused land held by the assessee for **industrial purpose** for a **period of 2 years** from the date of acquisition.

(4) Land held as **stock in trade** by the assessee for a **period of 10 years** from the date of acquisition.

"URBAN LAND" MEANS LAND SITUATED:

(A) In any area which is within the jurisdiction of a municipality **which has a population of not less than 10,000 as per the last preceding census published before the valuation date.**

(B) In an area within such distance, **not being more than 8 Kms** from the local limits of **any municipality or cantonment board.**

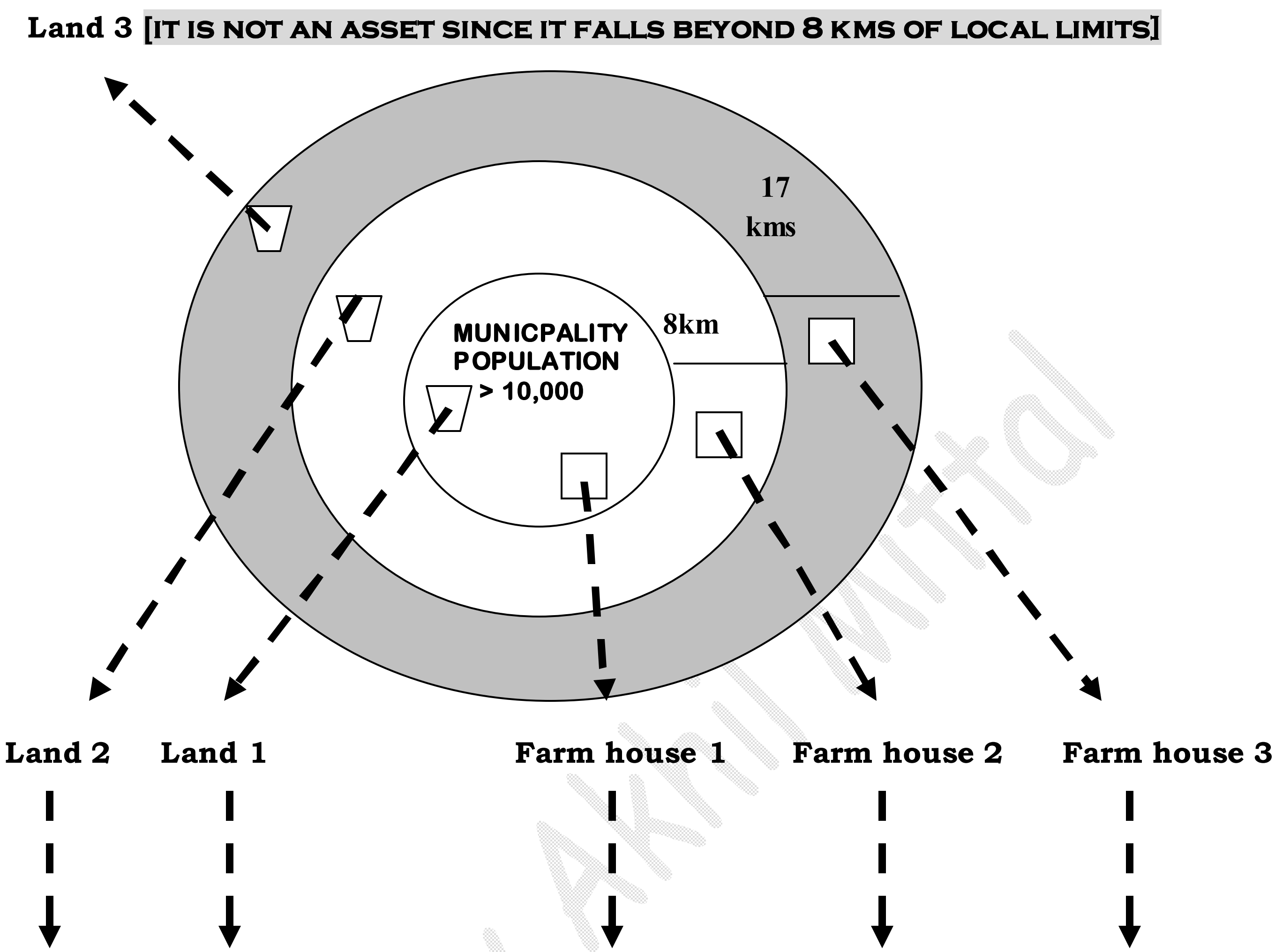
Now remembering the provision of the farm house where the distance from the local limits is 25 kms, the two i.e. land & farm house are different from each other.

In case of FARM HOUSE limit is 25 KMS.

In case of URBAN LAND limit is 8 KMS.

- ☑ **So any farm house if situated <u>within 8kms or 25 kms</u> of the local limits of the municipality IS AN ASSET.**
- ☑ **So if any urban land if situated within <u>8 kms</u> IS AN ASSET but in case if land is situated beyond 8 kms but within <u>25 kms</u> is NOT AN ASSET.**

THIS IS EXPALINED WITH THE HELP OF DIAGRAM ON NEXT PAGE



THESE 2 LANDS ARE ASSET SINCE THEY ARE IN MUNICIPALITY AND WITHIN 8 KMS OF THE LIMITS

ALL THE FARM HOUSES ARE ASSET BECAUSE THESE ARE WITHIN THE MUNICPALITY OR WITHIN 25 KMS OF THE LIMITS OF MUNICPALITY

(F) CASH IN HAND:

In case of INDIVIDUAL & HUF: In excess of ₹ 50,000 is ASSET

In case of OTHER PERSON [Companies/Firm/ AOP/ BOI] : Amount not recorded in the books of accounts is asset.

SECTION 4 : DEEMED ASSETS

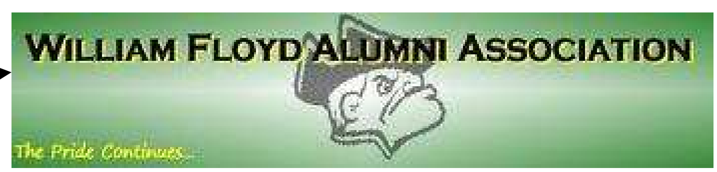
The value of the asset should be added in **the net wealth of the individual** belonged to the assessee **but held by the following as on VALUATION DATE:**

(a) Asset held by his/her spouse to whom such asset have been transferred **directly or indirectly** without **any consideration** or **otherwise in connection to live apart.**

(b) Asset held by his/her **minor child** not being **a minor married daughter. [This is because after marriage** normally all the property of the **daughter** and its control go in the hands of her in-laws.**]**. The asset held by minor married daughter will be clubbed in **her own wealth.**

If a minor is suffering from disability u/s 80u of the income tax act, then no clubbing of the wealth of the minor in the wealth of his/her parents. [It is done so that the disabled minor is not dependent on others].

(c)



Where any asset has been transferred to **an association of person** by an individual directly or indirectly **for inadequate consideration** for the immediate or deferred **benefit of the individual or his/her spouse**.

(d) Any person to whom **asset has been transferred other than under an irrevocable transfer. [**That is if asset is transferred **under revocable transfer** then the asset value will be clubbed in the hands of **transferor].**

MEANING OF IRREVOCABLE TRANSFER:

It includes transfer of the asset, by the terms of the instruments:

- ☑ **It is not revocable for a period exceeding 6 years OR**
- ☑ **It is not revocable during the LIFETIME of the assessee.**
- ☑ **Under this transferor derives no direct or indirect benefit.**

(e) Any asset transferred to **son's wife** by him/her **directly or indirectly otherwise than for adequate consideration [i.e. inadequate consideration].**

(f) Where any asset has been transferred to **an association of person** by an individual directly or indirectly **for inadequate consideration** for the immediate or deferred **benefit of his/her son's wife.**

SOME OTHER POINTS TO BE CONSIDERED:

(1) Child includes **STEP CHILD AND ADOPTED CHILD.**

(2) **Asset acquired by the minor not to be clubbed in following cases→**

(I) Income earned on account of manual work done by minor.

(II) Income earned on account of activity involving application of his skills, knowledge and experience.

SECTION 4(1)(b): INTEREST OF PARTNER IN A FIRM OR MEMBER OF AOP

Where the assessee is a partner in a firm or a member of AOP **[other than cooperative society]**:

The value of assessee's interest in the Asset of the firm or AOP determined as Per Schedule III → **to be included in THE NET WEALTH of the assessee.**

SECTION 4(5A) : GIFT BY BOOK ENTRIES

Where a **gift of money is made By 1 person to other by way Of merely BOOK ENTRIES** → **and money has not been actually delivered to the the other person**

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Then **SUCH GIFT shall Be liable to be included In the NET WEALTH of person making the gift**

SECTION 4(6) : HOLDER OF IMPARTIABLE ESTATE

The holder of a **INPARTIABLE ESTATE** shall be deemed **to be the owner** of **all the properties comprised in the estate.**

SECTION 4(7) : MEMBER OF A CO–OPERATIVE HOUSING SOCIETY

Where the assessee is a member of

CO-OPERATIVE SOCIETY | **COMPANY** | **ASSOCIATION OF PERSON**

AND building or land or part thereof - - - - - > **is allotted under a housing scheme of the society, company or association**

Then the **assessee will be deemed to be THE OWNER OF SUCH BUILDING & shall be Included in the net wealth of the assessee**

SECTION 4(8) : DEEMED OWNERSHIP ON POSSESSION

A person who is allowed to take possession of any building in part performance of a contract referred **to in section 53A** of the **TRANSFER OF PROPERTY ACT** shall be deemed **as the owner of such building and the value of such building shall be included in THE NET WEALTH OF SUCH PERSON.**

SECTION 5 : EXEMPTION IN RESPECT OF CERTAIN ASSETS

Following assets should not be included in the wealth of the assessee:

(1) **Any property held** under trust for public purpose of a **CHARITABLE or RELIGIOUS nature in India [Section 5(i)]**

IMPORTANT points to remember :

(1) **Exemption is allowed for those assets only which is used for religious or charitable purpose.**

BUSINESS ASSETS

Exemption under this section:
If the business is incidental to the attainment of the objective of trust & Separate books are maintained

No Exemption under this section:
If not incidental to the objectives of The trust

"If the public purpose of charitable or religious nature is outside INDIA, then the property held under trust, wherever located, SHALLL NOT BE EXEMPT".

(2) The interest of the assessee in the **co-parcenary** property of an **HINDU UNDIVIDED FAMILY** of which he is a member. **[Section 5(ii)]**

(3) Any **one building** in occupation of a **RULER,** being a building which was **declared as** his **OFFICIAL RESIDENCE** by the central government. **[Section 5(iii)]**

REASON FOR INSERTING THIS EXEMPTION:

At the time of independence the government of India decided to merge all the states of the kings/ rulers. But they all opposed to it. So government provided them certain benefits:

- Titles will be kept the rulers with them even after merger.
- Palaces will be given to the rulers
- **1 palaces - -> To be regarded as official residence**
- Central government **will bear all the expenses of such official residence.**
- Such official residence will be exempt from the wealth tax.

CASE STUDY: MOHAMMAD ALI KHAN [SUPREME COURT]

Where a ruler owned a palace **which was declared** by the **CENTRAL GOVERNEMENT** as his official residence **& this palace consisted** of various buildings out of which some buildings **were LET OUT** to various tenants, then ***exemption under 5(iii)*** *will be allowed only in respect of those buildings* ***which were occupied by the ruler for residence*** not for the rented building.

A PALACE

Assume that these **are** rented, as such these buildings **are not exempted under** 5(iii)

--> Assuming this building **is used by ruler** for his own residence & exemption under 5(iii) is available

"If a person takes exemption of a palace under section 5(iii) then he will not be allowed to claim exemption for another house under section 5(vi)."

(4) Jewellery in the possession of the any ruler, **not being his personal property,** recognized as **heirloom jewellery by the CENTRAL GOVERNEMENT** subject to the following conditions:

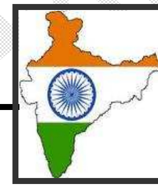
(I) The jewellery must be kept in India & not to be removed outside India without prior approval of **CBDT**.

(II) Reasonable steps should be taken to **keep jewellery** in **original shape.**

(III) Facilities should be provided to **any officer of the government** authorized by the CBDT **in this behalf to examine jewellery.**

(5) In case an assessee being a **person of Indian origin or a citizen of India**

Who was ordinarily residing in a foreign country
And who is leaving such country, has
Returned to India with intention of permanent
Residing thereon &



Money send to India

---------------1 year -------------------

Suppose assessee comes to India on **03-06-2011**

Any foreign Country
(04-06-2010)

Asset acquired by him out of Money **within 1year Immediately** preceding the date of his return

Value of any asset or money brought by him in India

SHALL BE EXEMPT FOR A PERIOD OF 7 SUCEESSIVE YEARS COMMENCING WITH THE ASSESSMENT YEAR NEXT FOLLOWING THE DATE ON WHICH SUCH PERSON RETURNED TO INDIA

For example: **If an assessee returned to India on 01-01-2011, then exemption will be of 7 successive years commencing from <u>AY 2011-12 to AY 2017-18</u>.**

<u>Some other important points to remember:</u>

<u>(1)</u> Money standing to credit of **NRE (non resident external) account** on the date of return should be deemed to be money brought by him into India on that date. (In NRE account assessee can deposit only foreign currency only).

<u>(2)</u>

If an asset is brought from USA & it is converted in money **IN INDIA**

And used money in buying other asset, then this asset is also eligible for the exemption

(6) Exemption under section 5(vi) is allowed in case of **INDIVIDUAL or HUF** in respect of:

(A) One house or part of house **OR**
(B) Plot of land of 500 sq. meter or less

1. **Exemption is available for a house whether residential or commercial or let out or self occupied.**

2. **Exemption under section 5(vi) can be availed for a guest house or farm house.**

3. **Exemption under section 5(vi) can be claimed for house / plot in foreign country also.**

Section 2 (m) : debts

Debts owed by the assessee on **the valuation date** are deductible. If these debts **are incurred** on the assets **included in the net wealth.** Interest accrued on such loan as on valuation date is also part of debt owed.

Section 6 : exclusion of assets and debts outside India

In following cases if an asset located outside India and debts incurred in respect of that asset **[debts may be outside India or in India]** shall **NOT** be **INCLUDED** in the net wealth of:

Individual

- - Not a citizen of India
- - Non- resident
- - resident but not ordinarily resident

HUF

- - Non- resident
- - Resident but not ordinarily resident

COMPANY

-- Non- resident

In following cases if an asset located outside India and debts incurred in respect of that asset shall be **INCLUDED** in the net wealth of:

INDIVIDUAL

- - Citizen of India
- - Resident
- - Resident & ordinarily resident

HUF

- - Resident
- - Resident & ordinarily resident

COMPANY

-- Resident