



STUDY NOTE - 13

OVERVIEW OF INCOME TAX

This Study Note includes

- Income Tax Liability
- Rate of Income Tax Payable
- Income from Salary
- Income from House Property
- Profit and Gain from Business or Profession
- Other Important Provision in respect of Business Income
- Capital Gains
- Income from other Sources
- Rebate/Exemptions from Income Tax Liability
- Other Provisions of Income Tax
- Income Tax Returns

13.1 INCOME TAX LIABILITY

The legal position discussed is as applicable for financial year 2007-08 (Assessment Year 2008-09) unless specified otherwise.

Income tax is levied under Entry No. 82 of List I of Seventh Schedule to Constitution (Union List), which reads, 'Tax on income other than agricultural income'. Entry No. 46 of List II of Seventh Schedule to Constitution (State List) reads, 'Taxes on agricultural income'.

Income Tax Act, 1961 imposes tax on income other than agricultural income. Tax on agricultural income can be imposed only by State Governments.

Section 4 of Income Tax Act, which is the charging section, states that where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income tax) of this Act (i.e. Income Tax Act) in respect of the total income of the previous year of every person.

Income tax Rates fixed under Finance Act every year - The 'Central Act' as referred to in section 4 of Income Tax Act is the 'Finance Act' enacted every year. Income Tax is payable by every assessee at the rates prescribed by Finance Act every year. The Finance Bill is presented at the time of presenting Budget, usually on last day of February every year. The relation between Finance Act and Budget is so close that often people associate budget only with taxation. Really, taxation is only one of the aspects of the Budget.

13.1.1 Who is assessee? - Assessee means a person by whom any tax or any other sum of money is payable under Income tax Act. It includes deemed assessee [section 2(7) of Income Tax Act] 'Person' includes * Individual * HUF * Company * Partnership Firm * Association of Persons (AOP) or body of individuals whether incorporated or not * Local Authority like Municipality etc. * Artificial Judicial person not falling in any of the aforesaid categories e.g. a Hindu deity [section 2(31) of Income Tax Act]

13.1.2 Different heads of income - All income is classified under following heads of income - *

Salaries * Income from House property * Profits and gains of business or profession * Capital Gains * Income from other sources (e.g. interest on securities, lotteries, races) [section 14 of Income Tax Act]

Calculation of income tax - Income from each of these sources is first calculated. All this income is added to find out total income of the assessee. Permissible deductions are reduced and then income-tax payable is calculated at the prescribed rates.

Income from one head can be set off against loss from other head, unless specifically prohibited. In *Rajasthan State Warehousing Corporation v. CIT* 2000 AIR SCW 629, it was held that if income is derived from various heads, assessee is entitled to claim deduction permissible under respective head whether or not computation under each head results in taxable income. If income to assessee arises under any of the heads of income but from different items e.g. different house properties or different securities etc., and income from one or more items alone is taxable whereas income from the other item is exempt under the Act, the entire permissible expenditure in earning the income from that head is deductible. - - If assessee carries business in various ventures, entire expenditure incurred on all ventures is deductible if all ventures constitute one business

13.1.3 Previous Year and Assessment Year - One very confusing aspect of Income Tax for a common man is the difference between Previous Year and Assessment Year.

Assessment year means the period of twelve months commencing on the 1st day of April every year [section 2(9) of Income Tax Act]

Previous year means the financial year immediately preceding the assessment year. If a business / profession is newly set up, previous year is the period from date of setting up that business or profession and ending with the financial year [section 3 of Income Tax Act]

The Financial Year for income tax purposes (called 'Previous Year') is always the year ending 31st March. The 'assessment year' is next to the 'Financial Year' or 'Previous Year' e.g. for Financial Year (FY) 2007-08 (1st April 07 to 31st March 2008), the 'Assessment Year' (AY) is 2008-09.

It may be noted that an assessee can have separate accounting year for his own purposes e.g. a Company can close its accounts on any day of the year, an individual may start his year on Diwali or any other auspicious day. However, for income tax purposes, the accounts must be closed only on 31st March.

Broad mode of computation of Income

		Rs.
1	Income from salaries, allowances and perquisites	
2.	Less : Deduction under section 16, entertainment allowance and professional tax:	
3.	Taxable income under the head "Salaries" (1-2)	.
4.	Income from house property - Adjusted net annual value	
5.	Less : Deductions under section 24	
6	Taxable income under the head Income from house property (5-6)	

7.	Profits and gains of business or profession - Profit/loss as per P&L account after deducting amounts not allowable as deduction, adding amounts which are allowable as deduction and adding income taxable under this head, though not credited / debited to P&L account	
8.	Less : Incomes which are credited to P & L A/c but are exempt under sections 10 to 13A or are taxable under other heads of income	
9.	Taxable income under the head Profits and gains of business or profession (7-8)	
10.	Capital gains	
11.	Less : Amount exempt under sections 54, 54B, 54D, 54EC, 54ED, 54F, 54G and 54GA	
12.	Taxable income under the head Capital gains (10-11)	
13.	Income from other sources	
14.	Less : Deductions under section 57	
15.	Taxable income under the head Income from other sources (13-14)	
16.	Total Income (3+6+9+12+15)	
17.	Less : Adjustment on account of set-off and carry forward of losses	
18.	Less : Deductions under sections 80C to 80U	
19.	Total income or net income liable to tax (16-17-18)	
20.	Income subject to special rate of tax (e.g. capital gains)	
21.	Balance income subject to normal rate (20+21 = 19)	

	Computation of tax liability	
A1.	Tax on net income at special rates	
A2	Tax on income at normal rates	
B	Less : Rebate under section 88E	
C	Add : Surcharge	
D	Add: Education cess and secondary and higher education cess	
E	Less : Rebate under sections 86, 89, 90, 90A and 91	
F	Net Tax payable (A1+A2-B+C+D-E)	
G	Tax paid on self-assessment	
H	Tax deducted or collected at source	
I	Tax paid in advance	
J	Balance Tax payable (F-G-H-I)	

13.2 RATE OF INCOME TAX PAYABLE

Major types of assessee and the tax payable is summarised here.

13.2.1 Individual - An individual may get income from salary, house rent, business, profession, interest etc. He does not have to pay income tax on dividend income at all. An individual may carry out business under some different name. However, this is only for convenience of business or trade. The income of a proprietary firm is added to his income for purpose of income tax. If a person gets salary from a partnership firm where he is a partner, the income is treated as 'business income' though termed as 'salary'.

The income tax rates are as follows :

Tax rates for the assessment year 2008-09 are as follows -

For resident woman (who is below 65 years at any time during the previous year) –

Net income	Income-tax rates
Up to Rs. 1,45,000	<i>Nil</i>
Rs. 1,45,000 – Rs. 1,50,000	10% of (total income <i>minus</i> Rs. 1,45,000)
Rs. 1,50,000 – Rs. 2,50,000	Rs. 500 + 20% of (total income <i>minus</i> Rs. 1,50,000)
Rs. 2,50,000 – Rs. 10,00,000	Rs. 20,500 + 30% of (total income <i>minus</i> Rs. 2,50,000)
Above Rs. 10,00,000	Rs. 2,45,500 + 30% of (total income <i>minus</i> Rs. 10,00,000) plus 10% of income tax as surcharge

For resident senior citizen (who is 65 years or more at any time during the previous year) –

Net income range	Income-tax rates
Up to Rs. 1,95,000	<i>Nil</i>
Rs. 1,95,000 – Rs. 2,50,000	20% of (total income <i>minus</i> Rs. 1,95,000)
Rs. 2,50,000 – Rs. 10,00,000	Rs. 11,000 + 30% of (total income <i>minus</i> Rs. 2,50,000)
Above Rs. 10,00,000	Rs. 2,36,000 + 30% of (total income <i>minus</i> Rs. 10,00,000) plus 10% of income tax as surcharge

For any other individual, every HUF / AOP / BOI / artificial juridical person –

Net income range	Income-tax rates
Up to Rs. 1,10,000	<i>Nil</i>
Rs. 1,10,000 – Rs. 1,50,000	10% of (total income <i>minus</i> Rs. 1,10,000)
Rs. 1,50,000 – Rs. 2,50,000	Rs. 4,000 + 20% of (total income <i>minus</i> Rs. 1,50,000)
Rs. 2,50,000 – Rs. 10,00,000	Rs. 24,000 + 30% of (total income <i>minus</i> Rs. 2,50,000)
Above Rs. 10,00,000	Rs. 2,49,000 + 30% of (total income <i>minus</i> Rs. 10,00,000) plus 10% of income tax as surcharge

Notes:

1. Surcharge - Surcharge is 10 per cent of income-tax if net income of an individual, Hindu undivided family, association of persons, or body of individuals, exceeds Rs. 10,00,000. If a person, having taxable income exceeding Rs. 10,00,000, is eligible for tax rebate under section 88E, then you have to calculate income-tax on his income, then from the tax so calculated deduct tax rebate under section 88E. 10 per cent of the balancing amount is surcharge. In the case of an artificial juridical person, surcharge is 10 per cent of income-tax (*i.e.*, income-tax *minus* rebate under section 88E), even if net income is less than Rs. 10,00,000.

Marginal relief - In the case of the aforesaid person having a net income of exceeding Rs. 10,00,000, the net amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 10,00,000 by more than the amount of income that exceeds Rs. 10,00,000.

2. Education cess and SAH Education Cess - Education cess is 2 per cent of income-tax (after rebate under section 88E) and surcharge. Secondary and higher education cess is 1 per cent of income-tax (after tax rebate under section 88E) and surcharge.

13.2.2 HUF - An Hindu Undivided Family (HUF) consists of all persons lineally descended from a common male ancestor. It is assessable in respect of income derived from the joint family corpus. However, income earned by individual members of HUF in their individual and personal capacities is taxed as their personal income. Such income is not treated as income of HUF. Thus, it is possible to have an income from a proprietary firm (in individual capacity) as well as income from a business of HUF. Both are eligible for separate tax exemptions. Business of HUF can, of course, be conducted in a different name. In such case, the HUF will be proprietor of the firm in the name of which business is being conducted.

It may be noted that there is no question of 'forming' an HUF, as every male Hindu automatically has 'HUF'. A Hindu male can have his own separate HUF even if his father or son has separate HUF. One HUF with only one male member is permissible. Any 'HUF' can have business run by head of the HUF called '*karta*'.

If an individual throws his separate property into the property of HUF, income from such converted property will be included in the total income of such individual. Hence, the HUF business should be from independent source of capital and not from the funds provided by an individual member of the HUF. Thus, if an HUF intends to conduct a business, its financial resources have to be carefully planned.

HUF should start business with loans / gifts from unrelated persons / bankers. Accounts and finances of HUF business should be kept separate. Otherwise, there is a possibility that income of HUF will be clubbed with the income of an individual.

The income of HUF is chargeable at the same rate as individual income as stated above. Thus, if an individual splits his business - partly in his individual capacity and partly in name of firm owned by HUF, considerable tax saving is possible, if done systematically and carefully.



13.2.3 Partnership Firm - Income of the partnership firm has to be calculated after deducting salary and interest payable to partners at prescribed rates. Specific provisions in respect of partnership firm have been explained later.

A firm is taxable at the rate of 30 per cent for the assessment year 2008-09. Surcharge @ 10 per cent of income-tax [i.e., income-tax after rebate under section 88E] is payable, if net income exceeds Rs. 1 crore. Marginal relief is available where net income exceeds Rs. 1 crore. In addition, Education cess is 2 per cent of income-tax (after rebate under section 88E) and surcharge. Secondary and higher education cess is 1 per cent of income-tax (after tax rebate under section 88E) and surcharge.

13.2.4 Company - The tax on income is 30% for Indian company and 40% for foreign companies for assessment year 2008-09. Surcharge @ 10 per cent of income-tax [i.e., income-tax after rebate under section 88E] is payable, if net income exceeds Rs. 1 crore. Marginal relief is available where net income exceeds Rs. 1 crore. In addition, Education cess is 2 per cent of income-tax (after rebate under section 88E) and surcharge. Secondary and higher education cess is 1 per cent of income-tax (after tax rebate under section 88E) and surcharge.

Dividend Distribution Tax - A domestic company paying dividend will have to pay dividend distribution tax u/s 115-O. The rate applicable w.e.f. 1-4-2007 is 15% plus surcharge @ 1.5% plus education cess @ 2% plus SAH education cess of 1% of income tax. Total 16.995%.

Dividend distribution tax is payable within 14 days from date of declaration / distribution / payment of dividend whichever is earlier. The dividend will be tax free at the hands of assesseees.

Mutual funds have to pay dividend distribution tax u/s 115R of Income Tax Act. The rate as applicable w.e.f. 1-4-2007 is 12.5% on income distributed to any individual or HUF and 20% on income distributed to any other person. In addition, surcharge, education cess @ 2% and SAH education cess @ 1% will be payable. Total is 14.1625% in case of individual or HUF unit holder and 22.66% in other cases.

In case of money market mutual fund or a liquid fund, rate is 25%. Including surcharge and education cess, it is 28.325%.

The dividend will be tax free at the hands of assesseees.

Income distributed to unit holders of open ended equity oriented funds or US 64 is exempt from dividend distribution tax.

13.2.5 Minimum Alternate Tax

Many companies charge depreciation in their books on straight line method. Thus, the profit shown is higher in the accounts maintained for company law purposes and they can declare dividend. However, for income tax purposes, they charge depreciation on WDV which is higher. Thus, for income tax purposes, they may show low profit or even loss, while in balance sheet prepared for company law purposes, they will show high profits, which is called 'book profits'. Hence, such companies have to pay minimum income tax [section 115JB]. This tax is termed as 'Minimum Alternate Tax' (MAT).

In *Apollo Tyres v. CIT* (2002) 122 Taxman 562 (SC 3 member bench), it was held that the assessing officer cannot reopen the accounts certified by auditors and adopted in general meeting. He has limited powers of making additions and reductions as provided in the section. [In this case, it was held that assessing officer cannot add back the depreciation for earlier years provided in accounts].

Rate of minimum alternate tax, as % of book profit is as follows, for Assessment Year 2008-09.

	If book profit does not exceed Rs. 1 crore			If book profit exceeds Rs. 1 crore			
	IT %	EC and SAHC %	Total	IT	SC	EC and SAHC	Total
Domestic company	10	0.3	10.30	10	1	0.33	11.33
Foreign company	10	0.3	10.30	10	0.25	0.3075	10.5575

Marginal Relief - If book profit of a company for the assessment year 2008-09 exceeds Rs. 1 crore, the minimum alternate tax cannot exceed the following : (Rs. 10 lakh + Book profit – Rs. 1 crore) + EC + SAHC.

13.2.6 Co-operative societies - Following rates are applicable to a co-operative society for the assessment year 2008-09 -

Net income	Rate of income-tax
Up to Rs. 10,000	10
Rs. 10,000 - Rs. 20,000	20
Rs. 20,000 and above	30

No surcharge applies, but education cess @ 2% of tax and SAH education cess @ 1% of tax is payable.

Various exemptions are available to cooperative societies u/s 80P of Income Tax Act. However, there is no exemption to urban cooperative banks.

13.2.7 Local authorities - Tax rate is 30%. No surcharge applies, but education cess @ 2% of tax and SAH education cess @ 1% of tax is payable.

13.2-7 Capital gains
The rates are 10% for short term capital gains and 20% for long term capital gains for AY 2008-09.



Surcharge for AY 2008-09 is 10% in case of (a) individual/HUF/BOI/AOP if income exceeds Rs 10 lakhs and (b) in case of company/firm if income exceeds Rs one crore. In addition, education cess @ 2% of tax and SAH education cess @ 1% of tax is payable.

13.2.8 Wealth-tax - Wealth tax for individual, HUF or a company is 1% in respect of wealth over Rs 15 lakhs. There is no surcharge or education cess.

One house or part of house belonging to an individual or HUF is excluded for purpose of wealth tax. The assets have to be valued as per Valuation Rules.

13.3 INCOME FROM SALARY

Income under the head 'salary' comprises of remuneration in any form (including perquisites) received by an employee from employer. Thus, there should be contractual employer-employee relationship. The contract may be express, oral or implied.

Salary is chargeable on due or receipt basis. Arrears of salary paid or allowed are includible if not charged to income tax for any earlier previous year [section 15 of Income Tax Act]

'Salary' includes * wages * dearness allowance * Bonus * gratuity * annuity or pension * advance of salary * Fees / Commissions perquisites/ profits received from employer in addition to salary * Leave encashment while in service * Employer's contribution to provident fund in excess of 12% of salary of employee * profit in lieu of salary [section 17(1) of Income Tax Act]

In *Karamchhari Union v. UOI* 2000 AIR SCW 806 = AIR 2000 SC 1226 = (2000) 109 Taxman 1 = 2000 LLR 897 = 243 ITR 143 (SC), it has been held that CCA (City Compensatory Allowance), DA (Dearness Allowance) and HRA (House Rent Allowance) are in nature of income forming part and parcel of salary and are taxable.

13.3.1 Allowances

House rent allowance - Exemption will be *lowest of* (a) 50% of salary where residential accommodation is in Mumbai, Kolkata, Delhi or Chennai and 40% of at other place (b) Excess of rent paid over 10% of salary (c) Actual allowance paid. There will be *no exemption* if the residential accommodation is owned by employee or employee has not paid any rent for residential accommodation used by him [section 10(13A) of Income Tax Act and rule 2A]

Salary means basic plus DA (if forming part of retirement benefits) plus commission (if fixed as a percentage of turnover).

Gratuity - Gratuity for Government employees is fully exempt [section 10(10)(i)]. In case of employees covered under Payment of Gratuity Act, exemption is upto Rs 3,50,000 to be reduced by such exemptions claimed in the past or 15 days salary for every completed year of service, whichever is lower.. Salary means basic plus DA (if forming part of retirement benefits) [section 10(10)(ii) of Income Tax Act] Any other gratuity is also exempt to same extent [section 10(10)(iii)] of Income Tax Act]

Leave encashment - Encashment of earned leave on retirement of employees of Central / State Govt is fully exempt [section 10(10AA)(i) of Income Tax Act] . Leave encashment while in service is treated as part of salary. In other cases, leave encashment of earned leave on retirement will be lowest of 10 months' salary, Rs three lakhs or actual sum received [section 10(10AA)(ii) of Income Tax Act]

LTA/LTC - Leave Travel Assistance/Leave Travel Concession is allowed twice in a block of four years. It is limited to amount actually spent on travelling of employee and his family members. It is limited to economy class of air fare or AC first class fare [section 10(5) of Income Tax Act and rule 2B]

The allowance is exempt subject to amount of expenses actually incurred by the employee for such travel. The employee will have to keep account of actual expenses incurred. It appears that actual travel by air or AC is not required, but the overall ceiling on expenses is subject to limit of air fare / rail fare.

VRS (Voluntary Retirement) - It is exempt upto Rs five lakhs if VRS is as per prescribed conditions.

Medical treatment - Reimbursement of amount actually spent for medical treatment upto Rs 15,000 is exempt in a financial year. In addition, reimbursement of insurance premium for self, spouse, children and dependent brothers, sisters and parents is exempt.

In case of treatment in Government or approved hospital, or expenditure on medical treatment outside India, reimbursement of medical expenses is exempt without any ceiling.

13.3.2 Valuation of perquisites - The employer often gives some perquisites to the employees. Value of these perquisites is added to the income of employees. The valuation of perquisites is done as follows :

Rent Free unfurnished Accommodation - - In case of private sector employees, value of perquisite of rent free unfurnished accommodation is taken as follows - (a) If owned by employer - If population of city exceeds 25 lakhs - 15%, if population exceeds 10 lakhs but below 25 lakhs - 10% (c) In other cases - 7.5%.

In case of Government Employees, value will be rent as per rules framed by Government, as reduced by sum actually paid

Salary includes basis, DA (if taken into account for retirement benefit), bonus, commission, fees and all taxable allowances.

Valuation of furnished accommodation - If accommodation is furnished, in addition to above, 10% of cost of furniture (including TV, radio, refrigerator, AC etc.), if owned by employer, will be treated as perquisite. If the furniture is hired from third party, actual hire charges less any amount recovered from employee will be the perquisite.

Gas electricity or water supply - Some benefits like gas, electricity, water are valued at actual cost to employer. If these are provided from own sources, value will be manufacturing cost



incurred per unit, less amount recovered from employee.

Domestic servants - Actual cost to employer for sweeper, gardener, watchman or personal attendant will be value of perquisite.

Use of movable assets - If some movable asset is provided to employee, perquisite will be @ 10% of the cost of asset or rent paid, as reduced by sum paid by employee.

Loans to employees at concessional rate - Calculate interest on basis of SBI lending rates, reduced interest paid by employee and difference will be the value of perquisite.

13.3.3 Perquisites which will not be added to salary if employer covered under FBT

Remaining perquisites will be considered as Fringe Benefit and will be considered for FBT. Hence, perquisites like motor car, lunch, refreshment, travelling, touring, gift, credit card, club etc. will be added to salary only in cases where employer in individual or HUF and is not liable to FBT.

Valuation of motor car - If car is owned or hired by employer and provided for personal purposes of employees, valuation will be expenditure incurred by employer on running and maintenance plus remuneration of chauffeur plus normal wear and tear @ 10% on actual cost less amount charged to employees.

If motor is partly for official and partly for personal purposes and expenses are reimbursed by employer, perquisite value per month is Rs 1,200 per month if engine cubic capacity is upto 1.6 liters and Rs 1,600 per month if cubic capacity of engine exceeds 1.6 liters.

If motor is partly for official and partly for personal purposes and expenses are reimbursed by employer, perquisite value per month is Rs 1,200 per month if engine cubic capacity is upto 1.6 liters and Rs 1,600 per month if cubic capacity of engine exceeds 1.6 liters. If chauffeur is provided, value of perquisite will be Rs 600 per month.

If motor is partly for official and partly for personal purposes and expenses are met by employee, perquisite value per month is Rs 400 per month if engine cubic capacity is upto 1.6 liters and Rs 600 per month if cubic capacity of engine exceeds 1.6 liters. If chauffeur is provided, value of perquisite will be Rs 600 per month.

Other amounts paid - Club fees paid on behalf of employee, insurance premiums paid on behalf of employee, income tax paid on behalf of employee are all treated as perquisites and its cost is added to income of employee.

Gifts - Gifts upto Rs 5,000 per year are exempt.

13.3.4 Deductions from Salary Income - Following deductions are permissible from salary income -

Professional Tax paid to State Government is allowable as deduction

Entertainment allowance upto Rs 5,000 is allowable to Government employees.

13.3.5 Exemptions for salary income - Following are exempt from income tax-

Transport allowance upto Rs 800 per month granted to an employee to meet his expenditure for the purpose of commuting between place of residence and the place of his duty.

Conveyance and transport allowance granted to employee to meet cost of travel on tour are exempt. Allowance granted to meet expenditure incurred on conveyance in performance of duties of an office or employment are exempt. In *LIC Officers v. LIC of India* (2000) 112 Taxman 227 (Bom HC DB), it was held that conveyance allowance is exempt only if expended for meeting expenses wholly and necessarily incurred or to be incurred in performance of duties of office. Conveyance allowance at flat rate irrespective of place of residence, work and posting will *not* be exempt from income tax.

Conveyance and transport allowance granted to employee to meet cost of travel on transfer are exempt. Expenses granted to meet cost of travel on transfer and cost of packing and transportation of personal effects on such transfer are exempt.

Use of employer's vehicle or transport provided for journey of employee from residence to his place of work and back is not treated as perquisite and its cost is not treated as income.

Refreshments during office hours to employees and recreational facilities provided to group of employees are not treated as perquisites.

13.4 INCOME FROM HOUSE PROPERTY

Income from house property consists of buildings and/or lands appurtenant thereto. However, income only from vacant plot or land is treated as 'income from other sources'. Following should be noted.

In case of let out property, income will be 'fair annual value' i.e. sum reasonably expected to be received from letting or 'actual rent received' whichever is higher. Deduction is allowable for unrealized rent.

'Annual Value or Property' is the sum for which the property could reasonably be expected to let from year to year. Municipal Valuation of ratable value can be taken as one of the tests to determine *bonafide* value of the property. If the house property is given on rent, actual rent received will be the 'annual value of the house property'.

From the 'Annual Value of House Property', in case of let out property, following will be allowed as deduction – (a) Municipal tax – The deduction will be permitted on actual payment basis (b) Standard deduction of 30% of (gross annual value less municipal tax) [section 24(a) of Income Tax Act] (c) Interest on capital borrowed to acquire or construct the house property subject to limit explained below [section 24(b) of Income Tax Act]

Annual Value of a self-occupied property is taken as 'Nil', if it is not let out. In such cases, none of the aforesaid expenses are allowed as deduction. However, if the self-occupied property is acquired or constructed or repaired from borrowed funds, interest payable on such funds upto Rs 1,50,000 per annum is allowed as deduction. Interest on borrowed capital for repairs is allowable as deduction upto Rs 30,000.



Naturally, this will be a 'loss' as the annual value of self occupied property is 'Nil'. This 'loss' can be set off against any other income of the assessee. In other words, if funds are borrowed to acquire or construct or repair self-occupied property, interest upto Rs 1,50,000 / 30,000 paid per annum is allowable as deduction from any other income.

House property or any portion thereof occupied by the owner for purpose of his business or profession is excluded and any expense of current repairs, municipal taxes, depreciation on property etc. is allowable as business expenditure.

13.5 PROFITS AND GAINS OF BUSINESS OR PROFESSION

Profit and gains of business as specified in section 28 of Income tax Act are taxable.

The term 'business' includes trade, commerce or manufacture or adventure or concern in nature of trade, commerce or manufacture [section 2(13) of Income Tax Act]

'Professional Income' is income from exercise of any profession or vocation which calls for an intellectual or manual skill. It covers doctor, lawyers, accountants, consulting engineers, artists, musicians, singers etc.

Profits of business or gains from profession are calculated after allowing all legitimate business expenditure. Some important deductions admissible in computing income from business or profession are as follows [sections 30 to 36 of Income Tax Act] —

- Rent, rates, taxes, repairs and insurance for business or professional premises [section 30 of Income Tax Act]
- Current repairs and insurance of machinery, plant and furniture [section 31 of Income Tax Act]
- Depreciation on building, machinery, plant or furniture [section 32 of Income Tax Act] (discussed below)
- Revenue expenditure on scientific research [section 35(1) of Income Tax Act]
- Capital expenditure on scientific research related to business (except land) [section 35(2) of Income Tax Act]
- Preliminary expenses in relation to formation of a company or in connection with extension of an undertaking or setting up of a new industrial unit can be amortised in 5 equal installments over 5 years. The preliminary expenditure is permitted only upto 5% of cost of project [section 35D]
- Insurance expenses [section 36(1)(i) of Income Tax Act]
- Insurance premium on health of employees [section 36(1)(ib) of Income Tax Act]
- Bonus or commission to employees [section 36(1)(ii) of Income Tax Act]
- Interest on borrowed capital [section 36(1)(iii) of Income Tax Act]

- Contributions towards approved provident fund, superannuation fund and gratuity fund [section 36(1)(iv) and 36(1)(v) of Income Tax Act]
- Bad debts in respect of income considered in previous years can be written off and allowable as deduction [section 36(1)(viii) of Income Tax Act]
- Banking cash transaction tax [section 36(1)(xiii) of Income Tax Act]
- Advertisement expenditure is fully allowed as deduction. However, expenditure incurred on advertisement in any souvenir, brochure, pamphlet etc. of a political party is not allowed as a deduction [section 37(2B) of Income Tax Act]
- Expenditure in maintenance of guest house is permissible as deduction [section 36(1)(i) of Income Tax Act]
- Any other expenditure which is not of capital nature or personal expenses of the assessee is allowed if it is expended wholly and exclusively for the purposes of business or profession. However, it should not have been for purpose which is an offence or is prohibited by any law [section 37 of Income Tax Act]

13.5.1 Depreciation - Depreciation means diminution in value of an asset on account of wear and tear and obsolescence.

In any business, raw material is used fully and immediately, while plant and machinery is used slowly over a period of time. After the estimated life of machinery, its value becomes Nil. Hence, it is fair that cost of machinery is charged over the period of its estimated useful life. This is the basic principle of depreciation on capital goods. Since land does not depreciate, no depreciation is allowed on land.

Under Income Tax, depreciation is calculated on the basis of 'block of assets'. 'Block of assets' means a group of assets falling within a class of assets, in respect of which the same % of depreciation rate has been prescribed. e.g. all machinery having rate of depreciation as 25% will form one block of asset, machinery having 40% rate of depreciation will form another 'block of asset' and so on.

Depreciation is allowed on actual cost of the asset. Interest paid on borrowed funds and capitalised as pre-commencement expenses before the asset is commissioned is added to cost of the asset and depreciation claimed on such expenditure. Thus, pre-production expenditure can be included in cost of the machinery and depreciation can be charged on such 'actual cost'. In *Chellapalli Sugar v. CIT* AIR 1975 SC 97 = 98 ITR 167 (SC), it is held that it includes all expenditure necessary to bring such asset into existence. [Thus, it will include installation charges]. It was held that interest on loans upto date of commencement of business forms part of 'actual cost' of plant for purpose of depreciation.

Depreciation is calculated on Written Down Value (WDV) method. If the asset is put to use for purpose of business for less than 180 days, only 50% of normal depreciation is permissible. In other words, full depreciation for the year is permissible only if asset is commissioned before 30th September of that year.



If depreciation cannot be fully claimed in a particular year for want of profits, the un-absorbed depreciation can be carried forward for any number of succeeding assessment years. [section 32(2)].

The depreciation rates in respect of some important assets are as follows :

- Residential building – 5%. Others (including hotels and boarding houses) – 10%. Purely temporary structures – 100%.
- Furniture and fittings including electrical fittings – 10%
- Motor cars 15% . Buses, lorries, and taxis used in business of running them on hire – 30%,
- Pollution control equipment and specified energy saving devises - 100%
- General machinery - 15%, aeroplane – 40%, Ships – 20%
- Computers including software - 60%.
- Books by professionals – 100% for annual subscription and 60% for others - books in library - 100%.
- Intangible assets - know-how, patents, copyrights, trade marks, licenses, franchises or any other right of similar nature - 25%.

In *Mysore Minerals v. CIT* 1999 AIR SCW 3146 = 1999(5) SCALE 340 = 239 ITR 775 = AIR 1999 SC 3185 = 106 Taxman 166 (SC), it was held that claimant of depreciation need not be owner of asset in legal sense. Person in whom for the time being vests the dominion over the asset and who is entitled to use it in his own right is eligible to claim depreciation. – followed in *Dalmia Cement v. CIT* 2000 AIR SCW 4198 (SC 3 member bench).

However, if assessee has not acquired dominion over the asset, he will not be entitled to depreciation on that asset. – *Tamilnadu Civil Supplies v. CIT* (2001) 116 Taxman 369 = 2001 AIR SCW 4777 (SC 3 member bench).

Depreciation compulsory – As per Explanation 5 to section 32(1)(ii), inserted w.e.f. 11.5.2001, depreciation is compulsory in computing total income even if assessee had not claimed the same. This amendment applies to AY 2002-03 onwards. [In *CIT v. Mahendra Mills* (2000) 2 SCALE 384 = AIR 2000 SC 1960 = 243 ITR 56 = (2000) 109 Taxman 225 (SC), it was held that assessee has option to claim or not to claim depreciation. The depreciation cannot be thrust upon him. Now, this judgement is ineffective from AY 2002-03]

Depreciation in case of imported machinery obtained on loan in foreign currency – If machinery is imported on loan repayable in foreign currency, the amount payable in rupees will go on changing due to fluctuations in foreign exchange rates, as the installments and interest are spread over a period. In such case, the value of machinery should be increased on basis of entire loan outstanding and not merely installments of loans that fell due during the accounting period. – *CIT v. Arvind Mills* (1992) 193 ITR 255 = 60 Taxman 192 (SC) – quoted and fol-



lowed in *CIT v. Madras Fertilizers* (2002) 124 Taxman 581 (Mad HC DB).

13.5.2 Expenditure not allowed as deduction - Following expenditures are not allowed as deduction for purpose of income tax.

Deduction of taxes, interest etc. Only on actual payment basis - Tax, duty, cess, fees payable under any law, Employer's contribution to provident fund or ESIC, bonus to employees, commission to employees, interest on any loan or borrowing from financial institutions, banks, SFC, leave encashment are eligible as deduction only if they are paid on 'due dates' on which these were payable. Even if these are not paid on due dates but are paid before filing of return, these are allowed as deduction, if proof of payment is filed along with the return. However, in case of employer's contribution to provident fund, superannuation fund or gratuity fund, the same is allowed as deduction only if it was paid before due date of payment [section 43B of Income Tax Act]

Expenditure in excess of Rs 20,000 in cash fully disallowed - If expenditure is incurred in business or profession by payment of cash over Rs 20,000, entire expenditure is disallowed [Earlier, 20% of such expenditure was disallowed upto AY 2007-08].. All payments made to a party in a day will be considered for considering the limit of Rs 20,000 [section 40A(3) of Income Tax Act]

Payment over Rs 20,000 should be made by cheque or demand draft.

However, this restriction is not applicable in case of payments to # RBI, other banks and financial institutions, LIC # Government payments, payment by book adjustment, railway freight * Payment for agricultural produce, poultry, fish etc. to the cultivator, grower or producer (i.e. payments to middlemen are not excluded from this provision) [rule 6DD]

Similarly, a person can accept loans or deposits of Rs 20,000 or more only by account payee bank draft or cheque.

Interest on delayed payment to small industries - Interest on delayed payment made to Small Scale Industries is not allowable as deduction.

Expenditure for any purpose which is an offence in law - Section 37(1) of Income Tax Act states that any expenditure incurred for any purpose which is an offence or which is prohibited by law shall not be allowed as deduction.

13.5.3 Different accounting for balance sheet and income tax purposes - Method of depreciation, valuation of stock etc. is different under Companies Act and Income Tax Act. Hence, one method of accounting for income tax and other for Companies Act is permitted. The practice has been specifically approved in *United Commercial Bank v. CIT* 1999 AIR SCW 4050 = AIR 2000 SC 94 = 106 Taxman 601 (SC).

Accounting profits and assessable profits are conceptually different. – *CIT v. Bipinchandra Maganlal* (1961) 41 ITR 290 (SC).



13.6 OTHER IMPORTANT PROVISIONS IN RESPECT OF BUSINESS INCOME

Some important provisions in relation to income from business or profession are as follows -

Maintenance of books of account - In respect of professional in legal, medical, engineering, architecture, accountancy or technical consultancy must maintain books, if their gross receipts are less than Rs 1.50 lakhs, they have to maintain such books of account as may enable Income Tax Officer to compute their taxable Income. If their gross receipts exceed Rs 1.50 lakhs, they have to maintain books of account as specified in rule 6F i.e. cash book, journal, ledger, copies of bills exceeding Rs 25 issued by him, original bills in respect of expenditure and payment vouchers etc. Person carrying on medical profession has to maintain additional books as prescribed. [Section 44AA and rule 6F]

Persons carrying on business or professionals other than those mentioned above have to maintain books of accounts if annual income exceeds Rs 1,20,000 or gross receipts or turnover exceed Rs. ten lakhs in case of business also have to maintain books of account.

Accounts on mercantile or cash basis - Accounts should be maintained either on mercantile basis or cash basis. Hybrid i.e. mixed system is not permitted. [In cash system, income or expenditure is considered only when it is actually received / paid. In mercantile system, income / expenditure is considered on accrual and payable basis. Actual receipt or payment may occur in subsequent financial year and may not happen in that particular year.]

Income tax audit report - If gross receipts or turnover of business exceeds Rs 40 lakhs per annum, the accounts have to be compulsorily audited. In case of professional income, accounts have to be audited if gross receipts exceed Rs ten lakhs. This audit report should be submitted along with income tax return. [section 44AB].

13.7 CAPITAL GAINS

Capital gains means any profit or gains arising from transfer of a capital asset. Such capital asset may be building, non-agricultural land, machinery, shares, jewellery etc. However, stock in trade, agricultural land in rural area and personal effects (other than jewellery) are not 'capital assets'.

From AY 2008-09, archaeological collections, paintings, sculptures will not be treated as 'capital assets'.

Broadly, 'capital gain' is the difference between the price at which the asset was acquired and the price at which the same asset was sold. In technical terms, capital gain is the difference between cost of acquisition and the full value of consideration. Incidental expenditure and cost of improvement is allowable as deduction.

The 'cost of acquisition of capital asset' is to be increased by Cost Inflation Index. The index is announced by Central Government every year. The index was 100 for 1981-82, 172 for 1989-90, 244 for 1993-94, 331 for 1997-98, 351 for 1998-99, 389 for 1999-2000, 406 for 2000-01, 426 for 2001-

02, 447 for 2002-03, 463 for 2003-04 and 480 for 2004-05, 519 for 2006-07 and 551 for 2007-08.

The cost of acquisition will be adjusted on basis of the above index and then capital gain will be calculated. The formula is $\text{Cost of acquisition} \times \text{Cost Inflation Index of the year in which the asset is transferred} / \text{Cost Inflation Index of the year of acquisition}$. If the asset was acquired before 1.4.1981, the Cost Inflation Index of that year will be treated as 100. Thus, if an asset was brought in 1989-90 for Rs one lakh and sold in 1997-98 for Rs three lakhs, the adjusted cost of acquisition will be $(1,00,000 \times 331) / 172$ i.e. Rs 1,92,442, and capital gains will be Rs 1,07,558 $(3,00,000 - 1,92,442)$. *Such adjustment is permissible only for long term capital gains and not for short term capital gains.*

Expenditure incurred on any improvement in asset is permitted as deduction and that cost can also be adjusted on the same principles as above.

If a company issues bonus shares, the cost of acquisition of bonus shares will be treated as 'Nil'. Thus, if the bonus shares are sold, net sale proceeds of bonus shares will be liable to capital gains.

Expenditure incurred in connection with transfer (like stamp duty, registration charges, legal fees, brokerage etc.) are allowed as deduction. Capital gain is charged as income of the financial year in which the transfer took place.

Capital gain can be classified as 'short term' or 'long term'. A short term capital gain is when the asset was held by the assessee for a period of upto 36 months. If the asset was held for more than 36 months, the gain will be long term gain. The period is only 12 months (instead of 36 months) in case of shares or any other security listed in stock exchange or units of UTI or units of mutual fund.

The income tax rate is 20% on long term capital gains, while calculating the long term capital gains, indexation of purchase price is required. *Tax on long term capital gain shall be subject to ceiling of 10% of capital gains calculated without indexing.*

The short term gains are added in other income of the assessee and the income tax is payable according to the normal rate applicable to the assessee.

Capital gains arising from sale of residential house is exempt if the original asset (i.e. the house) was held for more than three years and a new house was purchased within one year before or two years after the sale of original asset, or a new residential house is constructed within three years. The cost of new asset (residential house) should be more than the amount of capital gains [section 54 of Income Tax Act]

Any other long term capital gain is exempt if the capital gains are invested within 6 months in 3 year bonds issued by REC or NHAI and that investment is retained for three years. Investment cannot exceed Rs 50 lakhs - section 54EC of Income Tax Act.



13.8 INCOME FROM OTHER SOURCES

All income other than income from salary, house property, business and profession or capital gains is covered under 'Income from other sources'. Provisions in respect of some important sources of 'other income' are summarised below.

Dividends - Dividends on shares of domestic companies or units of UTI or mutual fund received from a company on or after 1-4-2003 will not be taxable at the hands of the assessee [section 10(34) and 10(35)]. [The dividend distribution tax will be payable by company / mutual fund u/s 115-O] However, deemed dividend as defined in section 2(22) of Income Tax Act will be considered as 'income from other sources'.

Winning from lotteries, races etc. - Winning from lotteries, card games, horse races are taxable as other income. This is taxable @ 30.3% without claiming any allowance or expenditure.

Interest on securities, bank deposits and loans - Interest on bank deposits and loans is treated as 'other income', if not taxable u/s 28.

Gifts - Gifts in a year exceeding Rs 50,000, except gifts from certain relatives and gifts on certain specified occasions will be taxable [section 56(2)(vi) of Income Tax Act]

Income from letting - Income from letting of furniture, machinery, plant and building which is not separable from composite letting with machineries is taxable as other income. Current repairs, insurance and depreciation are allowed as deductions [section 56(2)(ii) and (iii) of Income Tax Act]

13.9 REBATE / EXEMPTION FROM INCOME TAX LIABILITY

Following rebates / exemptions are available.

13.9.1 Deductions under chapter VI-A and rebates

Investments and deposits - Investments in PPF, Provident Fund, LIC, repayment of housing loans, NSIC, 5 year FDR with scheduled banks etc. are allowed as deduction upto Rs 1,00,000 u/s 80C.

Deduction of medical insurance premium, pension fund - Following deductions are permissible - (a) Medical insurance premium upto Rs 20,000 for senior citizen and Rs 15,000 for others (section 80D). (b) Contribution to pension fund within overall ceiling of Rs one lakh (section 80CCC)

Donations - Contribution to approved charitable institutions - in some cases 50% of amount paid is allowed as deduction, while in some cases, 100% amount paid is allowed as deduction (section 80G).

Exemption to EOU, SEZ - Income In case of EOU, STP, EHTP and BTP, the concession will continue upto 31-3-2010. In case of SEZ, exemption is for larger period.

13.10 OTHER PROVISIONS OF INCOME TAX

Certain other important provisions of income tax are discussed here.

13.10.1 Clubbing of Income - Often salary or other expenses from business are shown in name of close relatives like spouse (wife / husband) or minor child, to reduce tax liability. In such case, if the individual has a substantial interest in the concern, the income of such wife, husband or minor child will be added to the income of such individual. This is termed as 'clubbing of income'.

The clubbing provision is not applicable if spouse possesses technical or professional qualifications and the income is solely due to application of his / her technical knowledge and experience [section 64(1)(ii) of Income Tax Act]

If an asset is transferred to the spouse, income from such asset is also treated as income of the individual. [e.g. by transferring shares, house property etc.].

Similarly, if an individual throws his separate property into the property of HUF, income from such converted property will be included in the total income of such individual [section 64(2) of Income Tax Act]

The clubbing provision has obviously been made to plug avoidance of income tax liability, by 'showing' some income in the name of spouse / minor child / HUF.

13.10.2 Set off and carry forward of loss

Carry forward of loss other than speculation loss - Carry forward of loss is permitted only when return is filed in time. In case of closely held company, unabsorbed loss can be carried forward only if at least 51% of shares are held beneficially by same persons who were holding them in previous year.

Unabsorbed depreciation - Unabsorbed depreciation can be set off against any head of income other than salary. It can be carried forward to any number of years. It can be carried forward by same assessee except in case of amalgamation, demerger and business reorganization.

Speculative loss - Loss from speculative transactions involves sale and purchase of commodities including stocks and shares. It can be set off against speculative profits only and can be carried forward for four years.

13.10.3 Permanent Account Number - Every person whose total sales, turnover or gross receipts are over Rs 5,00,000 are required to apply and obtain a Permanent Account Number (PAN) [section 139A]. In addition, ITO can allot PAN *suo moto* to a person by whom income tax is payable.

Government has decided to use PAN as a common business identification number to be used by various agencies and departments like customs, excise, DGFT etc.



13.10.4 Advance Income Tax - Tax is deducted from salary payable to an employee. Since a businessman or professional earns his own income, there is no TDS (Tax Deduction at Source). Hence, he is liable to pay advance tax as he earns income. This is 'Pay Tax as you Earn'. Thus, advance tax is payable on the basis of estimated income of the current financial year. [The income is 'estimated' because, actual income will be known only after the financial year is over].

Advance tax is payable only in cases where tax payable is in excess of Rs 5,000. The assessee has to pay advance tax on his own accord and no notice will be issued to him. The advance tax is payable in installments as follows -

In case of company - # 15% on or before 15th June # 30% on or before 15th September # 30% on or before 15th December # Remaining 25% on or before 15th March. If there was shortfall in earlier installment, it should be made up in subsequent installment.

*** In case of partnership firms, proprietors, professionals etc.** - # 30% on or before 15th September # 30% on or before 15th December # Remaining 40% on or before 15th March. If there was shortfall in earlier installment, it should be made up in subsequent installment.

Thus, 100% income tax in respect of estimated income of current financial year is payable by 15th March. If any instalment is not paid on due date, it can be paid subsequently.

If advance tax is not paid or short paid on due dates, mandatory interest is payable as follows :

- If advance tax was not paid before 31st March of the financial year, or advance tax paid was less than 90% of the assessed tax, interest @ 1% per month or part thereof is payable from 1st April till the month of payment. [section 234B]. The interest is not payable if total tax liability is less than Rs 5,000 or if at least 90% of assessed tax was paid before 31st March.
- If installments of advance tax are not paid on due dates, interest on shortfall is payable @ 1% per month. In case of last instalment which is due on 15th March, interest @ 1% is payable for one month if tax is not paid at all or is paid after 15th March. [section 234C]. Note that this interest is calculated only upto 31st March, as from 1st April, interest @ 1% becomes payable on entire tax due under section 234B.

This interest is mandatory and there is no provision to grant exemption from payment of this interest.

If the return is not filed within due date, interest @ 1% is payable u/s 234B. In addition, interest @ 1% is payable u/s 234A. Thus, if return is not filed on or before due date, interest payable is 2% for every subsequent month.

13.10.5 Special provisions in respect of Partnership firm - A partnership firm is presently assessed on the lines similar to the assessment of a company. The firm can pay salary and interest on capital to the partners. Income tax is payable on profits calculated after deducting salary and interest paid to partners. The salary paid to partners is treated as 'business income' in their hands and is taxable accordingly.

The partnership firm may or may not be registered. However, the partnership must be evidenced by a partnership deed. The deed should indicate * individual shares of the partners * Salary payable to working partners * Interest payable to partners. A true copy of partnership deed certified and signed by all the partners should be filed along with the first return of income. Subsequently, the copy is not required to be filed along with every return. However, if there is any change in the partnership agreement, a fresh copy has to be filed.

Return of partnership firm can be signed by managing partner.

Salary to working partners - The salary payable to partners is as follows -

* Professional partnership firms - # upto book profit of Rs 1,00,000 - 90% of book profit - minimum Rs 50,000 # On next Rs 1,00,000 book profit - 60% # On balance of book-profit - 40%.

* Other than professional partnership firms (i.e. business firms) - # upto book profit of Rs 75,000 - 90% of book profit - minimum Rs 50,000 # On next Rs 75,000 book profit - 60% # On balance of book-profit - 40%.

The salary can be paid only to working partners. Such payment should be authorised by partnership deed. This salary is allowed as deduction from income of the partnership firm and is taken as business income of the individual partner.

Interest to partners - Income Tax Act provides that interest upto 12% paid to the partners will be allowable as deduction from income of partnership firm [section 40(b)(iv) of Income Tax Act]. [The interest rate was 12% upto 31-5-2002]. Such payment should be authorised by partnership deed. This interest is allowed as deduction from income of the partnership firm and is taken as 'other income' of the individual partner.

13.10.6 Tax deduction at source (TDS)

A person is under liability to deduct income tax at source and pay it to Government. He should issue a certificate to the person from whom tax is deducted, so that the person can submit the same to Income Tax authorities. Tax deducted at source should be paid to Government within one week from date of deduction. At the end of the year, a return in prescribed form has to be filed with ITO.

TDS is rightly called 'tedious', but not deducting tax at source can invite penalties.

As can be seen from following, if the person making payment is individual or HUF, he is exempt from the provisions of TDS in most of the cases, if he is not required to submit income tax audit report u/s 44AB. However, TDS provisions apply to (a) salary payments made by an individual or HUF even if he is not required to submit any income tax audit report u/s 44AB (b) If the individual/HUF is required to submit Income Tax Audit report.

TDS from salary - Every employer has to deduct tax from salary of employees. Payer should calculate tax payable on salary at the [section 192].

While deducting tax at source, the employer can consider the investments made by employee which qualify for exemption, payment for purchase or construction of house, mediclaim insur-



ance premium etc. Income tax is to be deducted every month and should be paid to Government within a week after deduction. The employer can adjust deductions from month to month so that total deductions from salary of the whole year is equal to tax payable by employee on salary income.

Deduction under section 80G is not to be considered by employer (except some specified funds like PM Relief Fund etc.) while calculating tax liability of employee. The tax relief has to be claimed by employee through tax return.

The employer has to file an annual return of tax deducted at source from all employees.

TDS from Interest other than interest on securities - Tax should be deducted from interest paid if interest payable in financial year exceeds Rs 10,000 in case of banks, post office and cooperative society and Rs 5,000 in case of others [section 194A].

If recipient is a resident other than domestic company, TDS is as follows - (a) If recipient is individual/HUF/AOP where aggregate payment or credit is upto Rs 10 lakhs, cooperative society, local authority, firm where aggregate payment or credit does not exceed Rs one crore - 10.3% (b) If recipient is individual/HUF/AOP where aggregate payment or credit exceeds Rs 10 lakhs, firm where aggregate payment or credit exceeds Rs one crore - 11.33%

If recipient is a domestic company, TDS rate is as follows - (a) If recipient is domestic company where aggregate payment or credit does not exceed Rs one crore - 20.6% (b) If recipient is domestic company where aggregate payment exceeds Rs one crore - 22.66%

An individual who is 65 years of age or above can get interest without deduction of tax at source, if he submits a self-declaration to the payer in duplicate, in form No. 15H. Others have to submit declaration in form 15G.

The payer has to submit one copy of declaration (form 15G/15H as applicable) to Commissioner of Income Tax under whose jurisdiction his tax is being assessed.

Individuals and HUF are required to deduct tax on interest payment, if they are required to submit income tax audit report u/s 44AB. Provisions of making payment of TDS do not apply to small HUF and individuals who do not have to submit income tax audit report.

TDS from Payments to contractors, sub-contractors and advertising contracts - TDS provisions apply if contract value exceeds Rs 20,000 for single payment or Rs 50,000 in aggregate for a financial year [section 194C].

In case of contract other than advertising contract, TDS is at following rates - (a) If recipient is individual/HUF/AOP where aggregate payment or credit is upto Rs 10 lakhs, cooperative society, local authority, firm / domestic company where aggregate payment or credit does not exceed Rs one crore - 1.03% (b) If recipient is individual/HUF/AOP where aggregate payment or credit exceeds Rs 10 lakhs, firm / domestic company where aggregate payment exceeds Rs one crore - 1.133%

In case of advertising contract, TDS is at following rates - (a) If recipient is individual/HUF/AOP where aggregate payment or credit is upto Rs 10 lakhs, cooperative society, local author-

ity, firm / domestic company where aggregate payment or credit does not exceed Rs one crore - 2.06% (b) If recipient is individual / HUF / AOP where aggregate payment or credit exceeds Rs 10 lakhs, firm / domestic company where aggregate payment exceeds Rs one crore - 2.266%

TDS is also required to be deducted, if payment to contractors / sub-contractors is made by an individual or HUF, who is required to submit income tax audit report u/s 44AB. Provisions of making payment of TDS do not apply to small HUF and individuals who do not have to submit income tax audit report.

TDS from payment on advertising contracts - See above. Provision of TDS applies when client makes payment to advertising agency and not when advertising agency makes payment to the media i.e. print media or electronic media.

TDS from commission / brokerage – TDS applies in respect of payment of commission or brokerage to resident. There is no TDS if commission / brokerage paid during the financial year is less than Rs 2,500. [section 194H]

TDS is at following rates - (a) If recipient is individual / HUF / AOP where aggregate payment or credit is upto Rs 10 lakhs, cooperative society, local authority, firm / domestic company where aggregate payment or credit does not exceed Rs one crore - 10.3% (b) If recipient is individual / HUF / AOP where aggregate payment or credit exceeds Rs 10 lakhs, firm / domestic company where aggregate payment exceeds Rs one crore - 11.33%

TDS provisions are applicable, if payment of commission / brokerage is made by an individual or HUF, who is required to submit income tax audit report u/s 44AB. Provisions of making TDS payment do not apply to small HUF and individuals who do not have to submit income tax audit report.

TDS from Payments of Rent - TDS provisions apply if aggregate sum of rent paid exceeds Rs 1,20,000 per annum [section 194-I]

The TDS rates vary between 10.3% to 22.66% depending on whether rent is for plant, machinery, land, furniture etc. and who is the recipient.

TDS provisions are applicable, if payment of rent is made by an individual or HUF, who is required to submit income tax audit report u/s 44AB. Provisions of making payment of TDS do not apply to small HUF and individuals who do not have to submit income tax audit report.

TDS from Payments for professional or technical services - TDS provisions apply if aggregate sum paid for professional or technical services exceed Rs 20,000 per annum [section 194J]. TDS should be on total payment including reimbursement of expenses, as per CBDT circular No. 715 dated 8-8-1995. However, ITO v. Dr. Willmar Schwabe (2005) 3 SOT 71 (ITAT), it has been held that reimbursement of expenses for which bill is separately raised did not attract the provisions of section 194J.

TDS is at following rates - (a) If recipient is individual / HUF / AOP where aggregate payment or credit is upto Rs 10 lakhs, cooperative society, local authority, firm / domestic company where aggregate payment or credit does not exceed Rs one crore - 10.3% (b) If recipient is individual / HUF / AOP where aggregate payment or credit exceeds Rs 10 lakhs, firm / domestic



tic company where aggregate payment exceeds Rs one crore - 11.33%

TDS provisions are applicable, if payment for professional or technical services is made by an individual or HUF, who is required to submit income tax audit report u/s 44AB. Provisions of making TDS payment do not apply to small HUF and individuals who do not have to submit income tax audit report.

TAN number – Assessee should obtain TAN (Tax Deduction Account Number) which is required to be quoted on all TDS returns. It is a 10 digit alphanumeric code.

TDS Return – Person who has deducted tax at source is required to file return to Income Tax department on annual basis. In case of companies, the return is to be filed on computer media, i.e. for them, filing of e-TDS is compulsory. The form has been prescribed. 'Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003' has been notified by CBDT for this purpose. The return has to be filed in prescribed form in floppy. NSDL (National Securities Depository Ltd.) has been given task of handling e-TDS returns.

13.10-7 No income tax clearance certificate – Income Tax department has discontinued giving Income Tax Clearance Certificates for various purposes like filing tender, bidding contracts etc. No such certificate will be issued by Income Tax department. The contractors etc. should quote PAN – CBDT circular No. 2/2004 dated 10-2-2004.

13.11 INCOME TAX RETURNS

Every assessee should file an annual return in prescribed form. The prescribed forms are as follows -

Form No.	Applicable to	Details
ITR 1	Individuals	Salary (including pension and family pension) and interest
ITR 2	Individuals and HUF	Any income other than business income
ITR 3	Individuals and HUF	Who are partners in firm but not carrying on business or profession as proprietor
ITR 4	Individuals and HUF -	Who are proprietors having income from business or profession
ITR 5	Firm, AOP, BOI	Including return of FBT
ITR 6	Companies except charitable companies claiming exemption u/s 11	Including return of FBT
ITR 7	Charitable trusts etc. including cases covered by section 139(4A) to 129(4D)	Including return of FBT
ITR 8	Persons liable to FBT	FBT return only
ITR-V	All except charitable trusts who have filed return electronically without digital signature	Verification form for persons who have filed return electronically but without digital signature

The income tax return is really a self assessment memorandum. The assessee should calculate the tax and interest payable by him and pay it by challan. The payment will of course be after deducting the advance tax which he might have already paid.

E-return – Beginning has been made in 2003 for electronic filing of return under Electronic Furnishing of returns of Income Scheme, 2003. Filing of e-return is compulsory for corporate employees.



Due dates for filing return - The due dates for filing return are as follows -

* (a) Individuals having only salary income (b) Non-corporate assessees (Individuals, HUF, partnership firms or societies) having income from business or profession but who do not have to get their accounts audited under Income Tax or any other law - 31st July

* (a) Non corporate assessees (Individuals, HUF, partnership firms or societies) having income from business or profession and who have to get their accounts audited (b) A working partner where the firm in which he is a working partner has to get its accounts audited (c) Corporate Assessee (d) Persons who have to file return under one by six scheme – 30th September (Till 2007, it was 31st October).

The dates are mandatory and there is no provision to extend the due date. If the return is filed beyond due date, mandatory interest @ 1% per month of tax due is payable. Belated return upto one year beyond due date is permissible. Mandatory interest is payable, but no penalty is payable. Thus, if no tax was due, belated return upto one year can be submitted without payment of any interest.

A loss return must be filed in time. Otherwise, the carry forward of loss is not permitted. However, CBDT can grant extension for submitting return by a loss making company.

Signature on return - The return should be signed by individual, karta of HUF, managing partner, managing director etc. In some cases, return can be signed by authorised representative.

No intimation will be sent by Income Tax Officer, if any tax / interest / refund is not due on the basis of return of income / wealth filed.

Scrutiny of returns - Some of the returns are taken by ITO for detailed scrutiny. Notice for scrutiny has to be served within 12 months from end of the month on which return is furnished. The ITO can require assessee to attend his office or produce evidence in support of the return filed.

Payment of tax - The advance tax and self-assessment tax should be paid vide prescribed challan.