Wealth Tax – Lecture 1

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Introduction

The Wealth Tax Act, 1957 is a personal and direct tax. The Act was introduced w.e.f. 1.4.1957 in order to supplement the tax revenue of the Government by distinguishing the 'haves' from 'have-nots'. The underlying criterion is the capacity to pay and penalty on unproductive assets.

Some Facts on Wealth Tax in India

- In India, Wealth Tax, along with capital gains, gift and personal expenditure taxes, was imposed on the recommendations of Prof. Nicholas Kaldor in 1956 under a plan of integrated taxation. In the statement of objects and reasons appended to the Wealth-tax Bill, the levy of this tax, which individuals, HUFs and companies were required to pay, was justified "as an important constituent of an integrated tax structure to form a composite system made up of complementary elements. Apart from the fact that a composite tax system of this type helps satisfy the criterion of the ***ability to pay***, it is consistent with the avowed goal of the attainment of a ***socialistic pattern of society***."
- However Wealth Tax Act has got much diluted over the years.
- The first blow to the Act came via the Finance Act, 1960 when, vide Section 13, wealth tax on companies was abolished from the assessment year 1960-61. It was revived in a limited way in closely-held companies for the AYs 1984-85 to 1992-93. With the insertion of Section 3(2) by the Finance Act, 1992 in the Wealth Tax Act, the tax on companies was again revived from the assessment year 1993-94, but this was done at a heavy cost in lieu of exemption from wealth-tax of the **so-called productive assets**, such as shares, securities, bonds, bank deposits, and so on.
- Vide Finance Act, 1992 the basic exemption limit was also substantially raised to Rs 15 lakh (from earlier ₹ 2.5 lakh for individuals and ₹ 5 lakh for companies) and the tax rate was reduced from 2% to 1%. This limit has been further raised to ₹ 30 lakh by Finance Act, 2009.

- The amount collected as wealth tax has remained at miserably low levels. The actual amount of wealth tax collected during 2005-06, 2006-07, 2007-08, 2008-09 was a paltry ₹ 265, 265, 325, 381 crores in each year respectively representing a mere 0.10% of the total direct taxes collection.
- It is estimated that the government is spending close to 40% of amount collected, as its costs.

Key Definitions

Assessment Year – Section 2(d)
Assessment year means a period of 12 months commencing on April 1, every year.

Valuation Date – Section 2(q)
With the modification of definition of previous year as given in section 3 of the Income Tax Act, 1961, effectively, 31st March immediately preceding the Assessment year shall be the valuation date in all cases.

Assessee – Section 2(c)
Assessee means any person by whom wealth tax or any other sum (interest or penalty) is payable under this Act and includes:-

(a) every person in respect of whom any proceeding under this Act has been taken for determination of wealth tax payable by him or by any other person or the amount of refund due to him or such other person;
(b) every person who is deemed to be an assessee under this Act;
(c) every person who is deemed to be an assessee in default under this Act.

Deemed Assessee
- In case of deceased person who dies after writing his will, the executors of the property of the deceased
- In case of person who dies intestate (i.e. without writing his will), his eldest son or other legal heirs
- In case of minor, lunatic or idiot having assets taxable under Wealth Tax Act, their guardian
- In case of non-resident having assets in India, any person acting on his behalf is deemed as assessee.

India – Section 2(ka)
The Wealth-tax Act extends to the whole of India. Therefore, the definition of the term "India" is very important. Section 2(ka) has been substituted to define comprehensively the term 'India' to mean –

(i) the territory of India as per article 1 of the Constitution,
(ii) its territorial waters, seabed and subsoil underlying such waters,
(iii) continental shelf,
(iv) exclusive economic zone or
(v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.
[***Substituted by Finance Act, 2007 retrospectively w.e.f. 25.8.1976***]

Net Wealth – Section 2(m)
"Net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets.

Charge of Wealth Tax – Section 3(2)

Subject to the other provisions contained in this Act, there shall be charged for every assessment year, wealth tax in respect of the Net Wealth on the corresponding valuation date of every Individual, HUF and Company, @ 1% of the amount by which the ***Net Wealth*** exceeds **₹ 30 lakhs**.

Notes

1. No Surcharge & No Cess is payable on wealth tax.
2. The term individual is wide enough to include-
   (i) A joint family other than HUF (Jain, Sikh families) [**CWT V Smt. Champa Kumari Singhi – 1972 – SC**]
   (ii) The trustees of a private trust [**Trustees of Gordhandas Govindram Family Charity Trust – 1973 – SC**]
   (iii) AOP having members with indefinite shares – Section 21AA
   (iv) Trust representing Hindu deity [**CWT V B C Gupta & Sons Ltd. – 1990 – Gauh**]
3. Heirs of an individual who dies intestate leaving behind his self acquired property will be assessed in their individual capacity and not as HUF. [**CWT V Chander Sen – 1986 – SC**]

Act not to apply in certain cases – Section 45

No wealth tax shall be levied under this Act in respect of the net wealth of:-

a. any company registered u/s 25 of the Companies Act, 1956
b. any co-operative society
c. any social club (i.e. mutual concern)
d. any political party [as per Explanation to Section 13A of Income Tax Act]
e. a Mutual Fund u/s 10(23D) of the Income Tax Act
f. any trade union

Notes

1. Besides above, firms, AOP, local authority, public charitable/religious trusts etc. are also not liable to wealth tax.
2. However, the AOP in which the individual shares of members are not determinable is liable to wealth tax u/s 21AA.
3. Also, wealth tax is charged in respect of the assets of the firm in the hands of the partners.

Exercise – 1

Person u/s 2(31) of I.T. Act	***Liable to Income Tax?***	***Liable to Wealth Tax?***
Individual		
HUF		
Company (Other than Sec. 25)		
Company – u/s 25		
Firm		
AOP/BOI (incorporated or not)		
Local authority		
Artificial juridical person		
Co-operative Society		
Social concern		
Political Party u/s 13A		
Mutual Fund u/s 10(23D)		
Public Trust		

Person u/s 2(31) of I.T. Act	*Liable to Income Tax?*	*Liable to Wealth Tax?*
Private Trust		
Hindu Deities		
Trade Union		

Computation of Net Wealth – Section 2(m)

"Net Wealth" means the amount by which -

(a) The Aggregate value computed in accordance with the provisions of this Act of all assets, wherever located*, belonging to the assessee on the valuation date
Including (+)
(b) Assets required to be included in his net wealth as on that date under this Act**
Is in excess of (-)
(c) Aggregate value of all the Debts owed by the assessee on the valuation date which has been incurred in relation to said assets.

* In India or abroad subject to certain exclusions
** Clubbing of Assets u/s 4

Notes

1. 'Net Wealth' is rounded off to the nearest multiple of ₹ 100/-. Tax, Interest, penalty, fine or any other sum payable or any refund due is rounded off to nearest rupee. [**Section 44C & 44D**]
2. The system of accounting, mercantile, cash or hybrid is not relevant in determining the assets of the assessee. [**CWT V Vysyaraju Badreenarayana Moorthy Raju – 1985 – SC**]
3. Asset should be owned by the assessee and mere possession or joint possession of the asset is not enough. [**CWT V Bishwanath Chatterjee – 1976 – SC**] Similarly, where an assessee purchased the property but could not get possession because of some litigation, the value of the property is includible in his net wealth. The fact that the assessee may lose the property if the suit was decided against him and wealth tax paid may not be refunded were not relevant except in fixing the market value. Therefore, in instant case the disputed title and lack of possession will have to be taken into consideration while determining market value on the valuation date. [**US Nayak V CWT – 1968 – Mysore**]
4. The liability in respect of wealth-tax gets crystallized on the valuation date. However, the law applicable in making such computation is the law as it stands on the first day of the relevant assessment year. The reference to valuation date means the last moment of the valuation date. [**Banarsi Das V CWT – 1970 – All, Dwarkanath V WTO – Mum**]

Example

The gold belonging to assessee was seized by the excise authorities but not confiscated on the valuation date. The Market value of gold is includible in the net wealth. [**Jayantilal Amritlal V CWT – 1982 – Guj**] However, if gold is confisticated by authorities and applied towards taxes due of the assessee, it will cease to be an asset taxable in the hands of the assessee.

Assets – Section 2(ea)

The exhaustive definition given in Wealth Tax Act provides that only following 6 assets belonging to the assessee and held on valuation date, are to be included for net wealth computation:-

1. Building including farm house
2. Motor Car

3. Jewellery
4. Yatch, boats, aircraft
5. Vacant Urban Land
6. Cash in hand

(i) Building including Farm house

- Any building or land appurtenant thereto, (hereinafter referred to as 'House'),
- whether used for residential purposes or commercial purposes
- or for the purpose of maintaining a guest house
- or otherwise
- including a farmhouse situated within 25 kilometers from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a cantonment board,
- but does not include—

Exclusions:

a. A house meant exclusively for residential purposes and which is **allotted by a company** to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than ₹ 5 lakhs

b. Any house for residential or commercial purposes which forms part of stock in trade

c. Any house which the assessee may occupy for the purposes of any business or profession carried on by him

d. Any residential property that has been let out for a minimum period of 300 days in the previous year

e. Any property in the nature of commercial establishments **or** complexes.

Notes

1. The exclusion of residential house allotted by a company to its whole time employees is intended for only one house per employee. However, in aggregate the company may allot any number of houses. But if an employee has been allotted more than one house for residential purposes, then all but one house shall be liable for inclusion in net wealth.
2. The gross annual salary in general parlance means the 'cash salary package' and includes basic salary, DA, other allowances paid in cash, commission or bonus but excludes non-cash perquisites. The salary for wealth tax purposes is considered before any exemption or deduction under Income Tax Act.
3. The exemption of residential house allotted to whole time employees is applicable only to company assessee and no other assessee can claim exemption in respect of such house even by claiming 'house occupied for his business/profession' purposes. Therefore, residential houses allotted by Individual, HUF, firm etc. to its whole-time employees are assets u/s 2(ea).
4. A property owned by a person but used for business or profession carried on by a firm in which such person is a partner, is treated as if the partner is using the property for his business/profession purposes and hence not liable to wealth tax. [**CIT V Rasiklal Balabhai – 1979 – Guj, CIT V P T Mannel – 1989 – Ker, CIT V KM Jaganathan – 1989 – Mad**]
5. However, if the owner lets out the factory building at market rates to a partnership firm in which the owner is a partner, it cannot be said that the business is carried on by the assessee personally and

hence liable to wealth tax. [**CIT V Ponnamma Lakshmi Narayani Asiatic Export Enterprises – 2009 – Ker**]

6. If a house is partly used for business purposes, only that part of the house which is used for residential purposes (self or let out) shall constitute an asset u/s 2(ea).
7. For the purposes of exception u/s 2(ea), it is not necessary the usage of house is continuous and uninterrupted. A place which is used for conducting business meetings will be a business asset liable for exclusion u/s 2(ea)(i). [**Tracstar Investment Pvt. Ltd. V CWT – 2005 – Mum**]
8. The exception u/s 2(ea)(i)(1) being a special provision for residential house provided by company to employee will prevail over the general provision u/s 2(ea)(i)(3) of house used for carrying a business. Therefore if the conditions of section 2(ea)(i)(1) are not satisfied it cannot be brought under 2(ea)(i)(3) to claim the exception. [**Floatglass India Ltd. V CWT – 2004 – Mum**]
9. The word 'Commercial' means relating to or engaged in or used for commerce. The word 'establishment' means an organization, building, construction, shop, store, concern or corporation. Thus, 'commercial establishment' means some kind of place or building or shop or store where business or trade is carried on. The word 'complex' means composite, compounded, multiple, manifold, multi-complex or something composed of or made of many inter-related parts, for example, a multi-purpose building. Thus, the words 'commercial complex' mean the commercial multi-purpose building composed and made of inter-relating parts in contrast to a single commercial establishment. In the case of a property in the nature of commercial establishment, it is not necessary that it should be also in the nature of commercial complex. [**Satvinder Singh V CWT – 2007 – Pune**]

Example

X owns a building in Gurgaon. It is used by him for his business purposes upto 8th June, 2010 and thereafter it has been let out for residential purposes. X claims that the value of building is not liable to wealth tax. Decide.
*

Answer
As on 31.3.2011, the building is not being used for business purposes. Also, during the PY 2010-11, the residential building has not been let out for minimum 300 days in the year. Therefore the value of building is liable for wealth tax.

(ii) Motor Cars

Motor Cars* (***other than*** those used by the assessee in the business of running them on hire or as stock in trade).
*Indian or foreign

Notes

1. Motor Cars used by any assessee for his business or personal purposes are taxable assets. Therefore, motor cars owned by driving schools, motor cars owned by a leasing companies are liable to wealth tax. However, a motor car owned by hire-purchaser will be included in the wealth of hire-purchaser.
2. Motor Cars cover all motor vehicles other than heavy vehicles. [**Southern Roadways Ltd. V CWT – 2002 – Mad**] Therefore, motors cars include jeeps, SUV, MUV. Buses, trucks, lorries, tempo, display vans, tractors, delivery vans, ambulances, two wheelers or three wheelers (autos) are not motor cars.
3. Where an assessee arranged for motor cars for its employees by devising a finance scheme under which the employees would pay a certain percentage of cost and the balance would be paid by the company, and the loan amount would be recovered from the employees' salary, and till the loan amount was fully paid and the vehicle (motor car) would remain in the name of the company, the

motor cars in the name of the assessee-company will be treated its assets under section 2(ea) of the Act. However, the amount of monthly installments collected would be "debt owed" by the company and would be eligible for deduction.[**Thermax Ltd. V CWT – 2008 – Pune**]

Taxability of motor car

Motor car used for business purposes	Taxable
Bus/Truck/Heavy vehicle used for business purposes	Not taxable

(iii) Jewellery

Jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals.

Provided that where any of the said assets is used by the assessee as stock-in-trade, such asset shall be deemed as excluded from the assets specified in this sub-clause.

Explanation 1 (a) – For the purposes of this clause - "Jewellery" includes:-
(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2—For the removal of doubts, it is hereby declared that "jewellery" does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

Note

Though silver utensils etc. used for personal purposes are excluded from the definition of capital assets as personal effects u/s 2(14) of Income Tax Act, yet they are liable to wealth tax u/s 2(ea)(iii).

(iv) Yachts, boats & air-crafts

Yachts, boats and aircrafts (***other than*** those used by the assessee for commercial purposes)

Notes

1. Yacht does not include Ships.
2. Aircraft includes helicopter. [**Garware Wall Ropes Ltd. V CIT – 2004 – Mum**]
3. Commercial purpose will mean used for earning business profits or running them on hire or when these assets are held as stock in trade. However, the nexus between use of assets and intention to earn profit must be direct. Therefore, aircraft used by company for its directors or employees is taxable asset under Wealth Tax Act.
4. Value of helicopter or aircraft used for purpose of an assessee's own business is not liable to wealth-tax. [**Garware Wall Ropes Ltd. V CIT – 2004 – Mum**]
5. The best test for determining whether Yatch/ Boat/ Aircraft etc. is being used for commercial purposes or not is the licence given by concerned authority/ministry.

(v) Urban Land

Explanation 1(b) – For the purposes of this clause – "Urban Land" means land situate –

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board **and** which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the valuation date ; or

(ii) in any area within such distance, **not being more than 8 kilometers** from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may specify in this behalf by notification in the Official Gazette, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations,

but ***does not include*** -

(1) Land on which construction of building is not permissible under any law for the time being in force in the area in which such land is situated; or

(2) Land occupied by any building which has been constructed with the approval of appropriate authority; or (However, such property will squarely fall in the 'House' category)

(3) Any unused land held by assessee for industrial purposes for a period of **2 years** from the date of its acquisition by him; or

(4) Any land held by assessee as stock-in-trade for a period of **10 years** from the date of its acquisition by him.

Notes

1. The word 'unused' in clause (3) above means not used for industrial purposes. A land used for agriculture purposes would be liable to inclusion u/s 2(ea) if it is an urban land. [**Meena Jacob V WTO – 2007 – Cochin**]
2. Building means fully constructed building and exemption u/s 2(ea)(v) is not available if land is occupied by a building under construction. [**CWT V Girdhar G Yadalam – Kar – 2007**]
3. An industrial land on which factory building is under construction would be liable to inclusion u/s 2(ea) after 2 years from date of acquisition unless it is being actually utilized for running an industrial undertaking. Therefore, in a case where building is under construction on urban land, the value of land is includible in net wealth but the value of building under construction is not includible (since building would mean completely constructed building).[**CWT V Prem Nath Motors Pvt. Ltd. – 1999 – Del**]

Examples

1. A has a plot of 500 square yards in Lucknow. However, since the plot is near to the local airport, no construction is permitted by the municipal authorities thereon. This plot is not liable to be included in the net wealth of A.
2. B has a plot of 250 square meters in Chandigarh on which he has constructed a guest house. The plot is not liable to wealth tax, but the value of building will be included in the net wealth of B u/s 2(ea)(i).
3. C has been allotted an industrial plot in Meerut on 18.5.2010. This plot will not be treated as a taxable asset till 17.5.2012. Therefore as on valuation date 31.3.2011 and 31.3.2012, this plot will not be included in the net wealth of C
4. D has been allotted an industrial plot in Bangalore on 18.5.2008. D starts construction on this plot on 1.4.2010 which is still ongoing on 31.3.2011. The plot will not be treated as a taxable asset on valuation date 31.3.2009 and 31.3.2010 but will be included in the net wealth of D on 31.3.2011.
5. E is a property broker and holding a plot in Simla acquired on 13.8.2005. This plot will not be treated as an asset for wealth tax purposes till 12.8.2015 but will be taxable on any valuation date thereafter.

(vi) Cash

(i) In case of Individual and HUF – Cash in hand, in excess of ₹ 50,000/-
(ii) In case of any other person – Any amount not recorded in the books of account

Notes

1. In case of Individual or HUF, cash in hand in excess of ₹ 50,000/- whether recorded in books or not is taxable to wealth tax. However, in case of companies, it is only unrecorded cash which is taxable.
2. Cheques in hand and Bank Balance are not cash in hand.
3. However, cash lying in bank locker is taxable asset.
4. In view of specific provision as above, when the assets belonging to Firm/AOP/BOI are taxed in the hands of partners/members, cash in hand will not be taken as a taxable asset.

Residential House – When exempt from wealth tax

1. If allotted by company to whole time employee/director with annual salary less than ₹ 5 lakh
2. If held as stock in trade
3. If let out for period of 300 days or more in a year

Residential House – When always taxable

1. If used as a guest house
2. If allotted by person (other than company) to its employee as rent free accommodation

Taxability of Farm house, Residential house, Vacant land

Asset	*Urban*	*Within 8 Km*	*Within 25 Km*	*Outside 25Km*
Residential House	Taxable	Taxable	Taxable	Taxable
Farm House	Taxable	Taxable	Taxable	Exempt
Vacant Land	Taxable	Taxable	Exempt	Exempt

Exercise – 2

Discuss whether these assets are chargeable to wealth tax.

(a) Guest House held as Stock in trade	
(b) Guest House held by Company to entertain guests	
(c) Farm House situated at 30 Kilometers from municipality limits of City X	
(d) Farm House situated at 30 Kilometers from municipality limits of City but within 15 Kilometers of City Y	
(e) Factory Building given on rent	
(f) Residential house given as rent free to full time director of company (Salary ₹ 5,00,000/- per annum)	
(g) Residential house given as rent free to director of company who is not whole time employment (Fee paid ₹ 5000/- per month)	
(h) Residential flat given to workers in the plant by an individual assessee (Salary does not exceed ₹ 10,000/- per month)	
(i) Commercial complex consisting of 20 shops out of which 7 shops are lying vacant	
(j) Deposit of ₹ 4,00,000/- made for allotment of house in co-op society. (House is yet to be allotted)	
(k) Cars used by the directors and executives for company's business purposes	
(l) Silver utensils used personally by assessee(not being held as stock in trade)	
(m) Helicopter used by directors and executives of a company for business purposes	
(n) Shares and Debentures in foreign companies	

(o) Industrial land purchased in 1995 for the purpose of factory, the construction of factory could not be started because of litigation with previous owners.	
(p) Land in urban area (construction not permitted as per municipal bye-laws)	
(q) Land in urban area (construction carried out without permission of local authority)	
(r) Land in urban area (used by assessee as a Horticulture Nursery)	
(s) Land in rural area	
(t) Bank balance of individual ₹ 7,86,000/-	
(u) Cash in Hand ₹ 2,34,000/- held by company	