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Direct Tax - I

Unit 1

Q: What is an Assessment Year?

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Ans.:

Assessment Year [Sec. 2(9)]

“Assessment year” means the period starting from April 1 and ending on March 31 of the next year. For instance, the assessment year 2018-19 will commence on April 1, 2018 and will end on March 31, 2019.

Income of previous year of an assessee is taxed during the next following assessment year at the rates prescribed by the relevant Finance Act.

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Q: What is a PreviousYear?

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Ans.:

Previous Year [Sec. 3]

Income earned in a year is taxable in the next year. The year in which income is earned is known as previous year.

Previous year is the financial year immediately preceding the assessment year.

When income of previous year is not taxable in the immediately following assessment year–

The rule that the income of the previous year is assessable as the income of the immediately following assessment year has certain exceptions. These are:

- *Income of non-resident from shipping;*
- *Income of persons leaving India either permanently or for a long period of time;*
- *Income of bodies formed for short duration;*
- *Income of a person trying to alienate his assets with a view to avoiding payment of tax; and*
- *Income of a discontinued business.*

Q: Who are included in Person?

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Ans.:

Person [Sec. 2(31)]

The term "person" includes :

- (i) an Individual;
- (ii) a Hindu Undivided Family ;
- (iii) a Company;
- (iv) a Firm;
- (v) an association of persons or a body of individuals, whether incorporated or not;
- (vi) a local authority; and
- (vii) every artificial juridical person not falling within any of the preceding categories.

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Q: Who is regarded as Assessee?

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Ans.:

Assessee [Sec. 2(7)]

Assessee means a person by whom income-tax or any other sum of money is payable under the Act. It includes –

- *First category* – A person (*i.e.*, an individual ; a Hindu undivided family ; a firm; an association of persons or body of individuals, whether incorporated or not ; a local authority ; and every artificial juridical person) by whom any tax or any other sum of money (including interest and penalty) is payable under the Act (irrespective of the fact whether any proceeding under the act has been taken against him or not).
- *Second category* – A person in respect of whom any proceeding under the Act has been taken (whether or not he is liable for any tax, interest or penalty). Proceeding may be taken –
 - (a) Either for the assessment of the amount of his income or the loss sustained by him ; or
 - (b) Of the income (or loss) of any other person in respect of whom he is assessable ; or
 - (c) Of the amount of refund due to him or to such other person.
- *Third category* – Every person who is deemed to be an assessee.
- *Fourth category* –Every person who is deemed to be an assessee in default under any provision of the Act.

Q: How to charge tax on income?

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Ans.:

To know the procedure for charging tax on income, one should be familiar with the following:

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- *Annual tax* – income tax is an annual tax on income.
- *Tax rate of assessment year* – income of previous year is chargeable to tax in the next following assessment year at the tax rates applicable for the assessment year. This rule is, however, subject to some exceptions.
- *Rates fixed by Finance Act* – tax rates are fixed by the annual Finance Act and not by the Income-tax Act.
- *Tax on person* – tax is charged on every person.
- *Tax on total income* – tax is levied on the “total income” of every assessee computed in accordance with the provisions of the Act.
- *Provisions as on April 1 of the assessment year applicable for computing income for the assessment year* – Total income is calculated in accordance with the provisions of the Income-tax Act, as they stand on the first day of April of the assessment year.

The above points are used in the computation of taxable income and tax liability.

Q: What is regarded as Income under the Income Tax Act?

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Ans.:

Income is a periodical monetary return with some sort of regularity. It may be broadly defined as the true increase in the amount of wealth which comes to a person during a fixed period of time. It may be recurring in nature.

Under section 2(24), the term “income” specifically includes the following:

- Profits and gains
- Dividend
- Voluntary contributions received by a trust
- Perquisites in the hands of employee
- Any special allowance or benefit
- City compensatory allowance/dearness allowance

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- Any benefit or perquisite to a director
- Any benefit or perquisite to a representative assessee
- Any sum chargeable under sections 28, 41 and 59
- Capital gains
- Insurance profit
- Banking income of a co-operative society
- Winnings from lottery
- Employees' contribution towards provident fund
- Amount received under Keyman insurance policy
- Amount exceeding Rs.50,000 by way of gift
- Consideration for issue of shares
- Advance money
- Assistance in the form of a subsidy/grant

The definition of the term income in section 2(24) is inclusive and not exhaustive. Therefore, the term income not only includes those things which are included in section 2(24) but also includes such things which the term signifies, according to its general and natural meaning.

Q: What is Gross Total Income?

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Ans.:

As per section 14, income of a person is computed under the following five heads:

1. Salaries.
2. Income from house property.
3. Profits and gains of business or profession.
4. Capital gains.
5. Income from other sources.

The aggregate income under these heads is termed as Gross Total Income. In other words, Gross Total Income means total income computed in accordance with the provisions of the Act before making any deduction under sections 80C to 80U.

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Q: What is Total Income?

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Ans.:

Total income of an assessee is gross total income as reduced by the amount permissible as deduction under sections 80C to 80U.

Q: Define Residential Status.

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Ans.:

There are two types of taxpayers - resident in India and non resident in India. Indian income is taxable in India whether the person earning income is resident or nonresident. Conversely, foreign income of a person is taxable in India only if such person is resident in India. Foreign income of a non resident is not taxable in India.

The following norms one has to keep in mind while deciding residential status of an assessee:

- **Different taxable entities** - all taxable entities are divided in the following for the purpose of determining residential status:
 - a. An individual;
 - b. a Hindu undivided family;
 - c. A firm or an association of persons;
 - d. A joint stock company; and
 - e. Every other person.
- **Different residential status**- an assessee is either: (a)- resident in India, or (b) non resident in India. However, a resident individual or a Hindu undivided family has to be (a) resident and ordinarily resident, or (b) resident but not ordinarily resident. Therefore, an individual and a Hindu undivided family can either be:
 - a. Resident and ordinarily resident in India; or
 - b. Resident but not ordinarily resident in India; or
 - c. Non resident in India.

All other assesseees (viz., a firm, association of persons, joint stock company and every other person) can either be:

- a. Resident in India; or
 - b. Non resident in India.
-

Q: How can you determine the residential status of an individual?

[SEC. 6]

(www.prepNext.com)

Ans.:

An individual may be (a) resident and ordinarily resident in India, (b) resident but not ordinarily resident in India, or (c) non resident in India.

Resident and ordinarily resident [Sec. 6(1), 6(6)(a)] - To find out whether an individual is "resident and ordinarily resident" in India, one has to first find out whether such individual is "resident" in India. If such individual is "resident" in India, then find out whether he is "ordinarily resident" in India.

BASIC CONDITIONS :-

Under section 6(1) an individual is said to be resident in India in any previous year, if he satisfies at least one of the following basic conditions-

- a. He is in India in the previous year for a period of 182 days or more.
- b. He is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year.

Exceptions – Basic condition (b) is not taken into consideration in two special cases given below. In the two special cases (given below) residential status of an individual shall be determined only on the basis of basic condition (a).

- I) It covers an Indian citizen who leaves India during the previous year for the purpose of employment outside India or an Indian citizen who leaves India during the previous year as a member of the crew of an Indian ship.
- II) It covers an Indian citizen or a person of Indian origin who comes on a visit to India during the previous year.

ADDITIONAL CONDITIONS:–

Under section 6(6), a resident individual is treated as “resident and ordinarily resident” in India if he satisfies the following two additional conditions –

- i. He has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
- ii. He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

In brief it can be said that an individual becomes **resident and ordinarily resident** in India if he satisfies at least one of the basic conditions and the two additional conditions [i.e., (i) and (ii)].

Resident but not ordinarily resident – An individual who satisfies at least one of the basic conditions but does not satisfies the two additional conditions is treated as a resident but not ordinarily resident in India.

Non-resident – An individual is a non-resident in India if he satisfies none of the basic conditions. In the case of non-resident, additional conditions need not be checked.

Q: How can you find out the residential status of a HUF?

(www.prepNext.com)

Ans.:

A Hindu undivided family (like an individual) is either resident in India or non-resident in India. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident.

When a Hindu undivided family is family is resident or non-resident– A Hindu undivided family is said to be resident in India if control and management of its affairs is wholly or partly situated in India. A Hindu undivided family is non-resident in India if control and management of its affairs is wholly situated outside India.

In order to determine whether a Hindu undivided family is resident or non-resident, the residential status of the karta of the family during the previous year is not relevant. Residential status of the karta during the preceding years is considered.

When a resident Hindu undivided family is ordinarily resident in India– A resident Hindu undivided family is an ordinarily resident in India if karta or manager of the family satisfies the following two additional conditions:

- (i) Karta has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
- (ii) Karta has been present in India for a period of 730 days or more during 7 years immediately preceding the previous year.

If karta or manager of a resident Hindu undivided family does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.

Q: How can you determine the residential status of a firm and an Association of persons? [SEC. 6(2)] *(www.prepNext.com)*

Ans.:

A partnership firm and an association of persons are said to be resident in India if control and management of their affairs are wholly or partly situated within India during the relevant previous year. They are, however, treated as non-resident in India if control and management of their affairs are situated wholly outside India.

A firm/an association of persons cannot be “ordinarily” or “not ordinarily resident”. The residential status of the partners/members of the firm/association is not relevant in determining the status of the firm/association.

Q: How can you find out the residential status of a Company?
[SEC.6(3)] *(www.prepNext.com)*

Ans.:

An Indian company is always resident in India. A foreign company is resident in India only if, during the previous year, control and management of its affairs is situated wholly in India. A company can never be “ordinarily” or “not ordinarily resident” in India.

Q. How can you determine the residential status of every other person? [SEC. 6(4)] *(www.prepNext.com)*

Ans.:

Every other person is resident in India if control and management of its affairs is, wholly or partly, situated within India during the relevant previous year. On the other hand, every other person is non-resident in India if control and management of its affairs is wholly situated outside India.

Q: Write the different kinds of income exempt from tax under Section 10. *(www.prepNext.com)*

Ans.:

- Agriculture income [10(1)]
- Payments received from family income by a member of a HUF [10(2)]
- Share of profit from a firm [10(2A)]
- Foreign allowance granted by the Government of India to its employees posted abroad [10(7)]
- Death-cum-retirement gratuity [10(10)]
- Commuted value of pension and any payment received by way of commutation of pension by an individual out of annuity plan of LIC or any other insurer from a fund set up by that corporation or insurer [10(10A)]

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- Leave salary [10(10A A)]
- Retrenchment compensation [10(10B)]
- Any sum (including bonus) on life insurance policy (not being a Keyman insurance policy) [10(10D)]
- Amount received from statutory or recognized provident fund or public provident fund [10(11)/(12)]
- Any payment from SukanyaSamridhhi Account [10(11A)]
- House rent allowance subnet to certain limits [10(13A)]
- Scholarship granted to meet the cost of education [10(16)]
- Family pension received by family members of armed forces [10(19)]
- Income of local authorities [10(20)]

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