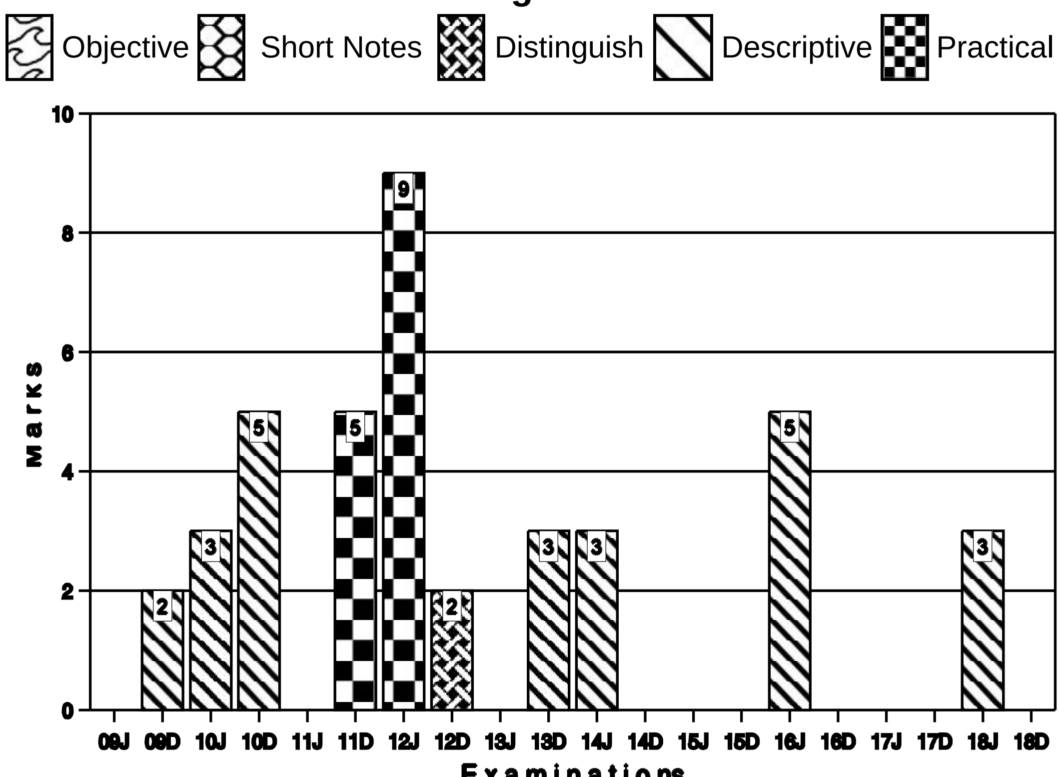
1 BASIC CONCEPTS

THIS CHAPTER INCLUDES

- Basic Concepts
- Important Definitions
- Rates of Income Tax
- Capital and Revenue Receipts and Expenditure

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



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DISTINGUISH BETWEEN

2012 - Dec [2] (b) Explain the difference between 'Total Income' and 'Gross Total Income'. **(2 marks)**

Answer:

GTI Sec. 2(45)	Total Income Sec. 5
1. Sum total of all 5 heads [Salary, House Property, Business Profession, Capital Gain, Other Sources]	1. GTI (-)deduction u/s chap. VI A
2. GTI is not rounded off	2. Rounded off u/s 288A
3. No tax is calculated on GTI	3. Tax is calculated on TI

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DESCRIPTIVE QUESTIONS

2009 - Dec [1] {C} (d) (iv) A company which has its head office in India operated in Pakistan declared dividend subject to remittance from Pakistan. During the previous year relevant to the assessment year, the remittance could not be recovered from Pakistan. What is the tax liability in the hands of shareholder? Discuss. **(2 marks)**

Answer:

As head office of Company is in India. So register of members will also be maintained in India. Income from dividend will be considered as income deemed to accrue on arise in India and hence taxable.

As dividend from domestic company is exempt U/s 10(34) subject to an amount of ₹ 10 Lakhs. Hence this dividend will be exempt from tax.

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2010 - June [8] (b) State the Elements/Sources of Income Tax Law. **(3 marks)**

Answer:

The elements/sources of Income Tax Law are:

(i) The Income Tax Act, 1961.

(ii) Finance Act.- Annual

(iii) The Income Tax Rules, 1962.

(iv) Circulars/notifications from CBDT.

(v) Judicial Decisions.

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2010 - Dec [5] (b) One of the exceptions to the rule that the income of the previous year shall be assessed in the subsequent assessment year is the shipping business of non-resident. Discuss briefly the assessment aspect of such income from shipping business. **(5 marks)**

Answer:

Section 172-Shipping Business of Non Resident:

Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof, 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.**[Section- 44B]**

Section 172 will not apply if time-charterer carries his own goods. When the time charterers carried their own cargo, they served their own interests and this kind of self service was not contemplated for the purpose of assessment, and **Section 172** would not be attracted - ***Lima Leitao & Co. Ltd. v. Union of India.***

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2013 - Dec [2] (a) What are the circumstances in which previous year and assessment year will be the same? **(3 marks)**

Answer:

Previous year and the assessment year will be same in the following cases:

1. Shipping business of non-resident. **(Section 172)**
2. Persons leaving India. **(Section 174)**
3. AOP or BOI or Artificial juridical person formed for a particular event or purpose. **(Section 174A)**
4. Persons likely to transfer property to avoid tax. **(Section 175)**
5. Discontinued Business. **(Section176)**

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2014 - June [5] (c) Explain the term "substantial interest" defined in Section 2(32) and its application in at least two situations. **(3 marks)**

Answer:

Substantial Interest

(a) For company- If individual along with relatives hold not less than 20% equity shares beneficially.

(b) For others- If individual along with relatives is entitled to atleast 20% of income.

Application

An individual is chargeable to tax in respect of any salary, commission, fees or any other remuneration received by the spouse from a concern in which the individual has substantial interest.

(i) But that portion of salary etc., of spouse which is due to application of technical or professional knowledge or experience shall not be clubbed.

(ii) If husband and wife both have substantial interest in the concern and
   - both are receiving remuneration because of interest in the concern
   - then the remuneration of both shall be clubbed in the hands of that spouse whose total income is greater, before clubbing such income.

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2016 - June [2] (a) State the situations in which the income of the assessee can be assessed in the previous year itself, instead of in the assessment year. **(5 marks)**

Answer:

Incomes which are taxed in the assessment year itself

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

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

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

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

(iv) During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings, is chargeable to tax in that Assessment year.

(v) Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year upto the date of such discontinuance may at the discretion of the Assessing Officer, be charged to tax in that assessment year.

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2018 - June [2] (a) (ii) Explain the following concepts

- Tax Planning
- Tax Avoidance
- Tax Evasion **(3 marks)**

Answer:

Tax Planning: It means arranging the financial activities in such a way that maximum tax benefits are enjoyed by making use of all beneficial provisions in the tax laws which entitle the assessee to get certain rebates and reliefs. This is permitted and not frowned upon by law.

Tax Avoidance: The line of demarcation between tax planning and tax avoidance is very thin and blurred. There could be elements of malafide motive involved in tax avoidance also. Any planning which, though done strictly according to legal requirements defeats the basic intention of the Legislature behind the statute could be termed as instance of tax avoidance.

Tax Evasion: It refers to a situation where a person tries to reduce his tax liability by deliberately suppressing the income or by inflating the expenditure showing the income lower then the actual income and resorting to various types of deliberate manipulations. An assessee guilty of tax evasion is punishable under the relevant laws.

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PRACTICAL QUESTIONS

2008 - Dec [5] (a) Kamlesh was working as a crew member on an Indian ship plying in foreign waters. During the year ended 31.03.2019, the ship did not touch the Indian coast, except for 180 days. State the residential status for the assessment year 2019-20 and taxability of his salary. **(2 marks)**

Answer:

Any individual, who is a citizen of India, leaving India in any year for the purpose of employment or as a member of crew of an Indian ship, is considered as resident in India only when his stay in India during that previous year is 182 days or more.

But in the given situation Mr. Kamlesh stays in India only for 180 days during the previous year. Hence, he is non resident in India.

Income received from salary is considered as income received and accrue outside India. Hence, it is not taxable in India.

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2011 - Dec [4] (a) BIRLA Ltd., a cement manufacturing company, entered into an agreement with a supplier for purchase of additional cement plant. One of the conditions in the agreement was that if the supplier failed to supply the machinery within the stipulated time, the company would be compensated at 5% of the price of the respective portion of the machinery without proof of actual loss. The company received ₹ 8.50 lakhs from the supplier by way of liquidated damages on account of his failure to supply the machinery within the stipulated time. What is the nature of liquidated damages received by BIRLA Ltd. from the supplier of plant for failure to supply machinery to the company within the stipulated time-a capital receipt or a revenue receipt ?

(5 marks)

Answer:

As per the decision of ***Apex Court in CIT. Vs. Saurashtra Cement Ltd. (2010)***, it was decided that receipts for procuring the capital asset are of capital nature. The Apex Court affirmed the decision of the Gujarat High Court holding that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which leads to delay incoming into existence of the profit-making unit. It was not a receipt in the course of profit making. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, not in the ordinary course of business, is a capital receipt in the hands of the assessee. Therefore in this case, the liquidated damages of ₹ 8.50 lakhs received by Birla Ltd., from the supplier of plant for failure to supply machinery to the company within the stipulated time is a capital receipt.

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2012 - June [2] (a) Following details are furnished by Mr. Appaji for the year ended 31.03.2019:

		₹
(i)	Profit on sale of shares in Indian company, sold in India but proceeds received in France	30,000
(ii)	Dividend from a Korean company received in France	50,000
(iii)	Rent from property in Sri Lanka deposited in Sri Lanka but later remitted to India through approved banking channel-Gross	1,00,000
(iv)	Dividend from ABC (P) Ltd.	20,000
(v)	Income from nursery in Gujarat	40,000

Compute the total income of Mr. Appaji if he is

(i) Resident and ordinarily resident;

(ii) Resident but not ordinarily resident;

(iii) Non-resident. **(9 marks)**

Answer:

Computation of total income of Mr. Appaji for the assessment year 2019-20

	ROR	**RNOR**	**NR**
Profit on sale of shares in Indian company, sold in India but proceeds received in France	30,000	30,000	30,000
Dividend from a Korean company received in France	50,000	Nil	Nil
Rent from property in Sri Lanka deposited in Sri Lanka but later remitted to India through approved banking channel	70,000*	Nil	Nil
Dividend from ABC (P) Ltd.	Exempt	Exempt	Exempt
Income from nursery in Gujarat	Agri income	Agri income	Agri income
Total Income	**1,50,000**	**30,000**	**30,000**

Note: ** Taking ₹ 1,00,000 (Gross) as NAV, standard deduction u/s 24(a) is applicable.*

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