



Introduction

Liability in Special Case

Introduction

Chapter XV of the Income-tax Act, 1961, provides provisions regarding the computation and recovery of tax in special cases. It covers liability in cases of legal representatives, representative assessees, executors, succession to business, dissolution of entities, liquidation of companies, and certain exceptional situations.

Legal Representative [Section 159]

- Upon the death of an individual, two separate assessments are made—one on the legal representative for the deceased's income until the date of death and another on heirs or executors for income from the estate.
- The liability varies based on whether the deceased left a will and whether an executor was appointed.

Representative Assessee [Sections 160-167]

- Includes agents of non-residents, guardians of minors or incapacitated individuals, and trustees.
- The representative assessee is liable for tax on behalf of the beneficiary and is entitled to exemptions and deductions available to the beneficiary.

Executors [Sections 168-169]

- The executor or administrator of an estate is assessed separately from their personal income.
- Tax is levied on the estate's income until complete distribution to beneficiaries.

Succession to Business or Profession [Section 170]

- When a business is succeeded by another person, the predecessor is taxed for income up to the succession date, and the successor is taxed for income thereafter.

Modified Return by Successor Entity [Section 170A]

- In cases of business reorganisation, the successor entity must file a modified return within six months from the month in which the final order approving the reorganisation is issued.

Partition of Hindu Undivided Family (HUF) [Section 171]

- A complete partition of HUF is recognised for tax purposes, and post-partition income is taxed in the hands of individual members.

Income Taxable in the Previous Year Itself

The income of a previous year is chargeable in the following assessment year. However, this general principle is subject to the following exceptions in which income is charged to tax in the previous year itself:

- Shipping business of a non-resident [Section 172]
- Persons leaving India [Section 174]
- AOP/BOI formed for a short duration [Section 174A]
- Persons likely to transfer property to avoid tax [Section 175]
- Discontinued business [Section 176]

Dissolution of AOP or Firm

- Tax is assessed as if dissolution has not occurred, and all members or partners remain jointly and severally liable.

Tax Recovery from Non-Residents [Section 173]

- Tax on non-residents' Indian income can be recovered by tax deduction at source (TDS) or from their assets within India.

Company in Liquidation [Section 178]

- The liquidator must inform the Assessing Officer about his appointment within 30 days of appointment.
- The Assessing Officer will determine the tax liability of the company within three months of notification about the liquidator's appointment.

Liability of Directors [Section 179]

- If a private company cannot pay its tax dues, its directors are jointly and severally liable unless they prove that non-recovery was not due to their negligence, misfeasance, or breach of duty.

Taxation of Legal Representatives and Legal Heirs

Taxation of Legal Representatives and Legal Heirs

Introduction

Upon the death of an individual, his legal representative becomes liable to pay any outstanding tax dues of the deceased. Any income generated from the deceased's estate after the date of death is taxable in the hands of the executor, administrator, or legal heirs, depending on the circumstances.



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Ministry of Finance, Government of India

Meaning of Legal Representative

- Defined under Section 2(29) of the Income-tax Act, referring to Section 2(11) of the Code of Civil Procedure, 1908.
- Includes persons managing the deceased's estate, such as executors, administrators, or legal heirs.

Tax on Income of Deceased Person

1. **Till the Date of Death:** The deceased's income is taxed in their name, and the legal representative must file the return on behalf of the deceased person and pay tax accordingly.
2. **After the Date of Death:**
 - If the deceased **died intestate** (without a will), income from the estate is taxed in the hands of the legal heirs and shall be disclosed in his personal income-tax return.
 - If an **executor is appointed**, income is taxable in the executor's hands under Section 168 until the estate is fully distributed.
 - If there is **no executor but an administrator**, income is taxed in the administrator's hands until distribution.

Apportionment of Income

Income from the estate of the deceased person shall be apportioned between the period ending on the date of the death and starting from the date of death on a time basis. Income which does not accrue from day-to-day shall be apportioned on some other reasonable basis. In case a dividend has been declared after the date of death of the deceased, the whole of the dividend shall be taxable in the hands of the legal heirs, or executors, or administrator, as the case may be.

Assessment Procedure

- If the deceased passed away before filing a return, the legal representative must file it.
- If the deceased passed away after filing return of income but the assessment proceedings has not begun, in that situation the Assessing Officer shall bring the name of the legal representative on record to initiate the assessment proceedings against him.
- If the assessment was initiated but not completed, proceedings continue in the legal representative's name.
- If tax was assessed but unpaid, the legal representative is liable to the extent of the deceased's estate.
- If the deceased passed away, and has been issued notice u/s 142(1) or section 148 and the deceased has not filed return in response to the respective section, then in that situation it is the duty of the legal representative to furnish a return and the assessment proceedings shall be continued in his name as legal representative.

Proceedings Against Legal Representative

- Any proceeding which could have been taken against the deceased if he had not died may be taken against the legal representative.

Carry Forward and Set-Off of Losses

- If a successor inherits a business, he can carry forward the predecessor's losses. However, the total period of carry forward cannot exceed 8 assessment years immediately succeeding the assessment year for which the loss was first computed.

Reporting in Income Tax Return

- Income earned by the deceased before death is reported in the deceased's return.
- Inherited assets do not attract capital gains tax but selling them later does.
- Income earned from inherited property after the date of death shall be considered as legal heir's own income. It shall be reported in legal heir's personal return;
- Refund claims should include details of a joint bank account or require verification by the Assessing Officer.

Surrender of PAN

- The deceased's PAN should be surrendered after filing the final tax return and clearing all dues.

Representative Assessee

Representative Assessee

Introduction

A representative assessee is liable for tax on income received or entitled to be received on behalf of another person. The Income-tax Act deems a representative assessee as an assessee for tax purposes.

Categories of Representative Assessee

1. Agent of a Non-Resident:

- o An agent of a non-resident is a person in India who can be made responsible for paying tax on income earned in India by a non-resident. Such an agent may be anyone employed by or on behalf of the non-resident, having a business connection with him, from or through whom he receives income, acting as his trustee, or someone who has acquired a capital asset from him.
- o The Assessing Officer must provide an opportunity of being heard before treating someone as an agent.



Income Tax Department

Ministry of Finance, Government of India

o An independent broker acting in the ordinary course of business or a person from whom non-resident purchases goods from India for export is not considered an agent.

2. Guardian or Manager of a Minor, Lunatic, or Idiot:

- o The guardian or manager of a minor, lunatic or idiot is treated as a representative assessee and is taxable on the income he receives or is entitled to receive on behalf of such person.
- o A guardian may be a natural guardian (like father or mother), one appointed by a will, one appointed by a court, or a person empowered by law (e.g., under the Court of Wards). For an unmarried Hindu girl, the natural guardian is first the father and, after him, the mother; for an illegitimate girl, it is the mother first and then the father (excluding step-parents).
- o A person cannot act as a natural guardian if he has ceased to be a Hindu or has renounced the world to live as an ascetic.

3. Court of Wards, Administrator-General, Official Trustee, Receiver, or Manager:

- o The Court of Wards, Administrator-General, Official Trustee, or any Receiver or Manager appointed by a court is treated as a representative assessee when they receive or are entitled to receive income on behalf of another person.
- o An Administrator-General may step in to manage the estate of a deceased person (where assets exceed Rs. 10 lakh) if no legal heir or representative applies for probate or administration within a month and if there is a risk of misappropriation or waste of the estate. .

4. Trustee Appointed by an Instrument

- o A trustee managing income for beneficiaries is assessed as a representative assessee.
- o If no formal trust deed exists, a written declaration must be submitted to the Assessing Officer within three months from the date of declaration of the trust.

5. Oral Trust:

- o A trustee under an oral trust is treated as a representative assessee and taxed at the maximum marginal rate.

Liability of Representative Assessee

- A representative assessee is treated as an assessee under the Income-tax Act and is liable for tax on the income he receives or manages on behalf of someone else.
- His liability is the same as that of the actual beneficiary. He can claim the same exemptions, deductions, and benefits as the beneficiary, and the assessment is made in his representative capacity (not mixed with his personal income).
- In case of a trustee, if the trust income includes business profits, the entire income is generally taxed at the maximum marginal rate (the highest rate applicable to an Association of Persons). However, if the trust is created by a will, solely for the support of dependent relatives, and is the only trust so declared, then normal tax rates apply instead of the maximum marginal rate.

Rights of Representative Assessee

- A representative assessee has the right to recover from the actual beneficiary any tax he has paid on that person's behalf, and he may keep aside the same amount out of any money of the beneficiary in his possession.
- In case of dispute, he may obtain a certificate from the Assessing Officer, which serves as his authority to retain that amount until the final liability is decided.

Assessing Officer's Powers

1. Direct Assessment of Beneficiary:

- o The Assessing Officer can assess either the representative assessee or the beneficiary but not both.

2. Tax Recovery from Beneficiary's Property:

- o The tax can be recovered from assets managed by the representative assessee on behalf of the beneficiary.

Assessment of Representative Assessee

1. Agent of a Non-Resident:

- o The agent files returns using his PAN in a representative capacity. The status and tax rate shall be that of the person he is representing.

2. Guardian or Manager of a Minor, Lunatic, or Idiot:

- o The guardian files returns using his PAN in a representative capacity. The status and tax rate shall be that of the person he is representing.

3. Court of Wards, Administrator-General, Official Trustee, Receiver, or Manager [Section 164]:

- o Tax is charged at the maximum marginal rate if beneficiaries' shares are indeterminate.
- o If all beneficiaries have incomes below the exemption limit, normal tax rates apply.

4. Trustee Under an Instrument:



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Ministry of Finance, Government of India

- o A trustee, when assessed as a representative assessee, is taxed at the maximum marginal rate (MMR) if income is indeterminate, unknown, or includes business profits, treating the trust like an AOP.
- o If beneficiaries' shares are determinate and known, the trustee is taxed at the rate applicable to each beneficiary, or the Assessing Officer may assess beneficiaries directly.
- o Income is taxed at the **AOP rate** instead of MMR in the following cases:
 - (a) When none of the beneficiaries has taxable income above the exemption limit or is a beneficiary of another trust.
 - (b) Where the trust is declared by a person by 'will' and such trust is the only trust declared by him.
 - (c) Where a pre-1970 non-testamentary trust is created exclusively for dependents/relatives.
 - (d) Where business income arises from a trust declared by any person by 'will' exclusively for a dependent relative.
 - (e) Where trustees hold income for employee welfare funds.

5. Oral Trust:

- o Tax is levied at the maximum marginal rate.

Taxation of Executors

Taxation of Executors

Introduction

An executor is a person appointed by a testator to administer the estate of a deceased individual and distribute it among beneficiaries. The income from the estate is taxable in the hands of the executor until the estate is fully distributed.

Who is an Executor?

- An executor is appointed by the testator or, in the absence of such appointment, by a court.
- An executor represents the testator, whereas a trustee represents the beneficiaries.
- The term "executor" includes an administrator or any other person managing the estate of the deceased.

Assessment of Executors

- The executor is assessed separately from their personal income.
- The estate's income is taxed in the hands of the executor until full distribution to the beneficiaries.

How Assessment is Made

1. In the Year of Death:

- o Two assessments occur: one for the deceased's income up to the date of death (filed by the legal representative on behalf of the deceased) and another for the estate's income from the date of death onwards which shall be taxable in the hands of the executor until the estate is fully distributed

2. If the Deceased Died Intestate (Without a Will):

- o The estate passes to legal heirs, and income earned from the estate is taxed in their hands.

3. If the Deceased Left a Will:

- o **With an Executor:** The executor is responsible for tax payment until full distribution.
- o **Without an Executor:** An administrator is appointed to manage the estate and is liable for tax.

Taxable Entity of Executor

- A single executor is taxed as an individual.
- Multiple executors are taxed as an Association of Persons (AOP).

Residential Status of Executor

- The residential status of the executor is the same as that of the deceased in the previous year in which death takes place.

Computation of Total Income

- Any income distributed to a beneficiary during the year is excluded from the executor's taxable income and taxed in the hands of the beneficiary.
- Expenses related to obtaining probate or executing the will are not deductible.

Right of the Executor

- As per Sections 162 and 169, the executor can recover tax paid on behalf of the estate from the estate itself.

Succession to Business Otherwise Than on Death

Succession to Business Otherwise Than on Death



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Ministry of Finance, Government of India

Introduction

When a person carrying on a business or profession is succeeded by another, two separate tax assessments are made for the year of succession:

1. **On the predecessor** – For income earned up to the date of succession.
2. **On the successor** – For income earned from the date of succession to the end of the financial year.
If proceedings were initiated or completed against the predecessor before succession, they are deemed to have been made on the successor.

Assessment Rules in Case of Succession

- **Before Succession:** Predecessor is liable for past year assessments.
- **During Succession:**
 - o Predecessor is taxed on income up to the date of succession.
 - o Successor is taxed on income after the date of succession.
- **If the Predecessor Cannot Be Found:** The successor is liable for pending tax assessments of the predecessor.

Validity of Proceedings and Notices

- Proceedings completed or initiated on the predecessor during the pendency of succession shall be deemed to have been made or initiated on the successor.
- If the Assessing Officer is notified of the succession, any further notices in the predecessor's name are void.

Modified Return by Successor Entity

- The business reorganisation often takes place from a preceding date because the adjudicating authority, tribunal, or the High Court takes time in approving such a scheme and passing the final order.
- To address this time gap, the Income-tax Act requires the successor entity to file a modified return of income for the intervening period, i.e., from the effective date of reorganisation to the date of the final order.
- Modified return shall be furnished in the prescribed form and manner within 6 months from the end of the month in which the order is issued.

Recovery of Tax

- If tax dues from the predecessor cannot be recovered, they can be collected from the successor.
- The successor can recover such payments from the predecessor.

HUF Business Succession

- If a Hindu Undivided Family (HUF) business is succeeded and later partitioned, tax liability is apportioned among members based on their share in the partition.

Appeals Against Recovery Orders

- If the tax department passes a recovery order asking a successor to pay the tax dues of a predecessor (other than in case of death), the successor has the right to challenge it. Such a challenge can be made either by filing an appeal before the Commissioner of Income-tax (Appeals) or by filing a revision application before the competent authority.

Modified Return

Modified Return

Introduction

When a business undergoes reorganisation (such as amalgamation, merger, or demerger), the successor entity must file a modified return for the period between the effective date of the business reorganisation and the date of issuance of the final order by the competent authority.

What is Modified Return?

- A Modified Return is a return of income that a successor company must file in cases of business reorganisation, such as amalgamation, merger, or demerger.
- Since these reorganisations often take effect from an earlier date but are approved later by the Competent Authority (Adjudicating Authority, Tribunal, or High Court), the law requires the successor to refile its return to reflect the correct position of income for the period between the effective date of the scheme and the date of the final order.
- This return must be furnished in the prescribed form within six months from the end of the month in which the final order is passed.

Who is Required to File a Modified Return?

- A Modified Return must be filed by the successor company in a business reorganisation if it has already filed a return of income under section 139 for the assessment year falling between the effective date of the scheme and the date of the final order of the Competent Authority.
- The modified return shall be filed irrespective of whether the earlier return was an original, loss, belated, revised, or even updated return.



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Ministry of Finance, Government of India

- The successor must file modified returns for all the previous years covered by the order of reorganisation.

Scope of Modified Return

- Only those changes arising from the order of business reorganization can be included.
- Errors or omissions unrelated to the reorganization cannot be rectified through a modified return.

Form and Time Limit

- Must be filed electronically in Form ITR-A using a digital signature.
- Applies only to business reorganization orders issued on or after April 1, 2022
- For orders issued between June 1, 2016, and March 31, 2022, the CBDT has allowed modified returns under a special order under Section 119.[Order F.No. 225/5/2021-ITA-II, dated 13-03-2024]

Assessment Based on Modified Return

- **If assessment is already completed:** The Assessing Officer will modify the assessment based on the modified return.
- **If assessment is pending:** The Assessing Officer will complete the assessment considering the modified return.

Applicable Tax Rates

- The tax rates applicable will be those relevant to the assessment year for which the modified return is filed.
- Section 170A overrides any conflicting provisions in the Income-tax Act.

Assessment of Persons Leaving India

Assessment of Persons Leaving India

Introduction

If the Assessing Officer believes that an individual is likely to leave India during the current assessment year or shortly thereafter without intending to return, the officer can tax the individual's total income before departure. This ensures tax collection before the person becomes untraceable.

Income Taxable in the Previous Year Itself

Normally, the income of a previous year is chargeable in the next following assessment year. However, this general principle is subject to some exceptions in which income is charged to tax in the previous year itself.

One exception arises when it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India. In this situation, his total income for the relevant financial year (from the 1st day of the previous year and up to the probable date of his departure from India) shall be charged to tax in that year itself.

Separate Assessments and Tax Rates

- Income is taxed at the rates in force for that assessment year.
- Separate assessments are made for each completed financial year or part thereof.

Issue of Notice

- The Assessing Officer issues a notice under Section 142(1)(i), requiring the individual to furnish returns for:
 - o Each completed previous year.
 - o Estimated income from the start of the financial year to the likely departure date.

Filing of Return and Consequences of Non-Compliance

- The individual must file the return within at least seven days of receiving the notice.
- If no return is filed:
 - o Best judgment assessment under Section 144 applies.
 - o Penalty under Section 271 may be levied.
 - o Prosecution under Section 276CC may be initiated

Assessment of AOP, BOI, or AJP Formed for a Short Duration

Assessment of AOP, BOI, or AJP Formed for a Short Duration

Introduction

If the Assessing Officer believes that an Association of Persons (AOP), Body of Individuals (BOI), or Artificial Juridical Person (AJP) is likely to dissolve within the current assessment year or shortly thereafter, tax on its total income can be levied before dissolution. This ensures prompt tax collection before the entity ceases to exist.

Income Taxable in the Previous Year Itself



Income Tax Department

Ministry of Finance, Government of India

Normally, the income of a previous year is chargeable in the next following assessment year. However, this general principle is subject to some exceptions in which income is charged to tax in the previous year itself.

One exception arises when it appears to the Assessing Officer that any AOP or BOI or AJP, formed for a particular event or purpose is likely to be dissolved in the assessment year in which it was formed or immediately after such assessment year. In this situation, the total income of such AOP or BOI or AJP for the relevant financial year (from the 1st day of the previous year and up to the probable date of dissolution) shall be charged to tax in that year itself.

Separate Assessments and Tax Rates

- Income is taxed at the rates in force for that assessment year.
- Separate assessments are made for each completed financial year or part thereof.

Issue of Notice

- The Assessing Officer issues a notice under Section 142(1)(i), requiring the entity to furnish returns for:
 - Each completed previous year.
 - Estimated income from the start of the financial year to the likely dissolution date.

Filing of Return and Consequences of Non-Compliance

- The return must be filed within the period specified in the notice, which cannot be less than seven days.
- If no return is filed:
 - Best judgment assessment under Section 144 applies.
 - Penalty under Section 271 may be levied.
 - Prosecution under Section 276CC may be initiated.

Assessment of Persons Likely to Transfer Property to Avoid Tax

Assessment of Persons Likely to Transfer Property to Avoid Tax

Introduction

If the Assessing Officer believes that a person may sell, transfer, or dispose of assets to evade tax liabilities, the total income of that person can be taxed before the transfer occurs. This ensures tax recovery before assets are beyond reach.

Income Taxable in the Previous Year Itself

Normally, the income of a previous year is chargeable in the next following assessment year. However, this general principle is subject to some exceptions in which income is charged to tax in the previous year itself.

One exception arises when it appears to the Assessing Officer that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoid payment of any liability under this Act. In this situation, the total income of such person for the relevant financial year (from 1st day of previous year and up to the date the Assessing Officer commences proceedings) shall be charged to tax in that year itself.

Separate Assessments and Tax Rates

- Tax is levied at the rates in force for the relevant assessment year.
- Separate assessments are made for each completed financial year or part thereof.

Issue of Notice

- The Assessing Officer issues a notice under Section 142(1)(i), requiring the individual to furnish returns for:
 - Each completed previous year.
 - Estimated income from the start of the financial year to the date of assessment.

Filing of Return and Consequences of Non-Compliance

- The return must be filed within the period specified in the notice, which cannot be less than seven days.
- If no return is filed:
 - Best judgment assessment under Section 144 applies.
 - Penalty under Section 271 may be levied.
 - Prosecution under Section 276CC may be initiated.

Assessment of Discontinued Business or Profession

Assessment of Discontinued Business or Profession

Introduction



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Ministry of Finance, Government of India

If a business or profession is discontinued during the year, the tax officer can tax the income earned from the start of that year up to the date of discontinuance in the same year itself.

Income Taxable in the Previous Year Itself

Normally, the income of a previous year is chargeable in the next following assessment year. However, this general principle is subject to some exceptions in which income is charged to tax in the previous year itself.

One exception arises when any business or profession is discontinued in any assessment year. In this situation, the total income from such business or profession for the relevant financial year (from 1st day of previous year and up to the date of discontinuation) shall be charged to tax in that year itself.

Possibility of Regular Assessments

- A firm discontinuing its business may be assessed in the manner provided under the provisions of Section 176 in the year itself in which it discontinues its business, it may also be assessed in the year of assessment as per Section 189.
- Similarly, where an AOP discontinues its business, it may be assessed in the manner provided under the provisions of Section 176 in the year itself in which it discontinues its business, it may also be assessed in the year of assessment as per Section 177.

Notice of Discontinuance

- The taxpayer must notify the Assessing Officer within 15 days of discontinuance.
- Failure to do so attracts a penalty of Rs. 500 per day under Section 272A.

Separate Assessments and Tax Rates

- Income is taxed at the rates in force for the relevant assessment year.
- Separate assessments are made for each completed financial year or part thereof.

Issue of Notice and Filing of Return

- The Assessing Officer issues a notice under Section 142(1)(i), requiring the taxpayer to furnish:
 - Returns for each completed previous year.
 - Estimated income for the period up to discontinuance.
- The return must be filed within the specified time, not less than seven days.
- If no return is filed:
 - Best judgment assessment under Section 144 applies.
 - Penalty under Section 271 may be levied.
 - Prosecution under Section 276CC may be initiated.

Receipts After Discontinuance

- Any income received after discontinuance is taxable in the year of receipt, provided it would have been taxable if received earlier.
- The CBDT has directed Assessing Officers to use Section 133(6) to collect information on outstanding professional fees at the time of discontinuance. [Instruction No. 703, dated 12-6-1974]

Company in Liquidation

Company in Liquidation

Introduction

When a company undergoes liquidation, a liquidator is appointed to oversee the sale of assets and settlement of liabilities. This provision ensures that the government's tax dues are not evaded during the liquidation process.

Duties of the Liquidator

1. Notification to Assessing Officer:

- The liquidator must inform the Assessing Officer within 30 days of their appointment.

2. Assessment by the Tax Department:

- The Assessing officer can ask for any information he needs and must inform the liquidator, within 3 months of getting the notice of appointment, about the amount that should be set aside to cover the company's present or likely future tax dues.

3. Set-Aside of Tax Amount:

- The liquidator cannot distribute assets without setting aside the notified tax amount.
- Exceptions: Payments to secured creditors and winding-up costs approved by tax authorities.

Priority of Tax Dues in Liquidation



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- Under the Insolvency and Bankruptcy Code, 2016 (IBC), tax dues rank below secured creditors.
- The priority of payments under Section 53 of IBC is:
 1. Insolvency resolution and liquidation costs
 2. Workmen's dues (24 months) and secured creditors
 3. Employee wages (12 months)
 4. Unsecured creditors
 5. Government dues (preceding 2 years) and unpaid secured creditor amounts
 6. Other debts and dues
 7. Preference shareholders
 8. Equity shareholders

Consequences of Default by Liquidator

A liquidator is personally liable for tax dues if they:

- Fail to notify the Assessing Officer within 30 days.
- Fail to set aside the notified tax amount.
- Distribute assets within three months without approval.
- Penalty:
 - Joint and several liability if multiple liquidators exist.
 - Rigorous imprisonment of up to two years under Section 276A.

Liability of Directors

- If a private company fails to pay tax, its directors are jointly and severally liable unless they prove that non-recovery was not due to their neglect or breach of duty.
- This applies even if the company has not gone into liquidation.
- Tax due includes penalty, interest, and fees.

Discretionary and Specific Trusts

Discretionary and Specific Trusts

Introduction

A discretionary trust gives trustees absolute discretion over distributing income or capital among beneficiaries. A specific trust has pre-determined beneficiaries with fixed shares in income and corpus. While both are taxed in a representative capacity, discretionary trusts are taxed under Section 164, and specific trusts under Section 161.

Types of Trusts

- **Oral and Written Trusts** – A trust can be created orally or through a written document.
- **Discretionary Trust** – Trustees decide the distribution of income/capital.
- **Specific Trust** – Beneficiaries have a definite right to income or corpus.

Key Differences Between Discretionary and Specific Trusts

- If beneficiaries' shares are fixed and known, it is a specific trust (Section 161).
- If shares are not fixed, it is a discretionary trust (Section 164).
- Even a single-beneficiary discretionary trust is taxed under Section 164 if income is not specifically receivable for that beneficiary.

Taxation of Trusts

Specific Trust (Section 161)

- If the beneficiary's share is determinate, income is taxed in the hands of the trustee as a representative-assessee or directly in the hands of the beneficiaries.
- Tax is levied at the rate applicable to the beneficiary.
- The Assessing Officer can choose to tax either the trustee or the beneficiary, but not both.

Discretionary Trust (Section 164)

- If beneficiaries' shares are indeterminate, the trustee is taxed as a representative-assessee at the maximum marginal rate.
- If income is received by a provident fund, pension fund, or gratuity fund, it is exempt under Section 10(25).



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Ministry of Finance, Government of India

Tax Rates for Trusts

Maximum Marginal Tax Rate (Section 164(1))

• Applies when:

- o Beneficiaries' shares are not fixed.
- o The trust has business income.
- o The trust is not created by will or for dependent relatives.

Tax Rate Applicable to Beneficiary (Section 161(1))

• Applies when:

- o Beneficiary's share is determinate and known.
- o Trust does not have business income.

Tax Rate as per AOP (First Proviso to Section 164(1))

• Applies when:

- o When none of the beneficiaries has taxable income above the exemption limit or is a beneficiary of another trust.
- o Where the trust is declared by a person by 'will' and such trust is the only trust declared by him.
- o Where a pre-1970 non-testamentary trust is created exclusively for dependents/relatives.
- o Where business income arises from a trust declared by any person by 'will' exclusively for a dependent relative.
- o Where trustees hold income for employee welfare funds

Apportionment of Income Between Specific and Discretionary Trusts

• If a trust has both determinate and indeterminate beneficiaries, taxation is split:

- o Determinate portion is taxed under Section 161(1).
- o Indeterminate portion is taxed under Section 164(1).

Taxation of Partially Taxable Trusts (Section 165)

• If only part of a trust's income is taxable, tax is proportionally calculated.

$$\text{Sum received from income chargeable to tax} = \frac{\text{Sum received from trust} \times \text{Trust's income chargeable to tax}}{\text{Trust's total Income}}$$

Oral Trust

Oral Trust

Introduction

An oral trust is a trust not declared through a written instrument, including any valid Wakf deed under the Mussalman Wakf Validating Act, 1913.

Recognition of Oral Trusts

- If a written declaration containing trust purpose, trustee details, beneficiaries, and trust property is submitted to the Assessing Officer within three months from the date of declaration of the trust, the oral trust is treated as a written trust.
- If no such declaration is made, it remains an oral trust for tax purposes.

Taxation of Oral Trusts

• **Maximum Marginal Rate (MMR) [Section 164A]**

- o Income of an oral trust is taxed at MMR, whether received or receivable on behalf of a beneficiary.

• **Taxation of Partially Taxable Trusts [Section 165]**

- o If only part of the trust's income is taxable, tax is computed proportionally on the sum received by the beneficiary.

$$\text{Sum received from income chargeable to tax} = \frac{\text{Sum received from trust} \times \text{Trust's income chargeable to tax}}{\text{Trust's total Income}}$$

Recovery of Firm's Dues

Recovery of Firm's Dues



Income Tax Department

Ministry of Finance, Government of India

Introduction

If a firm has outstanding tax dues, these can be recovered from every person who was a partner during the relevant financial year, whether the firm is under liquidation or not.

Liability of Partners

Limited Liability Partnership (LLP) [Section 167C]

- If tax dues cannot be recovered from an LLP, all partners during the relevant year are jointly and severally liable for payment.
- Exception: A partner is not liable if they can prove that the non-recovery was not due to their neglect, misfeasance, or breach of duty.

Tax Due Includes:

- Tax, penalty, interest, or any other sum payable under the Income-tax Act.

Other Cases (Non-LLP Firms) [Section 188A]

- All partners or legal representatives of a deceased partner are jointly and severally liable for the firm's tax dues.
- The provisions of the Income-tax Act apply for assessment and collection of such tax or penalties.

Assessment on Dissolution or Discontinuance of AOP or Firm

Assessment on Dissolution or Discontinuance of AOP or Firm

Introduction

If an Association of Persons (AOP) or firm is dissolved or discontinued, its assessment is made as if dissolution had not occurred. Every member, partner, or legal representative is jointly and severally liable for tax dues, penalties, or other sums payable.

Applicability

- Applies to: Dissolution or discontinuance of AOP or firms.
- Assessment continues: The Assessing Officer computes total income as if business continued.
- Tax, penalties, and other sums remain chargeable.

Imposition of Penalty

- If the AOP or firm is found guilty of offences under Chapter XXI, penalties can be imposed.
- The Assessing Officer, Joint Commissioner (Appeals), or Commissioner (Appeals) may levy penalties.

Recovery of Dues

- All partners/members (or their legal representatives) at the time of dissolution are jointly and severally liable for tax, penalty, or other sums.
- Legal representatives are liable only to the extent of the estate's assets [as per Section 159(6)].

Continuance of Proceedings

- If proceedings were initiated before dissolution, they continue against the partners/members or legal representatives.
- The proceedings resume from the stage at which they were left.

