

CS Executive Programme MODULE 1

Tax Laws and Practice

INCOME TAX ACT, 1961

[43 OF 1961]

[AS AMENDED BY FINANCE ACT, 2008]



INCOME-TAX ACT, 1961*

[43 OF 1961]

[AS AMENDED BY FINANCE ACT, 2008]

*An Act to consolidate and amend the law relating to
income-tax and super-tax*

BE it enacted by Parliament in the Twelfth Year of the Republic of
India as follows :—

CHAPTER I PRELIMINARY

Short title, extent and commencement.

- 1.** ²(1) This Act may be called the Income-tax Act, 1961.
- (2) It extends to the whole of India.
- (3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

Definitions.

- 2.** In this Act, unless the context otherwise requires,—
 - ³[(1) “advance tax” means the advance tax payable in accordance with the provisions of Chapter XVII-C;]

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1. For applicability of the Act to State of Sikkim, see section 26 of the Finance Act, 1989.
For extension of Act to Continental Shelf of India, see Notification No. GSR 304(E), dated 31-3-1983. For details, see Taxmann's Master Guide to Income-tax Act.
 2. For effective date for the applicability of the Act in the State of Sikkim, see Notification No. SO 148(E), dated 23-2-1989. For details, see Taxmann's Master Guide to Income-tax Act.
 3. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

***Amendments made by the Finance Act, 2008 notwithstanding the dates from which they come into effect, have been printed in italics enclosed with bold square brackets. Amendments made by the Finance Act, 2007 coming into force from April 1, 2008 have also been printed in italics but enclosed within medium square brackets.**

⁴[⁵(1A)] ⁶“agricultural income”⁷ means⁸—

- ⁹[(a) any rent¹⁰ or revenue derived from land¹⁰ which is situated in India and is used for agricultural purposes;]
- (b) any income derived from such land¹⁰ by—
- (i) agriculture¹⁰; or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market¹⁰; or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :
- ⁹[**Provided** that—
- (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and
 - (ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—
 - (A) 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)

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4. Renumbered as clause (1A) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.
 5. For relevant case laws, see Taxmann's Master Guide to Income-tax Act.
 6. See rules 7 and 8 for manner of computation of income which is partially agricultural and partially from business. See also rules 7A & 7B.
 7. The Finance Act, 1973 introduced for the first time a scheme of partially integrated taxation of non-agricultural income with incomes derived from agriculture for the purposes of determining the rate of income-tax that will apply to certain non-corporate assesseees. The scheme is since continued by the Annual Finance Acts. The provisions applicable for the assessment year 2008-09 are contained in section 2(2)/2(13)(c) and Part IV of the First Schedule to the Finance Act, 2008.
 8. See also Circular No. 310, dated 29-7-1981 and Circular No. 5/2003, dated 22-5-2003. For details, see Taxmann's Master Guide to Income-tax Act.
 9. Substituted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1962.
 10. For meaning of the terms/expressions “rent”, “revenue”, “derived”, “revenue derived from land”, “such land”, “agriculture” and “market”, see Taxmann's Direct Taxes Manual, Vol. 3.

- or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or
- (B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette¹¹.]

¹²[¹³*Explanation 1.*—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.]

¹⁴[*Explanation 2.*—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income;]

The following *Explanation 3* shall be inserted after *Explanation 2* in clause (1A) of section 2 by the Finance Act, 2008, w.e.f. 1-4-2009 :

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income;

¹⁵[¹⁶(1B)] “amalgamation”, in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;

11. For specified urban areas, refer Taxmann’s Direct Taxes Circulars.

12. Inserted by the Finance Act, 1989, w.r.e.f. 1-4-1970.

13. *Explanation* renumbered as *Explanation 1* by the Finance Act, 2000, w.e.f. 1-4-2001.

14. Inserted, *ibid*.

15. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

16. Renumbered as clause (1B) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

(iii) shareholders holding not less than ¹⁷[three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company ;]

¹⁸[(1C) “Additional Commissioner” means a person appointed to be an Additional Commissioner of Income-tax under sub-section (1) of section 117;

(1D) “Additional Director” means a person appointed to be an Additional Director of Income-tax under sub-section (1) of section 117 ;]

(2) “annual value”, in relation to any property, means its annual value as determined under section 23 ;

(3) ¹⁹[* * *]

(4) “Appellate Tribunal” means the Appellate Tribunal constituted under section 252 ;

(5) “approved gratuity fund” means a gratuity fund which has been and continues to be approved by the ²⁰[Chief Commissioner or Commissioner] in accordance with the rules contained in Part C of the Fourth Schedule ;

(6) “approved superannuation fund” means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the ²⁰[Chief Commissioner or Commissioner] in accordance with the rules contained in Part B of the Fourth Schedule ;

²¹(7) “assessee”²² means a person by whom ²³[any tax] or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income²⁴[or assessment of fringe benefits] or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

17. Substituted for “nine-tenths” by the Finance Act, 1999, w.e.f. 1-4-2000.

18. Clauses (1C) and (1D) inserted by the Finance Act, 2007, w.r.e.f. 1-6-1994.

19. Clause (3) omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

20. Substituted for “Commissioner”, *ibid.*

21. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

22. For meaning of the term “assessee”, see Taxmann’s Direct Taxes Manual, Vol. 3.

23. Substituted for “income-tax or super-tax” by the Finance Act, 1965, w.e.f. 1-4-1965.

24. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act ;

²⁵[(7A) “Assessing Officer” means the Assistant Commissioner ²⁶[or Deputy Commissioner] ²⁷[or Assistant Director] ²⁶[or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the ²⁸[Additional Commissioner or] ²⁹[Additional Director or] ³⁰[Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]

(8) “assessment”³¹ includes reassessment ;

(9) “assessment year” means the period of twelve months commencing on the 1st day of April every year ;

³²[(9A) “Assistant Commissioner” means a person appointed to be an Assistant Commissioner of Income-tax ³³[or a Deputy Commissioner of Income-tax] under sub-section (1) of section 117 ;]

³⁴[(9B) “Assistant Director” means a person appointed to be an Assistant Director of Income-tax under sub-section (1) of section 117;]

(10) “average rate of income-tax” means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income ;

³⁵[(11) “block of assets” means a group of assets falling within a class of assets comprising—

(a) tangible assets, being buildings, machinery, plant or furniture;

25. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

26. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

27. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

28. Inserted by the Finance Act, 2007, w.r.e.f. 1-6-1994.

29. Inserted, *ibid.*, w.r.e.f. 1-10-1996.

30. Substituted for “Deputy Commissioner or Deputy Director” by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “or Deputy Director” was inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

31. For the meaning of the term “assessment”, see Taxmann’s Direct Taxes Manual, Vol. 3.

32. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

33. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

34. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-1988.

35. Substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Prior to its substitution, clause (11), as inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, read as under :

‘(11) “block of assets” means a group of assets falling within a class of assets, being buildings, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed ;’

Original clause was earlier omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

(b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed ;]

(12) “Board” means the ³⁶[Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] ;

³⁷[(12A) “books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;]

³⁸(13) “business”³⁹ includes any trade³⁹, commerce or manufacture or any adventure³⁹ or concern in the nature of trade³⁹, commerce or manufacture ;

⁴⁰(14) “capital asset” means property⁴¹ of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession ;

⁴²(ii) *personal effects*⁴³, that is to say, *movable property (including wearing apparel and furniture) held for personal use*⁴³ by the assessee or any member of his family dependent on him, but excludes—

(a) *jewellery*;

(b) *archaeological collections*;

36. Substituted for “Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (4 of 1924)” by the Central Boards of Revenue Act, 1963, w.e.f. 1-1-1964.

37. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

38. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

39. For the meaning of the terms/expressions “business”, “trade”, “adventure” and “in the nature of trade”, see Taxmann’s Direct Taxes Manual, Vol. 3.

40. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

41. For the meaning of the term “property”, see Taxmann’s Direct Taxes Manual, Vol. 3.

42. Substituted by the Finance Act, 2007, w.e.f. **1-4-2008**. Prior to its substitution, sub-clause (ii), as substituted by the Finance Act, 1972, w.e.f. 1-4-1973, read as under :

“(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

Explanation.—For the purposes of this sub-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 ;”

43. For the meaning of the expressions “personal effects” and “personal use”, see Taxmann’s Direct Taxes Manual, Vol. 3.

- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Explanation.—For the purposes of this sub-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;]

⁴⁴[(iii) agricultural land⁴⁵ in India, not being land situate—

- (a) in any area which is comprised within the jurisdiction of a municipality⁴⁵ (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 population⁴⁵ of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or
- (b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette⁴⁶;

⁴⁷[(iv) 6½ per cent Gold Bonds, 1977,⁴⁸[or 7 per cent Gold Bonds, 1980,]
⁴⁹[or National Defence Gold Bonds, 1980,] issued by the Central Government ;]

⁵⁰[(v) Special Bearer Bonds, 1991, issued by the Central Government ;]

44. Substituted for “(iii) agricultural land in India” by the Finance Act, 1970, w.e.f. 1-4-1970.

45. For the meaning of the terms/expressions “agricultural land”, “municipality” and “population”, see Taxmann’s Direct Taxes Manual, Vol. 3.

46. For specified urban areas, refer Taxmann’s Direct Taxes Circulars.

47. Inserted by the Taxation Laws (Amendment) Act, 1962, w.e.f. 13-12-1962.

48. Inserted by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

49. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965, w.e.f. 4-12-1965.

50. Inserted by the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, w.e.f. 12-1-1981.

⁵¹[(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government ;]

⁵²(15) ⁵³“charitable purpose”⁵⁴ includes relief of the poor, education⁵⁴, medical relief, and the advancement of any other⁵⁴ object of general public utility⁵⁵ [* * *];

The following clause (15) shall be substituted for clause (15) of section 2 by the Finance Act, 2008, w.e.f. 1-4-2009 :

(15) “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

⁵⁶[(15A) “Chief Commissioner” means a person appointed to be a Chief Commissioner of Income-tax under sub-section (1) of section 117 ;]

⁵⁷[⁵⁸[(15B)] “child”, in relation to an individual, includes a step-child and an adopted child of that individual ;]

⁵⁹[(16) “Commissioner” means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117 ⁶⁰[* * *];]

⁶¹[(16A) “Commissioner (Appeals)” means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117 ;]

⁶²[(17) “company” means—

- (i) any Indian company, or
- (ii) any body corporate incorporated by or under the laws of a country outside India, or
- (iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the

51. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

52. See also Circular No. 395, dated 24-9-1984. For details, see Taxmann’s Master Guide to Income-tax Act.

53. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

54. For the meaning of terms/expression “charitable purpose”, “education” and “object of general public utility”, see Taxmann’s Direct Taxes Manual, Vol. 3.

55. “not involving the carrying on of any activity for profit” omitted by the Finance Act, 1983, w.e.f. 1-4-1984.

56. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

57. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

58. Renumbered by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

59. Substituted by the Finance Act, 1970, w.e.f. 1-4-1970.

60. Words “, and includes a person appointed to be an Additional Commissioner of Income-tax under that sub-section” omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

61. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

62. Substituted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

Indian Income-tax Act, 1922 (11 of 1922), or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or

- (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company :

Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ;]

- (18) “company in which the public are substantially interested”—a company is said to be a company in which the public⁶³ are substantially interested—

⁶⁴[(a) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or]

⁶⁵[(aa) if it is a company which is registered under section 25 of the Companies Act, 1956 (1 of 1956)⁶⁶ ; or

(ab) if it is a company having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested :
Provided that such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ; or]

⁶⁷[(ac) if it is a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A⁶⁸ of the Companies Act, 1956 (1 of 1956), to be a *Nidhi* or Mutual Benefit Society ; or]

⁶⁹[(ad) if it is a company, wherein shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or

63. For the meaning of the term “public”, see Taxmann’s Direct Taxes Manual, Vol. 3.

64. Substituted by the Finance Act, 1964, w.e.f. 1-4-1964.

65. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

66. For text of section 25 of the Companies Act, 1956, see **Appendix**.

67. Inserted by the Finance Act, 1985, w.r.e.f. 1-4-1984.

68. For text of section 620A of the Companies Act, 1956, and notified *Nidhi*(s) thereunder, see **Appendix**.

69. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

acquired unconditionally by, and were throughout the relevant previous year beneficially held by, one or more co-operative societies ;]

⁷⁰[(b) if it is a company which is not a ⁷¹private company as defined in the Companies Act, 1956 (1 of 1956), and the conditions specified either in item (A) or in item (B) are fulfilled, namely :—

(A) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder ;

⁷²[(B) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—

(a) the Government, or

(b) a corporation established by a Central, State or Provincial Act, or

(c) any company to which this clause applies or any subsidiary company of such company ⁷³[if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.]

Explanation.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (B) shall have effect as if for the words “not less than fifty per cent”, the words “not less than forty per cent” had been substituted ;]

(19) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;

70. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970. Earlier, clause (b) was amended first by the Finance Act, 1965, w.e.f. 1-4-1965 and then by the Finance Act, 1966, w.e.f. 1-4-1966.

71. Clause (iii) of section 3(1) of the Companies Act, 1956, defines “private company”. For text of section 3, see **Appendix**.

72. Substituted by the Finance Act, 1983, w.e.f. 2-4-1983.

73. Substituted for “where such subsidiary company fulfils the conditions laid down in clause (b) of section 108” by the Finance Act, 1987, w.e.f. 1-4-1988.

⁷⁴[(19A) “Deputy Commissioner” means a person appointed to be a Deputy Commissioner of Income-tax ⁷⁵[* * *] under sub-section (1) of section 117 ;

⁷⁶[(19AA) “demerger”, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394⁷⁷ of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

- (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;
- (ii) all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
- (iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;
- (iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;
- (v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;
- (vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1.—For the purposes of this clause, “undertaking” shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

74. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

75. Words “or an Additional Commissioner of Income-tax” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier the quoted words were inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

76. Clauses (19AA) and (19AAA) inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

77. For text of sections 391 to 394 of the Companies Act, 1956, see **Appendix**.

Explanation 2.—For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include—

- (a) the liabilities which arise out of the activities or operations of the undertaking;
- (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and
- (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3.—For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils ⁷⁸[such conditions as may be notified in the Official Gazette⁷⁹, by the Central Government];

(19AAA) “demerged company” means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;]

(19B) “Deputy Commissioner (Appeals)” means a person appointed to be a Deputy Commissioner of Income-tax (Appeals) ⁸⁰[or an Additional Commissioner of Income-tax (Appeals)] under sub-section (1) of section 117 ;]

⁸¹[(19C) “Deputy Director” means a person appointed to be a Deputy Director of Income-tax ⁸²[* * *] under sub-section (1) of section 117 ;]

(20) ⁸³“director”, “manager” and “managing agent”, in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956) ;

78. Substituted for “the conditions specified in sub-clauses (i) to (vi) of this clause, to the extent applicable” by the Finance Act, 2000, w.e.f. 1-4-2000.

79. For notified conditions, see Taxmann’s Master Guide to Income-tax Act.

80. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

81. Inserted, *ibid.*

82. Words “or an Additional Director of Income-tax” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

83. Clauses (13), (24) and (25) of section 2 of the Companies Act, 1956, define expressions “director”, “manager” and “managing agent”, respectively. For text of provisions, see **Appendix.**

⁸⁴[(21) “Director General or Director” means a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be ⁸⁵[an Additional Director of Income-tax or] a ⁸⁶[Joint] Director of Income-tax or an Assistant Director ⁸⁷[or Deputy Director] of Income-tax ;]

(22) ⁸⁸“dividend”⁸⁹ includes—

- (a) any distribution⁸⁹ by a company of accumulated profits⁸⁹, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;
- (b) any distribution⁸⁹ to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits⁸⁹, whether capitalised or not ;
- (c) any distribution⁸⁹ made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;
- (d) any distribution⁸⁹ to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits⁸⁹ which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;
- (e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) ⁹⁰[made after the 31st day of May, 1987, by way of advance or loan to a shareholder⁹¹, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern

84. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

85. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

86. Substituted for “Deputy” by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

87. Inserted, *ibid*.

88. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

89. For the meaning of the terms “dividend”, “distribution” and “profits”, see Taxmann’s Direct Taxes Manual, Vol. 3.

90. Substituted for “by way of advance or loan to a shareholder, being a person who has a substantial interest in the company,” by the Finance Act, 1987, w.e.f. 1-4-1988.

91. For the meaning of the term “shareholder”, see Taxmann’s Direct Taxes Manual, Vol. 3.

in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits⁹² ;

but “dividend” does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;
- ⁹³[(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, ⁹⁴[and before the 1st day of April, 1965] ;]
- (ii) any advance or loan made to a shareholder ⁹⁵[or the said concern] by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;
- ⁹⁶[(iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A⁹⁷ of the Companies Act, 1956 (1 of 1956);
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).]

Explanation 1.—The expression “accumulated profits”, wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression “accumulated profits” in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date

92. For the meaning of the terms “profits” and “distribution”, see Taxmann’s Direct Taxes Manual, Vol. 3.

93. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

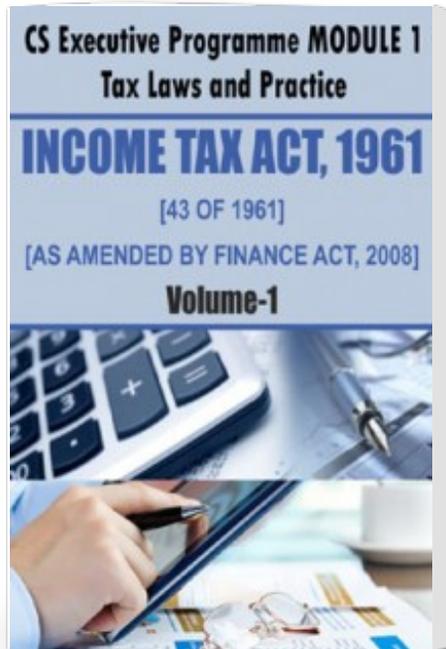
94. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

95. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

96. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

97. For text of section 77A of the Companies Act, 1956, see **Appendix**.

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