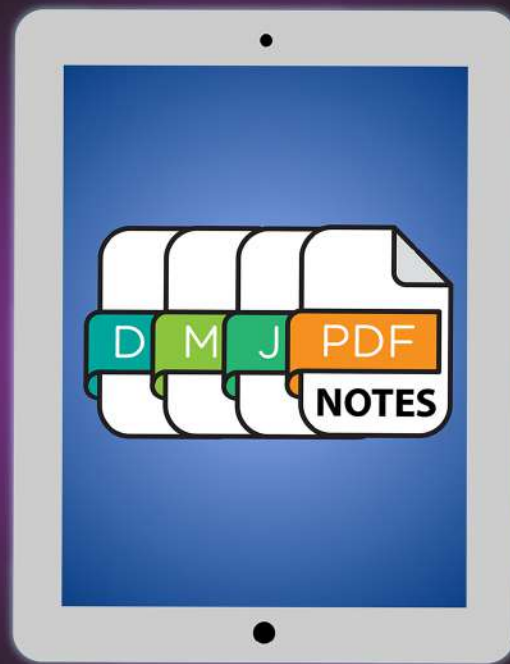




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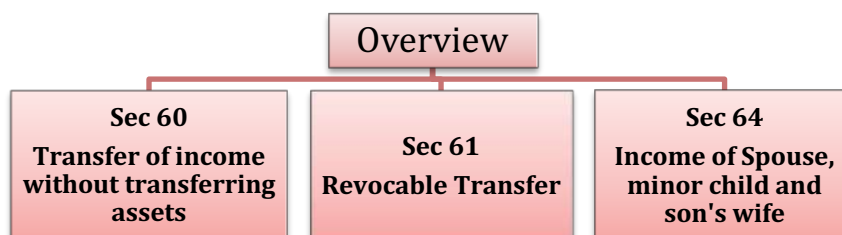
CA Inter

Direct Taxes



Paper-4A

Income of other persons included in assessee's total income



General points to remember

- The income, which is to be clubbed, shall be first computed in the hands of recipient, all expenditure related to such income shall be allowed as per the respective provisions of the Act, and thereafter the net income shall be clubbed.
- Clubbing shall be made **head wise**.
- If the clubbed income is eligible for deduction **u/s 80C to 80U**, then such deduction shall be allowed to the assessee in whose hands such income is clubbed.
- Includes clubbing of **negative income**.
- Clubbing provisions is **mandatory** and shall be applied even in those cases where the application of such provision causes loss of revenue to the Income tax department.
- The credit of **TDS** shall be given to the person in whose hands the income is taxable.
- The **advance tax** paid by the income earner (say spouse or minor child) with reference to such income is not eligible for adjustment towards the tax liability of the individual in whose hands such income has been clubbed. In such case, it is open to the payer of advance tax to apply for refund of advance tax so paid.
- Sec. 65 empowers the income tax authorities to **serve demand notice** (in respect of tax of clubbed income) upon transferee.

Sec 60 – Transfer of income without transferring assets

- Where an income is transferred without transferring the asset yielding such income – Such income is clubbed in the hands of the transferor.
 - whether the transfer is revocable or not; or
 - whether the transaction is affected before or after the commencement of this Act.

Sec 61 – Income arising from Revocable transfer of assets

- If an assessee transfers an asset under a revocable transfer, then income generated from such asset, shall be clubbed in the hands of the transferor.
- Transfer shall be deemed to be *revocable* if -

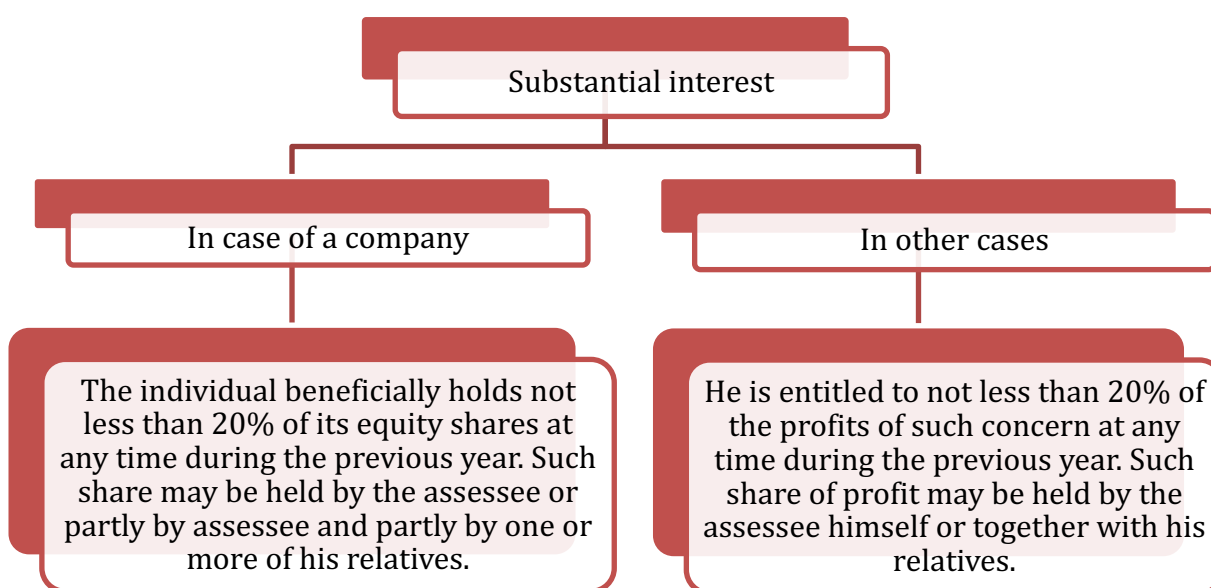
- It contains any **provision for the retransfer** (directly or indirectly) of any part or whole of the income/assets to the transferor; or
- It, in any way, gives the transferor a **right to re-assume power** (directly or indirectly) over any part or whole of the income/assets.

➤ **Sec 62 – Exceptions to the above rule**

- Sec. 61 shall not apply to an income arising to a person by virtue of
- A transfer by way of creation of a trust which is **irrevocable during the lifetime** of the beneficiary
 - Any transfer which is irrevocable during the lifetime of the transferee
 - Any transfer made **before 1.4.61**, which is not revocable for a period exceeding **6 years**

Sec. 64(1)(ii) - Remuneration to spouse

- Income of spouse by way of **salary, commission, fees or any other remuneration** (whether in cash or in kind) from a concern in which such assessee has substantial interest will be included in the total income of the assessee.
- Any **other income**, which is not specified above is not clubbed.
- Income generated through technical or professional qualification of the spouse is **not to be clubbed** in the total income of the individual.
- Where both, husband and wife, have substantial interest in a concern and both are drawing remuneration from that concern without possessing any specific qualification.
- Remuneration from such concern will be included in the total income of husband or wife, whose total income excluding such remuneration, **is higher**
 - In any subsequent years, such income cannot be included in the total income of the other spouse without **prior intimation by the Assessing officer** and after giving an opportunity of being heard to such spouse.
 - If both are not having any other income, then income will not be clubbed.



- Relative here includes spouse, brother or sister or any lineal ascendant or descendant of that individual [Sec. 2(41)].

Sec. 64(1)(iv) - Income from asset transferred to spouse

- Income arising from assets transferred to spouse without adequate consideration, shall be included in the income of that individual.
- Clubbing provision shall not be attracted
 - When such transfer is for adequate consideration
 - The transfer is under an agreement to live apart
 - Where the asset transferred is house property (as such transfer will be governed by Sec. 27)
 - The relationship of husband and wife does not subsist either on the date of transfer of assets or on the date of accrual of income
 - Income from assets acquired by spouse out of pin money or household savings
- Points to remember with regard to house property
 - Where house property is transferred with adequate consideration & not in pursuance to an agreement to live apart - Income generated from such property is clubbed in the hand of the transferor by virtue of sec 27
 - When such asset is sold - Capital gain generated will be clubbed in the hand of the transferor by virtue of sec 64 (1)(iv).
 - When money is gifted and the spouse purchases house property from such amount - Income generated from such property is clubbed in the hand of the transferor by virtue of sec 64(1)(iv)
- Asset transferred to spouse are invested in the business by the transferee, the proportionate income/interest(contribution to capital) is clubbed in the hand of the transferor. [Such proportion shall be computed on the invested value as on the first day of the previous year.]

Sec. 64(1)(vii)] - Assets transferred to AOP or other person for the benefit of spouse

- In case an asset is transferred to other person or an AOP,
- otherwise than for adequate consideration,
- for immediate or deferred benefit of spouse,
- then income on such asset shall be clubbed in the hands of the transferor

Sec. 64(1)(vi) & (viii) - Income from assets transferred to son's wife

- Assets transferred to son's wife (after 31.5.1973), without adequate consideration - Income from such asset clubbed with the income of the transferor.
- Aforesaid relationship must subsist on the date of transfer of assets as well as on the date of accrual of income

- Asset is transferred to other person or an association of persons (after 31.5.1973), without adequate consideration, for immediate or deferred benefit of son's wife - then income on asset so transferred shall be clubbed in the hands of the transferor.

Sec. 64(1A) - Income of minor child

- **All Income** of a minor child shall be clubbed with income of the parent as follows:

Case	Clubbing
When marriage subsists	Parent whose total income (excluding this income) is higher.
When marriage does not subsist	That parent who maintains the minor child in the previous year

- Child includes a stepchild, adopted child and a minor married daughter
- When child attains majority and afterwards, it is taxable in the hands of the child itself.
- Once clubbing is done with that of one parent will continued to be clubbed with the same parent in subsequent years. (Can be clubbed with other parent, if approved by AO)

Exceptions

The above clubbing provision shall not apply in the following cases -

- The income arises or accrues to the minor child due to any manual work done by him; or
- The income arises or accrues to the minor child due to his skill, talent, specialised knowledge or experience; or
- The minor child is suffering from any disability of nature specified u/s 80U.

- **Exemption [Sec. 10(32)]** - The assessee (parent) can claim exemption of
(i) Amount clubbed or (ii) Rs. 1500 => whichever is less

Sec. 64(2) - Conversion of self-acquired property into HUF property

- Asset was originally **self-acquired** property of the individual
- Such asset is transferred directly or indirectly to HUF (in which he is member) for **inadequate consideration**

Case	Income to be clubbed in hands of transferor
Before partition	The entire income from such property
After partition	Income from the assets attributable to the spouse of transferor.

Common points to remember for all transfers

- Consideration must be measurable in **terms of money**.
- If property has been transferred for **inadequate consideration** then only the part of **income which is attributable** to transfer for inadequate consideration, shall be clubbed.
- Income arising to the transferee from the **accretion** of such property shall **not be clubbed** in the total income of the transferor.
- Income arising on accretion of income arising from transferred asset be clubbed in case of Minor child.

- **Profit on sale** of property, which is gifted to spouse, minor child or son's wife, shall be clubbed in hands of the transferor.
- Where an asset is **transferred under a trust** for the benefit of spouse or son's wife the provision of sec. 64(1) shall be applicable.
- In case of cross transfers, the income is assessed in the hands of the **deemed transferor**. If the transfer is intimately connected to form of single transaction and each transfer is made with an intention to avoid the provisions of this section.