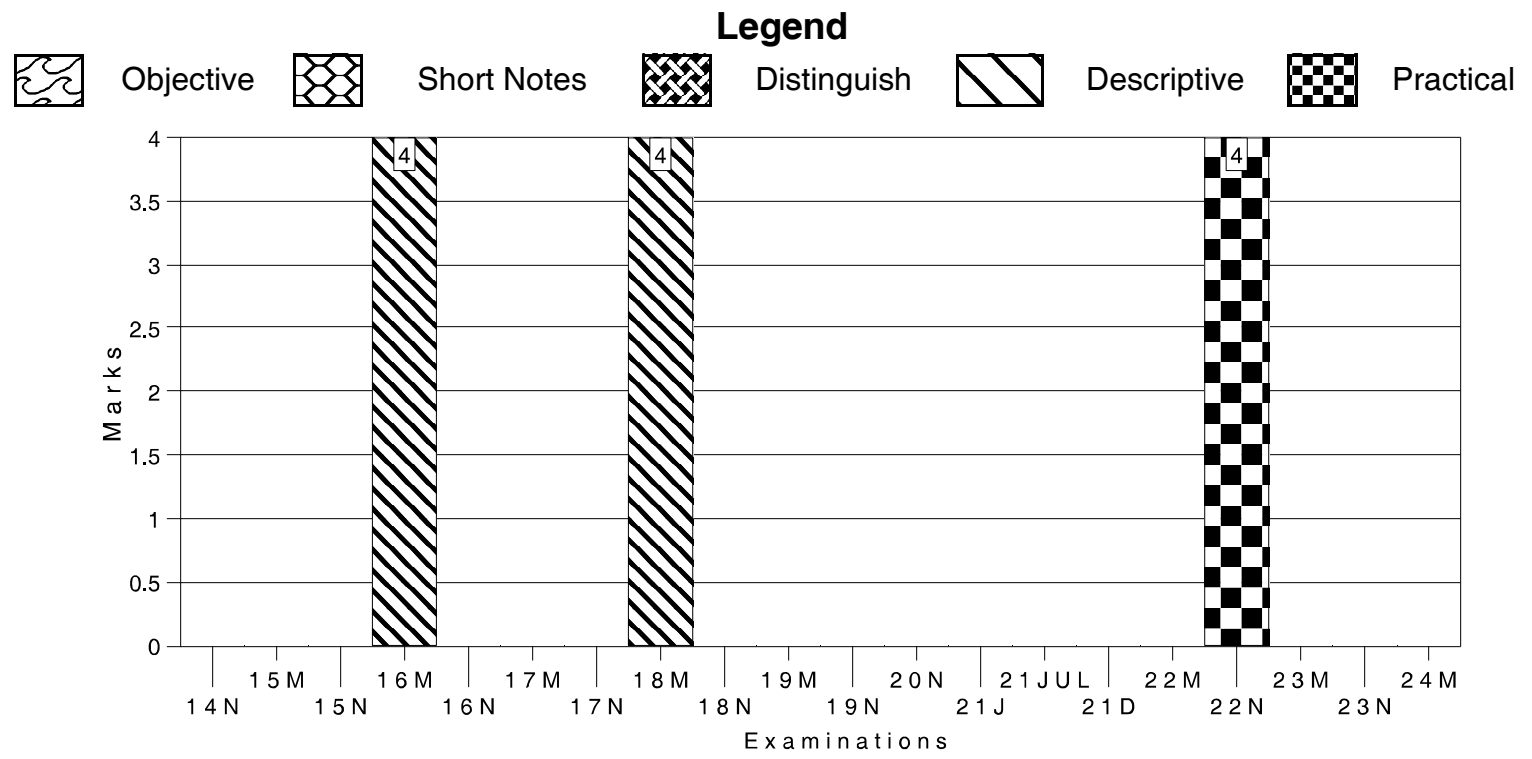


Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



CHAPTER	
1	Basic Concepts

Chapter Comprises

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| <ol style="list-style-type: none"> 1. What is Tax? 2. Overview of Income- tax law in India 3. Important Definitions 4. Previous Year and Assessment Year | <ol style="list-style-type: none"> 5. Previous year for undisclosed sources of income 6. Charge of Income- tax |
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DESCRIPTIVE QUESTIONS

2013 - Nov [7] (a) Define the term “assessee” as per the Income-tax Act, 1961. (4 marks)

Answer:

As per section 2(7), “**Assessee**” means a person by whom any tax or any other sum of money is payable under this Act. In addition, it includes-

- Every person in respect of whom any proceeding under this Act has been taken for the assessment of
 - his income; or
 - assessment of fringe benefits; or
 - the income of any other person in respect of which he is assessable; or
 - the loss sustained by him or by such other person; or
 - the amount of refund due to him or by such other person.
- Every person who is **deemed to be an assessee** under any provision of this Act.
 - Every person who is **deemed to be an assessee in default** under any provision of this Act (i.e. Fails to comply with the provision of TDS, Fails to pay advance tax).

2016 - May [2] (a) (ii) How is the term “Assessee” defined under the provisions of the Income-tax Act, 1961? (4 marks)

Answer:

Please refer 2013 - Nov [7] (a) on page no. 28

2018 - May [7] (b) Briefly explain the purpose for which the words “PROVISO” and “EXPLANATION” are incorporated under various sections of the Income Tax Act, 1961. (2+2= 4 marks)

Answer:

Proviso: The Proviso to a section is incorporated to specify the exception(s) to the provision contained in the respective section i.e., the proviso spells out the cases where the provision contained in the respective section would not apply or where the provision contained in the respective section would apply with certain modification.

Explanation: An explanation is incorporated in a section to provide a clarification relating to the provision contained in that section. Generally, an Explanation is clarificatory in nature.

PRACTICAL QUESTIONS

2022 - Nov [4] (c) Mr. X a resident, aged 56 years, till recently was a successful businessman filing his return of incomes regularly and promptly ever since he obtained PAN card. During the COVID-Pandemic period his business suffered severely and he incurred huge losses. He was not able to continue his business and finally on 1st January, 2024 he decided to wind-up his business which he also promptly intimated to the jurisdictional assessing officer about the closure of his business.

The Assessing officer sent him a notice to tax the income of A.Y. 2024-25 during the A.Y. 2023-24 itself. Does the assessing officer have the power to do so? Are there any exceptions to the general rule "Income of the previous year is assessed in the assessment year following the previous year" ? (4 marks)

Answer:

Yes, he has the power to do so.

Since the business of Mr. X is discontinued on 1st January, 2024, the income of the period from 1.4.2023 to 1.1.2024 may, at the discretion of the Assessing Officer, be charged to tax in A.Y.2023-24 itself.

Following are the other exceptions to the general rule "Income of the previous year is assessed in the assessment year following the previous year" i.e., the income of the previous year is assessed in the previous year itself.

- (i) Shipping business of non-resident
- (ii) Persons leaving India with no present intention of returning
- (iii) AOP/BOI/Artificial Juridical Person formed for a particular event or purpose and likely to be dissolved
- (iv) Persons likely to transfer property to avoid tax.

Topic not yet asked but equally important for examination
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Q. 1. Define the meaning of "Infrastructure Capital Company" as per Section 2(26A) of the Income-tax. Act, 1961.

Answer:

"Infrastructure Capital Company" means such company which makes investments by way of acquiring shares providing long-term finance to –

1. any enterprise or undertaking wholly engaged in the business referred to in Section 80- IA(4) or Section 80- IAB(1) or
2. an undertaking developing and building a housing project referred to in Section 80-IB(10) or
3. a project for constructing a hotel of not less than three star category as classified by the Central Government or
4. a project for constructing a hospital with at least 100 beds for patients.

Q. 2. State any four instances where the income of the previous year is assessable in the previous year itself instead of the assessment year.

Answer:

The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in a few 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 (**Section 172**).
- (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 his departure from India is chargeable to tax in that assessment year (**Section 174**).
- (iii) If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year (**Section 174A**).
- (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 under this section is chargeable to tax in that assessment year (**Section 175**).
- (v) Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year (**Section 176**).

Q. 3. Describe average rate of tax and maximum marginal rate under Section 2(10) and 2(29C) of the Income-tax Act, 1961.

Answer:

As per Section 2(10), “**Average Rate of tax**” means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

Section 2(29C) defines “**Maximum marginal rate**” to mean the rate of income-tax (including surcharge on the income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, AOP or BOI, as the case may be, as specified in Finance Act of the relevant year.

Q. 4. What is the difference between the two schools of Hindu law?

Answer:

The basic difference between the two schools of Hindu law with regard to succession is as follows:

Dayabaga school of Hindu law	Mitakshara school of Hindu law
Prevalent in West Bengal and Assam.	Prevalent in rest of India.
Nobody acquires the right, share in the property by birth as long as the head of family is living. Thus, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/ share in the property. Hence, the father and his brothers would be the coparceners of the HUF.	One acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. Thus, every child born in the family acquires a right/share in the family property.

Q. 5. Define India as per Income Tax Act, 1961?

Answer:

The term '**India**'[Section 2(25A)] means:

- (i) the territory of India as per article 1 of the Constitution,
- (ii) its territorial waters, seabed and subsoil underlying such waters,
- (iii) continental shelf,
- (iv) exclusive economic zone or
- (v) any other specified maritime zone (means maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.) and the air space above its territory and territorial waters.

FOR NOTE

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