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Income Tax in Relation to Business and Jurisdiction

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ABSTRACT

An **income tax** is a tax imposed on individuals or entities (taxpayers) in respect of the income or profits earned by them (commonly called taxable income). Income tax generally is computed as the product of a tax rate times the taxable income. Taxation rates may vary by type or characteristics of the taxpayer and the type of income.

The tax rate may increase as taxable income increases (referred to as graduated or progressive tax rates). The tax imposed on companies is usually known as corporate tax and is commonly levied at a flat rate. Individual income is often taxed at progressive rates where the tax rate applied to each additional unit of income increases (e.g. the first \$10,000 of income taxed at 0%, the next \$10,000 taxed at 1%, etc.). Most jurisdictions exempt local charitable organizations from tax. Income from investments may be taxed at different (generally lower) rates than other types of income. Credits of various sorts may be allowed that reduce tax. Some jurisdictions impose the higher of an income tax or a tax on an alternative base or measure of income.

Taxable income of taxpayers resident in the jurisdiction is generally total income less income producing expenses and other deductions. Generally, only net gain from the sale of property, including goods held for sale, is included in income. The income of a corporation's shareholders usually includes distributions of profits from the corporation. Deductions typically include all income-producing or business expenses including an allowance for recovery of costs of business assets. Many jurisdictions allow notional deductions for individuals and may allow deduction of some personal expenses. Most jurisdictions either do not tax income earned outside the jurisdiction or allow a credit for taxes paid to other jurisdictions on such income. Nonresidents are taxed only on certain types of income from sources within the jurisdictions, with few exceptions.

Most jurisdictions require self-assessment of the tax and require payers of some types of income to withhold tax from those payments. Advance payments of tax by taxpayers may be required. Taxpayers not timely paying tax owed are generally subject to significant penalties, which may include jail for individuals or revocation of an entity's legal existence.

Individuals are often taxed at different rates than corporations. Individuals include only human beings. Tax systems in countries other than the USA treat an entity as a corporation only if it is legally organized as a corporation. Estates and trusts are usually subject to special tax provisions. Other taxable entities are generally treated as partnerships. In the US, many kinds of entities may elect to be treated as a corporation or a partnership. Partners of partnerships are treated as having income, deductions, and credits equal to their shares of such partnership items.

Separate taxes are assessed against each taxpayer meeting certain minimum criteria. Many systems allow married individuals to request joint assessment. Many systems allow controlled groups of locally organized corporations to be jointly assessed.

Tax rates vary widely. Some systems impose higher rates on higher amounts of income. Example: Elbonia taxes income below E.10,000 at 20% and other income at 30%. Joe has E.15,000 of income. His tax is E.3,500. Tax rates schedules may vary for individuals based on marital status.^[b] In India on the other hand there is a slab rate system, where for income below INR 2.5 lakhs per annum the tax is zero percent, for those with their income in the slab rate of

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INR 2,50,001 to INR 5,00,000 the tax rate is 5%. In this way the rate goes up with each slab, reaching to 30% tax rate for those with income above INR 15,00,000

KEYWORDS: income tax, department, corporations, penalties, trusts, rates, schedules, assessed, legal

I. INTRODUCTION

Most systems define income subject to tax broadly for residents, but tax nonresidents only on specific types of income. What is included in income for individuals may differ from what is included for entities. The timing of recognizing income may differ by type of taxpayer or type of income.[1,2]

Income generally includes most types of receipts that enrich the taxpayer, including compensation for services, gain from sale of goods or other property, interest, dividends, rents, royalties, annuities, pensions, and all manner of other items.^[d] Many systems exclude from income part or all of superannuation or other national retirement plan payments. Most tax systems exclude from income health care benefits provided by employers or under national insurance systems.

Nearly all income tax systems permit residents to reduce gross income by business and some other types of deductions. By contrast, nonresidents are generally subject to income tax on the gross amount of income of most types plus the net business income earned within the jurisdiction.

Expenses incurred in a trading, business, rental, or other income producing activity are generally deductible, though there may be limitations on some types of expenses or activities. Business expenses include all manner of costs for the benefit of the activity. An allowance (as a capital allowance or depreciation deduction) is nearly always allowed for recovery of costs of assets used in the activity. Rules on capital allowances vary widely, and often permit recovery of costs more quickly than ratably over the life of the asset.

Most systems allow individuals some sort of notional deductions or an amount subject to zero tax. In addition, many systems allow deduction of some types of personal expenses, such as home mortgage interest or medical expenses.[3,4]

Income tax is generally collected in one of two ways: through withholding of tax at source and/or through payments directly by taxpayers. Nearly all jurisdictions require those paying employees or nonresidents to withhold income tax from such payments. The amount to be withheld is a fixed percentage where the tax itself is at a fixed rate. Alternatively, the amount to be withheld may be determined by the tax administration of the country or by the payer using formulas provided by the tax administration. Payees are generally required to provide to the payer or the government the information needed to make the determinations. Withholding for employees is often referred to as "pay as you earn" (PAYE) or "pay as you go."

Income taxes of workers are often collected by employers under a withholding or pay-as-you-earn tax system. Such collections are not necessarily final amounts of tax, as the worker may be required to aggregate wage income with other income and/or deductions to determine actual tax. Calculation of the tax to be withheld may be done by the government or by employers based on withholding allowances or formulas.

Nearly all systems require those whose proper tax is not fully settled through withholding to self-assess tax and make payments prior to or with final determination of the tax. Self-assessment means the taxpayer must make a computation of tax and submit it to the government. Some countries provide a pre-computed estimate to taxpayers, which the taxpayer can correct as necessary.

Income taxes are used in most countries around the world. The tax systems vary greatly and can be progressive, proportional, or regressive, depending on the type of tax. Comparison of tax rates around the world is a difficult and somewhat subjective enterprise. Tax laws in most countries are extremely complex, and tax burden falls differently on different groups in each country and sub-national unit. Of course, services provided by governments in return for taxation also vary, making comparisons all the more difficult.[5,6]

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Countries that tax income generally use one of two systems: territorial or residential. In the territorial system, only local income – income from a source inside the country – is taxed. In the residential system, residents of the country are taxed on their worldwide (local and foreign) income, while nonresidents are taxed only on their local income. In addition, a very small number of countries, notably the United States, also tax their nonresident citizens on worldwide income.

Countries with a residential system of taxation usually allow deductions or credits for the tax that residents already pay to other countries on their foreign income. Many countries also sign tax treaties with each other to eliminate or reduce double taxation.

Countries do not necessarily use the same system of taxation for individuals and corporations. For example, France uses a residential system for individuals but a territorial system for corporations

In addition to federal income tax collected by the United States, most individual U.S. states collect a **state income tax**. Some local governments also impose an income tax, often based on state income tax calculations. Forty-two states and many localities in the United States impose an income tax on individuals. Eight states impose no state income tax, and a ninth, New Hampshire, imposes an individual income tax on dividends and interest income but not other forms of income. Forty-seven states and many localities impose a tax on the income of corporations[7,8]

II. DISCUSSION

State income tax is imposed at a fixed or graduated rate on taxable income of individuals, corporations, and certain estates and trusts. These tax rates vary by state and by entity type. Taxable income conforms closely to federal taxable income in most states with limited modifications. States are prohibited from taxing income from federal bonds or other federal obligations. Most states do not tax Social Security benefits or interest income from obligations of that state. In computing the deduction for depreciation, several states require different useful lives and methods be used by businesses. Many states allow a standard deduction or some form of itemized deductions. States allow a variety of tax credits in computing tax.

Each state administers its own tax system. Many states also administer the tax return and collection process for localities within the state that impose income tax.

State income tax is allowed as an itemized deduction in computing federal income tax, subject to limitations for individuals.

Most states conform to federal rules for determining:

- gross income,
- timing of recognition of income and deductions,
- most aspects of business deductions,
- characterization of business entities as either corporations, partnerships, or disregarded entities.

Gross income generally includes all income earned or received from whatever source with some exceptions. States are prohibited from taxing income from federal bonds or other federal obligations.[9,10]

Forty-three states impose a tax on the income of individuals, sometimes referred to as personal income tax. State income tax rates vary widely from state to state. States imposing an income tax on individuals tax all taxable income (as defined in the state) of residents. Such residents are allowed a credit for taxes paid to other states. Most states tax income of nonresidents earned within the state. Such income includes wages for services within the state as well as income from a business with operations in the state. Where income is from multiple sources, formulary apportionment may be required for nonresidents. Generally, wages are apportioned based on the ratio days worked in the state to total days worked.

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Most states impose a tax on income of corporations having sufficient connection ("nexus") with the state. Such taxes apply to U.S. and foreign corporations, and are not subject to tax treaties. Such tax is generally based on business income of the corporation apportioned to the state plus nonbusiness income only of resident corporations. Most state corporate income taxes are imposed at a flat rate and have a minimum amount of tax. Business taxable income in most states is defined, at least in part, by reference to federal taxable income.

According to taxfoundation.org, these states have no state corporate income tax as of Feb 1, 2020: Nevada, Ohio, South Dakota, Texas, Washington, and Wyoming. However, Nevada, Ohio, and Washington impose a gross receipts tax while Texas has a franchise tax based on "taxable margin", generally defined as sales less either cost of goods sold less compensation, with complete exemption (no tax owed) for less than \$1MM in annual earnings and gradually increasing to a maximum tax of 1% based on net revenue, where net revenue can be calculated in the most advantageous of four different ways

Taxes in India are levied by the Central Government and the State Governments by virtue of powers conferred to them from the Constitution of India. Some minor taxes are also levied by the local authorities such as the Municipality.

The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Union Government and the State Governments. An important restriction on this power is Article 265 of the Constitution which states that "No tax shall be levied or collected except by the authority of law". Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. Nonetheless, tax evasion is a massive problem in India, ultimately catalyzing various negative effects on the country. In 2019–20, the Direct tax collections reported by CBDT were approximately INR 12.33 trillion.

Central government of India

| SL. No. | Taxes as per Union List |
|---------|--|
| 82 | Income tax: Taxes on income other than agricultural income. |
| 83 | Custom Duty: Duties of customs including export duties |
| 84 | Excise Duty: Duties of excise on the following goods manufactured or produced in India namely (a)Petroleum crude (b)high speed diesel (c)motor spirit (commonly known as petrol) (d)natural gas (e) aviation turbine fuel and (f)Tobacco and tobacco products |
| 85 | Corporation Tax |
| 86 | Taxes on capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on capital of companies |

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| 87 | Estate duty in respect of property other than agricultural land |
| 88 | Duties in respect of succession to property other than agricultural land |
| 89 | Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freight. |
| 90 | Taxes other than stamp duties on transactions in stock exchanges and futures markets |
| 92A | Taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce |
| 92B | Taxes on the consignment of goods in the course of inter-State trade or commerce |
| 97 | All residuary types of taxes not listed in any of the three lists of Seventh Schedule of Indian Constitution |

Income Tax is a tax imposed on individuals or entities (taxpayers) that varies with respective income or profits (taxable income). Income tax generally is computed as the product of a tax rate times taxable income. However, for individuals, tax is payable at slab rates. In the Finance Act, 2020 the Government introduced a new tax regime for individuals giving them the option to opt for the new regime or continue with the old regime.

The tax is collected by the Income Tax Department for the central government. Farmers - who constitute 70% of the Indian workforce - are generally excluded from paying income tax in India.

Income tax returns are due in India generally on 31 July, 30 September or 30 November, depending on the category of taxpayer.

Everyone who earns or gets an income in India is subject to income tax. I-T Department divided the income into five categories: Income from Salary, Income from Other Sources, Income from House Property, Income from Capital Gains, and Income from Business and Profession.

Goods and Services Tax is an indirect tax collected on supply of goods or service.[11]

- **Central Goods and Services Tax (CGST):** Portion of Tax to central government on intrastate sales.
- **State Goods and Services Tax (SGST):** Portion of Tax to state on intrastate sales.
- **Integrated Goods and Services Tax (IGST):** tax for interstate sales.

Goods and services are divided into five different tax slabs for collection of tax - 0%, 5%, 12%, 18% and 28%. However, petroleum products, alcoholic drinks, and electricity are not taxed under GST and instead are taxed separately by the individual state governments, as per the previous tax system.

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Customs duty is a tax on **import & export of goods in India** with specific rates on certain types of goods. Customs authorities are rightful in checking accurate details of the items exported or imported along with the origin of the item and duly validated rates & structure. Custom duty measures the value of the items in the context of the tax applicable on such item and is much higher on certain types of items including sin goods i.e. liquor & imported cigars.

Custom Duty is an indirect tax levied on import or export of goods in and out of country. When goods are imported from outside, the tax known as import custom duty. when goods are exported outside India, the tax is known as export custom duty. The tax collected by Central Board of Indirect Taxes and Customs. In February 2020, as part of India's attempts to increase and support local production, the government stated that it raised taxes on imports for items such as electronic devices, furniture and toys.

III. RESULTS

Service tax is imposed by the government on all the services provided by firms and servicing companies in lieu of **monetary benefit**. The service tax levied on services is actually borne by the customers which in turn goes through multiple channels of levying authorities till back to the government. Service tax will be applicable on the taxable services only which is provided or will be provided by the service provider agreeing upon the concern of actually offering services.

It is a tax levied on services provided in India. The responsibility of collecting the tax lies with the Central Board of Excise and Customs (CBEC). From 2012, service tax is imposed on all services, except those which are specifically exempted under law (e.g. Exempt under Negative List, Exempt as exclusion from Service definition as per Service Tax, Exempt under MEN (Mega exemption notification)). In budget presented for 2008–2009, it was announced that all small service providers whose turnover does not exceed ₹10 lakh (US\$13,000) need not pay service tax. Service tax at a rate of 14 percent (Inclusive of EC & SHEC) will be imposed on all applicable services from 1 June 2015. From 15 November 2015, Swachh Bharat cess of 0.5% has been added to all taxable service leading the new Service Tax rate to be 14.5 percent (Inclusive of EC, SHEC & Swachh Bharat cess). On 29 February 2016, Current Finance Minister Mr. Arun Jaitley announces a new Cess, Krishi Kalyan Cess that would be levied from 1 June 2016 at the rate of 0.5% on all taxable services. The purpose of introducing Krishi Kalyan Cess is to improve agriculture activities and welfare of Indian farmers. Thus, the new Service Tax rate would be 15% incorporating EC, SHEC, Swachh Bharat Cess and Krishi Kalyan Cess.

Property tax, or 'house tax,' is a local tax on buildings, along with appurtenant land, and imposed on Possessor (certainly, not true custodian of property as per 1978, 44th amendment of constitution). It resembles the US-type wealth tax and differs from the excise-type UK rate. The tax power is vested in the states and it is delegated by law to the local bodies, specifying the valuation method, rate band, and collection procedures. The tax base is the annual rental value (ARV) or area-based rating. Owner-occupied and other properties not producing rent are assessed on cost and then converted into ARV by applying a percentage of cost, usually six percent. Vacant land is generally exempt. Central government properties are exempt. Instead a 'service charge' is permissible under executive order. Properties of foreign missions also enjoy tax exemption without an insistence for reciprocity. The tax is usually accompanied by a number of service taxes, e.g., water tax, drainage tax, conservancy (sanitation) tax, lighting tax, all using the same tax base. The rate structure is flat on rural (panchayat) properties, but in the urban (municipal) areas it is mildly progressive with about 80% of assessments falling in the first two slabs.

The Indian government's deficiency in governmental expenditures is most notably attributed to wide spread tax evasion. Relative to other developing countries, the fact that India's income tax comprises 5% of its GDP is due to the fact nearly 2-3% of the population is exposed to income taxation.^[27] India faces more difficulties in proliferating its income tax than a country like China, who subjects 20% of its population, because there is an emphatically low amount of formal wage earners.^[28] Even though India's income tax was instituted in 1922 by the British, their tax history explains their high degree of tax delinquency today.

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With effect from 1 April 2017, the Income-tax Act, 1961 has introduced the General Anti-avoidance Rules. The intent of the bringing the said rules is to curb the ill-practices of the tax payers & tax practitioners assisting the tax payers in avoiding the tax where the tax impact of the arrangement or the transactions is more than INR Three Crores in a particular Financial Year. GAAR intends to cover the cases where the main purpose of the transaction is to obtain the tax benefit. It is pertinent to note that recently due to BEPS project by OECD & G 20 Member nations, there was huge hue and cry by the Inclusive Framework countries, where every country were trying to protect their respective tax base. Accordingly, basis the Action Plan Report 6 of the BEPS Project, member nations were required to adopt PPT test as a minimum standard. The said standard re-enshrines that where "one of the principal purpose of the transaction is to obtain tax benefit" then treaty benefit will not be allowed. Thus, presently in Indian context most of the treaties entered into by India, includes such minimum standard, accordingly where one of the principal purpose of the transaction is to obtain tax benefit, treaty benefit will be denied. This has posed several difficulties for MNCs who have routed their investments through Island Countries in India such as Mauritius, which though has a very good- Double tax avoidance treaty with India but with PPT all the benefits could be questioned due to want of Substance & PPT test requirements. The same was considered recently by Authority for Advance Rulings, New Delhi in ruling for Tiger Global International II Holdings

Goods and Services Tax (GST) is an indirect tax (or consumption tax) used in India on the supply of goods and services. It is a comprehensive, multistage, destination-based tax: comprehensive because it has subsumed almost all the indirect taxes except a few state taxes. Multi-staged as it is, the GST is imposed at every step in the production process, but is meant to be refunded to all parties in the various stages of production other than the final consumer and as a destination-based tax, it is collected from point of consumption and not point of origin like previous taxes.

Goods and services are divided into five different tax slabs for collection of tax: 0%, 5%, 12%, 18% and 28%. However, petroleum products, alcoholic drinks, and electricity are not taxed under GST and instead are taxed separately by the individual state governments, as per the previous tax system. There is a special rate of 0.25% on rough precious and semi-precious stones and 3% on gold. In addition a cess of 22% or other rates on top of 28% GST applies on few items like aerated drinks, luxury cars and tobacco products. Pre-GST, the statutory tax rate for most goods was about 26.5%, Post-GST, most goods are expected to be in the 18% tax range.

The tax came into effect from 1 July 2017 through the implementation of the One Hundred and First Amendment of the Constitution of India by the Indian government. The GST replaced existing multiple taxes levied by the central and state governments.

The tax rates, rules and regulations are governed by the GST Council which consists of the finance ministers of the central government and all the states. The GST is meant to replace a slew of indirect taxes with a federated tax and is therefore expected to reshape the country's \$2.4 trillion economy, but its implementation has received criticism. Positive outcomes of the GST includes the travel time in interstate movement, which dropped by 20%, because of disbanding of interstate check posts.[12]

IV. CONCLUSIONS

Chairperson, Central Board of Indirect taxes and Customs or Chairperson, CBIC is the senior most IRS (C&IT) officer in the Government of India. The Chairperson is the ex officio Special Secretary to the Government of India and also cadre controlling authority of the Indian Revenue Service (Customs & Indirect Taxes). Vivek Johri, IRS (C&CE:85) is the present Chairman of Central Board of Indirect Taxes and Customs. The Chairperson is equivalent to Secretary to Government of India and comes at position number 23 in Order of precedence of India.

The CBIC Chairperson is ex-officio special secretary and is under the direct charge of the Revenue Secretary of India. The Chairman of Central Board of Indirect Taxes and Customs (CBIC) is appointed by Appointments Committee of the Cabinet (ACC) which is headed by the Prime Minister of India.

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As the head of federal indirect tax administration, which touches the life of every Indian, the CBIC Chairperson plays a vital role in management of Indian economy and execution of economic policies of the government.[12]

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