

INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

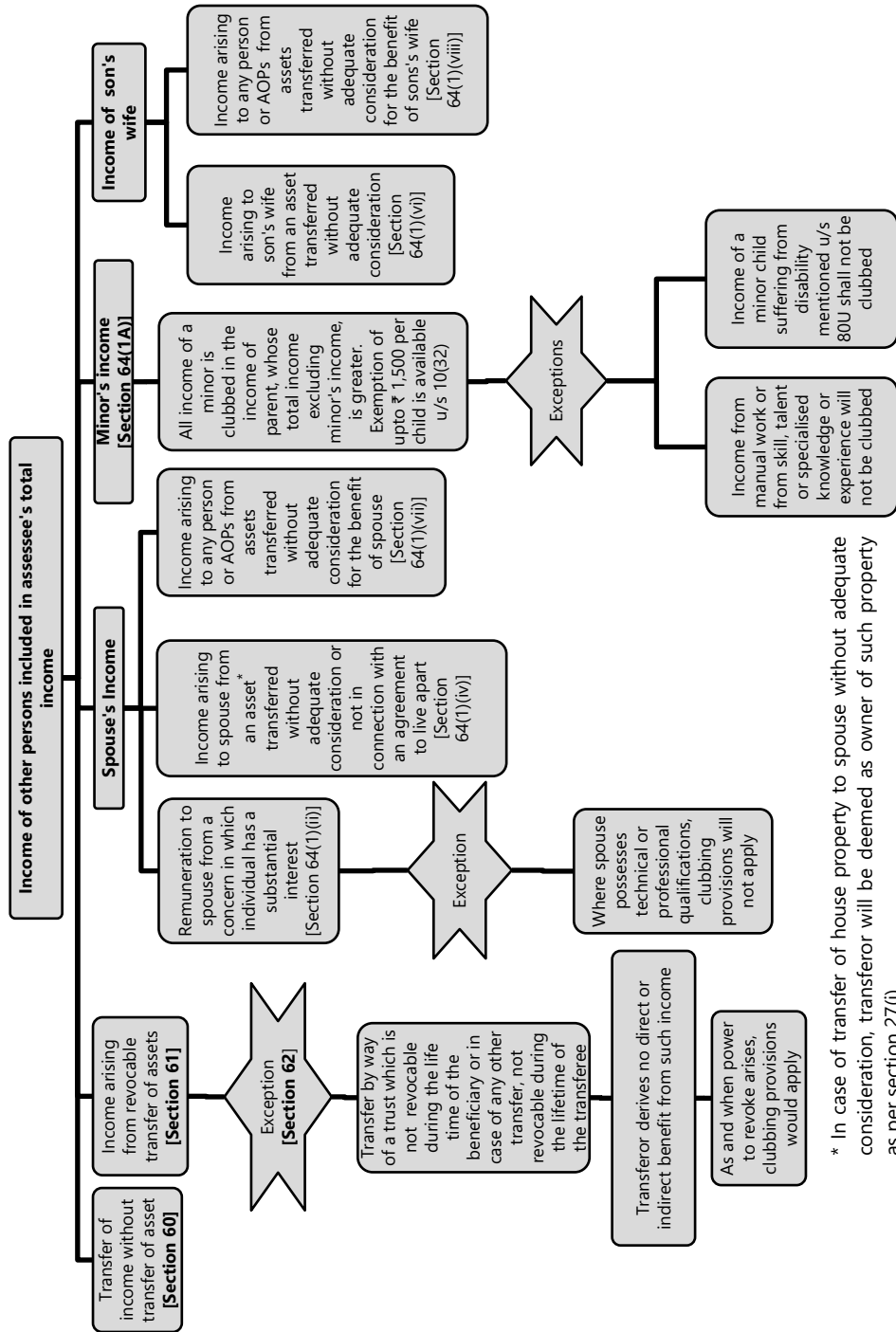


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** when clubbing provisions are attracted and apply the same in computing total income of the assessee;
- ❑ **examine** the circumstances when income of the spouse is clubbed with the income of the individual and apply the same in computing total income of the individual;
- ❑ **examine** the circumstances when income of son's wife is included in the hands of the individual and apply the same in computing total income of the individual;
- ❑ **identify** the nature of income of minor, in respect of which clubbing provisions are not attracted;
- ❑ **examine** how minor's income is included in the hands of the parent and compute the amount to be included in the hands of the parent;
- ❑ **examine** the circumstances when income of HUF is included in the hands of a member of the HUF.

CHAPTER OVERVIEW



* In case of transfer of house property to spouse without adequate consideration, transferor will be deemed as owner of such property as per section 27(i).



1. CLUBBING OF INCOME – AN INTRODUCTION

Under the Income-tax Act, 1961, an assessee is generally taxed in respect of his own income. However, there are certain cases where an assessee has to pay tax in respect of income of another person. The provisions for the same are contained in sections 60 to 64 of the Act. These provisions have been enacted to counteract the tendency on the part of the tax-payers to dispose of their property or transfer their income in such a way that their tax liability can be avoided or reduced.

Note - In the case of individuals, income-tax is levied on a slab system on the total income. The tax system is progressive i.e. as the income increases, the applicable rate of tax increases. Some taxpayers in the higher income bracket have a tendency to divert some portion of their income to their spouse, minor child etc. to minimize their tax burden. In order to prevent such tax avoidance, clubbing provisions have been incorporated in the Act, under which income arising to certain persons (like spouse, minor child etc.) have to be included in the income of the person who has diverted his income for the purpose of computing tax liability.



2 INCOME OF OTHER PERSONS INCLUDIBLE IN ASSESSEE'S TOTAL INCOME

2.1 Transfer of Income without Transfer of Asset [Section 60]

- (i) If any person transfers the income from any asset without transferring the asset itself, such income is to be included in the total income of the transferor.
- (ii) It is immaterial whether the transfer is revocable or irrevocable and whether it was made before the commencement of this Act or after its commencement.

Example 1: Mr. A confers the right to receive rent in respect of his house property to his wife, Mrs. A, without transferring the house itself to her. In this case, the rent received by Mrs. A will be clubbed with the income of Mr. A.

ILLUSTRATION 1

Mr. Vatsan has transferred, through a duly registered document, the income arising from a godown to his son, without transferring the godown. In whose hands will the rental income from godown be charged?

SOLUTION

Section 60 expressly states that where there is transfer of income from an asset without transfer of the asset itself, such income shall be included in the total income of the transferor. Hence, the rental income derived from the godown shall be clubbed in the hands of Mr. Vatsan.

2.2 Income arising from revocable transfer of assets [Section 61]

All income arising to any person by virtue of a revocable transfer of assets is to be included in the total income of the transferor.

Meaning of revocable transfer [Section 63]

Transfer is deemed to be revocable if—

- (a) it contains any provision for the retransfer, directly or indirectly, of the whole or any part of the income or assets to the transferor, or
- (b) it gives, in any way to the transferor, a right to reassume power, directly or indirectly, over the whole or any part of the income or the assets.

This clubbing provision will operate even if only part of income of the transferred asset had been applied for the benefit of the transferor. Once the transfer is revocable, the entire income from the transferred asset is includible in the total income of the transferor.

Exception where clubbing provisions are not attracted even in case of revocable transfer [Section 62]

Section 61 will not apply to any income arising to any person if there is –

- (i) a transfer by way of trust which is not revocable during the life time of the beneficiary; and
- (ii) any other transfer, which is not revocable during the life time of the transferee.

In the above cases, the income from the transferred asset is not includible in the total income of the transferor, provided the transferor derives no direct or indirect benefit from such income.

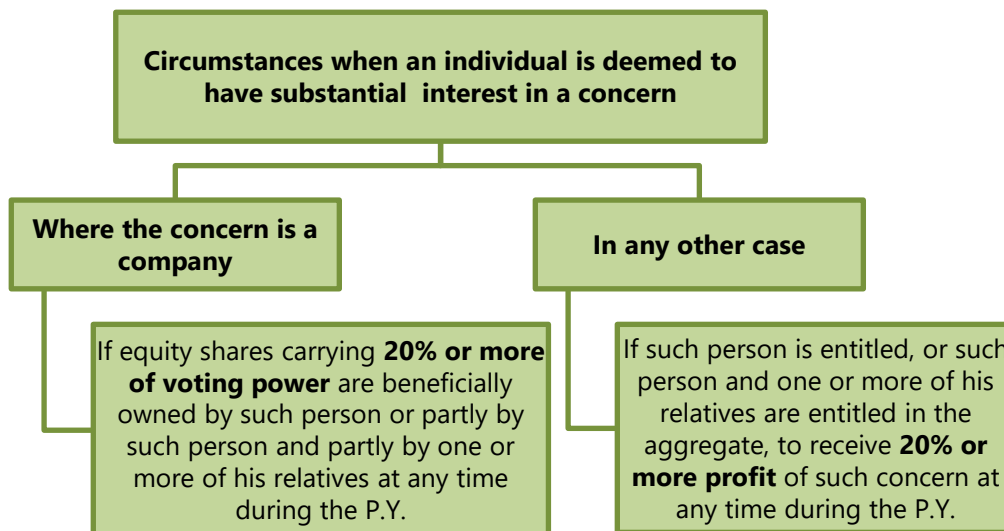
If the transferor receives direct or indirect benefit from such income, such income is to be included in his total income even though the transfer may not be revocable during the life time of the beneficiary or transferee, as the case may be.

As and when the power to revoke the transfer arises, the income arising by virtue of such transfer will be included in the total income of the transferor.

3. INCOME OF OTHER PERSONS INCLUDIBLE IN INDIVIDUAL'S TOTAL INCOME

3.1 Clubbing of income arising to spouse

- (I) **Income by way of remuneration from a concern in which the individual has substantial interest [Section 64(1)(ii)]**
- (i) **Remuneration in cash or kind to spouse from a concern in which the individual has a substantial interest to be clubbed:** In computing the total income of any individual, all such income which arises, directly or indirectly, to the spouse of such individual by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has a substantial interest shall be included.



The term '**relative**' in relation to an individual means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].

- (ii) **Clubbing provisions will not apply where remuneration is received on account of technical or professional qualifications:** Clubbing provisions, however, does not apply where the spouse of the said individual possesses technical or professional qualifications and the income to the spouse is solely attributable to the application of his/her technical or professional knowledge or experience. In such an event, the income arising to such spouse is to be assessed in his/her hands.
- (iii) **Both husband and wife have substantial interest in a concern:** Where both husband and wife have substantial interest in a concern and both are in receipt of income by way of salary etc. from the said concern, such income will be includible in the hands of that spouse, whose total income, excluding such income is higher.

Where any such income is once included in the total income of either spouse, income arising in the succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary to do so.

ILLUSTRATION 2

Mr. A holds shares carrying 25% voting power in X (P) Ltd. Mrs. A is working as a computer software programmer in X (P) Ltd. at a salary of ₹ 30,000 p.m. She is, however, not qualified for the job. The other income of Mr. A & Mrs. A are ₹ 7,00,000 & ₹ 4,00,000, respectively. Compute the gross total income of Mr. A and Mrs. A for the A.Y.2023-24, assuming that they do not opt for section 115BAC.

SOLUTION

Mr. A holds shares carrying 25% voting power in X (P) Ltd i.e., a substantial interest in the company. His wife is working in the same company without any professional qualifications for the same. Thus, by virtue of the clubbing provisions of the Act, the salary received by Mrs. A from X (P) Ltd. will be clubbed in the hands of Mr. A.

Computation of Gross total income of Mr. A

Particulars	₹	₹
Salary received by Mrs. A (₹ 30,000 × 12)	3,60,000	

Less: Standard deduction under section 16(ia)	50,000	3,10,000
Other Income		7,00,000
Gross total income		10,10,000

The gross total income of Mrs. A is ₹ 4,00,000.

ILLUSTRATION 3

Will your answer be different if Mrs. A was qualified for the job?

SOLUTION

If Mrs. A possesses professional qualifications for the job, then the clubbing provisions shall not be applicable.

Gross total income of Mr. A = ₹ 7,00,000 [Other income].

Gross total income of Mrs. A = Salary received by Mrs. A [₹ 30,000 × 12] less ₹ 50,000, being the standard deduction under section 16(ia) plus other income [₹ 4,00,000] = ₹ 7,10,000

ILLUSTRATION 4

Mr. B holds shares carrying 30% voting power in Y (P) Ltd. Mrs. B is working as accountant in Y (P) Ltd. getting income under the head salary (computed) of ₹ 3,44,000 without any qualification in accountancy. Mr. B also receives ₹ 30,000 as interest on securities. Mrs. B owns a house property which she has let out. Rent received from tenants is ₹ 6,000 p.m. Compute the gross total income of Mr. B and Mrs. B for the A.Y.2023-24.

SOLUTION

Since Mrs. B is not professionally qualified for the job, the clubbing provisions shall be applicable.

Computation of Gross total income of Mr. B

Particulars	₹
Income under the head salary of Mrs. B (Computed)	3,44,000
Income from other sources	
- Interest on securities	30,000
	3,74,000

Computation of Gross total income of Mrs. B

Particulars	₹	₹
Income from Salary [clubbed in the hands of Mr. B]		Nil
Income from house property		
Gross Annual Value [₹ 6,000 × 12]	72,000	
Less: Municipal taxes paid	-	
Net Annual Value (NAV)	72,000	
Less: Deductions under section 24		
- 30% of NAV i.e., 30% of ₹ 72,000	21,600	
- Interest on loan	-	50,400
Gross total income		50,400

(II) Income arising to the spouse from an asset transferred without adequate consideration [Section 64(1)(iv)]

- (i) **Transfer of asset (other than house property):** Where there is a transfer of an asset (other than house property), directly or indirectly, from one spouse to the other, without adequate consideration or otherwise than in connection with an agreement to live apart, any income arising to the transferee-spouse from the transferred asset, either directly or indirectly, shall be included in the total income of the transferor-spouse.
- (ii) **Transfer of house property:** In the case of transfer of house property, the provisions are contained in section 27. If an individual transfers a house property to his spouse, without adequate consideration or otherwise than in connection with an agreement to live apart, the transferor shall be deemed to be the owner of the house property and its annual value will be taxed in his hands.
- (iii) **Income from accretion of the transferred asset:** It may be noted that any income from the accretion of the transferred asset is not to be clubbed with the income of the transferor. i.e., the income arising on transferred assets alone have to be clubbed. Income earned by investing such income (arising from transferred asset) cannot be clubbed.

- (iv) **Meaning of adequate consideration:** It is also to be noted that natural love and affection do not constitute adequate consideration. Therefore, where an asset is transferred without adequate consideration, the income from such asset will be clubbed in the hands of the transferor.
- (v) **Transferred asset invested in business:** Where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the business, proportionate income arising to the transferee from such investment is to be included in the total income of the transferor. If the investment is in the nature of contribution of capital, proportionate interest receivable by the transferee from the firm will be clubbed with the income of the transferor.

Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

ILLUSTRATION 5

Mr. Vaibhav started a proprietary business on 01.04.2021 with a capital of ₹ 5,00,000. He incurred a loss of ₹ 2,00,000 during the year 2021-22. To overcome the financial position, his wife Mrs. Vaishaly, a software Engineer, gave a gift of ₹ 5,00,000 on 01.04.2022, which was immediately invested in the business by Mr. Vaibhav. He earned a profit of ₹ 4,00,000 during the year 2022-23. Compute the amount to be clubbed in the hands of Mrs. Vaishaly for the A.Y. 2023-24. If Mrs. Vaishaly gave the said amount as loan, what would be the amount to be clubbed?

SOLUTION

Section 64(1)(iv) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets (other than house property) transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration or in connection with an agreement to live apart.

In this case, Mr. Vaibhav received a gift of ₹ 5,00,000 on 1.4.2022 from his wife Mrs. Vaishaly, which he invested in his business immediately. The income to be clubbed in the hands of Mrs. Vaishaly for the A.Y. 2023-24 is computed as under:

Particulars	Mr. Vaibhav's capital contribution (₹)	Capital contribution out of gift from Mrs. Vaishaly (₹)	Total (₹)
Capital as on 1.4.2022	3,00,000 (5,00,000 – 2,00,000)	5,00,000	8,00,000
Profit for P.Y.2022-23 to be apportioned on the basis of capital employed on the first day of the previous year i.e. as on 1.4.2022 (3:5)	1,50,000 $\left(4,00,000 \times \frac{3}{8}\right)$	2,50,000 $\left(4,00,000 \times \frac{5}{8}\right)$	4,00,000

Therefore, the income to be clubbed in the hands of Mrs. Vaishaly for the A.Y.2023-24 is ₹ 2,50,000.

In case Mrs. Vaishaly gave the said amount of ₹ 5,00,000 as a *bona fide* loan, then, clubbing provisions would not be attracted.

Note: The provisions of section 56(2)(x) would **not** be attracted in the hands of Mr. Vaibhav, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his wife.

(III) Transfer of assets for the benefit of spouse [Section 64(1)(vii)]

All income arising directly or indirectly to any person or association of persons, from the assets transferred, directly or indirectly, to such person or association of persons by an individual without adequate consideration is includible in the income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's spouse.

3.2 Clubbing of Income arising to Son's Wife

(I) Income arising to son's wife from the assets transferred without adequate consideration by the father-in-law or mother-in-law [Section 64(1)(vi)]

- (i) **Asset transferred without adequate consideration:** Where an asset is transferred, directly or indirectly, by an individual to his or her son's wife without adequate consideration, the income from such asset is to be included in the total income of the transferor.

- (ii) **Asset transferred invested in the business:** For this purpose, where the assets transferred directly or indirectly by an individual to his or her son's wife are invested by the transferee in the business, proportionate income arising from such investment is to be included in the total income of the transferor. If the investment is in the nature of contribution of capital, the proportionate interest receivable from firm will be clubbed with the income of the transferor.

Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

(II) Transfer of assets for the benefit of son's wife [Section 64(1)(viii)]

All income arising directly or indirectly, to any person or association of persons from the assets transferred, directly or indirectly, without adequate consideration, to such person or association of persons by an individual will be included in the total income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's son's wife.

Note: Where any asset is transferred by a person to any other person without consideration or for inadequate consideration, the provisions of 56(2)(x) would get attracted in the hands of transferee, if conditions specified thereunder are satisfied.

ILLUSTRATION 6

Mrs. Kasturi transferred her immovable property to ABC Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 36,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Kasturi claims that the amount of ₹ 36,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.

Examine with reasons whether the contention of Mrs. Kasturi is valid in law.

SOLUTION

The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such

asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 36,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Kasturi in this case.

The contention of Mrs. Kasturi is, hence, not valid in law.

Note - In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted. Moreover, the provisions of section 56(2)(x) would also get attracted in the hands of ABC Co Ltd., if the conditions specified thereunder are satisfied.

If it is presumed that the transfer was for adequate consideration, the provisions of section 64(1)(viii) would not be attracted.

3.3 Clubbing of minor's income [Section 64(1A)]

- (i) All income of a minor is to be included in the income of his or her parent.
- (ii) However, the income derived by the minor from manual work or from any activity involving his skill, talent or specialised knowledge or experience will not be included in the income of his parent.
- (iii) The income of the minor will be included in the income of that parent, whose total income, excluding minor's income, is greater.
- (iv) Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so.
- (v) Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.
- (vi) However, the income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parent but shall be assessed in the hands of the child.
- (vii) It may be noted that the clubbing provisions are attracted even in respect of income of minor married daughter.

Exemption in respect of clubbed income of minor [Section 10(32)]

In case the income of an individual (i.e. the parent) includes the income of his minor child in terms of section 64(1A), such parent shall be entitled to exemption of ₹ 1,500 in respect of each minor child. However, if income of any minor so includible is less than ₹ 1,500, then, the entire income shall be exempt.

(viii) In case the asset transferred to a minor child (not being a minor married daughter) without consideration or for inadequate consideration is a house property, then, by virtue of section 27(i), the transferor-parent will be the deemed owner of the house property. Therefore, the income from house property will be taxable in the hands of the transferor-parent, being the deemed owner and not in the hands of the minor child. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of such income, due to which the benefit of exemption u/s 10(32) (discussed above) cannot be availed against such income.

However, if the house property is transferred by a parent to his or her minor married daughter, without consideration or for inadequate consideration, then, section 27(i) is **not** attracted. In such a case, the income from house property will be included u/s 64(1A) in the hands of that parent, whose total income before including minor child's income is higher; and benefit of exemption u/s 10(32) can be availed by that parent in respect of the income so included.

ILLUSTRATION 7

Mr. A has three minor children – two twin daughters, aged 12 years, and one son, aged 16 years. Income of the twin daughters is ₹ 2,000 p.a. each and that of the son is ₹ 1,200 p.a. Mrs. A has transferred her flat to her minor son on 1.4.2022 out of natural love and affection. The flat was let out on the same date and the rental income from the flat is ₹ 10,000 p.m. Compute the income, in respect of minor children, to be included in the hands of Mr. A and Mrs. A u/s 64(1A) (assuming that Mr. A's total income is higher than Mrs. A's total income, before including the income of minor children).

SOLUTION

Taxable income, in respect of minor children, in the hands of Mr. A is:

Particulars	₹	₹
Twin minor daughters [₹ 2,000 × 2]	4,000	

Less: Exempt under section 10(32) [₹ 1,500 × 2]	3,000	1,000
Minor son	1,200	
Less: Exempt under section 10(32)	1,200	Nil
Income to be clubbed in the hands of Mr. A		1,000

Note – As per section 27(i), Mrs. A is the deemed owner of house property transferred to her minor son. Natural love and affection do not constitute adequate consideration for this purpose. Accordingly, the income from house property of ₹ 84,000 [i.e., ₹ 1,20,000 (-) ₹ 36,000, being 30% of ₹ 1,20,000] would be taxable directly in her hands as the deemed owner of the said property. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of income from house property, owing to which exemption u/s 10(32) cannot be availed by her.

ILLUSTRATION 8

Compute the gross total income of Mr. & Mrs. A from the following information:

	Particulars	₹
(a)	Salary income (computed) of Mrs. A	2,30,000
(b)	Income from profession of Mr. A	3,90,000
(c)	Income of minor son B from company deposit	15,000
(d)	Income of minor daughter C from special talent	32,000
(e)	Interest from bank received by C on deposit made out of her special talent	3,000
(f)	Gift received by C on 30.09.2022 from friend of Mrs. A	2,500

Brief working is sufficient. Detailed computation under various heads of income is not required.

SOLUTION

As per the provisions of section 64(1A) of the Income-tax Act, 1961, all the income of a minor child has to be clubbed in the hands of that parent whose total income (excluding the income of the minor) is greater. The income of Mr. A is ₹ 3,90,000 and income of Mrs. A is ₹ 2,30,000. Since the income of Mr. A is greater than that of Mrs. A, the income of the minor children have to be clubbed in the hands of Mr. A. It is assumed that this is the first year when clubbing provisions are attracted.

Income derived by a minor child from any activity involving application of his/her skill, talent, specialised knowledge and experience is not to be clubbed. Hence, the income of minor child C from exercise of special talent will not be clubbed.

However, interest from bank deposit has to be clubbed even when deposit is made out of income arising from application of special talent.

The Gross Total Income of Mrs. A is ₹ 2,30,000. The total income of Mr. A giving effect to the provisions of section 64(1A) is as follows:

Computation of gross total income of Mr. A for the A.Y. 2023-24

Particulars	₹	₹
Income from profession		3,90,000
Income of minor son B from company deposit	15,000	
Less: Exemption under section 10(32)	1,500	13,500
Income of minor daughter C		
From special talent – not to be clubbed	-	
Interest from bank	3,000	
Gift of ₹ 2,500 received from a non-relative is not taxable under section 56(2)(x) being less than the aggregate limit of ₹ 50,000	Nil	
	3,000	
Less : Exemption under section 10(32)	1,500	1,500
Gross Total Income		4,05,000

4. CROSS TRANSFERS

In the case of cross transfers also (e.g., A making gift of ₹ 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth ₹ 50,000 owned by him), the income from the assets transferred would be assessed in the hands of the deemed transferor if the transfers are so intimately connected as to form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise. Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.

The Supreme Court, in case of *CIT v. Keshavji Morarji*[1967] 66 ITR 142, observed that if two transactions are inter-connected and are parts of the same transaction

in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income-yielding assets, so as to reduce their burden of taxation.

ILLUSTRATION 9

Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14-6-2022. On 12-7-2022, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and wife of Mr. Vasudevan's brother on 01-8-2022 at 9% interest. Examine the consequences of the above under the provisions of the Income-tax Act, 1961 in the hands of Mr. Vasudevan and his brother.

SOLUTION

In the given case, Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.06.2022 and simultaneously, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife on 12.07.2022. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the Apex Court in *CIT vs. Keshavji Morarji (1967) 66 ITR 142*.

Accordingly, the interest income arising to Mrs. Vasudevan in the form of interest on fixed deposits would be included in the total income of Mr. Vasudevan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Vasudevan's brother as per section 64(1), to the extent of amount of cross transfers i.e., ₹ 5 lakhs.

This is because both Mr. Vasudevan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

However, the interest income earned by his spouse on fixed deposit of ₹ 5 lakhs alone would be included in the hands of Mr. Vasudevan's brother and not the interest income on the entire fixed deposit of ₹ 6 lakhs, since the cross transfer is only to the extent of ₹ 5 lakhs.

5. CONVERSION OF SELF-ACQUIRED PROPERTY INTO THE PROPERTY OF A HINDU UNDIVIDED FAMILY [SECTION 64(2)]

Section 64(2) deals with the case of conversion of self-acquired property into property of a Hindu undivided family.

- (i) Where an individual, who is a member of the HUF, converts at any time after 31-12-1969, his individual property into property of the HUF of which he is a member or throws such property into the common stock of the family or otherwise transfers such individual property, directly or indirectly, to the family otherwise than for adequate consideration, the income from such property shall continue to be included in the total income of the individual.
- (ii) Where the converted property has been partitioned, either by way of total or partial partition, the income derived from such converted property as is received by the spouse on partition will be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and consequently, such income shall also be included in the total income of the individual who effected the conversion of such property.
- (iii) Where income from the converted property is included in the total income of an individual under section 64(2), it will be excluded from the total income of the family or, as the case may be, of the spouse of the individual.

6. INCOME INCLUDES LOSS

As per the *Explanation 2* to section 64, 'income' would include 'loss'. Accordingly, where the specified income to be included in the total income of the individual is a loss, such loss will be taken into account while computing the total income of the individual. It is significant to note that this *Explanation* applies to clubbing provisions under both sections 64(1) and 64(2).



7. DISTINCTION BETWEEN SECTION 61 AND SECTION 64

It may be noted that the main distinction between the two sections is that section 61 applies only to a revocable transfer made by any person while section 64 applies to revocable as well as irrevocable transfers made only by individuals.

Note: *It may be noted that clubbing provisions are attracted in respect of income arising from the assets transferred, however, income arising on accretion of income arising from transferred asset, would not be clubbed except in case of minor child.*

Example 2: *Mr. X transferred debentures of ₹ 50,000 carrying 10% interest to his wife. The interest income of ₹ 5,000 would be clubbed in the hands of Mr. X. However, in case his wife deposited ₹ 5,000 in fixed deposits @8%. The interest income of ₹ 400 arising on FDR would not be clubbed in the hands of Mr. X.*

LET US RECAPITULATE		
Section	Income to be clubbed	Contents
60	Income transferred without transfer of asset	When a person transfers the income accruing to an asset without the transfer of the asset itself, such income is to be included in the total income of the transferor, whether the transfer is revocable or irrevocable.
61	Income arising from revocable transfer of assets	Such income is to be included in the hands of the transferor. A transfer is deemed to be revocable if it – (i) contains any provision for re-transfer of the whole or any part of the income or assets to the transferor; or (ii) gives right to re-assume power over the whole or any part of the income or the asset.
64(1)(ii)	Income arising to spouse by way of remuneration from a concern in which the individual has substantial interest	Such income arising to spouse is to be included in the total income of the individual. However, if remuneration received is attributable to the application of technical or professional knowledge and experience of spouse, then, such income is not to be clubbed.
64(1)(iv)	Income arising to spouse from assets transferred without adequate consideration	Income arising from an asset (other than house property) transferred otherwise than for adequate consideration or not in connection with an agreement to live apart, from one spouse to another shall be included in the total income of the transferor. However, this provision will not apply in the case of transfer of house property, since the transferor-spouse would be the deemed owner as per section 27.

64(1)(vi)	Income arising to son's wife from an asset transferred without adequate consideration	Income arising from an asset transferred otherwise than for adequate consideration, by an individual to his or her son's wife shall be included in the total income of the transferor.
64(1)(vii)/ 64(1)(viii)	Income arising from transfer of assets for the benefit of spouse or son's wife	All income arising to any person or association of persons from assets transferred without adequate consideration is includible in the income of the transferor, to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's spouse or son's wife.
64(1A)	Income of minor child	<p>All income arising or accruing to a minor child (including a minor married daughter) shall be included in the total income of his or her parent.</p> <p>The income of the minor child shall be included with the income of that parent, whose total income, before including minor's income, is higher.</p> <p>Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.</p> <p>The parent, in whose total income, the income of the minor child or children are included, shall be entitled to exemption of such income subject to a maximum of ₹ 1,500 per child under section 10(32).</p> <p>The following income of a minor child shall, however, not be clubbed in the hands of his or her parent -</p> <p>(a) Income from manual work done by him or activity involving application of</p>

		<p>minor's skill, talent or specialized knowledge and experience; and</p> <p>(b) Income of a minor child suffering from any disability specified in section 80U.</p> <p>In case the asset transferred to a minor child (not being a minor married daughter) without consideration or for inadequate consideration is house property, then, by virtue of section 27(i), the transferor-parent will be the deemed owner of the house property. Therefore, the income from house property will be taxable in the hands of the transferor-parent, being the deemed owner and not in the hands of the minor child. Consequently, clubbing provisions u/s 64(1A) would not be attracted in respect of such income, due to which the benefit of exemption u/s 10(32) cannot be availed against such income.</p> <p>However, if the house property is transferred by a parent to his or her minor married daughter without consideration or for inadequate consideration, then, section 27(i) is not attracted. In such a case, the income from house property will be included u/s 64(1A) in the hands of that parent, whose total income before including minor child's income is higher; and benefit of exemption u/s 10(32) can be availed by that parent in respect of the income so included.</p>
64(2)	Conversion of self-acquired property into the property of a HUF	Where an individual, who is a member of the HUF, converts his individual property into property of the HUF of which he is a member, directly or indirectly, to the family otherwise than for adequate consideration, the income from such property shall continue to be included in the total income of the individual.

		Where the converted property has been partitioned, either by way of total or partial partition, the income derived from such converted property as is received by the spouse on partition shall also be included in the total income of the individual who effected the conversion of such property.
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Note: As per Explanation 2 to section 64 'income' includes 'loss'. Therefore, clubbing provisions would be attracted in all the above cases, even if there is a loss and not income.

TEST YOUR KNOWLEDGE

Question 1

Mr. Sharma has four children consisting 2 daughters and 2 sons. The annual income of 2 daughters were ₹ 9,000 and ₹ 4,500 and of sons were ₹ 6,200 and ₹ 4,300, respectively. The daughter who has income of ₹ 4,500 was suffering from a disability specified under section 80U.

Compute the amount of income earned by minor children to be clubbed in hands of Mr. Sharma.

Answer

As per section 64(1A), in computing the total income of an individual, all such income accruing or arising to a minor child shall be included. However, income of a minor child suffering from disability specified under section 80U would not be included in the income of the parent but would be taxable in the hands of the minor child. Therefore, in this case, the income of daughter suffering from disability specified under section 80U should not be clubbed with the income of Mr. Sharma.

Under section 10(32), income of each minor child includible in the hands of the parent under section 64(1A) would be exempt to the extent of the actual income or ₹ 1,500, whichever is lower. The remaining income would be included in the hands of the parent.

Computation of income earned by minor children to be clubbed with the income of Mr. Sharma:

	Particulars	₹
(i)	Income of one daughter	9,000
	Less: Income exempt under section 10(32)	1,500
	Total (A)	7,500
(ii)	Income of two sons (₹ 6,200 + ₹ 4,300)	10,500
	Less: Income exempt under section 10(32) (₹ 1,500 + ₹ 1,500)	3,000
	Total (B)	7,500
	Total Income to be clubbed as per section 64(1A) (A+B)	15,000

Note: It has been assumed that:

- (1) All the four children are minor children;
- (2) The income does not accrue or arise to the minor children on account of any manual work done by them or activity involving application of their skill, talent or specialized knowledge and experience;
- (3) The income of Mr. Sharma, before including the minor children's income, is greater than the income of Mrs. Sharma, due to which the income of the minor children would be included in his hands; and
- (4) This is the first year in which clubbing provisions are attracted.

Question 2

During the previous year 2022-23, the following transactions occurred in respect of Mr. A.

- (a) *Mr. A had a fixed deposit of ₹ 5,00,000 in Bank of India. He instructed the bank to credit the interest on the deposit @ 9% from 1-4-2022 to 31-3-2023 to the savings bank account of Mr. B, son of his brother, to help him in his education.*
- (b) *Mr. A holds 75% profit share in a partnership firm. Mrs. A received a commission of ₹ 25,000 from the firm for promoting the sales of the firm. Mrs. A possesses no technical or professional qualification.*
- (c) *Mr. A gifted a flat to Mrs. A on April 1, 2022. During the previous year 2022-23, Mrs. A's "Income from house property" (computed) was ₹ 52,000 from such flat.*
- (d) *Mr. A gifted ₹ 2,00,000 to his minor son who invested the same in a business and he derived income of ₹ 20,000 from the investment.*
- (e) *Mr. A's minor son derived an income of ₹ 20,000 through a business activity involving application of his skill and talent.*

During the year, Mr. A got a monthly pension of ₹ 10,000. He had no other income. Mrs. A received salary of ₹ 20,000 per month from a part time job.

Examine the tax implications of each transaction and compute the total income of Mr. A, Mrs. A and their minor child assuming they do not wish to opt for section 115BAC.

Answer

**Computation of total income of Mr. A, Mrs. A and their minor son
for the A.Y. 2023-24**

Particulars	Mr. A (₹)	Mrs. A (₹)	Minor Son (₹)
Income under the head "Salaries"			
Salary income (of Mrs. A)	-	2,40,000	-
Pension income (of Mr. A) (₹ 10,000×12)	1,20,000	-	
Less: Standard deduction under section 16(ia)	50,000	50,000	
	70,000	1,90,000	
Income from House Property [See Note (3) below]	52,000	-	-
Income from other sources			
Interest on Mr. A's fixed deposit with Bank of India (₹ 5,00,000×9%) [See Note (1) below]	45,000	-	-
Commission received by Mrs. A from a partnership firm, in which Mr. A has substantial interest [See Note (2) below]	25,000	70,000	
Income before including income of minor son under section 64(1A)	1,92,000	1,90,000	-
Income of the minor son from the investment made in the business out of the amount gifted by Mr. A [See Note (4) below]	18,500	-	-
Income of the minor son through a business activity involving application of his skill and talent [See Note (5) below]	-	-	20,000
Total Income	2,10,500	1,90,000	20,000

Notes:

- (1) As per section 60, in case there is a transfer of income without transfer of asset from which such income is derived, such income shall be treated as income of the transferor. Therefore, the fixed deposit interest of ₹ 45,000 transferred by Mr. A to Mr. B shall be included in the total income of Mr. A.
- (2) As per section 64(1)(ii), in case the spouse of the individual receives any amount by way of income from any concern in which the individual has substantial interest (i.e. holding shares carrying at least 20% voting power or entitled to at least 20% of the profits of the concern), then, such income shall be included in the total income of the individual. The only exception is in a case where the spouse possesses any technical or professional qualifications and the income earned is solely attributable to the application of her technical or professional knowledge and experience, in which case, the clubbing provisions would not apply.

In this case, the commission income of ₹ 25,000 received by Mrs. A from the partnership firm has to be included in the total income of Mr. A, as Mrs. A does not possess any technical or professional qualification for earning such commission and Mr. A has substantial interest in the partnership firm as he holds 75% profit share in the firm.

- (3) According to section 27(i), an individual who transfers any house property to his or her spouse otherwise than for adequate consideration or in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred. Hence, Mr. A shall be deemed to be the owner of the flat gifted to Mrs. A and hence, the income arising from the same shall be computed in the hands of Mr. A.

Note: *The provisions of section 56(2)(x) would not be attracted in the hands of Mrs. A, since she has received immovable property without consideration from a relative i.e., her husband.*

- (4) As per section 64(1A), the income of the minor child is to be included in the total income of the parent whose total income (excluding the income of minor child to be so clubbed) is greater. Further, as per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child.

Therefore, the income of ₹ 20,000 received by minor son from the investment made out of the sum gifted by Mr. A shall, after providing for exemption of ₹ 1,500 under section 10(32), be included in the income of

Mr. A, since Mr. A's income of ₹ 1,92,000 (before including the income of the minor child) is greater than Mrs. A's income of ₹ 1,90,000. Therefore, ₹ 18,500 (i.e., ₹ 20,000 – ₹ 1,500) shall be included in Mr. A's income. It is assumed that this is the first year in which clubbing provisions are attracted.

Note—*The provisions of section 56(2)(x) would not be attracted in the hands of the minor son, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his father.*

- (5) In case the income earned by the minor child is on account of any activity involving application of any skill or talent, then, such income of the minor child shall not be included in the income of the parent, but shall be taxable in the hands of the minor child.

Therefore, the income of ₹ 20,000 derived by Mr. A's minor son through a business activity involving application of his skill and talent shall not be clubbed in the hands of the parent. Such income shall be taxable in the hands of the minor son.

Question 3

Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute the total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

Answer

As per section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred.

Therefore, in this case, Mr. A would be the deemed owner of the house property transferred to his wife Mrs. B without consideration.

As per section 64(1)(vi), income arising to the son's wife from assets transferred, directly or indirectly, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24@30% of ₹ 3,00,000]

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr. A, applying the provisions of section 27(i) and section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son.

It may be noted that the provisions of section 56(2)(x) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a "relative" of such individual. Therefore, the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

Note - *The first part of the question can also be answered by applying the provisions of section 64(1)(vi) directly to include the income of ₹ 2,10,000 arising to Mrs. C in the hands of Mr. A. [without first applying the provisions of section 27(i) to deem Mr. A as the owner of the house property transferred to his wife Mrs. B without consideration], since section 64(1)(vi) speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration. Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.*

Question 4

A proprietary business was started by Smt. Rani in the year 2020. As on 1.4.2021 her capital in business was ₹ 3,00,000.

Her husband gifted ₹ 2,00,000 on 10.4.2021 to her and such sum is invested by Smt. Rani in her business on the same date. Smt. Rani earned profits from her proprietary business for the Financial year 2021-22, ₹ 1,50,000 and Financial year 2022-23 ₹ 3,90,000. Compute the income, to be clubbed in the hands of Rani's husband for the Assessment year 2023-24 with reasons.

Answer

Section 64(1) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration. In this case Smt. Rani received a gift of ₹ 2,00,000 from her

husband which she invested in her business. The income to be clubbed in the hands of Smt. Rani's husband for A.Y.2023-24 is computed as under:

Particulars	Smt. Rani's Capital Contribution	Capital Contribution Out of gift from husband	Total
	₹	₹	₹
Capital as at 1.4.2021	3,00,000	-	3,00,000
Investment on 10.04.2021 out of gift received from her husband		2,00,000	2,00,000
Profit for F.Y. 2021-22 to be apportioned on the basis of capital employed on the first day of the previous year i.e., on 1.4.2021	3,00,000	2,00,000	5,00,000
	1,50,000		1,50,000
Capital employed as at 1.4.2022	4,50,000	2,00,000	6,50,000
Profit for F.Y.2022-23 to be apportioned on the basis of capital employed as at 1.4.2022 (i.e., 45 : 20)	2,70,000	1,20,000	3,90,000

Therefore, the income to be clubbed in the hands of Smt. Rani's husband for A.Y.2023-24 is ₹ 1,20,000.

Question 5

Mr. B is the Karta of a HUF, whose members derive income as given below:

	Particulars	₹
(i)	<i>Income from B's profession</i>	45,000
(ii)	<i>Mrs. B's salary as fashion designer</i>	76,000
(iii)	<i>Minor son D (interest on fixed deposits with a bank which were gifted to him by his uncle)</i>	10,000
(iv)	<i>Minor daughter P's earnings from sports</i>	95,000
(v)	<i>D's winnings from lottery (gross)</i>	1,95,000

Examine the tax implications in the hands of Mr. and Mrs. B.

Answer**Clubbing of income and other tax implications**

As per the provisions of section 64(1A), in case the marriage of the parents subsist, the income of a minor child shall be clubbed in the hands of the parent whose total income, excluding the income of the minor child to be clubbed, is greater. In this problem, it has been assumed that the marriage of Mr. B and Mrs. B subsists.

Further, in case the income arises to the minor child on account of any manual work done by the child or as a result of any activity involving application of skill, talent, specialized knowledge or experience of the child, then, the same shall not be clubbed in the hands of the parent.

Tax implications

- (i) Income of ₹ 45,000 from Mr. B's profession shall be taxable in the hands of Mr. B under the head "Profits and gains of business or profession".
- (ii) Salary of ₹ 26,000 (₹ 76,000 less standard deduction under section 16(ia) of ₹ 50,000) shall be taxable as "Salaries" in the hands of Mrs. B.
- (iii) Income from fixed deposit of ₹ 10,000 arising to the minor son D, shall be clubbed in the hands of the father, Mr. B as "Income from other sources", since Mr. B's income is greater than income of Mrs. B before including the income of the minor child.

As per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child. The balance income would be clubbed in the hands of the parent as "Income from other sources".

- (iv) Income of ₹ 95,000 arising to the minor daughter P from sports shall not be included in the hands of the parent, since such income has arisen to the minor daughter on account of an activity involving application of her skill.
- (v) Income of ₹ 1,95,000 arising to minor son D from lottery shall be included in the hands of Mr. B as "Income from other sources", since Mr. B's income is greater than the income of Mrs. B before including the income of minor child.

Note – Mr. B can reduce the tax deducted at source from such lottery income while computing his net tax liability.