FAQs on Taxation in INDIA

1. Which income is taxable in India?
    - In case of a Resident, world/global income is taxable.
    - In case of a Non-resident, only Indian income is taxable.

2. How to determine Residential status in India?
On a general basis, an individual is said to be a **Resident** in India in any previous year, if he—
    - is in India in a previous year for a period or periods amounting in all to **182 days or more**; OR
    - has within the **four** years preceding that previous year been in India for a period or periods amounting in all to **365 days or more** and for a period or periods amounting in all to **60 days or more** in that previous year.

    Further, person is said to be **"Not Ordinarily Resident"** in India in any previous year if such person is a non-resident in India in **9 out of the 10 previous years** preceding that previous year or has during the 7 previous years preceding that previous year been in India for a period of, or periods amounting in all to, **729 days** or less.
    For not ordinarily resident, Foreign Income is generally not taxable in India.

3. Who is liable to pay advance tax?
Everyone who's income tax liability exceeds Rs. 10,000 after reducing TDS.
(Exception: Person of 60 years or more and not having any income from business/profession)

    Advance tax due dates and the cumulative tax to be paid by then:

Advance Tax Date	Cumulative Tax to be Paid
15th June	15%
15th September	45%
15th December	75%
15th March	100%

4. What are the due dates of filing tax returns?
31st July or 30th September (in case of tax audit) of each year
One should file tax return on time to carry forward losses of the current year
*W.e.f. assessment year 2018-19, if assessee failed to furnish return of income within due date as prescribed in section 139(1) then he is required to pay: -
a) Rs. 5000 if return is furnished on or before 31 December of assessment year.
b) Rs. 10,000 in any other case.
However, if total income of the person does not exceed Rs. 5 lakhs then fee payable shall be Rs. 1000.

5. What are set-off rules regarding Capital Gains (during the same financial year)?
    - Capital losses cannot be set-off against income from other heads
    - Long term capital loss can be set off against only long-term capital gains
    - Short term capital loss can be set off against both long term and short-term capital gains
    - Capital losses can be carried forward for a period of 8 yea

6. Holding period of Capital Assets to be considered as Long Term?

Listed Equity/Pref Shares	> 12 months
Listed Securities	> 12 months
Units of Equity Oriented Fund	> 12 months
Zero Coupon Bonds	> 12 months
Immovable Property	>24 months
Unlisted Equity Shares	>24 months
Gov Bonds/NCDs (Unlisted)	>36 months
Gov Bonds/NCDs (Listed)	>12 months
Other Assets	> 36 months

7. What are the income tax rates on Capital Gains?

Asset	**STT Paid**		**STT Not Paid**		
	Long Term	Short Term	Long Term		Short Term
			Without Indexation	With Indexation	
Equity Shares (Listed)	10%^	15%	10%	20%	Slab Rates
Equity Shares (Unlisted)	-	-	-	20%	Slab Rates
Units (Equity Oriented)	10%^	15%	-	20%	Slab Rates
Units (Others)	-	-	-	20%	Slab Rates
Preference Shares (Listed)	-	-	10%	20%	Slab Rates
Preference Shares (Unlisted)	-	-	-	20%	Slab Rates
Debentures (Listed)	-	-	10%	-	Slab Rates
Debentures (Unlisted)	-	-	20%	-	Slab Rates
Government Securities	-	-	10%	20%	Slab Rates
Physical Gold/Property/Others	-	-	-	20%	Slab Rates
Zero Coupon Bonds	-	-	10%	20%	Slab Rates

*Applicable surcharge, if any, and education cess of 4% to be added.
^On capital gains above Rs. 1 Lakh.
Surcharge of 15% where income exceeds Rs. 1 Crore and 10% where income exceeds Rs. 50 Lakhs but does not exceed Rs. 1 Crore.

8. What are the sections to claim exemption on LTCG from Sale of Assets?

- **Section 54** - Invest capital gains in a Residential House property if the 'property sold' is a residential house property
  Condition:
  a. Applicable to individuals & HUF
  b. Amount to be invested – Capital gains
  c. Any property purchased within 1 year prior OR 2 years after the date of transfer of the 'property sold';
     Under construction property completed within 3 years from the date of transfer of the 'property sold'
  d. If the new property is sold within 3 years from its date of purchase, the cost of acquisition of the new property sold will be reduced by the exemption claimed earlier while calculating the capital gains

- **Section 54F** - Invest sale consideration in a Residential House for any other capital asset sold
  Condition:
  a. Applicable to individuals & HUFs- provided individual does not have more than one Residential House
  b. Amount to be invested – Amount of Sale Consideration
  c. Any property purchased within 1 year prior OR 2 years after the date of transfer of the 'property sold';
     Under construction property completed within 3 years from the date of transfer of the 'property sold'
  d. If the new property is sold within 3 years from its date of purchase, the exemption claimed earlier shall be taxed as long term capital gains in the year in which such property is transferred

- **Section 54EC** - Invest the Capital gains from the sale of Long Term Capital Asset, being land or building or both, in REC/NHAI bonds
  Condition:
  a. Applicable to any assessee
  b. Amount to be invested – Amount of Capital gains (limited to Rs. 50 Lacs per assessee each financial year).
  c. to be invested within 6 months from the date of transfer of the 'property sold'
  d. The bonds are locked-in for a period of **5 years** – if any loan or advance is availed against the bond, the exemption claimed earlier shall be taxed as Long term capital gain in the year in which such loan/advance is taken

Losses from sale of a Capital Asset, post set-off against capital gains in the current year can be carried forward for 8 financial years

Note: A resident individual can adjust the basic exemption limit against LTCG.

9. What are the conditions for indexation in case the capital asset becomes the property of the assessee by way of succession or inheritance?

A per Section 49(1) of Income-tax Act, 1961: "Where the capital asset became the property of the assessee by succession, inheritance etc. the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it (or for the year beginning on the 1st April, 2001, whichever is later), increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be."

Note:

- If the property is acquired by the previous owner in the years prior to 1st April, 2001, the base year for indexation to be considered is FY 2001-02: 100
- The higher of the cost of acquisition (by the previous owner) or fair value of the property as on 1st April, 2001, if given, is to be considered for arriving at the indexed cost of acquisition with base year index 2001-02:100.
- Any improvement cost incurred by the previous owner prior to 1st April, 1981 is to be ignored for arriving at the indexed cost of acquisition,
- The sale/transfer value or stamp duty value, whichever is higher is to be considered.

- From AY 2015-16, with prospective effect, advance received and forfeited, in connection with transfer of capital asset, will be treated as income from other sources, and will not be deducted from indexed cost of acquisition to avoid double taxation. So, any such amount forfeited during FY 2014-15 shall be considered as income from other sources. However, any such amount forfeited prior to FY 2014-15 shall be reduced from Acquisition price (or previous owner's cost of acquisition or fair value) before applying the cost indexation.

10. What are the provisions under the Income Tax Act related to bonus stripping?

Under Section 94(8) of the Income Tax Act, if UNITS are purchased within 3 months prior to the record date of the bonus and sold within 9months of the record date

- Loss arising on sale of original units will be NOT considered as a short-term capital loss
- Such loss will be treated as cost of bonus units

11. What are the provisions under the Income Tax Act related to dividend stripping?

Under Section 94(7) of the Income Tax Act, If UNITS are purchased within 3 months prior to the record date of the dividend and sold within 9 months of the record date and the dividend is exempt from tax; OR
If SECURITIES are purchased within 3 months prior to the record date of the dividend and sold within 3 months of the record date

- Loss arising on sale of units/securities will be NOT considered as a short-term capital loss to the extent of dividend received
- Loss in excess of dividend received to be treated as short term capital loss.

12. What circumstances you may attract 'clubbing' of income u/s 64?

In the case of Assets Transferred to Anyone

Transfer of Income - no transfer of assets: When you retain the ownership of an asset but decide to transfer its income by doing an agreement or any other way, the Act will still consider that income as your income and it will be added to your total income for taxation purposes.

Transfer of Asset - which is revocable: When you transfer the ownership of an asset and make such transfer revocable, income from such an asset will continue to be added to your income.

a. Clubbing of Spouse's Income

Here are some situations when your spouse's income will get clubbed to your income and you'll have to pay tax on it-

- Your spouse receives a **salary from a company or a firm in which you have a substantial interest**, then such salary will be clubbed with your income. Substantial Interest means you alone or with your relatives (husband, wife, brother, sister or your lineal ascendant or descendant) hold equity or voting power of a company which is 20% or more. Or in case of a firm you are entitled to 20% or more of the profits. Also, if both of you receive an income from such a firm or company, it will get taxed in the hands of the person whose taxable income is higher. There is one exception to this - if your spouse receives the salary due to his/her application of technical or professional knowledge & experience then such salary will be taxed in the hands of the person receiving it and not clubbed.

- **Transfer an asset to your spouse directly or indirectly without receiving adequate consideration** (does not include where asset is transferred as part of a divorce settlement) - income from this asset will be clubbed with your income. For example – where the husband to reduce his tax liability transfers an asset worth Rs 1,00,000 to his wife for Rs 25,000 .3/4th of the income from this asset will be taxed in the hands of the husband. If he receives no consideration, in that case the entire income from this asset will be clubbed with the husband's income. Although the clubbing provisions here exclude house property - but in case you transfer a house property to your wife and do not receive adequate consideration, as per the Act, you will still be considered the 'deemed owner' and the income from the asset will be clubbed with your income.
- **Transfer an asset to a person or an association of persons**, directly or indirectly, without adequate consideration, so that the benefit arises to your spouse either now or on a deferred basis, income from such an asset will be clubbed with your income.

- Assume a situation where you **provide money to your spouse** (who is non-working) and that money is invested by the spouse and a certain income is generated (from such money that you gave your spouse). The income that arises from such investment done by her can be clubbed to your income. However, if your spouse reinvests the income portion and earns further income then such income may not be clubbed with your taxable income.

b. Clubbing of Income of Minor Child (less than 18 years old)

- Some families make **fixed deposits** in the name of a minor child. Income of a minor is taxable in the hands of the parent whose total income is higher (before including the minor's income). If the parents are divorced it is clubbed with the person who is maintaining the child. There is one exception to this rule - if the minor has earned an income because of his own manual work or used his talent or specialized knowledge & experience OR in case of a minor who is disabled (based on definition of disability in Section 80U) and earns an income, such income will not be clubbed.

- When your minor child's income is clubbed to your income - **exemption is available up to Rs. 1500** for each such minor child. Which means if clubbed income is more than Rs. 1500, Rs. 1500 is the maximum exemption, however if clubbed income is say Rs. 800 (less than Rs. 1500) exemption is limited up to such lesser amount, Rs. 800 in this case.

- The clubbing rule **does not apply once your child turns 18**.

c. Clubbing of Income of a Son's Wife

Transfer of an asset to your son's wife directly or indirectly without receiving adequate consideration – income from this asset will be clubbed with your income. Or you transfer an asset to a person or AOP, for the immediate or deferred benefit of your son's wife, without adequate consideration, directly or indirectly - income from this asset will be clubbed with your income

13. What qualifies as gifts under Income Tax?

The I-T Department considers:

- money given in cash/cheque or drafts
- immovable property such as land or building or both
- movable property like shares, jewellery, drawings, paintings or sculptures, gold bars as gifts.

14. When are gifts exempt from tax?

You are exempt from tax under the following situations:

- Monetary value of all gifts received don't add up to Rs. 50,000.
- Received from a relative
  a. Your immediate family – parents, siblings, spouse and children
  b. Your spouse's parents and siblings
  c. Your parents' siblings
  d. Your siblings and their spouses
- Received on occasion of marriage
- Received by way of a will or inheritance
- Received in contemplation of death of the payer
- Received from Local Authority
- Received from a fund, foundation, university, or other educational institution, hospitals, or any trust of institution defined in Section 10(23C)
- Money Received from a charitable Institution registered under section 12AA

15. How are gifts taxed?

These are chargeable under the head "Income from Other Sources" in the receiver's income tax returns

Gift received	Condition	Tax treatment
Money	Total money received as gift exceeds Rs. 50,000.	Chargeable to tax
Immovable Property received as a gift	Stamp Duty value of property exceeds Rs. 50,000	Stamp Duty value chargeable to tax
Immovable Property received with some consideration	Stamp Duty Less Consideration > Rs. 50,000	Amount Chargeable to Tax = Stamp Duty – Consideration
Movable Property without any consideration	Fair Market Value of property > Rs. 50,000	Total Fair Market Value is chargeable to tax
Movable Property with some consideration	Total Fair Market Value Less Consideration > Rs. 50,000	Amount Chargeable to Tax = Total FMV – Consideration