

# **CLUBBING OF INCOME**

## **Section 60**

<b>Transfer of Income without transfer of assets</b>	<ul style="list-style-type: none"><li>• Income shall be clubbed in the hands of transferor.</li></ul>
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## **Section 61**

<b>Revocable transfer of assets</b>	<ul style="list-style-type: none"><li>• Income arising from the assets shall be clubbed in the hands of the transferor.</li></ul>
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## **Section 62**

<b>Irrevocable transfer of assets</b>	<ul style="list-style-type: none"><li>• Asset transferred to any person</li><li>• <b>not revocable during the life time of the beneficiary or transferee,</b></li><li>• Income arising from the assets shall be taxable in the hands of the transferee.</li><li>• Provided <b>transferor derives no benefit from such income or assets.</b></li></ul> <p><b>Exception:</b></p> <ul style="list-style-type: none"><li>• Income shall be clubbed in the income of the transferor, as and when the <b>power to revoke the transfer arises</b> (i.e. on the death of the beneficiary/ transferee).</li><li>• Actual revocation is not relevant.</li></ul>
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## **Section 63**

<b>“Revocable Transfer” Defined</b>	<b>Transfer shall be deemed to be revocable if –</b> <ul style="list-style-type: none"><li>• it contains provision of re-transfer, or</li><li>• it gives the transferor a right to re-assume power, during the lifetime of the beneficiary/transferee.</li></ul>
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## Section 64(1)(ii)

<b>Income of individual to include income of Spouse from a concern in which Individual has substantial interest</b>	<ul style="list-style-type: none"><li>• In the income of <b>Individual</b> there shall be included,</li><li>• income of spouse by way of salary, commission, fees or any form of remuneration,</li><li>• in cash or in kind,</li><li>• from a concern in which the individual has substantial interest (<b>20% voting power/share in profit at any time during the previous year</b>),</li></ul> <p><b>Exception:</b></p> <ul style="list-style-type: none"><li>• <b>No clubbing if spouse possesses technical or professional qualification</b>, and</li><li>• income is attributable to his or her technical or professional knowledge and experience.</li></ul> <p><b>Note:</b></p> <ul style="list-style-type: none"><li>• In case both have substantial interest, remuneration will be clubbed in the hands of the individual whose income excluding such remuneration is greater.</li><li>• Once included in hand of either person cannot be changed in subsequent year, unless A.O. is satisfied.</li></ul>
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## Section 64(1)(iv)

<b>Income of individual to include income of Spouse from assets transferred to the spouse without adequate consideration</b>	<ul style="list-style-type: none"><li>• Assets transferred by one spouse to another spouse without adequate consideration. (<b>Except where transfer is in connection with an agreement to live apart</b>)</li><li>• Income from such asset shall be clubbed in the hands of transferor.</li><li>• <b>The relationship must exist both at the time of transfer of asset and at the time when income accrues.</b></li><li>• Section 64(1)(iv) applies to all assets <b>except House Property</b>.</li><li>• If House property is transferred to spouse otherwise than for adequate consideration, then section 64(1)(iv) shall not apply but section 27 shall apply.</li></ul>
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## Section 64(1)(vi)

<b>Income of individual to include income of son's wife from assets transferred without adequate consideration</b>	<ul style="list-style-type: none"><li>• Assets transferred by an individual to son's wife without adequate consideration.</li><li>• Income from such asset shall be clubbed in the hands of transferor.</li><li>• <b>The relationship must exist both at the time of transfer of asset and at the time when income accrues.</b></li></ul>
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### Section 64(1)(vii)

<b>Income of individual to include income of any person or AOP to which assets are transferred for the benefit of spouse</b>	<ul style="list-style-type: none"><li>Asset transferred to a person or an AOP (TRUST)</li><li>without adequate consideration</li><li>for the immediate or <b>deferred benefit</b> of his/her spouse.</li><li>Income from such asset shall be clubbed in the hands of the transferor.</li></ul>
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### Section 64(1)(viii)

<b>Income of individual to include income of any person or AOP to which assets are transferred for the benefit of son's wife</b>	<ul style="list-style-type: none"><li>Asset transferred to a person or an AOP (TRUST)</li><li>without adequate consideration</li><li>for the immediate or <b>deferred benefit</b> of his son's wife.</li><li>Income from such asset shall be clubbed in the hands of the transferor.</li></ul>
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### Section 64(1A)

<b>Income of Minor Child</b>	<ul style="list-style-type: none"><li>Income of minor child including minor married daughter.</li><li>Shall be clubbed with the income of parent.</li></ul> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"><li>Minor child suffering from disability specified under section 80U.</li><li>Income earned by minor child, on account of manual work or activity involving application of his skill, talent, specialized knowledge and experience.</li></ul> <p><b>Notes:</b></p> <ol style="list-style-type: none"><li>The income of the minor child shall be included, -<ul style="list-style-type: none"><li>where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includable under this sub-section) is greater, or</li><li>where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year.</li></ul></li><li>Once included in hand of either parent, cannot be changed in subsequent year, unless A.O. is satisfied.</li><li>If none of the parent is alive, minor shall file the return through legal guardian. There shall be no clubbing.</li><li>If the income by way of manual work or activity involving application of skill, etc. which was not clubbed, is invested, and income is earned thereon, such investment income shall be clubbed.</li><li>If the minor child becomes major during the previous year, then the incomes which have accrued to him till the date he attains majority shall be clubbed.</li></ol>
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## Section 64(2)

<b>Conversion into HUF Property</b>	<ul style="list-style-type: none"><li>Where separate property of the individual</li><li>is converted by the individual into property belonging to the family</li><li>otherwise than for adequate consideration</li><li>income derived from the converted property shall be deemed to be the income of the individual till the time partition takes place.</li><li>And where the converted property has been the subject-matter of a partition, the income derived from such converted property as is received by the spouse on partition shall be clubbed with the income of the individual.</li></ul>
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If assets transferred by an individual to his spouse/ son's wife are invested by the transferee in any business, then the following income shall be clubbed with the income of the transferor individual:

$$\frac{\text{Investment in the business as on the first day of the previous year out of the transferred funds made by the spouse or son's wife}}{\text{Total Investment in the business as on the first day of the previous year made by spouse, or son's wife}} \times$$

Income from such business of spouse, or son's wife

### GENERAL LAW APPLICABLE TO CLUBBING OF INCOME

1. The clubbing shall continue to apply even if the transferee has converted the transferred assets to some other form.
2. Income includes loss also. Therefore, losses are also to be clubbed.
3. If the transferee sells the transferred assets, then capital gains shall also be clubbed with the income of the transferor.
4. Income arising out of income earned on transferred assets has not to be clubbed. Although, the income earned on transferred assets is to be clubbed.
5. The Supreme Court in the case of J.H. Gotla held that the clubbed income shall be retained under the same head in which it is earned. Therefore, business income of a minor child shall be clubbed in the hands of the parent under the head P/G/B/P. The business losses of the parent can be set off against such income.
6. While clubbing the income, the deductions available under the five heads of income shall be allowed and the income after such deductions shall be clubbed.
7. Clubbing will take place even if the assets are indirectly transferred or transferred through cross transfers.
8. If interest free loan is given by husband to wife/ individual to son's wife / individual to his HUF, and the person to whom the loan is given purchases an asset out of the loan, then income from such asset shall not be clubbed

in the hands of the person who has given the loan. This is because giving a loan is not a transfer of assets. Clubbing applies when assets are transferred for inadequate consideration.

9. The HUF is a partner in firm ABC through its karta Mr. X and has 25% share in the profits of the firm. Wife of Mr. X is employed by firm ABC. In this case, clubbing shall not apply because Mr. X is partner in representative capacity and not in his individual capacity. Clubbing applies where an individual is a partner in his individual capacity and has substantial interest in firm and his spouse get remuneration from the firm.
10. If a trust is created for the benefit of a minor child, then the income of the trust shall be clubbed with the income of parent under section 64(1A). This shall apply even if the trust deed provides that the income shall be accumulated by trust and shall be given to minor child when he attains majority. Clubbing provisions under section 64(1A) shall apply since the income accrues for the benefit of minor child although it may be given on attaining majority.

#### **SECTION 65: LIABILITY OF THE TRANSFeree IN RESPECT OF CLUBBED INCOME**

Where, by reason of the provisions contained in section 60 to 64 or section 27, income from any asset is to be clubbed with the income of the transferor, then the transferee shall on the service of a notice of demand by the A.O., shall be liable to pay that portion of the tax levied on the transferor which is attributable to the income so clubbed.

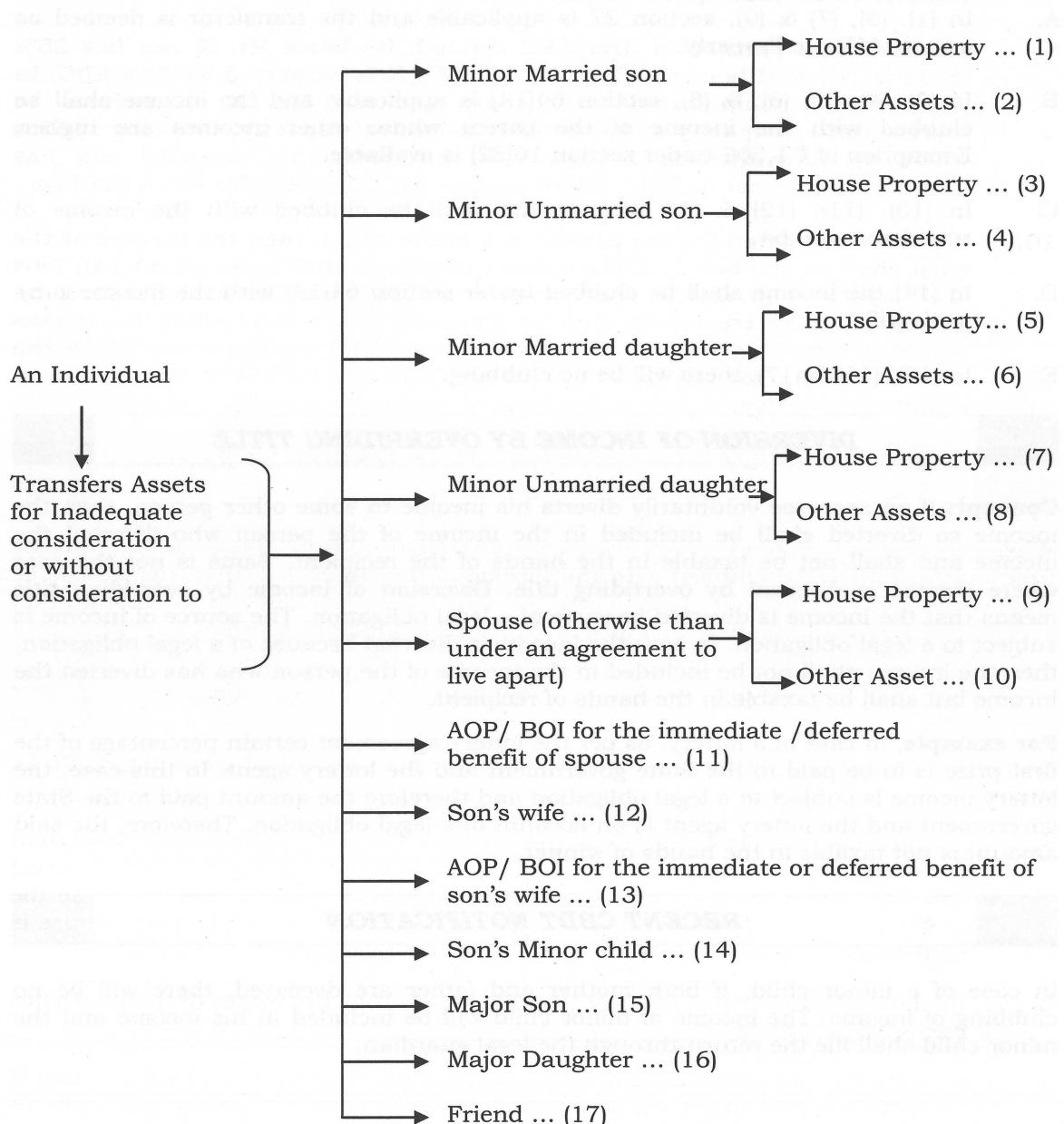
#### **SECTION 27: "OWNER OF HOUSE PROPERTY" DEFINED**

Section 27 defines the "owner of house property" for the purposes of section 22 to 26 as under:

- a) an individual who transfers any house property to his/her spouse otherwise than for adequate consideration or to a minor child not being a minor married daughter otherwise than for adequate consideration, shall be deemed to be the owner of the house property so transferred. (This shall not apply where house is transferred in connection with an agreement to live apart).
- b) the holder of imitable estate shall be deemed to be the owner of the properties comprised in the estate.
- c) a member of the cooperative society, company or other AOP to whom building is allotted or leased under the house building scheme of the society, company or AOP shall be deemed to be the owner of such building.
- d) any person who is allowed to take possession of any building in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, shall be deemed to be the owner of such building.

**Note:** As per **section 10(32)** any income includible in the total income of the assessee **under section 64(1A)** shall be exempt from tax to the extent that such income does not exceed ₹1,500 in respect of each minor child whose income is so includible.

## BIRD'S EYE VIEW ON CLUBBING OF INCOME



## **IMPLICATIONS UNDER THE INCOME TAX ACT**

- A. In (1), (3), (7) & (9), section 27 is applicable and the transferor is deemed as owner of House Property.
- B. In (2), (4), (5), (6), & (8), section 64(1A) is applicable and the income shall be clubbed with the income of the parent whose other incomes are higher. Exemption of ₹ 1,500 under section 10(32) is available.
- C. In (10), (11), (12) & (13) the income shall be clubbed with the income of transferor u/s 64.
- D. In (14) the income shall be clubbed under section 64(1A) with the income son/son's wife.
- E. In (15), (16) & (17), there will be no clubbing.

## **DIVERSION OF INCOME BY OVERRIDING TITLE**

**Concept:** If an assessee voluntarily diverts his income to some other person, then the income so diverted shall be included in the income of the person who diverted the income and shall not be taxable in the hands of the recipient. Same is not the case where income is diverted by overriding title. Diversion of income by overriding title means that the income is diverted because of a legal obligation. The source of income is subject to a legal obligation. In case the income is diverted because of a legal obligation, then the income shall not be included in the income of the person who has diverted the income but shall be taxable in the hands of recipient.

**For example**, in case of a lottery, as per the lottery agreement certain percentage of the first prize is to be paid to the State government and the lottery agent. In this case, the lottery income is subject to a legal obligation and therefore the amount paid to the State government and the lottery agent is on account of a legal obligation. Therefore, the said amount is not taxable in the hands of winner.

## **RECENT CBDT NOTIFICATION**

In case of a minor child, if both mother and father are deceased, there will be no clubbing of income. The income of minor child will be included in his income and the minor child shall file the return through the legal guardian.