

LIABILITY TO TAX IN SPECIAL CASES

SECTION 159: LEGAL REPRESENTATIVES

- (1) **Where a person dies, legal representative is liable to pay tax, interest, penalty and fine of the deceased which deceased would have to pay if he has not died.**
- (2) **Assessment/reassessment proceeding/penalty proceeding which were started on deceased and are pending on date of death shall be continued against legal representative.**

Also, assessment/reassessment/penalty proceeding can be initiated on the legal representative in the same manner in which they could have been initiated on deceased.

The Assessing Officer shall have to bring the legal representative on record and serve him a notice of continuation of proceedings in respect of deceased which are pending on date of death of deceased.

The Assessing Officer cannot continue the proceedings against the legal representative without bringing him on record and without serving a notice of continuation of proceedings of the deceased.

- (3) **The liability of legal representative in respect of tax, penalty & interest of deceased is restricted to the Estate inherited by legal representative i.e., the assets inherited by him.** Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which come into his possession.

SECTION 160 & SECTION 161: PRIVATE TRUSTS

1. The income of the following trusts shall be taxable in hands of trustees as representative assessee:
 - (a) Any trust declared by a duly executed instrument in writing whether testamentary or otherwise, which receives or is entitled to receive any income on behalf of or for the benefit of any person.
 - (b) Any oral trust which receives or is entitled to receive any income on behalf of or for the benefit of any person.

Note 1: If shares of beneficiaries in the trust are unknown, then income of trust shall be taxable at Maximum Marginal Rate (42.744%).

Note 2: However if such trust is a trust declared by **will** exclusively for benefit of any relative dependant upon him for support and maintenance and such trust is the only trust declared by him, then MMR shall not apply.

**EXCEPTIONS TO THE RULE OF ASSESSING INCOME EARNED
IN THE PREVIOUS YEAR IN THE ASSESSMENT YEAR
FOLLOWING THE PREVIOUS YEAR**

Income earned in a previous year is not assessed in that previous year but in the next following previous year i.e., Assessment Year. To this general rule, the following are the exceptions:

(1) Section 172: Shipping business of non-residents

The income of a ship owned by a non-resident is **assessable for the period when ship last arrived in India to the date of departure of ship.**

(2) Section 174: Assessment of Persons Leaving India

- a) When it appears to the Assessing Officer that any **individual may leave India** during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual **for the period from the expiry of the previous year for that assessment year upto the probable date of his departure from India shall be chargeable** to tax in that assessment year.

For Example: If it appears to Assessing Officer that a person may leave India on 30.06.2022 i.e., during the current Assessment Year 2022-23 and he has no present intention of returning to India, the total income of the period 01.04.2022 to 30.06.2022 shall be chargeable to tax in Assessment year 2022-23.

Note: The above income shall be chargeable to tax at the rate of tax applicable for assessment year 2022-23.

- b) The Assessing Officer may estimate the income of such individual for such period where it cannot be readily determined in the manner provided in the Act.
- c) **For the purposes of making an assessment under this section, the Assessing Officer may serve a notice** upon such individual requiring him to furnish within such time, not being less than seven days, a return of income. **Such notice shall be treated as if it was a notice under section 142(1)** and non-compliance with the notice may lead to best judgement assessment. The notice shall require the assessee to furnish his return of income for the period referred to in (a) above.

(3) Section 174A: Assessment of AOP/ BOI/ artificial juridical person formed for a particular event or purpose

Where it appears to the Assessing Officer that any **AOP/ BOI / an artificial juridical person, formed for a particular event or purpose is likely to be dissolved** in the assessment year in which such AOP/ BOI/ artificial juridical person was formed, the total income of such AOP/ BOI/ juridical person **for the period from the expiry of the previous year for that assessment year upto the date of its dissolution**

shall be chargeable to tax in that assessment year, and the provisions of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

(4) **Section 175: Assessment of persons likely to transfer property to avoid tax**

Where it appears to the Assessing Officer during the current assessment year that any **person is likely to charge, sell, transfer or dispose of** or otherwise part with any of his assets **with a view to avoid the payment of any liability** under the Act, then the total income of such person **for the period from the expiry of the previous year for that assessment year to the date when the Assessing Officer commences proceedings** under this section, shall be chargeable to tax in that assessment year. The provisions of section 174 shall, apply to the proceedings in case of any such person as they apply in case of persons leaving India.

(5) **Section 176: Discontinued Business**

Where any business or profession is discontinued in any assessment year, the income of the **period from the expiry of the previous year for that assessment year upto the date of discontinuance** may, at the discretion of the Assessing Officer be charged to tax in that assessment year.