6

LAWS RELATED TO MARINE INSURANCE AND INCOME TAX PROVISIONS RELATED TO INSURANCE

6.0 INTRODUCTION

The Marine Insurance Act, 1963 codifies the law relating to Marine Insurance. With a few exceptions this Act closely follows the UK Marine Insurance Act, 1906. Under his Act various definitions of principles of insurance and terminology have been defined which we have explained in the other module under Chapter "Marine Insurance". Kindly read those clauses & terminology carefully. In addition to the Marine Insurance Act, 1963 the following laws governs the practice of marine Insurance contracts. A good working knowledge of these laws is necessary for underwriters to pursue rights of recovery from carriers or bailees under subrogation proceedings.

6.1 OBJECTIVES

At the end of this lesson, you will be able to:

- Know the related laws to marine insurance.
- How the Transporter is responsible for the loss of goods during transit.
- Income tax provisions related to Life Insurer, General Insurer, Business organization and Individuals.

6.2 MARINE INSURANCE ACT, 1963

6.2.1 The Carriage of Goods by Sea Act, 1925

This Act defines the minimum rights, liabilities and immunities of a ship-owner in respect of loss or damage to cargo carried. Broadly, speaking, the Act deals with three aspects of a ship owner's liabilities towards cargo owners. They are:

a) The circumstances when the ship owner is deemed to be liable for loss or damage to cargo.

b) The circumstances when the shipowner is exempted from liability, i.e. when loss or damage is caused by events outside his control, e.g. perils of the seas.

c) The limits of liability of a **ship owner** for loss of or damage to cargo calculated in monetary terms per package or unit of cargo.

6.2.2 The Merchant Shipping Act, 1958

This Act also provides for protection to shipowners. The liability of a shipowner can be limited to certain maximum sums for certain losses, provided the incident giving rise to such claims has arisen without the actual fault or privity of the shipowner whether the claim relates to loss of life, personal injury, or damage to property on land or water. The Act also confers an obligation on the shipowner to send his ship to sea in a seaworthy and safe condition.

6.2.3 The Bill of Lading Act, 1855

This Act defines the character of the Bill of lading as an evidence of the contract of carriage of goods between the shipowner and the shipper, as an acknowledgement of the receipt of the goods on board the vessel and, as a document of title. The bill of lading is one of the documents required in connection with settlement of Marine Cargo claims.

6.3 THE INDIAN PORTS (MAJOR PORTS) ACT, 1963

This Act defines the liability of Port Trust Authorities for loss of or damage to goods whilst in their custody and prescribes time limits for filing monetary claim on, or suit against, the Post Trust Authorities.

6.3.1 The Carriage by Air Act, 1972

This Act gives effect to the provisions of the Warsaw Convention, 1929 and the Hague Protocol, 1955 relating to international carriage of passengers and goods by air. The Act defines the liability of the air carriers for death of or injury to passengers and for loss of or damage to registered luggage and cargo. The

Act also prescribes the maximum limits of liability for death, injury, damage etc. and also prescribes the time limits within which claims have to be filed on the air carrier. The provisions of the Act also apply, with some changes, to domestic carriage, that is carriage within India.

6.3.2 Multi- Modal Transportation Act, 1993

The Act provides for registration of multi-modal transport operators who are engaged in transportation of goods under more than one mode of transport i.e. rail, road and sea. The Act prescribes limits of liability of the operator, contents of documents issued by them, notice of loss etc.

6.4 THE CARRIERS ACT 1865

With the growth of industries movement of goods and property became an integral part of the society. The carriers role for the movement of goods became very important. In the beginning individual carriers came into existence and later many companies were formed. Tramways and Indian Railway Companies were formed under the enactments and their role as common carriers was of prime importance. While operating as common carriers loss or damage to the goods and property being carried were occasioned by the negligence or criminal acts of themselves, their servants or agents. It became necessary to make common carriers liable for the loss or damage so caused. To enable common carriers to limit their liability for loss of, or damage to, property delivered to them to be carried and also to declare their liability for loss of, or damage to, such property occasioned by the negligence or criminal acts of themselves, their servants or agents a Bill was introduced in the legislature.

This Act defines the right & liabilities of truck owners or operators who carry goods for public hire in respect of loss or damage to goods carried by them. The act also prescribes the time limit within which notice of loss or damage must be filed with the road carries.

Under the Act the Common Carrier includes any association or body of persons, whether incorporated or not, other than the Govt. carrying on business of transporting property from one place to another by land or inland navigation for all persons & for some consideration or reward.

The person does not include a Govt., Postal Deptt., the Indian Airlines etc. It includes an association or a body of persons which may be a co-operative society, a partnership firm or any other public or private company.

Under section 3 of the Act

“Carriers are not to be liable for loss of certain goods as given in the schedule above one hundred rupees in value.

Schedule

Gold and silver coin, Gold and silver in a manufactured or un-manufactured state, Precious stones and pearls. Jewellery, Time-pieces of any description, Bills and Hundis,

Currency notes of the Central Government, or notes of any Bank, or securities for payment of money, English or Foreign. Stamps and stamped paper, Maps, prints and works of art etc etc.

INTEXT QUESTIONS 6.1

1. What is represented by the Bill of lading?
2. What is multi modal transportation?

6.5 INDIAN INCOME TAX ACT 1961

6.5.1 Terminology

To understand the Income Tax Act one has to understood the various terms which are used frequently.

Income: Any earning by way of salary, profit or loss or rental income or interest income or profit or loss on sale of any capital assets or lottery, prizes is considered as income under Income Tax Act.

Assessee: An assessee is a person whose income is being assessed. For e.g., Mr. ‘A’ is a govt. employee or in job; his salary is an income, therefore - Mr. A will be considered as assessee.

Financial Year: The financial year is of 12 months starting from 1st April & ending to 31st March of the succeeding year.

Previous Year: The financial year in which the income is earned is known as the previous year.

Assessment Year: It is the succeeding year of the previous year and the year in which the income is assessed.

For e.g., Mr. A is in service and earning Rs.10,000 p.m. from 1/1/1999.

Financial Year: 1/4/98 to 31/3/99

Previous Years are: 1/4/98 to 31/3/99; 1/4/99 to 31/3/2000 & 1/4/00 to 31/3/2001

Assessment Year: (1/4/99 to 31/3/2000) will assess the income earned during the previous year 1/4/98 to 31/3/99.

Assessment year (1/4/00 to 31/3/2001) will assess the income earned during the previous year 1/4/99 to 31/3/2000.

6.5.2 Income Heads

Under section 14 of the Income Tax Act all incomes for the purpose of charge of Income Tax & Computation of total income have been classified under the following five heads of Income.

1)	Salaries	Section 15-17
2)	Income from House Property	Section 22 to 27
3)	Profits & gains of Business & Profession	Section 28 to 44
4)	Capital gains	Section 45 to 55
5)	Income from other sources	Section 56 to 59

Income, which falls within one head cannot be assigned to or taxed under another head. Further, income computed under each distinct head is not separately chargeable to tax. Income tax is only one tax levied on the aggregate of income classified and chargeable under the different heads.

The brief explanation of these heads are as under: -

1. Salary

Salary received and due during the previous year is chargeable to tax. However, if any salary has been included in the total income for any previous year on the basis of receipt it shall not be included again on the total income when it becomes due. Similarly, when any salary due (arrear) is not included in the total income it shall be included in the total income when it is received. The advance salary is included in the total income but not a loan taken by an employee from the employer.

Notes

Salary due means what is legally due or where a legally enforceable right has vested in the employee against the employer.

2. Income From House Property

The buildings include residential buildings let out for business or profession or for storage or warehouse or auditoriums for entertainment programmes. Cinema Halls, building let out for office, dance halls, music halls etc. But it does not include temporary hutments in the vacant land & any rental income there from will be assessed under the head "Income from other Sources". The location of building is immaterial. It may be located in India or abroad. If a company is incorporated with the object of promoting & developing a building for market place, the income of the company is not assessable under the head "Income from Business & Profession" but it is assessable under the head "Income from House Property". In case, the business carried on by the assessee has been stopped & the business premises have been based out the rental income is assessable as income from property.

3. Profit & Gains of Business or Profession Business [Sec.2(13)]

Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. For practical purposes, business means the purchase and sale or manufacture of a commodity with a view to make profit. Business includes banking, transport business or any other adventure. In this connection it is not necessary that there should be a series of transactions in a business and that it should be carried on permanently. Neither repetition nor continuity of similar transactions is necessary. Profit of an isolated transaction is also taxable under this head provided that it is a venture in the nature of business or trade. A transaction may be a single one and in that sense isolated but it must comprise some activity in the nature of operations, which are ordinarily followed in respect of trade. In this connection intention of purchase is very important. One may purchase an article for one's own use and without any intention to sell it and the mere fact that he subsequently sells it at a profit will not make the transaction of purchase and sale an adventure in the nature of trade. If, however, at the date of the purchase and sale an adventure in the nature of trade. If, however, at the date of the purchase the object of the purchase was not to bring the article in his own use but to sell it at a profit, there can hardly be any doubt that in that case the transaction would be a venture in nature of trade. Where a persons purchased, land and resold as building sites after plotting out within two years of purchase, it was held that the transaction was in the nature of trade and assessable as business income.

Profession includes vocation [Sec.2(36)]

Profession means those activities for earning livelihood which require intellectual skill or manual skill, e.g., the work of a lawyer, doctor, auditor, engineer and so on, are in the nature of profession. Vocation means activities which are performed in order to earn livelihood, e.g., brokerage, Insurance agency, music, dancing, etc. As the rules for the assessment of business, profession or vocation are the same, there is no importance of making any distinction between them from the income tax point of view.

4. Income from Capital Gains

Any profits & gains arising from the transfer of a capital assets effected in the previous year shall be chargeable to income tax under the head "Capital Gains" and shall be deemed to be the income of the previous year in which the transfer took place.

5. Income from other resources

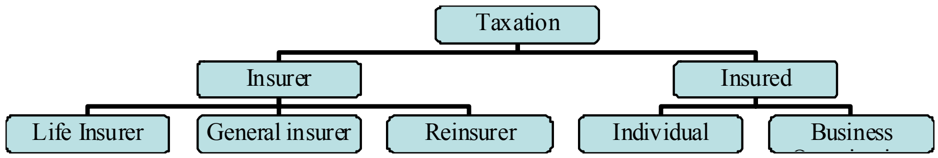
This is a residuary head of income and all such income profits & gains which are not chargeable to income tax under any of the first four heads.

6.5.3 Taxation Provisions for Insurers, Insured

Like every commercial contract, there are two or more persons are involved in the insurance contracts. The persons involved in these contracts are called Insurer (The seller) and the Insured (Buyer). As the obligations are of these persons are different, therefore the provisions of income tax are also different which are explained as under:—

The Tax provisions in the Insurance sector can be discussed under the following heads:

Notes



1. Insurer

a) Life Insurer:

As per the Insurance Act 1938 amended up to date in India, only companies registered under Indian Companies Act 1956 can start the Insurance business. As the companies are also conducting the commercial transaction business therefore these should also be considered at par with the other commercial organization under the head "Income from Business and Profession" but Income Tax Act considers Life insurer differently because the income generated by them is from contribution made by the general public for the risk coverage and saving. If the same is taxed at the rate applicable then it is taxed on the saving of an individual.

Hence section 44 (A) of the Act deals the taxation provisions related to life insurer and explained as under:

If the person who carries on or at any time in the previous year carried on life insurance business the profit & gains of such person from that business shall be computed separately from his profit and gains from any other business and further adjusted the surplus or deficit by the Actuarial valuation.

The Actuarial valuation means the liability of the life insurance company to be paid to the policyholders either on death or on maturity including bonus.

For eg: If a Life Insurance Company has earned Rs. 10 crores from life insurance and other activities then the profit say Rs. 3 crores from other activities and actuarial liability say Rs. 5 crores then the income form business will be as follows:—

	Rs. in crores
Total Income of Life Insurance Company	10.00
Less income form other activities	3.00
Income of life insurance business	7.00
Less Actuarial valuation	5.00
Taxable income of Life insurance company	2.00

The life insurance company will pay tax @ 12.5% on Rs. 2.00 crores under section 115B of Income Tax Act and normal rate (30% as on date) on income from other activities

b) General Insurer and Reinsurer:

in the case of these organizations the profit and gains are computed as in the case of other organization except that the reserve for unexpired risks may be allowed. Reserve for unexpired risks means provision of claims has been made on the general insurance polices who has not expired but claim may arise in future or the next financial year. The normal income tax rate will be applicable to these two insurers.

2. Insured

a) Individual:—

The following benefits are available to an individual who invest his income in insurance:—

i) Payment of life insurance premium: The payment of premium up to Rs 1.00 lakhs can be reduced from the taxable income of an individual. Premium may be life insurance or Annuity plan.

ii) Payment of Health insurance; The payment of premium on health insurance can be reduced from the taxable income of an individual up to Rs 15000/- (Rs 20000/- if any family member is senior citizen).

b) Business Organization:—

Any business organization incurring any expenditure by way of insurance premium is allowed as expenditure. In other words the income will be reduced by the expenses incurred on insurance for Plant & Machinery, Building, stock etc. Even if the insurance premium is paid for welfare of the employees are allowable expenditure.

INTEXT QUESTIONS 6.2

1. Define Income under Income Tax Act 1961.
2. Define Previous year under Income Tax 1961.

6.6 SUMMARY

As material is insured under marine insurance and the goods are sent through various modes of transportation like rail/road/sea/air and transporter is acting as a bailee and he is supposed to transport the goods in safe and sound condition. In case of loss he can not be made liable for the total loss and his liability will be limited under various acts.

In Income Tax Act the special consideration has been given to both life insurer and insured to popularize insurance. The income of life insurer is taxed at lower rate but the income of general insurer or Reinsurer at normal rate. The premium paid by the insured also gets the benefits by reducing his income as a result his tax liability also reduces.

6.7 TERMINAL QUESTIONS

1) How actuarial valuation is related with income tax treatment for insurer?
2) List the deduction allowed to business entity and an individual.
3) Discus the Carrier Act.
4) Write short note on
   a. The Carriage of Goods by Sea Act, 1925.
   b. The Merchant Shipping Act, 1958.
   c. Various Income heads under IT Act.

6.8 OBJECTIVE TYPE QUESTIONS

1. Under Indian Income Tax Act 1961 the Income can classified under ______heads(5/6).
2. Previous year and financial year can be same. (Correct/incorrect).
3. Income Tax Rate for life insurance business is ________ ________(12.5%/ 30%).
4. The maximum limit for health insurance premium is __________ (Rs. 15,000/-, Rs. 25,000/-).
5. Income Tax Rate for General insurance business is _______________(12.5%/ 30%).

6.9 ANSWERS TO INTEXT QUESTIONS

6.9.1

1. Bill of lading as an evidence of the contract of carriage of goods between the shipowner and the shipper, as an acknowledgement of the receipt of the goods on board the vessel and, as a document of title.

2. Multi-modal transportation means transportation of goods under more than one mode of transport i.e. rail, road and sea.

6.9.2

1. Any earning by way of salary, profit or loss or rental income or interest income or profit or loss on sale of any capital assets or lottery, prizes is considered as income under Income Tax Act.

2. The financial year in which the income is earned is known as the previous year.

6.10 ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. 5
2. Correct
3. 12.5%
4. Rs 15,000/-
5. 30%