

Extent of Income-tax Act



- 1 The Income-tax Act, 1961 came into force with effect from 1/4/1962.
- 2 It has XXIII chapters and 298 sections in all.
- 3 Income-tax Act extends to the whole of India.
- 4 Entry No: - 82 Union List > Income Tax other than Tax on Agricultural Income
- 5 Entry No: - 46 State List > Agricultural Income Tax

How Law Works



Central Board of Direct Taxes
(CBDT)



Law makers		Law Implementers	Law Interpreters	
Ministry of Finance in consultation with ministry of law and Justice draft the Finance bill Legislative Process		Parliament approves the law then the power is delegated to another body to create working law here the "Rules are made & implemented" In other words it can also be said as subordinate legislation.	Courts & tribunal	
Green paper	Discussion/consultation documents		Supreme court-APEX COURT	Can accept the case when HC grants certificate of Fitness [Article 134-A] or Filing an SPL [article 136]
White paper	Governments proposed new law		High Court	Original jurisdiction in most of the cases Writ petition can be filled
Bill	Debated and approved in both houses of parliament		Tribunal	Last Authority for Interpretation of Fact
Approval	President assent is taken, once approval is received it becomes an Act from the date notified.			

Constitutional Validity of Act

Article 123	Power of President to promulgate Ordinances during recess of Parliament (1) If at any time, except when both Houses of Parliament are in session, President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require
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1. BASICS OF INCOME TAX

	(2) An Ordinance promulgated under this article shall have the same force & effect as an Act of Parliament, but every such Ordinance
	(a) shall be laid before both House of Parliament & shall cease to operate at the expiration of six weeks from the reassemble of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
	(b) may be withdrawn at any time by the President Explanation where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause
Article 265	No tax shall be levied or collected except by authority of law
Article 245	(1) Parliament may make laws for the whole or any part of the territory of India, & the Legislature of a State may make laws for the whole or any part of the State
	(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.
Article 270	All the taxes & duties except specified shall be levied by CG & distributed between Union & State Government in the manner specified by President or through recommendation of finance commission.
Article 271	Notwithstanding anything in Article 270, Parliament may at any time increase any of the duties or taxes referred in those articles by a surcharge for purposes of the Union & the whole proceeds of any such surcharge shall form part the Consolidated Fund of India.

Sec 298 Power to remove difficulties

Sec 298(1) - If any difficulty arises in giving effect to the provisions of this Act the CG may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Sec 298(4) - Central Government shall remove the difficulty if any, & such order shall be placed before both houses of parliament.

Scope of Income Tax Act

Income Tax Act, 1961

- 1) For determination of Taxable Income
- 2) For determination of Tax Liability
- 3) Assessment procedures
- 4) Appeals, Penalties & Prosecutions

Income Tax Rules, 1962

- 1) For implementation of the Act
- 2) For carrying out purposes of the Act
- 3) Sec 295 - CBDT makes the Rules

Circulars & Clarifications

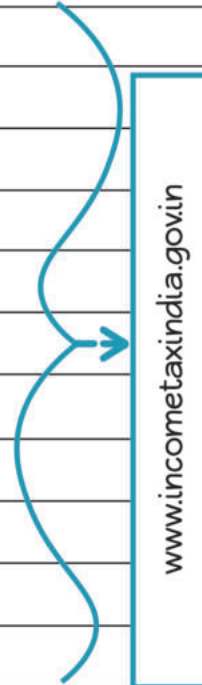
- 1) U/s 119, CBDT issues circulars & clarifications which helps clarify doubts
- 2) Binding on Income Tax Authorities
- 3) Not binding on Assessee
- 4) All Notifications & Circulars 6 months before exams are relevant

Judicial Decisions

- 1) SC/HC provides decision on Question of Law
- 2) Decision of SC become the law of land

Annual Amendments

Every year along with Budget a Financial Bill is presented. The provisions of such Finance Act are thereafter incorporated in the Income-tax Act.



1. BASICS OF INCOME TAX

Direct Tax Amendments

Effective from 1st day of Next Year, Unless Specified Otherwise

Indirect Tax Amendments

Effective from Midnight, Unless Specified Otherwise [Now after GST, amendment are expected after every GST Council Meet].

Sec 1 Short title, extent & commencement

- > This Act may be called the Income-tax Act, 1961
- > It extends to the whole of India
- > It shall come into force on the 1st day of April, 1962
 - > Total No. of Chapter in Act, XXIII
 - > Total Sec. in Act, 298
 - > Total Schedule in Act, Fourteen.

Sec 4 Charge of income-tax

- (1) Where any Central Act enacts that income-tax shall be charged for any AY at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (incl. provisions for the levy of additional income-tax) of, this Act in respect of the total income of PY of every person.
- Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the PY, income-tax shall be charged accordingly.
- (2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

SIMPLIFIED ANALYSIS OF THE SECTION -

Income Tax is Payable For Any Assessment Year at the rate specified in Annual Finance Act in respect of total income of any person in the previous year.

Sec 2(31) Person

- 1 An Individual
- 2 A Hindu Undivided Family [HUF]
- 3 A Company [Domestic & Foreign]
- 4 A Firm [Including LLP]
- 5 Association of Person / Body of Individuals. [AOP/BOI]
- 6 A Local Authority
- 7 Every Artificial juridical person not falling within any of the preceding sub-clauses. [AJP]

Explanation - For the purposes of this clause, an AOPs / BOIs / local authority / an artificial juridical person shall deemed to be a person, whether or not such person / authority / body / juridical person was formed / established / incorporated with object of deriving income, profits / gains.

Sec 2(7) Assessee

"Assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes -

- a. every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person
- b. every person who is deemed to be an assessee under any provision of this Act
- c. every person who is deemed to be an assessee in default under any provision of this Act.

Sec 2(9) Assessment Year

AY is a year in which income is charged to tax or year in which IT is payable. It is a period of 12 months commencing on 1st April every year.

Sec 3 Previous Year

PY is a year in which income is earned. It is same as FY. This uniform PY has to be followed for all source of income.

exemptions & deductions under several sections of the Act.

Relief are reduced from the amount of income-tax liability so computed on fulfilment of conditions as prescribed in Sec.86,89 etc

Sec 2(25A) India (Simplified Definition)

India means the territory of India as referred to in Article 1 of Constitution, its territorial waters, seabed & subsoil underlying waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone & other maritime Zones Act, 1976 and the air space above its territory & territorial waters.

Sec 2(45) Total Income

"Total income" means the total amount of income referred to in sec 5, computed in the manner laid down in this Act

Simplified Explanation -

Total income is income after reducing the deduction under chapter VI-A from the gross total income. This income is also called taxable income on which tax has to be imposed.

Section 2(24) : Income

- 1 Profits or gains of business / profession / Dividend / CG
- 2 Voluntary Contribution received
- 3 Value of perquisite or profit in lieu of salary taxable u/s 17
- 4 Export incentives, like Duty Drawback, Cash Compensatory Support, Sale of licences or Government Assistance etc.
- 5 Income of Partner from a Firm
- 6 Winnings from lotteries, crossword puzzles other casual income.
- 7 Deemed income u/s 41 or 59
- 8 Sums received by an assessee from his employees towards welfare fund contributions such as PF/SPF

1. BASICS OF INCOME TAX

- 9 Amount received under Keyman Insurance Policy incl bonus
- 10 Amount received under agreement for Intangible
- 11 Gift covered u/s 56
- 12 Advance received under failed negotiation on transfer of CA
- 13 Person received income in connection with termination or modification of any contract relating to Business
- 14 FMV of Inventory as on date of which converted into CA
- 15 Accumulated Profits [Reserves] of Amalgamated co to also incl. Reserve of Amalgamating co on date of amalgamation
- 16 Gift by Resident to NR of any money situated in India after 05.07.19 shall be taxable in India

Rates of income tax

Normal rates - these are specified by the relevant FA

Special rates - these are specified by Income Tax Act

Normal Rates

Individual: In case of every individual viz Male female, & below the age of 60 yrs on the last day of PY any AOP, BOI, HUF, AJP, Non Resident (Irrespective of Age).

Total Income	Rate (%)	Shortcut
Upto ₹ 250000	Nil	-
₹ 2,50,001 to 5,00,000	5%	₹ 12,500
₹ 5,00,001 to 10,00,000	20%	₹ 1,12,500
Above ₹ 10L	30%	-



Senior citizens: Every individual (Resident) 60 years or more but not more than 80 years

Total Income	Rate (%)	Shortcut
Upto ₹ 300000	Nil	-
₹ 3,00,001 to 5,00,000	5%	₹ 10,000
₹ 5,00,001 to 10,00,000	20%	₹ 1,10,000
Above ₹ 10L	30%	-



Super Senior citizens: Individual (Resident) 80 years / more

1. BASICS OF INCOME TAX

Total Income	Rate (%)	Shortcut
Upto ₹ 500000	Nil	-
₹ 5,00,001 to 10,00,000	20%	₹ 1,00,000
Above ₹ 10L	30%	-



From AY 21-22, Individual & HUF tax payers have an option to opt for taxation under newly inserted sec 115BAC

Circular 28/2016 : Clarifications Regarding Attaining Prescribed Age Of 60/80 Years on 31st March Itself, In Case of Senior/Very Senior Citizens Whose Date of Birth Falls on 1st April, for Purposes of Income-Tax Act Higher tax exemption limits have been prescribed under the past Finance Acts for resident senior citizen taxpayers who have attained the age of sixty years. Although specific provision does not exist in this regard under the Act, the Hon'ble Supreme Court had an occasion to consider a similar issue in the case of **Prabhu Dayal Sesma vs. State of Rajasthan** & another wherein it has dealt with on the general rules to be followed for calculating the age of the person. In this judgment, Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 O'clock in the midnight and he attains the specified age on the preceding, the anniversary of his birthday

In view of the aforesaid judgment, CBDT, hereby clarifies that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria. Therefore, if a person is born on 1 April, 1962/1942 then he shall get slab of ₹ 3,00,000/ ₹5,00,000 in PY 31.3.2022.

SIMPLIFIED ANALYSIS - Individual who has attained the age of 60/80 years on the 1st April would be eligible for higher basic exemption limit

1. BASICS OF INCOME TAX

NOTES FOR NORMAL RATES:

1) Rebate u/s 87A

1) Assessee is Individual

2) He is Resident in India

3) whose total income(From All Heads after Deduction) (Normal + Special excluding Agriculture Income and Exempt Income) **does not exceed ₹5 lakh**

Rebate= ₹12500 or 100% of tax payable ,whichever is lower.

Rebate not available for tax computed u/s 112A [FA'18]

2) Cess is applicable @ 4% on income taxable & renamed as HEC.

3) Rounding Off

Sec 288A - Rounding Off of Income : The amount of total income computed in accordance with the foregoing provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten; & the amount so rounded off shall be deemed to be total income of the assessee for the purposes of this Act.

Sec 288B - Rounding off amount payable and refund due : Any amount payable, & the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored & thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to next lower amount which is a multiple of ten

1. BASICS OF INCOME TAX

SIMPLIFIED FORM -

Sec.288A	Round off of Total Income	R/o to nearest multiple of ₹10
Sec.288B	Round off of Total Tax	R/o to nearest multiple of ₹10

Rule of 5 is applicable.

Eg:- Tax calculated is 81501, tax shall be rounded off to 81500.

4) Income chargeable at Special rate

Income	Rates
STCG referred to in sec 111A (Securities)	15%
LTCG referred to in sec 112	20%
LTCG U/s 112A Beyond ₹1Lakh	10%
Casual incomes (e.g. Lottery, horse winnings, etc.) (Sec 115BB)	30%
Unexplained Cash/Expenses/Investment-115BBE	60%
Maximum Marginal rate	42.744% [30% + 37% + 4%]

5) Special Adjustment for Resident :

If Assessee (Resident) has special Income i.e. LTCG (112 / 112A) / STCG (111 / 111A) (Not casual Income) & BEL is not exhausted then such special income shall be first used to cover up basic exemption limit and balance ,if any,shall be chargeable to special rate of Tax

6) Surcharge : I / HUF / AOP / BOI / AJP as:

	Income	u/s 111A, 112A & Dividend	Other
1)	TI [Including Income u/s 111A & 112A & dividend income does not exceed 50L	Nil	Nil
2)	TI [Including Income u/s 111A & 112A & dividend income exceed 50L but does not exceed 1cr.	10%	10%
3)	TI [Including Income u/s 111A & 112A & dividend income exceed 1cr but does not exceed 2cr.	15%	15%
4)	TI [Excluding Income u/s 111A & 112A & dividend income exceed 2cr but does not exceed 5cr.	15%	25%
5)	TI [Excluding Income u/s 111A & 112A & dividend income exceed 5cr	15%	37%
6)	TI [Including Income u/s 111A & 112A & dividend income exceed 2cr but not covered by situation 4 & 5.	15%	15%

1. BASICS OF INCOME TAX

Marginal Relief

A) In case of an **Local Authority & Firm**, where **TI < ₹1cr**, aggregate of income tax & surcharge shall be restricted to:

$$(Tax\ on\ ₹1cr) + (Total\ Income - ₹1cr)$$

B) In case of an **Individual & HUF**

Total Income	Income tax & Surcharge restricted to
₹50L <= ₹1cr	(Tax on ₹50 lakhs) + (Total Income - ₹50 lakhs)
₹1cr <= ₹2cr	(Tax on ₹1 crore with surch @ 10%) + (Total Income - ₹1 crore)
₹2cr <= ₹5cr	(Tax on ₹2 crore with surch @ 15%) + (Total Income - ₹2 crore)
Exceeds ₹5cr	(Tax on ₹5 crore with surch @ 25%) + (Total Income - ₹5 crore)

C) In case of a **Domestic / Foreign Company**, where **TI ₹1cr <= ₹10cr**, aggregate of income tax & surcharge shall be restricted to:

$$(Tax\ on\ ₹1cr) + (Total\ Income - ₹1cr)$$

D) In case of a **Domestic Company**, where **TI > ₹10cr**, aggregate of income tax & surcharge shall be restricted to:

$$(Tax\ on\ ₹10cr\ with\ surch\ of\ 7\%) + (Total\ Income - ₹10cr)$$

E) In case of a **Foreign Company**, where **TI > ₹10cr**, aggregate of income tax & surcharge shall be restricted to:

$$(Tax\ on\ ₹10cr\ with\ surch\ of\ 2\%) + (Total\ Income - ₹10cr)$$

For Other Assessee or Persons - Surcharge

Assessee	Rate of Tax	Applicable Surcharge			Rate of HEC
		TI < 1Cr	1Cr < TI < 10Cr	TI > 10Cr	
Domestic Co turnover not exceed 400 crore in PY 19-20 [FA'21]	25%	-	7%	12%	4%
Other Companies	30%	-	7%	12%	4%
Foreign Company	40%	-	2%	5%	4%
Firm & LLP	30%	-	12%	12%	4%
Local Authority	30%	-	12%	12%	4%
Co Operative Society					
For 1st ₹10000	10%	-	-	-	4%
For next ₹10000	20%	-	-	-	4%
For the balance 30%	30%	-	12%	12%	4%
Alternative Scheme : Sec 115BAD (NewSec inserted for Resident Co-Operative Societies subject to conditions)	22%	10%	10%	10%	4%

1. BASICS OF INCOME TAX

- > Companies may opt for alternative taxation scheme w/s 115BAA / 115BAB
- > Companies are further subject to MAT provisions whereas, other than company assessee are subject to AMT (Discussed in detail later)

Format to Compute Total Income

Particulars	Amount (₹)
Income from Salary	xxx
Income from House Property	xxx
Income from Profit and gains from Business and profession	xxx
Income from Capital Gains	xxx
Income from Other Sources	xxx
Gross Total Income	xxx
Less: Deduction under Chapter VIA	(xxx)
Total Income	xxx

Optional Tax Scheme :

For Individuals / HUF - Sec 115BAC

For Resident Co-operative Society - Sec 115BAD

For Domestic Company - Sec 115BAB / 115BAA / 115BA

"These sections require you to have knowledge of certain other sections as well & hence, it will be discussed later in detail."

Relevant Case Laws

Case	Matter	Conclusion
T.A. Querishi [SC]	Case: Whether Illegal income is also liable to tax	Held: In Income tax Source of Income is irrelevant Nature of receipt is important.
Saurashtra Cements Ltd [SC]	Case: Delay in supply of machinery Assessee received liquidated damages is it a revenue receipt?	Held: It is a capital receipt since it is not receipt in the course of profit earning process.

1. BASICS OF INCOME TAX

Broad structure of Income tax act [Self read]

Chap no	Title	Content	Sections
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V	Income of other person included in Assessee's Income	Clubbing provisions	60-65
VI	Aggregation of Income & set off/carry forward	Set off & c/f of lossess	66-80
VI-A	Deductions while computing total income	Deductions	80A-80U
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For your Practice!

P1 Calculate the Tax Liability of Mr. Bahubali age 43 years having the Following Income

Particulars	₹
Business Income	3,00,000
Dividend Income	1,50,000

P2 Calculate Tax Liability of Mr. Ranga age 40 years having Following Income

Particulars	₹
Business Income	6,00,000
Other Sources	1,50,000
LTCG u/s 112	40,000
STCG	30,000

P3 Calculate Tax Liability of Mr. Kaliya age 52 years having Following Income

Particulars	₹
Business Income	7,00,000
Other Sources	1,50,000
LTCG u/s 112	40,000
STCG u/s 111A	30,000

P4 Calculate Tax Liability of Mr. Micromax age 56 years having following Income

Particulars	₹
Business Income	9,00,000
Other Sources	1,80,000
LTCG u/s 112	60,000
STCG u/s 111A	50,000

P5 Calculate Tax Liability of Mr. Stark age 55 years having Following Income

Particulars	₹
Business Income	62,00,000
LTCG u/s 112A	8,00,000
STCG u/s 111A	8,00,000
Dividend Income	2,00,000

P6 Calculate Tax Liability of Mr. Thanos age 33 years having Following Income

Particulars	₹
Business Income	1,30,00,000
LTCG u/s 112A	21,00,000
STCG u/s 111A	28,00,000

1. BASICS OF INCOME TAX

P.7 Calculate Tax Liability of Mr. Rocket age 41 years having Following Income

Particulars	₹
Business Income	2,70,00,000
LTCG u/s 112A	51,00,000
STCG u/s 111A	48,00,000

P.8 Calculate Tax Liability of Mr. Groot age 48 years having Following Income

Particulars	₹
Business Income	6,30,00,000
LTCG u/s 112A	41,00,000
STCG u/s 111A	10,00,000

P.9 Calculate Tax Liability of Mr. Hulk age 52 years having Following Income

Business Income	1,90,00,000
STCG u/s 111A	40,00,000

Solved Problems

P.1 In case of a resident individual, age below 60 years, calculation of tax liability and marginal relief shall be as under-

Total Income	Income Tax & Surcharge
50,00,000	13,12,500 + Nil
51,00,000	13,42,500 + 1,34,250 = 14,76,750 (Restricted to 14,12,500)
1,00,00,000	28,12,500 + 2,81,250 = 30,93,750
1,02,00,000	28,72,500 + 4,30,875 = 33,03,375 (Restricted to 32,93,750)
2,00,00,000	58,12,500 + 8,71,875 = 66,84,375
2,03,00,000	59,02,500 + 14,75,625 = 73,78,125 (Restricted to 69,84,375)
5,00,00,000	1,48,12,500 + 37,03,125 = 1,85,15,625
5,05,00,000	1,49,62,500 + 55,36,125 = 2,04,98,625 (Restricted to 1,90,15,625)

P.2 Compute the tax liability of Mr. Akash (aged 55 years), having total income of ₹1,02,00,000 for the AY 2022-23. Assume that his total income comprises of salary income, income from house property and interest from fixed deposit account. Also, assume that Mr. Akash has not opted for the provisions of section 115BAC.

Solution :

1. BASICS OF INCOME TAX

A) Tax Payable including surcharge on total income of	1,02,00,000	
2,50,000 - 5,00,000 @ 5%	12,500	
5,00,000 - 10,00,000 @ 20%	1,00,000	
10,00,000 - 1,02,00,000 @ 30%	<u>27,60,000</u>	
Total	28,72,500	
Add : Surcharge @ 15%	4,30,875	33,03,375
B) Tax on Total income of 1cr.		28,12,500
(+) Surcharge		<u>2,81,250</u>
		30,93,750
C) Total Income less 1cr.		2,00,000
D) Tax Payable on total income of 1cr (+) the excess of total income over 1 cr. (B+C)		32,93,750
E) Tax Payable : lower of A & D		32,93,750
(+) Health & Education cess		<u>1,31,750</u>
Tax Liability		34,25,500
F) Marginal relief (A-D)		9,625

Alternative method

A) Tax Payable including surcharge on total income of	1,02,00,000	
2,50,000 - 5,00,000 @ 5%	12,500	
5,00,000 - 10,00,000 @ 20%	1,00,000	
10,00,000 - 1,02,00,000 @ 30%	<u>27,60,000</u>	
Total	28,72,500	
Add : Surcharge @ 15%	4,30,875	33,03,375
B) Tax on Total income of 1cr.		28,12,500
(+) Surcharge		<u>2,81,250</u>
		30,93,750
C) Excess Tax payable (A - B)		2,09,625
D) Marginal Relief (209625 - 200000) being the amount of income in excess of 1cr.		9625
Tax Payable		32,93,750
(+) Health & Education cess @ 4%		<u>1,31,750</u>
Tax Liability		34,25,500

P3 Compute tax liability of Mr. Deepak (aged 57 years), having total income of ₹2,02,00,000 for the AY 2022-23. Assume that his total income comprises of salary income, income from house property and interest from fixed deposit account. Also, assume that Mr. Deepak has not opted for the provisions of section 115BAC.

Solution :

1. BASICS OF INCOME TAX

A)	Tax Payable including surcharge on total income of	2,02,00,000	
	2,50,000 - 5,00,000 @ 5%	12,500	
	5,00,000 - 10,00,000 @ 20%	1,00,000	
	10,00,000 - 2,02,00,000 @ 30%	<u>57,60,000</u>	
	Total	58,72,500	
	Add : Surcharge @ 15%	14,68,125	73,40,625
B)	Tax on Total income of 2cr.		58,12,500
	(+) Surcharge @ 15%		<u>8,71,875</u>
			66,84,375
C)	Total Income less 2cr.		2,00,000
D)	Tax Payable on total income of 2cr (+) the excess of total income over 2 cr. (B+C)		68,84,375
E)	Tax Payable : lower of A & D		68,84,375
	(+) Health & Education cess		<u>2,75,375</u>
	Tax Liability		71,59,750
F)	Marginal relief (A-D)		4,56,250

Alternative method

A)	Tax Payable including surcharge on total income of	2,02,00,000	
	2,50,000 - 5,00,000 @ 5%	12,500	
	5,00,000 - 10,00,000 @ 20%	1,00,000	
	10,00,000 - 2,02,00,000 @ 30%	<u>57,60,000</u>	
	Total	58,72,500	
	Add : Surcharge @ 25%	14,68,125	73,40,625
B)	Tax on Total income of 2cr.		58,12,500
	(+) Surcharge @ 15%		<u>8,71,875</u>
			66,84,375
C)	Excess Tax payable (A - B)		6,56,250
D)	Marginal Relief (656250 - 200000) being the amount of income in excess of 2cr.		4,56,250
	Tax Payable		68,84,375
	(+) Health & Education cess @ 4%		<u>2,75,375</u>
	Tax Liability		71,59,750

P.4 Compute tax liability of Mr. Rajesh (aged 57 years), having total income of ₹5,02,00,000 for the AY 2022-23. Assume that his total income comprises of salary income, income from house property and interest on fixed deposit account. Assume that Mr. Rajesh has not opted for the provisions of section 115BAC.

Solution :

1. BASICS OF INCOME TAX

A) Tax Payable including surcharge on total income of	5,02,00,000	
2,50,000 - 5,00,000 @ 5%	12,500	
5,00,000 - 10,00,000 @ 20%	1,00,000	
10,00,000 - 5,02,00,000 @ 30%	<u>1,47,60,000</u>	
Total	1,48,72,500	
Add : Surcharge @ 37%	55,02,825	2,03,03,375
B) Tax on Total income of 5cr.		1,48,12,500
(+) Surcharge @ 25%		<u>37,03,125</u>
		1,85,15,625
C) Total Income less 2cr.		2,00,000
D) Tax Payable on total income of 5cr (+) the excess of total income over 5 cr. (B+C)		1,87,15,625
E) Tax Payable : lower of A & D		1,87,15,625
(+) Health & Education cess		<u>7,48,625</u>
Tax Liability		1,94,64,250
F) Marginal relief (A-D)		16,59,700

Alternative method

A) Tax Payable including surcharge on total income of	5,02,00,000	
2,50,000 - 5,00,000 @ 5%	12,500	
5,00,000 - 10,00,000 @ 20%	1,00,000	
10,00,000 - 2,02,00,000 @ 30%	<u>1,47,60,000</u>	
Total	1,48,72,500	
Add : Surcharge @ 15%	55,02,825	2,03,75,325
B) Tax on Total income of 5cr.		1,48,12,500
(+) Surcharge @ 25%		<u>37,03,125</u>
		1,85,15,625
C) Excess Tax payable (A - B)		18,59,700
D) Marginal Relief (1859700 - 200000) being the amount of income in excess of 5cr.		16,59,700
Tax Payable		1,87,15,625
(+) Health & Education cess @ 4%		<u>7,48,625</u>
Tax Liability		1,94,64,250

1. BASICS OF INCOME TAX

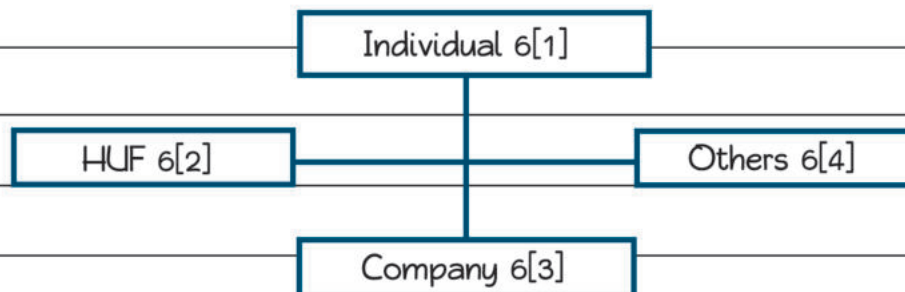
2. RESIDENTIAL STATUS

Basics of Residential Status [RS]

1. Total income of an assessee cannot be computed unless we know residential status of the assessee during the previous year.
2. RS is determined for each category of person separately.
3. RS always determined for P.Y. because we have to determine the total income of the PY only.
4. It is calculated for every year because it may change year to year.
5. A person can be resident of more than one country for any P.Y
6. Citizenship of a country and residential status of that country are different concept.
7. Onus of Proof

Individual/company	Burden lies on the Department
HUF, Firm, LLP	Assumed that they are Resident, Onus that they are not resident is on them.
Other Assessee	Is a question of Fact, it is the duty of assessee to provide all relevant fact.

Residential Status is Determined for



2. RESIDENTIAL STATUS

Residential Status of Individual

Determining Residential Status of individual (Sec 6(1))

Other Assessee not covered in the 3 categories

They would be treated as Resident if satisfy **any** of following condition-

- a) If they stay in India for 182 days or more in PY **OR**
- b) Stays in India for **60 days in PY AND 365 days in 4 Previous preceding years.**

For 3 category of cases

1. Indian Citizen who leaves India in PY as a ship crew member of an Indian ship **or** for the purpose of employment outside India
 - They would be treated as Resident if they stay in India for 182 days or more in PY
2. Indian Citizen or Person of Indian Origin who being outside India **comes on a visit to India in PY & total income (other than foreign income) is 15lakh or less**
 - They would be treated as Resident if they stay in India for 182 days or more in PY
3. Indian Citizen or Person of Indian Origin who being outside India **comes on a visit to India in PY & total income (other than foreign income) is exceeding 15lakh**
 - They would be treated as Resident if satisfy **any** of following condition-
 - a) If they stay in India for 182 days or more in PY **OR**
 - b) If the period of stay is **120 days** or more during the **PY AND 365 days or more** during the **4yrs immediately preceding PY**

IC / PIO having income exceeding 15L & liability to tax in another country

no Person treated as **RNOR** as per Sec 6(1A) & 6(6)

yes RS depends upon period of stay in India when he visit India

- Upto 120 days - NR
- Exceeding 120 days but less than 182 days & 365 days or more in 4 PPY - RNOR [6(1) & 6(6)]
- 182 days or more
 - Sec 6(1) - Resident
 - Sec 6(6) - ROR or RNOR

Sec 6(1A) - Deemed Resident

Notwithstanding anything contained in Sec 6(1),

an individual, being citizen of India, having total income, other than the income from foreign sources, exceeding 15,00,000 during the PY shall be deemed to be resident in India in that PY, if he is not liable to tax in any other country / territory by reason of his domicile /

2. RESIDENTIAL STATUS

residence / any other criteria of similar nature [FA'20]

As per Sec 6(6), If a person is deemed Resident as per Sec 6(1A) he shall deem to be RNOR.

Other Points :

- > If a person is resident as per Sec 6(1), then Sec 6(1A) shall not apply.
- > Sec 6(1A) does not apply to an individual who is not a citizen of India but a person of Indian Origin

Person of Indian Origin

A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in Undivided India. It may be noted that grandparents include both maternal and paternal grand parents.

Resident & Ordinarily Resident (ROR) :

An individual may become a ROR in India if he satisfy both the following conditions given u/s 6(1) besides satisfying any one of the above mentioned conditions:

- a) he is a resident in atleast any two out of the ten PYs immediately preceding relevant PY, &
- b) he has been in india for 730 days or more during the 7 PYs immediately preceding the relevant PY.

Resident but Not Ordinarily Resident (RNOR) :

An individual is RNOR in any PY if-

- a) he has been a NR in india in 9/10 PYs preceding that year, or
- b) he has during the 7 PYs preceding that year been in india for a period of, or periods amounting in all to, 729 days or less
- c) a citizen of india, or a person of indian origin, having total income, other than the income from foreign sources, exceeding 15,00,000 during the PY, who has been in India for a period or periods amounting in all to 120 days or more but less than 182 days; or
- d) a citizen of india who is deemed to be resident in india - clause (1a)

2. RESIDENTIAL STATUS

Explanation - "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

Non - Resident :

If an individual does not satisfy any of the above basic condition then, he will be treated as Non-resident. It must be noted that the fulfillment of any one of the above conditions (a) / (b) as applicable will make an Individual resident in India for tax purposes. Further it is to be noted that these conditions are alternative & not cumulative in their application.

Important Notes :

- > The fact that an assessee is resident in India in respect of one year does not automatically mean that he would be resident in the preceding or succeeding years as well. Consequently, the residential status of the assessee should be determined for each year separately. This is in view of the fact that a person resident in one year may become NR or RNOR in another year and vice versa.
- > The stay may be anywhere in India and for any length of time at each place in cases where the stay in India is at more places than one, what is required is the total period of stay should not be less than the number of days specified in each condition.
- > While determining residential status, the day of leaving and returning to India should be considered as a stay in India.
- > Where the exact arrival and departure time is not available then the day he comes to India and the day he leaves India is counted as stay in India.
- > India means territory of India, its territorial waters, continental shelf, Exclusive Economic Zone (upto 200 nautical miles) and airspace above its territory and territorial waters.

Exception to the basic condition :

being a citizen of India, who leaves India in any PY as a member of the crew of an Indian ship as defined in sec 3(18) of the Merchant Shipping Act, 1958, or for the purposes of employment outside India.

2. RESIDENTIAL STATUS

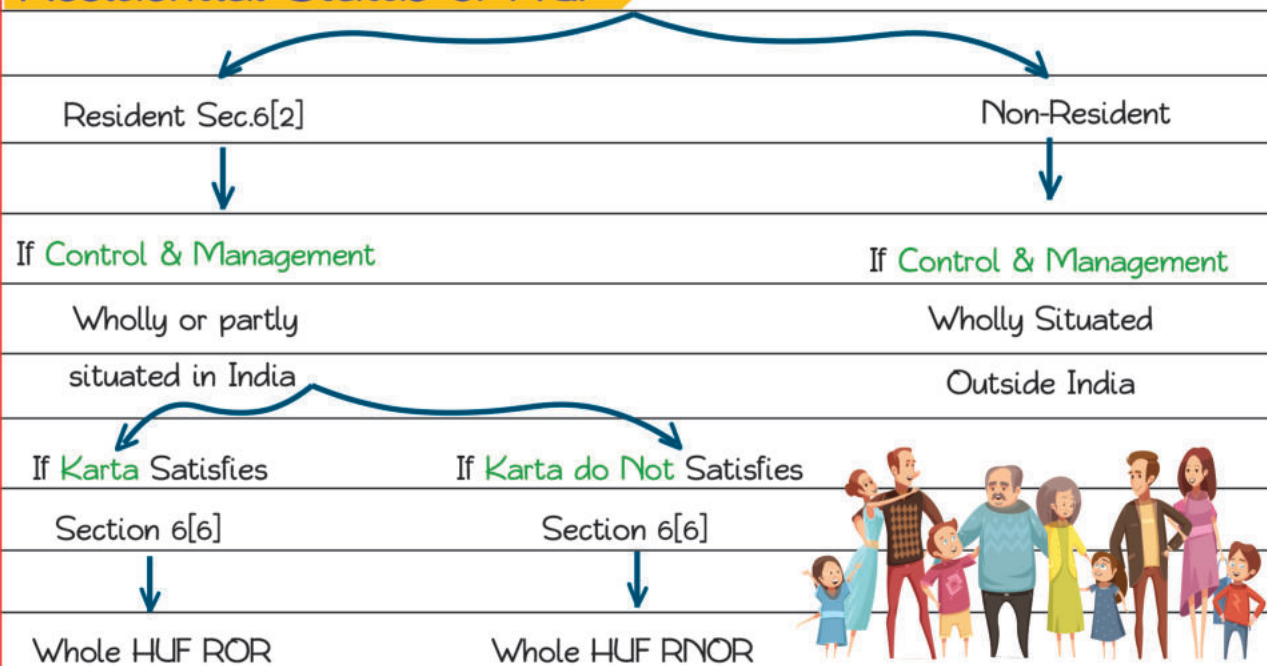
Rule 126 Computation of period of stay in India in certain cases -

An Individual, being a citizen of India and a member of the crew of a ship, the period of stay in India in respect of an eligible voyage shall not include the period beginning from the date of joining till the date of signing off as mentioned in the Continuous Discharge Certificate under the Merchant Shipping Act, 1958.

“eligible voyage” shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where-

- > for the voyage having originated from any port in India, has as its destination any port outside India; &
- > for the voyage having originated from any port outside India, has as its destination any port in India.
- > being citizen of India/ person of Indian origin within the meaning of expl. to sec 115C(e), who, being outside India, comes on visit to India in any PY.

Residential Status of HUF



Only Individual & HUF can be ROR/RNOR, other person can be Resident/NR.

Sec 6(2) - A HUF firm or other association of persons is said to be resident in India in any PY in every case except where during that year the control & management of its affairs is situated wholly outside India.

2. RESIDENTIAL STATUS

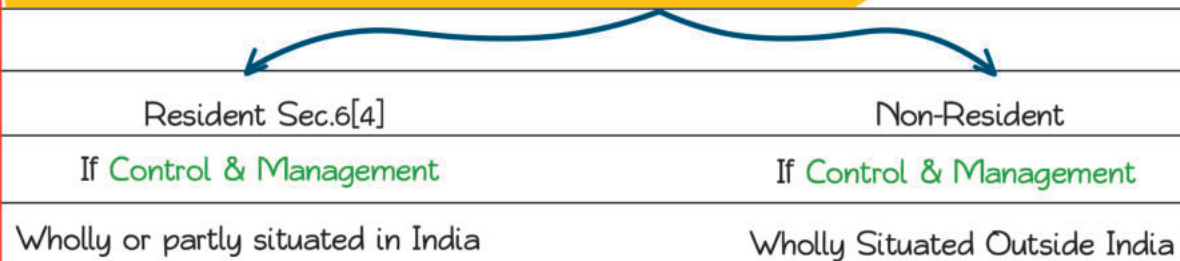
An HUF can be "not ordinarily resident"

If manager/karta has been a RNOR in india in the PY in accordance with the tests applicable to individuals. Where, during the last ten years the kartas of the H.U.F had been different from one another, the total period of stay of successive kartas of the same family should be aggregated to determine the residential status of the karta & consequently the HUF. In other words, if Karta of Resident HUF satisfies both the following additional conditions (as applicable in case of individual) then resident HUF will be ROR, otherwise it will be RNOR.

Additional Conditions :

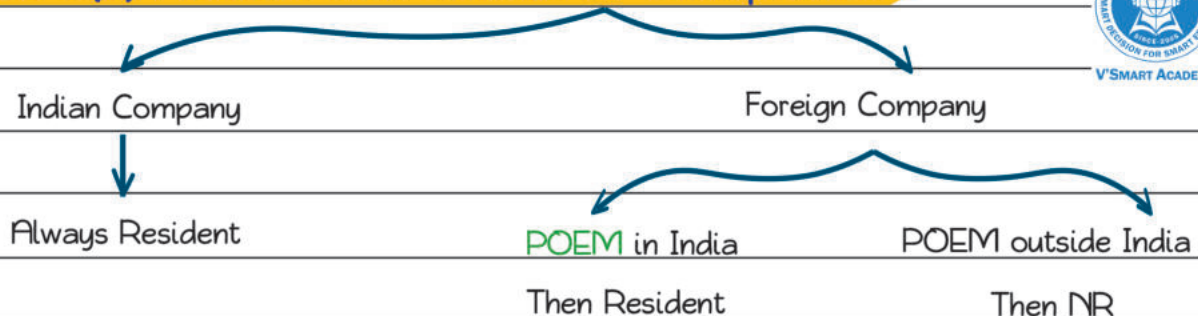
- Karta of resident HUF should be resident in atleast 2/10 PY immediately preceding relevant PY.
- Stay of Karta during 7 PY immediately preceding relevant PY should be 730 days or more.

Residential Status of Other Assessee



Sec 6(4) - Every other person is said to be resident in India in any previous year in every case, except where during that year the control & management of his affairs is situated wholly outside India.

Sec 6(3) Residential Status of Companies



2. RESIDENTIAL STATUS

Sec 6(3) - A company is said to be a resident in India in any P.Y. if—

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

Explanation - For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

Sec 5 Scope of Total Income & Tax Incidence

In order to understand relationship between residential status & Incidence it is necessary to understand meaning of Indian & Foreign income.

Indian Income:

1. Received In India
2. Deemed to be Received in India [Sec & 8]
3. Accrued in India
4. Deemed to be accrued or arise in India [Sec]

Foreign Income

Income is not received or not deemed to be received in India.

Income which does not accrue or arise in India.

Remittance of Income

Approved mode - Exempt in India

Unapproved Mode - Taxable In India

INCIDENCE OF TAX FOR INDIVIDUAL & HUF

Income	ROR	RNOR	NR
Indian	Taxable in India	Taxable in India	Taxable in India
Foreign	Taxable in India	Only two type of Foreign income is taxable in India.[Refer Notes]	Not Taxable in India

Note : Income from business/profession which is set up in India

2. RESIDENTIAL STATUS

INCIDENCE OF TAX FOR OTHERS

Income	Resident	NR
Indian	Taxable in India	Taxable in India
Foreign	Taxable in India	Not Taxable in India

Deemed to Received or Accrued

Deemed to be received in India [Sec.7]

Accrued In India [Sec.9]

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>A) Contribution made by the employer to RPF beyond 12% of the salary [Upto 12% Exempt] (Refer Salary)</p> <p>B) Interest credited to Employee beyond 9.5% p.a. (Ref Salary)</p> <p>C) Transfer from URPF to RPF</p> <p>D) Contribution to pension fund u/s 80CCD (Refer Salary)</p> | <ol style="list-style-type: none"> 1. Income out of Business Connection. 2. Salary earned in India 3. Salary from government to an Indian citizen for services 4. Rendered outside India 5. Dividend from Indian Co 6. Income from Interest payable by specified person 7. Income from royalty 8. Income from Technical services 9. Income from Property/Assets situated In India 10. Income from transfer of Capital Assets situated In India 11. Gift by R to NR |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Business Connection
1. Business Connection
2. Deemed Business Connection
3. Not a Business Connection

Meaning of "Income received or deemed to be received"

All assesseees are liable to tax in respect of the income received or deemed to be received by them in India during the PY irrespective of-

- (i) their residential status, and (ii) the place of its accrual

Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does

2. RESIDENTIAL STATUS

not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.

Meaning of income 'accruing' and 'arising'

Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January. Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

With a view to removing difficulties and clarifying doubts in the taxation of income, Expl 1 to section 5 specifically provides that an item of income accruing or arising outside India shall not be deemed to be received in India merely because it is taken into account in a balance sheet prepared in India.

Further, Explanation 2 to section 5 makes it clear that once an item of income is included in the assessee's total income and subjected to tax on the ground of its accrual/ deemed accrual, it cannot again be included in the person's total income and subjected to tax either in the same or in a subsequent year on the ground of its receipt - whether actual or deemed.

Sec 9(1) - Income From Business Connection

The following incomes shall be deemed to accrue or arise in India :—

Sec 9(1)(i) - All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset / source of income in India, or through the transfer of a capital asset situate in India.

Explanation 1 - Not a business connection

For the purposes of this clause -

- (a) ~~in the case of a business~~ in the case of a business other than the business having business connection in India on account of significant economic presence [FA'20], of which all the

2. RESIDENTIAL STATUS

operations are not carried out in India,

(b) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export;

(c) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India;

(d) in the case of a non-resident, being—

(1) an individual who is not a citizen of India ; or

(2) firm which does not have any partner who is a citizen of India / who is resident in India ; or

(3) company which does not have any shareholder who is a citizen of India or who is resident in India,

no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to shooting of any cinematograph film in India;

(e) in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unsorted diamond in any special zone notified by the CG in the Official Gazette in this behalf.

Explanation 2 - Meaning of business connection

For the removal of doubts, it is hereby declared that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,-

(a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—

(i) in the name of the non-resident; or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or

(iii) for the provision of services by the non-resident; or

2. RESIDENTIAL STATUS

- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Explanation 2A - Deemed Business Connection - Significant Economic Presence - For the removal of doubts, it is hereby declared that the significant economic presence of a NR in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not—

- (i) the agreement for such transactions or activities is entered in India; or
- (ii) the non-resident has a residence or place of business in India; or

2. RESIDENTIAL STATUS

(iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

Explanation 3 - Where a business is carried on in India through a person referred to in clause (a) or clause (b) or clause (c) of Explanation 2, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Explanation 3A - For the removal of doubts, it is hereby declared that the income attributable to the operations carried out in India, as referred to in Expl. 1, shall include income from—

- (i) such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;
- (ii) sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and
- (iii) sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

Provided that the provisions contained in this Explanation shall also apply to the income attributable to the transactions or activities referred to in Explanation 2A.

Explanation 4 - For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Explanation 5 - For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India:

Provided that nothing contained in this Explanation shall apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in a Foreign

2. RESIDENTIAL STATUS

Institutional Investor as referred to in clause (a) of the Explanation to section 115AD for an assessment year commencing on or after the 1st day of April, 2012 but before the 1st day of April, 2015:

Provided further that nothing contained in this Explanation shall apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities & Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 prior to their repeal [FA'20], made under the Securities and Exchange Board of India Act, 1992:

Provided also that nothing contained in this Explanation shall apply to an asset or a capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992. [FA'20]

Sec 9(1)(ii) - Salary Earned In India

Income which falls under the head "Salaries", if it is earned in India.

Explanation - For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

- a) service rendered in India; and
 - b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,
- shall be regarded as income earned in India;

Sec 9(1)(iii) - Salary Earned Outside India

Income chargeable under the head "Salaries" payable by the Government

2. RESIDENTIAL STATUS

Sec 9(1)(iv) - Dividend From An Indian Company

A dividend paid by an Indian company outside India;

Sec 9(1)(v) - Interest payable

- (a) the Government ; or
- (b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or
- (c) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India.

Explanation - For the purposes of this clause,—

- (a) it is hereby declared that in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India and the permanent establishment in India shall be deemed to be a person separate & independent of the non-resident person of which it is a permanent establishment & the provisions of the Act relating to computation of total income, determination of tax and collection and recovery shall apply accordingly;
- (b) "permanent establishment" shall have the meaning assigned to it in clause (iia) of section 92F;

Sec 9(1)(vi) - Royalty

Income by way of royalty payable by—

- (a) the Government ; or
- (b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on

2. RESIDENTIAL STATUS

by such person outside India or for the purposes of making or earning any income from any source outside India ; or

- (c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India:

Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the CG :

Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the GOI.

Explanation 1 - For the purposes of the first proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the CG before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st day of April, 1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the Assessing Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement

2. RESIDENTIAL STATUS

may be regarded as an agreement made before the 1st day of April, 1976.

Explanation 2 - For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

- (i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;
- (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trademark or similar property
- (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;
- (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;
- (v) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;
- (vi) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, **but not including consideration for the sale, distribution or exhibition of cinematographic films; or [FA'20]**
- (vii) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

Explanation 3 - For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data.

Explanation 4 - For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

2. RESIDENTIAL STATUS

Explanation 5 - For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not-

- (a) the possession or control of such right, property or information is with the payer;
- (b) such right, property or information is used directly by the payer;
- (c) the location of such right, property or information is in India.

Explanation 6 - For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret;

Sec 9(1)(vii) - Income by way of fees for technical services payable by—

- (a) the Government ; or
- (b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or
- (c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

Provided that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the CG.

Explanation 1 - For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the CG before that date.

2. RESIDENTIAL STATUS

Explanation 2 - For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries";

Sec 9(1)(viii) - Income arising outside India, being any sum of money referred to in sub-clause (xvii a) of clause (24) of section 2, paid on or after the 5th day of July, 2019 by a person resident in India to a non-resident, not being a company, or to a foreign company.

Sec 9(2) - Notwithstanding anything contained in sub-section (1), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-sec (1) and shall be included in total income of NR, whether or not,—

- (a) the non-resident has a residence or place of business or business connection in India; or
- (b) the non-resident has rendered services in India.

Circular 13/2017

Salary accrued to NR sea farer for service rendered outside India on a foreign going ship (with Indian flag/not) shall be not included in Total Income nearly because the salary is credited in NRE a/c with Indian Bank.

2. RESIDENTIAL STATUS

For Your Practice: Solved Questions

P1 Mr. A, an indian Citizen, is living in Mumbai since 1951, he left for China on July 1, 2016 and comes back on august 7, 2021. determine his residential status for the AY 22-23.

Solution :

Stay in india for a minimum period of 182 days in the PY :

Mr. a has stayed in india for 237 (viz. 25 + 30 + 31 + 30 + 31 + 31 + 28 + 31) days in the PY

2021-22. So, this test is satisfied. So, Mr. a shall be a resident in india during the

PY 2021-22. (AY 2022-23). Keeping in view the facts of the given case, Mr. A satisfies the two

additional conditions also namely : He is resident in 2/10 PYs preceding the

relevant PY.

PY	Stay in PY (days)	Stay during PY (days)	Basic Con. satisfied	Res / NR
2020-21	Nil	-	None	Non-resident
2019-20	Nil	-	None	Non-resident
2018-19	Nil	-	None	Non-resident
2017-18	Nil	-	None	Non-resident
2016-17	30+31+30+1= 92	365 days	Second	resident
2015-16	365	365	First	resident

His stay in india is also more than 730 days in 7 PYs preceding relevant PY as he left for

Japan on 1st July 2016.

PY	Stay (days)
2020-21	Nil
2019-20	Nil
2018-19	Nil
2017-18	Nil
2016-17	92
2015-16	365
2014-15	366
total Stay in 7 PYs	823

Hence, Mr. a is resident and ordinary resident in india for the AY 2022-23

P2 Dr. B, an indian Citizen and a Professor in IIM, lucknow, left india on September 15, 2021 for USA to take up Professors job in MIT, USA. Determine his residential status for the AY22-23.

Solution :

Dr. B being a citizen of india and who has gone out of the country for employment, will be governed by 182 days test only and therefore the second condition under section 6(1), i.e.

60 days during relevant PY shall not be applicable.

Dr. B stayed in india for 168 (viz. 30 + 31 + 30 + 31 + 31 + 15) days only in the relevant PY.

2. RESIDENTIAL STATUS

Hence, Dr. B shall be a non-resident in India for the FY 2022-23 as condition by stay of 182 days in relevant PY is not satisfied.

P3 Mr. Anil, an Indian citizen, leaves India on 22nd September, 2021 for the first time to work as an Engineer in France. determine his residential status for FY 2022-23

Solution :

During the PY 2021-22, Mr. Anil, an Indian citizen, was in India for 175 days (i.e. 30+31+30+31+31+22). He does not satisfy the minimum criteria of 182 days. Also since he is an Indian citizen leaving India for the purpose of employment outside India, the second condition u/s 6(1) is not applicable to him. Therefore Mr. Anil is non-resident for the FY 2022-23

Know Your Exams: Unsolved Questions

P1 Mr. R & Mr. S are brothers and they earned the following incomes during the FY Mr. R settled in Canada in the year 2005 and Mr. S settled in Delhi. Compute the total income for the FY.

Particulars	For R	For S
Interest on Canada Development Bonds (only 50% of interest received in India)	35000	40000
Dividend from British company received in London	28000	20000
Profit from a business in Nagpur, but managed directly from London	100000	140000
Short term capital gain on sale of shares of an Indian company received in India	60000	90000
Income from a business in Chennai	80000	70000
Fees for technical services rendered in India, but received in Canada	100000	-
Interest on savings bank deposit in UCO Bank, Delhi	7000	12000
Agricultural income from a land situated in GOA	55000	45000
Rent received in respect of house property at Bhopal	100000	60000
Life insurance premium paid	-	30000

P2 Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years. Find out his residential status for the FY.

P3 Poulomi, a chartered accountant, is presently working in a firm in India. She has received an offer for the post of Chief Financial Officer from a company at Singapore. As per the offer letter, she should join the company at any time between 1st September, 2021 and 31st

2. RESIDENTIAL STATUS

October, 2021. She approaches you for your advice on the following issues to mitigate her tax liability in India:

- (i) Date by which she should leave India to join the company;
- (ii) Direct credit of part of her salary to her bank account in Kolkata maintained jointly with her mother to meet requirement of her family
- (iii) Period for which she should stay in India when she comes on leave.

P4 Mr. federer, NR residing in Sweden received rent from Mr. Nadal, NR in France in respect of property taken in lease in Mumbai. As received outside India from NR, Federer claims that income not chargeable to Tax in India.

Mr. Shravan, citizen of India & employee of CG left India for first time on 11.02.2021 due to transfer to Australia for assignment. He did not visit India any time during PY. From following particulars of his income for FY 2021-22, compute his gross total income for A.Y.

[N-16 RTP]	Particulars	Rs.
	Salary	6,10,000
	Foreign Allowance (paid by the govt for rendering services in Australia)	4,55,000
	Interest on fixed deposit from bank in India	1,10,000
	Income from agriculture in Malaysia	3,50,000
	Income from house property in Malaysia	2,25,000

P6 Mr. Alok, Indian citizen & a member of crew of Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Mumbai port on 6th June'21
From following details for PY, determine S of Mr. Alok for AY assuming that his stay in India in the last 4 PY is 400 days & last seven previous years is 750 days:

Date entered into CDC 6th June 2021

Date entered into signing off the ship 9th Dec 2021 [N-16 RTP]

P7 Mr. L & Mr. G are brothers & they earned following during PY Mr. L settled in Bangkok in 2007 & Mr. G in Pune. Compute the total income

2. RESIDENTIAL STATUS

Particulars	For L	For G
Income from Profession in Bangkok (Setup In India received there)	15000	-
Profit from Business in Pune but managed from Bangkok	40000	-
Rent (Computed) from property in Bangkok later on remitted to India	120000	-
Dividend from ABC ltd	5000	9000
Dividend from company in Bangkok received there	15000	8000
Income from Agriculture land is situated in Gujarat	7500	4000
Past foreign untaxed Income brought to India	5000	-
Fees for Technical Service rendered in India	25000	-
Income from Business in Pune (50% received In India)	12000	15000

P8 Gonikka provides you following, calculate total income if, she is ROR, RNOR, NR

Particulars	ROR	RNOR	NR
Short term capital gain on sale of shares of Indian co received in Germany Rs.15000			
Dividend from Japanese company amount received in Japan 5000			
Rent (Computed) from a property in London deposited in a bank in London Rs.75000			
Dividend from an India Company Rs. 6000			
Agriculture income from Land in Gujarat Rs. 25000			
Total Income			

P9 Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practicing in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a Non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India?

[SM]

3. AGRICULTURE INCOME

Basics of Agriculture Income

1. Agriculture income is defined u/s 2[1A].
2. Agricultural Income is exempt from income tax u/s 10 (1), but the income tax act indirectly collects tax on agricultural income
3. Agriculture Income Fall within the state List Entry no 46, Hence shall be levied and collected by SG.
4. Sec.14A Where any expenditure is incurred in relation to exempt Income the same shall not be allowed as deduction.

Sec.2[1A] Agriculture Income [Only relevant part]

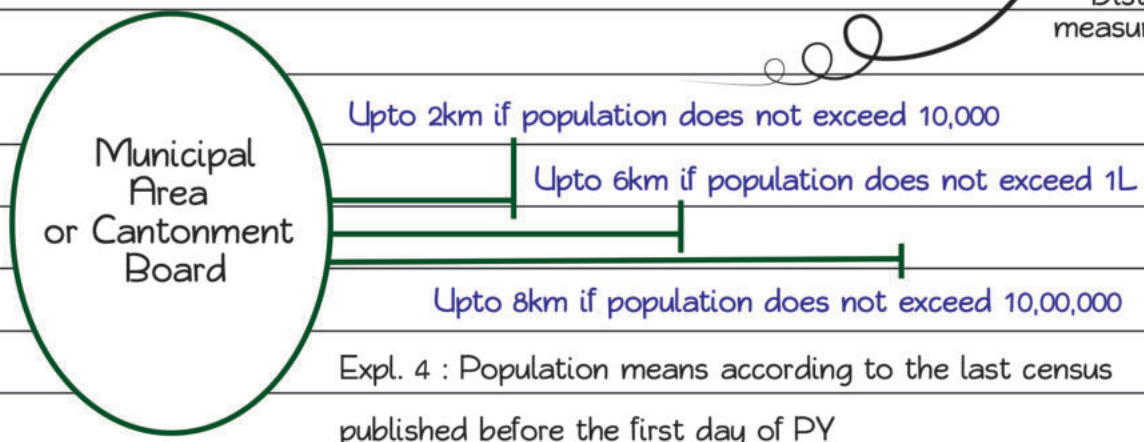
Agriculture Income means

1. Any Rent or Revenue Derived from an Agriculture land situated in India & used for agriculture purpose
2. Income from agricultural operation.
3. Income from farm house or farm land.
4. Income from Nursery, sampling, seedling. [Expl.3]

Agricultural Land

There are 2 type of agricultural land 1] Urban 2] Rural

The urban land is not defined but rural Land is defined



3. AGRICULTURE INCOME

SN	Particulars	Population	Result
1.	Distance 0-2km	Less than 10000	Rural
2.	Distance 0-2km	more than 10000	Urban
3.	Distance 2-6km	Less than 100000	Rural
4.	Distance 2-6km	More than 100000	Urban
5.	Distance 6-8km	Less than 1000000	Rural
6.	Distance 6-8km	More than 1000000	Urban

Agricultural Operation

The word agricultural operation is not defined in the act, however it has been considered by court in **Raja benoy Sahay Case** which has provided:

Mere Basic Operation

Mere Subsequent Operation

Subsequent operation together with basic

Basic Operation : It means application of human skill & labour upon the land, prior to germination, e.g. Tiling of land, sowing of seeds, planting etc.

Subsequent Operation : It means operations which fosters the growth & preserve the Produce for rendering the produce fit for sale in market, & which are performed after the produce sprouts from the land.

Onus to Proof: The Onus to prove that a particular income is an agriculture Income is on the assessee. It is he who needs to place before the Income tax Authorities Proper Material which will enable them to conclude that the Income Sought to be Assessed, is an agricultural Income

[**CIT Vs. Ramakrishna Deo.**]

3. AGRICULTURE INCOME

Agriculture Income or not	
Agriculture Income	Not Agriculture Income
1. Income from growing trade or commercial products.	1. Salary received by employee from any business (having agricultural income) is Not AI
2. Income from growing flowers & creepers is AI.	2. Dividend received from a company engaged in agricultural operation is non-agro income.
3. Plants sold in pots are an agro income provided basic operations are performed	3. Income from fisheries is non-agro income
4. Remuneration and interest to partner from a firm engaged in Agriculture activity	4. Income from poultry farming is Not AI.
5. Interest on capital received by a partner from a firm, engaged in agricultural operation is an AI	5. Income from dairy farming, butter & cheese making etc. is non-agro income
6. Income arising by sale of trees grown on denuded parts of the forest	6. Breeding & rearing of livestock is not AI.
	7. Interest received by a moneylender in the form of agricultural produce is not AI.
	8. Profit on sale of standing crops after harvest, where such crops were acquired through purchase is non-agro income
	9. Royalty income from mines in non-agro
	10. Income on supply of water for agricultural operation is non-agro income.
	11. Income from sale of trees & grasses grown spontaneously (without any human effort).
	12. Sale of Agriculture Land (CIT Vs. Carew)

Minors Agriculture Income

The agriculture Income of the Minor child shall be clubbed as per the provisions of clubbing.

3. AGRICULTURE INCOME

Rule[7 & 8] Composite Agricultural Income

Rule	Content	Agriculture	Non Agriculture
7A	Growing and manufacturing rubber	65%	35%
7B	Growing and manufacturing coffee grown & Cured	75%	25%
7B	Growing and manufacturing coffee grown, cured, roasted and grounded	60%	40%
8	Growing and manufacturing Tea	60%	40%

Composite Income for others:

	Directly Sold		Sold after processing
Sale Value	xxx		
- Cost of Cultivation	[xxx]	Agriculture Income	PGBP
AI	xxx	FMV	Sale Value
		- Cost of Cultivation	- FMV of Produce
		AI	- Exp on sales
			PGBP

Method of Aggregation / Method of partial integration

Applicability: Applicable only to individuals, HUF, AOP and BOI, AJP and not applicable to firms and companies

Minimum agricultural income: Should exceed ₹5000

Other income: Should exceed ₹250000

Step 1: Agricultural Income + Non Agricultural Income	xxx
Step 2: tax on Step 1	xxx
Step 3: Agricultural Income + Basic Exemption Limit	xxx
Step 4: tax on Step 3	xxx
Step 5: Difference of tax [Step 2- Step 4]	xxx
Step 6: Add Surcharge/ Less Rebate , Add HEC	xxx
Step 7: Final Tax Liability.	xxx

Loss from Agricultural Income: -

- > Loss from agricultural shall be set off against agriculture income only.
- > If such loss could not be set off in that PY, it shall be c/f & set-off in following AY for not more than 8y against agri income only

3. AGRICULTURE INCOME

Multiple Choice Questions (MCQs)

- | | | | | | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|------|------|------|------|------|--|
| <p>1. The concept of partial integration of agricultural income with non agri income is applicable to</p> <p>a) only individuals & HUF</p> <p>b) only firms and companies</p> <p>c) Individuals, HUF, AOPs/BOIs & AJP</p> <p>d) All persons</p> | <p>5. In case of individual aged 61y partial integration of AI is not required if his</p> <p>a) Net AI does not exceed ₹5,000</p> <p>b) Non AI does not exceed ₹2,50,000.</p> <p>c) Non AI does not exceed ₹3,00,000.</p> <p>d) Either (a) or (c) above</p> | | | | | | | | |
| <p>2. Which of the following would be AI.</p> <p>a) Income from breeding of livestock</p> <p>b) Income from poultry farming</p> <p>c) Rent received from movie shooting</p> <p>d) Rent received from grazing of cattle</p> | <p>6. AI from Foreign is taxable in case of</p> <p>a) ROR b) RNOR c) NR d) None</p> | | | | | | | | |
| <p>3. The proportion of agri & business income in case of income derived from sale of coffee grown & cured</p> <p>a) 65% & 35% b) 75% & 25%</p> <p>c) 60% & 40% d) 70% & 30%</p> | <p>7. Which of the following income is AI</p> <p>a) Rent received from agricultural land</p> <p>b) Income from dairy farm</p> <p>c) Income from poultry farm</p> <p>d) Dividend from a Co. generating AI.</p> | | | | | | | | |
| <p>4. The proportion of agri & business income in case of Tea</p> <p>a) 65% & 35% b) 75% & 25%</p> <p>c) 60% & 40% d) 70% & 30%</p> | <p>Answers :</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr> <td style="padding: 2px;">1. c</td> <td style="padding: 2px;">2. d</td> <td style="padding: 2px;">3. b</td> <td style="padding: 2px;">4. c</td> </tr> <tr> <td style="padding: 2px;">5. c</td> <td style="padding: 2px;">6. a</td> <td style="padding: 2px;">7. a</td> <td style="padding: 2px;"></td> </tr> </table> | 1. c | 2. d | 3. b | 4. c | 5. c | 6. a | 7. a | |
| 1. c | 2. d | 3. b | 4. c | | | | | | |
| 5. c | 6. a | 7. a | | | | | | | |

For your Practice!

P.1 Miss. Kavita, a ROR, has derived following Income for the year ended

Particulars	₹
Income from sale of centrifuged latex processed from rubber plants grown in Darjeeling	1,00,000
Income from sale of coffee grown and cured in Yercaud, Tamil Nadu	2,00,000
Income from sale of coffee grown, cured, roasted & grounded Colombo. Sale consideration was received in Chennai	5,00,000
Income from sale of tea grown & manufactured in India	10,00,000
Income from sapling and seedling in nursery at coaching basic Basic operations were not carried out by her on Land	2,00,000

3. AGRICULTURE INCOME

You are required to compute the business income & Agriculture Income of Miss. Kavita

- P2 Mr Pen is Resident individual age 50 years having income from agriculture ₹4000 and Other Income ₹300000. Specify whether the concept of Partial Integration will apply.
- P3 Miss Pencil, Resident individual age 35 years having income from agriculture ₹400000 & Other Income ₹300000. Whether the concept of Partial Integration will apply. If yes then calculate Tax.
- P4 Mr. B grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 30% of sugarcane produce is sold for ₹10 lacs, and the cost of cultivation is ₹5L. The cost of cultivation of balance [70%] is ₹14L & the market value of the same is ₹22L. After incurring ₹1.5L in the manufacturing process on the balance sugarcane, the sugar was sold for ₹25L. Compute the total income.
- P5 Mr. Asim, 60 Yrs individual, engaged in the business of roasting & grounding of coffee, derives income of ₹10L during the FY. compute the tax payable Assuming he has not earned any other Income. What would be your answer if also engaged in business of growing & curing coffee
- P6 Miss Vivitha, (ROR), has derived the following income from various operations (relating to plantations and estates owned by her) during the year ended 31st march.

Particular	₹
Income from sale of centrifuged latex processed from rubber plants Grown in darjelling	300000
Income from sale of coffee grown & cured in Yercaud, Tamil Nadu	1,00,000
Income from sale of coffee grown, cured, roasted and grounded, in Colombo. sale consideration was received at chennai	2,50,000
Income from sale of tea grown and manufactured in Shimla	4,00,000
Income from sapling and seedling grown in a nursery at Cochin	80000

- P7 Mr. Rana, a resident and ordinarily resident aged 42 years, manufactures rubber from the latex processed from rubber plants grown in Kerala. Thereafter, he sold the rubber for ₹47L. The cost of growing rubber plants was ₹25L & the cost of manufacturing rubber was ₹7L. He has no other income during PY 21-22. Compute his tax liability for AY 22-23. [M19 RTP]