

TAXMANN®

STUDENTS' GUIDE TO
INCOME TAX
INCLUDING GST

**PROBLEMS &
SOLUTIONS**

Also Incorporating

- Tabular Presentation of Income-tax Law/GST
- Additional New Generation Solved Problems



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Assessment Year
2024-25

CHAPTER 1

Basic concepts that one must know

PROVISIONS IN BRIEF

Assessment year	"Assessment year" means the period starting from April 1 and ending on March 31 of the next year. Income of previous year of an assessee is taxed during the next following assessment year at the rates prescribed by the relevant Finance Act.
Previous year	Income earned in a year is taxable in the next year. The year in which income is earned is known as previous year and the next year in which income is taxable is known as assessment year. Previous year is the financial year immediately preceding the assessment year. All assesseees are required to follow financial year (<i>i.e.</i> , April 1 to March 31) as the previous year. This uniform previous year has to be followed for all sources of income.
<i>Previous year in the case of newly set-up business/profession</i>	<p>In the case of a newly set-up business/profession or in the case of a new source of income, the previous year is determined as follows—</p> <ul style="list-style-type: none"> ▶ The first previous year commences on the date of setting up of the business/profession (or, as the case may be, the date on which the source of income newly comes into existence) and ends on the immediately following March 31. Thus, in the case of a newly set-up business/profession or new source of income, the first previous year is a period of 12 months or less than 12 months. It can never exceed 12 months. ▶ The second and subsequent previous years are always financial years. The second and subsequent previous years are always of 12 months each (<i>i.e.</i>, April to March).
<i>Connection between previous year and assessment year</i>	<p>Rule - Income of a previous year is taxable in the immediately following assessment year.</p> <p>Exception - In the following cases income of previous year is taxable in the previous year itself—</p> <ol style="list-style-type: none"> a. income of a non-resident from shipping ; b. income of persons leaving India either permanently or for a long period of time ; c. income of bodies formed for short duration ; d. income of a person trying to alienate his assets with a view to avoiding payment of tax ; and e. income of a discontinued business. <p>In these cases, income of a previous year may be taxed as the income of the assessment year immediately preceding the normal assessment year.</p>
Person	<p>The term "person" includes:</p> <ol style="list-style-type: none"> a. an individual ; b. a Hindu undivided family ; c. a company ; d. a firm ; e. an association of persons or a body of individuals, whether incorporated or not ; f. a local authority ; and g. every artificial juridical person not falling within any of the preceding categories. <p>These are seven categories of persons chargeable to tax under the Act. The aforesaid definition is inclusive and not exhaustive.</p>

<p>Assessee</p>	<p>"Assessee" means a person by whom income-tax or any other sum of money is payable under the Act. It includes every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or loss or the amount of refund due to him. It also includes a person who is assessable in respect of income or loss of another person or who is deemed to be an assessee, or an assessee in default under any provision of the Act.</p>
<p>Income</p>	<p>As generally understood - Income is a periodical monetary return with some sort of regularity. It may be recurring in nature. It may be broadly defined as the true increase in the amount of wealth, which comes to a person during a fixed period of time.</p> <p>Extended meaning given under section 2(24) - Under section 2(24), the term "income" specifically includes the following :</p> <ol style="list-style-type: none"> 1. Profits and gains 2. Dividend 3. Voluntary contributions received by a trust 4. Perquisites in the hands of employee 5. Any special allowance or benefit 6. City compensatory allowance/dearness allowance 7. Any benefit or perquisite to a director 8. Any benefit or perquisite to a representative assessee 9. Any sum chargeable under sections 28, 41 and 59 10. Capital gains 11. Insurance profit 12. Banking income of a co-operative society 13. Winnings from lottery 14. Employees' contribution towards provident fund 15. Amount received under keyman insurance policy 16. Fair market value for inventory (which is converted into stock-in-trade). 17. Amount exceeding Rs. 50,000 by way of gift received by a person. 18. Issue of shares at premium by a closely held company (if amount received exceeds fair market value of shares) 19. Advance received while negotiating transfer of a capital asset (if capital asset is not transferred and the advance is forfeited by recipient) 20. Any compensation or other payment referred to in section 56(2)(xi) [i.e., compensation on termination of employment or modification of terms of employment]. 21. Sum received by a unitholder from a business trust [referred to in section 56(2)(xii)]. 22. Any sum received under a life insurance policy referred to in section 56(2)(xiii). 23. Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) received (in cash or kind) from the Central Government or State Government or any authority or body or agency [not being subsidy/grant which is taken into consideration for calculating "actual cost" under section 43(1) and not being subsidy/grant by the Central Government for the purpose of the corpus of a trust/institution established by the Central/State Government].
<p>Gross total income [GTI]</p>	<p>As per section 14, income of a person is computed under the following five heads:</p> <ol style="list-style-type: none"> 1. Salaries. 2. Income from house property. 3. Profits and gains of business or profession. 4. Capital gains. 5. Income from other sources. <p>The aggregate income under these heads is termed as "gross total income". In other words, gross total income means total income computed in accordance with the provisions of the Act before making any deduction under sections 80C to 80U.</p>
<p>Rounding-off of income and tax</p>	<p>The taxable income and tax liability shall be rounded off to the nearest multiple of ten rupees.</p>

Exemption vs. Deduction	If an income is exempt from tax, it is not included in the computation of income. Exemption can never exceed the amount of income. Deduction is generally given from income chargeable to tax. Deduction can be less than or equal to or more than amount of income. If amount deductible is more than the amount of income, the resulting amount will be taken as loss.
Capital receipts vs. Revenue receipts	Receipts are of two types – capital receipts and revenue receipts. Capital receipts are exempt from tax unless they are expressly taxable. For instance, capital gains are taxable under section 45 even if they are capital receipts. On the other hand, revenue receipts are taxable, unless they are expressly exempt from tax. For instance, income exempt under section 10.
Method of accounting	Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” is to be computed in accordance with the method of accounting regularly employed by the assessee. For instance, if a trader follows mercantile system of accounting, his business income will be taxable on “accrual” basis and business expenses will be deductible on “due” basis. If a professional follows cash system of accounting, his professional income will be taxable on “receipt” basis and professional expenses will be deductible on “payment” basis. In other cases, method of maintaining books of account is irrelevant.
Types of accounting methods	Mainly there are two types of accounting methods – mercantile system and cash system. ► <i>Mercantile system</i> - Under mercantile system, income and expenditure are recorded at the time of occurrence during the previous year. ► <i>Cash system</i> - Under cash system of accounting, revenue and expenses are recorded only when received or paid.
Tax rates	Tax rates [including surcharge (SC) and health and education cess (HEC)] are given in Appendix 1. ► <i>Rebate under section 87A</i> - Rebate under section 87A is deductible from income-tax (before adding surcharge and education cess). It can be claimed only by a resident individual, if - a. taxable income does not exceed Rs. 5,00,000 (under regular tax regime), or b. taxable income does not exceed Rs. 7,00,000 ¹ (under alternative tax regime). Amount of rebate is 100 per cent of income-tax or Rs. 12,500 (under regular tax regime)/ Rs. 25,000 ² (under alternative tax regime).

SOLVED PROBLEMS

- **P1.1** X starts a new business on March 29, 2023. He closes down first set of books of account on March 31, 2024. He wants that income generated during this period should be chargeable to tax for the assessment year 2024-25. Is he legally correct?

Solution : Previous year ends on March 31 immediately before the commencement of assessment year. For instance, for the assessment year 2023-24, previous year is the period which ends on March 31, 2023. In this case, the period which commences on March 29, 2023 and ends on March 31, 2023, is the previous year for the assessment year 2023-24. In other words, income generated by X during March 29, 2023 and March 31, 2023 is chargeable to tax for the assessment year 2023-24. X does not have any option to include this income in the income of the assessment year 2024-25.

Previous year and assessment year, in this case, will be determined as follows –

First previous year - March 29, 2023 to March 31, 2023	Income of this previous year will be taxable in the assessment year 2023-24.
Second previous year - April 1, 2023 to March 31, 2024	Income of the previous year 2023-24 will be taxable in the assessment year 2024-25.

- Under the alternative tax regime, it is subject to marginal relief. Marginal relief is applicable if income exceeds Rs. 7,00,000 but does not exceed Rs. 7,27,770. There is no marginal relief in the case of regular tax regime.
- Under marginal relief, income-tax (after rebate under section 87A) cannot exceed the amount by which the net income exceeds Rs. 7,00,000.

Problem P1.2

Basic concepts that one must know

- **P1.2** Mrs. X (42 years) is resident in India for the assessment year 2023-24. For the previous year 2022-23, her income chargeable to tax in India is Rs. 10,30,000. Find out tax liability. Ignore section 115BAC.

Solution : For the assessment year 2024-25, the exemption limit applicable in case of all individuals other than senior (or super senior) citizens is Rs. 2,50,000. Tax liability will be calculated as follows -

Income	Rate of tax	Tax Rs.
First Rs. 2,50,000	Nil	Nil
Next Rs. 2,50,000	5%	12,500
Next Rs. 5,00,000	20%	1,00,000
Balance Rs. 30,000	30%	9,000
Income-tax ³		1,21,500
Add: Health and education cess	4%	4,860
Tax liability		1,26,360

- **P1.3** Mrs. X is resident in India for the assessment year 2024-25. For the previous year 2023-24, her income chargeable to tax in India is Rs. 15,54,810. Find out tax liability if date of birth of Mrs. X is (a) March 31, 1960, or (b) April 5, 1960. Ignore section 115BAC pertaining to alternative tax regime⁴.

Solution : For the assessment year 2024-25, exemption limit is Rs. 2,50,000 if the taxpayer is an individual below 60 years on the last day of the previous year (i.e., March 31, 2024). Conversely, in the case of a resident woman (or a resident man) if the taxpayer is 60 years or more at any time during the previous year, the exemption limit for the assessment year 2024-25 is Rs. 3,00,000. In Situation (a) Mrs. X is 60 years on March 31, 2024. Consequently, she becomes a senior citizen for the assessment year 2024-25 and the exemption limit would be Rs. 3,00,000. In Situation (b), however, she is below 60 years on March 31, 2024, the exemption limit is Rs. 2,50,000. Tax liability will be calculated as follows -

When Mrs. X is a senior citizen [i.e., Situation (a)]

Income	Rate of tax	Tax Rs.
First Rs. 3,00,000	Nil	Nil
Next Rs. 2,00,000	5%	10,000
Next Rs. 5,00,000	20%	1,00,000
Balance Rs. 5,54,810	30%	1,66,443
Income-tax ³		2,76,443
Add: Health and education cess	4%	11,058
Tax liability (rounded off)		2,87,500

When Mrs. X is not a senior citizen [i.e., Situation (b)]

Income	Rate of tax	Tax Rs.
First Rs. 2,50,000	Nil	Nil
Next Rs. 2,50,000	5%	12,500
Next Rs. 5,00,000	20%	1,00,000
Balance Rs. 5,54,810	30%	1,66,443
Income-tax		2,78,943
Add: Health and education cess	4%	11,158
Tax liability (rounded off)		2,90,100

- **P1.4** X Ltd. is an Indian company. For the previous year 2023-24, income of the company is Rs. 10,76,000 (calculated after deducting depreciation at the rate of 20 per cent on written down value of Rs. 8,16,295). Suppose, depreciation rate is 22 per cent up to March 1, 2024, 17 per cent from March 1, 2024 to May 1, 2024 and 22 per cent after May 1, 2024, find out the taxable income of X Ltd. for the assessment year 2024-25.

Solution : Income of the previous year 2023-24 is taxable in the assessment year 2024-25. Income of the assessment year 2024-25 is calculated in accordance with the provisions of law applicable on April 1, 2024. On April 1, 2024, depreciation rate is 17%. Consequently, taxable income shall be calculated by applying the depreciation rate of 17% for the assessment year 2024-25 as follows -

3. Surcharge on income-tax is not applicable as income of the assessee does not exceed Rs. 50 lakh.

4. Alternative tax regime provisions of section 115BAC are discussed in this book in Chapter 13.

	Rs.
Income as given in the problem.....	10,76,000
Add: Depreciation (20% of Rs. 8,16,295)	1,63,259
Less: Depreciation deductible (17% of Rs. 8,16,295).....	(-)1,38,770
Taxable income (rounded off)	<u>11,00,490</u>

PROBLEMS BASED UPON SIMILAR UNSOLVED EXERCISES GIVEN IN STUDENTS' GUIDE TO INCOME-TAX

■ **P1.5 [14-E4]*** Let the depreciation rates in respect of a depreciable asset be as under –

- 16 per cent up to April 1, 2024;
- 36 per cent from April 2, 2024 to April 10, 2025 ;
- 40 per cent from April 11, 2025 to May 10, 2025 ;
- 31 per cent from May 11, 2025 to March 31, 2026 ; and
- 50 per cent from April 1, 2026 onwards.

At what rate depreciation is admissible in respect of that asset for the assessment years 2024-25 to 2026-27.

Solution : Total income is calculated in accordance with the provisions of the Income-tax Act as they stand on the first day of April of the assessment year. The table gives depreciation rate on the basis of information given in the problem –

Previous year	Assessment year	What is the first day of the assessment year	Depreciation rate (given in the problem) as on April 1 of the assessment year (applicable for the relevant assessment year)
2023-24	2024-25	April 1, 2024	16%
2024-25	2025-26	April 1, 2025	36%
2025-26	2026-27	April 1, 2026	50%

■ **P1.6 [14-E5]*** Find out the tax liability (ignore section 115BAC) in the following cases pertaining to the assessment year 2024-25 –

Assessee	Taxable income Rs.	Long-term capital gain included in taxable income Rs.	Winnings from lotteries included in taxable income Rs.
X, a resident Hindu undivided family	2,30,000	–	18,000
Y, a Hindu undivided family	2,86,000	2,000	16,000
Z, an individual (age : 42 years)	11,70,000	40,000	70,000
Mrs. A, a resident individual (age : 58 years)	42,50,000	–	–
B Ltd., an Indian company (tax rate : 30 per cent)	1,12,00,000	50,000	73,000
C Ltd., an Indian company (tax rate : 22 per cent)	35,000	500	–
D Society, a co-operative society	5,000	700	150
E & Co., partnership firm	10,30,000	60,000	–
F, a non-resident individual (age : 74 years)	2,65,000	12,000	--

Solution : Tax liability will be calculated as follows⁵ –

In the case of X, a resident Hindu undivided family –

	Rate of tax	Amount of tax Rs.
On winnings from lotteries	30%	5,400
On the remaining income of Rs. 2,12,000 (it is below the exemption limit of Rs. 2,50,000)		Nil
Tax		5,400
Add: Health and education cess		216
Tax liability (rounded off)		<u>5,620</u>

5. Alternative tax regime provisions of section 115BAC are not considered.

*Number given in the bracket represents similar unsolved Problem No. of Students' Guide to Income-tax, 70th Edition.

Problem P1.6

Basic concepts that one must know

In the case of Y, a Hindu undivided family -

On winnings from lotteries	
On long-term capital gains	
On the remaining income of Rs. 2,68,000	
Tax	
Add: Health and education cess	
Tax liability (rounded off)	

Rate of tax	Amount of tax Rs.
30%	4,800
20%	400
	900
	6,100
	244
	6,340

In the case of Z, an individual -

On winnings from lotteries	
On long-term capital gains	
On the remaining income of Rs. 10,60,000	
Tax	
Add: Health and education cess	
Tax liability (rounded off)	

Rate of tax	Amount of tax Rs.
30%	21,000
20%	8,000
	1,30,500
	1,59,500
	6,380
	1,65,880

In the case of Mrs. A -

On first Rs. 2,50,000	
On next Rs. 2,50,000	
On next Rs. 5,00,000	
On the balance of Rs. 32,50,000	
Tax	
Add: Health and education cess @ 4% of Rs. 10,87,500	
Tax liability (rounded off)	

Rate of tax	Amount of tax Rs.
Nil	Nil
5%	12,500
20%	1,00,000
30%	9,75,000
	10,87,500
	43,500
	11,31,000

In the case of B Ltd. -

On winnings from lotteries	
On long-term capital gain	
On the remaining income of Rs. 1,10,77,000	
Total	
Add: Surcharge @ 7% ⁶	
Total	
Add: Health and education cess @ 4% of Rs. 35,89,850	
Tax liability (rounded off)	

Rate of tax	Amount of tax Rs.
30%	21,900
20%	10,000
30%	33,23,100
	33,55,000
	2,34,850
	35,89,850
	1,43,594
	37,33,440

In the case of C Ltd. -

On long-term capital gain	
On the remaining income of Rs. 34,500	
Total	
Add: Surcharge (applicable @ 10%)	
Total	
Add: Health and education cess @ 4%	
Tax liability (rounded off)	

Rate of tax	Amount of tax Rs.
20%	100
22%	7,590
	7,690
	769
	8,459
	338
	8,800

In the case of D Society, a co-operative society -

6. For the assessment year 2024-25, in the case of a domestic company, surcharge is 7 per cent of income-tax, if taxable income is above Rs. 1 crore but not more than Rs. 10 crore. If income is above Rs. 10 crore, surcharge at the rate of 12 per cent is applicable.

	Rate of tax	Amount of tax Rs.
On winnings from lotteries	30%	45
On long-term capital gain	20%	140
On the remaining income of Rs. 4,150	10%	415
Total		600
Add: Health and education cess @ 4% of Rs. 600		24
Tax liability (rounded off)		620

In the case of E & Co., a partnership firm -

	Rate of tax	Amount of tax Rs.
On long-term capital gain	20%	12,000
On the remaining income of Rs. 9,70,000	30%	2,91,000
Total		3,03,000
Add: Health and education cess @ 4% of Rs. 3,03,000		12,120
Tax liability (rounded off)		3,15,120

In the case of F, a non-resident individual -

	Rate of tax	Amount of tax Rs.
On long-term capital gain	20%	2,400
On the remaining income of Rs. 2,53,000 (exemption limit is Rs. 2,50,000 in the case of a non-resident, even if, he is a senior citizen)	5%	150
Total		2,550
Add: Health and education cess @ 4% of Rs. 2,550		102
Tax liability (rounded off)		2,650

CHAPTER 2

Residential status and its Effect on tax incidence

PROVISIONS IN BRIEF

Relevance of residential status	There are two types of taxpayers - resident in India and non-resident in India. Indian income is taxable in India whether the person earning income is resident or non-resident. Conversely, foreign income of a person is taxable in India only if such person is resident in India. Foreign income of a non-resident is not taxable in India.								
Types of residential status <i>Individuals/Hindu undivided family</i> <i>Firm, association of persons, joint stock company and every other person</i>	For different taxpayers residential status is as follows – <div style="display: flex; align-items: center; justify-content: center;"> <div style="margin-right: 20px;">▶ Resident in India</div> <div style="margin-right: 20px;">▶ Non-resident in India</div> <div style="margin-right: 20px;">▶ Resident in India</div> <div style="margin-right: 20px;">▶ Non-resident in India</div> <div style="margin-right: 20px;">▶ Resident in India</div> <div style="margin-right: 20px;">▶ Non-resident in India</div> </div> <div style="margin-left: 100px; margin-top: 10px;"> <pre> graph LR A[▶ Resident in India] --> B[Ordinarily resident] A --> C[Not ordinarily resident] </pre> </div>								
Significance of residential status	In the case of non-resident, Indian income is taxable but foreign income is not chargeable to tax. In the case of resident but not ordinarily resident, Indian income is taxable but foreign income is taxable only in two cases. In the case of resident (or resident and ordinarily resident) Indian income as well as foreign income are chargeable to tax.								
Rules for determination of residential status <i>Residential status of an individual</i>	The tables given below summarize the rule of residence for the assessment year 2024-25: <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th style="width: 33%;">Resident and ordinarily resident (1)</th> <th style="width: 33%;">Resident but not ordinarily resident (2)</th> <th style="width: 33%;">Non-resident (3)</th> </tr> </thead> <tbody> <tr> <td>Must satisfy at least one of the basic conditions and both of the additional conditions</td> <td>Must satisfy at least one of the basic conditions and one or none of the additional conditions</td> <td>Must satisfy none of the basic conditions.</td> </tr> </tbody> </table>			Resident and ordinarily resident (1)	Resident but not ordinarily resident (2)	Non-resident (3)	Must satisfy at least one of the basic conditions and both of the additional conditions	Must satisfy at least one of the basic conditions and one or none of the additional conditions	Must satisfy none of the basic conditions.
Resident and ordinarily resident (1)	Resident but not ordinarily resident (2)	Non-resident (3)							
Must satisfy at least one of the basic conditions and both of the additional conditions	Must satisfy at least one of the basic conditions and one or none of the additional conditions	Must satisfy none of the basic conditions.							

BASIC CONDITIONS AT A GLANCE		
<i>In the case of an Indian citizen who leaves India during the previous year for the purpose of employment (or as a member of the crew¹ of an Indian ship)</i> (1)	<i>In the case of an Indian citizen or a person of Indian origin (who is abroad) who comes on a visit to India during the previous year</i> (2)	<i>In the case of an individual [other than that mentioned in columns (1) and (2)]</i> (3)
a. Presence of at least 182 days in India during the previous year 2023-24 b. Non-functional.	a. Presence of at least 182 days in India during the previous year 2023-24 b. Non-functional.	a. Presence of at least 182 days in India during the previous year 2023-24 b. Presence of at least 60 days in India during the previous year 2023-24 and 365 days during 4 years immediately preceding the relevant previous year (i.e., during April 1, 2019 and March 31, 2023)
ADDITIONAL CONDITIONS AT A GLANCE		
i. Resident in India in at least 2 out of 10 years immediately preceding the relevant previous year [or must satisfy at least one of the basic conditions, in 2 out of 10 immediately preceding previous years (i.e., 2013-14 to 2022-23)]. ii. Presence of at least 730 days in India during 7 years immediately preceding the relevant previous year (i.e., during April 1, 2016 and March 31, 2023).		
EXCEPTIONS APPLICABLE FROM THE ASSESSMENT YEAR 2021-22 ²		
Even if an individual satisfies none of the basic conditions/additional conditions, he will be deemed as resident but not ordinarily resident in India, if the following conditions are satisfied -		
<i>Section 6(1A) read with section 6(6)(d)</i>	<i>Section 6(6)(c) read with Explan. 1(b) to section 6(1)</i>	
1. He is an Indian citizen. 2. His taxable income (other than the income from foreign sources ³) exceeds Rs. 15,00,000 during the relevant previous year. 3. He is not liable to tax ⁴ in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.	1. He is an Indian citizen or a person of Indian origin. 2. His taxable income (other than the income from foreign sources ³) exceeds Rs. 15,00,000 during the relevant previous year. 3. He comes to India on a visit during the relevant previous year. 4. He is in India for 120 days (or more but less than 182 days) during the relevant previous year and 365 days (or more) during 4 years immediately preceding the relevant previous year.	

- In the case of crew member of an Indian ship, the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage, shall not be included in the period of stay in India.
- The rule given by these exceptions is not applicable in the case of an individual who becomes resident in India by satisfying any of the basic conditions given above.
- Total income for the ceiling of Rs. 15,00,000 is calculated after ignoring income from foreign sources. "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). Income which is deemed to accrue or arise in India shall be included in computation of the ceiling of Rs. 15,00,000.
- "Liable to tax" (in relation to a person and with reference to a country) means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently being exempted from such liability under the law of that country.

Residential status and its effect on tax Incidence

Residential status of a person other than an individual	Taxpayers other than an individual	Control and management of the affairs of the taxpayer are		
		Wholly in India	Wholly outside India	Partly in India and partly outside India
	Hindu undivided family	Resident	Non-resident	Resident
	Firm	Resident	Non-resident	Resident
	Association of persons	Resident	Non-resident	Resident
	Indian company	Resident	Resident	Resident
	Non-Indian company ⁵	—	—	—
	Any other person except an individual	Resident	Non-resident	Resident
	<p><i>Note :</i></p> <p>1. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident. A resident Hindu undivided family is ordinarily resident in India if karta or manager of the family (including successive kartas) satisfies the following two additional conditions as laid down by section 6(6)(b) :</p> <p>a. he has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year ; and</p> <p>b. he has been present in India for a period of 730 days or more during 7 years immediately preceding the previous year.</p> <p>If karta or manager of resident Hindu undivided family does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.</p> <p>2. In order to determine the residential status of the aforesaid taxpayers, the residential status of the karta of the family (except as stated in 1 <i>supra</i>), partners of the firm, members of the association, directors of the company, etc., is not relevant. For instance, it is possible that partners of a firm are resident in India but the firm is controlled from a place outside India and, consequently, the firm is a non-resident in India.</p>			
Indian income and foreign income - When taxable/not taxable	<p>In order to understand the relationship between residential status and tax liability, one must understand the meaning of "Indian income" and "foreign income".</p> <p><i>Indian income</i> - Any of the following three is an Indian income –</p> <p>1. If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.</p> <p>2. If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year.</p> <p>3. If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.</p> <p><i>Foreign income</i> - If the following two conditions are satisfied, then such income is "foreign income" –</p> <p>a. Income is not received (or not deemed to be received) in India; and</p> <p>b. Income does not accrue or arise (or does not deemed to accrue or arise) in India⁶.</p>			
Broad conclusions	<p><i>Indian income</i> - Indian income is always taxable in India irrespective of the residential status of the taxpayer.</p>			

5. A non-Indian company will be resident in India (from the assessment year 2017-18) if its place of effective management (POEM), during the relevant previous year, is in India. For this purpose, the place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. However, a foreign company (whose annual turnover/ gross receipts is Rs. 50 crore or less) cannot be resident in India from the assessment year 2017-18 onwards – Circular No. 8/2017, dated February 23, 2017.

6. Salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer – Circular No. 13/2017, dated April 11, 2017.

	<p>Foreign income - Foreign income is taxable in the hands of resident (in case of a firm, an association of persons, a joint stock company and every other person) or resident and ordinarily resident (in case of an individual and a Hindu undivided family) in India. Foreign income is not taxable in the hands of non-resident in India.</p> <p>In the hands of resident but not ordinarily resident taxpayer, foreign income is taxable only if it is (a) business income and business is controlled wholly or partly from India, or (b) professional income from a profession which is set up in India. In any other case, foreign income is not taxable in the hands of resident but not ordinarily resident taxpayers.</p>
Receipt of income in India	<p>If income is received in India, it is always chargeable to tax. The "receipt" of income refers to the first occasion when the recipient gets the money under his control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in "receipt" at the other place.</p>
<i>Income deemed to be received in India</i>	<p>The Act enumerates the following as income deemed to be received in India:</p> <ul style="list-style-type: none"> ▶ Interest credited to recognized provident fund account of an employee in excess of 9.5 per cent. ▶ Excess contribution of employer in the case of recognized provident fund (<i>i.e.</i>, the amount contributed in excess of 12 per cent of salary). ▶ Transfer balance. ▶ Contribution by the Central Government or any other employer to the account of an employee under a notified pension scheme referred to in section 80CCD. ▶ Tax deducted at source. ▶ Deemed profit under section 41.
Accrual of income	<p>Income accrued in India is chargeable to tax in all cases irrespective of residential status of an assessee. The words "accrue" and "arise" are used in contradistinction to the word "receive". Income is said to be received when it reaches the assessee. When the right to receive the income becomes vested in the assessee, it is said to accrue or arise.</p>
<i>Income deemed to accrue or arise in India</i>	<p>In some cases, income is deemed to accrue or arise in India under section 9 even though it may actually accrue or arise outside India. The cases enumerated by section 9 are given below –</p> <ul style="list-style-type: none"> ▶ Income from business connection in India. ▶ Income from any property, asset or source of income in India. ▶ Capital gain on transfer of a capital asset situated in India.⁷ ▶ Income from salary if service is rendered in India. ▶ Income from salary (not being perquisite/allowance) if service is rendered outside India (provided the employer is Government of India and the employee is a citizen of India). ▶ Dividend paid by the Indian company. ▶ Interest, royalty or technical fees received from the Government of India. ▶ Interest, royalty or technical fees received from a resident (except when the payment pertains to business carried on by the payer outside India). ▶ Interest, royalty or technical fees received from a non-resident if the payment pertains to business carried on by the payer in India. ▶ Gift of money [covered by section 56(2)(x)] received from a resident (on or after July 5, 2019) by a non-resident/foreign company or received (on or after April 1, 2023) by a resident but not ordinarily resident individual/HUF.

7. 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 situated in India if the share or interest derives, directly or indirectly, its value substantially⁸ from the assets located in India.

8. "Substantially" means not less than 50 per cent - *DIT v. Copal Research Ltd.* [2014] 49 taxmann.com 125 (Delhi). The Finance Act, 2015 has amended the law with effect from assessment year 2016-17. Under the amended version, the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-

a. exceeds the amount of Rs. 10 crore; and

b. represents at least 50 per cent of the value of all the assets owned by the company or entity.

If a foreign company declares dividend outside India, it cannot be deemed to accrue or arise in India even if the foreign company declaring dividend have substantial assets (held by it directly or indirectly) located in India. This rule is applicable even if the foreign company satisfies the conditions given above - Circular No. 4/2015, dated March 26, 2015.

SOLVED PROBLEMS

- **P2.1** X was born in Pune in 1978. Later on he migrated to Australia in December 2022 and took the citizenship of that country with effect from January 1, 2023. His parents were born in Nasik in 1948 but his grandparents were born in Sydney. He comes to India on February 15, 2024 for a visit of 190 days. Find out the residential status of X for the assessment year 2024-25 on the assumption that before 2022, he was present in India for at least 275 days every year.

Solution : X is a foreign citizen. He, his parents and his grandparents were not born in undivided India. He is not a person of Indian origin. During the previous year 2023-24, he was in India for 46 days (i.e., from February 15, 2024 to March 31, 2024). He cannot satisfy any of the two basic conditions. Consequently, he is non-resident in India for the assessment year 2024-25.

- **P2.2** X was born in Karachi on January 2, 1947. He has been staying in USA since 1986. He comes to India on a visit of 200 days on December 10, 2023. Determine the residential status of X for the assessment year 2024-25.

Solution : X is a person of Indian origin, as he was born in undivided India. He comes to India on a visit during the previous year 2023-24. He can become resident in India if he visits India for at least 182 days during the previous year. He comes to India on December 10, 2023. His total stay in India during the previous year ending March 31, 2024, is of 113 days. He is, therefore, non-resident in India for the assessment year 2024-25.

- **P2.3** X (40 years), an Indian citizen, leaves India for the first time on October 10, 2021 for employment outside India. Before October 10, 2021, he was never out of India since his birth. During the previous years 2022-23 and 2023-24 he comes to India for 152 days (on April 2, 2022) and 195 days (on July 10, 2023), respectively. Find out the residential status of X for the assessment year 2024-25. Does it make any difference if X comes to India on October 10, 2023 (and not on July 10, 2023)?

Solution : X is an Indian citizen. He comes to India on a visit of 195 days during the previous year 2023-24. He is resident in India. From the information given above, it is clear beyond any doubt that he was in India for more than 730 days during the preceding 7 years and he was resident in India for more than 2 years out of the preceding 10 years. He is, therefore, resident and ordinarily resident in India for the previous year 2023-24 (i.e., the assessment year 2024-25). If he comes to India on October 10, 2023 for a visit of 195 days, his total stay in India during the previous year 2023-24 will be of 174 days (i.e., October 10, 2023 to March 31, 2024). In such a case, he will be non-resident in India for the assessment year 2024-25.

- **P2.4** X is a foreign citizen. He, his parents and grandparents were not born in undivided India. However, his relatives (like brothers of his father, sisters of his mother and brothers and sisters of his grandmother and grandfather) were born in undivided India. He is in India as follows—

Previous year	Presence in India
2023-24	147 days
2022-23	140 days
2021-22	300 days
2020-21	25 days
2019-20	32 days
Before 2018-19	Nil

Find out the residential status of X for the assessment year 2024-25.

Solution : X is a foreign citizen. He is not a person of Indian origin. During the previous year 2023-24, he was in India for 147 days and during preceding 4 years he was in India for 497 days. By satisfying the second basic condition, he becomes resident in India. However, he is not in a position to satisfy the two additional conditions, he will be resident but not ordinarily resident in India for the assessment year 2024-25.

- **P2.5** X (44 years) is a citizen of India. He leaves India for the first time on September 20, 2023 for the purpose of working on an overseas project of his employer-company: ABC Ltd., an Indian company. He will come back on October 10, 2024. Find out his residential status for the assessment years 2024-25 and 2025-26.

Solution : X is an Indian citizen. During the previous year he is employed by an Indian company in India. However, to work on an overseas project of the employer-company, he leaves India on September 20, 2023. This is his first foreign trip. During the previous year 2023-24, he is in India for 173 days. As he is an Indian citizen and leaves India for employment purposes, he can become resident in India only if he is in India for at least 182 days. Since he is in India only for 173 days, he will be non-resident in India for the previous year 2023-24 (i.e., assessment year 2024-25).

In the previous year 2024-25, X finally comes back on October 10, 2024. It cannot be said that he has come to India during the previous year 2024-25, on a "visit". Consequently, he can become resident in India by satisfying any of the two basic conditions. During the previous year 2024-25, he is in India for more than 60 days and during earlier 4 years, he is in India for more than 365 days. He will, therefore, be resident in India. Moreover, he can satisfy 2 additional conditions, as prior to September 20, 2023 he was never out of India. He will be resident and ordinarily resident in India for the previous year 2024-25 (i.e., assessment year 2025-26).

- **P2.6** Suppose in Problem P2.5, X leaves India on September 20, 2023 to meet his friends and relatives outside India. Other things remaining the same, find out the residential status of X for the assessment years 2024-25 and 2025-26.

Solution : During the previous year 2023-24, X does not leave India for the purpose of employment. He can become resident in India by satisfying any of the two basic conditions. During the previous year 2023-24, X is in India for more than 60 days and during earlier 4 years, he is in India for more than 365 days. He will be resident in India for the previous year 2023-24. Moreover, he can satisfy the two additional conditions. Consequently, he will be resident and ordinarily resident in India for the previous year 2023-24 (i.e., assessment year 2024-25).

Even for the assessment year 2025-26, he will be resident and ordinarily resident in India as determined in Problem P2.5.

■ **P2.7** X is a businessman. His parents and grandparents were born in Canada. He was born in USA but later on he migrated to Karachi and took Indian citizenship on June 1, 1946. After division of India, he stayed in Pakistan and took Pakistani citizenship in December 1948. From the information given below, find out the residential status of X for the assessment year 2024-25.

Previous year	Presence in India	Previous year	Presence in India
2024-25	20 days	2018-19	46 days
2023-24	70 days	2017-18	182 days
2022-23	60 days	2016-17	55 days
2021-22	40 days	2015-16	59 days
2020-21	5 days	2014-15	25 days
2019-20	260 days	2013-14	24 days

Solution : X is a foreign citizen. X, his parents and grandparents were not born in undivided India. He is not a person of Indian origin, even if he was Indian citizen between June 1946 and December 1948. He is in India for 70 days during the previous year 2023-24 and 365 days during the preceding 4 years. He is resident in India. However, he is unable to satisfy the 2 additional conditions given by section 6(6)(a), as is evident from the information given below -

Previous year	Presence in India	Residential status
2022-23	60 days	Non-resident
2021-22	40 days	Non-resident
2020-21	5 days	Non-resident
2019-20	260 days	Resident
2018-19	46 days	Non-resident
2017-18	182 days	Resident
2016-17	55 days	Non-resident
2015-16	59 days	Non-resident
2014-15	25 days	Non-resident
2013-14	24 days	Non-resident

Out of preceding 10 years, X is resident in India for 2 years. However, out of preceding 7 years, X is in India for 648 days. Consequently, X is resident but not ordinarily resident in India for the assessment year 2024-25.

■ **P2.8** In Problem P2.7, assume that X was born on May 15, 1945 in a ship when the ship was in Indian territorial waters near Andaman. Re-determine the residential status of X for the assessment year 2024-25.

Solution : As per section 2(25A), "India" means Indian territory including its territorial waters, seabed and subsoil underlying such waters, continental shelf and the air space above its territory and territorial waters. This definition was inserted by the Finance Act, 2007 with retrospective effect from August 25, 1976. This definition was not applicable prior to August 25, 1976. Consequently, it cannot be said that X was born in India in 1945. He will not be a person of Indian origin. He will remain resident but not ordinarily resident in India for the assessment year 2024-25.

■ **P2.9** X was Indian citizen up to March 31, 2018. With effect from April 1, 2018, he migrated to Kenya and took the citizenship of that country. He was born in Delhi in 1980. His parents were born in Kolkata during 1950. However, grandparents of X were born in South Africa. From the information given below, find out the residential status of X for the assessment year 2024-25.

Previous year	Presence in India	Year	Presence in India
2024-25	14 days	2018-19	38 days
2023-24	60 days	2017-18	180 days
2022-23	181 days	2016-17	181 days
2021-22	180 days	2015-16	175 days
2020-21	58 days	2014-15	181 days
2019-20	60 days	2013-14	44 days

Note - He left India for the first time in 1997 to set up a business outside India and since then he comes to India every year as shown in the table above.

Solution : From April 1, 2018, X is a foreign citizen. India was divided on August 14, 1947. X and his parents were born in India (after its division on August 14, 1947). His grandparents were born in South Africa. From April 1, 2018 onwards, X is neither Indian citizen nor a person of Indian origin. However, up to March 31, 2018, he was an Indian citizen.

Problem P2.10 Residential status and its effect on tax incidence

During the previous year 2023-24, X was in India for 60 days and during 4 preceding years (i.e., April 1, 2019 to March 31, 2023) he was in India for 479 days. He satisfies the second basic condition to become resident of India for the previous year 2023-24.

To find out, whether or not X is ordinarily resident in India, one has to test the two additional conditions given by section 6(6)(a) -

Previous year	Presence in India	Residential status		
		First basic condition	Second basic condition	Residential status
2022-23	181 days	x	x	Non-resident
2021-22	180 days	x	x	Non-resident
2020-21	58 days	x	x	Non-resident
2019-20	60 days	x	✓	Resident
2018-19	38 days	x	x	Non-resident
2017-18	180 days	x	Not relevant	Non-resident
2016-17	181 days	x	Not relevant	Non-resident
2015-16	175 days	x	Not relevant	Non-resident
2014-15	181 days	x	Not relevant	Non-resident
2013-14	44 days	x	Not relevant	Non-resident

X was resident in India only in the previous year 2019-20 out of preceding 10 years. But he was in India for more than 730 days in preceding 7 years. He is unable to satisfy simultaneously two additional conditions. Accordingly, he will be resident but not ordinarily resident in India for the assessment year 2024-25.

■ **P2.10** X is an Indian citizen. Currently, he is in employment with an overseas company located in tax-free zone of an African country. During different years, he is in India as follows -

Previous year	Presence in India	Previous year	Presence in India	Previous year	Presence in India
2023-24	30 days	2020-21	162 days	2017-18	62 days
2022-23	170 days	2019-20	205 days	2016-17	60 days
2021-22	220 days	2018-19	239 days	2015-16	58 days

For the previous year 2023-24, X is not taxable in any other country/territory by reason of his domicile or residence. Income of X (other than income from foreign sources) for the previous year 2023-24 is Rs. 18,00,000. Find out the residential status of X for the assessment year 2024-25.

Solution : X is in India for 30 days during the previous year 2023-24. He is unable to satisfy any of the basic condition given by section 6(1). However, he satisfies the following 3 conditions given by section 6(1A) -

- X is an Indian citizen;
- his total income (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant previous year, and
- he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

He is deemed to be resident but not ordinarily resident in India [as per section 6(1A) read with section 6(6)(d)]. The information given in the above table pertaining to earlier years, is not relevant in this case.

P2.11 X is an Indian citizen. Currently, he is in employment with a multinational company and posted in Nigeria. During the previous year 2023-24, he comes to India for a visit of 122 days. In earlier 4 years, he is in India for more than 1000 days. X wants to know his residential status for the assessment year 2024-25. His annual income for the previous year 2023-24 is as follows -

	Rs.
Income from salary, rent, consultancy and interest income earned and received in Nigeria	28,00,000
Income from business (accrued and received outside India, controlled from Nigeria)	22,00,000
Income from another business (accrued and received outside India, controlled from India)	7,00,000
Interest on bank fixed deposits in India	12,00,000
Any other income in India or outside India	Nil
Life insurance premium paid in India	90,000

Solution :

In the previous year 2023-24, X is in India for 120 days. Total income of X (other than income from foreign sources) is Rs. 18,10,000 (i.e., Rs. 7,00,000 + Rs. 12,00,000 - deduction under section 80C : Rs. 90,000). X satisfies 4 conditions of second exception as follows -

- X is an Indian citizen or a person of Indian origin;
- total income of X (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant previous year;