Circular No. 23 (23-07-1969)
A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. *Such an agent is not liable to income-tax in India on the commission.*

Income from Property, asset or Source of Income

Any income which arises from any property **situated in India** deemed to accrue or arise in India.

Income from Transfer of Capital Asset

Capital gain arises from the transfer of a capital asset situated in India would be deemed to accrue or arise in India.

Income from Salary

Salary would be deemed to accrue or arise in India if it is in respect of services rendered in India.

Exceptions

1. Pension payable outside India by the Govt to its officials & Judges who permanently resides outside India.
2. Salary of an employee in UNO

Question 5
Mr. A, a citizen of India, left for USA for the purposes of employment on 1-05-2009. He has not visited India thereafter; Mr. A borrows money from his friend Mr. B who left India one week before Mr. A's departure, to the extent of Rs.10 lakhs and buys debentures in X Ltd, an Indian company. Discuss the taxability of the interest on debentures Rs. 100000/- in B's hands where the same has been received in USA.

Question 6
Determine the tax liability in case of the following incomes for Assessment Year 2010-11 in the hand of:

a) Resident and Ordinary resident
b) Resident but not ordinary resident
c) Non Resident

i)	Interest on UK bond, 50% received in India	Rs. 10000/-
ii)	Income from Business in Chennai (50% received in India)	Rs. 20000/-
iii)	Profit on sale of shares of an Indian Co. received in London	Rs. 20000/-
iv)	Dividend from British Company received in London	Rs. 5000/-
v)	Profit on sale of plant at USA 50% profit received in India	Rs. 40000/-
vi	Profit from Business in Delhi but managed wholly from USA	Rs. 15000/-
vii)	Rent from Property at USA deposited in Indian Bank at USA	Rs. 50000/-
viii)	Fees for Technical services rendered in India but received USA	Rs. 12000/-
ix)	Past foreign untaxed income brought in India	Rs. 50000/-
x)	Agriculture income from Land situated at Nepal received in India	Rs. 10000/-

- Income which falls under the head salary if it is earned in India
- Income from Salary which is payable by Government of India to the Citizen of India for rendering services outside India.
- Dividend paid by Indian Company outside India
- Interest
- Royalty
- Fees for Technical Services

Meaning of Royalty
"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 trade mark 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.

Business Connection in India

SHALL include any business activity carried out through a person who acting on behalf of the NON-RESIDENT

He must have an authority to conclude contract on behalf of the Non-Resident, ***but does not include***, if his activities are limited to the purchase of goods on behalf of Non-Resident	Has no such authority but habitually maintains in India stock of goods from which he regularly delivers goods on behalf of Non-Resident	Where he habitually secures order in India **MAINLY or WHOLLY** for the Non-Resident

Exception

Business connection shall not include any business activity carried out through a broker, General Commission agent or any other agent having an independent status and activity in the ordinary course of business

Important
Indian Importer's foreign agent

Circular No. 23 (23-07-1969) has been withdrawn w.e.f. 22-10-2009.

<u>INCOME RECEIVED OF DEEMED TO BE RECEIVED</u>

<u>Meaning of “**Received**”</u>

“Received” for this purpose means the **FIRST RECEIPT** i.e when the recipient gets the money under his control.

<u>Section 7</u> <u>Income deemed to be received</u>

Income deemed to be received in India means that in the following case income deemed to be received in India irrespective of whether he has actually received or not.

Employee Participation in RPF

Employer Contribution in excess of 12 % of Salary

Interest Credited in excess of 9.50%

Transfer Balance from URPF to RPF

Contribution by CG of any other employer under Pension Scheme U/s 80CCD

<u>Meaning of “Accrue” or “Arise”</u>

Accrue → Day to Day accumulation

Arise → Right to Receive

<u>Section 9</u> <u>Income deemed to be accrue or arise in India</u>

Some of the income has been specifically assumed to accrue or arise in India even though it is not actually accrue or arise in India.

❖ *Accrue/arise at any place outside India directly or indirectly*

- Through or any business connection in India
- Through or any Property in India
- Through or from any asset or source in India
- Transfer of Capital asset situated in India

Question 1
Mr. Akash an American Citizen, comes to India for the First time during the previous year 2004-05 and remain in India as under:
2004-05 55 Days
2005-06 60 Days
2006-07 90 Days
2007-08 150 Days
2008-09 70 Days
2009-10 181 Days
Determine his residential status for AY 2010-11.

Question 2
Mr. D, an Indian citizen, leaves India on 22-09-2009 for the first time, to work as an officer of a Company in USA. Determine residential status for AY 2010-11.

Question 3
The business of HUF is executed from USA and all the decisions are taken over there. Mr. E the Karta of HUF, who born in Delhi, visit India during the previous year 2009-10 after 10 Years. He came India on 01-04-2009 and leave India on 01-12-2009. Determine residential status of Mr. E and HUF for the AY 2010-11.

Question 4
G, an American citizen, is appointed by a multi-national company to its branch in New Delhi in 2006. G has never been to India before this appointment. He arrives in Bombay on 15th April, 2006 and joins the New Delhi office on 20th April, 2006. His wife and children join him in India on 20th October, 2006. The company allotted him a leased residence for purposes of his stay. This residence is occupied by him from the beginning of October, 2006.

On 10th February, 2007, he is transferred by his employer, on deputation basis, to be the regional chief of his employer's operations in South East Asia having headquarters in Hong Kong. He leaves New Delhi on 11th February and arrives in Hong Kong on 12th February, 2007. G leaves behind his wife and children in India till 14th August, 2008, when they leave along with him for Hong Kong. G had come to India earlier on 15th June, 2007, on two months' leave. The members of the family occupied the residence till date of departure to Hong Kong.

At the end of the period of deputation, G is reposted to India and joins the New Delhi office of his employer as chief of Indian operations on 1st February, 2010.

In what residential status G will be assessable, for the various years, to income tax in India?

<u>SECTION 5: Scope of Total Income</u>

Particular of Income	**R & OR**	**R but NOR**	**NR**
Income received or deemed to be received in India	Yes	Yes	Yes
Income accrues/arises or deemed to accrue/arise in India	Yes	Yes	Yes
Income which accrue or arise outside India even if it is not received or brought in India	Yes	No*	No

** If income derived from a business controlled from India it shall be included in the income of R but NOR.*

Person is said to be Indian origin if either of his Parents or Grand Parents was born in undivided India.

If any of the above basic conditions is satisfied, the individual is Resident but not Ordinary Resident
To determine whether he is ordinary Resident in India we have to further check another two conditions.
(Applicable only in case of Individual or HUF)

His stay in India in 7 previous years preceding the Relevant Previous Year is 730 Days or More

AND

The Person is Resident in any 2 out of 10 years preceding the Relevant Previous Year

HUF

A HUF would be resident in India if the control and management of its affairs is situated **WHOLLY OR PARTLY** in India.

↓

HUF is Resident but not Ordinary Resident

↓

The Status of Karta is to be checked whether HUF is Ordinary Resident

FIRM & ASSOCIATION OF PERSON

A Firm & AOP will be resident in India if the **Control & Management of its affairs is** situated **wholly or partly in India.**

COMPANY

Resident if

Indian Company

Foreign Company

↓

Control or Management is situated **WHOLLY in India**

ARTIFICIAL PERSON

"Artificial Person" would be resident in India if the Control and Management of its affairs is situated **WHOLLY OR PARTLY in India**.

Chapter II
Residential Status & Scope of Total Income

RESIDENTIAL STATUS

Whether a particular Income of any person is taxable or not in India is depends upon his/her/its residential status

The Status of the assessee has been classified under 3 Categories

- Resident & Ordinary Resident
- Resident But not Ordinarily Resident
- Non-Resident

NOTE: Residential Status is to be checked for each assessment year

Individual

"Resident" but not Ordinary Resident

If Satisfy any of the Basic Conditions

Condition 1
Stay in India during the Previous Year for 182 Days or More

OR

Condition 2
60 Days or more during the Previous Year
AND
365 Days during the Last 4 Previous Years preceding the Previous Year

Condition 2

60DAYS SHALL BE READ AS ***182 DAYS***

In the following cases

- Indian Citizen Leaves India
  - As a crew Member
  - Employment Outside India
- Indian Citizen or Person of Indian Origin engaged outside India either in employment or Business.

Section 2(9): Assessment Year

"Assessment year" means the period of twelve months commencing on the 1st day of April every year

Example: Assessment Year 2010-11- Commences on 01-04-10 and ends on 31-03-11

Section 3: Previous Year

"Previous year" means the financial year immediately preceding the assessment year

Example: Previous Year 2009-10 Assessment Year 2010-11

General Rule: **Income of the Previous Year is assessable in the Assessment Year**

Exceptions

- Non-Resident Shipping Business
- Person Leaving India
- Formed for Particular Event
- Likely to transfer Property for Avoidance of Tax
- Discontinued Business

Section 14: Heads of Income

- Salaries
- House Property
- Profit & Gain from Business & Profession
- Capital Gains
- Income from other Sources

CONCEPT

The Income tax Act 1961 has broadly explained as to which income is to include under which head. Income under a particular head can not be included under any other head. Different heads have different deduction available.

Section 14A

Where a particular income is not included being not forming part of total as per this Act, no expenses to earn that income is to be allowed as expenses.

******

MAT (In case of Company only)

If Book Profit does not exceeds Rs. 1 Crore

15% + 2% + 1%
i.e.
15.45%

If Book Profit exceeds Rs. 1 Crore

Domestic Company

15% + 10%+ 2% + 1%
i.e.
16.995%

Foreign Company

15% + 2.5%+ 2% + 1%
i.e.
15.83625%

Note: Marginal Relief is available.

e) **Local Authorities**

Rate 30% Flat

Note: E. Cess & S.H.E.C is applicable but no Surcharge.

Question 6
Ramesh Industries Limited is having an Income of Rs. 1.02 Crore, Calculate Tax payable?

Question 7
USA Inc., a Foreign Company, business is wholly controlled from India is having an Income of Rs. 1.02 Crore, Calculate Tax payable?

Important Definitions

Section 2(31): Person

Individual | HUF | Company | Firm | AOP/BOI | Local Authority | Artificial Person

Section 2(7): Assessee

Means a person by whom any Tax/Other sums payable under Income Tax Act 1961

INCLUDES

Person in respect of whom any assessment proceeding has been taken up under this Act.

Deemed to be assessee in default

Person who is assessable in respect of Income/Loss of another Person.

Question 1
Calculate Tax for the Assessment Year 2010-11

The Mr. Assessee (Aged 45 Years) is having the Total Income

i) Rs. 300000/-
ii) Rs. 140000/-
iii) Rs. 740000/-

Question 2
Calculate Tax for the Assessment Year 2010-11

The Mr. Assessee (Aged 66 Years) is having the Total Income

i) Rs. 300000/-
ii) Rs. 140000/-
iii) Rs. 740000/-

Question 3
Calculate Tax for the Assessment Year 2010-11

The Mrs Assessee (Aged 35 Years) is having the Total Income

i) Rs. 300000/-
ii) Rs. 140000/-
iii) Rs. 740000/-

Question 4
Calculate Tax for the Assessment Year 2010-11

The Mrs Assessee (Aged 70 Years) is having the Total Income

i) Rs. 300000/-
ii) Rs. 140000/-
iii) Rs. 740000/-

Question 5
A Co-Operative Society is having an income for the assessment year 2010-11 of Rs. 200000/-. Calculate tax.

d) Companies

Domestic Company → 30 %

Foreign Company → 40%

Note: *No Surcharge applicable if the Total Income does not exceeds Rs. 1 Crore*

If Total Income exceeds Rs. 1 Crore, surcharge will be

Domestic (10%)

Foreign Company (2.50%)

Note: Marginal Relief allowed. EC & SHEC is applicable.

Chapter I
Basic Concepts

SALIENT FEATURES

- Income Tax in India is governed by Income Tax Act 1961
- Came into force 01-04-1962
- Having 298 Sections
- XIV Schedules
- Every year changes are made through finance Bill
- Income Tax Rules framed by CBDT
- Circulars and Notification

RATES OF INCOME TAX

Income tax is levied and collected as per the rates of income tax given under Part I of First Schedule of the Income Tax Act, 1961

a) Individual/HUF/AOP/BOI/Artificial Person

Up to Rs. 160000/- *	Nil
From 160001 to 300000/-	10% i.e. 14000/-
From 300001 to 500000/-	14000/- *Plus* 20%
Above Rs. 500000/-	54000/- *Plus* 30%

*

For Women Rs. 190000/-
For Senior Citizen (65 Years) Rs. 240000/-

Besides Income Tax calculated as above Education cess (EC) @ 2% and Secondary Higher Education Cess (SHEC) @1% is also payable (To be calculated on the tax payable).

No Surcharge (w.e.f. Assessment Year 2010-11)

b) Co-Operative Society

Up to 10,000/- — *10 %*

Exceeds 10000 up to 20000 — *1000 Plus 20%*

Exceeds 20000 — 3000 *Plus* 30%

Note: EC & SHEC is applicable but no surcharge.

c) Firm

Tax Rate: 30% (Flat)

Note: *EC & SHEC is applicable.*