

INCOME-TAX ACT, 1961*

[43 OF 1961]

[AS AMENDED BY FINANCE ACT, 2008]

An Act to consolidate and amend the law relating to income-tax and super-tax

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

¹1. ²(1) This Act may be called the Income-tax Act, 1961.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

²⁹[**Previous year defined.**

3. For the purposes of this Act, previous year means the financial year immediately preceding the assessment year :

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.]



CHAPTER II

BASIS OF CHARGE

Charge of income-tax.

³⁰4. ³¹(1) *Where any Central Act enacts that income-tax³² shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and ³³[subject to the provisions (including provisions for the levy of additional income-*

tax) of, this Act]³⁴ in respect of the total income³⁴ of the previous year ³⁵[* *
*] 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 previous year, 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.

Scope of total income.

³⁶5. ³⁷(1) Subject to³⁸ the provisions of this Act, the total income³⁸ of any previous year of a person who is a resident includes all income from whatever source derived which

- (a) is received³⁹ or is deemed to be received³⁹ in India in such year by or on behalf of such person ; or
- (b) accrues³⁹ or arises³⁹ or is deemed³⁹ to accrue or arise to him in India during such year ; or
- (c) accrues³⁹ or arises³⁹ to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6)* of [section 6](#), the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to³⁸ the provisions of this Act, the total income³⁸ of any previous year of a person who is a non-resident includes all income from whatever source derived which

- (a) is received³⁹ or is deemed to be received³⁹ in India in such year by or on behalf of such person ; or
- (b) accrues³⁹ or arises³⁹ or is deemed to accrue or arise to him in India during such year.

Explanation 1. Income accruing or arising outside India shall not be deemed to be received³⁹ in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2. For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued⁴⁰ or arisen⁴⁰ or is deemed to have accrued⁴⁰ or arisen⁴⁰ to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

⁴¹[Apportionment of income between spouses governed by Portuguese Civil Code.

5A. (1) Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as COMMUNIAO DOS BENS) in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head Salaries) shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head Salaries, such income shall be included in the total income of the spouse who has actually earned it.]

Residence in India.

⁴²6. For the purposes of this Act,

- (1) An individual is said to be resident in India in any previous year, if he
 - (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or
 - (b) ⁴³[* * *]
 - (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

⁴⁴[Explanation. In the case of an individual,

- (a) being a citizen of India, who leaves India in any previous year ⁴⁵[as a member of the crew of an ⁴⁶Indian ship as defined in clause (18) of [section 3](#) of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words sixty days, occurring therein, the words one hundred and eighty-two days had been substituted ;
- (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of [section 115C](#), who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words sixty days, occurring therein, the words one hundred and ⁴⁷[eighty-two] days had been substituted.]

- (2) *A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management⁴⁸ of its affairs⁴⁸ is situated wholly⁴⁸ outside India.*
- (3) *A company is said to be resident in India in any previous year, if*
- (i) it is an Indian company ; or*
 - (ii) during that year, the control and management⁴⁸ of its affairs⁴⁸ is situated wholly⁴⁸ in India.*
- (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 and management of his affairs is situated wholly outside India.*
- (5) *If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.*
- ⁴⁹[(6) *A person is said to be not ordinarily resident in India in any previous year if such person is*
- (a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or*
 - (b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.]*
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Income deemed to be received.

7. *The following incomes shall be deemed to be received in the previous year :*

- (i) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in rule 6 of Part A of the Fourth Schedule ;*
 - (ii) the transferred balance in a recognised provident fund, to the extent provided in sub-rule (4) of rule 11 of Part A of the Fourth Schedule ;*
 - ⁵⁰[(iii) *the contribution made, by the Central Government ⁵¹[or any other employer] in the previous year, to the account of an employee under a pension scheme referred to in [section 80CCD.](#)]*
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Dividend income.

8. ⁵²[For the purposes of inclusion in the total income of an assessee,
- (a) any dividend] declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of [section 2](#) shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be ;
 - ⁵³[(b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.]
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Income deemed to accrue or arise in India.

⁵⁴9. ⁵⁵(1) The following incomes shall be deemed⁵⁶ to accrue or arise in India :

- ⁵⁷(i) all income accruing or arising, whether directly or indirectly, through or from any business connection⁵⁸ in India, or through or from any property⁵⁸ in India, or through or from any asset or source of income in India, ⁵⁹[* * *] or through the transfer of a capital asset situate in India.

⁶⁰[Explanation 1].For the purposes of this clause

- (a) in the case of a business of which all the operations⁶¹ are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations⁶¹ 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 ;
⁶²[* * *]
- ⁶³[(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 ;]
- ⁶⁴[(d) in the case of a non-resident, being
 - (1) an individual who is not a citizen of India ; or
 - (2) a firm which does not have any partner who is a citizen of India or who is resident in India ; or
 - (3) a 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 operations⁶⁵ which are confined to the shooting of any cinematograph film in India.]

⁶⁶[Explanation 2. *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, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or*
- (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 the 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 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;]

- (ii) income which falls under the head Salaries, if it is earned⁶⁷ in India.*

⁶⁸[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 ;]
- (iii) *income chargeable under the head Salaries payable by the Government to a citizen of India for service outside India ;*
- (iv) *a dividend paid by an Indian company outside India ;*
- ⁶⁹[(v) *income by way of interest payable by*
 - (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 ;*
- (vi) *income by way of royalty⁷⁰ 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 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 Central Government :

⁷¹***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 Government of India.]

Explanation 1. For the purposes of the ⁷²[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 Central Government 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 ⁷³[Assessing] Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement 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 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 ;*

⁷⁴*[(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in [section 44BB](#).]*

- (v) 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

- (vi) *the rendering of any services in connection with the activities referred to in sub-clauses (i) to ⁷⁴[(iv), (iva) and] (v).*

⁷⁵*[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;]*

- (vii) *income by way of fees for technical services payable⁷⁶ 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 :

⁷⁷*[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 Central Government.]*

⁷⁷*[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 Central Government before that date.]*

Explanation ⁷⁷[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 construction⁷⁸, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head Salaries.]

- (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.

⁷⁹[Explanation. For the removal of doubts, it is hereby declared that for the purposes of this section, where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1), such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.]

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CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of income

Heads of income.

³⁴14. Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income :

A. Salaries.

B. ³⁵[***]

C. Income from house property.

D. Profits and gains of business or profession.

E. Capital gains.

F. Income from other sources.

 ³⁶[Expenditure incurred in relation to income not includible in total income³⁷.

14A. ³⁸[(1)] For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.]

³⁸[(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]

³⁹[**Provided** that nothing contained in this section shall empower the Assessing Officer either to reassess under [section 147](#) or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under [section 154](#), for any assessment year beginning on or before the 1st day of April, 2001.]

Deductions from salaries.

⁴³16. The income chargeable under the head Salaries shall be computed after making the following deductions, namely :

(i) ⁴⁶[***]

⁴⁷[(ii) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;]

⁴⁸[(iii) a deduction of any sum paid by the assessee on account of a tax on employment within the meaning of clause (2) of article 276⁴⁹ of the Constitution, leviable by or under any law.]

(iv) ⁵⁰[***]

(v) ⁵¹[***]
