

1. BASIC CONCEPT OF INCOME TAX

Q1. Explain the concept of "Marginal Relief".

Answer:

- Marginal Relief is a reduction from the Tax Payable by the Assessee.
- Relief from Tax Payable shall be given, where the Tax Payable together with Surcharge exceeds the Income earned by an Assessee in excess of Rs. 50 Lacs or Rs. 1 Crore. Such Relief is known as Marginal Relief.
- The principle in Marginal Relief is that the Additional Amount of Income Tax Payable with Surcharge in excess of Income over Rs. 50 Lacs or Rs. 1 Crore should not be more than the amount in excess of Rs. 50 Lacs/Rs. 1 Cr.
- **Marginal Relief** = Tax on Total Income including Surcharge - (Total Income - Rs. 50 Lacs or Rs. 1 Cr) + (Tax on Rs. 50 Lacs or Rs. 1 Cr excluding Surcharge).
- **Tax Payable** = Tax on Total Income including Surcharge - Marginal Relief as computed above.

Q2. Compute tax liability & Marginal Relief for Resident Assessee in the following situations for PY 2018-19.

Name of Individual	Mr. X	Mr. Y	Mr. Z
Age of Assessee	45 years	65 years	84 years
Total Income	Rs. 1.01 Crores	Rs. 1.01 Crores	Rs. 1.01 Crores

Solution:

Particulars	Mr. X	Mr. Y	Mr. Z
1(a). Tax on Total Income	1,12,500 + (91 L x 30% = 28,42,500	1,10,000 + (91 L x 30% = 28,40,000	1,00,000 + 91 L x 30% = 28,30,000
1(b). SC @ 15%	4,26,375	4,26,000	4,24,500
1. Total Tax = 1(a) + 1(b)	32,68,875	32,66,000	32,54,500
2(a). Tax if Income = Rs. 1 Cr	1,12,500 + 90 L x 30% = 28,12,500	1,10,000 + 90 L x 30% = 28,10,000	1,00,000 + 90 L x 30% = 28,00,000
2(b). SC @ 10% on 2(a)	2,81,250	2,81,000	2,80,000
Total Tax = 2(a) + 2(b)	30,93,750	30,91,000	30,80,000
3. Excess Tax payable	1,75,125	1,75,000	1,74,500
4. Excess Income (i.e > 1 Cr)	1,00,000	1,00,000	1,00,000
5. Marginal Relief (3 - 4)	75,125	75,000	74,500
6. Tax Payable (1 - 5)	31,93,750	31,91,000	31,80,000
7. HEC at 4 % on (6)	1,27,750	1,27,640	1,27,200
8. Tax Liability	33,21,500	33,18,640	33,07,200

Q3. Compute the tax liability of Mr. PC (Age 24), having total income of Rs. 51 Lacs for AY 2019-20.

Solution:

Computation of tax liability of Mr. PC for AY 2019-20

1. Tax payable including surcharge on Total Income of Rs. 51,00,000	Rs 14,76,750.
2. Tax Payable on total income of Rs. 50 Lacs	Rs. 13,12,500.
3. Excess tax payable = [(1)-(2)] = Rs. 14,76,750 - Rs. 13,12,500	Rs. 1,64,250.
4. Marginal Relief = [(Rs. 1,64,250- Rs. 1,00,000) Income in excess of Rs. 50,00,000]	Rs. 64,250.

$$\text{Tax Payable} = \text{Rs. 14,76,750} - \text{Rs. 64,250} = \text{Rs. 14,12,500} + 4\% \text{ HEC} = 14,69,000.$$

Q4. Compute the tax liability of Mr. A (aged 42), having total income of Rs. 1,01,00,000 for AY 2019-20.

Solution:

Computation of tax liability of Mr. A for AY 2019-20.

1. Tax payable including surcharge on total income of Rs. 1,01,00,000	Rs. 32,68,875.
2. Tax Payable on total income of Rs. 1 crore	Rs. 30,93,750.
3. Excess tax payable = [(1)-(2)] = Rs. 32,68,875 - Rs. 30,93,750	Rs. 1,75,125.
4. Marginal Relief = [(Rs. 1,75,125 - Rs. 1,00,000) Income in excess of Rs. 1,00,00,000]	Rs. 75,125.

$$\text{Tax Payable} = \text{Rs. 32,68,875} - \text{Rs. 75,125} = \text{Rs. 31,93,750} + 4\% \text{ HEC} = 33,21,500.$$

Q5. Differentiate between Diversion of Income & Application of Income:

Answer:

	Diversion of Income	Application of Income
(1)	Income never reaches to the assessee as his own income. By virtue of an obligation the income is diverted at source before it reaches the assessee.	Income reaches to the assessee as his own income & is subsequently applied to discharge an obligation.
(2)	The obligation is on the source of income.	The obligation is on the receipt of income i.e. after income reaches to the assessee.
(3)	There is an overriding title by virtue of which diversion of income takes place.	There is no overriding title in this case.
(4)	In case of diversion, the income is not included in the income of the assessee.	In case of application, income is included in the income of the assessee.
(5)	Since the assessee do not have title, Income cannot be said to have accrued or arisen.	Income is said to have accrued or arisen & therefore is taxable in the hands of assessee.

Q6. Anand & Sons is a partnership firm consisting of father & three sons. The partnership deed provided that after the death of father, the business shall be continued by his sons, subject to the condition that the firm shall pay 30% of the profits to their mother. Father died on 31st March, 2018. In the previous year 2018-19, the reconstituted firm paid Rs. 1 lakh (equivalent to 30% of the profit) to their mother & claimed the amount as deduction from its income. Examine the correctness of claim of the firm. [CS Exam]

Answer:

- The issue raised in the problem is based on the concept of diversion of income by overriding title which is well recognized in the income tax law.
- In the instant case, Rs. 1 lac being 30% of profits of the firm, paid to the mother gets diverted at source by the charge created in her favour as per the terms of the partnership deed. Such income does not reach the assessee.
- Rather, such income stands diverted to other person as such other person has a better title over the assessee.
- Firm might have received the said amount but it so received for & on behalf of mother, who possesses the overriding title.
- Therefore, the amount paid to the mother should be excluded from income of the firm. The view has been confirmed in CIT v. Nariman B. Bharucha & Sons [1981] 130 ITR 863 (Bom.)

Q7. An employee instructs his employer to pay a certain portion of his salary to a charity & claims it as exempt as it is diverted by overriding charge / title. Comment.

Answer:

- In the instant case, it is an application of income & in the nature of foregoing of salary.
- According to the Supreme Court judgment in CIT v. L.W. Russel (1964) 52 ITR 91, the salary which has been foregone after its accrual in the hands of the employee is taxable.
- Thus, amount paid by the employer to a charity as per the employee's directions is taxable to the employee.

Q8. Explain the purpose for which 'Proviso' & 'Explanation' are incorporated under various sections of the Act?

Answer:

1. Proviso to a section/sub-section/clause gives the exceptions to the provision contained in the respective section, sub-section/clause. (Proviso gives the cases where the provision contained in the respective section/sub-section/clause would not apply or where the provision would apply with certain modification).
2. The Explanation to a section/sub-section/clause gives a clarification relating to the provision contained in the respective section/subsection/clause.

Q9. Explain the purpose for which "Notifications" & "Circulars" are issued.

Answer:

1. Notification:

- Notifications are subordinate legislation issued by CG to give effect to the provisions of the Act.
- The CBDT is also empowered to make & amend rules by issuing notifications.
- They are binding on everyone. [Assessee + Income Tax department].

2. Circulars:

- Circulars are issued by the CBDT to deal with certain specific problems & to clarify the doubts regarding the scope & meaning of the provisions of the law.
- Circulars provide guidance to the Income Tax officers & Assesseees.
- These circulars are binding on the department but not on the assessee.
- However assessee can take advantage of beneficial circulars.

Q10. Define the term 'India' for the purpose of Income Tax Act, 1961.

Answer: The term 'India' means –

- Territory of India as per Article 1 of the Constitution,
- Territorial Waters of India (TWI), seabed & subsoil underlying such waters,
- Continental Shelf,
- Exclusive Economic Zone;
- Any other specified maritime zone & air space above its territory & TWI.
- Specified maritime zone means the maritime zone as referred to in Territorial Waters, Continental Shelf, Exclusive Economic Zone & other Maritime Zones Act, 1976.

Q11. Who is an "Assessee"? Explain with suitable examples.

Answer: Any person by whom **any tax or any other sum of money is payable** under this Act. It includes –

- (a) **Tax Payable:** Every Person by whom any **tax or any other sum of money is payable** under this Act whether or not any proceeding under this act has started against him.
- (b) **Proceeding started:** Any Person in respect of whom any **proceeding** under the act has been **taken** whether or not any tax, interest or penalty is payable by him under this act. Proceeding may be taken for/of:
 - Assessment of his income (or loss) sustained by him;
 - Income (or loss) of any other person in respect of whom he is assessable;
 - Refund due to him or to such other person.
 - Assessment of Fringe Benefits.
- (c) **Deemed Assessee:** Sometimes, a person becomes assessable in respect of the income of some other persons. In such a case, he may be deemed as an assessee.
- (d) **Representative Assessee:** Sometimes a person may be assessed for Income of another person. Such person is known as representative assessee. **Ex: Legal Heir** is assessable for the income of deceased person.
- (e) **Assessee in default:** Any person who does not deduct tax at source or after deducting tax, fails to pay deducted tax to the government or who fails to pay advance tax is deemed to be assessee in default u/s [201(1)]/218.

Q12. Who is a "Deemed Assessee"? Explain with suitable examples.

Answer: "Deemed Assessee" means a person who is treated as an Assessee under the IT Act.

This would include -

1. Trustee of a Trust,
2. Legal Representative of a Deceased Person u/s 159,
3. Representative Assessee of a Non-Resident u/s 160(2) (Agent of a Non-Resident),
4. Legal Guardian or Manager entitled to receive the Income on behalf of a Minor, Lunatic or Idiot,
5. Court of Wards/Official Trustee/Receiver entitled to receive Income on behalf of any other person.

Q13. Who is an "Assessee in Default"? Explain with suitable examples.

Answer: Assessee in Default includes persons who -

1. fail to deduct & remit TDS (Sec. 191).
2. fail to pay tax & any other sum demanded (Sec. 220).

***Q14.** A single letter of enquiry was issued by the income tax department to Mr. PC of Pune. In this letter there was no specific mention of any provision of the Income-tax Act, 1961. Can Mr. PC be treated as 'assessee'? [Nov. 1998]

Answer:

- If AO issues a letter to a Person, to conduct an enquiry, without mentioning any of the provisions of the Act, it shall not be treated as a proceeding under the Income Tax Act. Such Person shall not be treated as an "Assessee".
- A person is treated as 'assessee' only when any proceeding is initiated in his respect under the Act.
- In the given case, the letter was issued to Mr. PC only for an enquiry & not for any assessment.
- Such issuance of letter cannot be regarded as proceeding without any specific reference to the provisions of the Act.
- Therefore, Mr. PC is not an 'assessee' under the Act.

Q15. Explain the term "Person" under the Income Tax Act, 1961.

Answer: Refer Page No. 6 of "Concept Book".

Q16. What are the different opinions given by "Dayabaga school of Hindu law" & "Mitakshara school of Hindu law"?

Answer: Refer 'HUF' on Page No. 6 of "Concept Book".

Q17. Explain the term "Different Classes of Companies" under the Income Tax Act, 1961.

Answer: Refer Page No. 8 of "Concept Book".

Q18. When is an individual said to have a substantial interest in a concern?

Answer: As per section 2(32), an individual is said to have substantial interest in a concern if he or she, along with his or her relatives, is, at any time during the previous year, -

- (a) beneficial owner of equity shares carrying 20% or more of the voting power in a company; or
- (b) entitled to 20% or more of the profits of such concern.

Q19. Describe 'Average rate of tax' & 'Maximum marginal rate' u/s 2(10) & 2(29C) of the IT Act, 1961.

Answer:

1. Average Rate of tax =
$$\frac{\text{Amount of income tax calculated on the total income} \times 100}{\text{Total Income}}$$

2. Maximum Marginal Rate is the rate of income-tax (including surcharge, if any) applicable in relation to the highest slab of income, specified in the Finance Act for the relevant year, in the case of the following persons an individual; or an AOP or Body of Individuals.

Note: MMR for AY 2019-20 is 35.88% (being tax @ 30% + 15% SC + 4% HEC on Income-tax).

***Q20.** State whether various heads of income are mutually exclusive?

Answer:

- The heads of income are mutually exclusive i.e. an income, which falls under one head cannot be brought to tax under any other head of income.
- The Income-tax Act contains provisions describing the incomes to be included in each of the heads of income listed above.
- Correct classification of income under the proper head is mandatory.
- Incorrect classification to obtain undue incentives in the law may lead to penalties & prosecution.

Q21. List the differences between Capital Receipts & Revenue Receipts.

Answer:

Capital Receipts	Revenue Receipts
Receipts relating to fixed capital are capital receipts. Ex: Receipt on sale of asset is a capital receipt.	Receipts relating to circulating capital are revenue receipts. Ex: Receipt on sale of SIT is revenue receipt.
Compensation received for extinction of a profit earning source (in whole/part) is a capital receipt.	Compensation received for loss of profits or earnings is a revenue receipt.
Receipt in substitution of source of income Ex: Compensation for loss of employment.	A receipt in substitution of income is revenue receipt.
Profits from sale of shares or securities, which were purchased as an investor, are capital receipts.	Profits from sale of shares acquired in ordinary course of business by dealer in shares, are revenue receipts.
Capital receipts are exempt from tax unless expressly taxable. Ex: Capital gains.	Revenue receipts are taxable unless expressly exempt. Ex: Income exempt u/s 10 to 13A.
Compensation received for relinquishing interest (in whole/part) in a capital asset is a capital receipt.	Compensation received for relinquishing interest in stock-in-trade of the business is a revenue receipt.
Profits from transactions outside the purview of regular trading activities of the assessee are capital receipts.	Profits from transactions entered into the business regularly carried on by the assessee or are incidental to/associated with business, are revenue receipts.
Subsidy is treated as capital receipt if it is given to set-up a new business or to complete a project or to acquire an asset.	Subsidy is treated as revenue receipt if it is given for existing business or to meet any specific revenue expenditure or reimbursement of such expenditure.

Q22. X starts a new business on 29th March 2018. He closes down first set of books of A/c on 31st March 2019. He wants that income generated during this period should be chargeable to tax for AY 2019-20. Is he legally correct?

Solution: Previous year ends on March 31 immediately before the commencement of AY.

Ex: For AY 2018-19, previous year is the period which ends on March 31, 2018.

In this case, the period which commences on March 29, 2018 & ends on March 31, 2018, is the previous year for the AY 2018-19.

In other words, income generated by X during March 29, 2018 & March 31, 2018 is taxable for AY 2018-19.

X does not have any option to include this income in the income of the AY 2019-20.

Previous year & AY, in this case, will be determined as follows:

First PY: March 29, 2018 - March 31, 2018	Income of PY 2017-18 will be taxable in AY 2018-19
2 nd PY: April 1, 2018 to March 31, 2019	Income of PY 2018-19 will be taxable in AY 2019-20

Q23. State the instances where the income of the PY is assessable in the PY itself instead of the AY.

Answer: Income earned during any PY is assessed to tax in immediately succeeding AY.

However, in following circumstances, income is taxed in PY in which it is earned. Thus AY & PY in these exceptional circumstances will be the same. These exceptions have been made to protect the interests of revenue.

1. Shipping Business of a Non-Residents [section 172]

- If a ship belonging to or chartered by NR carries passengers/livestock/mail/goods shipped at a port in India,
- Such Ship is allowed to leave the port only when tax has been paid or satisfactory arrangement has been made for payment thereof.
- Income = 7.5% of freight paid/payable to the owner/his agent whether in India or o/s India for such carriage.
- Such income is charged to tax in the same year in which it is earned.

2. Persons leaving India [section 174]

- Where it appears to AO that any individual may leave India during current AY or shortly after its expiry &
- He has no present intention of returning to India, then
- Total Income of such individual for the period from the expiry of the respective PY up to the probable date of his departure from India is chargeable to tax in that AY.

3. AOP/BOI/AJP formed for a particular event or purpose [Sec 174A]

- If AOP/BOI etc. is formed or established for a particular event or purpose &
- AO apprehends that AOP/BOI is likely to be dissolved in the same year or in next year,
- he can make assessment of the income upto date of dissolution as income of relevant AY.

4. Persons likely to transfer property to avoid tax [Sec 175]

- If during current AY, it appears to AO that a person is likely to charge, sell, transfer, dispose any of his assets
- to avoid payment of any liability under this Act,
- Total income of such person for the period from the expiry of PY to the date when AO commences proceedings is chargeable to tax in that AY.

5. Discontinued Business [Section 176]

- If any business or profession is discontinued in any AY,
- Income of the period from the expiry of the PY up to the date of such discontinuance may,
- at the discretion of AO, may be charged to tax in that AY.

Section 176 is a Discretionary power. The Assessing Officer has the discretion of applying it. AO may choose not to apply it & wait till the end of the AY.

Q24. What will be the previous year in case of undisclosed sources of income? [4 Marks, PCC June, 2009]

Answer: Following undisclosed incomes shall be deemed to be the income of FY in which they are found:

1. **Unexplained Cash Credits [Section 68]:** Where the assessee offers no explanation to the Assessing Officer for any sum credited in the books of accounts or the explanation so offered is not satisfactory, then the sum shall be charged as income in the previous year in which it is credited in the books of accounts.
2. **Unexplained investments [Section 69]:** Where the assessee fails to record the investments made by him & thereafter offers no explanation or the explanation so offered is not satisfactory, then the value of such investments are taxed as income in the financial year in which such investment is made.
3. **Unexplained Money [Section 69A]:** Where the assessee owns any money, bullion, jewellery, etc. & does not record the same in his books of accounts, then the same shall be regarded as his income of the financial year in which it is found, if the assessee fails to offer any explanation regarding such money or the explanation offered by him seems to be unsatisfactory to the Assessing Officer.
4. **Investment not fully disclosed [Section 69B]:** In case, it is found that the real value of any investments, money, bullion, etc. is more than the amount recorded in the books & no explanation is offered by the assessee or the explanation so offered is not satisfactory, then such excess amount shall be treated as his income in the financial year in which such investment, etc. is made.
5. **Unexplained Expenditure [Section 69C]:** When the assessee incurs any expenditure for which he offers no explanation about its source or offers an explanation which is not satisfactory, then the same shall be considered as his income in the financial year in which such expenditure is incurred.
6. **Amount borrowed or repaid on hundi [Section 69D]:** If any amount is borrowed or repaid on hundi through any mode other than the account-payee cheque, then the same shall be regarded as the income in the financial year in which such amount is so borrowed or repaid.

Rate of Tax for Deemed Income u/s 68 & 69 [Section 115BBE]

- (60% + SC @ 25 % of tax) + 4 % HEC. Thus, Effective rate of tax is 78 % [Section 115BBE].
- Neither BEL nor any allowance nor set off of any loss shall be allowable against such income.

***Q25. State the incomes which are chargeable at flat rate of Income tax.**

Answer:

Section	Income	Rate
112	Long term capital gains (other than LTCG u/s 112A)	20%
112A	LTCG on transfer of (i) Equity share (ii) Units of EOMF/Business trust. Note: LTCG upto Rs. 1 lac is exempt. LTCG > Rs. 1 lac is taxable @10%.	10% if > 1 Lacs
111A	STCG u/s 111A [STT Paid]	15%
115BB	(i) Winning from Lotteries (ii) Crossword puzzles (iii) Race including horse races (iv) Card game & other game of any sort Gambling or betting	30%
115BBDA	Income by way of dividend exceeding Rs. 10 Lacs in aggregate	10%
115BBE	Income u/s 68/69/69A/69B/69C/69D.	60%

Q26. Write a short note on Surcharge.

Answer:

- Surcharge is an additional tax payable over & above the income-tax.
- Surcharge is levied as a percentage of income-tax.
- Rate of Surcharge is given below in the table:

Assessee	Rate of Surcharge if Total Income ↓		
	> 50 Lacs but ≤ 1 Cr	>1 Cr but ≤ 10 Cr	> 10 Cr
1. Individual/HUF/AOP/BOI/AJP	10 % of IT	15 % of IT	15 % of IT
2. Firms/LLP/Co-operative society/LA	-	12 % of IT	12 % of IT
3. Domestic Companies	-	7 % of IT	12 % of IT
4. Foreign Companies	-	2 % of IT	5 % of IT

***Q27. Explain the provisions relating to Rebate u/s 87A.**

Answer:

- Rebate u/s 87A is applicable for a Resident Individual whose Total Income does not exceed Rs. 3.5 Lacs.
- Rebate = Rs. 2,500 or 100% of Tax Payable, whichever is lower.
- Rebate u/s 87A shall be before adding 4% of Health & Education Cess.
- Rebate u/s 87A is not available in respect of tax payable @ 10% on LTCG u/s 112A.

Q28. Total income of Mr. X aged 35 years resident in India is Rs. 3,35,000. Compute tax liability for AY 2019-20.

Solution: Since Mr. X is a resident having Total Income < Rs. 3,50,000, rebate u/s 87A is available.

First Rs. 2,50,000	Nil
Next Rs. 85,000 @ 5%	Rs. 4,250
Total	Rs. 4,250
Rebate u/s 87A = Lower of (i) Tax payable or (ii) Rs. 2,500	(Rs. 2,500)
Tax after rebate	Rs. 1,750
Add: 4% HEC	Rs. 70
Tax rounded off	Rs. 1,820

Q29. Total income of Mr. Jon aged 35 years (NR) in India is Rs. 3,35,000. Compute tax liability for AY 2019-20.

Solution: Since Mr. X is a Non- Resident, rebate u/s 87A is **Not** available.

First Rs. 2,50,000	Nil
Next Rs. 85,000 @ 5%	Rs. 4,250
Total	Rs. 4,250
Add: 4% HEC	Rs. 170
Tax rounded off	Rs. 4,420

Q30. Compute tax liability of Mr. X aged 44 years NR in India, whose total income for AY 2019-20 is Rs. 10 lacs.

Solution:

First Rs. 2,50,000	Nil
Next Rs. 2,50,000 @ 5%	Rs. 12,500
Balance Rs. 5,00,000 @ 20%	Rs. 1,00,000
Total	Rs. 1,12,500
Add: 4% HEC	Rs. 4,500
Tax rounded off	Rs. 1,17,000

Q31. Total income of Mrs. X aged 44 years resident in India, for AY 2019-20 is Rs. 10 lacs. Compute tax liability.

Solution: BEL is same for male & female Assessee. Thus Mrs. X will get the same BEL of Rs. 2,50,000.

First Rs. 2,50,000	Nil
Next Rs. 2,50,000 @ 5%	Rs. 12,500
Balance Rs. 5,00,000 @ 20%	Rs. 1,00,000
Total	Rs. 1,12,500
Add: 4% HEC	Rs. 4,500
Tax rounded off	Rs. 1,17,000

Q32. Total income of Mr. Joe aged 70 Non-resident in India for PY 2018-19 is Rs. 10 lacs. Compute his tax liability.

Solution:

- Since increased BEL of Rs. 3 lacs is available only to resident person, Mr. Joe is not eligible.
- Thus he will be eligible for BEL of Rs. 2,50,000 only.

First Rs. 2,50,000	Nil
Next Rs. 2,50,000 @ 5%	Rs. 12,500
Balance Rs. 5,00,000 @ 20%	Rs. 1,00,000
Total	Rs. 1,12,500
Add: 4% HEC	Rs. 4,500
Tax rounded off	Rs. 1,17,000

Q33. Total income of Mr. X aged 83 is Rs. 15,00,000. Compute his tax liability for AY 2019-20.

Solution: Since Mr. X is a super-senior citizen, he will get the BEL of Rs. 5 lacs & remaining slabs will be same.

First Rs. 500,000	Nil
Next Rs. 5,00,000 @ 20%	Rs. 1,00,000
Balance Rs. 5,00,000 @ 30%	Rs. 1,50,000
Total	Rs. 2,50,000
Add: 4% HEC	Rs. 10,000
Tax rounded off	Rs. 2,60,000

2. RESIDENTIAL STATUS

Q1. Mr. Atif Aslam, a Non-Resident, residing in Pakistan since 2002 came to India on 19.02.2017 for permanent settlement in India. Explain his Residential Status for the AY 2019-20. [May 2015]

Solution:

Basic Conditions:

(a) Stay in India in relevant PY should be ≥ 182 days	Since Assessee has come back to India in India on 19.2.2017 & has not gone back from India, his stay during PY 2018-19 will be 365 days. Thus he satisfy first basic condition for PY 2018-19. Hence, Assessee is a Resident.
(b) (i) Stay in India in relevant PY should be ≥ 60 days & (ii) Stay in India in Last 4 PYs should be ≥ 365 days	No need to check since the assessee has satisfied 1 st basic condition. We will directly check additional conditions.

Additional Conditions

(a) Total Stay in India in Last 7 PYs ≥ 730 days	PY 2017- 2018: 365 days; PY 2016-2017: Feb (11 days) + March (31 days) = 42 days; PY 2015-16 : Nil PY 2014-15: Nil. Total 42+365 = 407 days. So, 1 st Condition is Not satisfied. Thus he is a RNOR .
(b) Resident in any 2 PYs during Last 10 PYs	No Need to check because to be ROR, both conditions are to be satisfied.

Q2. Mr. X is a foreign national. During PY 2018-19, he comes to India for 91 days. Determine his residential status for AY 2019-20 if during PY 2005-2006 to PY 2017-18, he was present in India as follows:

2005-06	315 days	2008-09	72 days	2011-12	22 days	2014-15	307 days	2017-18	134 days
2006-07	16 days	2009-10	179 days	2012-13	359 days	2015-16	67 days		
2007-08	40 days	2010-11	362 days	2013-14	180 days	2016-17	12 days		

Solution: During PY 2018-19, Mr. X is in India for 91 days & during Last 4 PYs, he is in India for 520 days (134 + 12 + 67 + 307 days). Thus, he satisfies 2nd basic condition & **thus he is Resident**.

Additional conditions:

	Stay in India	
2017-18	134 (566 days in last 4 PYs)	Resident
2016-17	12 (866 days in last 4 PYs)	Non-resident
2015-16	67 (868 days in last 4 PYs)	Resident (for 2nd time)
2014-15	307	Not necessary to determine further as resident for 2 years
2013-14	180	
2012-13	359	
2011-12	22	

Total stay in 7 preceding PY is 1081 days. Thus R satisfies both the additional conditions.

Thus, he is a ROR in India for AY 2019-20.

Q3. During PY 2018-19, X, a foreign citizen, stayed in India for just 69 days. Determine his residential status for AY 2019-20 on the basis of the following information:

(i) During PY 2015-16, X was present in India for 365 days.

(ii) During PY 2012-13 & 2011-12, X was in Japan for 359 & 348 days respectively.

Solution:

Basic Condition:

(a) Stay in India in Relevant PY: 69 days. Thus 1st basic condition is not satisfied.

(b) (i) Stay in India in Relevant PY: 69 days; &

(ii) Stay in Last 4 PYs (PY 2017-18, 2016-17, 2015-16, 2014-15) for > 365 days.

Mr. X is a resident in India for PY 2018-19.

Additional Conditions:

PY	Stay in India	Whether Resident or Non-Resident
2017-18	Nil	Non-resident
2016-17	Nil	Non-resident
2015-16	365 days	Resident
2014-15	Nil	Non-resident
2013-14	Nil	Non-resident
2012-13	7 days	Non-resident
2011-12	17 days	Non-resident
Total	389 days	

He was in India for < 730 days in Last 7 PYs. **Hence, he is RNOR.** [No need to check 2nd condition]

Q4. Mr. C, Japanese citizen left India after a stay of 10 years on 1.6.2016. During PY 2017-18, he comes to India for 46 days. Later, he returns to India for 1 year on 10.10.2018. Determine his residential status for AY 2019-20.

Solution: Mr. C leave India on 1.6.2016 (i.e in PY 2016-17). Before that he was in India for 10 years.

Basic Conditions:

(a) Stay in India in relevant PY should be ≥ 182 days	Stay in India during PY 2018-19 = 173 days (22+30+31+31+28+31 days). So 1 st basic condition is not satisfied.																		
(b) (i) Stay in India in relevant PY should be ≥ 60 days & (ii) Stay in India in Last 4 PYs should be ≥ 365 days	(i) Stay in India during PY 2018-19 = 173 days (ii) <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>PY</th> <th>Days</th> <th>Notes</th> </tr> </thead> <tbody> <tr> <td>PY 2017-18</td> <td>46</td> <td>Given in the question</td> </tr> <tr> <td>PY 2016-17</td> <td>62</td> <td>(April: 30 days + May: 31 days + June: 1 day)</td> </tr> <tr> <td>PY 2015-16</td> <td>365</td> <td>(since he left India on 1.6.2016 after 10 years)</td> </tr> <tr> <td>PY 2014-15</td> <td>365</td> <td>(since he left India on 1.6.2016 after 10 years)</td> </tr> <tr> <td>Total stay</td> <td>838</td> <td></td> </tr> </tbody> </table>	PY	Days	Notes	PY 2017-18	46	Given in the question	PY 2016-17	62	(April: 30 days + May: 31 days + June: 1 day)	PY 2015-16	365	(since he left India on 1.6.2016 after 10 years)	PY 2014-15	365	(since he left India on 1.6.2016 after 10 years)	Total stay	838	
PY	Days	Notes																	
PY 2017-18	46	Given in the question																	
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PY 2015-16	365	(since he left India on 1.6.2016 after 10 years)																	
PY 2014-15	365	(since he left India on 1.6.2016 after 10 years)																	
Total stay	838																		
	Mr. C satisfies 2 nd Basic Condition since his stay in India in PY 2018-19 is 173 days which is more than 60 days & in Last 4 PYs > 365 days. Thus Mr. C is Resident in India for AY 2019-20.																		

Additional Conditions

(a) Stay in India in Last 4 PYs should be ≥ 730 days	Since Mr. C left India after 10 years in PY 2016-17, his stay in India during Last 7 PYs > 730 days. Thus he satisfies first additional condition.
(b) Resident in any 2 PYs during Last 10 PYs	Since Mr. C left India after 10 years in PY 2016-17, he must be resident before that PY. Thus he satisfies both the additional conditions. Therefore, Mr. C is ROR for AY 2019-20.

Q5. Mr. Brett Lee, an Australian cricket player visits India for 100 days in every FY. This has been his practice for the past 10 FYs. Find out his residential status for the AY 2019-20. [ICAI SM]

Solution: **Determination of Residential Status of Mr. Brett Lee for AY 2019-20**

Basic Conditions:

(a) Period of stay during PY 2018-19 = 100 days which is less than 182 days. Thus he does not satisfy 1st basic condition.

(b) (i) Period of stay during PY 2018-19 = 100 days which is more than 60 days.

(ii) Period of stay in India during 4 preceding PY (100 x 4 = 400 days) which is more than 365 days.

Thus he satisfy 2nd basic condition. Thus Mr. Brett Lee is a **Resident** in India.

Additional Conditions:

(a) Period of stay during 7 preceding PYs = 100 x 7 = 700 days. Since his period of stay in India during the past 7 PY is less than 730 days, he does not satisfy 1st additional condition.

We know that in order to be ROR, Individual must satisfy both additional conditions.

Since Mr. Brett Lee does not satisfy 2nd additional condition, we do not need to check for 1st additional condition. Thus Mr. Brett Lee is a **RNOR** for AY 2019-20.

Q6. During the last 4 PYs, Mr. X, a Citizen of India, was present in India for 430 days. During last 7 PYs, he was present in India for 830 days. Mr. X is a Member of Crew of a Dubai bound Indian Ship, carrying passengers in the international waters, which left Kochi Port on 12th August 2018. Following details are given for PY 2018-2019:

Particulars	Date
Date entered into Continuous Discharge Certificate in respect of joining the ship by Mr. X	12 th Aug, 2018
Date entered into Continuous Discharge Certificate in respect of signing of the ship by Mr. X	21 st Jan 2019

In May 2018, he had gone out of India to Singapore & Malaysia on a private tour for a continuous period of 29 days. You are required to determine the Residential Status of Mr. X for PY 2018-2019.

Solution:

- The given voyage is Eligible Voyage since Origin Port is Kochi (India) & Destination Port is Dubai (outside India).
- Indian Citizen being Crew Member of Indian Ship, leaving India during Relevant PY is considered as Resident only if he stayed in India for a period of 182 days or more during the Relevant PY. [2nd Basic condition - NA]
- In computing stay in India, the period entered in CDC (i.e. from joining to signing off) shall be excluded.

Stay in India during PY 2018-19 = April (30 days) + May (2 days) + June (30days) + July (31 days) + Aug (11 days) + Jan (10 days) + Feb (28 days) + March (31 days) = **173 days** which is less than 182 days.

Thus Mr. X does not satisfy 1st basic condition.

2nd basic condition is not applicable in his case since he is an Indian Citizen & has left India as member of Indian Crew. **Thus Mr. X is a Non-resident for PY 2018-19.**

***Q7.** 'M' an Indian citizen left India for the first time on 24.9.2017 for employment in USA. During PY 2018-19, he comes to India on 5.6.2018 for 165 days. Determine the residential status of 'M' for the PY 2017-18 & PY 2018-19.

Solution:

(a) He is a citizen of India & has left India during PY 2017-18 for employment outside India. Thus 2nd basic condition is not applicable in his case.

During PY 2017-18, his stay in India is of 177 days (i.e. 30 + 31 + 30 + 31 + 31 + 24). Thus he does not satisfy the first basic condition (182 days or more) & therefore, he is **NR in India during PY 2017-18.**

(b) **During PY 2018-19**, his stay in India is for 165 days. Since he is a citizen of India & comes on a visit to India, 2nd basic condition is not applicable in his case.

During PY 2018-19, his stay in India is of 165 days. Thus he does not satisfy the first basic condition (182 days or more) & therefore, he is **NR in India during PY 2018-19.**

***Q8.** Mr. Raj, a citizen of India, is an export manager of XYZ Ltd, an Indian Company, since 1.5.2014. He has been regularly going to USA for export promotion. He spent following days in USA for last 5 yrs:

PY	PY 2018-19	PY 2017-18	PY 2016-17	PY 2015-16	PY 2014-15
Days spent in USA	294	311	271	150	317

Determine his residential status for AY 2019-20 assuming that prior to 1.5.2014 he had never travelled abroad.

Solution: This case does not fall in the exceptions since he has not gone for employment outside India but has gone out of India during the employment in India. **Thus Both Basic Conditions are applicable.**

Basic Conditions:

(a) Stay during PY: 71 Days (365-294) & thus 1st basic condition is not satisfied.

(b) (i) Stay in India during PY 2018-19 = 71 days &

(ii) Stay in 4 preceding PYs [48 + 215 + 94 + 55] = 412 days.

PY	PY 2018-19	PY 2017 - 18	PY 2016 - 17	PY 2015 - 16	PY 2014 - 15
Days in USA	294	311	271	150	317
Days in India	71	55	94	215	48

Thus, Mr. Raj satisfies 2nd basic condition. Thus he is a resident in India.

Additional conditions:

(a) **Stay in India in Last 7 PYs** = 55+94+215 +48+365+365+365 = 1507. Thus he satisfy 1st additional condition.

PY	2017-18	2016-17	2015-16	2014-15	2013-14	2012-13	2011-12
Days	55	94	215	48	365	365	365

(b)

PY	Stay in India	Residential Status
2017-18	55 Days	NR
2016-17	94 Days	NR
2015-16	215 Days	Resident
2014-15	48 Days	NR
Prior to 2013-14		Resident

He satisfies 2nd additional condition of being resident in at least 2 out of 10 PY prior to relevant PY.

Since Mr. Raj satisfy both the additional conditions, **he is a ROR.**

*Q9. Mr. PC, UK citizen has come to India for first time on 1.7.2015 as an executive of a MNC. His employer has allowed him to visit UK every year & for this purpose he will be leaving India every year on 1st Nov & shall come back on 31st Dec. Besides that he has visited China on several occasions in connection with the official work. Details of the same are given below:

Date of leaving India	Date of arriving in India
10.09.2015	30.09.2015
07.02.2016	08.05.2016
11.07.2016	21.10.2016
10.02.2017	23.07.2017
11.02.2018	12.06.2018
01.02.2019	10.04.2019

Determine his residential status for PY 2015-16 to 2018-19.

[Modified May 1998]

Solution:

PY 2015-16: No. of days in India during PY 2015-16 = 144. Thus, he is Non – resident for PY 2015-16.
[July - 31, Aug - 31, Sep - 11, Oct - 31, Nov - 1, Dec - 1, Jan - 31, Feb - 7]

PY 2016-17: No. of days in India during PY 2016 - 17 = 119. Thus, he is Non – resident for PY 2016-17.
[May - 24, June - 30, July - 11, Oct - 11, Nov - 1, Dec - 1; Jan - 31, Feb - 10]

PY 2017-18: No. of days in India during PY 2017 - 18 = 145. Thus, he is Non – resident for PY 2017-18.
[July - 9, Aug - 31, Sep - 30, Oct - 31, Nov - 1, Dec - 1, Jan - 31, Feb - 11].

PY 2018-19: (i) No. of days in India during PY 2017 - 18 = 176.

[June - 19, July - 31, Aug - 31, Sep - 30, Oct - 31, Nov - 1, Dec - 1, Jan - 31, Feb - 1]

(ii) Stay in India in Last 4 PYs = 365 days or more so he is resident.

Additional: His stay during 7 years is 729 days or less, hence he is a resident but not ordinarily resident.

Q10. X was born in UK in 1980. His parents were born in Pakistan on 2.2.1947. He has been staying in USA since 1980. He comes to India for 200 days on 10th Oct 2018. Determine residential status of X for AY 2019-20.

Solution:

- X is a person of Indian origin as his parents were born in undivided India.
- Thus 2nd basic condition is not applicable in his case.
- Thus, he can become resident in India only if he visits India for at least 182 days during PY.
- In this case, he comes to India on 10th October 2018.
- His total stay in India during the previous year ending March 31, 2019 is of 173 days.
- He is, therefore, non-resident in India for AY 2019-20.

Q11. Mr. X was born in 1977 in India. His parents were also born in India in 1950. However, his grandparents were born in England. Mr. X was residing in India till 16.3.2015. Thereafter, he migrated to England & took the citizenship of that country on 15.3.2016. He visits India during PY 2018-19 for 90 days. Determine the residential status of Mr. X for AY 2019-20.

Solution:

Mr. X is neither a citizen of India nor a person of Indian origin, because neither he nor his parents nor his grandparents were born in undivided India.

Thus 2nd basic condition is applicable.

(a) 1st Basic Condition: Stay in India during PY 2018-19: 90 days. Thus he does not satisfy 1st basic condition.

(b) 2nd Basic Condition: (i) Stay in India during PY 2018-19: 90 days;

(ii) Stay in India during Last 4 PY: 350 days

2017-18	Nil	2016-17	Nil
2015-16	Nil	2014-15	350 days

Since he does not satisfy Any Basic Condition, he is a Non- Resident in India.

***Q12.** X is a businessman. His parents & grandparents were born in USA. He was born in UK but later on, he migrated to Karachi & took Indian citizenship on 1st June 1946. After division of India, he stayed in Pakistan & took Pakistani citizenship in December 1948. Find out the residential status of X for AY 2019-20. His stay in India is:

PY 2018-19	70 days	PY 2014-15	260 days	PY 2010-11	55 days
PY 2017-18	60 days	PY 2013-14	46 days	PY 2009-10	25 days
PY 2016-17	40 days	PY 2012-13	182 days	PY 2008-09	24 days
PY 2015-16	5 days	PY 2011-12	55 days		

Solution:

- X is a foreign citizen. X, his parents & grandparents were not born in undivided India.
- He is not a person of Indian origin, even if he was Indian citizen between June 1946 & December 1948.
- He is in India for 70 days during PY 2018-19 & 365 days during last 4 PYs. Thus, he is resident in India.

Additional Conditions:

PY	Presence in India	Residential status
2017 - 18	60 days	Non-resident
2016 - 17	40 days	Non-resident
2015 - 16	5 days	Non-resident
2014 - 15	260 days	Resident
2013 - 14	46 days	Non-resident
2012 - 13	182 days	Resident
2011 - 12	55 days	Non-resident
2010 - 11	59 days	Non-resident
2009 - 10	25 days	Non-resident
2008 - 09	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 AY 2019-20.

***Q13.** Head Office of RG, a Hindu undivided family, is situated in Singapore. Since 1980, the family is managed by R who is non-resident in India in only 7 out of 10 years preceding the PY 2018-19. Determine the residential status of the family for the AY 2019-20 if the affairs of the family's business are (a) wholly controlled from Singapore, (b) partly controlled from India.

Solution:

(a) Since the affairs of the Hindu undivided family are wholly controlled from Singapore i.e. outside India, the HUF will be non-resident in India.

(b) Since affairs of family's business are partly controlled from India during PY 2018-19, HUF is resident in India.

It is given that Karta is non-resident in 7 out of last 10 PY, this means he is resident in 3 PYs out of Last 10 PYs.

The details regarding second condition are not given.

- If Karta's stay in India during last 7 PYs is 729 days or less, HUF will be RNOR.
- If Karta's stay in India during last 7 PYs is 730 days or more, HUF will be ROR.

Q14. The business of a HUF is transacted from Australia & all the policy decisions are taken there. Mr. E, the karta of the HUF, who was born in Kolkata, visits India during PY 2018-19 after 15 years. He comes to India on 1.4.2018 & leaves for Australia on 1.12.2018. Determine the residential status of Mr. E & HUF for AY 2019-20.

Solution:**Determination of Residential Status of Mr. 'E'****Basic Condition:**

- During PY 2018-19, Mr. E has stayed in India for 245 days (30+31+30+31+31+30+31+30+1 days).
- Thus he satisfies 1st basic condition & Therefore, he is a Resident in India.

Additional Conditions

- Since it is given in the question that he has come to India after 15 years, his total stay in India during Last 7 PYs is Zero days & thus he does not satisfy 2nd additional condition.
- We know that in order to be ROR, Individual must satisfy both additional conditions.
- Since Mr. E does not satisfy 2nd additional condition, we do not need to check for 1st additional condition.
- Thus Mr. E is a RNOR.

Residential Status of HUF

- Since the business of the HUF is transacted from Australia & nothing is mentioned regarding its control & management, it is assumed that C & M is also wholly outside India. Therefore, HUF is a NR for PY 2018-2019.

Q15. A Ltd. is an Indian Company. It carries on business in New Delhi & London. Place of effective management of A Limited is situated outside India. 80% of the total income of the company is from the business in London. What is the residential status of A Ltd.?

Solution:

- As A Ltd. is an Indian Company, it is always resident in India even if its POEM is outside India.
- It is irrelevant that 80% of the total income of the company is from the business outside India.

Q16. XYZ Ltd is registered in China. All the meetings of BODs of XYZ Ltd were held in India during PY 2018-19. Determine the residential status of XYZ Ltd. for AY 2019-20.

Solution:

- XYZ Ltd is not Indian Company.
- Thus to determine the residential status of XYZ Ltd, we need to check where is the POEM of XYZ Ltd.
- It is given in the question that All the board meetings are held in India.
- Thus POEM is in India. Thus XYZ is Resident in India.

Q17. ABC Ltd is registered in India. All the meetings of BODs of ABC Ltd were held in China during PY 2018-19. Determine the residential status of ABC Ltd. for AY 2019-20.

Solution:

- As ABC Ltd. is an Indian Company, it is always resident in India even if its POEM is outside India.
- It is irrelevant that all the board meetings are held in China.

***Q18.** ABC Ltd., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2018 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products & explore further opportunities. The liaison office takes decisions relating to day to day routine operations & performs support functions that are preparatory & auxiliary in nature. The significant management & commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Ltd. for AY 2019-20.

Answer:

- As per Section 6(3), a company would be resident in India in any previous year, if
(i) it is an Indian company; or
(ii) its place of effective management, in that year, is in India.
- In this case, ABC Ltd. is a foreign company. Therefore, it would be resident in India for PY 2018-19 only if its place of effective management, in that year, is in India.
- "Place of effective management" means a place where key management & commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.
- In case of ABC Ltd., its place of effective management for PY 2018-19 is not in India, since the significant management & commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.
- ABC Ltd. has only a liaison office in India through which it looks after its routine day to day business operations in India.
- It cannot be said to have POEM in India just because of this liaison's office in India since having a place where decisions relating to day to day routine operations are taken & support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.
- Hence, ABC Ltd. being a foreign company is a non-resident for AY 2019-20, since its place of effective management is outside India in the PY 2018-19.

Q19. In a partnership firm, there are 3 partners namely A, B & C. A & B reside in India while C lives in Germany. The firm is fully controlled by C. During PY 2018-19, Mr. C stayed for 6 months in India. Determine the residential status of the partnership firm for AY 2019-20.

Solution:

- A partnership firm is said to be resident in India if C & M of its affairs is wholly/partly situated in India.
- It is given in the question that the Firm is controlled by Mr. C. & Mr. C was in India for 6 months in this PY, Control & Management can be said to have been in India during this PY & thus Firm is a Resident in India.

Q20. Determine the residential status in the following cases for AY 2019-20:

(i) The control & management of a HUF is situated in India. The manager of the HUF visited England with his wife from 14.8.2018 to 30.6.2019. Earlier to that he was always in India.

(ii) Company, whose registered office is in America, has a place of its effective management during PY in India.

(iii) A VIP Club is in India, whose director Mr. X belongs to China. The Club is controlled fully by Mr. X. In PY 2018-19, Mr. X did not come for a single day to India.

Solution:

(i) HUF is a resident in India, as it is partly controlled from India. Further, the Karta of the HUF satisfies both the additional conditions. He was resident in at least 2 out of 10 PY prior to relevant PY & was in India for 730 days or more in the 7 preceding PYs. Hence, the Karta is "ROR in India".

(ii) Company is resident in India as is place of effective management in the PY is in India.

(iii) VIP Club is a **Non-Resident** as no part of the control & management was in India.

Q21. Mr. David, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2018 due to his transfer to High Commission of Canada. He did not visit India any time during PY 2018-19. He has received the following income for PY 2018-19. Discuss tax-treatment of the following receipts.

	Particulars	Rs.
(i)	Salary	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from Agriculture in Pakistan	2,00,000
(v)	Income from House property in Pakistan	2,50,000

Solution: Mr. David is a **NR** for AY 2019-20, since he was not present in India at any time during PY 2017-18. Thus Only Indian Income (being taxable to everyone) will be taxable in his hands.

- Income from Agriculture in Pakistan & Income from house property in Pakistan → Not taxable.
- Income from 'Salaries' payable by GOI to a citizen of India for services rendered o/s India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. It has been assumed that Mr. David is a citizen of India.
- Allowances/perquisites paid or allowed as such outside India by GOI to citizen of India for rendering service o/s India is exempt u/s 10(7). Hence, foreign allowance of Rs. 4,00,000 is exempt.

Q22. X is a citizen of Pakistan. His maternal grandfather was born in a village near Karachi in 1932. He comes to India on April 7, 2017 to complete a foreign assignment of his employer-company. He goes back on 4.10.2018. Mrs. X is resident & ordinarily resident in India for PY 2018-19. Prior to April 7, 2018, X was in India as follows –

PY	2017-18	2016-17	2015-16	2014-15	2013-14	2012-13
Stay in India	179	182	180	72	175	Nil

Income of X for the previous year 2018-19 is as follows –

Salary Income from Pakistani company (received in Pakistan) (for rendering service in Pakistan)	14,34,000
Salary Income from Pakistani company (received in Pakistan) (for rendering service in India)	6,63,000
Business income (Business is situated in UAE & income is received in UAE) (Business is partly controlled from India from Pakistan & partly from India)	9,95,000
Rental income from a property situated in Mumbai (income is received in Pakistan) [Computed]	2,10,000
Business income (business is situated in UK & it is partly controlled from UK & partly from Pakistan) (income is received in UK & later on Rs. 50,000 is remitted to India)	10,72,000
Birthday gift (he celebrated his birthday on June 10, 2018, received cash gifts in India from his friends, some of them have sent gift cheques from Pakistan)	74,000

Find out residential status & taxable income of X for the AY 2019-20.

Solution: X is a foreign citizen. One of his grandfathers was born in undivided India in 1932. Consequently, he is a person of Indian origin.

- He comes to India on a visit from April 7, 2018 to October 4, 2018. His total stay in India during PY 2018-19 is 181 days (i.e., 24 days + 31 days + 30 days + 31 days + 31 days + 30 days + 4 days).
- He can become resident in India only if he is in India for at least 182 days.
- He is, therefore, non-resident in India for AY 2019-20.

Income of X for AY 2019-20 shall be calculated as follows:

Particulars	Nature of income	Rs.
Salary of Rs. 14,34,000 for rendering service in Pakistan	Foreign income	Nil
Salary of Rs. 6,63,000 for rendering service in India	Indian income	6,63,000
Business income of Rs. 9,95,000	Foreign income	Nil
Rental income from Mumbai property	Indian income	2,10,000
Business income of Rs. 10,72,000	Foreign income	Nil
Birthday gift	Indian income	74,000
Net income		9,47,000

Q23. Compute the total income for the AY 2019-20 of Mr. A if he is: (i) ROR (ii) RNOR (iii) NR [RTP N-14]

	Particulars	Rs.
(a)	STCG on sale of shares in Indian Company received in Germany	15,000
(b)	Dividend from a Japanese Company received in Japan	10,000
(c)	Rent from property in London deposited in a bank in London, later on remitted to India	75,000
(d)	Dividend from RP Ltd., an Indian Company	6,000
(e)	Agricultural income from lands in Gujarat	25,000

Solution: Computation of total income of Mr. A for AY 2019-20

Particulars	ROR	RNOR	NR
(a) STCG on sale of shares of an Indian co., received in Germany	15,000	15,000	15,000
(b) Dividend from a Japanese company, received in Japan	10,000		
(c) Rent from property in London deposited in a bank in London [Note (i)]	52,500		
(d) Dividend from RP Ltd., an Indian Company [Note (ii)]			
(e) Agricultural income from land in Gujarat [Note (iii)]			
Total Income	77,500	15,000	15,000

Notes:

(i) GAV = Rent Received. Standard deduction u/s 24 @ 30% has been provided & NAV is taken into account for determining the total income of a ROR. Income from house property = Rs. 75,000 – 30% = Rs. 52,500.

(ii) Dividend from Indian company is Exempt u/s 10(34) upto 10 lacs.

(iii) Agricultural income is exempt u/s 10(1).

Q24. Compute the taxable income of DJ for AY 2019-20 assuming his to be (1) ROR (2) RNOR (3) NR.

Interest received in London on money lent in London to Resident in India, but money used in India	46000
Remuneration for consultancy service in Japan but received in India	100000
FTS payable by G (Resident) related to a business carried on in India	50000
Royalty received from Government of India	20000
Royalty from S (resident) for technical services provided to a business o/s India but received in India	8000
FTS paid by a Non-Resident for a business outside India	20000

Solution: Computation of Taxable Income of MR. DJ for AY 2019-20

ROR	RNOR	NR
46,000	46,000	46,000
1,00,000	1,00,000	1,00,000
50,000	50,000	50,000
20,000	20,000	20,000
8,000	8,000	8,000
20,000	-	-

Q25. Mr. Ramesh & Mr. Suresh are brothers & they earned the following income during PY 2018-19. Mr. Ramesh settled in Canada in the year 2001 & Mr. Suresh settled in Delhi. Compute the Total Income for the AY 2019-20.

SN	Particulars	Ramesh	Suresh
1	Interest on Canada Development Bond (50% of Interest is received in India)	35,000	40,000
2	Dividend from British Company received in London	28,000	20,000
3	STCG on sale of Shares of an Indian Company received in India	60,000	90,000
4	Fees for Technical Services rendered in India, but received in Canada	1,00,000	-
5	Interest on Savings Bank Deposit in UCO Bank, Delhi	7,000	12,000
6	Agricultural Income from a land situated in Andhra Pradesh	55,000	45,000
7	Life Insurance Premium paid	-	30,000

Solution:

(a) Ramesh stayed in India for only 20 days every year. Hence, he is a Non-Resident (NR).

(b) Suresh stayed in India for 365 days & hence he is a resident for all 10 preceding PYs. Hence, he is a ROR

Taxability of Income:

NR: Incomes which are deemed to accrue in India (or) Received or deemed to be received is in India, are taxable.

ROR: All Incomes are taxable in India.

Computation of Total Income for the AY 2019-20

SN	Particulars	Ramesh (NR)	Suresh (ROR)
1	Interest on Canada Development Bond (50% is received in India)	17,500	40,000
2	Dividend from British Company received in London	-	20,000
3	STCG on sale of Shares of an Indian Company received in India	60,000	90,000
4	Fees for Technical Services rendered in India, but received in Canada	1,00,000	-

5	Interest on Savings Bank Deposit in UCO Bank, Delhi	7,000	12,000
6	Agricultural Income from a land situated in Andhra Pradesh	-	-
	Gross Total Income	1,84,500	1,62,000
	Less: Deductions u/s 80TTA: Interest on Savings Bank (Max: 10,000)	-	(10,000)
	Total Taxable Income	1,84,500	1,52,000

Q26. Discuss the tax treatment of the following receipts in the hands of PC, who is a Non-Resident for AY 2019-20:

- Interest paid by Government of India.
- Interest paid by Mr. R, resident for money borrowed for earning capital gains outside India.
- Amount paid by Government of India for use of a patent developed by Mr. PC.
- Royalty paid by Mr. S, a non-resident. Royalty is payable in respect of an information used for profession carried on by Mr. S in India.
- Income from operations confined to the purchase of goods in India for Export.
- Income from operations confined to shooting of a cinematography film in India. Mr. PC is Indian citizen.

Solution: For Non-Resident, only Indian Income is taxable. Accordingly -

- Interest paid by GOI shall be taxable for Mr. PC as it is deemed to accrue in India [Section 9(i)(v)(a)].
- Interest paid by R is not a deemed to accrue in India since the money borrowed is used by NR for earning Capital gains **outside India**. Thus it is not taxable in the hands of Mr. PC unless it is received in India.
- Amount paid for use of a patent is Royalty & since it is paid by Government of India, it is deemed to accrue in India & hence it is an Indian Income. Thus it is Taxable to Mr. PC.
- Royalty paid by S (Non-Resident) is deemed to accrue in India since it is given for the profession in India. Thus it is an Indian income & Hence it is taxable in India in the hands of Mr. PC.
- Income from purchase of goods in India for Export is not treated as Business Connection in India. Thus it not taxable u/s 9(1)(i)(ii) in the hands of Mr. PC.
- Income from shooting of a cinematograph film in India is Taxable in India as PC is an Indian Citizen.

Q27. A Chinese Company entered in to the following transactions during PY 2018-19. Explain briefly, whether, these receipts are chargeable to Tax in India.

- Received Rs. 20 Lacs from a Non-Resident for use of Patent for a business in India.
- Received Rs. 15 Lacs from a Non-Resident Indian for use of Know-How for a business in Sri Lanka & this amount was received in Japan.
- Received Rs. 7 Lacs from RR Co. Ltd, an Indian Company, for providing Technical Know-How in India.
- Received Rs. 5 Lacs from R & Co. Mumbai for conducting the Feasibility Study for a new project in Nepal, & the payment was made in Nepal.

Solution:

- Taxable. Payer, being a Non-Resident, Income received for Patent used for business in India, is deemed to accrue or arise in India.
- Not Taxable. Payer, being a Non-Resident, Income Received for use of Know-How for a Business outside India, is not deemed to accrue or arise in India.
- Taxable. Payer is an Indian Company, i.e. Resident in India, & also Technical Know-How is used for business in India. Hence, deemed to accrue or arise in India.
- Not Taxable. Payer is assumed as a Resident in India. Fees for Feasibility Study conducted for business outside India, is not deemed to accrue or arise in India.

Q28. Discuss the tax treatment in India in the hands of US-based Company having its POEM outside India on the following transactions & also discuss the rate of tax applicable to such company.

- Rs. 5 Lacs received from an Indian Domestic Company for providing Technical Know-how in India.
- Rs. 6 Lacs from an Indian Firm for conducting the feasibility study for the new project in Finland.
- Rs. 4 Lacs from a Non-Resident for the use of Patent for a Business in India.
- Rs. 8 Lacs from a Non-Resident Indian for use of know-how for a Business in Singapore.
- Rs. 10 Lacs for supply of manuals & designs for the Business to be established in Singapore.

Solution: In this case, US-based Company has its Place of Effective management outside India. So it is a NR.

- Rs. 5,00,000 will be Taxable since the payer [Indian Company (Resident in India)] has used the technical know-how for business in India. Hence, such income is deemed to accrue or arise in India.

- (b) Not Taxable since Payer is an Indian Firm, & a Resident in India. Fees for Feasibility Study conducted for business outside India is not deemed to accrue or arise outside India.
- (c) Rs. 4,00,000 will be Taxable since Payer, being a Non-Resident, Income received for Patent used for business in India, is deemed to accrue or arise in India.
- (d) Not Taxable since Payer, being Non-Resident, income received for use of know-how for a business outside India, is not deemed to accrue or arise in India.
- (e) Income received for supply of manuals & designs for business outside India, is not deemed to accrue or arise in India. Thus it is not taxable to NR.

Taxable Income = Rs. 9 Lacs; Rate of Tax + HEC = 40 % + 4 % of 40% = 3,60,000 + 14,400 = Rs. 3,74,400.

***Q29. State with reasons whether the following attract Income Tax in India in the hands of Recipients -**

1. Salary of Rs. 7,00,000 paid by CG to Mr. John, a Citizen of India, for the services rendered outside India.
2. Interest on moneys borrowed from outside India Rs. 5,00,000 by a Non-Resident for the business within India.
3. Post Office Savings Bank Interest of Rs. 12,000 received by a Resident Assessee.
4. Royalty paid by a Resident to a Non-Resident in respect of business carried on outside India.
5. Legal Charges of Rs. 5,00,000 paid to a Lawyer of UK who visited India to represent a case at the Delhi High Court.
6. X Ltd. is a foreign company. It has 10 shareholders, all of them are non-resident & foreign citizens. It has shot a feature film on location situated in Kerala. The film will be exhibited in UK. However, Kerala Government has power to telecast it in South India free of charge.
7. Mr. X is a foreign citizen. He is a person of Indian origin. During the previous year 2018-19, X is in India for a visit of 150 days. He holds 1,000 equity shares in Reliance Industries. However, share certificates are in the office of X situated in Paris where X normally resides. These shares are transferred by X to a foreign company in the UK by signing the agreement in the UK. Certificates are handed over to the purchaser in the UK & consideration is received by X in foreign currency in the UK. On this transaction, X has generated a long-term capital gain of Rs. 95,00,000.
8. Y is a citizen of the UK. He is non-resident in India. He is employed by the Indian High Commissioner in the UK. Salary is paid to him in the UK in pound sterling. (b) Does it make any difference if Y is an Indian citizen?

Answer:

1. Payer is CG. Salary paid for rendering services outside India, deemed to accrue or arise in India. However, exemption is available u/s 10(7) for allowances or perquisites.
2. Taxable. U/s 9(1)(v), Interest paid by Non-Resident for the purpose of carrying on Business or Profession in India is deemed to accrue or arise in India.
3. Taxable. Any Income received by Resident is taxable in India.
4. Not Taxable. Payment relating to a Business/Profession carried on o/s India, not deemed to accrue or arise in India.
5. Taxable. Legal Charges paid to a Non-Resident for earning any source of Income in India is deemed to accrue or arise in India.
6. In the case of a non-resident no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India. This rule is applicable only if such non-resident is a foreign citizen or if such resident is a company, the company should not have any shareholder who is a citizen of India or is resident in India. In this case, nothing is taxable in the hands of X Ltd.
7. Since X is in India only for 150 days, he is non-resident in India. In the case of non-resident, Indian income is chargeable to tax. Shares in a company incorporated in India are always situated in India. On transfer of such shares, capital profit is deemed to accrue or arise in India [sec. 9(1)(i)]. This rule is applicable even if share certificates are handed over to the purchaser outside India under an agreement made outside India for which consideration is also payable outside India in foreign currency. Capital gain of Rs. 95,00,000 is taxable as income of X in India.
8. If Services are rendered outside India, Income is deemed to accrue or arise outside India. It is received outside India & the employee is non-resident in India. It is a foreign income & not taxable in India in the hands of non-resident employee.
(b) However, Section 9(1)(m) provides an exception to this rule. If the employee is a citizen of India & service is rendered to the Government of India o/s India, salary paid to such Citizen is deemed to be accrued in India & thus, it is an Indian Income. If Y is a citizen of India, then income is deemed to accrue or arise in India & chargeable to tax in India.

Q30. Ms. Vivitha paid a sum of \$ 5,000 to Mr. Kulasekhara, a Management Consultant practicing in Colombo, specializing in Project Financing. The payment was made in Colombo. Mr. Kulasekhara is 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?

Solution:

- Fees for Technical Services paid by Resident or Non-Resident, for the purpose of carrying on Business or Profession in India or to earn any Income from any Source in India is deemed to accrue or arise in India.
- Hence, it is taxable for all Assesseees, irrespective of their Residential Status.
- The above payment of \$ 5,000 made by Ms. Vivitha to Mr. Kulasekhara, a Non-Resident, related to a project in India, is taxable in the hands of Mr. Kulasekhara, in India.

Q31. A firm of solicitors in Calcutta engaged a barrister of London for arguing a case before the Supreme Court of India. A payment of 10,000 Pounds was made to the barrister in London as per the terms of the professional engagement. It is claimed that since the payment is made outside India, no tax is payable on the fee paid. Is the claim correct.

Solution: The Problem is based on a case decided by the Supreme Court in ITO v Barendra Prasad Ray & Others (1981) 129 ITR 295 in which the court held that business connection includes professional connections also. In view of the aforesaid case, the fee paid to the barrister shall be deemed to accrue or arise in India if the barrister firm has any business connection in India.

Q32. Mr. Federer, a Non-Resident residing in Sweden, has received rent from Mr. Nadal, another NR residing in France in respect of a property taken on lease at Mumbai. Since this income is received outside India from a NR, Federer claims that his income is not chargeable to tax in India. **[Nov 2016]**

Answer: As per Sec. 9(1)(i), if the Source of Income, directly or indirectly, through or from a Property, Asset in India, it shall be deemed to accrue or arise in India. Hence, the Rent is taxable in India.

Q33. Mr. A, a Citizen of India, left for USA for the purposes of employment on 01.05.2018. 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 Lacs & buys Shares in X Ltd, an Indian Company. Discuss the taxability of the interest charged at 10% in B's hands where the same has been received in New York.

Answer:

- The Receiver "B" is a Non-Resident. U/s 9(1)(v), Interest paid by Non-Resident (Mr. A) to any person (Mr. B) (other than for carrying on business or profession in India) is not deemed to accrue or arise in India.
- Interest Received by Mr. B from Mr. A is not taxable in India.

***Q34.** Discuss the correctness or otherwise of the statement - "Income deemed to accrue or arise in India to a NR by way of interest, royalty & fees for technical services is to be taxed irrespective of territorial nexus".

Answer:

- As per section 9, if any non-resident has provided any patent right or any managerial, technical services & such patent right etc was used in India, in such cases any royalty or fee received by nonresident shall be considered to be income accruing/arising in India & shall be taxable & it do not matter that the non-resident do not have residence or place of business or business connection in India i.e. there is no territorial nexus or non-resident has not rendered services in India. E.g. If Suzuki Incorporation of Japan a non-resident company has provided technical know-how in Japan to Maruti Udyog Limited for use in India & has received Rs. 300,00,000 in this case, such income is deemed to be accruing/arising in India & is taxable in India even if Suzuki Incorporation do not have any Territorial Nexus with India i.e. the company do not have place of residence or place of business in India. Similarly if any loan was given by a nonresident to some other non-resident & such other non-resident has utilized loan amount in India in business/profession, interest received by the non-resident shall be considered to be his income accruing/arising in India even if such non-resident do not have any territorial nexus with India.

MASTER QUESTION ON RESIDENTIAL STATUS

MQ35. Compute total income of Mr. PC assuming him (i) ROR (ii) RNOR (iii) NR for AY 2019-20.

Particulars	Amt
1. Interest on UK Development Bonds, (50% of interest received in India)	10,000
2. Interest for debentures in an Indian company (received in London)	10,000
3. Income from a business in Chennai managed from London (50% is received in India)	20,000
4. Profits on sale of shares of Indian company (received in London)	20,000
5. Dividend from British Company (received in London)	5,000
6. Profits on Sale of Plant at Germany (50% of profits are received in India)	40,000
7. Business income in Germany which is controlled from Delhi (40,000 is received in India)	70,000
8. Profits from a business in Delhi but managed entirely from London	15,000
9. Income from House in London deposited in Indian Bank at London, brought to India (computed)	50,000
10. Royalty/Fees for technical services rendered in India (received in London)	8,000
11. Pension for services rendered in India (received in Burma)	4,000
12. Income from property situated in Pakistan received there	16,000
13. Past foreign untaxed Income brought to India during the PY	5,000
14. Income from agricultural land in Nepal received there & then brought to India	18,000
15. Income from profession in Kenya which was set up in India, received there but spent in India	5,000
16. Gift received on the occasion of his wedding	20,000
17. Income from a business in Russia, controlled from Russia	20,000
18. Dividend from Reliance Petroleum Limited, an Indian company	5,000
19. Honorarium received from Government of India (Rs. 15,000 was paid for travelling expenses)	20,000
20. Income from Business connection in India, received in London	10,000
21. Speculation profit earned & received outside India on 15.4.2018	20,000
22. Salary drawn for 2 months for working in Indian Embassy's Office in Australia & received there	80,000

Solution:

Computation of Total Income for AY 2019-20

Particular	ROR	RNOR	NR
1. Interest on UK Development Bonds.	10,000	5,000	5,000
It is foreign Income. But 50% of interest received in India is Indian Income.			
2. Interest for debentures in an Indian company	10,000	10,000	10,000
Since Interest is paid on debentures by Indian company, it is an Indian Income. Thus, taxable to Everyone.			
3. Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Since business is situated in India, 100% is Indian Income irrespective of the place where it is Managed from.			
4. Profits on sale of shares of Indian company received in London	20,000	20,000	20,000
5. Dividend from British company received in London [Foreign Income]	5,000	-	-
6. Profits on sale of plant at Germany [50% Foreign & 50% Indian Income]	40,000	20,000	20,000
7. Income earned from business in Germany which is controlled from Delhi	70,000	70,000	40,000
Since the business has been controlled from India, such foreign income is taxable to RNOR also.			
8. Profits from business in Delhi [Indian Income & thus taxable to everyone]	15,000	15,000	15,000
9. Income from property in London deposited in London, later on remitted to India [Foreign Income & thus taxable to ROR]; No tax on Remittance	50,000	-	-
10. Royalty/FTS rendered in India; Indian Income & thus taxable to everyone	8,000	8,000	8,000
11. Pension for services rendered in India & [Thus Indian Income]	4,000	4,000	4,000
12. Income from property situated in Pakistan [Foreign Income; tax - ROR]	16,000	-	-
13. Past foreign untaxed income brought to India during the PY	-	-	-
Since income relates to past year, it is assumed that it must have been taxed in that PY. Thus, it is not taxable in this PY.			
14. Income from Agricultural land in Nepal received there [Foreign Income]	18,000	-	-
15. Income from profession in Kenya which was set up in India [Refer Pt. 7]	5,000	5,000	-
16. Gift received on the occasion of his wedding [not taxable]	-	-	-
17. Income from business in Russia, controlled from Russia [Foreign Income]	20,000	-	-
18. Dividend from Reliance Limited, Indian Company [Exempt u/s 10(34)]	-	-	-
19. Honorarium received from Government of India [Indian Income]. But Allowance are exempt u/s 10(7). Thus, travelling expenses are not taxable.	5,000	5,000	5,000
20. Income from Business connection in India, received in London	10,000	10,000	10,000
21. Speculation profit earned & received outside India [Foreign Income]	20,000	-	-
22. Salary for working in Indian Embassy's Office in Australia & received there. [Deemed to accrue in India & thus Indian Income]	80,000	80,000	80,000

3. EXEMPT INCOMES

Q1. Briefly discuss about the provisions relating to deductibility of expenditure incurred in relation to income not includible in assessee's total income. [PCC May 2007]

Answer: As per Section 14A, while computing the total income of an assessee -

(1) No deduction shall be allowed to the assessee in respect of expenditure incurred in relation to income which does not form the part of the total income under the Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income, if having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure made by the assessee.

(3) The Assessing Officer has the power to determine the amount of such expenditure even if 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.

Q2. State with reasons whether the receipt is taxable under the Income Tax Act, 1961 for AY 2019-20?

(i) Mr. Suri received a sum of Rs. 5,00,000 as compensation, from 'Yatra Foundation', towards the loss of property on account of Flood Disaster. [Nov 16]

Answer:

- Disaster Compensation received/receivable from CG/SG/Local Authority is exempt u/s 10(10BC).
- In this case, since Yatra Foundation is not covered in the above, the receipt is taxable in Suri's hands.

(ii) Any amount received by an individual or his legal heir as compensation for natural disaster from the Government, is taxable. Comment. [May 16]

Answer:

- According to Section 10(10BC), any amount received or receivable as compensation by an individual or his legal heir on account of any disaster is exempt from tax if Such compensation should be granted by CG/SG/LA.
- However, such exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

(iii) Rent Received for letting out Agricultural Land for a movie shooting – Rs. 7,00,000. [Nov 2013]

Answer: Rent Received for letting out Agricultural Land for a movie shooting is fully taxable, as it is not considered as Agricultural Income.

Q3. The Government of India pays a salary of US \$ 80,000 to a Non-Resident for services rendered by him in USA. Such NR is Indian Citizen. In addition, he gets allowances & Perquisites of US\$ 20,000. Discuss the tax consequence.

Solution:

- As per section 9(1)(iii), salary income for service rendered outside India shall be deemed to accrue or arise in India if all the following conditions are satisfied:
 - (a) Such salary is paid to an individual who is a citizen of India.
 - (b) Salary must be paid by Government.
 - (c) It should be paid for services rendered outside India.
- However any allowances/perquisites paid outside India by the Government shall be exempt u/s 10(7).
- Thus salary of US \$ 80,000 is taxable in India. But Allowances & perquisites of US \$ 20,000 is exempt u/s 10(7).

Q4. Ms. J, a Sikkimese woman married Mr. K, a Non-Sikkimese on 1st Jan 2009. During PY 2018-19, she received rent of Rs. 12 Lakhs from letting out house properties situated in Sikkim. Is she liable to Income Tax for AY 2019-20? (b) Will your solution be different, if she married Mr. K on 16th April, 2013. [May 09]

Answer:

U/s 10(26AAA), in case of an Individual, being a Sikkimese, any income which accrues or arises to him from the following sources are exempted (i) from any Source in Sikkim & (ii) Dividend or Interest on Securities.

Exception: This provision shall not apply to a Sikkimese woman who on/after 1.4.2008 marries an individual who is not Sikkimese.

Here, the Assessee marries a Non-Sikkimese individual before 1.4.2008. So, the exemption u/s 10(26AAA) shall be allowed in her case. Hence, Ms. J is eligible for exemption in respect of House Property Income situated in Sikkim.

(b) Marriage occurred on 16th April 2013. i.e. after 1.4.2008. So, Ms. J is not eligible for exemption u/s 10(26AAA).

Q5. Calculate the amount of tax liability of Mrs. Mahima who is 50 years old & resident in India for AY 2019-20:

Share of profit from partnership firm	40,000
Income from salary (Computed)	2,80,000
Receipt of accumulated balance in PPF	80,000
Lottery income (Gross)	7,000