

INCOME-TAX ACT, 1961*

[43 OF 1961]

[AS AMENDED BY FINANCE ACT, 1999]

*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.

Definitions.

2. In this Act, unless the context otherwise requires,—

³[(I) “advance tax” means the advance tax payable in accordance with the provisions of Chapter XVII-C;]

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1. For applicability of the Act to State of Sikkim, *see* section 26 of the Finance Act, 1989. For extension of Act to continental shelf of India, *see* Notification No. GSR 304(E), dated 31-3-1983. For details, *see* Taxmann’s Master Guide to Income-tax Act.
 2. For effective date for the applicability of the Act in the State of Sikkim, *see* Notification No. SO 148(E), dated 23-2-1989. For details, *see* Taxmann’s Master Guide to Income-tax Act.
 3. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

**Amendments made by the Income-tax (Second Amendment) Act, 1998 and the Finance Act, 1999, notwithstanding the dates from which they come into effect have been printed in italics enclosed with bold square brackets. Amendments made by the Income-tax (Amendment) Act, 1998, and the Finance (No. 2) Act, 1998, coming into force from April 1, 1999 have also been printed in italics but enclosed within medium square brackets.*

⁴[⁵(1A)] “agricultural income”⁷ means⁸—

- ⁹[(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;]
- (b) any income derived from such land by—
- (i) agriculture; or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:
- ⁹[**Provided** that—
- (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and
 - (ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—
 - (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not

4. Renumbered as clause (1A) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

5. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

6. See rules 7 and 8 for manner of computation of income which is partially agricultural and partially from business. See also **Appendix Two** for an analysis of rules 7 and 8.

7. The Finance Act, 1973 introduced for the first time a scheme of partially integrated taxation of non-agricultural income with incomes derived from agriculture for the purposes of determining the rate of income-tax that will apply to certain non-corporate assessees. The scheme is since continued by the Annual Finance Acts. The provisions applicable for the assessment year 1999-2000 are contained in section 2(2)/2(10)(c) and Part IV of the First Schedule to the Finance Act, 1999.

8. See also Instruction No. 745 [F. No. 228/28/74-IT(A-II)], dated 30-8-1974 and Circular No. 310, dated 29-7-1981. For details, see Taxmann’s Master Guide to Income-tax Act.

9. Substituted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1962.

less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

- ¹⁰(B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.]

¹¹[*Explanation.*—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section ;]

¹²[¹³[(1B)] “amalgamation”, in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;
- (iii) shareholders holding not less than ^{13a}[*nine-tenths*] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company ;]

10. For specified urban areas, refer Taxmann’s Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.9-1.57.

11. Inserted by the Finance Act, 1989, with retrospective effect from 1-4-1970.

12. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

13. Renumbered as clause (1B) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

13a. Words “three-fourths” shall be substituted for “nine-tenths” by the Finance Act, 1999, w.e.f. 1-4-2000.

- (2) “annual value”, in relation to any property, means its annual value as determined under section 23 ;
- (3) ¹⁴[* * *]
- (4) “Appellate Tribunal” means the Appellate Tribunal constituted under section 252 ;
- (5) “approved gratuity fund” means a gratuity fund which has been and continues to be approved by the ¹⁵[Chief Commissioner or Commissioner] in accordance with the rules contained in Part C of the Fourth Schedule ;
- (6) “approved superannuation fund” means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the ¹⁵[Chief Commissioner or Commissioner] in accordance with the rules contained in Part B of the Fourth Schedule ;
- ¹⁶(7) “assessee” means a person by whom ¹⁷[any tax] or any other sum of money is payable under this Act, and includes—
- (a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;
- (b) every person who is deemed to be an assessee under any provision of this Act ;
- (c) every person who is deemed to be an assessee in default under any provision of this Act ;
- ¹⁸[(7A) “Assessing Officer” means the Assistant Commissioner ¹⁹[or Deputy Commissioner] ²⁰[or Assistant Director] ¹⁹[or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the ²¹[Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]

14. Clause (3) omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Prior to its omission, clause (3) stood as under :

‘(3) “Appellate Assistant Commissioner” means a person appointed to be an Appellate Assistant Commissioner of Income-tax under sub-section (1) of section 117;’

15. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

16. For relevant case laws, *see* Taxmann’s Master Guide to Income-tax Act.

17. Substituted for “income-tax or super-tax” by the Finance Act, 1965, w.e.f. 1-4-1965.

18. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

19. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

20. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

21. Substituted for “Deputy Commissioner or Deputy Director” by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “or Deputy Director” was inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

- (8) “assessment” includes reassessment ;
- (9) “assessment year” means the period of twelve months commencing on the 1st day of April every year ;
- ²²[(9A) “Assistant Commissioner” means a person appointed to be an Assistant Commissioner of Income-tax ²³[or a Deputy Commissioner of Income-tax] under sub-section (1) of section 117 ;]
- (10) “average rate of income-tax” means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income ;
- ²⁴[(11) “*block of assets*” means a group of assets falling within a class of assets comprising—
- (a) *tangible assets, being buildings, machinery, plant or furniture;*
- (b) *intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature,*
- in respect of which the same percentage of depreciation is prescribed;]*
- (12) “Board” means the ²⁵[Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] ;
- ²⁶(13) “business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- ²⁶(14) ²⁷“capital asset” means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—
- (i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession ;
- ²⁸[(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

22. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

23. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

24. Substituted, *ibid.*, w.e.f. **1-4-1999**. Prior to its substitution, clause (ii), as inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, read as under :

‘(11) “block of assets” means a group of assets falling within a class of assets, being buildings, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed ;’

Original clause was earlier omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

25. Substituted for “Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (4 of 1924)” by the Central Boards of Revenue Act, 1963, w.e.f. 1-1-1964.

26. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

27. See also Letter F. No. 34/11/65-IT(A-I), dated 15-1-1966. For details, see Taxmann’s Master Guide to Income-tax Act.

28. Substituted by the Finance Act, 1972, w.e.f. 1-4-1973.

Explanation.—For the purposes of this sub-clause, “jewellery” includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel ;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel ;]

²⁹[(iii) agricultural land in India, not being land situate—

- (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

- ³⁰(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette ;]

³¹[(iv) 6½ per cent Gold Bonds, 1977,³²[or 7 per cent Gold Bonds, 1980,]
³³[or National Defence Gold Bonds, 1980,] issued by the Central Government ;]

³⁴[(v) Special Bearer Bonds, 1991, issued by the Central Government ;]

The following sub-clause (vi) shall be inserted after sub-clause (v) in clause (14) of section 2 by the Finance Act, 1999, w.e.f. 1-4-2000 :

- (vi) *Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government ;*

29. Substituted for “(iii) agricultural land in India” by the Finance Act, 1970, w.e.f. 1-4-1970.

30. For specified urban areas, refer Taxmann’s Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.9-1.57.

31. Inserted by the Taxation Laws (Amendment) Act, 1962, w.e.f. 13-12-1962.

32. Inserted by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

33. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965, w.e.f. 4-12-1965.

34. Inserted by the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, w.e.f. 12-1-1981.

- ³⁵(15) ³⁶“charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility ³⁷[* * *];
- ³⁸[(15A) “Chief Commissioner” means a person appointed to be a Chief Commissioner of Income-tax under sub-section (1) of section 117;]
- ³⁹[⁴⁰[(15B)] “child”, in relation to an individual, includes a step-child and an adopted child of that individual;]
- ⁴¹[(16) “Commissioner” means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117 ⁴²[* * *];]
- ⁴³[(16A) “Commissioner (Appeals)” means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117;]
- ⁴⁴[(17) “company” means—
- (i) any Indian company, or
 - (ii) any body corporate incorporated by or under the laws of a country outside India, or
 - (iii) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (11 of 1922), or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or
 - (iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company :
- Provided** that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ;]
- (18) “company in which the public are substantially interested”—
- ⁴⁵[(a) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are

35. See also Circular No. 395, dated 24-9-1984. For details, see Taxmann’s Master Guide to Income-tax Act.

36. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

37. “not involving the carrying on of any activity for profit” omitted by the Finance Act, 1983, w.e.f. 1-4-1984.

38. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

39. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

40. Renumbered by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. Substituted by the Finance Act, 1970, w.e.f. 1-4-1970.

42. “, and includes a person appointed to be an Additional Commissioner of Income-tax under that sub-section” omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

43. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

44. Substituted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

45. Substituted by the Finance Act, 1964, w.e.f. 1-4-1964.

held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or]

⁴⁶[(aa) if it is a company which is registered under section 25 of the Companies Act, 1956 (1 of 1956)⁴⁷ ; or

(ab) if it is a company having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested :

Provided that such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ; or]

⁴⁸[(ac) if it is a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A⁴⁹ of the Companies Act, 1956 (1 of 1956), to be a *Nidhi* or Mutual Benefit Society ; or]

⁵⁰[(ad) if it is a company, wherein shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by, one or more co-operative societies ;]

⁵¹[(b) if it is a company which is not a ⁵²private company as defined in the Companies Act, 1956 (1 of 1956), and the conditions specified either in item (A) or in item (B) are fulfilled, namely :—

(A) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder ;

⁵³[(B) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to

46. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

47. For text of section 25 of the Companies Act, 1956, see **Appendix One**.

48. Inserted by the Finance Act, 1985, with retrospective effect from 1-4-1984.

49. For text of section 620A of the Companies Act, 1956, and notified *Nidhi* thereunder, see **Appendix One**.

50. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

51. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970. Earlier, clause (b) was amended first by the Finance Act, 1965, w.e.f. 1-4-1965 and then by the Finance Act, 1966, w.e.f. 1-4-1966.

52. Clause (iii) of section 3(1) of the Companies Act, 1956, defines “private company”. For text of section 3, see **Appendix One**.

53. Substituted by the Finance Act, 1983, w.e.f. 2-4-1983.

participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—

- (a) the Government, or
- (b) a corporation established by a Central, State or Provincial Act, or
- (c) any company to which this clause applies or any subsidiary company of such company ⁵⁴[if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.]

Explanation.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (B) shall have effect as if for the words “not less than fifty per cent”, the words “not less than forty per cent” had been substituted ;]

(19) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;

⁵⁵[(19A) “Deputy Commissioner” means a person appointed to be a Deputy Commissioner of Income-tax ⁵⁶[* * *] under sub-section (1) of section 117;

The following clauses (19AA) and (19AAA) shall be inserted after clause (19A) of section 2 by the Finance Act, 1999, w.e.f. 1-4-2000:

- (19AA) “*demerger*”, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—
- (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;
 - (ii) all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

54. Substituted for “where such subsidiary company fulfils the conditions laid down in clause (b) of section 108” by the Finance Act, 1987, w.e.f. 1-4-1988.

55. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

56. Words “or an Additional Commissioner of Income-tax” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier the quoted words were inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

- (iii) *the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;*
- (iv) *the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;*
- (v) *the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, *otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;*
- (vi) *the transfer of the undertaking is on a going concern basis;*
- (vii) *the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.*

Explanation 1.—*For the purposes of this clause, “undertaking” shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.*

Explanation 2.—*For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include—*

- (a) *the liabilities which arise out of the activities or operations of the undertaking;*
- (b) *the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and*
- (c) *in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.*

Explanation 3.—*For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.*

Explanation 4.—*For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if*

*The words ‘otherwise...company’ should appear before *Explanation 1.*

such split up or reconstruction fulfils the conditions specified in sub-clauses (i) to (vii) of this clause, to the extent applicable;

(19AAA) “*demerged company*” means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;

(19B) “Deputy Commissioner (Appeals)” means a person appointed to be a Deputy Commissioner of Income-tax (Appeals)⁵⁷[or an Additional Commissioner of Income-tax (Appeals)] under sub-section (1) of section 117 ;]

⁵⁸[(19C) “Deputy Director” means a person appointed to be a Deputy Director of Income-tax⁵⁹[* * *] under sub-section (1) of section 117 ;]

(20)⁶⁰“director”, “manager” and “managing agent”, in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956) ;

⁶¹[(21) “Director General or Director” means a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be⁶²[an Additional Director of Income-tax or] a⁶³[Joint] Director of Income-tax or an Assistant Director⁶⁴[or Deputy Director] of Income-tax ;]

⁶⁵(22) “dividend” includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference

57. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

58. Inserted, *ibid*.

59. Words “or an Additional Director of Income-tax” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

60. Clauses (13), (24) and (25) of section 2 of the Companies Act, 1956, define expressions “director”, “manager” and “managing agent”, respectively. For text of provisions, *see Appendix One*.

61. Substituted for the following clause (21) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 :

‘(21) “Director of Inspection” means a person appointed to be a Director of Inspection under sub-section (1) of section 117, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection ;’

62. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

63. Substituted for “Deputy” by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

64. Inserted, *ibid*.

65. *See also* Circular No. 5-P (para 56), dated 9-10-1967. For details, *see Taxmann’s Master Guide to Income-tax Act*.

66. For relevant case laws, *see Taxmann’s Master Guide to Income-tax Act*.

shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not ;

- (c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;
- (d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;
- (e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) ⁶⁷[made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ;

but “dividend” does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;
- ⁶⁸[(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, ⁶⁹[and before the 1st day of April, 1965] ;]
- (ii) any advance or loan made to a shareholder ⁷⁰[or the said concern] by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;

67. Substituted for “by way of advance or loan to a shareholder, being a person who has a substantial interest in the company,” by the Finance Act, 1987, w.e.f. 1-4-1988.

68. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

69. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

70. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

The following sub-clauses (iv) and (v) shall be inserted after sub-clause (iii) in clause (22) of section 2 by the Finance Act, 1999, w.e.f. 1-4-2000 :

- (iv) *any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);*
- (v) *any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).*

Explanation 1.—The expression “accumulated profits”, wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression “accumulated profits” in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation,⁷¹[but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place].

⁷²[*Explanation 3.*—For the purposes of this clause,—

- (a) “concern” means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
- (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern ;]

⁷³[(22A) “domestic company” means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;]

71. Inserted by the Direct Taxes (Amendment) Act, 1964, w.r.e.f. 1-4-1962.

72. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

73. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

- ⁷⁴[⁷⁵[(22B)] “fair market value”, in relation to a capital asset, means—
- (i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date ; and
 - (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act ;]
- (23) ⁷⁶“firm”, “partner” and “partnership” have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932) ; but the expression “partner” shall also include any person who, being a minor, has been admitted to the benefits of partnership ;
- ⁷⁷[(23A) “foreign company” means a company which is not a domestic company ;]
- ⁷⁸(24) “income” includes—
- (i) profits and gains ;
 - (ii) dividend ;
- ⁷⁹[(*iii*) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes ⁸⁰[or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C), of section 10].
- Explanation.*—For the purposes of this sub-clause, “trust” includes any other legal obligation ;]
- ⁸¹(*iii*) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17 ;

74. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

75. Renumbered as clause (22B) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

76. Section 4 of the Indian Partnership Act, 1932, defines expressions “firm”, “partner” and “partnership” as follows :

‘ “Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm”, and the name under which their business is carried on is called the “firm name”.’

77. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

78. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

79. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

80. Substituted for “or by a trust or institution of national importance referred to in clause (d) of sub-section (1) of section 80F” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, the said expression was substituted for “, not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution” by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

81. See also Board’s Letter to Indian Merchants Chamber published in Chamber’s Annual Report, 1963, p. 87. For details, see Taxmann’s Master Guide to Income-tax Act.

- ⁸²[(*iiia*)] ⁸³any special allowance or benefit, other than perquisite included under sub-clause (*iii*), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;
- (*iiib*) ⁸³any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;]
- ⁸⁴(*iv*) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;
- ⁸⁵[(*iva*)] the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (*iii*) or clause (*iv*) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the “beneficiary”) and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;]
- (*v*) any sum chargeable to income-tax under clauses (*ii*) and (*iii*) of section 28 or section 41 or section 59 ;
- ⁸⁶[(*va*)] any sum chargeable to income-tax under clause (*iiia*) of section 28 ;]
- ⁸⁷[(*vb*)] any sum chargeable to income-tax under clause (*iiib*) of section 28 ;]
- ⁸⁸[(*vc*)] any sum chargeable to income-tax under clause (*iiic*) of section 28 ;]
- ⁸⁹[(*vd*)] the value of any benefit or perquisite taxable under clause (*iv*) of section 28 ;

82. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1962.

83. See also Circular No. 701, dated 23-3-1995. For details, see Taxmann’s Master Guide to Income-tax Act.

84. See also Board’s Letter to Indian Merchants Chamber published in Chamber’s Annual Report, 1963, p. 87. For details, see Taxmann’s Master Guide to Income-tax Act.

85. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

86. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1962.

87. Inserted, *ibid.*, w.r.e.f. 1-4-1967.

88. Inserted, *ibid.*, w.r.e.f. 1-4-1972.

89. Relettered, *ibid.*, w.r.e.f. 1-4-1962. Earlier the original sub-clause (*va*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

⁹⁰[(*ve*) any sum chargeable to income-tax under clause (*v*) of section 28 ;]

(*vi*) any capital gains chargeable under section 45 ;

(*vii*) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;

⁹¹(*viii*) [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (viii) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.*]

⁹²[(*ix*) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever ;]

⁹³[(*x*) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;]

⁹⁴[(*xi*) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression “Keyman insurance policy” shall have the meaning assigned to it in the *Explanation* to clause (10D) of section 10 ;]

(25) “Income-tax Officer” means a person appointed to be an Income-tax Officer under ⁹⁵[* * *] section 117 ;

⁹⁶[(25A) “India” shall be deemed to include the Union territories of Dadra and Nagar Haveli, Goa†, Daman and Diu, and Pondicherry,—

(*a*) as respects any period, for the purposes of section 6 ; and

(*b*) as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing on the 1st day of April, 1963, or for any subsequent year ;]

90. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

91. Prior to its omission, sub-clause (*viii*) read as under :

“(viii) any annuity due, or commuted value of any annuity paid, under the provisions of section 280D ;”

92. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

93. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

94. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

95. “sub-section (1) of” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988. Earlier, that expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

96. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

† Now State of Goa.

(26) “Indian company” means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes—

(i) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir ⁹⁷[and the Union territories specified in sub-clause (iii) of this clause]);

⁹⁸[(ia) a corporation established by or under a Central, State or Provincial Act ;

(ib) any institution, association or body which is declared by the Board to be a company under clause (17) ;]

(ii) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State ;

⁹⁹[(iii) in the case of any of the Union territories of Dadra and Nagar Haveli, Goa†, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory :]

Provided that the ¹[registered or, as the case may be, principal office of the company, corporation, institution, association or body] in all cases is in India ;

(27) ²[* * *]

(28) “Inspector of Income-tax” means a person appointed to be an Inspector of Income-tax under sub-section ³[(1)] of section 117 ;

⁴[(28A) “interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised ;]

97. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

98. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

99. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

1. Substituted for “registered office of the company” by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

2. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Omitted clause (27) stood as under :

‘(27) “Inspecting Assistant Commissioner” means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under sub-section (1) of section 117 ;’

3. Substituted for “(2)” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

4. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

5. See also Letter F. No. 164/18/77-IT(A-I), dated 13-7-1978. For details, see Taxmann’s Master Guide to Income-tax Act.

† Now State of Goa.

- ⁶[(28B) “interest on securities” means,—
- (i) interest on any security of the Central Government or a State Government ;
 - (ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act ;]
- ⁷[(28C) “Joint Commissioner” means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117;
- (28D) “Joint Director” means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under sub-section (1) of section 117;]
- (29) “legal representative” has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908) ;
- ⁹[(29A) “long-term capital asset” means a capital asset which is not a short-term capital asset ;
- (29B) “long-term capital gain” means capital gain arising from the transfer of a long-term capital asset ;]
- ¹⁰[(29C) “maximum marginal rate” means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual ¹¹[, association of persons or, as the case may be, body of individuals] as specified in the Finance Act of the relevant year ;]
- (30) “non-resident” means a person who is not a “resident” ^{11a}[, *and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6*], and for the purposes of sections 92, 93 ¹²[* * *] and 168, includes a person who is not ordinarily resident within the meaning of sub-section (6)*of section 6 ;
- ¹³(31) “person” includes—
- (i) an individual,
 - (ii) a Hindu undivided family,

6. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

7. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

8. Clause (11) of section 2 of the Code of Civil Procedure defines “legal representative” as follows :

‘(11) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued ;’

9. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

10. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

11. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

11a. Inserted by the Finance Act, 1999, w.e.f. **1-4-1999**. Earlier these words were omitted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999**.

12. “, 113” omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

13. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

* Should be ‘clause (6) of section 6’.

- (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) a local authority, and
 - (vii) every artificial juridical person, not falling within any of the preceding sub-clauses ;
- (32) “person who has a substantial interest in the company”, in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power ;
- (33) “prescribed” means prescribed by rules made under this Act ;
- (34) “previous year” means the previous year as defined in section 3 ;
- ¹⁴(35) “principal officer”, used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—
- (a) the secretary, treasurer, manager or agent of the authority, company, association or body, or
 - (b) any person connected with the management or administration of the local authority, company, association or body upon whom the ¹⁵[Assessing] Officer has served a notice of his intention of treating him as the principal officer thereof ;
- ¹⁶(36) “profession” includes vocation ;
- ¹⁷[(36A) “public sector company” means any corporation established by or under any Central, State or Provincial Act or a Government company¹⁸ as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;]
- (37) ¹⁹“public servant” has the same meaning as in section 21 of the Indian Penal Code (45 of 1860) ;

14. For relevant case laws, *see* Taxmann’s Master Guide to Income-tax Act.

15. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

16. For relevant case laws, *see* Taxmann’s Master Guide to Income-tax Act.

17. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

18. Section 617 of the Companies Act, 1956, defines “Government company” as follows :
 ‘617. *Definition of “Government company”*.—For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.’

19. Section 21 of the Indian Penal Code defines “public servant”. For text of section 21, *see* **Appendix One**.

²⁰[(37A) “rate or rates in force” or “rates in force”, in relation to an assessment year or financial year, mean—

- (i) for the purposes of calculating income-tax under the first proviso to sub-section (5) of section 132, or computing the income-tax chargeable under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 or deducting income-tax under section 192 from income chargeable under the head “Salaries” ²¹[* * *] or ²²[computation of the “advance tax” payable under Chapter XVII-C in a case not falling under ²³[section 115A or section 115B ²⁴[or section 115BB or section 115E] or] section 164 ²⁴[or section 164A ²⁵[* * *]] ²⁶[or section 167B], the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, and for the purposes of computation of the “advance tax” payable under Chapter XVII-C ²⁷[in a case falling under section 115A or section 115B ²⁸[or section 115BB or section 115E] or section 164 ²⁸[or section 164A ²⁹[* * *]] ³⁰[or section 167B], the rate or rates specified in section 115A or ³¹[section 115B or section 115BB or section 115E or section 164 or section 164A ²⁹[* * *]] ³⁰[or section 167B], as the case may be,] or the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, whichever is applicable ;]
- (ii) for the purposes of deduction of tax under sections 193, 194, 194A ³²[, 194B] ³³[, 194BB] ³⁴[and 194D], the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year ;]

20. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

21. “or sub-section (9) of section 80E from any payment referred to therein” omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Originally, the said expression was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

22. Substituted for ‘computation of the “advance tax” payable under Chapter XVII-C, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year’ by the Finance Act, 1970, w.e.f. 1-4-1971.

23. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

24. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

25. “or section 167A” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier this expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

26. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

27. Substituted for “in a case falling under section 164, the rate specified in that section” by the Finance Act, 1976, w.e.f. 1-6-1976.

28. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

29. “or section 167A” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier this expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

31. Substituted for “section 115B or, as the case may be, section 164” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

32. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

33. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

34. Substituted for “, 194D and 195” by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

³⁵[(iii) for the purposes of deduction of tax under section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or the rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90, whichever is applicable by virtue of the provisions of section 90 ;]

³⁶(38) “recognised provident fund” means a provident fund which has been and continues to be recognised by the ³⁷[Chief Commissioner or Commissioner] in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees’ Provident Funds Act, 1952 (19 of 1952) ;

(39) ³⁸[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

(40) “regular assessment” means the assessment made under ³⁹[sub-section (3) of] section 143 or section 144 ;

(41) “relative”, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual ;

The following clause (41A) shall be inserted after clause (41) of section 2 of the Finance Act, 1999, w.e.f. 1-4-2000 :

(41A) “*resulting company*” means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger ;

35. Substituted by the Finance Act, 1992, w.e.f. 1-6-1992. Prior to its substitution, sub-clause (iii), as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, read as under :

“(iii) for the purposes of deduction of tax under section 195, the rate or rates of income-tax specified in section 115A or the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, whichever is applicable ;”

36. See also Circular No. 153, dated 30-11-1974. For details, see Taxmann’s Master Guide to Income-tax Act.

37. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

38. Prior to omission, clause (39) was substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier clause (39) was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and was later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to omission, it read as under :

‘(39) “registered firm” means a firm registered under the provisions of clause (a) of sub-section (1) of section 185 or deemed to be registered under the provisions of sub-section (6) of that section or under those provisions read with sub-section (7) of section 184 ;’

39. Inserted by the Finance Act, 1990, w.e.f. 1-4-1989.

(42) “resident” means a person who is resident in India within the meaning of section 6 ;

⁴⁰[⁴¹(42A) ⁴²“short-term capital asset” means a capital asset held by an assessee for not more than ⁴³[thirty-six] months immediately preceding the date of its transfer :]

⁴⁴**[Provided that in the case of a share held in a company ⁴⁵[or any other security listed in a recognised stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of a Mutual Fund specified under clause (23D) of section 10], the provisions of this clause shall have effect as if for the words “thirty-six months”, the words “twelve months” had been substituted.]**

⁴⁶[*Explanation 1*].—(i) In determining the period for which any capital asset is held by the assessee—

(a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

(b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in ⁴⁷[sub-section (1)] of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section ;

⁴⁸[(c) in the case of a capital asset being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, there shall be included the period for which the share or shares in the amalgamating company were held by the assessee ;]

⁴⁹[(d) in the case of a capital asset, being a share or any other security (hereafter in this clause referred to as the financial asset) subscribed to by the assessee on the basis of his right to subscribe to such financial asset or subscribed to by the person in whose favour the assessee has renounced his right to subscribe to such financial asset, the period shall be reckoned from the date of allotment of such financial asset ;

40. Inserted by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962.

41. See also Circular No. 415, dated 14-3-1985 and Circular No. 704, dated 28-4-1995. For details and relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

42. Substituted for the portion beginning with “short-term capital asset” and ending with “preceding the date of its transfer ;” by the Finance Act, 1973, w.e.f. 1-4-1974. Earlier clause (42A) was first amended by the Finance Act, 1966, w.e.f. 1-4-1966 and later by the Finance Act, 1968, w.e.f. 1-4-1969.

43. Substituted for “sixty” by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

44. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

45. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

46. Existing *Explanation* renumbered as *Explanation 1*, *ibid*.

47. Substituted for “clauses (i) to (iii)” by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

48. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

49. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

(e) in the case of a capital asset, being the right to subscribe to any financial asset, which is renounced in favour of any other person, the period shall be reckoned from the date of the offer of such right by the company or institution, as the case may be, making such offer ;]

⁵⁰[(f) in the case of a capital asset, being a financial asset, allotted without any payment and on the basis of holding of any other financial asset, the period shall be reckoned from the date of the allotment of such financial asset ;]

The following sub-clause (g) shall be inserted after sub-clause (f) in Explanation 1 to clause (42A) of section 2 by the Finance Act, 1999, w.e.f. 1-4-2000:

(g) *in the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the assessee;*

(ii) In respect of capital assets other than those mentioned in clause (i), the period for which any capital asset is held by the assessee shall be determined subject to any rules which the Board may make in this behalf ;]

^{50a}[*Explanation 2.*—For the purposes of this clause, the expression “security”⁵¹ shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;]

⁵²[(42B) “short-term capital gain” means capital gain arising from the transfer of a short-term capital asset ;]

(42C) ⁵³[* * *]

50. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

50a. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

51. Clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, defines “securities” as follows :

‘(h) “securities” include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate ;
- (ii) Government securities ;
- (iia) such other instruments as may be declared by the Central Government to be securities ; and
- (iii) rights or interest in securities ;’

52. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

53. Omitted by the Finance Act, 1990, w.e.f. 1-4-1990. Prior to omission, clause (42C), as inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990, read as under :

‘(42C) “security” means a Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944) ;’

The following clause (42C) shall be inserted after clause (42B) of section 2 by the Finance Act, 1999, w.e.f. 1-4-2000:

(42C) “*slump sale*” means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1.—*For the purposes of this clause, “undertaking” shall have the meaning assigned to it in Explanation 1 to clause (19AA).*

Explanation 2.—*For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities ;*

⁵⁴[(43) “tax” in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income-tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date ;]

⁵⁵[(43A) “tax credit certificate” means a tax credit certificate granted to any person in accordance with the provisions of Chapter XXII-B⁵⁶ and any scheme made thereunder ;]

(43B) ⁵⁷[* * *]

⁵⁸[(44) “Tax Recovery Officer” means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery

54. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.

55. Inserted, *ibid*.

56. Chapter XXII-B has been omitted with effect from 1-4-1990.

57. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original clause (43B) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972 and read as under :
‘(43B) “Tax Recovery Commissioner” means a Commissioner or an Assistant Commissioner of Income-tax who may be authorised by the Central Government, by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Commissioner ;’

58. Substituted by the Direct Tax Laws (Amendment) Act, 1987 [as amended by the Direct Tax Laws (Amendment) Act, 1989], w.r.e.f. 1-4-1988. Prior to its substitution, clause (44), as substituted by the Finance Act, 1963, w.r.e.f. 1-4-1962, stood as under :

‘(44) “Tax Recovery Officer” means—

- (i) a Collector or an Additional Collector ;
- (ii) any such officer empowered to effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State as may be authorised by the State Government, by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer ;
- (iii) any Gazetted Officer of the Central or a State Government who may be authorised by the Central Government, by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer ;’

Officer ;]

(45) “total income” means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;

(46) ⁵⁹[* * *]

⁶⁰(47) ⁶¹[“transfer”, in relation to a capital asset, includes,—

(i) the sale, exchange or relinquishment of the asset ; or

(ii) the extinguishment of any rights therein ; or

(iii) the compulsory acquisition thereof under any law ; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] ⁶²[or]

⁶²[(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A⁶³ of the Transfer of Property Act, 1882 (4 of 1882) ; or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.—For the purposes of sub-clauses (v) and (vi), “immovable property” shall have the same meaning as in clause (d) of section 269UA.]

(48) ⁶⁴[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

⁶⁵[⁶⁶“**Previous year**” defined.

3. (1) Save as otherwise provided in this section, “previous year” for the purposes of this Act, means the financial year immediately preceding the assessment year :

59. Omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

60. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act. See also Circular No. 751, dated 10-2-1997 on Stock Lending Scheme.

61. Substituted for the following by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985 :

‘“transfer”, in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law ;’

62. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

63. For text of section 53A of the Transfer of Property Act, 1882, see **Appendix One**.

64. Prior to omission clause (48), as reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 which was earlier omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date, read as under :

‘(48) “unregistered firm” means a firm which is not a registered firm.’

65. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, section 3 as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 stood as under :

(Contd. on p. 1.26)

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

(Contd. from p. 1.25)

‘3. “*Previous year*” defined.—(1) For the purposes of this Act, “previous year” means—

- (a) the financial year immediately preceding the assessment year ; or
- (b) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, the twelve months ending on such date ; or
- (c) in the case of any person or business or class of persons or business not falling within clause (a) or clause (b), such period as may be determined by the Board or by any authority authorised by the Board in this behalf ; or
- (d) in the case of a business or profession newly set up in the said financial year, the period beginning with the date of the setting up of the business or profession and—
 - (i) ending with the said financial year, or
 - (ii) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, ending on that date, or
 - (iii) ending with the period, if any, determined under clause (c),
 as the case may be ; or
- (e) in the case of a business or profession newly set up in the twelve months immediately preceding the said financial year—
 - (i) if the accounts of the assessee have been made up to a date within the said financial year and the period from the date of the setting up of the business or profession to such date does not exceed twelve months, then, at the option of the assessee, such period, or
 - (ii) if any period has been determined under clause (c), then the period beginning with the date of the setting up of the business or profession and ending with that period,
 as the case may be ; or
- (f) where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee’s share in the income of the firm, the period determined as the previous year for the assessment of the income of the firm ; or
- (g) in respect of profits and gains from life insurance business, the year immediately preceding the assessment year for which annual accounts are required to be prepared under the Insurance Act, 1938 (4 of 1938), or under that Act read with section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956).

(2) Where an assessee has newly set up a business or profession in the said financial year and his accounts are made up to a date in the assessment year in respect of a period not exceeding twelve months from the date of such setting up, then, notwithstanding anything contained in sub-clause (iii) of clause (d) of sub-section (1), the assessee shall, in respect of that business or profession, at his option, be deemed to have no previous year for the said assessment year under that clause and such option shall, in relation to the immediately succeeding assessment year, have effect as an option exercised under sub-clause (i) of clause (e) of sub-section (1).

(3) Subject to the other provisions of this section, an assessee may have different previous years in respect of separate sources of his income.

(4) Where in respect of a particular source of income or in respect of a business or profession newly set up, an assessee has once exercised the option under clause (b) or sub-clause (ii) of clause (d) or sub-clause (i) of clause (e) of sub-section (1) or has once been assessed, then, he shall not, in respect of that source, or, as the case may be, business or profession, be entitled to vary the meaning of the expression “previous year” as then applicable to him, except with the consent of the Assessing Officer and upon such conditions as the Assessing Officer may think fit to impose.’

66. See also PIB Press Release, dated 10-6-1988 and Instruction F.No. 165/4/88-IT(A-I), dated 4-2-1988. For details, see Taxmann’s Master Guide to Income-tax Act.

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.

(2) “Previous year”, in relation to the assessment year, commencing on the 1st day of April, 1989, means the period which begins with the date immediately following the last day of the previous year relevant to the assessment year commencing on the 1st day of April, 1988 and ends on the 31st day of March, 1989 :

⁶⁷**Provided** that where the assessee has adopted more than one period as the “previous year” in relation to the assessment year commencing on the 1st day of April, 1988 for different sources of his income, the previous year in relation to the assessment year commencing on the 1st day of April, 1989 shall be reckoned separately in the manner aforesaid in respect of each such source of income, and the longer or the longest of the periods so reckoned shall be the previous year for the said assessment year :

⁶⁸[**Provided further** that in the case of a business or profession newly set up, or a source of income newly coming into existence on or after the 1st day of April, 1987 but before the 1st day of April, 1988 and where the accounts in relation to such business or profession or source of income have not been made up to the 31st day of March, 1988, the “previous year” in relation to the assessment year commencing on the 1st day of April, 1989, 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 on the 31st day of March, 1989 :

⁶⁹**Provided also** that where the assessee has adopted one or more periods as the “previous year” in relation to the assessment year commencing on the 1st day of April, 1988, for any source or sources of his income, in addition to the business or profession or source of income referred to in the second proviso, the previous year in relation to the assessment year commencing on the 1st day of April, 1989, shall be reckoned separately in the manner aforesaid in respect of each such source of income, and the longer or the longest of the periods so reckoned shall be the previous year in relation to the said assessment year.]

(3) Where the previous year in relation to the assessment year commencing on the 1st day of April, 1989, referred to in sub-section (2) exceeds a period of twelve months, the provisions of this Act shall apply subject to the modifications specified in the rules in the Tenth Schedule.]

The following section 3 shall be substituted for the existing section 3 by the Finance Act, 1999, w.e.f. 1-4-2000:

“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

67. See rule 125 for rules for calculation of deductions/allowance for the transitional previous year relating to assessment year 1989-90.

68. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

69. See rule 125.

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.

⁷⁰4. ⁷¹(1) Where any Central Act enacts that income-tax 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 ⁷²[subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year ⁷³[* * *] 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.

⁷⁴5. ⁷⁵(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

- (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or
- (c) accrues or arises 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.

70. See also Circular No. 142, dated 1-8-1974, Circular No. 447, dated 22-1-1986, Circular No. 573, dated 21-8-1990, Letter No. 75/19/191/62-ITJ, dated 24-8-1966 and Instruction No. 747 [F. No. 288/29/74-IT(A-II)], (relevant extracts), dated 30-8-1974. For details, see Taxmann's Master Guide to Income-tax Act.

71. For relevant case laws, see Taxmann's Master Guide to Income-tax Act.

72. Substituted for "subject to the provisions of this Act" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

73. "or previous years, as the case may be," omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

74. See also Circular No. 369, dated 17-9-1983. For details, see Taxmann's Master Guide to Income-tax Act.

75. For relevant case laws, see Taxmann's Master Guide to Income-tax Act.

*Should be clause (6).

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

- (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
- (b) accrues or arises 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 received 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 accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

⁷⁶[**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 “COMMUNIAODOS 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.

⁷⁷6. 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) ⁷⁸[* * *]
 - (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.

76. Inserted by the Finance Act, 1994, w.r.e.f. 1-4-1963.

77. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

78. Omitted by the Finance Act, 1982, w.e.f. 1-4-1983.

⁷⁹[*Explanation.*—In the case of an individual,—

- (a) being a citizen of India, who leaves India in any previous year ⁸⁰[as a member of the crew of an ⁸¹Indian 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 ⁸²[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 management of its affairs is situated wholly 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 management of its affairs is situated wholly 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.

79. Substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990. Original *Explanation*, as inserted by the Finance Act, 1978, w.e.f. 1-4-1979 and later amended by the Finance Act, 1982, w.e.f. 1-4-1983, read as under :

Explanation.—In the case of an individual, being a citizen of India,—

- (a) who leaves India in any previous year 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) 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 “ninety days” had been substituted.’

80. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

81. Clause (18) of section 3 of the Merchant Shipping Act, 1958, defines “Indian ship” as follows :

‘(18) “Indian ship” means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognised as an Indian ship under the proviso to sub-section (2) of section 22 ;’

82. Substituted for “fifty” by the Finance Act, 1994, w.e.f. 1-4-1995.

- (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 not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more ; or
 - (b) a Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more.

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.

Dividend income.

8. ⁸³[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 ;
- ⁸⁴(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.]

Income deemed to accrue or arise in India.

- ⁸⁵9. ⁸⁶(1) The following incomes shall be deemed to accrue or arise in India :—
- ⁸⁷(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income

83. Substituted for “For the purposes of inclusion in the total income of an assessee, any dividend” by the Finance Act, 1965, w.e.f. 1-4-1965.

84. Inserted, *ibid*.

85. See also Circular No. 23, dated 23-7-1969, Circular No. 163, dated 29-5-1975, Circular No. 35(XXXIII-7) of 1956, dated 3-9-1956, Circular No. 4, dated 20-2-1969 and Circular No. 382, dated 4-5-1984. For details, see Taxmann’s Master Guide to Income-tax Act.

86. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

87. See rule 10 for manner of computation of income of non-residents in certain cases. See also **Appendix Two** for an analysis of rule 10.

in India, ⁸⁸[* * *] or through the transfer of a capital asset situate in India.

Explanation.—For the purposes of this clause—

(a) in the case of a business of which all the operations 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 operations 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 ;

⁸⁹[* * *]

⁹⁰[(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 ;]

⁹¹[(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 operations which are confined to the shooting of any cinematograph film in India ;]

(ii) income which falls under the head “Salaries”, if it is earned in India.

⁹²[*Explanation.*—For the removal of doubts, it is hereby declared that income of the nature referred to in this clause payable for service rendered in India shall be regarded as income earned in India ;]

The following Explanation shall be substituted for the existing Explanation to clause (ii) of sub-section (1) of section 9 by the Finance Act, 1999, w.e.f. 1-4-2000:

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

88. “or through or from any money lent at interest and brought into India in cash or in kind” omitted by the Finance Act, 1976, w.e.f. 1-6-1976.

89. Proviso omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

90. Inserted by the Finance Act, 1983, w.r.e.f. 1-4-1962.

91. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1982.

92. Inserted by the Finance Act, 1983, w.r.e.f. 1-4-1979.

(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 ;

⁹³(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 royalty payable by—

(a) the Government ; or

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

⁹⁴**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

93. Clauses (v), (vi) and (vii) inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

94. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

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 ⁹⁵[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 ⁹⁶[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 ;
- (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,

95. Substituted for “foregoing”, by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

96. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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 (v).

⁹⁷[*Explanation 3.*—For the purposes of this clause, the expression “computer software” shall have the meaning assigned to it in clause (b) of the *Explanation* to section 80HHE ;]

- (vii) income by way of fees for technical services payable by—

(a) the Government ; or

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

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

⁹⁸**[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.]**

⁹⁹[*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 1*¹[2].—For the purposes of this clause, “fees for technical services” means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Salaries”.]

(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.

97. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

98. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977.

99. Inserted, *ibid.*

1. Inserted, *ibid.*