

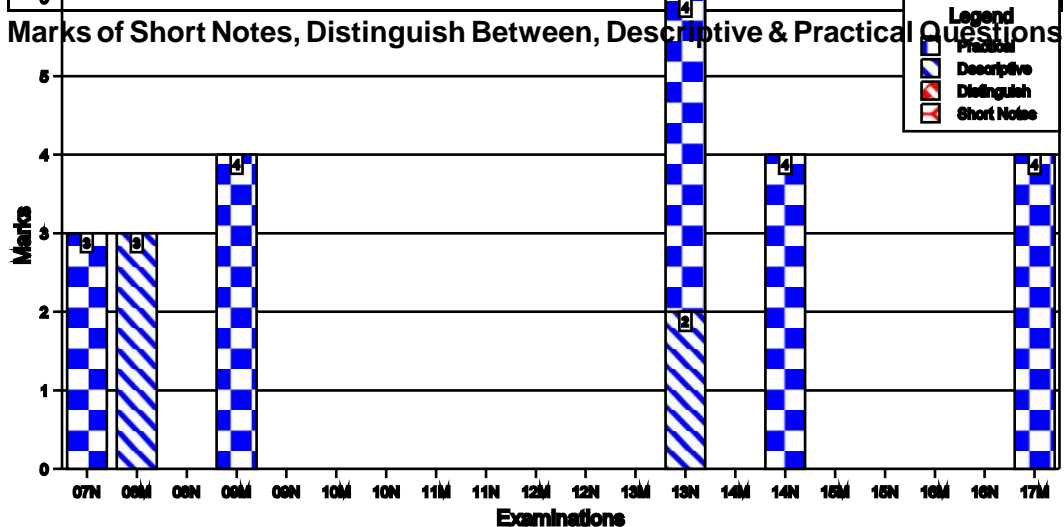
## Star Rating

On the basis of Maximum marks from a chapter	Nil
On the basis of Questions included every year from a chapter	Nil
On the basis of Compulsory questions from a chapter	Nil

# 1

## Basic Concepts, Residence and Scope of Total Income

**This Chapter Includes :** Income Tax Law in India, Charge & Rates of Tax, Income, Total income, Tax Payable, Definitions, Concepts, Residential Status, Deemed receipt & accrual of income, Income received or deemed to be received, Income accruing & arising, Income deemed to accrue or arise in India



## CA Final Gr. II

### DESCRIPTIVE QUESTIONS

**2008 - May [6]** (a) "Income-tax Act, 1961 extends to whole of India". What meaning has been assigned to "India" under this Act ? (3 marks)

**Answer :**

According to Sec. 2(25A) India means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and the air space above its territory and territorial waters.

### PRACTICAL QUESTIONS

**2007 - Nov [3]** (c) Smt. Kanti engaged in the business of growing, curing, roasting and grounding of Coffee after mixing chicory had total income of ₹ 3,25,000 from this business which was her only source of income during the year ended on 31.3.17. She consults you to have an opinion whether she is required to file return of income for the Asst. Year 2017-18 as per provisions of Section 139 (1) of the Act. (3 marks)

**Answer :**

Income derived from sale of coffee grown, cured, roasted & grounded by the seller in India, with or without mixing chicory, or other flavouring ingredients, shall be computed as if it were income derived from business & 60% of the income will be treated as agricultural income & rest 40% as business income.

So, in this case Smt. Kanti is not required to file its return of Income. Because her total taxable income would be:-

40% of 3,25,000 = ₹ 1,30,000. So, this is the amount, which is below the limit of maximum amount not chargeable to tax.

## CA Final Gr. II (New Course)

### DESCRIPTIVE QUESTIONS

**2013 - Nov [3]** (a) Examine the following statements in the context of provisions contained in the Act relevant for the previous year ended on 31.03.2017:

- (i) The additions to income made by invoking provisions of Section 68 are subject to normal rates of tax as applicable to the assessee.

(2 marks)

**Answer:**

The said statement is false since u/s 115BBE, where the total income of the assessee includes income by way of additions u/s 68, he shall be liable to tax @ 30% (plus surcharge, if applicable and 3% education cess) on the income u/s 68.

### PRACTICAL QUESTIONS

**2009 - May [2]** (a) Explain in the context of provisions of the Act, whether the income derived during the year ended on 31.3.2017 in each of the following cases shall be subject to tax in A.Y. 2017-18:

- (ii) Mr. 'Gaitonde' born and brought up in the State of Sikkim had net profit of ₹ 2,25,000 from the business located in Sikkim and interest of ₹ 55,000 on the securities/bonds issued by the Government of Rajasthan. (2 marks)
- (iii) Mr. Ravi an IAS Officer was posted to USA by the Government of India on 11.7.16 for a period of three years. He was paid salary of ₹ 3 lacs for the period 01.04.16 to 10.07.16 and ₹ 12 lacs for the period upto 31.03.17. He left India for USA in the night of 10.07.16 and did not come even for a day uptill 31.03.17. (2 marks)

**Answer :**

- (ii) Sec. 10 (26AA), exempts the income which accrues or arises to a Sikkimese individual (Sikkimese Taxpayer) from any source in the State of Sikkim and/or the income by way of dividend or interest on securities (whether granted in Sikkim or any other place). Therefore, the income of Mr. Gaitonde from a business located in Sikkim and interest income on the securities/bonds of Government of Rajasthan shall not be subject to tax.
- (iii) According to Sec. 9(1), Any income chargeable under the head Salary payable by the Government to a citizen of India for his services outside India shall be deemed to accrue or arise in India. Therefore, the total amount of salary of ₹ 15 lakh received by the IAS Officer in and outside India shall be subject to tax in India in the A.Y 2017-18.

**2013 - Nov [4]** Examine critically any four out of the following problems/issues/cases in the context of provisions contained in the Act relevant for assessment year 2017-18. Support the answer with the case laws.

- (i) A company received liquidated damages of ₹ 25 lacs from the suppliers of plant & machinery for failure to supply the plant and machinery within the stipulated time. The Assessing Officer treated the same as income chargeable to tax as against the claim of the company of treating as capital receipt. (4 marks)

**Answer:**

Liquidated damages received in connection with a capital asset are capital receipts. It should be reduced from the purchase price of the P&M for calculating actual cost. Hence the treatment of the AO of such receipt as taxable is not tenable. Similar view was echoed by the Supreme Court in *CIT vs Saurashtra Cement Ltd. (2010)*.

**2014 - Nov [3]** (b) State with reasons whether the following transactions attract Income-Tax in India, in the hands of recipients u/s 9 of Income-Tax Act, 1961:

- (i) A non-resident German Company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards

drawings & designs, which were described as “Engineering Fee”. The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of Sec. 9(1)(i) of Income-tax Act, 1961.

- (ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.
- (iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.
- (iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2016, with an Indian Company and was in receipt of interest on 8% debentures for ₹ 20 lakhs, issued by Indian Company, in consideration of providing technical know-how during previous year 2016-17. (4 marks)

**Answer:**

- (i) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as “engineering fee”) are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of Section 9(1)(vii) [Aeg Aktiengesellschaft v. CIT (2004) 267 ITR 209 (Kar.)].

As per Explanation to Section 9, where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

- (ii) As per Section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression “business” includes not only trade and manufacture, it includes, within its scope, “profession” as well. Therefore, the existence of professional connection amounts to existence of “business connection” under section 9(1)(i). It was so held by the Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295.

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

- (iii) As per Section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty" means consideration for, *inter alia*, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India.
- (iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how, is in the nature of fee for technical services, deemed to accrue or arise in India to Sai Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

Further, as per Section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Sai Engineering by virtue of Section 9(1)(v). Hence, it is taxable in India.

**Note :** Since the question specifically requires the candidates to examine the taxability of the above transactions under section 9, the provisions of double taxation avoidance agreement, if any, applicable in the above cases, have not been taken into consideration.

**2017 - May [4]** Answer the following (*Your answer should cover these aspects: (i) Issue involved, (ii) Provisions applicable, (iii) Analysis and (iv) Conclusion*):

- (b) Atlant Italy, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers. Software was also made available to its customers, who used it to carry out their business activities. The Assessing Officer contented that the consideration for supply of software embedded in hardware is 'Royalty'

under Section 9(1)(vi).

Examine the correctness of the action of the Assessing Officer.

(4 marks)