

RESIDENCE AND SCOPE OF TOTAL INCOME

Some Key Points

Scope of Total Income [Section 5]

The total income of a person who is a resident shall include 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.

In the case of a person not ordinarily resident in India {as per section 6(6)}, income which accrues or arises to him outside India shall not be included unless it is derived from a business controlled in or a profession set up in India.

In the case of non-resident the total income shall include all income from whatever source derived which –

- (a) is received or 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.

Income accruing or arising outside India shall not be deemed to be received in India merely on the reason that it is taken into account in a balance sheet preferred in India.

Residence in India [Section 6]

Basic conditions

- (i) Must have remained in India for a period of 182 days or more.
- (ii) Must have remained in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year.

Exception:

- (a) In the case of Indian citizen who leaves India during the previous year for the purpose of employment or as a member of the crew of an Indian ship, it must be taken as 182 days instead

Additional conditions	of 60 days given in (ii) above.		
	(b) In the case of Indian citizen or a person of Indian origin who comes on visit during the previous year it must be 182 days of stay in India instead of 60 days given in (ii) above.		
	(i) Must be a resident in at least 2 out of 10 previous years immediately preceding the relevant previous year. (ii) Must have remained in India for 730 days or more during 7 years immediately preceding the relevant previous year.		
Resident ordinarily resident	Resident but not ordinarily resident	Non-resident	
Must satisfy at least one of the basic conditions and both the additional conditions.	Must satisfy at least one of the basic conditions and one or none of the additional conditions.	Must not satisfy any of the basic conditions.	

Chapter XII-A

Chapter XII-A consisting of sections 115C to 115-I could be opted for by non-residents in respect of incomes and long term capital gains arising from foreign exchange assets. Incomes would mean interest and dividend income and long term capital gain covers profits arising from transfer of specified assets acquired in convertible foreign exchange.

In some situations it may be advantageous to opt for this chapter and pay concessional rate of tax prescribed therein. By opting Chapter XII-A, the assessee could also avail the benefit of section 115-G.

Question 1

Arjun who works as a Finance Controller of ABC Ltd. had undertaken foreign tour (work related) several times during the P.Y.2010-11. The total number of days he stayed outside India during the said previous year is 300. He claims that he is a non-resident for the A.Y.2011-12. Is his claim valid? Discuss.

Answer

In the given case, Arjun is employed in India and he undertakes foreign tours for the company's work outside India. He stays outside India for 300 days during the previous year. As per section 6, an individual is treated as resident if he has stayed for 182 days in India during the previous year or if he has stayed for 60 days in the current previous year and 365 days in total during the four preceding previous years. In this case, Arjun satisfies the second condition and therefore, he is a resident for A.Y.2011-12.

The exception that when an individual leaves abroad for the purposes of employment outside India, he shall be regarded as a non-resident unless he stays for 182 days in India during the current previous year does not apply to Arjun since he has not left India for taking up any employment outside India. Therefore, Arjun cannot claim that he is a non-resident for A.Y.2011-12.

It may also be noted that there is difference between leaving India for the purpose of employment vis a vis leaving India in the course of employment. In this case, Arjun has left India in the course of employment i.e. in discharge of his official duties and therefore the extended stay contained in exception (i) of the basic condition will not apply.

Question 2

J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.3.2011 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2011-12. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2011-12.

Answer

Section 9(1)(iii) of the Income-tax Act, 1961 says that salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax, even though he was a non-resident for A.Y.2011-12.

As per section 10(7) all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax. Therefore, the allowances and perquisites received by J are exempt as per section 10(7).