

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 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.

Additional conditions	(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 Must satisfy at least one of the basic conditions and both the additional conditions.	Resident but not ordinarily resident Must satisfy at least one of the basic conditions and one or none of the additional conditions.	Non-resident 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

JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of ₹ 1 crore and ₹ 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of ₹ 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.

Answer

The *Explanation* below section 9(2) has been substituted with retrospective effect from 1st June, 1976 to clarify that income by way of, *inter alia*, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per section 9(2), the fee of ₹ 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.

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Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of ₹ 1 crore (as it is for rendering services outside India) is not correct.

Question 2

Arjun who works as a Finance Controller of ABC Ltd. had undertaken foreign tour (work related) several times during the P.Y.2012-13. 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.2013-14. 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.2013-14, as he has stayed in India for 65 days in current year and as he was employed in India he would have stayed in India for more than 365 days in preceding four previous years.

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.2013-14.

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 mentioned above of the basic condition will not apply.

Question 3

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 31.3.2013 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2013-14. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2013-14.

Answer

As per section 9(1)(iii) of the Income-tax Act, 1961, 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.2013-14.

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).

Self-examination questions

1. When is an individual said to be "Resident and ordinarily resident" under the Income-tax Act, 1961?
2. How is royalty defined under section 9 of the Income-tax Act, 1961?
3. Write short notes on -
 - (a) Business connection
 - (b) Income deemed to accrue or arise in India.
4. Discuss the provisions relating to determination of residential status of individuals.
5. When are the following income deemed to accrue or arise in India?
 - (a) Interest
 - (b) Fees for technical services.
6. During the previous year 2012-13, Abhinav had the following income:

	₹
(a) Salary income received in India for services rendered in Nepal	15,000
(b) Income from profession in India, but received in France.	10,000
(c) Property income in Belgium (out of which ₹ 6,000 was remitted to India).	9,000
(d) Profits earned from business in Hyderabad.	8,000
(e) Profits from a business carried on at Nepal but controlled from India.	25,000
(f) Past untaxed profits remitted to India during the previous year 2011-12.	75,000

Compute his income for assessment year 2013-14 if he is (i) resident and ordinarily resident, (ii) Not ordinarily resident, and (iii) Non-resident in India.
7. Mr. Aakash earns the following income during the previous year 2012-13. Compute his total income for A.Y.2013-14 if he is (i) resident and ordinarily resident; (ii) resident but not ordinarily resident; (iii) non-resident.

	Particulars	₹
(a)	Profits from a business in Ranchi managed from Canada	23,000
(b)	Income from property in Canada received there	36,000
(c)	Income from agricultural land in Nepal received there and remitted to India later on.	33,500
(d)	Interest on debentures in an Indian company received in Canada	6,200
(e)	Income from profession in Canada which was set up in Patna, received there.	42,000

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(f)	Profits earned from business in Canada which is controlled from Jamshedpur, 25% of the profits being received in Jamshedpur	80,000
(g)	Fees for technical services rendered in Patna but received in Canada	25,000
(h)	Untaxed foreign income of earlier years brought to India	15,500
(i)	Dividend from a Canadian company received in Canada	14,000
(j)	Interest on development bonds issued in Canada, 40% of interest received in Patna	20,000

8. Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2012. He has not visited India thereafter. Mr. A borrows money from his friend Mr. B, who left India one week before Mr. A's departure, to the extent of ₹ 10 lakhs and buys shares in X Ltd., an Indian company. Discuss the taxability of the interest charged @10% in B's hands where the same has been received in New York.

Answers

6. (i) ₹ 67,000; (ii) ₹ 58,000; (iii) ₹ 33,000.
7. (i) ₹ 2,79,700; (ii) ₹ 1,84,200; (iii) ₹ 82,200.
8. An individual is said to be resident in India in any previous year, if he -
- (i) has been in India during that year for a total period of 182 days or more, or
 - (ii) has been in India during the four years immediately preceding that year for a total period of 365 days or more and has been in India for at least 60 days in that year.

In this case, A has been in India only from 1.4.2012 to 30.04.2012 i.e. for 30 days. Therefore, he does not satisfy either of the conditions in (i) or (ii) and is, hence, a non-resident. B, who left India one week before A's departure, is also a non-resident for the same reasons.

Section 9(1)(v) provides that income by way of interest payable by a non-resident 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 shall be deemed to accrue or arise in India.

Therefore, interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purpose of making or earning any income from any source other than a business or profession carried on by him in India, shall not be deemed to accrue or arise in India. Therefore, interest payable by A on money borrowed from B to invest in shares of an Indian company shall not be deemed to accrue or arise in India and hence, is not taxable in India in the hands of B.