

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	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.2013-14. 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.2014-15. 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.2014-15, 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.2014-15.

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 mandatory requirement of stay in India for 182 days in the current previous year to qualify as a resident, as contained in the exception, will not apply.

Question 2

Poulomi, a chartered accountant, is presently working in a firm in India. She has received an offer for the post of Chief Financial Officer from a company at Singapore. As per the offer letter, she should join the company at any time between 1st September, 2013 and 31st October, 2013. She approaches you for your advice on the following issues to mitigate her tax liability in India:

- (i) *Date by which she should leave India to join the company;*
- (ii) *Direct credit of part of her salary to her bank account in Kolkata maintained jointly with her mother to meet requirement of her family*
- (iii) *Period for which she should stay in India when she comes on leave.*

Answer

The following category of individuals will be treated as resident in India only if the period of their stay in India during the relevant previous year is 182 days or more :-

- (a) Indian citizens, who leave India in any previous year, *inter alia*, for purposes of employment outside India, or
- (b) Indian citizen or person of Indian origin engaged outside India, *inter alia*, in an employment, who comes on a visit to India in any previous year.
- (i) Since Poulomi is leaving India for the purpose of employment outside India, she will be treated as resident only if the period of her stay during the previous year amounts to 182 days or more. Therefore, Poulomi should leave India on or before 28th September, 2013, in which case, her stay in India during the previous year would be less than 182 days and she would become non-resident for the purpose of taxability in India. In such a case only the income which accrues or arises in India or which is deemed to accrue or arise in India or received or deemed to be received in India shall be taxable.

The income earned by her in Singapore would not be chargeable to tax in India for A.Y. 2014-15, if she leaves India on or before 28th September, 2013.

- (ii) If any part of Poulomi's salary will be credited directly to her bank account in Kolkata then, that part of her salary would be considered as income received in India during the previous year under section 5 and would be chargeable to tax under Income-tax Act, 1961, even if she is a non-resident. Therefore, Poulomi should receive her entire salary in Singapore and then remit the required amount to her bank account in Kolkata in which case, the salary earned by her in Singapore would not be subject to tax in India.

- (iii) In case Poulomi visits India after taking up employment outside India, she would be covered in the exception provided in (b) above and she will be treated as resident only if the period of her stay during the relevant previous year amounts to 182 days or more.

Therefore, when Poulomi comes India on leave, she should stay in India for less than 182 days during the relevant previous year so that her status remains as a non-resident for the relevant previous year. Moreover, she should not visit India again during the current previous year i.e. P.Y. 2013-14.

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 31.3.2014 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2014-15. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2014-15.

Answer

As per section 9(1)(iii), 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. 2014-15.

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).

Question 4

Explain in the context of provisions of the Act, whether the income derived during the year ended on 31.03.2014 in the following case shall be subject to tax in the A.Y. 2014-15:

Mr. Ravi, an IAS Officer, was posted to USA by the Government of India on 11.07.13 for a period of three years. He was paid salary of ₹ 3 lacs for the period 01.04.12 to 10.07.13 and of ₹ 12 lacs for the period upto 31.03.14. He left India for USA in the night of 10.07.13 and did not come even for a day up till 31.03.14.

Answer

The salary drawn by an IAS Officer by virtue of his posting in USA, despite the fact that he was a non-resident in the previous year, shall be subject to tax in India as per section 9(1)(iii) which states that income chargeable under the head "Salaries" 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. 2014-15.

Question 5

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) clarifies 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.

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.

Self-examination questions

- During the previous year 2013-14, 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 were 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 2012-13	75,000

Compute his income for assessment year 2014-15 if he is (i) resident and ordinarily resident, (ii) Not ordinarily resident, and (iii) Non-resident in India.

- Mr. Aakash earns the following income during the previous year 2013-14. Compute his total income for A.Y.2014-15 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

(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

3. Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2013. 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

- (i) ₹ 67,000; (ii) ₹ 58,000; (iii) ₹ 33,000.
- (i) ₹ 2,79,700; (ii) ₹ 1,84,200; (iii) ₹ 82,200.
- An individual is said to be resident in India in any previous year, if he -
 - has been in India during that year for a total period of 182 days or more, or
 - 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 1.4.2013 to 30.04.2013 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.