

Chapter 1

Residential Status & Scope of Total Income

Q1

Study Mat

From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.3.2022, compute the total income for the assessment year 2022-23, if he is:

- (i) Resident and ordinary resident;
- (ii) Resident but not ordinarily resident;
- (iii) Non-resident

	Particulars	₹
(a)	Short term capital gains on sale of shares of an Indian Company received in Germany	15,000
(b)	Dividend from a Japanese Company received in Japan	10,000
(c)	Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels	75,000
(d)	Dividend from RP Ltd., an Indian Company	6,000
(e)	Agricultural income from land in Gujarat	25,000

Answer

Computation of total income of Mr. Anirudh for the AY 2022-23

Particulars	Resident & ordinarily resident	Resident but not ordinarily resident	Non-Resident
	₹	₹	₹
1) Short term capital gains on sale of shares of an Indian company, received in Germany	15,000	15,000	15,000
2) Dividend from Japanese company, received in Japan	10,000	-	-

3) Rent from property in London deposited in a bank in London [See Note (i) below]	52,500	-	-
4) Dividend from RP Ltd., an Indian Company [See Note (ii) below]	6,000	6,000	6,000
5) Agricultural income from land in Gujarat [See Note (iii) below]	-	-	-
Total Income	83,500	21,000	21,000

Notes:

- (i) It has been assumed that the rental income is the gross annual value of the property. Therefore, deduction @30% under section 24, has been provided and the net income so computed is taken into account for determining the total income of a resident and ordinarily resident.

	₹
Rent received (assumed as gross annual value)	75,000
Less: Deduction under section 24 (30% of ₹ 75,000)	22,500
Income from house property	52,500

- (ii) Dividend received from Indian company is fully taxable.
(iii) Agricultural income is exempt under section 10(1).

Q2

Study Mat

Mr. David, aged 40 years, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2022 due to his transfer to High Commission of Canada. He did not visit India any time during the previous year 2022-23. He has received the following income for the Financial Year 2022-23:

S. No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Pakistan	2,00,000
(v)	Income from house property in Pakistan	2,50,000

Compute his Gross Total Income for Assessment Year 2022-23.

Answer

As per section 6(1), Mr. David is a non-resident for the AY 2022-23, since he was not present in India at any time during the previous year 2022-23.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

- (i) Income received or deemed to be received in India; and
(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Pakistan and income from house property in Pakistan would not be chargeable to tax in the hands of David, assuming that the same were received in Pakistan.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. It has been assumed that Mr. David is a citizen of India.

However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt under section 10(7).

Gross Total Income of Mr. David for AY 2022-23

Particulars	₹
Salaries (computed)	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	6,00,000

Q3

Study Mat

Mr. Soham, an Indian Citizen, left India on 20-04-2019 for the first time to setup a software firm in Singapore. On 10-04-2021, he entered into an agreement with LK Limited, an Indian Company, for the transfer of technical documents and designs to setup an automobile factory in Faridabad. He reached India along with his team to render the requisite services on 15-05-2021 and was able to complete his assignment on 20-08-2021. He left for Singapore on 21-08-2021. He charged ₹ 50 lakhs for his services from LK Limited.

Determine the residential status of Mr. Soham for the Assessment Year 2022-23 and examine whether the fees charged from LK Limited would be chargeable to tax in his hands under the Income-tax Act, 1961.

Answer

Determination of residential status of Mr. Soham

As per section 6(1), an individual is said to be resident in India in any previous year if he satisfies the conditions:-

- He has been in India during the previous year for a total period of 182 days or more, or
- He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

In the case of an Indian citizen, who being outside India, comes on a visit to India in relevant previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. Soham is an Indian citizen living in Singapore, who comes on a visit to India during the PY 2022-23. His stay in India during the period of his visit is only 99 days (i.e., 17+30+31+21 days). Since

his stay in India during the previous year 2022-23 is only 99 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for AY 2022-23 is Non-Resident.

Taxability of income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

In this case, Mr. Soham, a non-resident, charges fees from LK Ltd., an Indian company, for transfer of technical documents and designs to set up an automobile factory in Faridabad. He renders the requisite services in India for which he stays in India for 99 days during the PY 2022-23.

Section 9(1)(vi) defines "royalty" to mean consideration for transfer of all or any rights in respect of, inter alia, a design and also for the rendering of services in connection with such activity. Transfer of rights in the above definition includes transfer of right for use or right to use a computer software also. Therefore, the fees received by Mr. Soham for transfer of technical documents and designs and rendering of requisite services in relation thereto would fall within the meaning of "royalty".

As per section 9(1)(vi), income by way of royalty payable by a person who is a resident (in this case, LK Limited, an Indian company) would be deemed to accrue or arise in India in the hands of the non-resident (Mr. Soham, in this case), except where such royalty is payable in respect of any right or property or information used or for services utilized for the purpose of a business carried on by such person outside India or for the purposes of making or earning income from any source outside India.

In this case, since the royalty is payable by an Indian company to Mr. Soham, a non-resident, in respect of services utilized for the purpose of business in India (namely, for setting up an automobile factory in Faridabad), the same is deemed to accrue or arise in India and is hence, taxable in India in the hands of Mr. Soham, a non-resident for the AY 2022-23.

Q4

Study Mat

Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India?

Answer

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, inter alia, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

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 in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether

or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

Q5

Study Mat

Compute the total income in the hands of an individual aged 45 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the AY 2022-23 –

Particulars	Amount (₹)
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000
Dividend from British company received in London	5,000
Long term capital gains on sale of plant at Germany, 50% of profits are received in India	40,000
Income earned from business in Germany which is controlled from Delhi (₹ 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from house property in London deposited in a Bank at London, brought to India (Computed)	50,000
Interest on debentures in an Indian company received in London	12,000
Fees for technical services rendered in India but received in London	8,000
Profits from a business in Mumbai managed from London	26,000
Income from property situated in Pakistan received there (Computed)	16,000
Past foreign untaxed income brought to India during the previous year	5,000
Income from agricultural land in Nepal, received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on savings bank deposit in State Bank of India	12,000
Income from a business in Russia, controlled from Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000
Agricultural income from a land in Rajasthan	15,000

Answer

Computation of total income for the AY 2022-23

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non-resident
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Long term Capital gains on sale of plant at Germany, 50% of profits are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled from Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from house property in London deposited in a Bank at London, later on remitted to India	50,000	-	-
Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from business in Mumbai managed from London	26,000	26,000	26,000
Income from property situated in Pakistan and received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal, received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding [not taxable]	-	-	-
Interest on savings bank deposit in State Bank of India	12,000	12,000	12,000
Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000

Agricultural income from a land in Rajasthan [Exempt under section 10(1)]	-	-	-
Gross Total Income	3,52,000	2,18,000	1,83,000
Less: Deduction under section 80TTA [Interest on savings bank account subject to a maximum of ₹10,000]	10,000	10,000	10,000
Total Income	3,42,000	2,08,000	1,73,000

Q6

Study Mat

Examine with reasons whether the following transactions attract income-tax in India in the hands of recipients:

- Salary paid by Central Government to Mr. John, a citizen of India ₹ 7,00,000 for the services rendered outside India.
- Interest on moneys borrowed from outside India ₹ 5,00,000 by a non-resident for the purpose of business within India say, at Mumbai.
- Post office savings bank interest of ₹ 19,000 received by a resident assessee, Mr. Ram, aged 46 years.
- Royalty paid by a resident to a non-resident in respect of a business carried on outside India.
- Legal charges of ₹ 5,00,000 paid in Delhi to a lawyer of United Kingdom who visited India to represent a case at the Delhi High Court.

Answer

	Taxable/ Not Taxable	Amount liable to tax (₹)	Reason
(i)	Taxable	6,50,000	As per section 9(1)(iii), salaries payable by the Government to a citizen of India for service rendered outside India shall be deemed to accrue or arise in India. Therefore, salary paid by Central Government to Mr. John for services rendered outside India would be deemed to accrue or arise in India since he is a citizen of India. He would be entitled to standard deduction of ₹ 50,000 under section 16(ia).
(ii)	Taxable	5,00,000	As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.
(iii)	Partly Taxable	5,500	The interest on Post Office Savings Bank Account, would be exempt under section 10(15)(i), only to the extent of ₹ 3,500 in case of an individual account. Further, interest upto ₹ 10,000, would be allowed as deduction under section 80TTA from Gross Total Income. Balance ₹ 5,500 i.e., ₹ 19,000 - ₹ 3,500 - ₹ 10,000 would be taxable in the hands of Mr. Ram, a resident.

(iv)	Not Taxable	-	Royalty paid by a resident to a non-resident in respect of a business carried outside India would not be taxable in the hands of the non-resident provided the same is not received in India. This has been provided as an exception to deemed accrual mentioned in section 9(1)(vi)(b).
(v)	Taxable	5,00,000	In case of a non-resident, any income which accrues or arises in India or which is deemed to accrue or arise in India or which is received in India or is deemed to be received in India is taxable in India.

Q7

May 17 (Old)

During the last four years preceding the financial year 2022-23, Mr. Damodhar, a citizen of India, was present in India for 430 days. During the last seven previous years preceding the previous year 2022-23, he was present in India for 830 days. Mr. Damodhar is a member of crew of a Dubai bound Indian ship, carrying passengers in the international waters, which left Kochi port in Kerala, on 12th August, 2021.

Following details are made available to you for the previous year 2022-23:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Damodhar	12th August, 2021
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Damodhar	21st January, 2022

In May, 2021, he had gone out of India to Singapore and Malaysia on a private tour for a continuous period of 29 days. You are required to determine the residential status of Mr. Damodhar for the previous year 2022-23.

Answer

Determination of residential status of Mr. Damodhar for the PY 2022-23

As per Explanation 1 to section 6(1), where an Indian citizen leaves India as a member of crew of an Indian ship, he will be resident in India only if he stayed in India for 182 days during the relevant previous year.

As per Explanation 2 to section 6(1), in case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining of ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Eligible voyage includes a voyage undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from any port in India and having its destination at a port outside India.

(a) In this case, voyage is undertaken by a foreign bound Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Kochi port) and having its destination at a port outside India (i.e., the Dubai port). Hence, the voyage is an eligible voyage.

- (b) Therefore, the period from 12th August, 2021 and ending on 21st January, 2022 has to be excluded for computing the period of stay of Mr. Damodhar in India. Accordingly, the period of 163 days [20+30+31+30+31+21] has to be excluded for computing the period of his stay in India during the PY 2022-23.

Further, since Mr. Damodhar had also gone out of India to Singapore and Malaysia on a private tour for a continuous period of 29 days in May, 2020, such period has also to be excluded for computing his period of stay in India during the PY 2022-23.

Consequently, Mr. Damodhar's period of stay in India during the PY 2022-23 would be 173 days [i.e., 365 days – 163 days – 29 days], which is less than 182 days.

Thus, Mr. Damodhar would be a non-resident for AY 2022-23.

Since the residential status of Mr. Damodhar is "non-resident" for AY 2022-23 consequent to his number of days of stay in India in PY 2022-23, being less than 182 days, his period of stay in India in the earlier previous years become irrelevant.

Q8

May 17 (Old)

A Korean Company Damjung Ltd. entered into the following transactions during the financial year 2022-23:

- Received ₹ 20 lakhs from a non-resident for use of patent for a business in India.
- Received ₹ 15 lakhs from a non-resident Indian for use of know-how for a business in Sri Lanka and this amount was received in Japan. [Assume that the above amount is converted/stated in Indian Rupees].
- Received ₹ 7 lakhs from RR Co. Ltd., an Indian company for providing technical know-how in India.
- Received ₹ 5 lakhs from R & Co., Mumbai for conducting the feasibility study for a new project in Nepal and the payment was made in Nepal

Answer

Taxability of certain receipts in the hands of Damjung Ltd⁹, a Korean Company, for AY 2022-23

	Taxability	Reason
(a)	Taxable	Amount of ₹ 20 lakhs received from a non-resident for use of patent for a business in India is deemed to accrue or arise in India by virtue of section 9(1)(vi)(c), and is therefore, chargeable to tax in India.
(b)	Not Taxable	Amount of ₹ 15 lakhs received in Japan from a non-resident for use of know-how for a business in Sri Lanka is not deemed to accrue or arise in India as per section 9(1)(vi)(c), since it is in respect of a business carried on outside India. Also, the amount is received outside India. Therefore, the same is not chargeable to tax in India.
(c)	Taxable	Amount of ₹ 7 lakhs received from RR Co. Ltd., an Indian Company, is deemed to accrue or arise in India by virtue of section 9(1)(vii)(b) since it is for providing technical know-how in India. Therefore, the same is chargeable to tax in India

(d)	Not Taxable	Amount of ₹ 5 lakhs received in Nepal from R & Co., a resident, for conducting feasibility study for the new project in Nepal is not deemed to accrue or arise in India as per section 9(1)(vii)(b), since such study was done for a project outside India. The amount was also received outside India. Therefore, the same is not chargeable to tax in India.
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Q9

Nov 17 (Old)

DAISY Ltd. a foreign company incorporated in USA and engaged in the manufacturing and distribution of diamonds set up a branch office in India in June 2021. The branch office was required to purchase uncut and unsorted diamonds from the dealers of Mumbai and export them to USA. During the Previous Year 2022-23, profit from such export amounted to ₹ 75 lakhs.

Out of 20 shareholders of DAISY Ltd., 12 shareholders are non-resident in India. All the major decisions were taken through Board Meetings held at USA.

- (i) Determine the residential status of DAISY Ltd. for the Assessment Year 2022-23.
- (ii) Discuss the tax treatment of profit from export business.

Answer

- (i) As per section 6(3), a foreign company would be resident in India in the PY 2022-23, if its place of effective management (POEM), in that year, is in India.

“Place of Effective Management” means the place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance, made.

In this case, since all major decisions were taken through Board Meetings held at the USA, the place of effective management of Daisy Ltd., a foreign company incorporated in the USA, is outside India.

Hence, Daisy Ltd. is a non-resident for the PY 2022-23 (AY 2022-23)

- (ii) As per section 5(2), in case of a non-resident, income which, inter alia, is deemed to accrue or arise to him in India is taxable in India.

As per Explanation 1(b) to section 9(1)(i), in 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.

Accordingly, profit of ₹ 75 lakhs from export of uncut and unsorted diamonds purchased from dealers of Mumbai by the branch office of Daisy Ltd. in India would not be deemed to accrue or arise in India in the hands of Daisy Ltd, being a non-resident. Hence, the same would not be taxable in India in the hands of Daisy Ltd.

Q10

MTP March 18

Mr. Kunal is an Indian citizen and a member of the crew of a Thailand bound Indian ship engaged in carriage of passengers in international traffic departing from Port Blair on 10th July, 2021. His stay

in India in the last 4 previous years (preceding PY 2022-23) is 375 days and last seven previous years (preceding PY 2022-23) is 729 days:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Kunal	10th July, 2021
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Kunal	21st January, 2022

He earned following income during the previous year 2022-23

Dividend from Thailand Company received in Thailand	₹ 30,000
Short term capital gains on sale of shares of an Indian company	₹ 25,000
Interest on savings account with Post office	₹ 13,000
Past foreign untaxed income brought to India during the previous year	₹ 5,000
Cash gift received from non-relative	₹ 20,000
Income from agricultural land in Nepal received there and then brought to India	₹ 18,000
Interest received from a non-resident on moneys borrowed for the purpose of business in Delhi	₹ 1,50,000

From the above details for the PY 2022-23, compute the total income of Mr. Kunal for AY 2022-23.

Answer

In this case, the voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Port Blair) and having its destination at a port outside India (i.e., the Thailand port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 10th July, 2021 and ending on 21st January, 2022, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Kunal, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 196 days [22+31+30+31+30+31+21] have to be excluded from the period of his stay in India. Consequently, Mr. Kunal's period of stay in India during the PY 2022-23 would be 169 days [i.e., 365 days – 196 days]. Since his period of stay in India during the PY 2022-23 is less than 182 days, he is a non-resident for AY 2022-23.

Based on the residential status, the total income of Mr. Kunal would be determined as follows:

Computation of total income of Mr. Kunal for the AY 2022-23

S. No.	Particulars	(₹)
(i)	Dividend from Thailand Company received in Thailand (Note 2)	-
(ii)	Short term capital gain on sale of shares of an Indian company	25,000
(iii)	Interest on savings account with Post office (Note 3)	9,500
(iv)	Past foreign untaxed income brought to India during the previous year [Not taxable, since it does not represent income of the PY 2022-23]	-

(v)	Gift received from non-relative [As per section 56(2)(x), cash gifts received from a non-relative would be taxable, if the amount exceeds ₹ 50,000 in aggregate during the previous year]	-
(vi)	Income from agricultural land in Nepal received there and then brought to India (Note 2)	-
(vii)	Interest received from a non-resident on moneys borrowed for the purpose of business in Delhi (Note 4)	1,50,000
Gross Total income		1,84,500
Less: Deductions under Chapter VIA		
Section 80TTA (In case of an individual, interest upto ₹ 10,000 from savings account with, inter alia, a post office is allowable as deduction under section 80TTA)		9,500
Total Income		1,75,000

Notes:

- (1) Since the residential status of Mr. Kunal is "non-resident" for AY 2022-23 consequent to his number of days of stay in PY 2022-23 being less than 182 days, his period of stay in the earlier previous years become irrelevant.
- (2) As per section 5(2), only the following incomes are chargeable to tax in India, in case of a non-resident:
 - (i) Income received or deemed to be received in India; and
 - (ii) Income accruing or arising or deemed to accrue or arise in India.

Therefore, dividend from Thailand Company received in Thailand and Income from agricultural land in Nepal received there and then brought to India by Mr. Kunal, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.
- (3) The interest on Post Office Savings Bank Account, would be exempt under section 10(15)(i), only to the extent of ₹ 3,500 in case of an individual account.
- (4) As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.

Q11

RTP May 18

Mr. Kavin, a non-resident, entered into the following transactions during the financial year 2022-23:

- (a) Received ₹ 20 lakhs from a non-resident for use of patent for a business in India.
- (b) Received foreign currency equivalent to ₹ 15 lakhs from a non-resident Indian for use of know-how for a business in Sri Lanka and this amount was received in Korea.
- (c) Received ₹ 7 lakhs from RR Ltd., an Indian company as fees for providing technical services in India.
- (d) Received ₹ 5 lakhs from R & Co., Mumbai, resident in India, for conducting the feasibility study for a new project in Nepal and the payment was made in Nepal.

- (e) Received ₹ 8 lakhs towards interest on moneys borrowed by a non-resident for the purpose of business within India. Amount was received in Korea.

Examine briefly whether the above receipts are chargeable to tax in India.

Answer

Taxability of certain receipts in the hands of Mr. Kavin, a non-resident, for AY 2022-23

	Taxability	Reason
(a)	Taxable	Amount of ₹ 20 lakhs received from a non-resident is deemed to accrue or arise in India by virtue of section 9(1)(vi)(c), since the patent was used for a business in India. Therefore, the amount is chargeable to tax in India.
(b)	Not Taxable	Foreign currency equivalent to ₹ 15 lakhs received in Korea from a non-resident for use of know-how for a business in Sri Lanka is not deemed to accrue or arise in India as per section 9(1)(vi)(c), since it is in respect of a business carried on outside India. Also, the amount was received outside India. Therefore, the same is not chargeable to tax in India.
(c)	Taxable	Amount of ₹ 7 lakhs received from RR Ltd., an Indian Company, is deemed to accrue or arise in India by virtue of section 9(1)(vii)(b), since it is for providing technical services in India. Therefore, the same is chargeable to tax in India.
(d)	Not Taxable	Amount of ₹ 5 lakhs received in Nepal from R & Co., a resident, for conducting feasibility study for the new project in Nepal is not deemed to accrue or arise in India as per section 9(1)(vii)(b), since such study was done for a project outside India. The amount was also received outside India. Therefore, the same is not chargeable to tax in India.
(e)	Taxable	Amount of ₹ 8 lakhs received in Korea towards interest on moneys borrowed by a non-resident for the purpose of business within India is deemed to accrue or arise in India by virtue of section 9(v)(c), since money borrowed was used for the purpose of business in India. Therefore, the same is chargeable to tax in India.

Q12

May 18 (Old)

Mrs. Karuna Kapoor is a Hollywood actress. Her passport reveals the following information about her stay in India.

2021-22	From April 3rd to July 11th
2021-22	From June 22nd to July 11th
2019-20	From Feb 10th to March 26th
2018-19	From Sept. 7th to March 26th
2017-18	From May 17th to September 30th
2016-17	From April 3rd to July 11th
2015-16	From April 3rd to July 11th

2014-15	From April 3rd to July 11th
2013-14	From April 3rd to July 11th

Find out her residential status for the assessment year 2022-23.

Answer

The question states that Mrs. Karuna Kapoor is a Hollywood actress. Assuming that she is neither a citizen of India nor a person of Indian origin, her residential status would be determined in the following manner -

Previous Year	2021-22	2021-22	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14
No. of days of stay in India	100	20	46	201	137	100	100	100	100

An individual is said to be resident if he / she satisfies any one of the following basic conditions:

- (i) Has been in India during the previous year for a total period of 182 days or more

(or)

- (ii) Has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days during the previous year.

Mrs. Karuna Kapoor's stay in India during the PY 2021-22 is less than 182 days. However, her stay in India during the PY 2021-22 is 100 days, which exceeds 60 days; and her stay in India during the four previous years prior to PY 2021-22 is 404 days [20 + 46 + 201 + 137], which exceeds 365 days. Hence, she is a resident for PY 2021-22.

Further, her stay in India in the last seven previous years prior to PY 2021-22 is 704 days [20 + 46 + 201 + 137 + 100 + 100 + 100], which is less than 730 days. Therefore, she is resident but not ordinarily resident for the PY 2021-22.

The fact that she is resident in the AY 2019-20 and AY 2018-19 as per the information given in the question would not change her residential status, since even if one of the two additional conditions (namely, the number of days being less than 730 days or being non-resident in 9 out of 10 previous years), is satisfied, she becomes a resident but not-ordinarily resident.

Note : If it is assumed that Mrs. Karuna Kapoor is an Indian citizen or a person of Indian origin, her residential status for AY 2022-23 would be non-resident, since her stay in India during the PY 2021-22 is less than 182 days.

Q13

MTP August 18

Miss Kaira, an American national, got married to Mr. Ramesh of India in USA on 1.03.2021 and came to India for the first time on 20.03.2021. She left for USA on 20.9.2021. She returned to India again on 27.03.2022. She has earned the following income during the financial year 2021-22.

Sl. No.	Particulars	Amount (₹)
1.	Dividend from American company, received in America	20,000
2.	Profits from a profession in Delhi, but managed directly from America	50,000
3.	Long term capital gain on sale of shares of an Indian company, received in India	60,000
4.	Interest on savings bank deposit in SBI, Delhi	17,000
5.	Agricultural income from a land situated in Tamilnadu	55,000
6.	Rent (computed) from property in America deposit in a Bank there, later on remitted to India	1,00,000
7.	Cash gift received from a friend on her birthday on 16.8.2021	51,000
8.	Past foreign untaxed income brought to India	70,000

Determine her residential status and compute the total income chargeable to tax for the Assessment Year 2022-23.

Answer

Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If an individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Miss Kaira, an American National, for AY 2022-23 has to be determined on the basis of her stay in India during the previous year relevant to AY 2022-23 i.e. PY 2021-22 and in the preceding four assessment years.

**Her stay in India during the previous year 2021-22 and in the preceding four years are as under:
PY 2021-22**

01.04.2021 to 20.09.2021	173 days
27.03.2022 to 31.03.2022	5 days
Total	178 days
Four preceding previous years	
PY 2020-21 [1.4.2020 to 31.3.2021]	12 days
PY 2019-20 [1.4.2019 to 31.3.2020]	Nil
PY 2018-19 [1.4.2018 to 31.3.2019]	Nil

PY 2017-18 [1.4.2017 to 31.3.2018]	Nil
Total	12 days

The total stay of the assessee during the previous year in India was less than 182 days and during the four years preceding this year was for 12 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the Assessment Year 2022-23.

Computation of total income of Mrs. Kaira for the AY 2022-23

Sl. No.	Particulars	(Non-Resident) (₹)
1.	Dividend from American company, received in America (Note 1)	-
2.	Profit from profession in Delhi, but managed directly from America (Note 2)	50,000
3.	Long-term capital gain on sale of shares of an Indian company (Note 2)	60,000
4.	Interest on savings account with SBI (Note 2)	17,000
5.	Agricultural income from land in Tamilnadu [Exempt under section 10(1)]	-
6.	Rent (computed) from property in America deposited in a Bank at America, later on remitted to India (Note 1)	-
7.	Cash gift received from a friend on Mrs. Kaira birthday on 16.8.2020 Note: As per section 56(2)(x), cash gifts received from a non-relative would be taxable, if the amount exceeds ₹ 50,000 in aggregate during the previous year	51,000
8.	Past foreign untaxed income brought to India [Not taxable, since it does not represent income of the PY 2021-22]	-
Total Income		1,78,000

Q14

MTP Oct 18

Mrs. Bhawna and Mrs. Perna are sisters and they earned the following income during the Financial Year 2021-22. Mrs. Bhawna is settled in Malaysia since 1988 and visits India for a month every year. Mrs. Perna is settled in Indore since her marriage in 1996. Compute the Gross total income of Mrs. Bhawna and Mrs. Perna for the assessment year 2022-23:

Sl. No.	Particulars	Mrs. Bhawna (₹)	Mrs. Perna (₹)
(i)	Income from Profession in Malaysia, (set up in India) received there	15,000	
(ii)	Profit from business in Delhi, but managed directly from Malaysia	40,000	-
(iii)	Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels.	1,20,000	-
(iv)	Dividend from PQR Ltd., an Indian Company	5,000	9,000
(v)	Agricultural income from land in Maharashtra	7,500	4,000

(vi)	Past foreign untaxed income brought to India	5,000	-
(vii)	Fees for technical services rendered in India received in Malaysia	25,000	-
(viii)	Income from a business in Pune (Mrs. Bhawna receives 50% of the income in India)	12,000	15,000

Answer

The residential status of Mrs. Bhawna and Mrs. Prerna has to be determined on the basis of the number of days of their stay in India. Since Mrs. Bhawna is settled in Malaysia since 1988, she would be a non-resident for AY 2022-23. Her visit to India for a month every year would not change her residential status. However, Mrs. Prerna would be resident and ordinarily resident for AY 2022-23, since she is settled in India permanently since 1996. Based on their residential status, the gross total income of Mrs. Bhawna and Mrs. Prerna would be determined as follows:

Computation of Gross Total Income of Mrs. Bhawna & Mrs. Prerna for the AY 2022-23

Sl. No.	Particulars	Mrs. Prerna (Resident) (₹)	Mrs. Bhawna (Non-Resident) (₹)
(i)	Income from profession in Malaysia (set up in India) received there (See Note below)	-	-
(ii)	Profit from business in Delhi, but managed directly from Malaysia (See Note below)	40,000	-
(iii)	Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels (See Note below)	-	-
(iv)	Dividend from PQR Ltd. an Indian Company [Taxable in the hands of non- resident and resident]	5,000	9,000
(v)	Agricultural income from land in Maharashtra [Exempt under section 10(1), both in the hands of non- resident and resident]	-	-
(vi)	Past foreign untaxed income brought to India [Not taxable, since it does not represent income of the PY 2021-22]	-	-
(vii)	Fees for technical services rendered in India, but received in Malaysia (See Note below)	25,000	-
(viii)	Income from a business in Pune (Mrs. Bhawna receives 50% of the income in India) (See Note below)	12,000	15,000
Gross Total income		82,000	24,000

Notes:

As per section 5(1), global income is taxable, in case of a resident. However, as per section 5(2), only the following incomes are chargeable to tax, in case of a non-resident:

- (i) Income received or deemed to be received in India; and
- (ii) Income accruing or arising or deemed to accrue or arise in India.

Therefore, income from profession in Malaysia and rent from property in Malaysia received in Malaysia by Mrs. Bhawna, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.

However, profit from business in Delhi would be taxable in India in the hands of Mrs. Bhawna, even though it is managed directly from Malaysia.

Further, by virtue of section 9(1)(vii), fees for technical services rendered in India would also be taxable in the hands of Mrs. Bhawna, since it is deemed to accrue or arise in India.

The entire income from a business in Pune is taxable in the hands of both Mrs. Bhawna and Mrs. Prerna due to their accrual/deemed accrual in India, even though a part of income from business in Pune is received by Mrs. Bhawna outside India.

Q15

Nov 18 (Old)

Mr. Surya, an Indian citizen, travelled frequently out of India for his business trip as well as for his outings. He left India from Mumbai airport on 15th May 2021 as stamped in the passport. He has been in India for less than 365 days during the 4 years immediately preceding the previous year and has not been in India for at least 60 days in the previous year.

Determine:

- (i) Residential status of Mr. Surya and
- (ii) Total income for the assessment year 2022-23 from the following information:
 - (1) Dividend amounting to ₹ 20,000 received from Sassy Ltd., a Switzerland based company, which was transferred to his Swiss bank account. He had borrowed money from Mr. Sundarlal, a non-resident Indian, for the above mentioned investment on 2nd April, 2021. Interest on the borrowed money for the previous year 2021-22 amounted to ₹ 2,500.
 - (2) Short term capital gain on the sale of shares of Trena India Ltd. a listed Indian Company amounting to ₹ 35,000. The sale proceeds were credited to his Swiss bank account.
 - (3) Interest on fixed deposit with State Bank of India (Mumbai) amounting to ₹ 8,000 was credited to his saving account.

Answer

Determination of residential status and scope of total Income

- (i) An individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:
 - (i) He has been in India during the previous year for a total period of 182 days or more, or
 - (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Mr. Surya, an Indian citizen, has not satisfied either of the basic conditions for being a resident. Hence, he is non-resident in India for AY 2022-23.

- (ii) Computation of total income of Mr. Surya for AY 2022-23

	Particulars	Amount (₹)
(1)	Dividend of ₹ 20,000 received from Switzerland based company transferred to Swiss bank account is not taxable in the hands of the non-resident since the income has neither accrued or arisen in India nor has it been received in India. Since dividend is not taxable in India, interest paid for investment is not allowable as deduction.	Nil
(2)	Short-term capital gain on sale of shares of an Indian listed company is chargeable to tax in the hands of Mr. Surya, since it has accrued and arisen in India even through the sale proceeds were credited to Swiss bank account.	35,000
(3)	Interest on fixed deposit with SBI credited to his savings bank account is taxable in the hands of Mr. Surya as Income from other sources, since it has accrued and arisen in India and is also received in India	8,000
Total Income		43,000

Q16

RTP Nov 18

Mr. Sahil, a citizen of India, serving in the Ministry of Human Resources in India, was transferred to Indian Embassy in Germany on 15th March 2020. His income during the financial year 2021-22 is given here under:

Particulars	₹
Rent from a house situated at Australia, received in Australia. Thereafter, remitted to Indian bank account.	4,80,000
Interest accrued on National Saving Certificate	25,600
Interest on Post office savings bank account	3,200
Salary from Government of India	8,15,000
Foreign Allowances from Government of India	9,00,000

Mr. Sahil did not come to India during the financial year 2021-22. Compute his Gross Total Income for the Assessment year 2022-23.

Answer

Mr. Sahil is a non-resident for the AY 2022-23, since he was not present in India at any time during the previous year 2021-22 [Section 6(1)].

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

- (i) Income received or deemed to be received in India; and
- (ii) Income accruing or arising or income deemed to accrue or arise in India.

Computation of Gross Total Income of Mr. Sahil for AY 2022-23

Particulars	₹
Salaries	8,15,000
Salary from Government of India (Income chargeable under the head 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India under section 9(1)(iii). Hence, such income is taxable in the hands of Mr. Sahil, a citizen of India, even though he is a non-resident and rendering services outside India)	
Less: Standard Deduction u/s 16(ia)	50,000
Foreign Allowances from Government of India [Any allowances or perquisites paid or allowed as such outside India by the Government of India to a citizen of India for rendering service outside India is exempt under section 10(7)].	Nil
Income from House Property	Nil
Rent from a house situated at Australia, received in Australia (Income from property situated outside India would not be taxable in India in the hands of a non-resident, since it is neither accruing or arising in India nor is it deemed to accrue or arise in India nor is it received in India)	
Income from Other Sources Interest accrued on National Savings Certificate is taxable*	25,600
Interest on Post office savings bank account – exempt upto ₹ 3,500	Nil
Gross Total Income	7,90,600

*It is assumed that Mr. Sahil follows mercantile system of accounting.

Q17

RTP May 19

Determine the residential status of Ms. Nicole Kidman, an Australian actress, for the AY 2022-23, from the following information about her stay in India contained in her passport.

FY	From	To	FY	From	To
2021-22	May 3rd	August 12th	2016-16	May 3rd	August 12th
2020-21	July 23rd	August 11th	2015-15	May 3rd	August 12th
2019-20	February 9th	March 26th	2014-15	May 3rd	August 12th
2018-19	September 8th	March 26th	2013-14	May 3rd	August 12th
2017-18	May 17th	September 30th	-	-	-

Answer

The residential status of Ms. Nicole Kidman, a foreign national, would be determined in the following manner -

Previous Year	2021-22	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14
No. of days of stay in India	102	20	46	201	137	102	102	102	102

Ms. Nicole Kidman is said to be resident if she satisfies any one of the following basic conditions:

- (i) Has been in India during the previous year for a total period of 182 days or more
(or)
- (ii) Has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days during the previous year.

Ms. Nicole Kidman's stay in India during the PY 2021-22 is less than 182 days. However, her stay in India during the PY 2021-22 is 102 days, which exceeds 60 days; and her stay in India during the four previous years prior to PY 2021-22 is 404 days [20 + 46 + 201 + 137], which exceeds 365 days. Hence, she is a resident for PY 2021-22.

Further, Ms. Nicole Kidman would be "Resident but not ordinarily resident" in India in during the previous year 2021-22, if she:

- (a) has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or
- (b) has during the 7 previous years immediately preceding the relevant previous year been in India for less than 730 days.

If she does not satisfy both of these conditions, she would be a resident and ordinarily resident.

In the present case, her stay in India in the last seven previous years prior to PY 2021-22 is 710 days [20 + 46 + 201 + 137 + 102 + 102 + 102], which is less than 730 days. Therefore, she is resident but not ordinarily resident for the PY 2021-22 even if she is resident in the two assessment years i.e., AY 2019-20 and AY 2018-19 as per the information given in the question.

Q18

May 19 (New)

The following are the incomes of Shri Subhash Chandra, a citizen of India, for the previous year 2021-22:

- (i) Income from business in India ₹ 2,00,000. The business is controlled from London and ₹ 60,000 were remitted to London.
- (ii) Profits from business earned in Japan ₹ 70,000 of which ₹ 20,000 were received in India. This business is controlled from India.
- (iii) Untaxed income of ₹ 1,30,000 for the year 2019-20 of a business in England which was brought in India on 3rd March, 2022.
- (iv) Royalty of ₹ 4,00,000 received from Shri Ramesh, a resident, for technical service provided to run a business outside India.

- (v) Agricultural income of ₹ 90,000 in Bhutan.
(vi) Income of ₹ 73,000 from house property in Dubai, which was deposited in bank at Dubai.

Compute Gross Total Income of Shri Subhash Chandra for the AY 2022-23, if he is -

- (1) A Resident and Ordinarily Resident; and
(2) A Resident but Not Ordinarily Resident

Answer

Computation of Gross Total Income of Shri Subhash Chandra for the AY 2022-23

	Particulars	Resident and Ordinarily Resident [ROR] (₹)	Resident but Not Ordinarily Resident [RNOR] (₹)
(i)	Income from business in India, controlled from London [Taxable both in the hands ROR and RNOR, since income accrues/arises from business in India, irrespective of the fact that business is controlled from London]	2,00,000	2,00,000
(ii)	Profits earned from business in Japan [Profits from business in Japan is taxable in the hands of ROR, since global income is taxable in the hands of ROR. Moreover, entire profit of ₹ 70,000 would be taxable in the hands of RNOR, even if only ₹ 20,000 is received in India, since the business in Japan is controlled from India]	70,000	70,000
(iii)	Untaxed income for the year 2019-20 of a business in England which was brought in India during the PY 2021-22 [Not taxable either in the hands of ROR or RNOR, since such income is not related to the PY 2021-22]	Nil	Nil
(iv)	Royalty received from a resident for technical service provided to run a business outside India [Taxable in the hands of ROR, since global income is taxable in the hands of ROR. Not taxable in the hands RNOR, since royalty income is not deemed to accrue or arise in India as such income is paid by a resident for technical services used to run a business outside India.]	4,00,000	Nil

(v)	Agricultural Income in Bhutan(received in Bhutan) [Since agricultural income accrues/arises outside India, it is taxable only in the hands of ROR. No exemption is available in respect of agricultural income earned outside India]	90,000	Nil
(vi)	Income from house property in Dubai, which was deposited in a bank at Dubai Since income accrues/arises outside India and is also received outside India, it is taxable only in the hands of ROR 73,000 Less: Deduction u/s 24 @30% 21,900 [See Note below for alternative treatment]	51,100	Nil
	Gross Total Income	8,11,100	2,70,000

Note : In the above solution, income of ₹ 73,000 from house property in Dubai is presumed to be the rent received, since the said amount is stated to be the amount deposited in bank. Accordingly, deduction@30% of the said amount has been provided to compute the “Income from house property”, where Shri Subhash Chandra is a ROR. However, since the words “Income from house property” appears to indicate that the same is the income computed under that head of income, it is possible to consider the said amount of ₹ 73,000 as income computed under the head “Income from house property” after providing deduction @30% u/s 24(a). In such a case, the gross total income of Shri Subhash Chandra, if he were a ROR, would be ₹ 8,33,000.

Q19

May 19 (Old)

Mr. Bachhan has provided the following details of his income for the year ended 31-3-2022:

(1)	Short term capital gains on sale of shares in Indian Company received in Japan.	85,000
(2)	Dividend from a Chinese Company received in China	30,000
(3)	Rent from property in Bangladesh deposited in a bank at Dhaka later on remitted to India through approved banking channels	96,000
(4)	Dividend from ABC Ltd. an Indian Company	22,000

Compute his total income for the Assessment Year 2022-23, in case of he is:

- (i) Resident and ordinarily resident;
- (ii) Resident but not ordinarily resident; or
- (iii) Non-resident

Answer

Computation of total income of Mr. Bachhan for the AY 2022-23

Particulars	Resident and ordinarily resident (ROR)	Resident but not ordinarily resident (RNOR)	Non-resident (NR)
	₹	₹	₹
Short term capital gains on sale of shares of an Indian company received in Japan [Since income is deemed to accrue/arise in India, it is taxable in his hands, whether he is ROR, RNOR or non-resident]	85,000	85,000	85,000
Dividend from a Chinese company received in China [Since it accrues and is received outside India, it is taxable only in case of ROR]	30,000	-	-
Rent from property in Bangladesh deposited in a Bank at Dhaka, later on remitted to India through approved banking channels [Since it accrues and is received outside India, it is taxable only in case of ROR]	96,000	-	-
Less: Deduction u/s 24@ 30%	<u>28,800</u>		
Income from house property	67,200	-	-
Dividend of ₹ 22,000 from ABC Ltd., an Indian Company [Taxable in all three cases]	22,000	22,000	22,000
Total Income	2,04,200	1,07,000	1,07,000

Q20

MTP March 19

- I. Explain with reasons whether the following transactions attract income-tax in India in the hands of recipients :
 - (i) Salary paid to Mr. Dinesh, a citizen of India ₹ 20,00,000 by the Central Government for the services rendered in London.
 - (ii) Royalty paid to Raja, a non-resident by Ms. Mukta, a resident for a business carried on in Sri Lanka.
- II. Ms. Anjali, a non-resident, residing in London since 1992, came back to India on 19-02-2020 for permanent settlement in India. Explain the residential status of Ms. Anjali for the Assessment Year 2022-23 in accordance with the various provisions of Income-tax Act, 1961.

Answer

I. Taxability of certain receipts under the Income-tax Act, 1961

Sl. No.	Taxable/ Not Taxable	Amount liable to tax (₹)	Reason
1	2	3	4
(i)	Taxable	20,00,000	Salaries payable by the Government to a citizen of India for service rendered outside India shall be deemed to accrue or arise in India as per section 9(1)(iii). Mr. Dinesh is a citizen of India. Therefore, salary paid by the Central Government to him for services rendered in London would be deemed to accrue or arise in India in his hands.
(ii)	Not Taxable	-	Royalty paid by a resident to a non-resident in respect of a business carried on outside India would not be taxable in the hands of the non-resident, as the same would not be deemed to accrue or arise in India as per the exception mentioned in section 9(1)(vi)(b). Therefore, royalty paid by Mukta, a resident, to Raja, a non-resident, for a business carried on in Sri Lanka would not be deemed to accrue or arise in India. Note : It is assumed that the royalty was not received in India.

II. Determination of residential status of Ms. Anjali for the AY 2022-23

Ms. Anjali is a resident since she has stayed in India for 365 days during the PY 2021-22. Therefore, she satisfies the condition of stay in India for a period of 182 days or more in the relevant previous year as per the requirement under section 6(1).

As per section 6(6), an individual is said to be “not ordinarily resident” in India in any previous year, if he has:

- been a non-resident in India in nine out of ten previous years preceding the relevant previous year; or
- during the seven previous years immediately preceding the relevant previous year, been in India for a period of, or periods amount in all to, 729 days or less.

Ms. Anjali must, therefore, satisfy either of the conditions to qualify as a not-ordinarily resident.

Ms. Anjali was a non-resident in India up to AY 2020-21.

She was resident in India only for PY 2020-21 (AY 2021-22) out of the ten previous years preceding PY 2021-22 (AY 2022-23). This implies that she has been a non-resident in India in nine out of ten previous years preceding PY 2021-22 (AY 2022-23).

Further, she was in India only for a period of 406 days [i.e., 10 days in February, 2018 + 31 days in March 2018 + 365 days during the PY 2020-21] in the seven previous years preceding PY 2020-21 (AY 2021-22).

Therefore, since Ms. Anjali satisfies both the conditions for “not-ordinarily resident”, her residential status for AY 2022-23 would be “Resident but not ordinarily resident”.

Q21

MTP April 19

Compute the total income of Mr. Rajesh, aged 45 years, an Indian citizen for AY 2022-23. On 22.09.2021, he left India for the first time to work as an officer of a company in Canada. He earns the following income during the previous year 2021-22:

Sl. No.	Particulars	(₹)
1.	Interest on Canada Development Bonds (only 50% of interest received in India)	40,000
2.	Dividend from Canadian company received in Canada	20,000
3.	Short term capital gain on sale of shares of an Indian company received in India	90,000
4.	Interest on savings bank deposit in UCO Bank, Delhi	12,000
5.	Income from Profession in Canada (set up in India), out of which ₹10,000 is received in India	15,000
6.	Agricultural income from a land situated in Gujarat	45,000
7.	Rent received in Canada in respect of house property at Canada	60,000

Answer

Under section 6(1), an individual is said to be resident in India in any previous year if he satisfies any one of the following conditions -

- He has been in India during the previous year for a total period of 182 days or more, or
- He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

In the case of Indian citizens leaving India for employment, the period of stay during the previous year must be 182 days instead of 60 days given in (ii) above.

During the previous year 2021-22, Mr. Rajesh, an Indian citizen, was in India for 175 days only (i.e., 30+31+30+31+31+22 days). Thereafter, he left India for employment purposes. Since he does not satisfy the minimum criteria of 182 days, he is a non-resident for the AY 2022-23.

Computation of total income of Mr. Rajesh for the AY 2022-23

Sl. No.	Particulars	Non-Resident (₹)
1.	Interest on Canada Development Bond (See Note 1)	20,000
2.	Dividend from Canadian Company received in Canada (See Note 2)	-
3.	Short term capital gain on sale of shares of an Indian company received in India	90,000
4.	Interest on savings bank deposit in UCO Bank, Delhi	12,000
5.	Income from profession in Canada (set up in India) out of which ₹10,000 is received in India (See Note 1)	10,000
6.	Agricultural income from a land in Gujarat (See Note 3)	-
7.	Income from house property at Canada (See Note 4)	-
Gross Total income		1,32,000
Less: Deduction under Chapter VI-A Section 80TTA (See Note 5)		10,000
Total Income		1,22,000

Notes :

- (1) As per section 5(2), in case of a non-resident, only the following incomes are chargeable to tax in India:
 - (i) Income received or deemed to be received in India; and
 - (ii) Income accruing or arising or deemed to accrue or arise in India.Therefore, only that part of interest income and income from profession which is received in India would be taxable in his hands.
- (2) Dividend received in Canada from a Canadian based company would not be taxable in the hands of Mr. Rajesh since it has neither accrued nor arisen in India nor is it received in India.
- (3) Agricultural income from a land situated in India is exempt under section 10(1) in the case of both non-residents and residents.
- (4) Rental income from property in Canada would not be taxable, since it is neither accrued or arisen in India nor it is received in India.
- (5) In case of an individual other than senior citizen, interest upto ₹ 10,000 from savings account with, inter alia, a bank is allowable as deduction under section 80TTA, irrespective of the residential status.

Q22

RTP Nov 19

Mr. Rajesh Sharma (aged 62 years), an Indian citizen, travelled frequently out of India for his business trip as well as for his outings. He left India from Delhi airport on 29th May 2021 as stamped in the passport and returned on 27th April 2022. He has been in India for less than 365 days during the 4 years immediately preceding the previous year. Determine his residential status and his total income for the assessment year 2022-23 from the following information:

- (1) Short term capital gain on the sale of shares of Tilt India Ltd., a listed Indian company, amounting to ₹ 58,000. The sale proceeds were credited to his bank account in Singapore.
- (2) Dividend amounting to ₹ 48,000 received from Treat Ltd., a Singapore based company, which was transferred to his bank account in Singapore. He had borrowed money from Mr. Abhay, a non-resident Indian, for the above-mentioned investment on 2nd April, 2021. Interest on the borrowed money for the previous year 2021-22 amounted to ₹ 5,800.
- (3) Interest on fixed deposit with Punjab National Bank, Delhi amounting to ₹ 9,500 was credited to his saving bank account.

Answer

Determination of residential status

An individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Mr. Rajesh Sharma, an Indian citizen, has not satisfied either of the basic conditions for being a resident, since he was in India for only 59 days during the previous year 2021-22. Hence, he is non-resident in India for AY 2022-23.

Computation of total income of Mr. Rajesh Sharma for AY 2022-23

Particulars	Amount (₹)
(1) Short-term capital gain on sale of shares of an Indian listed company is chargeable to tax in the hands of Mr. Rajesh Sharma, since it has accrued and arisen in India even though the sale proceeds were credited to bank account in Singapore.	58,000
(2) Dividend of ₹ 48,000 received from Singapore based company transferred to his bank account in Singapore is not taxable in the hands of the non-resident since the income has neither accrued or arisen in India nor has it been received in India. Since dividend is not taxable in India, interest paid for investment is not allowable as deduction.	Nil
(3) Interest on fixed deposit with Punjab National Bank, Delhi credited to his savings bank account is taxable in the hands of Mr. Rajesh Sharma as Income from other sources, since it has accrued and arisen in India and is also received in India. He would not be eligible for deduction under section 80TTB, since he is a non-resident.	9,500
Total Income	67,500

Q23

Nov 19 (New)

Mr. Jagdish, aged 61 years, has set-up his business in Thailand and is residing in Thailand since last 20 years. He owns a house property in Bangkok, half of which is used as his residence and half is given on rent (such rent received, converted in INR is ₹ 6,00,000). The annual value of the house in Thailand is ₹ 50,00,000 i.e. converted value in INR.

He purchased a flat in Pune during FY 2016-17, which has been given on monthly rent of ₹ 27,500 since 01.07.2019. The annual property tax of Pune flat is ₹ 40,000 which is paid by Mr. Jagdish whenever he comes to India. Mr. Jagdish last visited India in July 2019. He has taken a loan from Union Bank of India for purchase of the Pune flat amounting to ₹ 15,00,000. The interest on such loan for the FY 2020-21 was ₹ 84,000. However interest for March 2022 quarter has not been paid by Mr. Jagdish.

He had a house in Jaipur which was sold in May 2016. In respect of this house he received arrears of rent of ₹ 96,000 in Feb. 2022 (not taxed earlier).

He also derived some other incomes during FY 2021-22 which are as follows:

Profit from business in Thailand ₹ 2,75,000.

Interest on bond of a Japanese Co. ₹ 45,000 out of which 50% was received in India.

Income from Apple Orchard in Nepal given on contract and the yearly contract fee of ₹ 5,00,000, for FY 2021-22 was deposited directly by the contractor in Kathmandu branch of Union Bank of India in Mr. Jagdish's bank account maintained with Union Bank of India Pune's Branch.

Compute the total income of Mr. Jagdish for Assessment Year 2022-23 chargeable to income tax in India.

Answer

Stay in India for a minimum period of 182 days in the relevant previous year or, in the alternative, 60 days in the relevant previous year and 365 days in the four immediately preceding previous years is required to qualify as a resident. In this case, since Mr. Jagdish has not visited India at any time during the PY 2021-22, he would be a non-resident for that year.

Computation of Total Income of Mr. Jagdish, a non-resident, for the AY 2022-23

	Particulars	₹	₹
(i)	Income from house property		
	Income from house property at Bangkok		NIL
	[Income from house property at Bangkok neither accrues or arises in India, nor is it deemed to accrue or arise in India; and it is also not stated to be received in India. Hence, it is not taxable in India, since he is a non-resident]		
	Income from house property in Pune (taxable in India since it accrues and arises in India)		
	Gross Annual Value of Pune flat (₹ 27,500 x 12)	3,30,000	
	Less: Municipal taxes (Deduction is not allowable, since no amount has been paid during the previous year 2021-22)	NIL	
	Net Annual Value (NAV)	3,30,000	
	Less: Deductions u/s 24		
	(a) 30% of NAV	99,000	
	(b) Interest due on housing loan (allowable even if not paid) <u>84,000</u>	1,83,000	
		1,47,000	
	Arrears of rent received in respect of Jaipur house (taxable u/s 25A, even if he is not the owner of the house property in the PY 2021-22)	96,000	
	Less: Deduction @ 30%	<u>28,800</u>	67,200
(ii)	Profits and gains of business or profession		
	Profit from business in Thailand (not taxable in the hands of a non-resident, since it neither accrues or arises in India nor is it deemed to accrue or arise in India; and it is also not stated to be received in India)		Nil
(iii)	Income from Other Sources		
	Interest on bonds of a Japanese company [Only ₹ 22,500, being 50% of ₹ 45,000 is taxable in India, since it is stated to be received in India]	22,500	
	Income from Apple Orchard in Nepal [Contract fee directly credited to bank account in India is taxable in India, since it is received in India]	5,00,000	5,22,500
	Total Income		7,36,700

Note : Contract fee for Apple Orchard has been stated to have been deposited directly by the contractor in the Kathmandu branch of UBI in Mr. Jagdish's bank account maintained with UBI's Pune Branch. Since the deposit is stated to have been made by the contractor directly in UBI's Pune branch, the income

is received in India and hence, would be taxable in the hands of Mr. Jagdish. The above solution has been worked out accordingly. However, due to the use of the word "in the Kathmandu branch", a view is taken that such receipt is actually received in Kathmandu and subsequently it is remitted to Indian branch, the amount of ₹ 5 lakh would not be taxable in India and hence, the total income would be ₹ 2,36,700.

Q24

Nov 19 (Old)

Miss Bansuri, a Chinese National, got married to Mr. Keshav of India in Beijing on 3rd February, 2020 and came to India for the first time on 14-02-2020. She left for China on 11-08-2020. She returned to India again on 20-02-2021.

She received the following gifts from her relatives and friends during 01-04-2021 to 31-03-2022 in India:

- From parents of husband ₹ 71,000
- From married sister of husband ₹ 21,000
- From two very close friends of her husband, ₹ 1,41,000 and ₹ 1,21,000 ₹ 2,62,000

- (a) Determine her residential status and compute the total income chargeable to tax along with the amount of tax payable on such income for the Assessment Year 2022-23.
- (b) Will your answer change if she had returned to India again on 20-01-2022 instead of 20-02-2022?

Answer

- (a) Determination of residential status and computation of total income and tax liability of Miss Bansuri (if she returned to India on 20.2.2022)

Particulars
Under section 6(1), an individual is said to be resident in India in any previous year, if he/she satisfies any one of the following conditions:
(i) He/she has been in India during the previous year for a total period of 182 days or more, or
(ii) He/she has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.
If an individual satisfies any one of the conditions mentioned above, he/she is a resident. If both the above conditions are not satisfied, the individual is a non-resident.
Therefore, the residential status of Miss Bansuri, a Chinese National, for AY 2022-23 has to be determined on the basis of her stay in India during the previous year relevant to AY 2022-23 i.e. PY 2021-22 and in the preceding four years.
Her stay in India during the previous year 2021-22 and in the preceding four years are as under:
PY 2021-22

01.04.2021 to 11.08.2021	133 days
20.02.2022 to 31.03.2022	40 days
Total	173 days
Four preceding previous years	
PY 2019-20 [14.2.2020 to 31.3.2020]	46 days
PY 2018-19 [1.4.2018 to 31.3.2019]	Nil
PY 2017-18 [1.4.2017 to 31.3.2018]	Nil
PY 2016-17 [1.4.2016 to 31.3.2017]	Nil
Total	46 days

The total stay of Miss Bansuri during the previous year in India was less than 182 days and during the four years preceding this year was for 46 days.

Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the Assessment Year 2022-23.

Accordingly, her total income and tax liability would be computed in the following manner:

Computation of total income and tax liability of Miss Bansuri for the AY 2022-23

Income from other sources	₹
Gifts received from non-relatives is chargeable to tax as per section 56(2) (x) if the aggregate value of such gifts exceeds ₹ 50,000.	
- ₹ 71,000 received from parents of husband would be exempt, since parents of husband fall within the definition of 'relatives' and gifts from a relative are not chargeable to tax.	Nil
- ₹ 21,000 received from married sister-in-law is exempt, since sister of husband falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil
- Gift received from two friends of her husband ₹ 1,41,000 and ₹ 1,21,000 aggregating to ₹ 2,62,000 is taxable under section 56(2)(x) since the aggregate of ₹ 2,62,000 exceeds ₹ 50,000.	2,62,000
Total Income	2,62,000
Tax on total income of ₹ 2,62,000 [5% of ₹ 12,000 in excess of ₹ 2,50,000, being the basic exemption limit]	600
Add: Health and Education cess@ 4%	24
Total tax payable	624
Total tax payable (rounded off)	620

(b) Determination of residential status and computation of total income and tax liability of Miss Bansuri (if she returned to India on 20.1.2022)

Particulars	₹
Yes, the answer would change, if she had returned to India again on 20.1.2022 instead of 20.2.2022.	
In such case, her stay in India during the previous year 2021-22 would be:	

01.04.2021 to 11.08.2022	133 days
20.01.2022 to 31.03.2022	71 days
Total	204 days
<p>Since she satisfies the condition of stay in India for more than 182 days during the previous year 2021-22, she would become resident in India. She would be a resident but not ordinarily resident in India for AY 2022-23, since her stay in India in the preceding seven years is less than 730 days (it is only 46 days).</p>	
<p>Her total income would remain same i.e., ₹ 2,62,000 even in case she become resident but not ordinarily resident, however, her tax liability would be determined in the following manner:</p>	
Tax liability:	
Tax on total income of ₹ 2,62,000 [5% of ₹ 12,000 in excess of ₹ 2,50,000, being the basic exemption limit]	600
Less: Rebate under section 87A (since she is a resident individual and her total income does not exceed ₹ 5,00,000, she would be eligible for a rebate of lower of ₹ 12,500 and tax payable i.e., ₹ 600).	600
Total tax payable	Nil

Q25

MTP May 20

Simran, 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 New York. As per the offer letter, she should join the company at any time between 1st September, 2021 and 31st October, 2021. She approaches you for your advice on the following issues to mitigate her tax liability in India:

- Date by which she should leave India to join the company;
- Direct credit of part of her salary to her bank account in Delhi maintained jointly with her mother to meet requirement of her family.
- 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:-

- Indian citizens, who leave India in any previous year, inter alia, for purposes of employment outside India, or
 - 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.
- (a) Since Simran 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, Simran should leave India on or before 28th September, 2021, 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 New York would not be chargeable to tax in India for AY 2022-23, if she leaves India on or before 28th September, 2021.

- (b) If any part of Simran's salary will be credited directly to her bank account in Delhi 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, Simran should receive her entire salary in New York and then remit the required amount to her bank account in Delhi in which case, the salary earned by her in New York would not be subject to tax in India.
- (c) In case Simran visits India after taking up employment outside India, she would be covered in the second exception provided 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 Simran 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. PY 2021-22.

Q26

RTP May 20

Mr. Shridhar (age 45 years), a citizen of India, serving in the Ministry of Finance in India, was transferred to Indian Embassy in Australia on 15th March 2021. His income during the financial year 2021-22 is given below:

Particulars	₹
Rent from a house situated at Australia, received in Australia. Thereafter, remitted to Indian bank account.	5,25,000
Interest on Post office savings bank account in India	4,500
Salary from Government of India	9,25,000
Foreign Allowances from Government of India	8,00,000

Mr. Shridhar did not come to India during the financial year 2021-22. Compute his Gross Total Income for the Assessment year 2022-23.

Answer

Mr. Shridhar is a non-resident for the AY 2022-23, since he was not present in India at any time during the previous year 2021-22 [Section 6(1)].

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

- (i) Income received or deemed to be received in India; and
- (ii) Income accruing or arising or income deemed to accrue or arise in India.

Computation of Gross Total Income of Mr. Shridhar for AY 2022-23

Particulars	₹
Salaries	
Salary from Government of India	9,25,000

(Income chargeable under the head 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India under section 9(1)(iii). Hence, such income is taxable in the hands of Mr. Shridhar, a citizen of India, even though he is a non-resident and rendering services outside India)	
Foreign Allowance from Government of India	Nil
[Any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7)].	
Gross Salary	9,25,000
Less: Standard Deduction under section 16(ia) of ₹ 50,000, being lower of gross salary or ₹ 50,000	50,000
	8,75,000
Income from House Property	
Rent from a house situated at Australia, received in Australia	
(Income from property situated outside India would not be taxable in India in the hands of a non-resident, since it neither accrues or arises in India nor is it deemed to accrue or arise in India nor is it received in India)	Nil
Income from Other Sources	
Interest on Post office savings bank account – exempt upto ₹ 3,500	1,000
Gross Total Income	8,76,000

Note : Interest on Post office saving bank account of ₹ 1,000 would be allowed as deduction under section 80TTA.

Q27

RTP Nov 20

You are required to determine the residential status of Mr. Dinesh, a citizen of India, for the previous year 2021-22.

Mr. Dinesh is a member of crew of a Singapore bound Indian ship, carrying passengers in the international waters, which left Kochi port in Kerala, on 16th August, 2021.

Following details are made available to you for the previous year 2021-22:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Dinesh	16th August, 2021
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Dinesh	21st January, 2022

In June, 2021, he had gone out of India to Dubai on a private tour for a continuous period of 27 days.

During the last four years preceding the previous year 2021-22, he was present in India for 425 days. During the last seven previous years preceding the previous year 2021-22, he was present in India for 830 days.

Answer

As per Explanation 1 to section 6(1), where an Indian citizen leaves India as a member of crew of an Indian ship, he will be resident in India only if he stayed in India for 182 days during the relevant previous year.

As per Explanation 2 to section 6(1)1, in case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining of ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Eligible voyage includes a voyage undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from any port in India and having its destination at a port outside India.

In this case, voyage is undertaken by a foreign bound Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Kochi port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage.

Therefore, the period from 16th August, 2021 and ending on 21st January, 2022 has to be excluded for computing the period of stay of Mr. Dinesh in India. Accordingly, the period of 159 days [16+30+31+30+31+21] has to be excluded for computing the period of his stay in India during the P.Y.2021-22.

Further, since Mr. Dinesh had also gone out of India to Dubai on a private tour for a continuous period of 27 days in June, 2021, such period has also to be excluded for computing his period of stay in India during the P.Y. 2021-22.

Consequently, the period of stay in India during the P.Y. 2021-22 would be 180 days [i.e., 366 days – 159 days – 27 days], which is less than 182 days.

Thus, Mr. Dinesh would be a non-resident for A.Y. 2022-23.

Since the residential status of Mr. Dinesh is “non-resident” for A.Y. 2022-23 consequent to his number of days of stay in India in P.Y. 2021-22, being less than 182 days, his period of stay in India in the earlier previous years become irrelevant.

Q28

Nov 20 (New)

Mr. Thomas, a non-resident and citizen of Japan entered into following transactions during the previous year ended 31.03.2022. Examine the tax implications in the hands of Mr. Thomas for the Assessment Year 2022-23 as per Income Tax Act, 1961. (Give brief reasoning)

- (1) Interest received from Mr. Marshal, a non-resident outside India (The borrowed fund is used by Mr. Marshal for investing in Indian company's debt fund for earning interest).
- (2) Received ₹ 10 lakhs in Japan from a business enterprise in India for granting license for computer software (not hardware specific).
- (3) He is also engaged in the business of running news agency and earned income of ₹ 10 lakhs from collection of news and views in India for transmission outside India.

- (4) He entered into an agreement with SKK & Co., a partnership firm for transfer of technical documents and design and for providing services relating thereto, to set up a Denim Jeans manufacturing plant, in Surat (India). He charged X 10 lakhs for these services from SKK & Co.

Answer

- (1) Not taxable, since interest payable by a non-resident to another non-resident would be deemed to accrue or arise in India only if the borrowed fund is used for the purposes of business or profession carried on by him in India. In this case, it is used for investing in Indian company's debt fund for earning interest and not for the purposes of business or profession. Hence, it is not taxable in India.
- (2) Royalty includes, inter alia, consideration for grant of license for computer software. Hence, the amount of ₹ 10 lakhs payable by a resident (business enterprise in India) for grant of license for computer software would be royalty which is deemed to accrue or arise in India in the hands of Mr. Thomas, a non-resident, since it is for the purpose of business in India. Hence, the royalty is taxable in India.
- (3) No income shall be deemed to accrue or arise to Mr. Thomas through or from activities which are confined to the collection of news and views in India for transmission outside India. Hence, ₹ 10 lakhs is not taxable in India in the hands of Mr. Thomas.
- (4) ₹ 10 lakhs is deemed to accrue or arise in India to Mr. Thomas, a non-resident, since it represents royalty/fees for technical services paid for services utilized in India, in this case, for setting up a Denim Jeans manufacturing plant in Surat. Hence, the same would be taxable in India in the hands of Mr. Thomas.

Q29

Nov 20 (Old)

Mr. Vinod aged 45 years earned the following incomes during the year ended on 31.03.2022. Compute his total income, if he is

- (i) Resident and ordinarily resident
(ii) Resident but not ordinarily resident.

Particulars	₹
(i) Agricultural Income from Sri Lanka	25,000
(ii) Long term capital gain on sale of property in Bombay but received in Burma	30,000
(iii) Profit from business in Dubai controlled from India	2,50,000
(iv) Rent from house property in Thailand received in India	1,00,000
(v) Interest on Savings account from bank in India	8,000
(vi) Past untaxed foreign income brought into India during the year	1,00,000

Answer

Computation of total income of Mr. Vinod for the A.Y. 2022-23

Particulars		Resident and ordinarily resident (ROR)	Resident but not ordinarily resident (RNOR)
		₹	₹
Agricultural income from Sri Lanka [Taxable in his hands as ROR, since global income is taxable and exemption under section 10(1) is not available in respect of agricultural income arising outside India; however, such income is not taxable in his hands as RNOR, since the income accrues or arises outside India and it is not stated that such income is received in India]		25,000	NIL
Long-term capital gain on sale of property in Bombay but received in Burma [Taxable in his hands as ROR, since global income is taxable in the hands of ROR. Also, the income is taxable in his hands as RNOR, since income arises on sale of property situated in India and it is deemed to accrue/arise in India]		30,000	30,000
Profit from business in Dubai controlled from India [Taxable in his hands as ROR, since global income is taxable in the hands of ROR. Also, the income is taxable in his hands as RNOR, since it is in respect of business controlled from India]		2,50,000	2,50,000
Rent from house property in Thailand received in India [Taxable in his hands as ROR, since global income is taxable in the hands of ROR. Also, the income is taxable in his hands as RNOR, since it is received in India]	1,00,000		
Less: Deduction u/s 24(a)@30%	30,000	70,000	70,000
Interest on savings account from bank in India [Since income accrues/arises in India, it is taxable in his hands, whether he is ROR or RNOR]		8,000	8,000
Past untaxed foreign income brought into India during the year [not taxable in the hands of ROR or RNOR, since it does not relate to current year]		NIL	NIL
Gross Total Income		3,83,000	3,58,000
Less: Deduction under section Chapter VI-A			
Under section 80TTA, interest on saving A/c, allowable to him as ROR or RNOR in full, since it is within the permissible limit of ₹ 10,000		8,000	8,000
Total Income		3,75,000	3,50,000

Q30

Nov 20 (Old)

Determine residential status of Sundaram (HUF) which carries out its transactions in Malaysia. Its affairs are partly controlled from India. The Karta of HUF Mr. Sundaram who is from Chennai visits India on 01.06.2021 and leaves to Malaysia on 10.02.2022. He has not visited India for the past 11 years.

Answer

Determination of residential status of Sundaram (HUF)

A HUF is said to be resident, if control and management of its affairs is situated wholly or partly in India. Since in the present case, the affairs of the HUF are partly controlled from India, it is said to be resident in India.

A HUF is said to be RNOR, if its Karta is RNOR. In the present case, Mr. Sundaram, being a karta of the HUF has not visited India for the past 11 years and hence he satisfies the condition for being a RNOR i.e., he is non-resident in India in 9 out of 10 previous years immediately preceding the relevant previous year or has been in India for 729 days or less in 7 previous years immediately preceding the relevant previous year. Thus, Sundaram HUF is said to be RNOR for the previous year 2021-22.

Q31

Jan 21 (New)

“Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is to be taxed in India irrespective of territorial nexus.” Examine the correctness or otherwise of the given statement.

Answer

Income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1) shall be included in the total income of the non-resident, whether or not –

- (i) the non-resident has a residence or place of business or business connection in India; or
- (ii) the non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

Therefore, the given statement that income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus, is correct.

Q32

Jan 21 (Old)

Discuss the taxability of the following items in the hands of different persons briefly explaining the applicable provisions of the Income Tax Act.

- (i) Mr. Jayesh, a non-resident is having a plot of land in Jodhpur. He sells this plot to another non-resident outside India. The consideration is received outside India in foreign currency.
- (ii) Mr. Arpit is having a house property in India, The property let out by him to a foreign company. The rent agreement is entered outside India. Monthly rent is also received outside India.

- (iii) Govt. of Rajasthan has borrowed money from ABC Express Bank, a foreign bank. The interest payable to ABC Express Bank is remitted outside India.
- (iv) Mr. Bhavesh, a citizen of India, is appointed by Reliable Industries Ltd. in their Dubai Branch. Mr. Bhavesh is a non-resident and receives salary outside India.

Answer

(i) Sale of plot of land at Jodhpur

As per section 9(1)(i), income accruing or arising in the hands of Mr. Jayesh, a non-resident, from transfer of a capital asset situated in India, namely, land in Jodhpur, would be deemed to accrue or arise in India.

Hence, capital gains arising from transfer of such land would be chargeable to tax in the hands of Jayesh, even though the land is transferred to another non-resident outside India and consideration is received in foreign currency.

(ii) Rental income from a house property situated in India

As per section 9(1)(i), rental income from a house property in India would be deemed to accrue or arise in India as the source of income, namely, the house property, is in India. Therefore, rental income from a house property in India is taxable in the hands of Mr. Arpit, even though the house has been let-out to a foreign company, the rent agreement is entered outside India and such income is received outside India.

Note (Alternate assumption): The question does not mention the residential status of Mr. Arpit. The above reasoning for arriving at the conclusion of taxability is based on the assumption that Mr. Arpit is a non-resident. However, if Mr. Arpit is a resident, the answer would be as follows –

The rental income from house property in India would be taxable in the hands of Mr. Arpit, since global income is taxable in the hands of a resident, irrespective of the fact that it is received outside India from a foreign company.

(iii) Interest on loan payable by Government of Rajasthan

Income by way interest payable by the Government is deemed to accrue or arise in India by virtue of section 9(1)(v)(a). Therefore, interest payable by the Government of Rajasthan would be taxable in the hands of ABC Express Bank, even though it is a foreign bank and the interest has been remitted outside India.

(iv) Salary income earned outside India

As per section 9(1)(ii), salary received outside India for services rendered outside India (in Dubai Branch) is not deemed to accrue or arise in India, since the services are rendered outside India. Hence, the salary income would not be taxable in the hands of Mr. Bhavesh, a non-resident, since the same is received outside India and is not deemed to accrue or arise in India.



MTP Apr 21

Miss Bhanushali, an American National, got married to Mr. Vikas of India in New York on 3rd February, 2021 and came to India for the first time on 14-02-2021. She left for New York on 11-08-2021. She returned to India again on 20-02-2022.

She received the following gifts from her relatives and friends during 01-04-2021 to 31-03-2022 in India:

- From parents of husband ₹ 71,000
- From married sister of husband ₹ 21,000
- From two very close friends of her husband ₹ 1,41,000 and ₹ 1,21,000 ₹ 2,62,000

- (i) Determine her residential status and compute the total income chargeable to tax for the Assessment Year 2022-23.
- (ii) Will the residential status change if she had returned to India again on 20-01-2022 instead of 20-02-2022?

Answer

- (i) Determination of residential status and computation of total income of Miss Bhanushali (if she returned to India on 20.2.2022)

Particulars	₹
Under section 6(1), an individual is said to be resident in India in any previous year, if he/she satisfies any one of the following conditions:	
(i) He/she has been in India during the previous year for a total period of 182 days or more, or	
(ii) He/she has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.	
If an individual satisfies any one of the conditions mentioned above, he/she is a resident. If both the above conditions are not satisfied, the individual is a non-resident.	
Therefore, the residential status of Miss Bhanushali, an American National, for A.Y.2022-23 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2022-23 i.e. P.Y.2021-22 and in the preceding four assessment year	
Her stay in India during the previous year 2021-22 and in the preceding four years are as under:	
P.Y. 2021-22	
01.04.2021 to 11.08.2021	133 days
20.02.2022 to 31.03.2022	40 days
Total	<u>173 days</u>
Four preceding previous years	
P.Y.2020-21 [14.2.2021 to 31.3.2021]	47 days
P.Y.2019-20	Nil
P.Y.2018-19	Nil
P.Y.2017-18	Nil
Total	<u>47 days</u>

<p>The total stay of Miss Bhanushali during the previous year in India was less than 182 days and during the four years preceding this year was for 47 days.</p> <p>Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the Assessment Year 2022-23.</p> <p>Computation of total income of Miss Bhanushali for the A.Y. 2022-23</p> <p>Income from other sources</p> <p>Gifts received from non-relatives is chargeable to tax as per section 56(2) (x) if the aggregate value of such gifts exceeds ₹ 50,000.</p> <ul style="list-style-type: none"> - ₹ 71,000 received from parents of husband would be exempt, since parents of husband fall within the definition of 'relatives' and gifts from a relative are not chargeable to tax. Nil - ₹ 21,000 received from married sister-in-law is exempt, since sister of husband falls within the definition of relative and gifts from a relative are not chargeable to tax. Nil - Gift received from two friends of her husband ₹ 1,41,000 and ₹ 1,21,000 aggregating to ₹ 2,62,000 is taxable under section 56(2)(x) since the aggregate of ₹ 2,62,000 exceeds ₹ 50,000. 2,62,000 	
Total Income	2,62,000

(ii) **Determination of residential status of Miss Bhanushali (if she returned to India on 20.1.2022)**

Particulars	₹
Yes, the answer would change, if she had returned to India again on 20.1.2022 instead of 20.2.2022.	
In such case, her stay in India during the previous year 2021-22 would be:	
01.04.2021 to 11.08.2021	133 days
20.01.2022 to 31.03.2022	<u>71 days</u>
Total	<u>204 days</u>
Since she satisfies the condition of stay in India for more than 182 days during the previous year 2021-22, she would become resident in India. She would be a resident but not ordinarily resident in India for A.Y. 2022-23, since her stay in India in the preceding seven years is less than 730 days (it is only 47 days) ¹ .	

¹ In the alternative, an individual can be treated as not ordinarily resident if she is non-resident in any 9 out of 10 preceding assessment years. In this case, Miss Bhanushali is a non-resident in all 10 preceding assessment years. She was in India for only 47 days in A.Y.2022-23 and never visited India earlier.

Q34

MTP Mar 21

Determine the residential status and total income of Mr. Raghu for the assessment year 2022-23 from the information given below.

Mr. Raghu (age 62 years), an American citizen, is employed with a multinational company in Gurugram. Mr. Raghu holds a senior level position as researcher in the company, since 2010. To share his knowledge and finding in research, company gave him an opportunity to travel to other group companies outside India while continuing to be based at the Gurugram office.

The details of his travel outside India for the financial year 2021-22 are as under:

Country	Period of stay
USA	25 August, 2021 to 10 November, 2021
UK	20 November, 2021 to 23 December, 2021
Germany	10 January, 2022 to 24 March, 2022

During the last four years preceding the previous year 2021-22, he was present in India for 380 days. During the last seven previous years preceding the previous year 2021-22, he was present in India for 700 days. During the P.Y. 2021-22, he earned the following incomes:

- (1) Salary ₹ 15,80,000. The entire salary is paid by the Indian company in his Indian bank account.
- (2) Dividend amounting to ₹ 48,000 received from Treat Ltd., a Singapore based company, which was transferred to his bank account in Singapore.
- (3) Interest on fixed deposit with Punjab National Bank (Delhi) amounting to ₹ 10,500 was credited to his saving account.

Answer

Determination of residential status

Mr. Raghu would be a resident in India in P.Y. 2021-22, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If he satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, he would be a non-resident.

During the P.Y. 2021-22 Mr. Raghu stayed in India for 179 days i.e., 365 days – 186 days [78 days + 34 days + 74 days] and 380 days i.e., more than 365 days during the 4 preceding previous years. He satisfies the second basic condition for being a resident. Hence, he is a resident in India for A.Y.2022-23.

A person would be "Not ordinarily Resident" in India in any previous year, if such person, inter alia,:

- (a) has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or
- (b) has during the 7 previous years immediately preceding the relevant previous year been in India for 729 days or less.

For the previous year 2021-22, Mr. Raghu would be "Resident but not ordinarily resident" since he stayed for less than 729 days during the 7 previous years immediately preceding P.Y. 2021-22.

Computation of total income of Mr. Raghu for A.Y.2022-23

Particulars			Amount (₹)
(1)	Salary from Indian company received in a bank account in India	15,00,000	
	Less: Standard deduction u/s 16(ia)	50,000	14,50,000
(2)	Dividend of ₹ 48,000 received from Singapore based company transferred to his bank account in Singapore is not taxable in the hands of the resident but not ordinarily resident since the income has neither accrued or arisen in India nor has it been received in India.		Nil
(3)	Interest on fixed deposit with PNB credited to his savings bank account is taxable in the hands of Mr. Raghu as Income from other sources, since it has accrued and arisen in India and is also received in India.		10,500
Gross Total Income			14,60,500
Less: Deduction u/s 80TTB			10,500
Total Income			14,50,000

Q35

RTP May 21

Mr. Dhruv, a person of Indian origin and citizen of Country X, got married to Ms. Deepa, an Indian citizen residing in Country X, on 4th February, 2021 and came to India for the first time on 20-02-2021. He left for Country X on 12th August, 2021. He returned to India again on 20-01-2022 with his wife to spend some time with his parents-in law for 30 days and thereafter returned to Country X on 18.02.2022.

He received the following gifts from his relatives and friends of her wife during 01-04-2021 to 31-03-2022 in India:

- From parents of wife ₹ 1,01,000
- From married sister of wife ₹ 11,000
- From very close friends of his wife ₹ 2,82,000

- (a) Determine his residential status and compute the total income chargeable to tax along with the amount of tax payable on such income for the Assessment Year 2022-23.
- (b) Will your answer change if he has received ₹ 16,00,000 instead of ₹ 2,82,000 from very close friends of his wife during the previous year 2021-22 and he stayed in India for 400 days during the 4 years preceding the previous year 2021-22?

Answer

(a) Determination of residential status and computation of total income and tax payable of Mr. Dhruv

Under section 6(1), an individual, being a person of Indian origin and who comes on a visit to India during the previous year and his total income other than the income from foreign source exceeds ₹ 15,00,000, is said to be resident in India, if he stayed in India for a total period of 120 days or more during that previous year and for 365 days or more during the 4 years immediately preceding the relevant previous year.

However, in case, the total income other than the income from foreign source does not exceed ₹ 15,00,000, the said individual is said to be resident in India, only if he stayed in India for a total period of 182 days or more during that previous year.

Since in the present case, total income other than from foreign source, of Mr. Dhruv, a person of Indian origin does not exceed ₹ 15,00,000, he would be said to be resident in India, only if he stayed in India for 182 days or more during the previous year 2021-22 relevant to A.Y. 2022-23.

His stay in India during the previous year 2021-22 is as under: P.Y. 2021-22

01.04.2021 to 12.08.2021	134 days
20.01.2022 to 18.02.2022	30 days
Total	<u>164 days</u>

Since Mr. Dhruv has stayed in India during the previous year for less than 182 days, he is said to be non-resident. Accordingly, his total income and tax payable would be computed in the following manner:

Computation of total income and tax payable of Mr. Dhruv for the A.Y. 2022-23

Particulars	₹
Income from other sources	
Cash gifts received from non-relatives is chargeable to tax as per section 56(2)(x) if the aggregate value of such gifts exceeds ₹ 50,000.	
- ₹ 1,01,000 received from parents of wife would be exempt, since parents of wife fall within the definition of 'relatives' and gifts from a relative are not chargeable to tax.	Nil
- ₹ 11,000 received from married sister-in-law is exempt, since sister of wife falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil
- Gift received from close friends of his wife of ₹ 2,82,000 is taxable under section 56(2)(x) since the said sum exceeds ₹ 50,000.	2,82,000
Total Income	2,82,000
Tax on total income of ₹ 2,82,000 [5% of ₹ 32,000 in excess of ₹ 2,50,000, being the basic exemption limit]	1,600
Add: Health and Education cess@4%	64
Total tax payable	1,664
Total tax payable (rounded off)	1,660

(b) **Determination of residential status and computation of total income and tax payable of Mr. Dhruv (if he has received cash gifts from non-relative for ₹ 16,00,000):**

Where an individual, being a person of Indian origin comes on visit to India and he is having total income other than income from foreign sources exceeding ₹ 15 lakhs during the previous year, such individual is said to be resident in India, if he stays in India during the previous year for 120 days or more and for 365 days or more during the 4 years immediately preceding the relevant previous year. As per section 6(6), such individual whose stay in India is for 120 days or more but less than 182 days in the P.Y. 2021-22 would be resident but not ordinarily resident irrespective of his residential status or no. of days of stay in India in the immediately preceding PYs.

Mr. Dhruv, is a person of India origin who has come on a visit to India during the previous year. Since his total income other than income from foreign sources exceeds ₹ 15,00,000; and his stay in India is for 164 days during the P.Y. 2021-22 and for 400 days during the 4 years immediately preceding the P.Y. 2021-22, he is resident but not ordinarily resident in India for the P.Y. 2021-22.

In such case, his total income and tax payable would be computed in the following manner:

Computation of total income and tax payable of Mr. Dhruv for the A.Y. 2022-23

Particulars	₹
Income from other sources	
Cash gifts received from non-relatives is chargeable to tax as per section 56(2)(x) if the aggregate value of such gifts exceeds ₹ 50,000.	
- ₹ 1,01,000 received from parents of wife would be exempt, since parents of wife fall within the definition of 'relatives' and gifts from a relative are not chargeable to tax.	Nil
- ₹ 11,000 received from married sister-in-law is exempt, since sister of wife falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil
- Gift received from close friends of his wife of ₹ 16,00,000 is taxable under section 56(2)(x) since the amount of cash gifts exceeds ₹ 50,000.	16,00,000
Total Income	16,00,000
Tax on total income of ₹ 16,00,000	2,17,500
Upto ₹ 2,50,000 Nil	
₹ 2,50,001 – ₹ 5,00,000 [₹ 2,50,000 @ 5%] 12,500	
₹ 5,00,001 – ₹ 7,50,000 [₹ 2,50,000 @ 10%] 25,000	
₹ 7,50,001 – ₹ 10,00,000 [₹ 2,50,000 @ 15%] 37,500	
₹ 10,00,001 – ₹ 12,50,000 [₹ 2,50,000 @ 20%] 50,000	
₹ 12,50,001 – ₹ 15,00,000 [₹ 2,50,000 @ 25%] 62,500	
₹ 15,00,001 – ₹ 16,00,000 [₹ 1,00,000 @ 30%] 30,000	
Add: Health and Education cess@4%	8,700
Total tax payable	2,26,200

Note – Since his tax payable as per normal provisions is ₹ 3,04,200 [₹ 2,92,500 (₹ 1,12,500 plus 30% on ₹ 6,00,000 income exceeding ₹ 10,00,000) plus ₹ 11,700, being health and education cess @4%], which is higher than the tax payable computed as per concessional tax rates available under section 115BAC, it is beneficial for him to opt for section 115BAC.

Q 36

May 21 (New)

Mrs. Rohini, aged 62 years, was born and brought up in New Delhi. She got married in Russia in 1996 and settled there since then. Since her marriage, she visits India for 60 days each year during her summer break. The following are the details of her income for the previous year ended 31.03.2022:

S. No.	Particulars	Amount (in ₹)
1.	Pension received from Russian Government	65,000
2.	Long-term capital gain on sale of land at New Delhi (computed)	3,00,000
3.	Short-term capital gain on sale of shares of Indian listed companies in respect of which STT was paid both at the time of acquisition as well as at the time of sale (computed)	60,000
4.	Premium paid to Russian Life Insurance Corporation at Russia	75,000
5.	Rent received (equivalent to Annual Value) in respect of house property in New Delhi	90,000

You are required to ascertain the residential status of Mrs. Rohini and compute her total income and tax liability in India for Assessment Year 2022-23¹.

Answer

An Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India (and whose total income, other than from foreign sources, does not exceed ₹ 15,00,000) would be resident in India only if he or she stays in India for a period of 182 days or more during the previous year.

Since Mrs. Rohini is a person of Indian origin who comes on a visit to India only for 60 days in the P.Y.2021-22 and her income other than from foreign sources does not exceed ₹ 15,00,000, she is non-resident for the A.Y. 2022-23.

A non-resident is chargeable to tax in respect of income received or deemed to be received in India and income which accrues or arises or is deemed to accrue or arise to her in India. Accordingly, her total income and tax liability would be determined in the following manner:

Computation of total income and tax liability of Mrs. Rohini for A.Y. 2022-23

Particulars		Amt (₹)
Salaries		
Pension received from Russian Government [Not taxable, since it neither accrues or arises in India nor is it received in India]		Nil
Income from House Property		
Annual Value [Rental Income from house property in New Delhi is taxable, since it is deemed to accrue or arise in India, as it accrues or arises from a property situated in India]	90,000	

¹ Even if her total income exceeds ₹ 15 lakh, still, she would be non-resident since the minimum period of stay required in the current year for being a resident is 120 days.

Less: Deduction u/s 24(a) @ 30%	27,000	63,000
Capital Gains		
Long-term capital gains on sale of land at New Delhi [Taxable, since it is deemed to accrue or arise in India as it is arising from transfer of land situated in India]		3,00,000
Short-term capital gains on sale of shares of Indian listed companies in respect of which STT was paid [Taxable, since it is deemed to accrue or arise in India, as such income arises on transfer of shares of Indian listed companies]		60,000
Gross Total Income		4,23,000
Less: Deduction under Chapter VI-A		
Deduction under section 80C		63,000
- Life insurance premium ¹ of ₹ 75,000 [Premium paid to Russian Life Insurance Corporation allowable as deduction. However, the same has to be restricted to gross total income excluding LTCG and STCG, as Chapter VI-A deductions are not allowable against such income chargeable to tax u/s 112 and 111A, respectively]		
Total Income		3,60,000
Computation of Tax Liability		
Long-term capital gains taxable @20% u/s 112 [3,00,000 x 20%]		60,000
Short-term capital gains taxable @15% u/s 111A [60,000 x 15%]		9,000
		69,000
Add: Health and Education Cess @4%		2,760
Tax Liability		71,760

Note - The benefit of adjustment of unexhausted basic exemption limit against long-term capital gains taxable u/s 112 and short-term capital gains taxable u/s 111A is not available in case of non-resident. Further, rebate u/s 87A is not allowable to a non-resident, even if his income does not exceed ₹ 5 lakh.

Q 37

May 21 (Old)

Mr. Pratap earned following incomes during the F.Y. 2021-22. He settled in Singapore in the year 1996.

- (1) Interest on Singapore Development Bonds (only 50% of interest received in India) ₹ 35,000.
- (2) Dividend from German Company received in Germany ₹ 28,000.
- (3) Profits from a business in Kanpur, which is managed directly from Singapore ₹ 1,00,000.
- (4) Short term capital gain on sale of shares of an Indian company received in India ₹ 60,000.
- (5) Income from Business in Mumbai ₹ 80,000
- (6) Fees for technical services rendered in India, but received in Singapore ₹ 1,00,000.
- (7) Agricultural Income from land situated in Punjab ₹ 55,000

¹ It is assumed that such premium is paid for self or spouse or any child of Mrs. Rohini

(8) Rent received from house property at Lucknow ₹ 1,00,000.

Compute his total income for the A.Y. 2022-23.

Answer

Computation of total income of Mr. Pratap¹, a non-resident, for the A.Y. 2022-23

Particulars		₹
Interest on Singapore Development Bonds [50% of ₹ 35,000 would be taxable in India in the hands of a non-resident, since the same is received in India. The remaining 50% would not be taxable in India, since it neither accrues in India nor is received in India]		17,500
Dividend from German company received in Germany [Since the accrual and receipt of income are outside India, the same is not taxable in the hands of a non-resident]		-
Profit from business in Kanpur, which is managed from Singapore [Such income from a business in India is deemed to accrue or arise in India in the hands of a non-resident]		1,00,000
Short-term capital gains on sale of shares of an Indian company received in India [Since income arises from transfer of a capital asset situated in India and the same is also received in India, it is taxable in the hands of a non-resident]		60,000
Income from business in Mumbai [Such income from a business in India is deemed to accrue or arise in India and is hence, taxable in the hands of a non-resident]		80,000
Fees from technical services rendered in India, but received in Singapore [Such income from services rendered in India is deemed to accrue or arise in India and is hence, taxable in India]		1,00,000
Agricultural income from land situated in Punjab [Exempt u/s 10(1), both in the hands of resident and non-resident]		-
Rent from house property in Lucknow [Such income from a property situated in India is deemed to accrue or arise in India and hence, is taxable in India in the hands of a non-resident]	1,00,000	
Less: Deduction u/s 24(a)@30%	30,000	
		70,000
Total Income		4,27,500

Q 38

Nov 21 (New)

Examine the tax implications of the following transactions for the assessment year 2022-23: (Give brief reason)

¹ Since the question mentions that Pratap is settled in Singapore in the year 1996, it is logical to assume that he is a non-resident.

- (i) Government of India has appointed Mr. Rahul as an ambassador in Japan. He received salary of ₹ 7,50,000 and allowances of ₹ 2,40,000 during the previous year 2021-22 for rendering his services in Japan. He is an Indian citizen having status of non-resident in India for the previous year 2021-22.
- (ii) Ms. Juhi, a non-resident in India is engaged in operations which are confined to purchase of goods in India for the purpose of export. She has earned ₹ 2,50,000 during the previous year 2021-22.
- (iii) Mr. Naveen, a non-resident in India, has earned ₹ 3,00,000 as royalty for a patent right made available to Mr. Rakesh who is also a non-resident. Mr. Rakesh has utilized patent rights for development of a product in India and 50% royalty is received in India and 50% outside India.
- (iv) Mr. James, a NRI, borrowed ₹ 10,00,000 on 01.04.2021 from Mr. Akash who is also non-resident and invested such money in the shares of an Indian Company. Mr. Akash has received interest @ 12% per annum.

Answer

- (i) As per section 9(1)(iii), salaries (including, inter alia, allowances) payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India.

Thus, salary received from Government by Mr. Rahul, being a non-resident of ₹ 7,50,000 for rendering services in Japan would be taxable in his hands, after allowing standard deduction of ₹ 50,000.

However, any allowance or perquisites paid or allowed outside India by the Government to a citizen of India for rendering services outside India will be fully exempt u/s 10(7). Hence, ₹ 2,40,000, being the allowance would be exempt.

- (ii) 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.

Thus, income of ₹ 2,50,000 arising in the hands of Ms. Juhi would not be taxable in her hands in India, since her operations are confined to purchase of goods in India for the purpose of export.

- (iii) Royalty payable by a non-resident would be deemed to accrue or arise in India in the hands of the recipient only when such royalty is payable in respect of any right, property or information used for the purposes of a business or profession carried on by such non-resident in India or earning any income from any source in India.

In the present case, since Mr. Rakesh, a non-resident, paid the royalty of ₹ 3,00,000 for a patent right used for development of a product in India, the same would be taxable in India in the hands of the recipient, Mr. Naveen, a non-resident, irrespective of the fact that only 50% of the royalty is received in India.

- (iv) Interest payable by a non-resident on the money borrowed for any purpose other than a business or profession in India, would not be deemed to accrue or arise in India.

In the present case, since Mr. James, a non-resident borrowed the money for investment in shares of an Indian company, the interest on such borrowing of ₹ 1,20,000 (₹ 10,00,000 x 12%) payable to Mr. Akash, a non-resident would not be deemed to accrue or arise to him in India. Hence, the same would not be taxable in India in the hands of Mr. Akash.

Q 39

Nov 21 (Old)

Mr. Dhruv, an Indian citizen aged 32 years, a Central Government officer serving in the Ministry of Corporate Affairs, left India for the first time on 31.03.2021 due to transfer to High Commission of UK. He did not visit India any time during the previous year 2021-22. He has received the following income for the previous year 2021-22 :

(i) Salaries received for services rendered in London (computed)	20,00,000
(ii) Foreign Allowances	10,00,000
(iii) Interest on saving bank deposit in State Bank of India	1,00,000
(iv) Short term capital gains on sale of shares of an Indian Company received in London	2,00,000
(v) Dividend from PP Ltd., an Indian company paid in London	50,000
(vi) Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels	1,80,000

Compute the Total Income of Mr. Dhruv for the Assessment Year 2022-23.

Answer

Mr. Dhruv is a non-resident for the A.Y. 2021-22, since he was not present in India at any time during the previous year 2020-21.

A non-resident is chargeable to tax in India only in respect of following incomes:

- Income received or deemed to be received in India; and
- Income accruing or arising or deemed to accrue or arise in India.

Computation of total income of Mr. Dhruv, a non-resident, for the A.Y. 2021-22

Particulars	₹
Salaries received for services rendered in London (computed) [Taxable, since the income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii)]	20,00,000
Foreign allowances [Allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7)]	-
Interest on saving bank deposit in State Bank of India [Since interest income is from a source (i.e., bank deposit) in India, it is deemed to accrue or arise in India]	1,00,000
Short term capital gains on sale of shares of an Indian company received in London [Since income arises from transfer of a capital asset situated in India, it is taxable in the hands of a non-resident]	2,00,000
Dividend from PP Ltd., an Indian company paid in London [Since the dividend paid by an Indian company outside India is deemed to accrue or arise in India, it is taxable in the hands of non-resident]	50,000

Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels [Not taxable, since neither the property is situated in India nor rent is received in India]	-
Gross Total Income	23,50,000
Less: Deduction under section 80TTA	
Interest on saving bank account subject to a maximum of ₹ 10,000	10,000
Total Income	23,40,000

Q 40

MTP Oct 21

Mrs. Jasmin, an Australian citizen, got married to Mr. Kapil of India in Australia on 2.01.2021 and came to India for the first time on 18.03.2021. She left for Australia on 10.8.2021. She returned to India again on 23.02.2022.

On 01.04.2021, she had purchased a Flat in Mumbai, which was let out to Mr. Sunil on a rent of ₹ 28,000 p.m. from 1.5.2021. She had taken loan from an Indian bank for purchase of this flat on which bank had charged interest of ₹ 2,15,500 upto 31.03.2022.

While in India, during the previous year 2021-22, she had received a gold chain from her in-laws worth ₹ 1,50,000, a car worth ₹ 6,25,000 from married sister of her husband and ₹ 1,72,000 from very close friends of her husband.

Determine her residential status and compute her gross total income chargeable to tax for the Assessment Year 2022-23

Answer

Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year .

If an individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Mrs. Jasmin, an Australian, for A.Y.2022-23 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2022-23 i.e. P.Y.2021-22 and in the preceding four assessment years.

Her stay in India during the previous year 2021-22 and in the preceding four years are as under:

P.Y. 2021-22	
01.04.2021 to 10.08.2021	132 days
23.02.2022 to 31.03.2022	37 days
Total	169 days

Four preceding previous years

P.Y.2020-21 [1.4.2020 to 31.3.2021]	14 days
P.Y.2019-20 [1.4.2019 to 31.3.2020]	Nil
P.Y.2018-19 [1.4.2018 to 31.3.2019]	Nil
P.Y.2017-18 [1.4.2017 to 31.3.2018]	Nil
Total	14 days

The total stay of Mrs. Jasmin during the previous year in India was less than 182 days and during the four years preceding this year was for 14 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the Assessment Year 2022-23.

Computation of gross total income of Mrs. Jasmin for the A.Y. 2022-23

Particulars	₹	₹
Income from house property		
Flat located in Mumbai let-out from 01.05.2021 to 31.03.2022		
@ ₹ 28,000/- p.m.		
Gross Annual Value [28,000 x 11] ¹	3,08,000	
Less: Municipal taxes	Nil	
Net Annual Value (NAV)	3,08,000	
Less: Deduction under section 24		
30% of NAV	92,400	
Interest on loan [fully allowable as deduction, since property is let-out]	2,15,500	3,07,900
Income from other sources		
- Gold chain worth ₹ 1,50,000 received from parents of husband would be exempt, since parents of husband fall within the definition of relatives and gifts from a relative are not chargeable to tax.	Nil	
- Car worth ₹ 6,25,000 received from married sister of her husband is exempt, since sister-in-law falls within the definition of relative and gifts from a relative are not chargeable to tax. Moreover, car is not included in the definition of property.	Nil	
- Gift received from friends of her husband aggregating to ₹ 1,72,000 is taxable under section 56(2)(x) since the amount of cash gifts of ₹ 1,72,000 exceeds ₹ 50,000.	1,72,000	1,72,000
Gross Total income		1,72,100

¹ Actual rent received has been taken as the gross annual the value in absence of other information (i.e. Municipal value, fair rental value and standard rent) in the question.

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MTP Nov 21

Mr. Thomas, a citizen of Japan, comes to India for the first time during the P.Y. 2017-18. During the financial years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, he was in India for 50 days, 65 days, 95 days, 150 days and 75 days, respectively. Determine his residential status for the A.Y. 2022-23. Examine the tax implications in the hands of Mr. Thomas for the Assessment Year 2022-23 of the following transactions entered by him.

- (1) Interest received from Mr. Michel, a non-resident outside India (The borrowed fund is used by Mr. Michel for investing in Indian company's debt fund for earning interest).
- (2) He is also engaged in the business of running news agency and earned income of ₹ 5 lakhs from collection of news and views in India for transmission outside India.
- (3) He entered into an agreement with ABC & Co., a partnership firm for transfer of technical documents and design and for providing services relating thereto, to set up a Steel manufacturing plant, in India. He charged ₹ 15 lakhs for these services from ABC & Co.

Answer

Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If an individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

During the previous year 2021-22, Mr. Thomas was in India for 75 days and during the 4 years preceding the previous year 2021-22, he was in India for 360 days (i.e. 50+ 65+ 95+ 150 days).

The total stay of the Mr. Thomas during the previous year in India was less than 182 days and during the four years preceding this year was for 360 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, he would be treated as non-resident for the Assessment Year 2022-23.

- (1) Not taxable, since interest payable by a non-resident to another non-resident would be deemed to accrue or arise in India only if the borrowed fund is used for the purposes of business or profession carried on by him in India. In this case, it is used for investing in Indian company's debt fund for earning interest and not for the purposes of business or profession. Hence, it is not taxable in India.
- (2) No income shall be deemed to accrue or arise to Mr. Thomas through or from activities which are confined to the collection of news and views in India for transmission outside India. Hence, ₹ 10 lakhs is not taxable in India in the hands of Mr. Thomas.
- (3) ₹ 10 lakhs is deemed to accrue or arise in India to Mr. Thomas, a non-resident, since it represents royalty/fees for technical services paid for services utilized in India, in this case, for setting up a Steel manufacturing plant in India. Hence, the same would be taxable in India in the hands of Mr. Thomas.