

2. RESIDENTIAL STATUS - I

CONCEPT WISE ANALYSIS OF PREVIOUS EXAMINATIONS OF IPCC AND CA INTER (THEORY)

No.	Chapter / Concept Name	ABC	M-15	N-15	M-16	N-16	M-17	N-17	M-18(O)	M-18(N)	N-18(O)	N-18(N)	M-19(O)	M-19(N)	N-19(O)	N-19(N)	N-20(O)	N-20(N)
1.	Residential Status of Individuals	A	-	-	-	-	-	-	-	-	-	6	4	-	-	-	5	-
2.	Residential Status of HUF	B	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-
3.	Residential Status of Company & Others	B	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	Scope of Total Income	A+	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-

CONCEPT WISE ANALYSIS OF PREVIOUS EXAMINATIONS OF IPCC AND CA INTER (PROBLEMS)

No.	Chapter / Concept Name	ABC	N-09	M-10	N-10	M-11	N-11	M-12	N-13 TO M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18(O)	M-18(N)
1.	Determination of Residential Status, Tax	A	-	10	-	4	4	4	8	-	4	8	-	4	4	5	5	10

SIGNIFICANCE OF EACH PROBLEM COVERED IN THIS MATERIAL

Problem No. in this material	Problem No. in NEW SM	Problem No. in OLD SM	Problem No. in OLD PM	RTP	MTP	Previous Exams	Remarks
CR 1	ILL 2 (90%)	ILL 2	-	-	-	-	
CR 2	ILL 3	ILL 3	-	-	-	-	
CR 3	ILL 4	ILL 4	-	-	-	-	
CR 4	ILL 9	-	PQ 19	-	-	-	
CR 5	EX 1	-	PQ 7	-	-	-	
CR 6	ILL 6	ILL 6	-	-	-	-	
CR 7	-	-	-	-	-	N18 (O) - 5M	
CR 8	ILL 11	ILL 8	-	-	-	-	
CR 9	PQ 4	-	PQ 2	-	-	-	
CR 10	ILL 10	-	PQ 6	-	-	-	
ASG 1	PQ 3	-	PQ 1	N17	-	-	
ASG 2	PQ 2	-	PQ 10	-	N16	-	
ASG 3	ILL 8	-	PQ 4	-	-	-	
ASG 4	PQ 3	-	PQ 8	-	-	N18 (N) - 6M (80%)	
ASG 5	-	-	PQ 13	-	-	-	
ASG 6	-	-	-	-	-	N17- 5M	
ASG 7	-	-	-	-	-	M18 (O) - 5M	
ASG 8	-	-	-	-	-	M18 (N) - 10M	

CHAPTER OVERVIEW

SECTION	TOPIC	STARTING PAGE NO.
1.	THEORY FOR CLASSROOM DISCUSSION	2.2
2.	PROBLEMS FOR CLASSROOM DISCUSSION	2.7
3.	PRINTED SOLUTIONS TO SOME SELECTIVE PROBLEMS	2.10
4.	ASSIGNMENT PROBLEMS	2.14
5.	ADDITIONAL PROBLEMS FOR STUDENTS SELF PRACTICE	2.16
6.	TEST YOUR KNOWLEDGE	2.18

SECTION 1: THEORY FOR CLASSROOM DISCUSSION

RESIDENTIAL STATUS (SECTION: 6)

SIGNIFICANCE OF RESIDENTIAL STATUS:

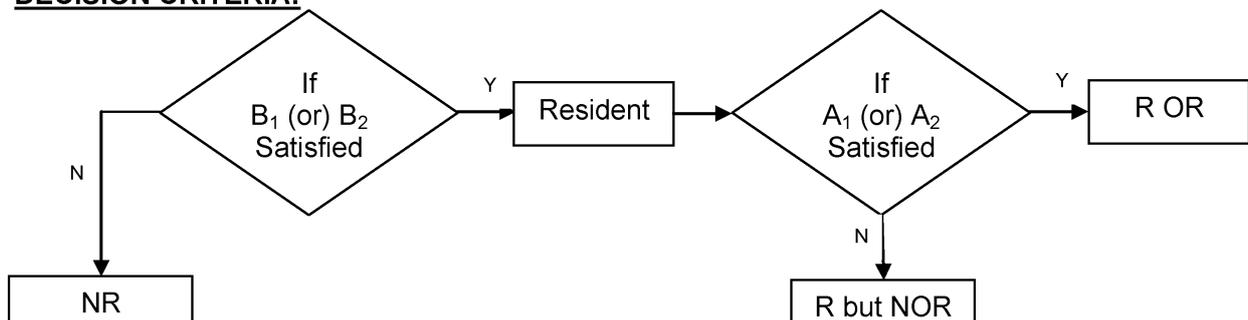
- 1) Total income of a person can't be determined without knowing his residential status.
- 2) For the purpose of determining whether a particular income shall be taxed in India or not will depend upon the residential status of the person and type of income.
- 3) Residential status is always determined for the previous year.
- 4) A person may be a resident for more than one country for any previous year.
- 5) Citizenship of a country and residential status of that country are separate concepts.
- 6) If an assessee is resident then he is resident for all sources of income.
- 7) Residential status is determined for each category of persons separately.

1. RESIDENTIAL STATUS FOR INDIVIDUALS

- 1) Residential status of Individual is classified into 3 types:
 - a) Resident and ordinarily resident
 - b) Resident but not ordinarily resident
 - c) Non-resident
- 2) In India the residential status of an Individual depends on his physical presence or number of days he / she stayed in India and not on his nationality or domicile. if he satisfies **any one** of the following conditions:

Basic Conditions for determining R OR NR	Additional Conditions for determining OR (or) NOR
B1: 182 days or more in the relevant PY (OR)	A1: "Resident" in India for 2 years out of 10 years immediately preceding RPY (AND)
B2: 60 days or more in the relevant PY and 365 days or more in four immediately preceding RPY	A2: "Present in India for 730 days or more during 7 years immediately preceding RPY

3) **DECISION CRITERIA:**



- 4) **EXCEPTIONS:** Exceptions to fulfillment of both the above two conditions (i.e. cases where only first condition is to be checked) (i.e B2 is not applicable):
- Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India, or
 - Indian citizen or person of Indian origin who, being outside India comes on a visit to India during the relevant previous year.

However, such person having total income, other than the income from foreign sources exceeding ₹ 15 lakhs during the previous year will be treated as resident in India if -

- The period of his stay during the relevant previous year amounts to 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 120 days in the previous year.

- 5) **DEEMED RESIDENT [SECTION 6(1A)]:** An individual, being an Indian citizen, having total income, other than the income from foreign sources exceeding ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

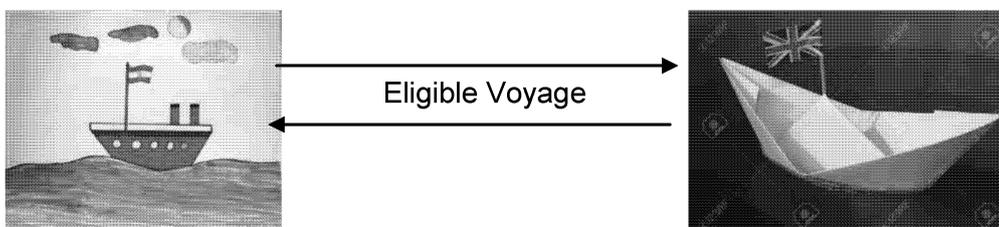
However, this provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).

a) **The below persons shall always be treated as RNOR**

- Indian citizen are person of an Indian origin having total income (Other than Income from Foreign sources) s but less than 182 days.
- Indian citizen who fulfexceeding Rs 15 lakhs have been in India for a period of More than or equal to 120 dayilled the condition specified u/s 6(1A)(i.e Deemed resident)

NOTES:

- Income from Foreign sources:** income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India],
- A person is said to be an Indian origin, if his parents or Grand-parents were born in India before 1947.
- Citizenship will depend upon the place of birth, where as the residential status will be determined considering the number of days of stay in India in the relevant previous year.
- Employment includes self-employment. It means taking a job outside India, shifting his place of business or profession outside India. Employment does not mean going outside India for Education, Export Promotion, tour or training.
- While calculating the period of stay in India of a crew member following period shall be excluded



The period beginning from the date of entering into continuous discharge certificate and ending with the date on which that individual signing off that agreement.

FOCUS POINTS:

- Stay at the same place in India is not necessary as well as a regular stay is also not necessary. Purpose of stay is also immaterial.
- Residential status is always determined on hourly basis but if information is not available of the day on which he enters India as well as of the day on which he leaves India, then the day of arrival and the day of departure, both shall be taken in to the account.

For instance, Mr. Ram a citizen of USA stayed for a period of 100 days & 2 hours in India at his first visit and stayed for a period of 80 days and 4 hours in India at his second visit. But Mr. Ram has not intimated about the period of stay in India. In this case the day he entered in to India and leaved India, both shall be considered for the purpose of calculation of stay in India.

- 3) India includes territorial waters of India. Therefore, stay in territorial waters to be counted.

TIT BIT 1: Determine the Residential Status of Mr. X and Mr. Y

Year	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14	2012-13	2011-12	2010-11	Ans.
Days (X)	84	70	60	70	34	365	182	125	190	-	-	
Days (Y)	182	60	91	92	91	91	-	100	100	50	60	

TIT BIT 2: During the previous year 2020-21, a sailor has remained on ship for a private company owning ocean going ships as follows.

- Outside the territorial waters of India for 183 days
- Inside the territorial waters of India for 182 days.

Is he considered to be resident or not for the Assessment Year 2021-22. Comment

(ANS.: THE SAILOR IS TREATED AS A RESIDENT IN INDIA FOR THE ASSESSMENT YEAR 2020-21)

ILLUSTRATION 1: Mr. Anand is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Chennai port on 6th June, 2020. From the following details for the P.Y.2020-21, determine the residential status of Mr. Anand for A.Y.2021-22, assuming that his stay in India in the last 4 previous years (preceding P.Y.2020-21) is 400 days and last seven previous years (preceding P.Y.2020-21) is 750 days:

(NEW SM, M17-4M, RTP N16)

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Anand	6 th June, 2020
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Anand	9 th December, 2020

SOLUTION: In this case, the voyage is undertaken by an Indian ship engaged in the carriage of passengers from Chennai port to the Singapore port. Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period begins with 6th June, 2020 and ends with 9th December, 2020, being the dates entered into the Continuous Discharge Certificate in respect of Mr. Anand, has to be excluded for computing the period of his stay in India.

Accordingly, 187 days [25 + 31 + 31 + 30 + 31 + 30 + 9] have to be excluded from the period of his stay in India. Consequently, Mr. Anand's period of stay in India during the P.Y.2020-21 would be 178 days [i.e., 365 days - 187 days]. Since his period of stay in India during the P.Y.2020-21 is less than 182 days, he is a non-resident for A.Y.2021-22.

NOTE: Since the residential status of Mr. Anand is "non-resident" for A.Y. 2021-22 consequent to his number of days of stay in P.Y.2020-21 being less than 182 days, his period of stay in the earlier previous years become irrelevant.

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) and received into the NRE bank account maintained with an Indian bank shall not be included in the total income.

2. RESIDENTIAL STATUS OF HUF

Control & Management	Residential status of HUF	Ordinarily Resident or not (If Karta satisfies)		
		AC*-1	Y	In all other cases
Wholly In India	R	AC*-1	Y	In all other cases
Partly in India and Partly outside India		AC-2	Y	
			ROR	RBNOR
Wholly outside India	NR			

*AC - Additional conditions are same as in Residential Status of Individual.

NOTE:

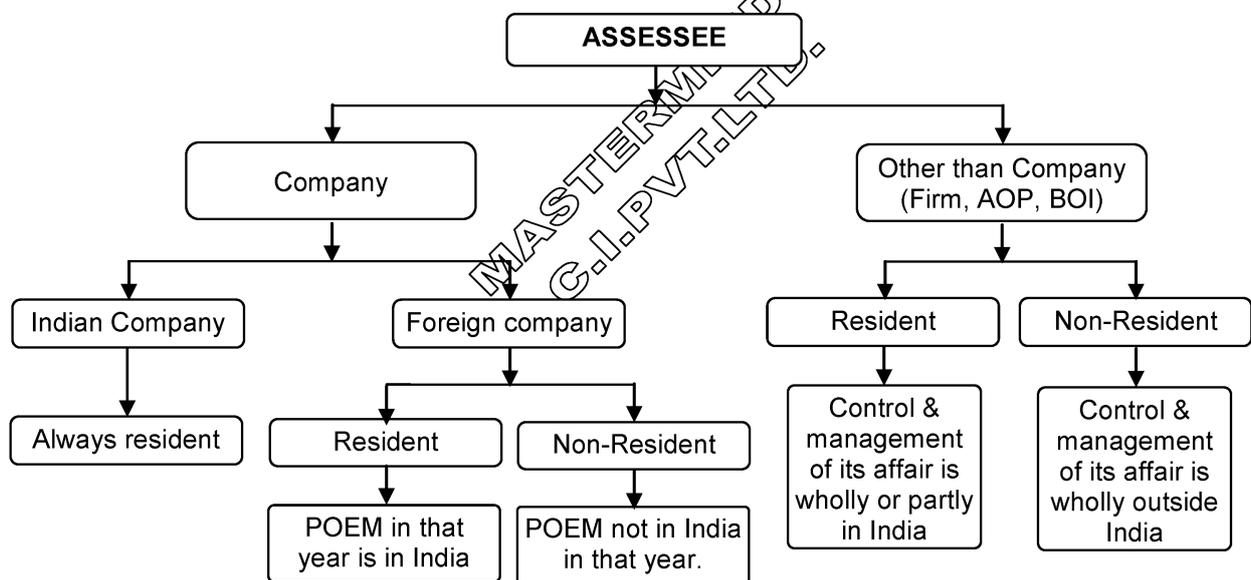
- 1) The expression 'control and management' referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.
- 2) The business may be done from outside India and yet its control and management may be wholly within India

TIT BIT 3:

State Whether the Following statements are True (T) or False (F):

- 1) Whether HUF is R or NR depends upon the residential status of Karta - F
- 2) Whether HUF is ROR or RNOR depends upon the residential status of Karta - T
- 3) Residential status of an assessee once fixed is fixed forever. - F

3. RESIDENTIAL STATUS OF COMPANY & OTHER PERSONS (W.E.F. A.Y 2017 - 18)



NOTE:

- 1) Place of effective management. (POEM)
 "Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.
- 2) Residential status of a local authority ⇒ Always Resident in India

TIT BIT 4:

- 1) Santosh Ltd., is registered in India. Its entire share capital is held by an American Citizen and board meetings are generally held in USA. Its factory is located outside India. Determine Its residential status - Ans. R
- 2) What would be your answer if the company is registered in Pakistan and board meetings are held in USA - Ans. NR

- 3) What would be your answer if the company is registered in Pakistan and all the board meetings of the relevant previous year were held in India except one which was held in South Africa - Ans. Resident
- 4) What would be your answer if the company is registered in South Africa and all the board meetings of the relevant previous year were held in India - Ans. R

TIT BIT 5:**Determine the residential status of M/s. Raja & Co. (Partnership Firm) in the following cases:**

- 1) The partners of the firm keep their dwelling place in Srilanka. The business is wholly controlled by Mr. Ravan and Mr. Meghanath (being a sleeping partner) - Ans. NR
- 2) The partners of the firm keep their dwelling place in Srilanka. The business is wholly controlled by Mr. Kumbhakarna, the manager of the firm, who lives in India. The partners however keep tab of Mr. Kumbhakarna's decision - Ans. R
- 3) The partners of the firm keep their dwelling place in Srilanka. The business is wholly controlled by both the partners. However, both the partners were in Ayodhya for 360 days in the relevant previous year - Ans. R

ILLUSTRATION 2: ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2020 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for A.Y.2021-22.

SOLUTION: In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for P.Y.2020-21 only if its place of effective management, in that year, is in India.

In the case of ABC Inc., its place of effective management for P.Y.2020-21 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc., being a foreign company is a non-resident for A.Y.2021-22, since its place of effective management is outside India in the P.Y.2020-21.

4. SCOPE OF TOTAL INCOME - SEC.5**INCOMES CAN BE DIVIDED INTO TWO TYPES:**

- 1) Indian Income - Income accrued* or received** in India
- 2) Foreign Income - Income accrued* and Income received** outside India

NOTE:

- 1) Source of income located in India - Indian income
- 2) Source of income located outside India – Foreign income
- 3) *Accrued includes deemed to be accrued
- 4) **Received includes deemed to be received

The scope of total income of a person depends upon the residential status of that person for the relevant assessment year.

Particulars	Resident & Ordinarily resident	Resident but not ordinarily resident	Non-resident
1) Income received or deemed to be received in India	T	T	T
2) Income accruing or arising or deemed to accrue or arise in India	T	T	T

3) Income accruing or arising outside India from:			
a) Business controlled from India(or) profession set up in India	T	T	NT
b) Any other source	T	NT	NT

Where T = taxable, NT = Non-taxable

FOCUS POINTS:

- a) **ROR:** Entire global income is taxable
- b) **RBNOR:** Indian Income and Foreign Income earned outside India from a business controlled from India is taxable.
- c) **NR:** Only those Incomes which are received or earned in India.

CRUX OF SECTION 5 AND SECTION 9:

WHERE TAX INCIDENCE ARISES IN CASE OF	ROR	RBNOR	NR
Income received in India (whether accrued in or outside India)	Y	Y	Y
Income deemed to be received in India (whether accrued in or outside India)	Y	Y	Y
Income accruing or arising in India (whether received in or outside India)	Y	Y	Y
Income deemed to accruing or arising in India (whether received in or outside India)	Y	Y	Y
Income received or accrued outside India from a business controlled from India or a profession set up in India.	Y	Y	N
Income received or accrued outside India from a business controlled from outside India or a profession set up outside India.	Y	N	N
Income earned and received outside India but later on remitted to India (whether tax incidence arises at the time of remittance)	N	N	N
Past untaxed profits (not taxable as relates to past years)	N	N	N
Agricultural income in India {exempt u/s. 10(1)}	N	N	N
Gifts from relatives or on marriage or will etc. or gifts from others up to Rs.50,000	N	N	N

SECTION 2: PROBLEMS FOR CLASSROOM DISCUSSION

PROBLEM NO.1: Mr. B, a Canadian citizen, comes to India for the first time during the P.Y 2016-17. During the financial years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 he was in India for 55 days, 60 days, 90 days, 150 days and 70 days respectively. Determine his residential status for the A.Y. 2021-22.

(NEW SM, OLD SM) (ANS.: NON RESIDENT)

(SOLVE PROBLEM NO. 2, 7 OF ASSIGNMENT PROBLEMS AS REWORK)

Note: _____

PROBLEM NO.2: Mr. C, a Japanese citizen left India after a stay of 10 years on 01-06-2018. During the financial year 2020-21, he comes to India for 46 days. Later, he returns to India for 1 year on 10-10-2019. Determine his residential status for the A.Y. 2021-22.

(NEW SM, OLD SM) (MTP M15) (ANS.: MR. C IS RESIDENT AND ORDINARY RESIDENT)

Note: _____

PROBLEM NO.3: Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years.

- a) Find out his residential status for the assessment year 2021-22.
- b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in Australia and represents the Australian cricket team?

- c) What would be your answer if Srinath had visited India for 120 days instead of 100 days every year, including P.Y.2020-21?

PROBLEM NO 4: Mr. Soham, an Indian Citizen, left India on 20-04-2018 for the first time to setup software Firm in Singapore. On 10-04-2020, 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 15-05-2020 and was able to complete his assignment on 20-08-2020. He left for Singapore on 21-08-2020. He charged Rs.50 lakhs for his services from LK Limited.

Determine the residential status of Mr. Soham for the Assessment Year 2021-22 and explain as to be taxability of the fees charged from LK Limited as per the Income Tax Act, 1961.

(NEW SM) (ANS.: HE IS NON-RESIDENT)

Note: _____

PROBLEM NO.5: Mr. Ram, an Indian citizen, left India on 22.09.2020 for the first time to work as an officer of a company in Germany.

Determine the residential status of Ram for the assessment year 2021-22 and explain the conditions to be fulfilled for the same under the Income-tax Act, 1961.

(NEW SM) (ANS.: HE IS NON-RESIDENT)

Note: _____

PROBLEM NO.6: The business of a HUF is transacted from Australia and all the policy decisions are taken there. Mr. E, the karta of the HUF, who was born in Kolkata, visits India during the P.Y. 2020-21 after 15 years. He comes to India on 01-04-2020 and leaves for Australia on 01-12-2020. Determine the residential status of Mr. E and the HUF for A.Y. 2021-22. (Assuming that Assessee's total income does not exceeds 15,00,000 except Income from Foreign sources.)

(NEW SM, OLD SM)

(ANS.: HUF IS NON-RESIDENT AND MR. E, THE KARTA IS A RESIDENT BUT NOT ORDINARY RESIDENT)

Note: _____

PROBLEM NO.7: 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, 2020 as stamped in the passport. He has been in India for less than 365 days during last 4 years immediately preceding the previous year and has not been in India for at least 60 days in the previous year.

Determine:

- a) Residential status of Mr. Surya and
- b) Total Income for the assessment year 2021-22 from the following information.
 - i) Dividend amounting to Rs. 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, 2020. Interest on the borrowed money for the previous year 2020-21 amounted to Rs. 2,500.
 - ii) Short term capital gain on the sale of shares of Trena India Ltd. a listed Indian Company amounting to Rs. 35,000. The sale proceeds were credited to his Swiss bank account.
 - iii) Interest on fixed deposit with State Bank of India (Mumbai) amounting to Rs. 8,000 was credited to his saving account.

(N18 (O) - 5M)

Note: _____

PROBLEM NO.8: Determine the taxability of the following incomes in the hands of a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2021-22.

Particulars	Amount (Rs.)
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
Profits on sale of shares of an Indian company received in London	20,000
Dividend from British company received in London	5,000
Profits 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 (Rs. 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from property in London deposited in a Indian Bank at London, brought to India	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 Bombay managed from London	26,000
Pension for services rendered in India but received in Burma	4,000
Income from property situated in Pakistan received there	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

MTP-M19(N)(NEW SM, OLD SM) (ANS.: TOTAL INCOME OF INDIVIDUAL IS IF ROR 3,46,000, IF RNOR 2,12,000 AND NR 1,77,000)
(SOLVE PROBLEM NO. 3, 4, 8 OF ASSIGNMENT PROBLEMS AS REWORK)

Note: _____

PROBLEM NO.9: Mrs. Geetha and Mrs. Leena are sisters and they earned the following income during the financial Year 2020-21. Mrs. Geetha is settled in Malaysia since 1987 and visits India for a month every year. Mrs. Leena is settled in Indore since her marriage in 1995. Compute the total income of Mrs. Geetha and Mrs. Leena for the assessment year 2021-22:

S.No.	Particulars	Mrs. Geetha	Mrs. Leena
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)	Dividend from a Malaysian company received in Malaysia	15,000	8,000
vi)	Cash gift received form a friend on Mrs. Leena's 50th birthday	-	51,000
vii)	Agricultural income from land in Maharashtra	7,500	4,000
viii)	Past foreign untaxed income brought to India	5,000	-
ix)	Fees for technical services rendered in India received in Malaysia	25,000	-
x)	Income from a business in Pune (Mrs. Geetha receives 50% of the income in India)	12,000	15,000
xi)	Interest on debentures in an India company (Mrs. Geetha received the same in Malaysia)	18,500	14,000

xii)	Short-term capital gain on sale of shares of an Indian company	15,000	25,500
xiii)	Interest on savings account with SBI	12,000	8,000
xiv)	Life insurance premium paid to LIC	-	30,000

(NEW SM) (ANS.: TOTAL INCOME OF MRS. GEETHA IS RS.1,17,500 AND MRS. LEENA IS RS. 92,500)

(SOLVE PROBLEM NO. 1, 5 OF ASSIGNMENT PROBLEMS AS REWORK)

Note: _____

SECTION 3: PRINTED SOLUTIONS TO CLASSROOM DISCUSSION PROBLEMS

PROBLEM NO.1

During the previous year 2020-21, Mr. B was in India for 70 days and during the 4 years preceding the previous year 2020-21, he was in India for 355 days (i.e. 55+ 60+ 90+150 days).

Thus, he does not satisfy section 6(1). Therefore, he is a non-resident for the previous year 2020-21.

PROBLEM NO.2

During the previous year 2020-21, Mr. C was in India for 173 days (i.e. 22+30+31+31+28 +31 days). His stay in the last 4 years is:

Previous Year	2019-20	2018-19	2017-18	2016-17
No. of days of stay	46	62	365***	366***

***Since he left India on 01.06.2018 after 10 years

Total stay of Mr. C in the last 4 years = 838 days (46 + 62 + 365 + 365 days)

Mr. C is a resident since his stay in the previous year 2020-21 is 173 days and in the last 4 years is more than 365 days.

For the purpose of being ordinarily resident, it is evident from the above calculations, that

- his stay in the last 7 years is more than 729 days and
- Since he was in India for 10 years prior to 01.06.2018, he was a resident in at least 2 out of the last 10 years preceding the relevant previous year.

Therefore, Mr. C is a resident and ordinarily resident for the A.Y. 2021-22.

PROBLEM NO.3

- a) **Determination of Residential Status of Mr. Brett Lee for the A.Y. 2021-22:-**

Period of stay during previous year 2020-21 = 100 days

Calculation of period of stay during 4 preceding previous years (100 x 4=400 days)

2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days
Total	400 days

Mr. Brett Lee has been in India for a period more than 60 days during previous year 2020-21 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the assessment year 2021-22.

Computation of period of stay during 7 preceding previous years = 100 x 7=700 days

2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days

2015-16	100 days
2014-15	100 days
2013-14	100 days
Total	700 days

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the assessment year 2021-22. (See Note below)

Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2020-21 relevant to the assessment year 2021-22.

NOTE: An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,

- a) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- b) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Brett Lee satisfies condition (ii), he is a not-ordinarily resident for the A.Y. 2021-22.

- c) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in Australia, comes on a visit to India, he would be treated as non-resident in India, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.
- d) In this case, if Srinath's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2020-21, since his stay in India is 120 days in the P.Y.2020-21 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) does not exceed ₹ 15 lakh, he would be treated as non-resident in India for the P.Y.2020-21, since his stay in India is less than 182 days in the P.Y.2020-21.

PROBLEM NO.4

A. Computation of Residential status of Mr. Soham for the A.Y.21-22

i) **Conditions:**

B1: He is in India for at least 182 days during the P.Y.2020-21

OR

B2: He is in India for at least 120 days during the P.Y. 20-21 and at least 365 Days during 4 years preceding the P.Y.2020-221

ii) **Actual stay:** 99 days only during the P.Y. 20-21

Mr. Soham is treated as Non- resident, because he was satisfied none of the conditions specified above.

Note: This is an Exceptional case (i.e Indian citizen or persons of an Indian origin comes to India on visit & his Indian source of income exceeds 15 Lakhs).

B. Taxability of Fee charged from LK Ltd:

Fee charged from LK Ltd is taxable in the hands of Mr.Soham even if he is a Non- resident, because the services were rendered in India (i.e Accrued in India)

Note: Income accrued or arise in India is taxable in the hands of all Assessees irrespective of residential status.

PROBLEM NO.5

An individual being an Indian citizen leaving India for employment, is said to be resident in India in any previous year if he has been in India during the previous year for a total period of 182 days or more

During the previous year 2020-21, Mr. Ram, an Indian citizen, was in India for 175 days only (i.e.,30 + 31 + 30 + 31 + 31 + 22 days).

Since he does not satisfy the minimum criteria of 182 days, he is a non-resident for the A.Y. 2021-22.

PROBLEM NO.6

- a) During the P.Y. 2020-21, Mr. E has stayed in India for 245 days (i.e.30+31+30+31+31+30 +31+30+1 days). Therefore, he is a resident. However, since he has come to India after 15 years, he does not satisfy any of the conditions for being ordinarily resident.

Therefore, the residential status of Mr. E for the P.Y. 2020-21 is resident but not ordinarily resident.

- b) Since the business of the HUF is transacted from Australia and nothing is mentioned regarding its control and management, it is assumed that the control and management is also wholly outside India. Therefore, the HUF is a non-resident for the P.Y. 2020-21.

PROBLEM NO.7**a) 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:
- ii) He has been in India during the previous year for a total period of 182 days or more, or
- iii) 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 A.Y.2021-22.

b) Computation of total income of Mr. Surya for A.Y.2021-22

Particulars		Amount (Rs)
1)	i) Dividend of Rs 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. ii) Since dividend is not taxable in India, interest paid for investment is not allowable as deduction.	Nil
2)	iii) 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)	iv) 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

PROBLEM NO.8**Computation of total income for the A.Y. 2021-22**

Particulars	ROR (Rs.)	RB NOR (Rs.)	NR (Rs.)
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
Profits on sale of shares of an Indian company received in London (assuming that they are in the nature of short-term capital gains)	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Profits 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 Rs. 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 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 a business in Bombay managed from London	26,000	26,000	26,000
Pension for services rendered in India but received in Burma	4,000	4,000	4,000
Income from property situated in Pakistan 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 u/s 10(1)]	-	-	-
Gross Total Income	3,56,000	2,22,000	1,87,000
Less: Deduction under section 80TTA [Interest on savings bank account subject to a maximum of Rs. 10,000]	(10,000)	(10,000)	(10,000)
Total Income	3,46,000	2,12,000	1,77,000

PROBLEM NO. 9

The residential status of Mrs. Geetha and Mrs. Leena has to be determined on the basis of the number of days of their stay in India. Since Mrs. Geetha is settled in Malaysia since 1986, she would be a non-resident for A.Y. 2021-22. Her visit to India for a month every year would not change her residential status. However, Mrs. Leena would be resident and ordinarily resident for A.Y. 2021-22, since she is settled in India permanently since 1994.

Based on their residential status, the total income of Mrs. Geetha and Mrs. Leena would be determined as follows:

Computation of total income of Mrs. Geetha & Mrs. Leena for the A.Y. 2021-22

Particulars	Mrs. Geetha (NR) (Rs.)	Mrs. Leena (Resident) (Rs.)
Income from profession in Malaysia (set up in India) received there (Note 1)	-	-
Profit from business in Delhi, but managed directly from Malaysia (Note 1)	40,000	-
Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels (Note 1)	-	-
Dividend from PQR Ltd. an Indian Company	5,000	9,000
Dividend from Malaysian Company received in Malaysia (Note 1)	-	8,000
Cash gift received from a friend on Mrs. Leena's 50th birthday Note: As per section 56(2)(x), cash gifts received from a non-relative would be taxable, if the amount exceeds Rs. 50,000 in aggregate during the PY.	-	51,000
Agricultural income from land in Maharashtra [Exempt u/s 10(1), both in the hands of Non-Resident and resident].	-	-
Past foreign untaxed income brought to India	-	-

[Not taxable, since it does not represent income of the P.Y.2019-20].		
Fees for technical services rendered India, but received in Malaysia (Note 1)	25,000	-
Income from a business in Pune (Mrs. Geetha receives 50% of the income in India) (Note 2)	12,000	15,000
Interest on debentures in an Indian company (Mrs. Geetha received the same in Malaysia) (Note 2)	18,500	14,000
Short-term capital gain on sale of shares of an Indian company (Note 2)	15,000	25,500
Interest on savings account with SBI (Note 2)	<u>12,000</u>	<u>8,000</u>
Gross Total income	1,27,500	1,30,500
Less: Deductions under Chapter VIA		
Section 80C [Life insurance premium paid] [Assuming that premium paid is within the specified percentage (10%/20%, as the case may be) of capital sum assured]	-	30,000
Section 80TTA:	10,000	8,000
(In case of an individual, interest upto Rs. 10,000 from savings account the, inter alia, a bank is allowable as deduction under section 80TTA)		
Total Income	1,17,500	92,500

NOTES:

1) 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:

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

Therefore, income from profession in Malaysia, rent from property in Malaysia and dividend from Malaysian company received in Malaysia by Mrs. Geetha, 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. Geetha, even though it is managed directly from Malaysia.

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

2) The income referred to in S. No. 10, 11, 12 and 13 are taxable in the hands of both Mrs. Geetha and Mrs. Leena due to their accrual/deemed accrual in India, even though a part of income from business in Pune and the entire interest on debentures in Indian company is received by Mrs. Geetha outside India.

SECTION 4: ASSIGNMENT PROBLEMS

PROBLEM NO.1: Mr. Ramesh & Mr. Suresh are brothers and they earned the following incomes during the financial year 2020-21. Mr. Ramesh settled in Canada in the year 1997 and Mr. Suresh settled in Delhi. Compute the total income for the assessment year 2021-22.

S. No.	Particulars	Mr. Ramesh (Rs.)	Mr. Suresh (Rs.)
1)	Interest on Canada Development Bond (Only 50% of interest received in India)	35,000	40,000
2)	Dividend from British company received in London	28,000	20,000
3)	Profit from a business in Nagpur, but managed directly from London	1,00,000	1,40,000
4)	Short term capital gain on sale of shares of an Indian company received in India	60,000	90,000
5)	Income from a business in Chennai	80,000	70,000
6)	Fees for technical services rendered in India, but received in Canada	1,00,000	-

7)	Interest on savings bank deposit in UCO Bank, Delhi	7,000	12,000
8)	Agricultural income from a land situated in Andhra Pradesh	55,000	45,000
9)	Rent received in respect of house property at Bhopal	1,00,000	60,000
10)	Life Insurance premium paid	-	30,000

(MTP-M19(N) (NEW SM, MTP- N15) (ANS.: TOTAL INCOME OF MR. RAMESH IS 4,27,500 AND MR. SURESH IS 3,74,000)

PROBLEM NO.2: Mr. Dey, a non-resident, residing in US since 1991, came back to India on 01.04.2020 for permanent settlement. What will be his residential status for assessment years 2020-21 and 2021-22?

(NEW SM) (ANS.: HE IS RESIDENT BUT NOT ORDINARILY RESIDENT IN BOTH THE CASES)

PROBLEM NO.3: Mr. David, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2018 due to his transfer to High Commission of Canada. He did not visit India any time during the previous year 2020-21. He has received the following income for the Financial Year 2020-21:

S.No.	Particulars	Rs.
(i)	Salary income	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 2021-22.

(NEW SM, RTP N16)

(ANS.: TOTAL INCOME OF MR. DAVID IS RS.6,00,000)

PROBLEM NO.4: From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.03.2021, compute the total income for the assessment year 2021-22, if he is:

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

S.No.	Particulars	Rs.
a)	Short term capital gain on sale of shares in 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 lands in Gujarat	25,000

(NEW SM, SIMILAR: N18 (N) - 6M) (ANS.: TOTAL INCOME OF MR. ANIRUDH IS IF ROR 77,500, IF RNOR 15,000 AND NR 15,000)

PROBLEM NO.5: State with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:

- a) Only individuals and HUFs can be resident, but not ordinarily resident in India; firms can be either a resident or non-resident.
- b) Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is taxable in India irrespective of territorial nexus.
- c) Mr. X, Karta of HUF, claims that the HUF is non-resident as the business of HUF is transacted from UK and all the policy decisions are taken there.

(ANS.: (A), (B), (C) ARE TRUE)

PROBLEM NO.6: 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 2020. The branch office was required to purchase uncut and unassorted diamonds from the dealers of Mumbai and export them to USA. During the Previous Year 2020-21, profit from such export amounted to Rs.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 2021- 22.

ii) Discuss the tax treatment of profit from export business.

(N17-5M) (ANS: (I) NR, (II) NO TAX IN INDIA)

PROBLEM NO.7: Mrs. Karuna Kapoor is a Hollywood actress. Her passport reveals the following information about her stay in India.

2020-21	From April 3 rd to July 11 th
2019-20	From June 22 nd to July 11 th
2018-19	From Feb 10 th to March 26 th
2017-18	From Sept 7 th to March 26 th
2016-17	From May 17 th to September 30 th
2015-16	From April 3 rd to July 11 th
2014-15	From April 3 rd to July 11 th
2013-14	From April 3 rd to July 11 th
2012-13	From April 3 rd to July 11 th

Find out her residential status for the assessment year 2021-22

(RTP-M19 (N),(M18 (O)-5M) (ANS.: RESIDENT BUT NOT ORDINARY RESIDENT)

PROBLEM NO.8: Compute Gross Total Income in the hands of an individual, if he is

- A resident and ordinary resident; and
- A non-resident for the A.Y. 2021-22

S.No.	Particulars	Amount (Rs.)
i)	Interest from German Derivatives Bonds	21,000
ii)	Income from agriculture Land situated in Malaysia remitted to India	51,000
iii)	Income earned from business in Dubai, controlled from India (Rs. 20,000 received in India)	75,000
iv)	Profit from business in Mumbai, controlled from Australia	1,75,000
v)	Interest received from Mr. Ashok (NRI) on loan provided to him for business in India	35,000
vi)	Dividend from Brown Ltd., an Indian Company	30,000
vii)	Profit from business in Canada controlled from Mumbai (60% of profits deposited in a bank in Canada and 40% remitted to India)	60,000
viii)	Amount received from and NRI for the use of know-how for his business in Singapore	8,00,000
ix)	Dividend received from foreign company in India	25,000
x)	Past years untaxed foreign income brought to India	50,000

(M18 (N)-10M) (ANS.: GROSS TOTAL INCOME: ROR: RS. 12,42,000; NR: RS. 2,62,000)

SECTION 5: ADDITIONAL PROBLEMS FOR STUDENTS SELF PRACTICE

- Mr. Federer, a Non-Resident residing in Sweden, has received rent from Mr. Nadal, also a Non-Resident residing in France in respect of a property taken on lease at Mumbai. "Since this Income is received outside India from a Non-Resident, Federer claims that his income is not chargeable to tax in India." Comment.
- A Korean Company Damjung Ltd., entered into the following transactions during the financial year 2020-2021. Explain briefly, whether, the receipts are chargeable to Tax in India.

Particulars
Received Rs. 20 Lakhs from a Non-Resident for use of Patent for a business in India.
Received Rs. 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 Rs. 7 Lakhs from RR Co. Ltd, an Indian Company, for providing Technical Know-How in India.
Received Rs. 5 Lakhs from R & Co. Mumbai for conducting the Feasibility Study for a new project in Nepal and the payment was made in Nepal.

3) Ram has the following incomes during the financial year 2020-21:

	Particulars	Amount (Rs.)
a)	Royalty earned in India, received on 03.05.2020 in Nepal	46,000
b)	Dividend from a foreign company received in Nepal on 16.07.2020	56,000
c)	Share of profit of a business situated in Nepal, received in Burma on 14.06.2020 but controlled from India	42,000
d)	Rent of 2020-21 of a land situated in Nepal. and received there on 31.12.2020	1,65,000
e)	Speculation profit earned and received outside India on 15.04.2020	60,000
f)	Profit on sale of machinery at Delhi received on 30.03.2021 (one-half is received in London)	50,000

From the above particulars ascertain the Gross Total income of R for the assessment year 2021-22 if he is (a) a resident and ordinarily resident (b) a not ordinarily resident (c) a non-resident.

4) Following are the Particulars of taxable income of R for the previous year ended 31.03.2021:

- Royalty received from Government of India Rs.24,000.
- Income from business earned in Afghanistan Rs.25,000 of which Rs.15,000 were received in India.
- Interest received from G a non-resident against a loan provided to him to run a business in India Rs. 5,000.
- Royalty received in India from S a resident for technical services provided to run a business outside India 20,000.
- Income from business in Jaipur Rs.40,000. This business is controlled from France, Rs.20,000 were remitted to France.

Find out Gross Total Income of R for assessment year 2021-22, if he is

- Resident and ordinarily resident of India
- Not ordinarily resident of India and
- Non-resident of India in previous year.

5) Compute taxable income of G a non-resident for the previous year 2020-21:

	Particulars	Amount (Rs.)
i)	Income from operations confined to the purchase of goods in India for the purpose of export.	40,000
ii)	Income from operations confined to shooting of a cinematography film in India. G is an Indian citizen.	1,00,000
iii)	Income from salary received in India for services rendered outside India.	60,000

6) X earns the following income during the financial year 2020-21:

	Particulars	Amount (Rs.)
a)	Income from business connection in India, received in London	10,000
b)	Pension from former employer in India received in UK.	14,000
c)	Profits earned from a business in Paris which is controlled in India, half of the profits being received in India.	1,20,000
d)	Income from agriculture in Bhutan and remitted to India.	15,000
e)	Income from agriculture in India	4,000
f)	Past foreign untaxed income brought to India.	10,000

Compute his income for the assessment year 2021-22 if he is:

- Resident and ordinarily resident in India.
- "Not ordinarily resident in India",
- Non-resident in India.

- 7) A firm of solicitors in Calcutta engaged a barrister of London for arguing a case before the Supreme Court of India. A payment of 10,000 Pounds was made to the barrister in London as per the terms of the professional engagement. It is claimed that since the payment is made outside India, no tax is payable on the fee paid. Is the claim correct?
- 8) X (HUF) whose karta is X since 1970, owns the following three businesses:

Name of business	From where business is controlled	Income earned and received in India (Rs.)	Income earned and received outside India (Rs.)	Income earned in India but received outside India (Rs.)	Income earned outside India but received in India (Rs.)	Total income of the assessment year 2020-21 (Rs.)
A	India	10,000	7,000	20,000	9,000	46,000
B	Nepal	20,000	80,000	6,000	10,000	1,16,000
C	Partly from India & Partly from Hongkong	5,000	8,000	12,000	13,000	38,000
	Total	35,000	95,000	38,000	32,000	2,00,000

X comes to India only for 60 days each year. No other income is derived by X (HUF). Personal income of X which is chargeable to tax in India for the assessment year 2021-22 is Rs. 70,000. Find out the income of X (HUF) for the assessment year 2021-22.

SECTION 6: TEST YOUR KNOWLEDGE

- 1) Identify the Residential status of the following persons

PY	Ravan	Suyodhan	Kalakeya	Karna
2018-19		67	59	120
2017-18	800	100	190	20
2016-17		100	185	120
2015-16	489	100	182	130
2014-15	-	100	170	40
2013-14	-	-	200	140
Answer	NR	R	NR	NR

- 2) Determine whether in following cases an individual falls in exception or not

Circumstance	Yes/No	WHY?
Leaves India for taking up job in South Africa	Y	
Leaves India to join as a crew member of Vikranth	Y	
Comes to India on a visit from Paris	Y	
Comes to India to join as a manager in Tata Ltd	N	
Comes to India for permanent settlement	N	

- 3) Determine whether Mr. Ravan a citizen of Srilanka is a person of Indian origin in the following cases:

- Mr. Ravan was born in Karachi on 01.06.1944.
- Mr. Ravan was born in Karachi on 01.06.1948 and his father was born in India in the year 1930.
- Mr. Ravan was born in Delhi on 01.06.1970 and leaves his Indian citizenship. His father was born in Karachi in the year 1950. His grandfather was born in the year 1930 in England. His grandmother was born in Bangladesh in the year 1931.

Ans: Yes, in all cases he is a Person of Indian origin.

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THE END