

2. RESIDENTIAL STATUS - I

ASSIGNMENT SOLUTIONS

PROBLEM NO: 1

Computation of total income of Mr. Ramesh & Mr. Suresh for the A.Y. 2019-20

S.No.	Particulars	Mr. Ramesh (Non-Resident) (Rs.)	Mr. Suresh (Resident) (Rs.)
1.	Interest on Canada Development Bond (See Note 2)	17,500	40,000
2.	Dividend from British Company received in London (See Note 3)	-	20,000
3.	Profit from a business in Nagpur but managed directly from London (See Note 2)	1,00,000	1,40,000
4.	Short term capital gain on sale of shares of an Indian company received in India (See Note 2)	60,000	90,000
5.	Income from a business in Chennai (See Note 2)	80,000	70,000
6.	Fees for technical services rendered in India, but received in Canada (See Note 2)	1,00,000	-
7.	Interest on savings bank deposit in UCO Bank, Delhi (See Note 2)	7,000	12,000
8.	Agricultural income from a land in Andhra Pradesh (See Note 4)	-	-
9.	Income from house property at Bhopal (See Note 5)	70,000	42,000
	Gross Total income	4,34,500	4,14,000
	Less: Deduction under chapter VIA-		
	Section 80C-Life insurance premium paid	-	30,000
	Section 80TTA (See Note 6)	7,000	10,000
	Total Income	4,27,500	3,74,000

Notes:

- Mr. Ramesh is a non-resident since he has been living in Canada since 1995. Mr. Suresh, who is settled in Delhi, is a resident.
- In case of a resident, his global income is taxable as per section 5(1). However, as per section 5(2), in case of a non-resident, only the following incomes are chargeable to tax:

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

Therefore, fees for technical services rendered in India would be taxable in the hands of Mr. Ramesh, even though he is a non-resident.

The income referred to in Sl. No. 3, 4, 5 and 7 are taxable in the hands of both Mr. Ramesh and Mr. Suresh since they accrue or arise in India.

Interest on Canada Development Bond would be fully taxable in the hands of Mr. Suresh, whereas only 50% which is received in India is taxable in the hands of Mr. Ramesh.

- Dividend received from British company in London by Mr. Ramesh is not taxable since it accrues and is received outside India. However, dividend received by Mr. Suresh is taxable, since he is a resident. Exemption under section 10(34) would not be available in respect of dividend received from a foreign company.
- Agricultural income from a land situated in India is exempt under section 10(1) in the case of both non-residents and residents.
- Income from house property-

	Mr. Ramesh (Rs.)	Mr. Suresh (Rs.)
Rent received	1,00,000	60,000
Less: Deduction under section 24 @ 30%	<u>30,000</u>	<u>18,000</u>
Net income from house property	<u>70,000</u>	<u>42,000</u>

The net income from house property in India would be taxable in the hands of both Mr. Ramesh and Mr. Suresh, since the accrual and receipt of the same are in India.

6. In case of an individual, interest up to Rs. 10,000 from savings account with, *inter alia*, a bank is allowable as deduction under section 80TTA.

PROBLEM NO: 2

Mr. Dey is a resident in A.Y.2018-19 and A.Y.2019-20 since he has stayed in India for a period of 365 days (more than 182 days) during the P.Y.2017-18 and P.Y.2018-19, respectively.

As per section 6(6), a person will be "Not ordinarily Resident" in India in any previous year, if such person:

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

If he does not satisfy either of these conditions, he would be a resident and ordinarily resident.

In the instant case, applying the above, the status of Mr. Dey for the previous year 2017-18 (A.Y. 2018-19) will be "Resident but not ordinarily resident".

For the previous year 2018-19 (A.Y. 2019-20) his status would continue to be Resident but not ordinarily resident since he was non-resident in 9 out of 10 previous years immediately preceding the previous year and also had stayed for less than 729 days in 7 previous years immediately preceding the previous year.

Therefore, his status for

A.Y. 2018-19: "Resident but not ordinarily resident"

A.Y. 2019-20: "Resident but not ordinarily resident"

Note: students are advised to rectify in the question, the date 01.04.2016 as 01.04.2017.

PROBLEM NO: 3

As per section 6(1), Mr. David is a non-resident for the A.Y. 2019-20, since he was not present in India at any time during the previous year 2018-19. As per section 5(2), 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.

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 Rs. 4,00,000 is exempt under section 10(7).

Gross Total Income of Mr. David for A.Y. 2019-20

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

Note: students are advised to rectify in the question, the date 31.03.2017 as 31.03.2018.

PROBLEM NO: 4

Computation of total income of Mr. Anirudh for the A.Y. 2019-20

Particulars	Resident & ordinary Resident	Resident but not ordinarily Resident	Non-Resident
1. Short term capital gain on sale of shares of an Indian company, received in Germany	15,000	15,000	15,000
2. Dividend from a 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]	-	-	-
5. Agricultural income from land in Gujarat [See Note (iii) below]	-	-	-
Total income	77,500	15,000	15,000

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 Rs.75,000) 22,500

Income from house property 52,500

- ii) Dividend from Indian company is exempt under section 10(34).
iii) Agricultural income is exempt under section 10(1).

PROBLEM NO: 5

- a) **True:** A person is said to be "not-ordinarily resident" in India if he satisfies either of the conditions given in sub-section (6) of section 6. This sub-section relates to only individuals and Hindu Undivided Families. Therefore, only individuals and Hindu Undivided Families can be resident, but not ordinarily resident in India. All other classes of assesses can be either a resident or non-resident for the purpose of income-tax. Firms and companies can, therefore, either be a resident or non-resident.
- b) **True:** *Explanation* below section 9(2) clarifies that income by way of interest, royalty or fee 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
- non-resident has a residence or place of business or business connection in India; or
 - the non-resident has rendered services in India
- c) **True:** A HUF is considered to be a non-resident where the control and management of its affairs are situated wholly outside India. In the given case, since all the policy decisions of HUF are taken from UK, the HUF is a non-resident.

PROBLEM NO: 6

- i) As per section 6(3), a foreign company would be resident in India in the P.Y.2016-17, 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 P.Y.2018-19 (A.Y.2019-20)

- 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 Rs. 75 lakhs from export of uncut and unassorted 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 nonresident. Hence, the same would not be taxable in India in the hands of Daisy Ltd.

PROBLEM NO:7

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	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14	2012-13	2011-12	2010-11
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 P.Y.2018-19 is less than 182 days. However, her stay in India during the P.Y.2018-19 is 100 days, which exceeds 60 days; and her stay in India during the four previous years prior to P.Y.2017-18 is 404 days [20 + 46 + 201 + 137], which exceeds 365 days. Hence, she is a resident for P.Y.2017-18.

Further, her stay in India in the last seven previous years prior to P.Y.2018-19 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 P.Y.2017-18.

The fact that she is resident in the A.Y.2016-17 and A.Y.2015-16 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 nonresident 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 A.Y.2019-20 would be non-resident, since her stay in India during the P.Y.2018-19 is less than 182 days.

PROBLEM NO: 8

Computation of Gross Total Income for the A.Y. 2019-20

	Particulars	Resident and ordinarily resident (Rs.)	Non-resident (Rs.)
i)	Interest from German Derivative Bonds (1/3 rd received in India) [Refer Note at the end]	21,000	7,000
ii)	Income from agriculture land situated in Malaysia, remitted to India [Refer Note at the end] [Taxable only in the hands of resident and ordinarily resident, since agriculture income arises from land situated outside India]	51,000	-
iii)	Income earned from business in Dubai, controlled from India (Rs.20,000 received in India) [Refer Note at the end]	75,000	20,000
iv)	Profit from business in Mumbai, controlled from Australia [Since the income accrues or arises in India, the same is taxable in the hands of the resident and nonresident]	1,75,000	1,75,000
v)	Interest received from Mr. Ashok (NRI) on loan provided to him for business in India [Since interest is payable by non-resident for the loan used for business in India, such income is deemed to accrue or arise in India u/s 9(1)(v). Consequently, such income is taxable in the hands	35,000	35,000

	of both the resident and non-resident]		
vi)	Dividend from Brown Ltd., an Indian Co. under section 115-O of the Income-tax Act, 1961 [Exempt u/s 10(34), in the hands of both resident and ordinarily resident and non-resident, since the dividend does not exceed Rs.10,00,000]	-	-
vii)	Profit from business in Canada controlled from Mumbai (60% of profits deposited in a bank in Canada and 40% remitted to India) [Refer Note at the end]	60,000	-
viii)	Amount received from an NRI for the use of knowhow for his business in Singapore [Since the amount is received for the use know-how for his business outside India, the same is not deemed to accrue or arise in India as per section 9(1)(vii). Accordingly, such income is not taxable in case of the non-resident, assuming that the amount is received outside India]	8,00,000	-
ix)	Dividend received from foreign company in India [Taxable both in the hands of resident and ordinarily resident and non-resident, since the income is received in India and no exemption is available in respect of dividend from foreign company]	25,000	25,000
x)	Past years untaxed foreign income brought to India [Not taxable, since it does not represent income of the P.Y. 2018-19]	-	-
	Gross Total Income	12,42,000	2,62,000

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

- 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 German derivative bonds, income from agriculture land in Malaysia, income earned from business in Dubai and profit from business in Canada would be fully taxable in the hands of the resident and ordinarily resident, even though such income accrues or arises outside India, since global income is taxable in case of a resident and ordinarily resident. However, in case of a non-resident, such income would be taxable only to the extent it is received in India. Subsequent remittance to India, would however, not attract taxability of such income in India in the hands of the non-resident.

THE END