



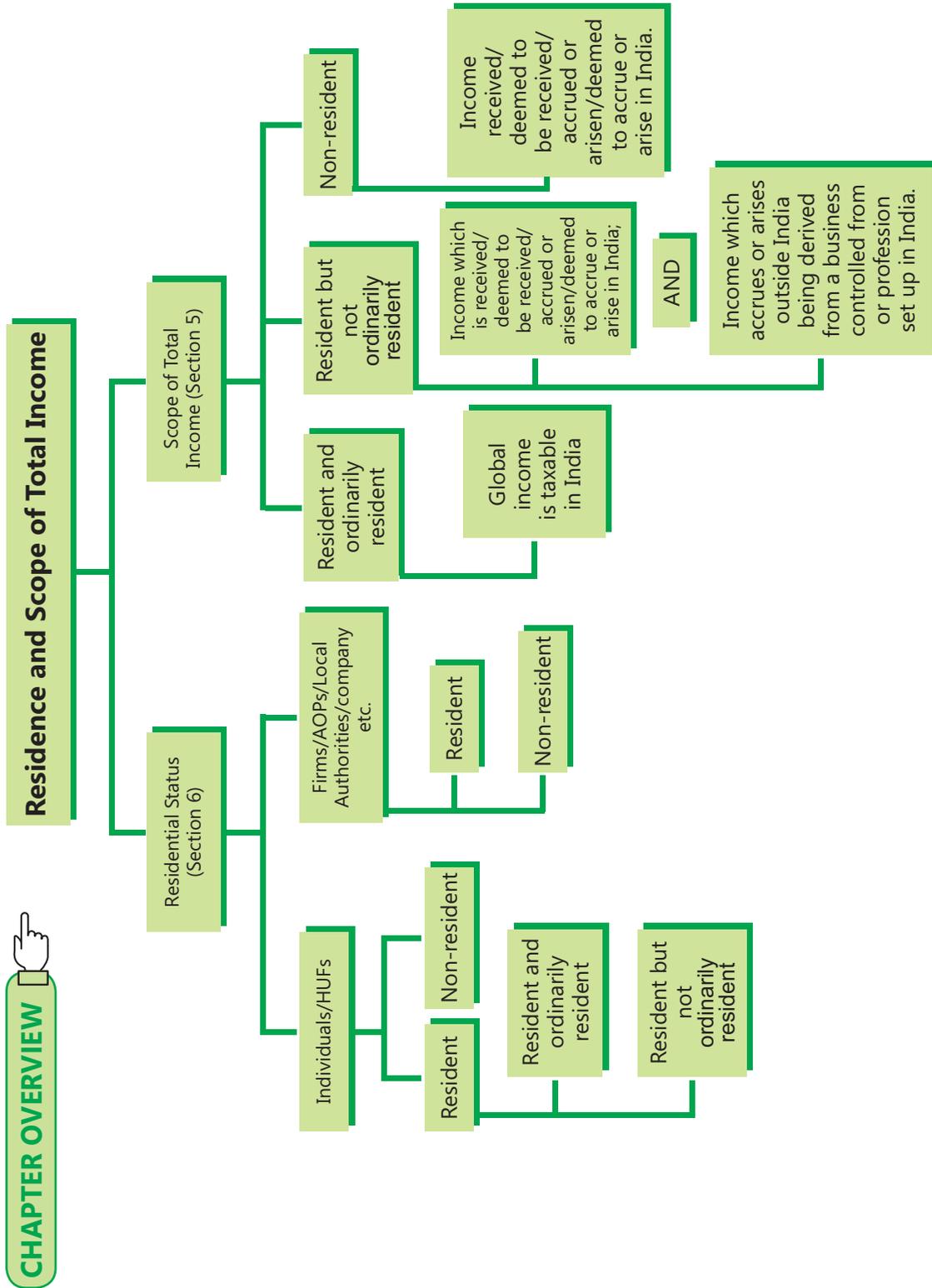
# RESIDENCE AND SCOPE OF TOTAL INCOME



## LEARNING OUTCOMES

After studying this chapter, you would be able to -

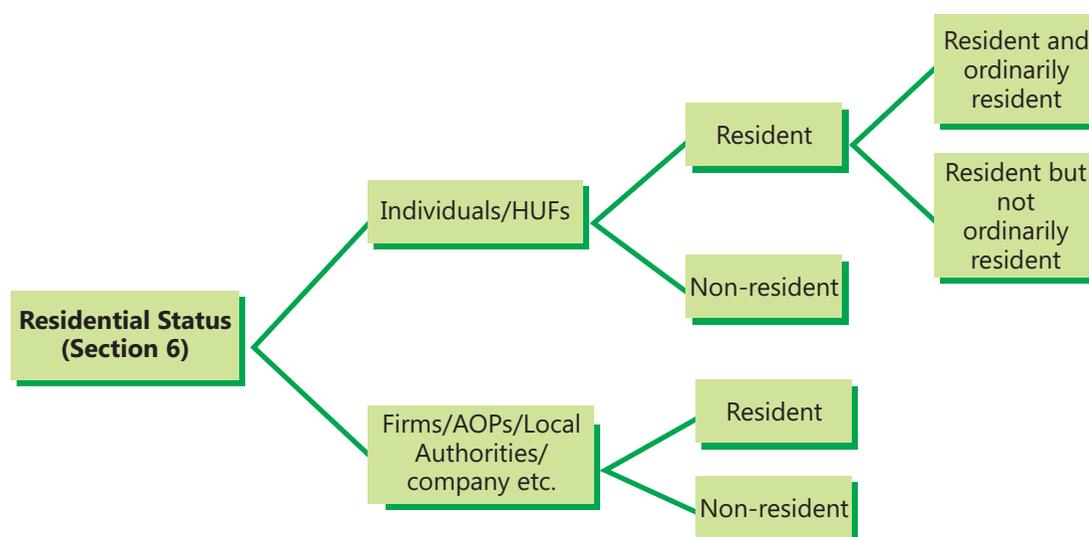
- appreciate the provisions for determining the residential status of different persons.
- apply the relevant provisions to determine the residential status of different persons.
- examine the scope of income of a person based on his residential status.
- apply the relevant provisions to determine the total income of a person based on his residential status.



## 1. RESIDENTIAL STATUS [SECTION 6]

The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers are classified into three broad categories on the basis of their residential status viz.

- (1) Resident and ordinarily resident
- (2) Resident but not ordinarily resident
- (3) Non-resident



The residential status of an assessee must be ascertained with reference to each previous year. A person who is resident and ordinarily resident in one year may become non-resident or resident but not ordinarily resident in another year or vice versa.

The provisions for determining the residential status of assessee are:

### 1.1 Residential status of Individuals

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 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.

**Note:**

- (a) *The term "stay in India" includes stay in the territorial waters of India (i.e. 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.*
- (b) *It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business or employment of the individual.*
- (c) *For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are considered to be in India.*
- (d) *The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.*

**Exceptions:**

The following categories of individuals will be treated as residents only if the period of their stay during the relevant previous year amounts to 182 days. In other words even if such persons were in India for 365 days during the 4 preceding years and 60 days in the relevant previous year, they will not be treated as resident.

- (1) Indian citizens, who leave India in any previous year as a member of the crew of an Indian ship or for purposes of employment outside India, or
- (2) Indian citizen or person of Indian origin<sup>1</sup> engaged outside India in an employment or a business or profession or in any other vocation, who comes on a visit to India in any previous year

**How to determine period of stay in India for an Indian citizen, being a crew member?**

In case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.

To remove this uncertainty, *Explanation 2* to section 6(1) provides that in the 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 such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

Accordingly, the CBDT has *vide, Notification No.70/2015 dated 17.8.2015*, inserted Rule 126 in the Income-tax Rules, 1962 to compute the period of stay in such cases.

According to Rule 126, for the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in

<sup>1</sup> A person is said to be of Indian origin if he or either of his parents or either of his grandparents were born in undivided India.

India shall, in respect of an eligible voyage, not include the following period:

**Period to be excluded**

| <b>Period commencing from</b>   |            | <b>Period ending on</b>   |
|---|------------|---|
| <i>the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage</i> | <b>and</b> | <i>the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.</i> |

**Meaning of certain terms:**

| <b>Terms</b> |   | <b>Meaning</b>  |
|--------------|---|---|
| (a)          | <i>Continuous Discharge Certificate</i> | <i>This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.</i>  |
| (b)          | <i>Eligible voyage</i>                  | <i>A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where –<br/>(i) for the voyage having originated from any port in India, has as its destination any port outside India; and<br/>(ii) for the voyage having originated from any port outside India, has as its destination any port in India.</i> |

**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 6<sup>th</sup> June, 2017. From the following details for the P.Y. 2017-18, determine the residential status of Mr. Anand for A.Y. 2018-19, assuming that his stay in India in the last 4 previous years (preceding P.Y. 2017-18) is 400 days and last seven previous years (preceding P.Y. 2017-18) is 750 days:

| <b>Particulars</b>  | <b>Date</b>               |
|---|---------------------------|
| <i>Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Anand</i>     | <i>6th June, 2017</i>     |
| <i>Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Anand</i> | <i>9th December, 2017</i> |

**SOLUTION**

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 Chennai port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 6<sup>th</sup> June, 2017 and ending on 9<sup>th</sup> December, 2017, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Anand, 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, 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. 2017-18 would be 178 days [i.e., 365 days – 187 days]. Since his period of stay in India during the P.Y. 2017-18 is less than 182 days, he is a non-resident for A.Y. 2018-19.

**Note** - Since the residential status of Mr. Anand is "non-resident" for A.Y. 2018-19 consequent to his number of days of stay in P.Y. 2017-18 being less than 182 days, his period of stay in the earlier previous years become irrelevant.

#### **Resident and ordinarily resident/Resident but not ordinarily resident**

Only individuals and HUF can be resident but not ordinarily resident in India. All other classes of assesseees can be either a resident or non-resident. A not-ordinarily resident person is one who satisfies any one of the conditions specified under section 6(6).

- (i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- (ii) 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.

**Note:** In simpler terms, an individual is said to be a **resident and ordinarily resident** if he satisfies both the following conditions:

- (i) He is a resident in any 2 out of the last 10 years preceding the relevant previous year,
- and**
- (ii) His total stay in India in the last 7 years preceding the relevant previous year is 730 days or more.

If the individual satisfies both the conditions mentioned above, he is a resident and ordinarily resident but if only one or none of the conditions are satisfied, the individual is a resident but not ordinarily resident.

#### **ILLUSTRATION 2**

*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. Find out his residential status for the assessment year 2018-19.*

**SOLUTION****Determination of Residential Status of Mr. Brett Lee for the A.Y. 2018-19:-**

Period of stay during previous year 2017-18 = 100 days

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

|              |                 |
|--------------|-----------------|
| 2016-17      | 100 days        |
| 2015-16      | 100 days        |
| 2014-15      | 100 days        |
| 2013-14      | 100 days        |
| <b>Total</b> | <b>400 days</b> |

Mr. Brett Lee has been in India for a period more than 60 days during previous year 2017-18 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 2018-19.

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

|              |                 |
|--------------|-----------------|
| 2016-17      | 100 days        |
| 2015-16      | 100 days        |
| 2014-15      | 100 days        |
| 2013-14      | 100 days        |
| 2012-13      | 100 days        |
| 2011-12      | 100 days        |
| 2010-11      | 100 days        |
| <b>Total</b> | <b>700 days</b> |

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 2018-19. (See Note below)

Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2017-18 relevant to the assessment year 2018-19.

**Note:** A not-ordinarily resident person is one who satisfies any one of the conditions specified under section 6(6), i.e.,

- (i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- (ii) 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-ordinary resident for the A.Y. 2018-19.

**ILLUSTRATION 3**

*Mr. B, a Canadian citizen, comes to India for the first time during the P.Y. 2013-14. During the financial years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, 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. 2018-19.*

**SOLUTION**

During the previous year 2017-18, Mr. B was in India for 70 days and during the 4 years preceding the previous year 2017-18, 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 2018-19.

**ILLUSTRATION 4**

*Mr. C, a Japanese citizen left India after a stay of 10 years on 1.06.2015. During the financial year 2016-17, he comes to India for 46 days. Later, he returns to India for 1 year on 10.10.2017. Determine his residential status for the A.Y.2018-19.*

**SOLUTION**

During the previous year 2017-18, 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:

|         |   |            |  |
|---------|---|------------|--|
| 2016-17 | - | 46         |  |
| 2015-16 | - | 62         | (i.e. 30 + 31 + 1)                               |
| 2014-15 | - | 365        | (since he left India on 1.6.2015 after 10 years) |
| 2013-14 | - | <u>365</u> | (since he left India on 1.6.2015 after 10 years) |
|         |   | <u>838</u> |  |

Mr. C is a resident since his stay in the previous year 2017-18 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

- (i) his stay in the last 7 years is more than 729 days and
- (ii) since he was in India for 10 years prior to 1.6.2015, 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. 2018-19.

**ILLUSTRATION 5**

*Mr. D, an Indian citizen, leaves India on 22.9.2017 for the first time, to work as an officer of a company in France. Determine his residential status for the A.Y. 2018-19.*

**SOLUTION**

During the previous year 2017-18, Mr. D, an Indian citizen, was in India for 175 days (i.e., 30+ 31+30+31+31+22 days). He does not satisfy the minimum criteria of 182 days. Also, since he is an Indian citizen leaving India for the purposes of employment, the second condition under section 6(1) is not applicable to him.

Therefore, Mr. D is a non-resident for the A.Y. 2018-19.

**1.2 Residential status of HUF**

**Resident:** A HUF would be resident in India if the control and management of its affairs is situated wholly or partly in India.

**Non-resident:** If the control and management of the affairs is situated wholly outside India it would become a non-resident.

**Meaning of the term “control and management”**

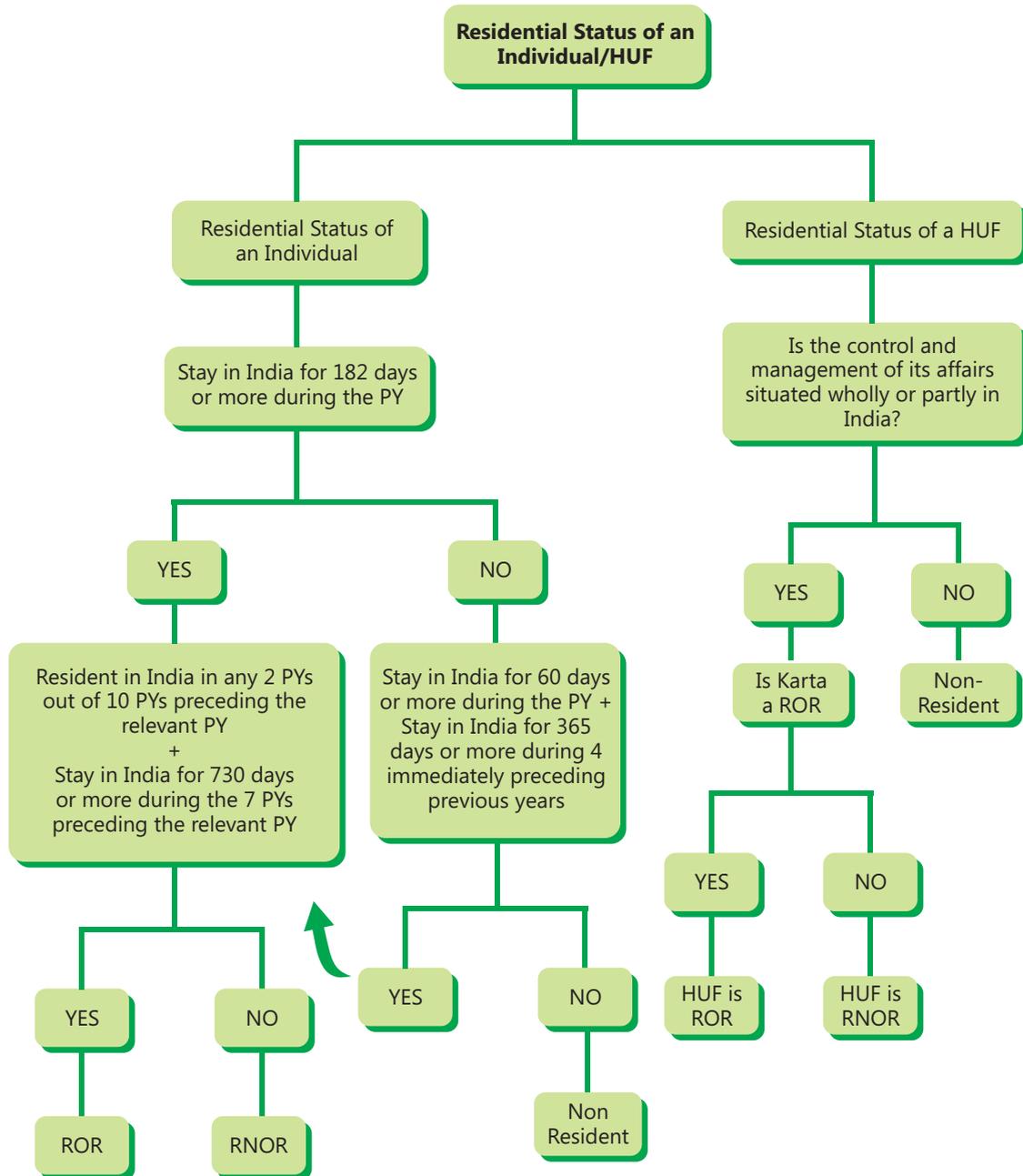
- The expression ‘control and management’ referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.
- The business may be done from outside India and yet its control and management may be wholly within India. Therefore, control and management of a business is said to be situated at a place where the head and brain of the adventure is situated.
- The place of control may be different from the usual place of running the business and sometimes even the registered office of the assessee. This is because the control and management of a business need not necessarily be done from the place of business or from the registered office of the assessee.
- But control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.

**Resident and ordinarily resident/Resident but not ordinarily resident**

If the HUF is resident, then the status of the Karta determines whether it is resident and ordinarily resident or resident but not ordinarily resident.

- If the karta is resident and ordinarily resident, then the HUF is resident and ordinarily resident.
- If the karta is resident but not ordinarily resident, then HUF is resident but not ordinarily resident.

### Determination of Residential Status of an Individual/HUF



**ILLUSTRATION 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. 2017-18 after 15 years. He comes to India on 1.4.2017 and leaves for Australia on 1.12.2017. Determine the residential status of Mr. E and the HUF for A.Y. 2018-19.

**SOLUTION**

- (a) During the P.Y. 2017-18, 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. 2017-18 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. 2017-18.

**1.3 Residential status of firms and association of persons**

**Resident:** A firm and an AOP would be resident in India if the control and management of its affairs is situated wholly or partly in India.

**Non-resident:** Where the control and management of the affairs is situated wholly outside India, the firm and AOP would become a non-resident.

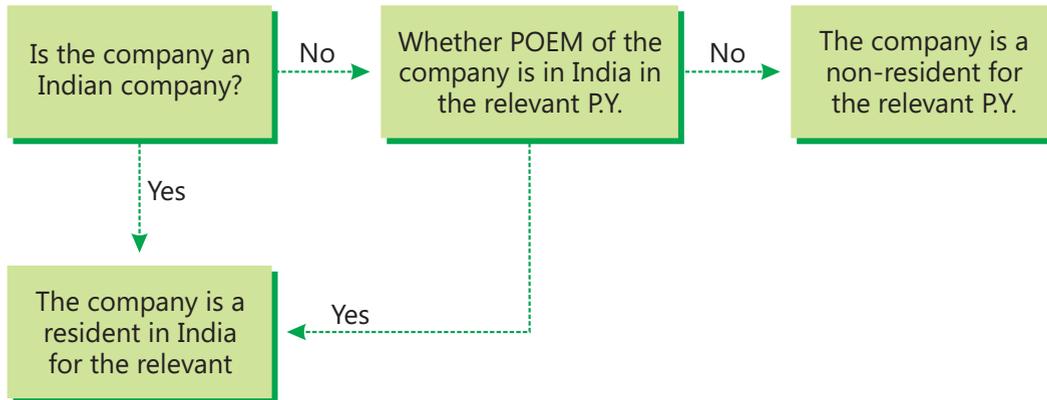
**1.4 Residential status of companies**

A company would be resident in India in any previous year, if-

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

*"Place of effective management" to mean 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*[Explanation to section 6(3)]

### Determination of residential status of a company



**Note** – A transition mechanism for a company which is incorporated outside India, which has not been assessed to tax in India earlier and has become resident in India for the first time in A.Y. 2017-18 due to application of POEM, has been provided in Chapter XII-BC. The same will be dealt with at the Final level.

### 1.5 Residential status of local authorities and artificial juridical persons

**Resident:** Local authorities and artificial juridical persons would be resident in India if the control and management of its affairs is situated wholly or partly in India.

**Non-resident:** Where the control and management of the affairs is situated wholly outside India, they would become non-residents.

## 2. SCOPE OF TOTAL INCOME

Section 5 provides the scope of total income in terms of the residential status of the assessee because the incidence of tax on any person depends upon his residential status. The scope of total income of an assessee depends upon the following three important considerations:

- (i) the residential status of the assessee;
- (ii) the place of accrual or receipt of income, whether actual or deemed; and
- (iii) the point of time at which the income had accrued to or was received by or on behalf of the assessee.

The ambit of total income of the three classes of assessee would be as follows:

#### (1) Resident and ordinarily resident

The total income of a resident assessee would, under section 5(1), consist of:

- (i) income received or deemed to be received in India during the previous year;
- (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year; and

- (iii) income which accrues or arises outside India even if it is not received or brought into India during the previous year.

In simpler terms, a resident and ordinarily resident has to pay tax on the total income accrued or deemed to accrue, received or deemed to be received in or outside India.

### **(2) Resident but not ordinarily resident**

Under section 5(1), the computation of total income of resident but not ordinarily resident is the same as in the case of resident and ordinarily resident stated above except for the fact that the income accruing or arising to him outside India is not to be included in his total income.

However, where such income is derived from a business controlled from or profession set up in India, then it must be included in his total income even though it accrues or arises outside India.

### **(3) Non-resident**

A non-resident's total income under section 5(2) includes:

- (i) income received or deemed to be received in India in the previous year; and  
 (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year.

**Note:** All assesseees, whether resident or not, are chargeable to tax in respect of their income accrued, arisen, received or deemed to accrue, arise or to be received in India whereas residents alone are chargeable to tax in respect of income which accrues or arises outside India.

### **Residential Status and Scope of Total Income**

| <b>Scope of total Income</b>   | <b>Resident and Ordinarily Resident</b> | <b>Resident but not Ordinarily Resident</b> | <b>Non-Resident</b> |
|--|---|---|---------------------|
| Income received or deemed to be received in India during the previous year                 | Yes                                     | Yes   | Yes                 |
| Income accruing or arising or deeming to accrue or arise in India during the previous year | Yes                                     | Yes   | Yes                 |

| Scope of total Income                    | Resident and Ordinarily Resident  | Resident but not Ordinarily Resident  | Non-Resident |
|--|---|---|--------------|
| Income accruing or arising outside India | Yes, even if such income is not received or brought into India during the previous year | Yes, if income is derived from a business controlled from or profession set up in India; Otherwise, No. | No           |

**ILLUSTRATION 7**

From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.3.2018, compute the total income for the assessment year 2018-19, if he is:

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

|     | Particulars  | ₹      |
|-----|--|--------|
| (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 |

**SOLUTION****Computation of total income of Mr. Anirudh for the A.Y. 2018-19**

| Particulars  | Resident & ordinarily 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                             | -  | -                |

| Particulars   | Resident & ordinarily resident<br>(₹) | Resident but not ordinarily resident<br>(₹) | Non-Resident<br>(₹) |
|---|---------------------------------------|---|---------------------|
| 3) Rent from property in London deposited in a bank in London <b>[See Note (i) below]</b> | 52,500                                | -   | -                   |
| 4) Dividend from RP Ltd., an Indian Company <b>[See Note (ii) below]</b>                  | -                                     | -   | -                   |
| 5) Agricultural income from land in Gujarat <b>[See Note (iii) below]</b>                 | -                                     | -   | -                   |
| <b>Total Income</b>   | <b>77,500</b>                         | <b>15,000</b>                               | <b>15,000</b>       |

**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 |

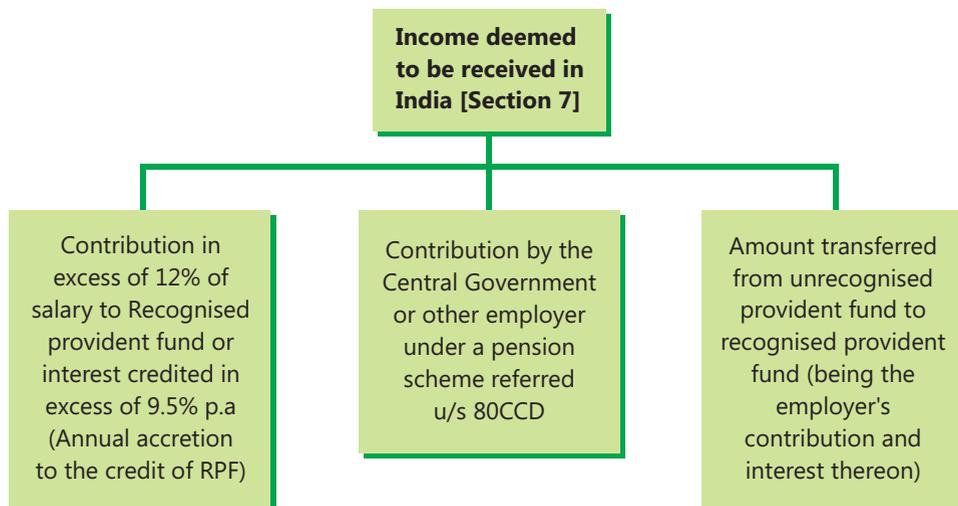
- (ii) Dividend from Indian company is exempt under section 10(34).  
 (iii) Agricultural income is exempt under section 10(1).

**2.1 Meaning of “Income received or deemed to be received”**

All assesseees are liable to tax in respect of the income received or deemed to be received by them in India during the previous year irrespective of -

- (i) their residential status, and  
 (ii) the place of its accrual.

Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.



## 2.2 Meaning of income 'accruing' and 'arising'

Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31<sup>st</sup> December or 1<sup>st</sup> January.

Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

### Example:

*Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.*

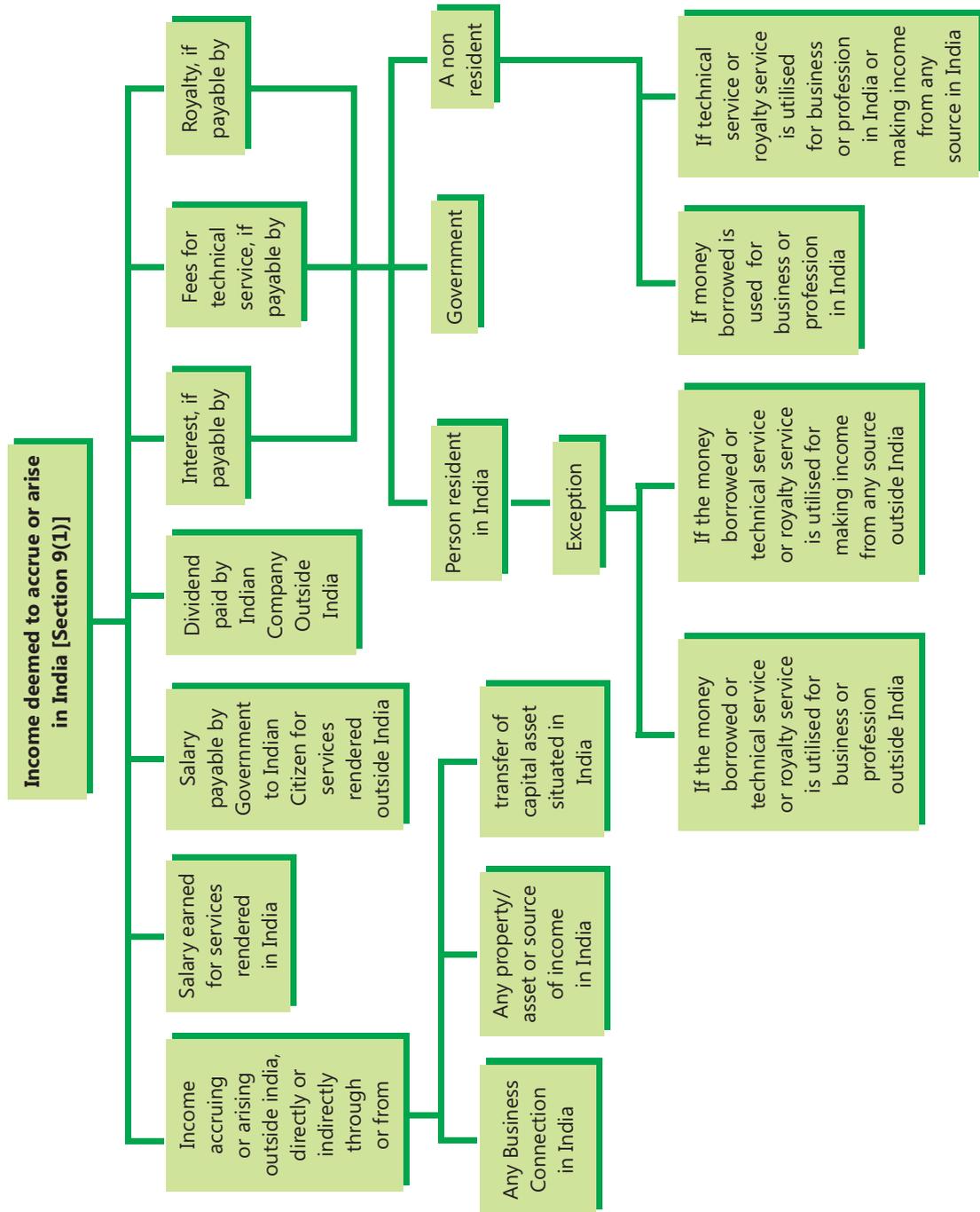
It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

With a view to removing difficulties and clarifying doubts in the taxation of income, *Explanation 1* to section 5 specifically provides that an item of income accruing or arising outside India shall not be deemed to be received in India merely because it is taken into account in a balance sheet prepared in India.

Further, *Explanation 2* to section 5 makes it clear that once an item of income is included in the assessee's total income and subjected to tax on the ground of its accrual/deemed accrual or receipt, it cannot again be included in the person's total income and subjected to tax either in the same or in a subsequent year on the ground of its receipt - whether actual or deemed.

### 2.3 Income deemed to accrue or arise in India [Section 9]

Certain types of income are deemed to accrue or arise in India even though they may actually **accrue or arise outside India**.



**The categories of income which are deemed to accrue or arise in India are:**

**(1) Any income accruing or arising to an assessee in any place outside India whether directly or indirectly**

- (a) through or from any business connection in India,
  - (b) through or from any property in India,
  - (c) through or from any asset or source of income in India or
  - (d) through the transfer of a capital asset situated in India
- would be deemed to accrue or arise in India. **[Section 9(1)(i)]**

**(a) What is Business Connection?**

'Business connection' shall include any business activity carried out through a person acting on behalf of the non-resident *[Explanation 2 to section 9(1)(i)]*

For a business connection to be established, the person acting on behalf of the non-resident –

- (i) must have an authority which is habitually exercised to conclude contracts on behalf of the non-resident or

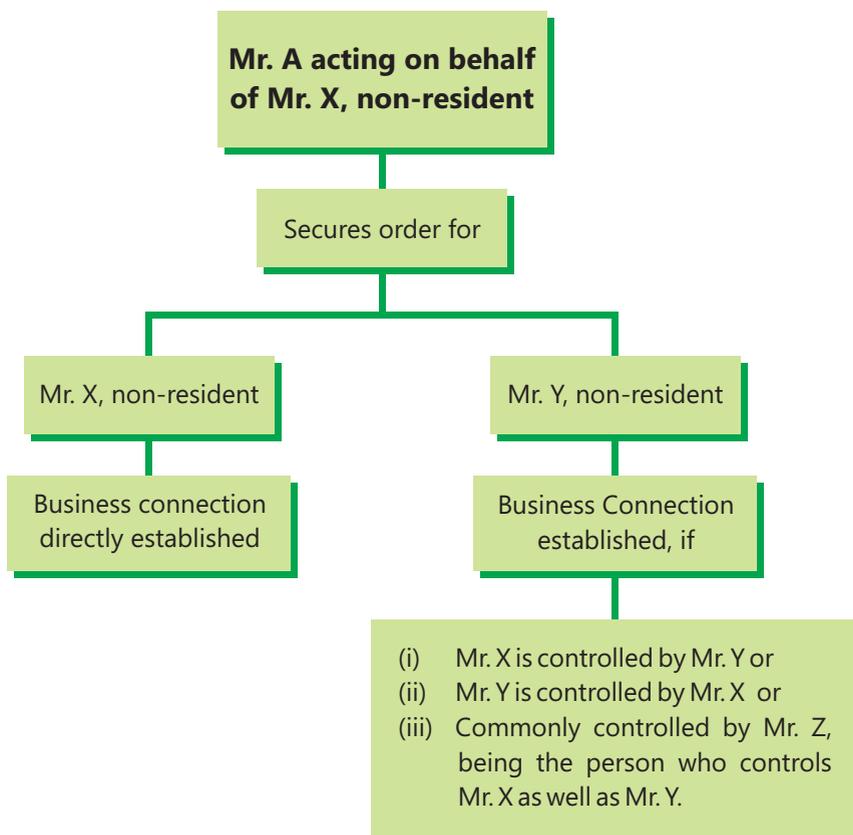
However, if his activities are limited to the purchase of goods or merchandise for the non-resident, this provision will not apply.

- (ii) In a case, where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or
- (iii) habitually secures orders in India, mainly or wholly for the non-resident.

Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,

- (a) such other non-resident controls the non-resident or
- (b) such other non-resident is controlled by the non-resident or
- (c) such other non-resident is subject to same control as that of non-resident.

In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.



**Agents having independent status are not included in Business Connection:**

Business connection, however, shall not be established, where the non-resident carries on business through a broker, general commission agent or any other agent having an independent status, if such a person is acting in the ordinary course of his business.

A broker, general commission agent or any other agent shall be deemed to have an independent status where he does not work mainly or wholly for the non-resident.

He will, however, not be considered to have an independent status in the three situations explained above, where he is employed by such a non-resident.

Where a business is carried on in India through a person referred to in (i), (ii) or (iii) of (a) above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

**In the case of a Non-resident the following shall not, however, be treated as business connection in India [Explanation 1 to section 9(1)(i)]:**

- (i) **In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1)(i)]:** In the case of a

business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.

- (ii) **Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)]:** 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.
- (iii) **Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1)(i)]:** In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.
- (iv) **Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)]:** In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is :
  - (a) an individual, who is not a citizen of India or
  - (b) a firm which does not have any partner who is a citizen of India or who is resident in India; or
  - (c) a company which does not have any shareholder who is a citizen of India or who is resident in India.
- (v) **Activities confined to display of rough diamonds in SNZs [Explanation 1(e) to section 9(1)(i)]:** In order to facilitate the FMCs to undertake activity of display of uncut diamond (without any sorting or sale) in a Special Notified Zone (SNZ), clause (e) has been inserted in *Explanation 1* to section 9(1)(i) to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unsorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf.

**(b) & (c) Income from property, asset or source of income in India**

Any income which arises from any property (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.

**Examples:**

- (i) Hire charges or rent paid outside India for the use of the machinery or buildings situated in India,
- (ii) deposits with an Indian company for which interest is received outside India etc.

**(d) Income through transfer of a capital asset situated in India**

Capital gains arising through or from the transfer of a capital asset situated in India would be deemed to accrue or arise in India in all cases irrespective of the fact whether

- (i) the capital asset is movable or immovable, tangible or intangible;
- (ii) the place of registration of the document of transfer etc., is in India or outside; and
- (iii) the place of payment of the consideration for the transfer is within India or outside.

Accordingly, the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Further, an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

**Declaration of dividend by a foreign company** outside India does not have the effect of transfer of any underlying assets located in India. *Circular No. 4/2015, dated 26-03-2015*, therefore, clarifies that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would NOT be deemed to be income accruing or arising in India by virtue of the provisions of section 9(1)(i).

**(2) Income from salaries earned in India [Section 9(1)(ii)]**

Income, which falls under the head "Salaries", deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India would be treated as earned in India.

Further, any income under the head "Salaries" payable for rest period or leave period which is preceded and succeeded by services rendered in India, and forms part of the service contract of employment, shall be regarded as income earned in India.

### **(3) Income from salaries payable by the Government for services rendered outside India [Section 9(1)(iii)]**

Income from 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India would be deemed to accrue or arise in India.

However, allowances and perquisites paid outside India by the Government is exempt, by virtue of section 10(7).

#### **Exception under section 9(2):**

Pension payable outside India by the Government to its officials and judges who permanently reside outside India shall not be deemed to accrue or arise in India.

#### **ILLUSTRATION 8**

*Mr. David, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2017 due to his transfer to High Commission of Canada. He did not visit India any time during the previous year 2017-18. He has received the following income for the Financial Year 2017-18:*

| <b>S.No.</b> | <b>Particulars</b>                           | <b>₹</b> |
|--------------|--|----------|
| (i)          | Salary                                       | 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 2018-19.*

#### **SOLUTION**

As per section 6(1), Mr. David is a non-resident for the A.Y. 2018-19, since he was not present in India at any time during the previous year 2017-18.

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 A.Y. 2018-19

| Particulars  | ₹               |
|--|-----------------|
| Salaries   | 5,00,000        |
| Income from other sources (Interest on fixed deposit in India) | 1,00,000        |
| <b>Gross Total Income</b>                                      | <b>6,00,000</b> |

#### (4) Dividend paid by a Indian company outside India [Section 9(1)(iv)]

All dividends paid by an Indian company must be deemed to accrue or arise in India. (*Taxability of dividend is discussed in Unit 5 of Chapter 4 in detail*) Under section 10(34), income from dividends referred to in section 115-O is exempt from tax in the hands of the shareholder. It may be noted that dividend distribution tax under section 115-O does not apply to deemed dividend under section 2(22)(e), which is chargeable in the previous year in which such dividend is distributed or paid.

#### (5) Interest [Section 9(1)(v)]

Under section 9(1)(v), an interest is deemed to accrue or arise in India if it is payable by -

- (i) the Government;
- (ii) a person resident in India;

**Exception:** Where it is payable in respect of any money borrowed and used for the purposes of a business or profession carried on by him outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

- (iii) a non-resident when it is payable in respect of any debt incurred or moneys borrowed and used for the purpose of a business or profession carried on in India by him.

**Exception:** Interest on money borrowed by the non-resident for any purpose other than a business or profession, will not be deemed to accrue or arise in India.

#### Example:

*If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.*

#### (6) Royalty [Section 9(1)(vi)]

Royalty will be deemed to accrue or arise in India when it is payable by -

- (i) the Government;

- (ii) a person who is a resident in India  
**Exception:** Where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or
- (iii) a non-resident only when the royalty is payable in respect of any right, property or information used or services utilised for purposes of a business or profession carried on in India or for the purposes of making or earning any income from any source in India.

**Important points:**

- (1) **Lumpsum royalty not deemed to accrue arise in India:** Lumpsum royalty payments made by a resident for the transfer of all or any rights (including the granting of a licence) in respect of **computer software** supplied by a non-resident manufacturer along with computer hardware under any scheme approved by the Government under the Policy on Computer Software Export, Software Development and Training, 1986 shall not be deemed to accrue or arise in India.
- (2) **Meaning of Royalty:** The term 'royalty' means consideration (including any lumpsum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains') for:
  - (i) the transfer of all or any rights (including the granting of licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
  - (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
  - (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
  - (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
  - (v) the use or right to use any industrial, commercial or scientific equipment<sup>2</sup>;
  - (vi) the transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films;
  - (vii) the rendering of any service in connection with the activities listed above.

2 but not including the amounts referred to in section 44BB, containing presumptive tax provisions relating to non-resident engaged in the business of exploration, etc., of mineral oils, which will be dealt with at the final level.

The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The deduction specially excludes income which should be chargeable to tax under the head 'capital gains'.

**(3) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)**

The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

**(4) Consideration in respect of any right, property or information – Is it royalty?**

Royalty includes and has always included consideration in respect of any right, property or information, whether or not,

- (a) the possession or control of such right, property or information is with the payer;
- (b) such right, property or information is used directly by the payer;
- (c) the location of such right, property or information is in India.

**(5) Meaning of Process:** The term "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

### ILLUSTRATION 9

*Mr. Soham, an Indian Citizen, left India on 20-04-2015 for the first time to setup a software firm in Singapore. On 10-04-2017, 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 15-05-2017 and was able to complete his assignment on 20-08-2017. He left for Singapore on 21-08-2017. He charged ₹ 50 lakhs for his services from LK Limited.*

*Determine the residential status of Mr. Soham for the Assessment Year 2018-19 and examine whether the fees charged from LK Limited would be chargeable to tax as per the Income-tax Act, 1961.*

### SOLUTION

**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:-

- (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.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year or an Indian citizen, who being outside India, comes on a visit to India in any 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 who left India to set up a software firm in Singapore on 20.04.2015. Therefore, he is an Indian citizen living in Singapore, who comes on a visit to India during the P.Y. 2017-18. 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 2017-18 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 A.Y. 2018-19 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 P.Y. 2017-18.

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 a 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 A.Y. 2018-19.

**(7) Fees for technical services [Section 9(1)(vii)]**

Any fees for technical services will be deemed to accrue or arise in India if they are payable by -

- (i) the Government.
- (ii) a person who is resident in India

**Exception:** Where the fees is payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.

- (iii) a person who is a non-resident, only where the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India or where such services are utilised for the purpose of making or earning any income from any source in India.

**Fees for technical services** mean any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel). However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'.

**Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services to be taxed irrespective of territorial nexus (Explanation to section 9)**

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 –

- (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 fee 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.

**ILLUSTRATION 10**

*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?*

**SOLUTION**

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.

**ILLUSTRATION 11**

Compute the total income in the hands of an individual, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2018-19-

| <b>Particulars</b>   | <b>Amount (₹)</b> |
|--|-------------------|
| 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 (₹ 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 Indian 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 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            |

| <b>Particulars</b>  | <b>Amount (₹)</b> |
|---|-------------------|
| <i>Past foreign untaxed Income brought to India during the previous year</i>                        | 5,000             |
| <i>Income from agricultural land in Nepal received there and then brought to India</i>              | 18,000            |
| <i>Income from profession in Kenya which was set up in India, received there but spent in India</i> | 5,000             |
| <i>Gift received on the occasion of his wedding</i>   | 20,000            |
| <i>Interest on Savings Bank Deposit in State Bank of India</i>                                      | 12,000            |
| <i>Income from a business in Russia, controlled from Russia</i>                                     | 20,000            |
| <i>Dividend from Reliance Petroleum Limited, an Indian company</i>                                  | 5,000             |
| <i>Agricultural income from a land in Rajasthan</i>   | 15,000            |

**SOLUTION****Computation of total income for the A.Y. 2018-19**

| <b>Particulars</b>   | <b>Resident and ordinarily resident<br/>₹</b> | <b>Resident but not ordinarily resident<br/>₹</b> | <b>Non-resident<br/>₹</b> |
|--|---|---|---------------------------|
| 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 ₹ 40,000 is received in India                    | 70,000  | 70,000  | 40,000                    |

| Particulars  | Resident and ordinarily resident<br>₹ | Resident but not ordinarily resident<br>₹ | Non-resident<br>₹ |
|--|---------------------------------------|---|-------------------|
| 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 <b>[not taxable]</b>                                | -                                     | -   | -                 |
| 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 <b>[Exempt under section 10(34)]</b> | -                                     | -   | -                 |

| Particulars   | Resident and ordinarily resident<br>₹ | Resident but not ordinarily resident<br>₹ | Non-resident<br>₹ |
|---|---------------------------------------|---|-------------------|
| Agricultural income from a land in Rajasthan [ <i>Exempt under section 10(1)</i> ]                      | -                                     | -   | -                 |
| <b>Gross Total Income</b>   | <b>3,51,000</b>                       | <b>2,17,000</b>                           | <b>1,82,000</b>   |
| Less: Deduction under section 80TTA [Interest on savings bank account subject to a maximum of ₹ 10,000] | 10,000                                | 10,000                                    | 10,000            |
| <b>Total Income</b>   | <b>3,41,000</b>                       | <b>2,07,000</b>                           | <b>1,72,000</b>   |

### EXERCISE

#### Question 1

Mr. Ram, an Indian citizen, left India on 22.09.2017 for the first time to work as an officer of a company in Germany. Determine the residential status of Ram for the assessment year 2018-19.

#### 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 2017-18, Mr. Ram, 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 A.Y. 2018-19.

#### Question 2

Mr. Dey, a non-resident, residing in US since 1990, came back to India on 1.4.2016 for permanent settlement. What will be his residential status for assessment years 2017-18 and 2018-19?

**Answer**

Mr. Dey is a resident in A.Y. 2017-18 and A.Y. 2018-19 since he has stayed in India for a period of 365 days (more than 182 days) during the P.Y. 2016-17 and P.Y. 2017-18, respectively.

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

- (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.

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 2016-17 (A.Y. 2017-18) will be "Resident but not ordinarily resident".

For the previous year 2017-18 (A.Y. 2018-19) 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. 2017-18 – "Resident but not ordinarily resident"

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

**Question 3**

*Mr. Ramesh & Mr. Suresh are brothers and they earned the following incomes during the financial year 2017-18. Mr. Ramesh settled in Canada in the year 1995 and Mr. Suresh settled in Delhi. Compute the total income for the assessment year 2018-19.*

| <b>Sr. No.</b> | <b>Particulars</b>  | <b>Mr. Ramesh<br/>(₹)</b> | <b>Mr. Suresh<br/>(₹)</b> |
|----------------|---|---------------------------|---------------------------|
| 1.             | <i>Interest on Canada Development Bonds (only 50% of interest received in India)</i>    | 35,000                    | 40,000                    |
| 2.             | <i>Dividend from British company received in London</i>                                 | 28,000                    | 20,000                    |
| 3.             | <i>Profit from a business in Nagpur, but managed directly from London</i>               | 1,00,000                  | 1,40,000                  |
| 4.             | <i>Short term capital gain on sale of shares of an Indian company received in India</i> | 60,000                    | 90,000                    |
| 5.             | <i>Income from a business in Chennai</i>  | 80,000                    | 70,000                    |

| Sr. No. | Particulars   | Mr. Ramesh (₹) | Mr. Suresh (₹) |
|---------|---|----------------|----------------|
| 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         |

**Answer****Computation of total income of Mr. Ramesh & Mr. Suresh for the A.Y. 2018-19**

| S. No. | Particulars  | Mr. Ramesh (Non-Resident) (₹) | Mr. Suresh (Resident) (₹) |
|--------|--|-------------------------------|---------------------------|
| 1.     | Interest on Canada Development Bond ( <b>See Note 2</b> )  | 17,500                        | 40,000                    |
| 2.     | Dividend from British Company received in London ( <b>See Note 3</b> )                                 | -                             | 20,000                    |
| 3.     | Profit from a business in Nagpur but managed directly from London ( <b>See Note 2</b> )                | 1,00,000                      | 1,40,000                  |
| 4.     | Short term capital gain on sale of shares of an Indian company received in India ( <b>See Note 2</b> ) | 60,000                        | 90,000                    |
| 5.     | Income from a business in Chennai ( <b>See Note 2</b> )  | 80,000                        | 70,000                    |
| 6.     | Fees for technical services rendered in India, but received in Canada ( <b>See Note 2</b> )            | 1,00,000                      | -                         |
| 7.     | Interest on savings bank deposit in UCO Bank, Delhi ( <b>See Note 2</b> )                              | 7,000                         | 12,000                    |
| 8.     | Agricultural income from a land in Andhra Pradesh ( <b>See Note 4</b> )                                | -                             | -                         |
| 9.     | Income from house property at Bhopal ( <b>See Note 5</b> )   | 70,000                        | 42,000                    |
|        | <b>Gross Total income</b>  | <b>4,34,500</b>               | <b>4,14,000</b>           |

| S. No. | Particulars                               | Mr. Ramesh (Non-Resident) (₹) | Mr. Suresh (Resident) (₹) |
|--------|---|-------------------------------|---------------------------|
|        | <i>Less:</i> Deduction under chapter VI-A |                               |                           |
|        | Section 80C-Life insurance premium paid   | -                             | 30,000                    |
|        | Section 80TTA ( <b>See Note 6</b> )       | 7,000                         | 10,000                    |
|        | <b>Total Income</b>                       | <b>4,27,500</b>               | <b>3,74,000</b>           |

**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 (₹) | Mr. Suresh (₹) |
|---|----------------|----------------|
| Rent received                                 | 1,00,000       | 60,000         |
| <i>Less:</i> Deduction under section 24 @ 30% | 30,000         | 18,000         |
| <b>Net income from house property</b>         | <b>70,000</b>  | <b>42,000</b>  |

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 upto ₹ 10,000 from savings account with, *inter alia*, a bank is allowable as deduction under section 80TTA.

#### Question 4

Mrs. Geetha and Mrs. Leena are sisters and they earned the following income during the Financial Year 2017-18. Mrs. Geetha is settled in Malaysia since 1986 and visits India for a month every year. Mrs. Leena is settled in Indore since her marriage in 1994. Compute the total income of Mrs. Geetha and Mrs. Leena for the assessment year 2018-19:

| Sl. No. | Particulars  | Mrs. Geetha<br>₹ | Mrs. Leena<br>₹ |
|---------|--|------------------|-----------------|
| (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 Indian 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          |

| Sl. No. | Particulars                          | Mrs. Geetha<br>₹ | Mrs. Leena<br>₹ |
|---------|--------------------------------------|------------------|-----------------|
| (xiii)  | Interest on savings account with SBI | 12,000           | 8,000           |
| (xiv)   | Life insurance premium paid to LIC   | -                | 30,000          |

**Answer**

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. 2018-19. 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. 2018-19, 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. 2018-19**

| S. No. | Particulars   | Mrs. Geetha<br>(Non-Resident)<br>₹ | Mrs. Leena<br>(Resident)<br>₹ |
|--------|---|------------------------------------|-------------------------------|
| 1.     | Income from profession in Malaysia (set up in India) received there <b>(Note 1)</b>   | -                                  | -                             |
| 2.     | Profit from business in Delhi, but managed directly from Malaysia <b>(Note 1)</b>   | 40,000                             | -                             |
| 3.     | Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels <b>(Note 1)</b>   | -                                  | -                             |
| 4.     | Dividend from PQR Ltd. an Indian Company <b>[Exempt under section 10(34)]</b>   | -                                  | -                             |
| 5.     | Dividend from Malaysian Company received in Malaysia <b>(Note 1)</b>  | -                                  | 8,000                         |
| 6.     | Cash gift received from a friend on Mrs. Leena's 50 <sup>th</sup> birthday<br><b>Note:</b> 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                        |

| S. No.                             | Particulars  | Mrs. Geetha (Non-Resident)<br>(₹) | Mrs. Leena (Resident)<br>(₹) |
|------------------------------------|--|-----------------------------------|------------------------------|
| 7.                                 | Agricultural income from land in Maharashtra <b>[Exempt under section 10(1), both in the hands of non-resident and resident].</b>                                    | -                                 | -                            |
| 8.                                 | Past foreign untaxed income brought to India <b>[Not taxable, since it does not represent income of the P.Y.2017-18].</b>  | -                                 | -                            |
| 9.                                 | Fees for technical services rendered in India, but received in Malaysia <b>(Note 1)</b>  | 25,000                            | -                            |
| 10.                                | Income from a business in Pune (Mrs. Geetha receives 50% of the income in India) <b>(Note 2)</b>   | 12,000                            | 15,000                       |
| 11.                                | Interest on debentures in an Indian company (Mrs. Geetha received the same in Malaysia) <b>(Note 2)</b>  | 18,500                            | 14,000                       |
| 12.                                | Short-term capital gain on sale of shares of an Indian company <b>(Note 2)</b>   | 15,000                            | 25,500                       |
| 13.                                | Interest on savings account with SBI <b>(Note 2)</b>   | 12,000                            | 8,000                        |
| <b>Gross Total income</b>          |  | <b>1,22,500</b>                   | <b>1,21,500</b>              |
| Less: Deductions under Chapter VIA |  |                                   |                              |
|                                    | - Section 80C [Life insurance premium paid]<br>[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 ₹ 10,000 from savings account with, inter alia, a bank is allowable as deduction under section 80TTA)                       |                                   |                              |
| <b>Total Income</b>                |  | <b>1,12,500</b>                   | <b>83,500</b>                |

**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:

- (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, 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)(vii), 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.

### Question 5

*Examine the correctness or otherwise of the statement- "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".*

### Answer

This statement is correct.

As per *Explanation* to section 9, 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 -

- (i) 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 fee for technical services, interest or royalty from services utilised 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 and irrespective of whether the non-resident has a residence or place of business or business connection in India.

### Question 6

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

- (i) Salary paid by Central Government to Mr. John, a citizen of India ₹ 7,00,000 for the services rendered outside India.
- (ii) Interest on moneys borrowed from outside India ₹ 5,00,000 by a non-resident for the purpose of business within India say, at Mumbai.
- (iii) Post office savings bank interest of ₹ 12,000 received by a resident assessee, Mr. Ram.
- (iv) Royalty paid by a resident to a non-resident in respect of a business carried on outside India.
- (v) Legal charges of ₹ 5,00,000 paid 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               | 7,00,000                 | 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. |
| (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        | Nil                      | 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. The remaining ₹ 8,500, being less than ₹ 10,000, would be allowed as deduction under section 80TTA from Gross Total Income.  |
| (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).  |

|     | Taxable / Not Taxable | Amount liable to tax (₹) | Reason   |
|-----|-----------------------|--------------------------|--|
| (v) | Taxable               | 5,00,000                 | <p>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.</p> <p>Therefore, legal charges paid in India<sup>3</sup> to a non-resident lawyer of UK, who visited India to represent a case at the Delhi High Court would be taxable in India.</p> <p><b>Note</b> – This question can also be answered on the rationale that existence of professional connection tantamounts to existence of business connection, and hence, legal charges paid to a non-resident lawyer would be deemed to accrue or arise in India by virtue of section 9(1)(i).</p> |

### Question 7

*An individual, who is an Indian resident, is allowed to hold two different citizenships simultaneously. Is the citizenship a determining factor for residential status of an individual?*

### Answer

Citizenship of a country and residential status of that country are separate concepts. A person may be an Indian national /citizen, but may not be a resident in India. On the other hand, a person may be a foreign national /citizen, but may be a resident in India. The citizenship of an individual has no role in determining the residential status of an individual.

The residential status of resident, non-resident, etc. is determined on the basis of number of days an individual actually stays in India during the previous year.

The provisions of section 6 of the Income-tax Act, 1961 are the determining factor of residential status of an individual.

3. Since the payment is in Indian currency, it is logical to assume that the same has been paid in India

## LET US RECAPITULATE

| Section 6 [Residence in India]  |  |   |  |
|---|--|---|--|
| <b>(i)</b>  | <b>Individuals [Resident and ordinarily resident / Resident but not ordinarily resident / non-resident].</b>   |   |  |
|   | The residential status of an individual is determined on the basis of the period of his stay in India.   |   |  |
|   | <b>Basic conditions:</b>   |   |  |
|   | (i) Must be present in India for a period of 182 days or more during the previous year<br>(ii) Must be present in India for a period of 60 days or more during the previous year <b>and</b> 365 days or more during the 4 years immediately preceding the previous year.                     |   |  |
| However, the second condition is not applicable in the following cases:   |  |   |  |
| (1) An Indian citizen who leaves India during the previous year for the purpose of employment outside India or as a member of the crew of an Indian ship;<br>(2) An Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India during the previous year. |  |   |  |
| <b>Additional conditions:</b>   |  |   |  |
| (i) He is a resident in at least 2 out of 10 previous years preceding the relevant previous year;<br>(ii) His stay in India in the last 7 years preceding the relevant previous year is 730 days or more.   |  |   |  |
|   | <b>Resident and ordinarily resident</b>  | <b>Resident but not ordinarily resident</b>   | <b>Non-resident</b>                              |
|   | Must satisfy at least one of the basic conditions and both the additional conditions.  | Must satisfy at least one of the basic conditions and one or none of the additional conditions. | Must not satisfy either of the basic conditions. |
| <b>(ii)</b>   | <b>HUFs [Resident and ordinarily resident / Resident but not ordinarily resident / non-resident]</b>   |   |  |
|   | (i) A HUF would be <b>resident in India</b> if the <b>control and management</b> of its affairs is situated <b>wholly or partly in India</b> .<br>(ii) If the <b>control and management</b> of the affairs is situated <b>wholly outside India</b> , it would become a <b>non-resident</b> . |   |  |

|  |   |  |  |
|--|---|--|--|
|  | (iii) If the HUF is resident, then the <b>status of the Karta</b> would determine whether the HUF is <b>resident and ordinarily resident</b> or <b>resident but not ordinarily resident</b><br><br>If the karta is resident and ordinarily resident, then the HUF would be a resident and ordinarily resident and if the karta is resident but not ordinarily resident, then the HUF would be a resident but not ordinarily resident. |  |  |
| <b>(iii)</b>                             | <b>Firms &amp; AOPs [Resident / Non-resident]</b>   |  |  |
|  | (i)   | A firm or AOP would be <b>resident in India</b> if the <b>control and management</b> of its affairs is situated <b>wholly or partly in India</b> .   |  |
|  | (ii)  | If the <b>control and management</b> of the affairs is situated <b>wholly outside India</b> , it would become a <b>non-resident</b> .  |  |
| <b>(iv)</b>                              | <b>Companies [Resident / Non-resident]</b>  |  |  |
|  | (i)   | A company would be <b>resident in India</b> in any previous year if it is an Indian Company or its place of effective management (POEM) in that year is in India.  |  |
|  | (ii)  | If the company is not an Indian Company and its POEM is also not in India in that year, it would become a non-resident for that year.  |  |
| <b>Section 5 [Scope of Total Income]</b> |   |  |  |
|  | <b>Resident And Ordinarily Resident</b>   | <b>Resident But Not Ordinarily Resident</b>  | <b>Non-Resident</b>  |
|  | Income received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in or outside India<br>In short, the global income is taxable.   | Income which is received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India; <b>AND</b> Income which accrues or arises outside India being derived from a business controlled from or profession set up in India. | Income received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India. |

 **TEST YOUR KNOWLEDGE**

1. *If Anirudh has stayed in India in the P.Y. 2017-18 for 181 days, and he is non-resident in 9 out of 10 years immediately preceding the current previous year and he has stayed in India for 365 days in all in the 4 years immediately preceding the current previous year and 420 days in all in the 7 years immediately preceding the current previous year, his residential status for the A.Y. 2018-19 would be -*
  - (a) *Resident and ordinarily resident*
  - (b) *Resident but not ordinarily resident*
  - (c) *Non-resident*
  - (d) *Cannot be ascertained with the given information*
2. *Raman was employed in Hindustan Lever Ltd. He received a salary at ₹ 40,000 p.m. from 1.4.2017 to 27.9.2017. He resigned and left for Dubai for the first time on 1.10.2017 and got salary of rupee equivalent of ₹ 80,000 p.m. from 1.10.2017 to 31.3.2018. His salary for October to December 2017 was credited in his Dubai bank account and the salary for January to March 2018 was credited in his Bombay account directly. He is liable to tax in respect of -*
  - (a) *Income received in India from Hindustan Lever Ltd;*
  - (b) *Income received in India and in Dubai;*
  - (c) *Income received in India from Hindustan Lever Ltd. and income directly credited in India;*
  - (d) *Income received in Dubai*
3. *A company, other than an Indian company, would be a resident in India for the P.Y. 2017-18 if, during that year,*
  - (a) *its Place of Effective Management is in India.*
  - (b) *its control and management is wholly in India.*
  - (c) *it control and management is partly in India.*
  - (d) *majority of its directors are resident in India*
4. *Income accruing in London and received there is taxable in India in the case of -*
  - (a) *resident and ordinarily resident only*
  - (b) *both resident and ordinarily resident and resident but not ordinarily resident*
  - (c) *both resident and non-resident*
  - (d) *non-resident*
5. *Incomes which accrue or arise outside India but received directly in India are taxable in case of-*
  - (a) *resident and ordinarily resident only*
  - (b) *resident but not ordinarily resident*

- (c) *non-resident*  
(d) *All the above*
6. *R Ltd. is an Indian company whose place of effective management is outside India. R Ltd., shall be:*
- (a) *resident in India*  
(b) *non-resident in India*  
(c) *not ordinarily resident in India*  
(d) *resident and ordinarily resident only*
7. *Fees for technical services paid by the Central Government will be taxable in case of –*
- (a) *resident and ordinarily resident only*  
(b) *resident but not ordinarily resident*  
(c) *non-resident*  
(d) *All the above*
8. *Profit on sale of shares of an Indian company received in Australia is taxable in case of –*
- (a) *resident and ordinarily resident only*  
(b) *resident but not ordinarily resident*  
(c) *non-resident*  
(d) *All the above*
9. *Income from a business in Canada, controlled from Canada is taxable in case of –*
- (a) *resident and ordinarily resident only*  
(b) *resident but not ordinarily resident*  
(c) *non-resident*  
(d) *All the above*
10. *Dividend Income from Australian company received in Australia in the year 2015, brought to India during the previous year 2017-18 is taxable in case of –*
- (a) *resident and ordinarily resident only*  
(b) *resident but not ordinarily resident*  
(c) *non-resident*  
(d) *None of the above*

**Answers**

- 1.** (b)    **2.** (b)    **3.** (a)    **4.** (a)    **5.** (d)    **6.** (a)  
**7.** (d)    **8.** (d)    **9.** (a)    **10.** (d)