



## Direct Tax - CA / CMA Inter

### Residential Status

#### Last Day Revision Questions - Sept 25 / Dec 25 / Jan 26

#### Question 1

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 Rs.7,00,000 for the services rendered outside India considering that he pays tax under sec 115 BAC.
- (ii) Interest on moneys borrowed from outside India Rs.5,00,000 by a non-resident for the purpose of business within India say, at Mumbai.
- (iii) Post office savings bank interest of Rs.19,000 received by a resident assessee, Mr. Ram, aged 46 years if he exercises option of shifting out under sec 115 BAC(1A).
- (iv) Royalty paid by a resident to a non-resident in respect of a business carried on outside India.
- (v) Legal charges of Rs.5,00,000 paid in Delhi to a lawyer of United Kingdom who visited India to represent a case at the Delhi High Court.

#### Answer

	Taxable / Not Taxable	Amount liable to tax (Rs.)	Reason
(i)	Taxable	6,25,000	As per section 9(1)(iii), salaries payable by the Government to a citizen of India for service rendered outside India shall be deemed to accrue or arise in India. Therefore, salary paid by Central Government to Mr. John for services rendered outside India would be deemed to accrue or arise in India since he is a citizen of India. He would be entitled to standard deduction of Rs.75,000 under section 16(ia).



(ii)	Taxable	5,00,000	As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.
(iii)	Partly Taxable	5,500	The interest on Post Office Savings Bank a/c, would be exempt u/s 10(15)(i), only to the extent of Rs.3,500 in case of an individual a/c. Further, interest upto Rs.10,000, would be allowed as deduction u/s 80TTA from Gross Total Income. Balance Rs.5,500 i.e., Rs.19,000 - Rs.3,500 - Rs.10,000 would be taxable in the hands of Mr. Ram, a resident.
(iv)	Not Taxable	-	Royalty paid by a resident to a non-resident in respect of a business carried outside India would not be taxable in the hands of the non-resident provided the same is not received in India. This has been provided as an exception to deemed accrual mentioned in section 9(1)(vi)(b).

(v) Since income is accrued in India – it is taxable



## Question 2

A Korean Company D Ltd, entered in to following transactions during FY 2023-24:

- (A) Received 20 Lakhs from a NR for use of Patent for a business in India.
- (B) Received 15 Lakhs from a NR Indian for use of know-how for a business in Sri Lanka & this amount was received in Japan. [Assume that above amount is converted/stated in Indian Rupees].
- (C) Received 7 Lakhs from RR Co. Ltd, an Indian Company, for providing Technical know-how in India.
- (D) Received 5 Lakhs from R & Co. Mumbai for conducting Feasibility Study for a new project in Nepal & the payment was made in Nepal.

Explain briefly whether, these receipts are chargeable to tax in India.

## Answers

- (A) Chargeable to tax in India. In this case as the payer is a NR, income received for patent used for business in India, shall be deemed to accrue or arise in India.
- (B) Not chargeable to tax in India. In this case as the payer is a NR, income received for use of know-how for a business outside India, shall not be deemed to accrue or arise in India.
- (C) Chargeable to tax in India. In this case as the payer is an Indian Company, i.e., resident in India, & further technical know-how is used for business in India, the income shall be deemed to accrue or arise in India.
- (D) Not chargeable to tax in India. In this case as the payer, being an Indian company is a resident in India. However, as the fee is for feasibility study conducted for business outside India, it shall not be deemed to accrue or arise in India.



### Question 3

Mr. Sarthak, an individual and Indian citizen living in Dubai, since year 2006 and never came to India for a single day since then, earned the following incomes during previous year 2023-24:

	Particulars	Amount (in ₹)
(i)	Income accrued and arisen in Dubai but he is not liable to tax in Dubai	20,00,000
(ii)	Income accrued and arisen in India	5,00,000
(iii)	Income deemed to accrue and arise in India	8,00,000
(iv)	Income arising in Dubai from a profession set up in India	10,00,000

- I. Determine the residential status of Mr. Sarthak and taxable income for the previous year 2023- 24 (assuming no other income arise during the previous year).
- II. What would be your answer if income arising in Dubai from a profession set up in India is ₹ 2 lakhs instead of ₹ 10 lakhs?
- III. What would be your answer, if Mr. Sarthak is not an Indian citizen but his parents were born in India?

### Answer

- I. Mr. Sarthak is an Indian citizen living in Dubai since 2005 who never came to India for a single day since then, he would not be a resident in India for the P.Y. 2023-24 on the basis of number of days of his stay in India as per section 6(1).

However, since he is an Indian citizen ₹ having total income (excluding income from foreign sources) of ₹ 23 lakhs, which exceeds the threshold of ₹ 15 lakhs during the previous year; and ₹ not liable to tax in Dubai, he would be deemed resident in India for the P.Y. 2023-24 by virtue of section 6(1A). A deemed resident is always a resident but not ordinarily resident in India (RNOR).

#### Computation of Total Income for A.Y.2024-25

	Particulars	₹
(i)	Income accrued and arisen in Dubai (not taxable in case of an RNOR)	-
(ii)	Income accrued and arisen in India (taxable)	5,00,000
(iii)	Income deemed to accrue or arise in India (taxable)	8,00,000
(iv)	Income arising in Dubai from a profession set up in India would be taxable in case of RNOR	10,00,000
	Total income	23,00,000



- II. If income arising in Dubai from a profession set up in India is ₹ 2 lakhs instead of ₹ 10 lakhs, his total income (excluding income from foreign sources) would be only ₹ 15 lakhs. Since the same does not exceed the threshold limit of ₹ 15 lakhs, he would not be deemed resident. Accordingly, he would be non-resident in India for the P.Y. 2023-24 and hence, his total income would be only ₹ 13 lakhs (aggregate of (ii) and (iii) above i.e., ₹ 5 lakhs + ₹ 8 lakhs).
- III. If Mr. Sarthak is not an Indian citizen and his parents were born in India, he would be person of Indian origin. In such case, the provisions relating to deemed resident would not apply to him.

#### Question 4

Mr. Rajesh Sharma (aged 62 years), an Indian citizen, travelled frequently out of India for his business trip as well as for his outings. He left India from Delhi airport on 29th May 2023 as stamped in the passport and returned on 27th April 2024. He has been in India for less than 365 days during the 4 years immediately preceding the previous year. Determine his residential status and his total income for the assessment year 2024-25 from the following information:

- (1) Short term capital gain on the sale of shares of Tilt India Ltd., a listed Indian company, amounting to ₹ 58,000. The sale proceeds were credited to his bank account in Singapore.
- (2) Dividend amounting to ₹ 48,000 received from Treat Ltd., a Singapore based company, which was transferred to his bank account in Singapore. He had borrowed money from Mr. Abhay, a non-resident Indian, for the above-mentioned investment on 2nd April, 2023. Interest on the borrowed money for the previous year 2023-24 amounted to ₹ 5,800.
- (3) Interest on fixed deposit with Punjab National Bank, Delhi amounting to ₹ 9,500 was credited to his saving bank account. (RTP May '20)



## Answer

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

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

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident. Mr. Rajesh Sharma, an Indian citizen, has not satisfied either of the basic conditions for being a resident, since he was in India for only 59 days during the previous year 2023-24. Hence, he is non-resident in India for A.Y.2024-25.

### Computation of total income of Mr. Rajesh Sharma for A.Y.2024-25

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

### Question 5

Compute the total income in the hands of an individual aged 35 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2025-26, assuming that he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)–

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

**Answer**
**Computation of total income for the A.Y. 2025-26**

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non-resident
	₹	₹	₹
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company, received in London	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Long term Capital gains on sale of plant at Germany, 50% of gains are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled in Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from house property in London deposited in a Bank at London, later on remitted to India	50,000	-	-

Interest on debentures in an Indian company, received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Mumbai, managed from London	26,000	26,000	26,000
Income from property situated in Nepal and received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal, received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding <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 in Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan <b>[Exempt under section 10(1)]</b>	-	-	-
<b>Gross Total Income</b>	<b>3,52,000</b>	<b>2,18,000</b>	<b>1,83,000</b>
<b>Less:</b> 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>3,42,000</b>	<b>2,08,000</b>	<b>1,73,000</b>



### Question 6

Mr. Prashant (aged 35 years) is an Australian citizen who is settled in Australia and visits India for 125 days in every financial year since past 11 years. During the F.Y. 2023-24, he visited India for a total period of 200 days. The purpose of his visit was to meet his family members who are settled in India and also for managing his family members who are settled in India and also for managing his business in Sri Lanka through his office in Chennai, India.

During the P.Y. 2023-24, he has the following incomes:

- (A) Income from business in Australia controlled form Australia - ₹ 20,00,000
- (B) Income from business in Sri Lanka controlled form Chennai - ₹16,00,000
- (C) Short-term capital gains on sale of shares of an Indian company received in Australia - ₹50,000. The shares were sold online from Australia.
- (D) Income from agricultural land in Australia, received there and then brought to India - ₹ 2,00,000

Find out the residential status of Mr. Prashant and compute his total income for Assessment Year 2024-25. (PYP 4 Marks May '23)

### Answer

#### Determination of Residential Status of Mr. Prashant

Mr. Prashant is an Australian citizen who comes on a visit to India for 125 days in every financial year since the past 11 years. During the P.Y. 2022-23, he visited India for 200 days. Since he stayed in India for 182 days or more during the P.Y. 2023-24, he would be resident in India for the A.Y. 2024-25.

An individual is said to be “Resident and ordinarily resident [ROR]” in India in any previous year, if he satisfies both the following conditions:

- He is a resident in at least 2 out of 10 previous years preceding the relevant previous year; and
- His stay in India in the last 7 years preceding the relevant previous year is 730 days or more [Refer Note 1 below for alternate presentation]

#### First condition



Residential status for P.Y.2022-23 (A.Y.2023-24) – Resident, since he has stayed in India for  $\geq 60$  days (125 days) in the said P.Y. and  $\geq 365$  days (500 days, being 125 days x 4) in the four immediately preceding PYs.

Residential status for P.Y.2021-22 (A.Y.2022-23) – Resident, since he has stayed in India for  $\geq 60$  days (125 days) in the said P.Y. and  $\geq 365$  days (500 days, being 125 days x 4) in the four immediately preceding PYs.

Therefore, he satisfies the first condition of being resident in India in at least 2 out of 10 previous years preceding the relevant P.Y.

### Second condition

Stay in India in 7 immediately preceding PYs =  $7 \times 125$  days = 875 days  $>$  730 days Since both the conditions are satisfied, he is Resident and Ordinarily Resident (ROR). In case of ROR, global income would be taxable in India. Accordingly, his total income for A.Y. 2024-25 would as follows:

#### Computation of Total Income of Mr. Prashant for A.Y.2024-25

	Particulars	₹
(i)	Income from business in Australia	20,00,000
(ii)	Income from business in Sri Lanka	16,00,000
(iii)	Short-term capital gains on sale of shares of an Indian company	50,000
(iv)	Income from agricultural land in Australia [would not be exempt, since it is not from an agricultural land in India]	2,00,000
	Total income	38,50,000

**Notes - (1)** Alternative manner of determination of whether Mr. Prashant is ROR/ RNOR – “An individual is said to be “Resident but not ordinarily resident [RNOR]” in India in any previous year, if he satisfies any one of the following conditions:



- He is a non-resident in at least 9 out of 10 previous years preceding the relevant previous year; or
- His stay in India in the last 7 years preceding the relevant previous year is 729 days or less.
- Mr. Prashant does not satisfy either of the above conditions on account of being resident in more than 1 year out of 10 years and stay in India for 875 days in the 7 years preceding the P.Y.2023-24. Hence, he is a Resident and Ordinarily Resident in the P.Y.2023-24.
- (2) In the absence of information relating to whether Mr. Prashant is a person of Indian origin, the above solution has been worked out assuming that Mr. Prashant is not a person of Indian origin.
- However, alternate assumption that Mr. Prashant is a person of Indian origin is also possible since the purpose of his visit was to meet his family members who are settled in India. Accordingly, if it is assumed that he is a person of Indian origin, then, for determining whether he is resident in P.Y.2021-22 and P.Y.2022-23, information relating to his total income (excluding income from foreign sources) for the said P.Y.s is required for ascertaining whether the condition of 120 days in the relevant P.Y. + 365 days in the 4 immediately preceding P.Ys would be attracted in his case. This information is not given in the question. Accordingly, assumptions would have to be made relating to the applicability of this condition.
- It may be noted that the condition of 120 days in the P.Y. + 365 days in the four immediately preceding PYs for a PIO whose total income (other than income from foreign sources) exceed ₹ 15 lakhs for determination of residential status came into effect only from A.Y.2022-23. Therefore, in the previous years prior to that, he would be non-resident irrespective of his total income since the number of days of his stay < 182 days each year.
- In case if it is assumed that his total income (other than income from foreign sources) for the P.Y.2021-22 and P.Y.2022-23 > ₹ 15 lakhs, he would be ROR since he would be resident in 2 out of 10 years immediately preceding the current P.Y. and he stayed for 730 days or more in 7 previous years immediately preceding current P.Y.. In such case, his total income would be same as determined in the above solution.



- In case if it assumed that he is a PIO whose total income (other than income from foreign sources) for the P.Y.2021-22 and P.Y.2022-23  $\leq$  ₹ 15 lakhs, he would be non-resident for P.Y.2021-22 and P.Y.2022-23, since his stay in India is for less than 182 days in those years. In such a case, for P.Y.2023-24, he would be RNOR, since he would be non-resident in all the 10 years immediately preceding the current P.Y.
- In such case, the computation of total income for A.Y.2024-25 would be as follows –
- Computation of Total Income of Mr. Prashant for A.Y.2024-25

	Particulars	₹
(i)	Income from business in Australia controlled from Australia (not taxable in case of RNOR, since it accrues and arises outside India)	-
(ii)	Income from business in Sri Lanka (taxable since it is controlled from India)	16,00,000
(iii)	Short-term capital gains on sale of shares of an Indian company (taxable, irrespective of residential status)	50,000
(iv)	Income from agricultural land in Australia [would not be taxable in case of RNOR since it accrues and arises outside India]	-
	Total Income	16,50,000

### Question 7

Miss Asha is an Indian citizen. She is a lawyer by profession. She started her consultancy profession in India in 2020 with the name “New way associates”.

In May 2022, she got married to Mr. Ram, an American citizen. Mr. Ram came to India for the first time on 1st May 2021 when he joined an MNC in India. He got a promotion and was transferred to Dubai. He left for Dubai on 1st October, 2022. Mrs. Asha accompanied him to Dubai. She started providing consultancy there. Both of them came to India for 3 months from June to August in 2023 to spend time with Asha’s family. Following incomes were earned by Mr. Ram and Mrs. Asha during the P.Y. 2023-24.

Income of Mr. Ram		₹
1	Salary from company in Dubai (not liable to tax in Dubai)	13,00,000
2	Long term capital gain on sale of shares of an Indian company	2,50,000
3	Income from house property in Delhi (computed)	4,60,000
4	Dividend from shares of an Indian company	65,000

Income of Mrs. Asha		₹
1	Profit from consultancy profession in Dubai which was set up in India (not liable to tax in Dubai)	12,00,000
2	Profit from consultancy profession in India	3,00,000
3	Long term capital gain on sale of shares of British company, credited to her Dubai bank account	60,000
4	Short term capital loss on sale of listed shares of an Indian company	(42,000)

Determine the residential status of Mr. Ram and Mrs. Asha and their total income for the A.Y. 2024-25 ignoring the provisions of section 115BAC. (RTP Nov '23)

## Answer

Determination of residential status of Mr. Ram Mr. Ram is an American citizen who comes on a visit to India during the P.Y. 2023-24 for 3 months. He has been in India from 1st May 2021 to 1st October 2022. Since Mr. Ram has been in India for a period of more than 60 days (i.e., 92 days) during the P.Y. 2023-24 and for a period of more than 365 days (i.e., 519 days) during the 4 immediately preceding previous years, he satisfies one of the basic conditions and he is a resident for the A.Y. 2024-25.

Since his period of stay in India during the preceding 7 previous years is less than 730 days (i.e., 519 days), he is a resident but not-ordinarily resident in India during the A.Y. 2024-25.

Since Mr. Ram is a resident but not-ordinarily resident, income which accrues or arises in India, deemed to accrue or arises in India, received in India, deemed to be received in India and income derived from business controlled in or a profession set up in India is chargeable to tax in India in his hands.

### Computation of total Income of Mr. Ram for the A.Y. 2024-25

Particulars of income		(₹)
1	Salary from company in Dubai [Not taxable, since it accrues and arises outside India]	-
2	Long term capital gain on sale of shares of an Indian company [Taxable, since it accrues and arises in India]	2,50,000
3	Income from house property in Delhi [Taxable, since it accrues and arises in India]	4,60,000
4	Dividend from shares of an Indian company [Taxable, since it accrues and arises in India]	65,000
		7,75,000

Determination of residential status of Mrs. Asha Mrs. Asha is an Indian citizen who comes on a visit to India during the P.Y. 2023 -24 for 3 months i.e., 92 days. Since she does not satisfy any of the basic conditions of staying in India for 182 days or 120 days during the P.Y. 2023-24, she is not a resident in India as per section 6(1).

Mrs. Asha would be a deemed resident under section 6(1A) if her total income other than the income from foreign sources exceeds ₹ 15 lakhs during the P.Y. 2023-24 as she is an Indian citizen and is not liable to tax in Dubai.

### Computation of total Income other than the income from foreign sources of Mrs. Asha

Particulars of income		(₹)
1	Profit from consultancy profession in Dubai which was set up in India [Includible]	12,00,000
2	Profit from consultancy profession in India [Includible]	3,00,000
3	Long term capital gain on sale of shares of British company [Not includible, since it is a foreign source income]	-
4	Short term capital loss on sale of listed shares of an Indian company [It accrues and arises in India. However, short term capital loss is not allowed to be set off from business or profession income, hence, not includible]	-
		15,00,000

Since, total income other than the income from foreign sources of Mrs. Asha does not exceed ₹ 15 lakhs, she would not be a deemed resident. Hence, Mrs. Asha is a non- resident during the A.Y. 2024-25.

Since Mrs. Asha is a non-resident, income which accrues or arises in India, deemed to accrue or arises in India, received in India and deemed to be received in India is chargeable to tax in India in her hands.

Particulars of income		(₹)
1	Profit from consultancy profession in Dubai which was set up in India [Not taxable]	-
2	Profit from consultancy profession in India [Taxable, since it accrues and arises in India]	3,00,000
3	Long term capital gain on sale of shares of British company [Not taxable, since it accrues and arises outside India]	-
4	Short term capital loss on sale of listed shares of an Indian company [Since, it accrues and arises in India, it is allowed to be carry forward to A.Y. 2025-26]	-
		3,00,000

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