

# **Topic: Residential Status (Part-4)**

**Unit: 1**

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**Subject: Corporate Tax Planning and Management Paper: MC4.2**

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## **The provisions of tax incidence at a glance:**

Serial No.	Nature of Income	Tax incidence in the case of		
		Resident & ordinarily resident	Resident but not ordinarily resident	Non resident
1.	Income accrued or deemed to be accrued and received or deemed to be received in India	Taxable	Taxable	Taxable
2.	Income accrued outside India but received or deemed to be received in India.	Taxable	Taxable	Taxable
3.	Income accrued or deemed to be accrued in India but received outside India	Taxable	Taxable	Taxable
4.	Income accrued and received outside India	Taxable	Taxable	Not Taxable

	from a business controlled in or profession set-up in India.			
5.	Income accrued and received outside India from a business controlled or profession set-up outside India.	Taxable	Not Taxable	Not Taxable
6.	Income accrued and received outside India in the previous year (it makes no difference if the same is later remitted to India).	Taxable	Not Taxable	Not Taxable
7.	Income accrued and received outside India in any year preceding the previous year and later on remitted to India in current financial year.	Not Taxable	Not Taxable	Not Taxable
Note: In case of resident assessee like company, firm etc. (other than Individual and HUF) in which there is no classification as 'Resident but not ordinarily resident', income accrued and received outside India from a business controlled or profession setup outside India shall be taxable.				

### **MEANING OF INCOME RECEIVED IN INDIA**

Income received in India is taxable in all cases (whether accrued in India or elsewhere) irrespective of residential status of the assessee, therefore it is significant to know the meaning of income received in India. If the place, where the recipient gets the money (on first occasion) under his control, is in India, it is said to be income received in India.

Tax point: Receipt is different from remittance. The receipt of income refers to the first occasion when the recipient gets the money under his control. Once the amount is received as income (at any place outside India), any subsequent remittance or transmission of the amount to India does not result to receipt in India.

Example: Mr. X, a non-resident, received dividend from a German company in Japan on 15/12/2019. On 17/12/2019, he remitted such income in India. Such income shall not be taxable in India as income has neither received in India nor accrued in India.

**Note: Salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.**

## **MEANING OF INCOME DEEMED TO BE RECEIVED IN INDIA**

Following incomes shall be deemed to be received in India and taxable in hands of all assessee irrespective of their residential status - a) The annual accretion in the previous year to the balance at the credit of an employee participating in a recognized provident fund, to the extent provided in Rule 6 of part A of the IV schedule i.e.-

- i) Employer's contribution to the recognized provident fund in excess of 12% of salary.
  - ii) Interest credited on the above balance by a rate exceeding 9.5% [Sec. 7(i)]
- b) The transferred balance in recognized provident fund, to the extent liable to income tax [Sec. 7(ii)]
- c) The contribution made, by the employer in the previous year, to the account of an employee under a pension scheme notified u/s 80CCD [Sec. 7(iii)]
- d) Tax Deducted at source [Sec. 198] e) Deemed profit.
- f) Income from undisclosed sources

## **MEANING OF INCOME DEEMED TO ACCRUE OR ARISE IN INDIA [SEC. 9]**

Following incomes are deemed to accrue or arise in India:

Income from connection in India [Sec. 9(1)(i)] All income accruing or arising, whether directly or indirectly,:

a) through or from any business connection in India;

or b) through or from any property/asset or source of income in India;

or c) through the transfer of a capital asset situated in India.

### **A. Income from business connection in India**

Income, which arises outside India because of business connection (or Professional connection) in India is deemed to accrue or arise in India and shall be taxable in hands of all assessee irrespective of his residential status.

Meaning: Business connections may be in several forms, e.g. a branch office in India or an agent/ organization of a non-resident in India. Business connection shall include any business activity carried out through a person who, acting on behalf of the non-resident: a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or

habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—

- i) in the name of the non-resident; or
- ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that nonresident or that non-resident has the right to use;
- iii) or for the provision of services by the non-resident; or b) has no such authority, but he maintains in India habitually a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or c) habitually secures orders in India mainly for the non-resident.

### **1. Income from any property/assets or source of income in India**

Following income shall be deemed to accrue or arise in India –

- Income from any assets or property in India whether tangible / intangible, movable / immovable; or
- Income from a source situated in India

### **2. Income on transfer of a capital asset situated in India**

Any gain on transfer of a capital asset situated in India, shall be deemed to accrue or arise in India

### **B. Salaries earned in India [Sec. 9(1) (ii)]**

Salary payable for – a) Services rendered in India; and

- b) The rest period or leave period which is preceded and succeeded by the period during which services were rendered in India and forms part of the service contract of employment, - shall be deemed to accrue or arise in India.

Salary payable by the Government to Indian citizen for services rendered outside India [Sec. 9(1)(iii)]

Any salary –

- Payable by the Government of India;
- to a citizen of India;
- for services rendered outside India; - shall be deemed to accrue or arise in India.

**C. Income from dividend [Sec. 9(1) (IV)]**

Any dividend paid by an Indian company outside India is deemed to accrue or arise in India.

**D. Income from Interest [Sec. 9(1) (v)]**

Following interest shall be deemed to accrue or arise in India –

Interest payable by The Government Nil

**A resident person:** Money borrowed is not used for the purpose of –

- business or profession carried on by such person outside India;
- or • earning any income from any source outside India

**A non-resident person**

Money borrowed is used for the purpose of business or profession carried on by such person in India.

**Tax point:** In case money borrowed and used for the purpose of earning an income from any other source in India, interest shall not be treated as deemed to accrue or arise in India.

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