

TAXBOOK⁺

Working steps of solutions

B18 to B34A

Residential Status & Scope of Total Income

Build Your Confidence (BYC)

SCOPE OF TOTAL INCOME

B18. SCOPE OF TOTAL INCOME - Determine whether the following incomes will be taxable in the hands of Rahul

#	Income	Category	ROR	RNOR	NR
1	Interest received in the fixed deposit account maintained with Pune branch of ICICI Bank	Receipt – India Accrual – India	Yes	Yes	Yes
2	Rent received in China from a house property situated in India	Receipt – China Accrual – India	Yes	Yes	Yes
3	Salary received in India for services rendered in US	Receipt – India Accrual – US	Yes	Yes	Yes
4	Income from sale of building situated in France and received in Canada	Receipt – Canada Accrual – Australia	Yes	No	No
5	Income received in Thailand from a business carried on in Canada, controlled in India	Receipt – Thailand Accrual – Canada Control – India	Yes	Yes	No
6	Income received in Thailand from a business carried on in Canada, controlled in Thailand	Receipt – Thailand Accrual – Canada Control – Thailand	Yes	No	No
7	Income received in USA from a profession carried on in USA, but set up in India	Receipt – USA Accrual – USA Setup – India	Yes	Yes	No
8	Income received in Sri Lanka from a profession carried on in India and set up in India	Receipt – Sri Lanka Accrual – India Setup – India	Yes	Yes	Yes

B19. INCOME ACCRUING/ARISING IN INDIA - Determine whether the following incomes will be

Income	Category	ROR	RNOR	NR
Income received in UK from a business carried on in UK, controlled in UK, but included in the group balance sheet prepared in India	Accrual – UK Receipt – UK Control – UK	Yes	No	No
Income arises from professional services rendered in UK and is received in India. Profession is set-up in India.	Accrual – UK Receipt – India Setup – India	Yes	Yes	Yes

B20. BUSINESS CONNECTION – MASTER QUESTION - Swamy is a non-resident based out of Brazil

#	Situation	Income deemed to accrue or arise in India?
1	He purchases raw cloth from Indian suppliers and exports to Mexico for being processed in a factory situated in Mexico. It is then sold to the customers in Mexico.	No, as operations confined to purchase of goods in India for the purpose of export
2	He publishes a law journal in Brazil for which he collects news and views from various sources located in India	No, as activity is confined to the collection of news and views in India for transmission out of India

3	He visited India for 20 days during the year to shoot a cinematographic film in Jodhpur. He later sold the film to a film distributor in Brazil.	No, as operations confined to the shooting of cinematograph film in India by an individual not a citizen of India
4	He is in the diamond business in connection with which he displayed uncut and unsorted diamonds in the special notified zone for 35 days.	Yes, since he is not a foreign company

B21. BUSINESS CONNECTION - CA2017(N) - Daisy Ltd., a foreign company, incorporated in USA

Since all major decisions were taken through Board meetings held in USA, POEM is outside India. Hence, Daisy Ltd. is a non-resident. Branch office constitutes business connection in India u/s 9(1)(i). Income from business connection is deemed to accrue or arise in India. However, export exclusion applies in this case as operations are confined to purchase of goods in India for the purpose of export. Hence, profits from export are not taxable in India.

B22. PROPERTY/ASSET/SOURCE IN INDIA - State whether the following items of income can be deemed to accrue or.....

#	Particulars	Deemed to accrue/arise in India?
1	Hire charges or rent paid outside India for the use of the machinery or buildings situated in India.	Yes u/s 9(1)(i), since property, asset or source of income is in India
2	Deposits with an Indian company for which interest is received outside India	Yes u/s 9(1)(i), since property, asset or source of income is in India
3	Rental income from a property situated in India	Yes u/s 9(1)(i), since property, asset or source of income is in India
4	Dividends received from shares or securities of an Indian company	Yes u/s 9(1)(iv) since dividend is paid by an Indian company
5	Interest from deposits held in Indian bank accounts	Yes u/s 9(1)(i), since property, asset or source of income is in India

B23. PROPERTY/ASSET/SOURCE IN INDIA - CA2016(N) – Mr. Federer, a non resident residing in Sweden.....

No, since income from any property, asset or source of income in India is deemed to accrue or arise in India u/s 9(1)(i). Hence, it is taxable in India.

B24.. PROPERTY/ASSET/SOURCE IN INDIA - Determine whether the following are taxable in the hands of Sonu.....

#	Particulars	ROR	RNOR	NR	Comment
1	Winning from lottery run by Brazilian Government, received in Mexico and remitted to India	Yes	No	No	Income accrues/arises and is received outside India. Subsequent remittance not relevant. However, global income taxable for ROR.
2	Interest on FD made in branch of State Bank of Colombo in Sri Lanka	Yes	No	No	Income accrues/arises outside India and is received outside India. However, global income taxable for ROR.
3	Loan from bank in Mexico credited in the bank account in Mexico	No	No	No	Loan is not in the nature of income.
4	Interest in money lending business carried out in UK, received in UK, where business is controlled from India	Yes	Yes	No	Accrues/arises and is received outside India, but business controlled in India. Taxable for ROR and RNOR.

B25. CAPITAL ASSET IN INDIA - Determine whether the following are taxable in the hands of Johnny.....

#	Particulars	ROR	RNOR	NR	Comment
1	Johnny owns a residential house property in India. He transfers the property to Bony, a non-resident, and receives the sale consideration outside India.	Yes	Yes	Yes	Capital asset is situate in India. Income deemed to accrue/arise in India u/s 9(1)(i).
2	Johnny is a real estate dealer. He sells a flat, forming part of his stock-in-trade, located in	Yes	Yes	No	Flat is not capital asset as it is stock-in-trade. Hence, income is business income, not capital gain.

	France, to Bony who lives in UK. Johnny's business is controlled from India.				Business income accrues/arises outside India but is controlled in India. Taxable for ROR and RNOR.
3	Johnny buys gold bars in India and then takes them to US where he sells these to Bony, a non-resident. Sale proceeds are credited to his bank account in the US.	Yes	No	No	It is transfer of capital asset situated outside India at the time of transfer. Receipt is outside India. Not deemed to accrue/arise in India. Thus, taxable only for ROR as global income.

B26. SALARY - Determine whether the following incomes will be taxable in the hands of Siddharth,

#	Income	Citizen of India	Citizen of US	Comment
1	Salary received in India from ABC Pvt. Ltd. for services rendered in India	Yes	Yes	Receipt in India. Also, income deemed to accrue/arise in India u/s 9(1)(ii) as services rendered in India.
2	Salary received in US from ABC Pvt. Ltd. for services rendered in India	Yes	Yes	Income deemed to accrue/arise in India u/s 9(1)(ii) as services rendered in India.
3	Salary received in US from ABC Pvt. Ltd. for services rendered in US	No	No	Receipt outside India. Also, income not deemed to accrue/arise in India u/s 9(1)(ii) as services rendered outside India.
4	Salary received in India from Government of India for services rendered in US while working in Indian embassy	Yes	Yes	Receipt in India. Also, income deemed to accrue/arise in India u/s 9(1)(iii) for citizen of India as it is payable by Government.
5	Salary received in US from Government of India for services rendered in US while working in Indian embassy	Yes*	No	Income deemed to accrue/arise in India u/s 9(1)(iii) for citizen of India as it is payable by Government.
6	Pension received in US from ABC Pvt. Ltd. for services rendered in India	Yes	Yes	Income deemed to accrue/arise in India u/s 9(1)(ii) as services rendered in India.

*Allowance or perquisites will be exempt u/s 10(7).

B27. SALARY - Simran, a Chartered Accountant, is presently working in a firm in India.....

- Employment rule will apply. Stay in India \geq 182 stay required to become resident. Should leave latest by 28 Sep 2021 to make her non-resident for PY 2021-22. In such case, income in the form of salary received outside India for services rendered outside India will not be taxable.
- Direct credit should be avoided as it will get taxed on receipt basis. Salary should be received abroad and then remitted.
- Stay in India \geq 182 stay required to become a resident. She should ensure her overall stay during PY 2021-22 within this limit. Moreover, she should not visit again during current PY.

B28. DIVIDEND - Determine whether the following dividend will be taxable in the hands of Zen, a non-resident, for.....

#	Dividend from Reliance Ltd., an Indian company, received in India	Taxable?
1	Dividend from Reliance Ltd., an Indian company, received in China	Yes, as deemed to accrue/arise in India u/s 9(1)(iv) since paid by an Indian company outside India
2	Dividend from ByteDance Ltd., a Chinese company, received in China	No, as received outside India and not deemed to accrue/arise in India u/s 9(1)(iv)
3	Dividend from ByteDance Ltd., a Chinese company, received in India	Yes, as received in India, though not deemed to accrue/arise in India u/s 9(1)(iv)

B29. INTEREST - Determine whether the following interest incomes will be taxable in the hands of Johnny, for the PY.....

#	Particulars	ROR	RNOR	NR	Comments
1	Interest of Rs. 1 lakh is received from the Government of India which is used in a project being executed in Japan in collaboration with the Japanese Government.	Yes	Yes	Yes	Deemed to accrue/arise in India u/s 9(1)(v) as payable by Government
2	Interest of Rs. 2 lakh is received from Bony, a resident, in respect of loan given, which Bony uses to purchase plant and machinery for his	Yes	Yes	Yes	Deemed to accrue/arise in India u/s 9(1)(v) as payable by resident and loan is not used for business or profession carried on by the payer

	business in India. Loan agreement is executed in USA.				outside India or for earning any income from any source outside India.
3	Interest of Rs. 3 lakh is received from Mony, a non-resident, in respect of loan given, which Mony uses to set up a new office for his profession in Australia.	Yes	No	No	Not deemed to accrue/arise in India u/s 9(1)(v) as payable by non-resident and loan is not used for business or profession carried on by the payer in India. However, taxable for ROR on global basis.
4	Interest of Rs. 4 lakh is received (in USD) from Mony, a non-resident, in respect of loan given, which Mony uses to invest in shares of an Indian company.	Yes	No	No	Not deemed to accrue/arise in India u/s 9(1)(v) as payable by non-resident and loan is not used for business or profession carried on by the payer in India. However, taxable for ROR on global basis.

B30. ROYALTY/FTS - Determine if the following are royalty or FTS.

#	Particulars	Royalty/FTS	Comments
1	Royalty to author holding copyright in a book	Royalty	Transfer of all or any rights in respect of IPRs (including grant of a license)
2	Imparting of technical knowledge to use a machine installed in the factory	Royalty	Imparting of any information concerning IPR or know-how
3	Payment for use of a surgical robotic equipment belonging to another person	Royalty	Use of any IPR or right to use certain equipment
4	Outright sale of a patent	Not royalty	Royalty excludes consideration taxable as Capital Gains
5	License to download and use data analytics software	Royalty	Consideration for use or right to use computer software (including granting of license)
6	Management of a complex project	FTS	Yes. It is managerial services.
7	Buying a manual of how to use engineering techniques to work a machine	Not FTS	No. It is purchase of a product rather than a service.
8	Installation of equipment by an engineer	FTS	Yes. It is technical services.

B31. ROYALTY/FTS - Determine whether the following royalty and FTS incomes will be taxable

#	Particulars	ROR	RNOR	NR	Comment
1	Mr. Pro provides mechanical engineering services to the branch in Greece of JK Ltd., an Indian company. JK Ltd. makes payment of FTS to Mr. Pro in Greece. Service contract is entered into in India.	Yes	No	No	Service used by resident payer for business carried on by payer outside India. Not deemed to accrue/arise in India u/s 9(1)(vii). Also, receipt outside India. However, global income taxable for ROR.
2	Mr. Pro provides software development services to US Co, a US company. US Co utilizes the services at its branch office in India. Services are rendered in US and payment is made in USD.	Yes	Yes	Yes	Services used by non resident payer for business carried on by payer in India. Deemed to accrue/arise in India u/s 9(1)(vii).
3	Mr. Pro divulges a secret formula to C Co, a Japanese company, which uses it in manufacture of beverages in its factory set up in China. C Co pays royalty to Mr. Pro outside India.	Yes	No	No	Information used by non resident payer for business carried outside India. Not deemed to accrue/arise in India u/s 9(1)(vi). Also, receipt outside India. However, global income taxable for ROR.

B31a. CA2021(J) – ROYALTY - Discuss the taxability of the following transaction giving reasons, in light of relevant.....

Consideration for transfer of right to use the manufacturing process is royalty u/s 9(1)(vi). It is not taxable for Pratham as it is not deemed to accrue or arise in India since it is payable by a resident in respect of right used for the purpose of business carried on by the payer outside India.

B32. CA2015(N) – ROYALTY - Soham, an Indian citizen, left India on 20 April 2019 for the first time to

Where an Indian citizen comes on a visit to India, he will be resident in India only if stay in India is 182 days or more during the previous year. In this case, his stay in India from 15 May to 21 August is of 99 days. Hence, he is a non-resident.

Section 9(1)(vi) defines 'royalty' to mean consideration for transfer of all or any rights in respect of a design and also for the rendering of services in connection with such activity. Transfer of rights also includes transfer of right for use or right to use a computer software. Therefore, fees received by Soham is in the nature of 'royalty'.

Since royalty is paid by LK Ltd, which is a resident, royalty would be deemed to accrue or arise in India, as the rights are used for the purposes of its business carried on in India. Thus, royalty would be taxable in India.

B33. CA2011(M) – FTS - Vivitha paid a sum of 5,000 USD to Kulasekhara, a management consultant

Payment to a management consultant relating to project financing is in the nature of consultancy services. Hence, it is fees for technical services (FTS).

The residential status of Vivitha is not stated. However, since the payment is for services utilized in the business carried on in India, FTS shall be deemed to accrue or arise in India u/s 9(1)(vii) and, hence, taxable in India in the hands of Kulasekhara. This will be the position whether or not services are rendered in India or whether or not Kulasekhara has a residence or place of business or business connection in India.

B34. CA2017(M) – ROYALTY/FTS - A Korean company, Damjung Ltd., entered into the following

#	Particulars	Taxability
1	Rs. 20 lakh from a non-resident for use of patent for a business in India	Royalty is taxable since patent is used for purpose of business carried on by payer in India. Hence, deemed to accrue/arise in India u/s 9(1)(vi).
2	Rs. 15 lakh from a NRI for use of know-how for a business in Sri Lanka and this amount was received in Japan	Royalty is not taxable as know-how is used for purpose of business carried on by payer outside India, whether NRI is resident or NR. Hence, not deemed to accrue/arise in India u/s 9(1)(vi). Also, received outside India.
3	Rs. 7 lakh from CC Ltd., an Indian company for providing technical know-how in India	Royalty is taxable since know-how is used for purpose of business carried on by payer in India. Hence, deemed to accrue/arise in India u/s 9(1)(vi).
4	Rs. 5 lakh from B & Co., Mumbai, for conducting feasibility study for a new project in Nepal. Payment was made in Nepal.	FTS is not taxable as services are used for purpose of business carried on by payer outside India. Hence, not deemed to accrue/arise in India u/s 9(1)(vi). Also, received outside India.

B34A. CA2021(J) - Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for.....

Interest, royalty or FTS is included in the total income of a non-resident, whether or not,—

- the non-resident has a residence or place of business or business connection in India; or
- the non-resident has rendered services in India.

Thus, only status of payer and utilization is relevant for source rule. Territorial nexus of NR is not relevant.