**Question 1**

**Mrs. Davidee, not being a person of Indian origin, comes to visit India for the first time on**

**April 15, 2010. She plans to visit all the historical palaces in India. Determine her**

**residential status for the Assessment year 2015-16 given during the financial years she is**

**in India for following days-**

**2010-11 -- 130**

**2011-12 -- 80**

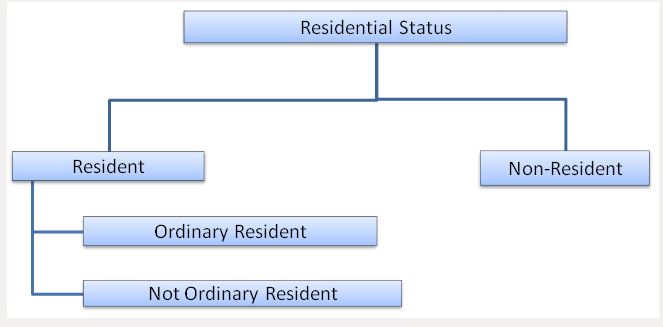
**2012-13 -- 13**

**2013-14 -- 210**

**2014-15 -- 75**

**Answer:**

According to Section 6 of residential status of Income tax act.



Determination of residential status of a taxpayer is very important at the time of filing of income tax return as income tax is levied based on residential status of the taxpayer.

The following types of incomes are taxable in the hands of the different categories of taxpayers:

|  |  |  |  |
| --- | --- | --- | --- |
| Particulars | Resident and ordinary resident | Not ordinary resident | Non-Resident |
| Income received or deemed to be received in india weather earned in india or elsewhere | Yes | Yes | Yes |
| Income which accrue or arise or is deemed to accrue or arise in india during the previous year, weather received in india or elsewhere | yes | Yes | Yes |
| Income which accrue or arise outside india and received outside india from business controlled from india | Yes | Yes | No |
| Income which accrue or arise outside india and received outside india in the previous year from any other source | Yes | No | No |
| Income which accrues or arises outside india and received outside india during the year preceding the year and remitted to india during the previous year | Yes | No | No |

The residential status of an individual is to be determined on the basis of period of stay of the taxpayer in india and is computed separately for each year. If an individual satisfies any one of the following conditions, he is said to be resident in india for the financial year.

The conditions are:

1. He is in India for a period of 182 Days or more in that financial year.
2. He is in india for 60 Days or more during that financial year and has been in india for 365 days or more during 4 previous years immediately preceding the relevant financial year.

Now, according to question, for assessment year 15-16,

According to condition second mentioned above,

Mrs. Davidee is in India for 75 days in 14-15 which satisfies the limit of 60 days. And she is also in india for more the 365 days in years,

10-11, → 130

11-12, → 80

12-13, → 13

13-14. → 210

So, 130+80+13+210 = 433>365\

Hence, She is resident of india in assessment year 2015-16.

**Question 2**

**“Indirect tax is an umbrella term which not only includes Excise Duty or Custom Duty but**

**certain other taxes, with different statutes governing them. Discuss in detail the different**

**taxes.**

**Answer:**

A tax may be defined as a "pecuniary burden laid upon individuals or property owners to support the government." In simple words tax is nothing but money that people have to pay to the government, which is used to provide public services.

If taxpayer is just a conduit and at every stage the tax-incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. Also called consumption taxes, they are regressive in nature because they are not based on principle on ability to pay. Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. The significant indirect taxes levied in India are excise duty, custom duty, service tax, central sales tax, value added tax, entry tax, purchase tax.

1. CENTRAL SALES TAX

Central sales tax is tax levied by the Central government on Inter-state sales i.e. sale made from one state to another state. Entry no. 92A of Union list of Seventh Schedule gives power to Central government to make law regarding tax on sale from one state to another state. As per charging section 6, every dealer shall be liable to pay tax under CST act on sales of all goods, other than electrical energy, effected by him in the course of inter state trade.

(a) Inter state sale by movement of goods, section 3(a): Where the movement of goods commences and terminates in the same state it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement, the goods pass through the territory of any other state. Location of buyer and seller is not important. Inter state sales take place if sales causes the movement of goods from one state to another.

(b) Inter state sale by transfer of documents, section 3(b): Inter state sales take place if sales is effected by transfer of documents of title during the movement of goods from one state to another.

Document of title is generally a lorry receipt in case of transportation by road, railway receipt in case transport by rail, bill of lading in case of transport by sea and air waybill in case of transport by air. A person in whose name the document of title to the goods is endorsed would be entitled to delivery of the goods.

Duration of movement of goods: When goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Concessional rate of CST will be 2% or state VAT rate (whichever is less) if :

(a) sale is made to a registered dealer

(b)Form C is obtained from purchasing dealer and

(c) sale is of eligible goods which are specified in the registration certificate of purchasing dealer.

In case any of the above three conditions are not fulfilled, the rate of CST would be the rate applicable on the sale of such goods inside the appropriate state under the sales tax law of that state.

2. VALUE ADDED TAX

VAT is not paid by trader from his own pocket, but he collects the tax from his customers and paid to government. It is a multipoint tax where at each value addition tax is charged on output price and credit is given for tax paid on input price. Therefore VAT is a consumption based tax.

In VAT if any person is purchasing goods within a particular state and has paid value added tax and subsequently the goods were sold either in the same state or to some other state, in that case such person shall be allowed to take credit for input tax but if the goods has been purchased from outside the state and has paid tax to that particular state, tax credit for such input tax is not allowed. Tax credit is not allowed for central sales tax. It become cost of purchase for purchaser.

* Advantages of VAT

(a) Lower tax evasion: The suppression of purchases becomes difficult, because no credit will be available in respect of suppressed purchase; the cost of such purchase will be higher and therefore, there will be loss of revenue to the dealer.

(b) Transparency: Under VAT system, the buyer knows, out of the total consideration paid for purchase of material, what is tax component. Thus, the system ensure transparency.

(c) Better accounting: VAT promotes better accounting of business transactions, as maintenance of records and purchase invoice is a necessary per-condition for availment of credit on purchase.

* Demerits of VAT

(a) Central VAT/ State VAT: So long as Central VAT is not integrated with the state VAT is will be difficult, to put the purchase from other states at par with state purchases.

(b) Increase in accounting cost: For complying with the VAT provisions, the accounting cost will increase. The burden of this increase may not be balanced with the benefit to the traders and small firms.

(c) VAT is regressive: VAT is a regressive tax. It burdens more on the poor and less on the richer sections of society.

Under VAT system there will be only two basic rate i.e. 4% and 12.5%, plus a specific category of tax free goods and a special VAT rate 1% only for gold and silver ornaments etc.(depending on different states).

3. SERVICE TAX

Service tax is a tax on service. It is leviable only if any taxable service is provided or to be provided. Though the service tax is paid by the service provider but it is charged or collected from the service receiver, however in some specific cases it is paid by service receiver and is technically known as reverse charge. It extends to whole of India except Jammu and Kashmir. Service tax is a destination based consumption tax. The location of service provider doesn't matter. If service is received and consumed in Jammu and Kashmir then it shall not be taxable.

Service means any activity carried out by a person for another for consideration, and includes a declared service.

Service tax is levied at the rate of 14.5% on the value of the services, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Point of taxation means the point of time when a service shall be deemed to have been provided. This point will determine rate of service tax and due date for payment of service tax to the credit of central government. As per rule 3, deemed date of provision of service will be:

(a) the date of issue of invoice, if such invoice is issued within 30 days of completion of service

(b) the date of completion of service, if such invoice is not issued within 30 days

(c) the date on which the payment is received by the service provider

Whichever is earlier

As per rule 6 sub rule 1, service tax shall be paid by 5th (or 6th if paid electronically) of the next calendar month from the relevant month in which service is deemed to have been provided. In case of an individual or partnership firm, the service tax shall be paid by 5th (or 6th if paid electronically) of the next calendar month following the relevant quarter. Provided that the service tax on the services provided in the month of march or the quarter ending march, shall be paid by the 31 march.

Negative list

Service tax will be leviable on all services other than the services specified in the negative list(section 66B).

(a) any service provided by RBI is non taxable but all services provided to RBI is taxable unless otherwise exempt.

(b) services provided by a foreign diplomatic mission located in India is non taxable.

(c) goods which are purchased and sold are not liable to service tax. The negative list contains the entry the trading of goods and not the services provided in relation to trading of goods.

(d) any process amounting to manufacture or production of goods on which excise duty is leviable under the central excise act will not be leviable to service tax.

(e) tax on betting and gambling or sale of lottery tickets is not taxable.

(f) access to roads, bridges on payment of toll charges excluding services provided by any agency for collecting such toll charges.

**Question 3**

**A) Determine the amount of disallowances for the cases given below (5 Marks )**

**I. Generally Mr Ravil pays salary to his employees by account payee cheques. But**

**salary for the month of March 2015, is paid to Mr. X, Mr. Y , Mr. Z by bearer**

**cheques (payment being Rs.20000, Rs.25000, Rs 20200, respectively**

**Answer:**

As per section 40A(3), if the assessee incurred any revenue expenditure and aggregate payment for such expenditure on any single day to any single person exceeds Rs. 20000 for payment made otherwise than through a/c payee cheque or draft, then entire payment is disallowed.

Here in the given case, Mr. Ravil pays salary to his employees Mr. X of Rs. 20000, Mr. Y of Rs. 25000 and Mr. Z of Rs.20200 for the month of march 2015 through bearer cheques. Thus the entire sum paid to Mr. Y and Mr. Z shall be disallowed.

**ii. Daisy Ltd purchased raw material on credit from Mr. Navneet on credit who hold**

**20 % of equity share capital in Daisy Ltd(the amount of the bill being Rs.38800**

**however the market price of the goods was Rs.19460) the same is paid in cash on**

**June 25,2016**

**Answer:**

As per section 40A(2), where the assessee incurs any expenditure in respect of which payment has been made or is to be made to certain specified person the assessing officer may disallow so much of the expenditure as he considers to be excessive or unreasonable having regard to fair market value of good.

Mr. Navneet who hold 20% equity share capital of Daisy Ltd., qualified the definition of specified person refer to section 40A(2). That any person has substantial interest i.e 20% or more of voting power in the company is specified person to that company.

In the present case Daisy Ltd., Purchased raw material from specified person (Navneet) at Rs. 38800 and fair market value of that raw material was rs 19460. Assessing officer disallow the expense in excess of Rs. 19460 i.e Rs. 19340.

**B) On April 2014, the depreciated value of a block of asset is Rs.80000 (rate of**

**depreciation being 12 %). It consists of Plants P & Q. The assessee being Mr. Ammar**

**purchased one more plant C (rate of depreciation being 12 %), during the previous**

**year 2014-15 for Rs.50000 and sells Plant P on April 5,2014 for Rs 185000. Calculate**

**the amount of depreciation admissible for the assessment year 2015-16 and give**

**reasons for the computation done.**

**Answer:**

With reference to section 50 of income tax act, if one or more assets of a block are disposed at a value which is more than total block value then the value of the block becomes NIL and the differential amount will be Short term capital gain. Depreciation claim will be nil even if the block has assets.

In the given case,

Opening WDV of plants P and Q. 80000

Add: Cost of plant C acquired in the P.Y. 50000

130000

Less: Money receivable on disposal (restricted to 130000). 130000

WDV for A.Y 15-16. NIL

Depreciation NIL

STCG u/s 50 for A.Y 15-16

STCG = Sale value of asset - value of block of asset

= 185000 - 130000

= 55000