

RESIDENTIAL STATUS

The determination of the residential status of a person is very significant in order to find out his tax liability

❖ whether an income, accrued to an individual outside india, is taxable in india depends upon the residential status of the individual in india.

❖ Similarly, whether an income earned by a foreign national in india (or outside india) is taxable in india, depends on the residential status of the individual, rather than on his citizenship..

Different taxable entities

- **An individual;**
- **A Hindu Undivided Family(HUF);**
- **A firm or an Associations Of Persons (AOP);**
- **A Joint Stock Company;&**
- **Every other person.**

DIFFERENT RESIDENTIAL STATUS:

<u>FOR INDIVIDUAL AND A HINDU UNDIVIDED FAMILY</u>	<u>FIRM, COMPANY, LOCAL AUTHORITY,ARTIFICIAL PERSON,AOP/BOI</u>
<ul style="list-style-type: none">• ordinarily Resident in India• Resident but not ordinarily resident• Non-resident in India.	<ul style="list-style-type: none">• Resident in India; or• Non-resident in India.

RESIDENTIAL STATUS OF THE INDIVIDUAL

**Step
1**

First find out whether such individual is “Resident” in India

**Step
2**

If such individual is “Resident” in India, then find out whether he is “ordinarily resident” in India.

Residence -Individual

- An Individual is said to be resident in India in any previous year, if he satisfies at least one of the following conditions:
- 1) He is in India in the previous year for a period of 182 days or more.
- 2) a) He is in India for a period of 60 days or more during the previous year
- and
- b) 365 days or more during 4 years immediately preceding the previous year.

Exception

- Period 60 Days is extended to 182 days in the following cases.
 - i) An Indian citizen who leaves India during the previous year for the purpose of employment outside India
 - ii) Indian citizen who leaves India during the previous year as a member of crew of Indian ship.
 - iii) Indian citizen or person of Indian origin who comes on a visit to India during the previous year.

CONDITIONS TO TEST AS TO WHEN A RESIDENT
INDIVIDUAL IS ORDINARILY RESIDENT IN INDIA

<u>Supplement ary Condition 1</u>	He must been resident in India in at least 2 py out of 10 previous years immediately preceding the relevant previous year
<u>Supplement ry Condition 2</u>	He has been in India for a period of 730 days or more during 7 previous years immediately preceding the relevant previous year

CONDITIONS TO TEST AS TO WHEN A
RESIDENT BUT NOT ORDINARILY RESIDENT
[SEC. 6(1), (6) (A)]

Situation 1	If he satisfies at least one of the basic conditions u/s 6(1), but none of the supplementary conditions
Situation 2	If he satisfies at least one of the basic conditions “AND” one of the two supplementary conditions

RESIDENTIAL
STATUS OF A
HINDU
UNDIVIDED
FAMILY

<u>PLACE OF BUSINESS CONTROL</u>	<u>RESIDENTIAL STATUS OF HUF</u>	<u>ORDINARILY RESIDENT OR NOT</u>
➡Wholly in India	Resident	1) If Karta or Manager has been resident in India of 2 out of 10 previous yrs immediately preceding the previous year And
➡Wholly Out of India	Non-Resident	2) 730 days or more during 7 years preceding the relevant previous yrs.
➡Partly in India and partly outside India	Resident	Same

RESIDENTIAL STATUS OF FIRM AND ASSOCIATION OF PERSON [SEC 6 (2)]

Place of Control

✚ **Wholly in India**

✚ **Wholly Out of India**

✚ **Partly in India and partly
outside India**

Residential Status Of Firm

Resident

Non-Resident

Resident

COMPANY [SEC 6 (3)]

NOTE: A COMPANY CAN NEVER BE "ORDINARILY"
OR "NOT ORDINARILY RESIDENT" IN INDIA

<u>PLACE OF CONTROL</u>	<u>AN INDIAN COMPANY</u>	<u>A COMPANY OTHER THAN INDIAN COMPANY</u>
➡ Wholly in India	Resident	Resident
➡ Wholly Out of India	Resident	Non-Resident
➡ Partly in India and partly outside India	Resident	Non-Resident

RESIDENTIAL STATUS OF
EVERY OTHER PERSON [SEC.
6(4)]

Every other person is resident in India if control and management of his affairs is, wholly or partly, situated within India during the relevant previous. On the other hand, every other person is non-resident in India if control and management of its affairs is wholly situated outside India.

RELATIONSHIP BETWEEN RESIDENTIAL STATUS AND SCOPE OF TAX [SEC. 5]

*In order to understand the relationship between residential status and tax liability,
one understand the difference between “Indian Income” and “Foreign Income”*

1. INDIAN INCOME

2. FOREIGN INCOME

PROVISIONS IN BRIEF

<u>WHETHER INCOME IS RECEIVED (OR DEEMED TO BE RECEIVED) IN INDIA DURING THE RELEVANT YEAR</u>	<u>WHETHER INCOME ACCRUES (OR ARISES OR IS DEEMED TO ACCRUE OR ARISE) IN INDIA DURING THE RELEVANT YEAR</u>	<u>STATUS OF INCOME</u>
Yes	Yes	Indian Income
Yes	No	Indian Income
No	Yes	Indian Income
No	No	Foreign Income

INCIDENCE OF TAX FOR DIFFERENT TAX PAYERS

INDIVIDUAL and HUF

<u>PARTICULARS</u>	<u>RESIDENT AND ORDINARILY A RESIDENT IN INDIA</u>	<u>RESIDENT BUT NOT AND ORDINARILY A RESIDENT IN INDIA</u>	<u>NON- RESIDENT IN INDIA</u>
<p>➤ Indian Income</p> <p>➤</p>	Taxable in India	Taxable in India	Taxable in India

<u>PARTICULARS</u>	<u>RESIDENT AND ORDINARILY A RESIDENT IN INDIA</u>	<u>RESIDENT BUT NOT AND ORDINARILY A RESIDENT IN INDIA</u>	<u>NON- RESIDENT IN INDIA</u>
<p>➡ <u>Foreign Income</u></p> <p>-If it is business income and business is controlled wholly or partly from India</p> <p>- If it is income from profession which is set up in India</p> <p>- If it is business income and business is controlled outside India</p> <p>- If it is income from profession which is set up outside India</p> <p>- Any other Foreign Income (like salary, rent, interest, etc.)</p>	<p>Taxable in India</p> <p>Taxable in India</p> <p>Taxable in India</p> <p>Taxable in India</p> <p>Taxable in India</p>	<p>Taxable in India</p> <p>Taxable in India</p> <p>Not Taxable in India</p> <p>Not Taxable in India</p> <p>Not Taxable in India</p>	<p>Not Taxable in India</p> <p>Not Taxable in India</p> <p>Not Taxable in India</p> <p>Not Taxable in India</p> <p>Not Taxable in India</p>

FOR TAX PAYERS

	<u>RESIDENT IN INDIA</u>	<u>NON- RESIDENT IN INDIA</u>
<u>INDIAN INCOME</u>	Taxable in India	Taxable in India
<u>FOREIGN INCOME</u>	Taxable in India	Not taxable in India

RECEIPT OF INCOME

Income received in India is taxable in all cases irrespective of residential status of an assessee.

CONNOTATION OF ACCRUE OR ARISE AND DEEMED TO ACCRUE OR ARISE

INCOME FROM BUSINESS CONNECTION [SEC.9(1)(I)]

THE FOLLOWING CONDITIONS SHOULD BE SATISFIED

- CONDITION ONE – The Tax Payer Has a “Business Connection” in India
- CONDITION TWO – By Virtue of “Business Connection” in India, Income Actually Arises Outside India.

WHAT IS BUSINESS
CONNECTION???

He Exercises In India An Authority To
Conclude Contracts On Behalf Of The
Non Resident.

ACTIVITY TWO

He Has No Such Authority but Habitually
Maintains in India a Stock of Goods or
Merchandise From Which

ACTIVITY THREE

He Habitually Secures Orders in India for
the Non-resident \non- Residents Under
the Same Management

Independent Brokers /Agents are
EXCLUDED

Operations not taken as
BUSINESS
CONNECTION???

- Where all operations are not carried out in India.
- Purchase of goods for export(in case of non-resident)
- Collection of news & views in India for transmission out of India.
- Shooting of cinematograph films in India.

OTHER IMPORTANT POINTS TO BE NOTED

- Income Through Or From Any Property,asset Or Source Of Income In India.[Sec.9 (1)(i)]
- Income Through the Transfer of Capital Asset Situated in India [Sec.9 (1)(i)]
- Income Under the Head “Salaries”[sec.9(1)(ii)]
- Salary Payable Abroad by the Government to a Citizen of India [Sec.9 (1)(iii)]

- Dividend Paid by an Indian Company [SEC.9 (1)(iv)]
- Income by Way of Interest [Sec.9 (1)(v)]
- Income by the Way of Royalty [Sec.9 (1)(vi)]
- Income by Way of Fees for Technical Services[sec.9 (1)(vii)]