

# **Taxation 1**

**Residential status of an Assessee**

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- **Scope of total income of assessee is based on residential status.**
- **Total income of an assessee cannot be determined without knowing his residential status.**
- **The incidence of tax i.e. tax liability of an assessee is determined on the basis of his stay in India during the relevant previous year.**

# **Classification of an individual assessee on the basis of residential status**

- According to the provisions the assesses are divided into three categories regarding their residence
  1. Resident and Ordinarily Resident
  2. Resident but not Ordinarily Resident
  3. Non-Resident

# Conditions to Determine Residential Status

- According to Section 6 (1) of the Income – tax Act, residential status of an individual assessee is determined on the basis of fulfilment of basic and additional conditions.
- **Basic Conditions**
- Stay of 182 days or more during previous year
- (a) Stay of 60 days or more during previous year
- (b) Stay of 365 days or more during 4 preceding previous years
- **Exceptions of 2 (a) –**
- In case of an individual, being a citizen of India (or an individual who is a member of the crew of an Indian Ship) leaves India in any previous year for the purpose of employment or self – employment outside India, the period of 60 days or more will be extended to 182 days or more.
- In case of an Indian citizen (or a person of Indian origin who being engaged outside India, whether rendering service outside or not ) comes on a visit to India in the previous year, the period of 60 days or more will be extended to 182 days or more.
- **Note** A person is deemed to be of ‘Indian origin’ if he or either of his parents or any of his grandparents was born in undivided (pre-independence) India.

- When any one or both basic conditions are satisfied additional conditions are applied
- Additional Conditions
- Assesse must be a resident in India for 2 previous years out of 10 previous years preceding to the relevant previous year.
- Stay of 730 days in India during 7 previous years preceding to the relevant previous year.

# Rules to determine residential status on the basis of fulfilment of conditions

- **1. Non-resident** ---- None of the basic and none of the additional conditions are satisfied
- **2. Resident but not ordinarily resident** ---- one or two basic satisfied and one or two additional not satisfied
- **3. Ordinarily resident** ---- One or two basic satisfied and both additional satisfied

# Residential Status for Assesseees other than individuals

- **Hindu Undivided Family (HUF) :**
- **(1)** An HUF is treated as resident in India in any previous year, if the control and management of its affairs is partly or wholly situated in India.
- **(2)** It is interesting to note that the ordinary residence of HUF follows from that of its Karta or manager of the family (including successive kartas). It is provided that the HUF will be '**Resident and Ordinarily Resident**' in India, if the Karta (including successive kartas) has satisfied the following two additional conditions :
  - **1)** resident in India in at least 2 out of 10 previous years preceding the relevant previous year
  - **2)** stay of 730 days or more during 7 years preceding the previous year
- An HUF will be **Non-Resident** when in any previous year, the control and management of its affairs is wholly situated outside India.

# Firms and Other Association of Persons :

- The conditions for Resident and Non-Resident are the same as that of HUF. A firm or other Association of persons(AOP) cannot be resident but not ordinarily resident.
- A firm or other association of persons is said to be resident in India in any previous year, when the control and management of its affairs is either partly or wholly situated in India.
- A firm or AOP is said to be Non-Resident if the control and management of its affairs is wholly situated outside India.



# Companies

- A company is resident in India in any previous year if
- it is an Indian company, or
- the effective control and management of its affairs is situated wholly India.
- Thus, all companies registered in India are resident, even if some portion of its control and management is outside India.
- Companies incorporated outside India will be treated as resident if control and management of its affairs is wholly in India.
- A company will be Non-Resident in India if it does not fulfil any one of the two conditions mentioned above for being resident.

# Other Persons

- Every other person, including artificial juridical person is resident in India if any portion of control and management of its affairs is in India.
- When control and management of its affairs is wholly outside India, it will be regarded as Non-Resident.

# Incidence of Tax

- Income received or deemed to be received in India whether earned in India or elsewhere. **Taxable for all types of assessee.**
- Income which accrues or arises or is deemed to accrue or arise in India during the previous year, whether received in India or elsewhere. **Taxable for all types of assessee.**
- Income which accrues or arises outside India and received outside India from a business controlled from India. **(Taxable for Ordinarily Resident and Resident but not Ordinarily Resident –Not taxable for Non-Resident )**
- Income which accrues or arises outside India and received outside India in the previous year from any other source. **(Taxable for Ordinarily Resident and Not Taxable for Resident but not Ordinarily Resident and Non-resident)**
- Income which accrues or arises outside India and received outside India during the year preceding to the previous year and remitted to India during the previous year.**(Not taxable for all types of assessee)**