



S.P. SAH

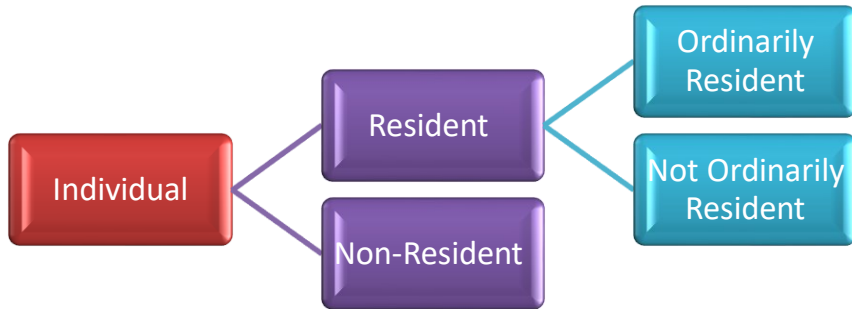
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DEPARTMENT OF ACCOUNTANCY

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RESIDENTIAL STATUS



Rules for determining the residential status of an individual An individual may either be a:

(a) Resident in India; or

(b) Non-resident in India.

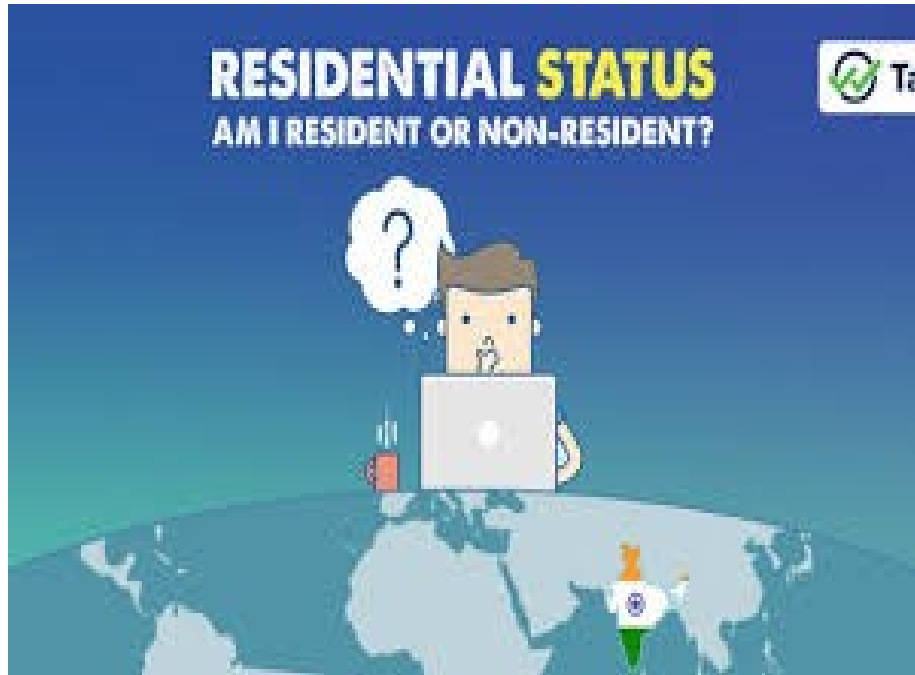
An individual cannot simply be called a resident in India.

If he is a resident in India, we have to further determine whether he is:

(a) Resident and ordinarily resident in India; or

(b) Resident but not ordinarily resident in India.

2.5 a When an individual is said to be resident in India? [Section 6(1)]



An individual is said to be resident in India if he satisfies any one of the following two conditions:

- (a) He is in India for a period or periods amounting in all to 182 days or more in the relevant previous year; or
- (b) He is in India for 60 days or more during the relevant previous year and has been in India for 365 days or more during 4 previous years immediately preceeding the relevant previous year.

Exceptions: There are two exceptions to the above rule



(1) In case of an individual, who is a citizen of India and who leaves India in any previous year for the purpose of employment outside India, the period of 60 days, in condition No. 2, supra, shall be substituted by 182 days i.e., he shall not be a resident of India unless his stay in India is at least 182 days during the relevant previous year in which he leaves India. Similarly in case of an individual who is a citizen of India and who leaves India in any previous year as a member of the crew of an Indian ship, the period of 60 days will be substituted by 182 days.

(2) In case of an individual, who is a citizen of India, or is a person of Indian origin, who, being outside India, comes on a visit to India in any previous year, the period of 60 days in the second condition given above, will be substituted by 102 days i.e., he shall not be a resident unless his stay in India is at least 182 days during the relevant previous year in which he visits India.

Notes:



1. 'Being in India' can be 'anywhere in India' including territorial waters of India.
2. The number of days of stay specified in the condition need not be a continuous stay.
3. For calculating the number of days of stay in India, both the date of arrival into India and date of departure from India, must be considered.
4. In the following cases, 60 days in condition under Section 6(1) (b) must be replaced by 182 days (i.e., in the following cases, the second condition is the same as first condition): (a) In case of an Indian citizen leaving India for employment purposes; (b) In case of an Indian citizen leaving India as a crew member of a ship; (c) In case of a Person of Indian Origin coming on a visit to India or for permanent stay in India.

Notes:



5. In case of an Indian citizen leaving India as a crew member of a foreign bound ship, the period of stay of the individual in India shall not include - the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining the ship for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage. ('Eligible Voyage' for this purpose means a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic which has originated from any port in India and has its destination of any port outside India, or a voyage which has originated from any port outside India and has destination of any port in India).

6. For becoming resident, an individual needs to fulfill at least one of the conditions under Section 6 (1). In the above-mentioned three cases, where an individual fulfills the first condition, he does not have to verify the fulfillment of the second condition; and where he cannot fulfill the first condition, the second condition also cannot be fulfilled. So, in the above three cases, the second condition [i.e., condition under Section 6(1) (b)] is not required at all). Hence, the above three cases are called 'Exceptions to condition under section 6(1)(b)'.

7. 'Person of Indian Origin' means an individual whose either of the parents, or any of the grandparents were born in undivided India.

2.5 b When an individual is said to be resident and ordinarily resident in India?

Residential status in India as per Income tax act

Particular	Resident and Ordinary resident(ROR)	Resident but not ordinary resident (RNOR)	Non Resident (NR)
Condition 1 Section 6(1)	✓	✓	✗
Condition 2 Section 6(2)	✓	✗	✗
	If condition 1 and 2 is satisfied then person is ROR	If condition 1 is only satisfied then person is RNOR	If none of the condition is satisfied then person is NR

The law has not prescribed the conditions of ordinarily resident in India.

Section 6(6) states that an individual shall be not ordinarily resident in India if he satisfies any one of the following two conditions:

(1) He has been a non-resident in India in 2 out of 10 previous years immediately preceding the relevant previous year,

OR

(2) He has been in India for a period of 730 days or less in 7 previous years immediately preceding the relevant previous year.

Deriving from the above, an individual who is resident in India, shall be resident and ordinarily resident in India if he satisfies both the following conditions



(a) He has been resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year. This means that he must have satisfied any one of the conditions, with exceptions (given above) for being a resident for at least 2 out of 10 previous years immediately preceding the relevant previous year.

AND

(b) He has been in India for 730 days or more, during seven previous years immediately preceding the relevant previous year.

2.5 C : When an individual is said to be resident but not ordinarily resident in India {Section 6(6) (a)}:

Residential status in India as per Income tax act			
Particular	Resident and Ordinary resident(ROR)	Resident but not ordinary resident (RNOR)	Non Resident (NR)
Condition 1 Section 6(1)	✓	✓	✗
Condition 2 Section 6(2)	✓	✗	✗
	If condition 1 and 2 is satisfied then person is ROR	If condition 1 is only satisfied then person is RNOR	If none of the condition is satisfied then person is NR

An individual who is resident in India is said to be "not ordinarily resident in India" if he satisfies any of the conditions mentioned in clause (1) and (2) given in para 2.5b above or if he does not satisfy any or both of the conditions mentioned in clause (a) and (b) in the same para 2.5b above.

2.5d When an individual is said to be non-resident in India {Section 2(30)}



Resident

VS



Non-Resident



An individual is said to be a non-resident, if he is not a resident in India i.e. none of the conditions (with exception) mentioned in para 2.5a is satisfied.

An assessee may earn his income in India or outside India or at both the places. Which income is assessable in India depends on the residential status of an assessee.

(1) A German individual having remained in India for 15 years left for Germany in May 2015 and came back to India in March 2018.

Solution: During the Previous Year 2017-18 he did not remain in India for 182 days or more. Of course, he remained in India for a period amounting in all to more than 365 days during the four years preceding the Previous Year 2017-18, but he was not in India for 60 days or more during the said previous year; hence, he will be non-resident the Previous Year 2017-18.

(2) A German individual having remained in India for 15 years left for Germany in March 2015 and came back to India on 30th September, 2017.

Solution: He remained in India for more than 182 days during the previous year 2017-18; he was not non-resident in India in nine out of the ten previous years (2007-08 to 2016-17) preceding the previous year 2017-18. Further, he had been in India for a period amounting in all to more than 729 days during the seven previous years preceding the previous year 2017-18. Hence, he is 'ordinarily resident'.

(3) Mr. X, an Indian citizen, serving in a company in London, comes to India every year for five months.

Solution: He will be non-resident for the previous year 2017-18 because he was not in India for at least 182 days during the previous year. (Exception to Condition (b)]

(4) A Bengali gentleman has been doing business in Dacca (Bangladesh) for the last 15 years and he comes to India every year for seven months.

Solution: He remained in India for at least 365 days during the four years preceding the relevant previous year and remained in India for at least 182 days during the previous year. Hence, he satisfied the second basic condition for becoming a resident. He was resident in India in two out of ten years preceding the relevant previous year and he also remained in India for 730 days during the seven years preceding the relevant previous year. Hence, he is 'ordinarily resident'.

(5) A foreign individual came to India for the first time in June 2013 and left India on 1st July, 2016. He again came back to India in January 2018.

Solution: He remained in India for a period amounting in all to more than 365 days during the four years preceding the previous year 2017-18 and has been in India for more than 60 days during the relevant previous year, he satisfies the second basic condition. Further, he was in India for more than 729 days during seven years preceding the previous year and he was not non-resident in India in nine out of ten years preceding the relevant previous year he will be 'ordinarily resident for the previous year 2017-18.

Illustration

Nixon, an American citizen, was appointed a Senior Scientific Officer in India on 1st April, 2007. On 31st January, 2015 he went to Uganda on deputation for a period of 3 years, but left his wife and children in India. On 1st May, 2016 he came to India and took with him his family to Uganda on 30th June, 2016. He returned to India and joined his original job on 2nd February, 2018.

What would be the residential status of Nixon for income tax purposes for the assessment year 2018-19?

Solution

During the previous year 2017-18 he did not fulfill any of the two basic conditions, as he was neither in India, for at least 182 days, nor was in India for at least 60 days during the previous year. Hence, he will be non-resident for this assessment year.

Illustration

Shri Om Prakash, an Indian citizen was born in U.K. He came to India, when he was of 12 years age and went outside India for the first time when he was 25 years of age. He left for U.K. in May 2015 and again came back to India in March 2018.

What is his residential status for the Assessment Year 2018-19?

Solution

Shri Om Prakash came to India in March 2018. Neither he was in India for at least 182 days nor 60 days during previous year. Hence, he is non-resident in India for the Assessment Year 2018-19.

Illustration

Shri Ramesh, who was born and brought up in India, went for further studies to U.K. on 1st March, 2016 and came back to India on 1st October, 2017 early in the morning.

Find out his residential status for the Assessment Year 2018-19.

Solution

Assessment Year 2018-19 or Previous Year 1.4.2017 to 31.3.2018.

Stay in India during the previous year 2017-18:

$31 + 30 + 31 + 31 + 28 + 31 = 182$ days (First basic condition satisfied). Hence, he is resident.

For determining whether he is ordinarily resident, we shall see his status during the preceding 10 years as under:

Previous Year 2016-17-	He was non-resident because he was not in India at all during the previous year.
Previous Year 2015-16-	He was resident, as he left India on 1st March, 2016.
Previous Year 2007-08 to 2014-15	He was resident, as he was in India throughout.

He was not non-resident in India for 9 out of 10 years preceding the Previous Year 2017-18. He has been in India for more than 729 days during the preceding 7 years. Therefore is Resident and Ordinarily Resident for the Assessment Year 2018-19.

Illustration

Mr. AB a foreign citizen leaves India for the first time in the last 20 years on November 2015.

During the calendar year 2016 he came in India on September 1 and stayed for a period of 30 days. During the calendar year 2017, he did not visit India at all. He came to India January 16, 2018 and did not leave thereafter.

Determine the Residential status of Mr. AB for the Assessment Year 2018-19 if (a) he is an Indian origin, (b) he is not an Indian origin.

Solution

(a) Mr. AB, an Indian origin:

(i) During the last 20 years (upto Assessment Year 2016-17) he has been resident in India.

(ii) During the Previous Year 2016-17 (Assessment Year 2017-18) he came to India for 30 days. Hence, he is non-resident.

(iii) During the Previous Year 2017-18 (Assessment Year 2018-19) he has been in India for 75 days. He was not in India for a visit for at least 182 days, hence, he is non-resident for the Assessment Year 2018-19.

(b) Mr. AB, not an Indian origin:

(i) Same as above

(ii) Same as above

(iii) Assessment Year 2018-19: During four years preceding the previous year, he was in India for more than 365 days and during previous year he was in India for more than 60 days. Further, he was not non-resident for 9 years out of 10 years preceding the previous year and was in India for more than 729 days during 7 years preceding the previous year. Hence, he is ordinarily resident for the Assessment Year 2018-19.

Illustration

A Hind undivided family carries on the business of export of dry fruits from Afghanistan, and for this purpose it has a permanent office there which is controlled by the younger brother of the karta of the family who resides there permanently. The karta permanently resides in India but sometimes visits his office in Afghanistan for a few days. The policy decisions are taken by the karta but in emergency his younger brother can also take decision himself. Day to day affairs are, however, controlled by the younger brother. What will be the residential status of the family?

Solution

As the control and management of the family business is, at least, partially situated in India and as the karta permanently resides in India but only sometimes visits Afghanistan for a few days, he becomes resident and ordinarily resident in India. Hence, the family is ordinarily resident in India.

Illustration

Determine the residential status of the Company:

X Ltd. is an Indian company carrying on business in India as well as in British East Africa. Its income accruing or arising in British East Africa in the previous year far exceeded its income accruing or arising in India.

Solution

Since X Ltd. is an Indian Company, it is a resident company. It is immaterial whether its foreign income exceeded the Indian income or vice-versa.

Illustration

X' Ltd. and Y'Ltd. are registered in Pakistan and India respectively. The place of effective management of X Ltd. is in India, whereas all Board meetings of Y Ltd. were held in Pakistan during the Previous Year 2017-18. Determine their residential status for the Assessment Year 2018-19.

Solution

X' Ltd. is registered in Pakistan. Hence, it is a foreign company, but its place of effective management is in India. Hence, it is resident in India.

Y Ltd. is registered in India. Hence, it is an Indian company. An Indian company is treated as resident in India, whether its management is situated in India or abroad.

Illustration: Mr. Nicholas is a citizen of Slovenia. The details of his arrival in India and departure from India are as under:
Determine his residential status for the assessment year 2019-20.

Arrival	Departure
31-01-2009 (first time)	30-06-2009
01-06-2011	28-06-2011
01-08-2011	28-02-2012
20-12-2012	31-01-2014
02-02-2015	01-06-2015
01-05-2016	29-10-2016
01-01-2018	04-03-2018
01-10-2018	30-11-2018

Solution:

Step No. One: Calculation of Number of Days of Stay in India during Different Previous Years

P.Y	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	TOT
2018-2019	0	0	0	0	0	0	31	30	0	0	0	0	61
2017-2018	0	0	0	0	0	0	0	0	0	31	28	4	63
2016-2017	0	31	30	31	31	30	29	0	0	0	0	0	182
2015-2016	30	31	1	0	0	0	0	0	0	0	0	0	62
2014-2015	0	0	0	0	0	0	0	0	0	0	27	31	58
2013-2014	30	31	30	31	31	30	31	30	31	31	0	0	306
2012-2013	0	0	0	0	0	0	0	0	12	31	28	31	102
2011-2012	0	0	28	0	31	30	31	30	31	31	29	0	241
2010-2011	0	0	0	0	0	0	0	0	0	0	0	0	0
2009-2010	30	31	30	0	0	0	0	0	0	0	0	0	91
2008-2009	0	0	0	0	0	0	0	0	0	1	28	31	60

Notes:

1. While counting the number of days of stay, both date arrival and date of departure has been considered.
2. In the month of June 2011, Mr. Nicholas arrives on 1st and departs on 28th. Including the dates of arrival and departure, the total number of days of stay during June 2011 is 28.

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)
Since Nicholas has fulfilled one of the conditions under Section 6(1), he is a **resident**.

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 60 days during the relevant previous year (i.e., 2018-19)	Fulfilled
and at least 365 days during 4 previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled

- Notes:
- 1. Since Mr. Nicholas is a foreign citizen 60 days has been taken in the condition under Section 6(1) (b). Where the assessee was either an Indian citizen leaving India for employment purposes or an Indian citizen leaving India as a crew member of a ship or a Person of Indian Origin coming to India, 182 days must have been taken in the same condition.
 - 2. The total number of days of stay during 4 previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018) is 365 (63 + 182 + 62 + 58).
 - 3. Condition under Section 6(1)(b) is said to be fulfilled if both the parts of the condition are fulfilled.

Step No. Three: Verification of Fulfillment of Conditions under Section 6(6)

Condition under Section 6(6)	Fulfilled or Not Fulfilled
(a) The Individual must be resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year (i.e., 2018-19)	Fulfilled
(b) The Individual must be in India for at least 730 days during 7 previous years immediately preceding the relevant previous year (i.e., between 01-04-2011 and 31-03-2018)	Fulfilled

Since Mr. Nicholas, a resident individual has fulfilled both the conditions under Section 6(6). He is a 'resident and ordinarily a resident'.

Notes:

1. Condition under Section 6(6)(i) requires the individual to be 'resident for at least 2 out of 10 previous years immediately preceding the previous year. Being 'resident' means fulfilling at least one of the conditions under Section 6(1). In this case, Mr. Nicholas is resident for previous years 2011-12, 2012–13, 2013-14, 2015-16, 2016-17, and 2017-18 by fulfilling either of the two conditions under Section 6(1). That is, out of 10 previous years immediately preceding the relevant previous year, Mr. Nicholas is resident for 6 years. Hence, the first condition is fulfilled.
2. The number of days of stay during 7 previous years immediately preceding the relevant previous year (i.e., 2018-19) is 1014 (63 + 182 + 62 +58 + 306 + 102 +241). Hence, the condition under Section 6(6) (ii) is fulfilled.

Illustration

In the above problem, what will be the residential status of Mr. Nicholas, if he departs on 3rd March 2018, instead of 4th March, 2018.

Solution:

In this case, the number of days of stay of Mr. Nicholas in India, during previous year 2017-18 will be 61 days (since during March 2018, his stay will be only 3 days). On account of this, the total number of days of stay during 4 previous years immediately preceding the relevant previous year will be **364** ($62 + 182 + 62 + 58$).

Mr. Nicholas neither fulfills condition under Section 6(1)(a) nor the condition under Section 6(1)(b). Hence, he becomes a 'Non-resident'. Since, Mr. Nicholas is a non-resident; there is no need to verify the fulfillment of conditions under Section 6(6).

Illustration

Mr. Ram an Indian citizen left India on 22-09-2018 for the first time to work as an officer of a company in Germany. Determine the residential status of Ram for the assessment year 2019-20 and explain the conditions to be fulfilled for the same under the Income Tax Act, 1961.

Solution:

Step No. One: Calculation of Number of Days of Stay in India During Different Previous Years

[illegible]

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19) And At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Not Fulfilled Fulfilled

Since Ram has not fulfilled any of the conditions under Section 6(1), he is a **non-resident**.

Notes:

1. Ram is an Indian citizen leaving India for employment purposes. This is a case of exception to condition under Section 6(1) (b). Hence, in the condition 60 days has been replaced by 182 days.
2. Alternatively, fulfillment of condition under Section 6(1) (a) only can be verified. In case it is fulfilled, assessee becomes a resident. Else, he would be a non-resident.

Illustration

Bret Lee, an Australian cricket player, visits India for 100 days in every financial year. This has been his practice for the past 10 financial years. Find out his residential status for the assessment year 2019-20.

Solution:

Step No. One: Calculation of Number of Days of Stay in India during Different Previous Year

P.Y	TOT
2018-2019	100
2017-2018	100
2016-2017	100
2015-2016	100
2014-2015	100
2013-2014	100
2012-2013	100
2011-2012	100
2010-2011	100
2009-2010	100
2008-2009	100

Step No. Two: Verification of Fulfillment of Conditions under Section (1)

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 60 days during the relevant previous year (i.e., 2018-19)	Fulfilled
And At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled

Since Bret Lee has fulfilled both the conditions under Section 6(1), he is a **resident in India** for assessment year 2019-20.

Note: Bret Lee is a foreign citizen. Hence, for verification of fulfillment of condition under Section 6(1)(b), 60 days have been considered.

Step No. Three: Verification of Fulfillment of Conditions under Section 6(6)

Condition under Section 6(6)	Fulfilled or Not Fulfilled
(a) The Individual must be resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year (i.e., 2018-19)	Fulfilled
(b) The Individual must be in India for at least 730 days during 7 previous years immediately preceding the relevant previous year (i.e., between 01-04-2011 and 31-03-2018)	Not Fulfilled

Since Bret Lee, a resident individual, has fulfilled only one of the conditions under Section 6(6), he is a **'resident, but not ordinarily a resident'**.

Notes:

- 1. For every previous year, preceding the relevant previous year Bret Lee is a resident by virtue of fulfilling condition under Section 6(1) (b). Hence, he has fulfilled condition under Section 6(6) (i).
- 2. During 7 previous years immediately preceding the relevant previous year (i.e., 2018-19), Bret Lee is in India for 700 days. Hence, he has not fulfilled the condition under Section 6(6)(ii).

Illustration

During the previous year 2018-19, a sailor has remained on ship for a private company owning ocean going ships as follows:

- (a) Outside the territorial waters of India for 183 days.
- (b) Inside the territorial waters of India for 182 days. Is he considered to be resident or not for the assessment year 2019-20?

Solution:

According to Section 6(1) (a), an individual can be a resident if he is in India for at least 182 days during the relevant previous year.

'Being in India' can be anywhere in India, including the territorial waters of India.

In the relevant previous year 2018-19, the sailor is in the territorial waters of India for 182 days and hence has fulfilled condition under Section 6(1)(a).

When at least one of the conditions under Section 6(1) is fulfilled, an individual becomes a 'resident'. Hence, in this case, the sailor is a 'resident in India for the assessment year 2019-20.

Illustration

George, an American citizen, is appointed by a multinational company to its branch in New Delhi in 2015. George has never been to India before this appointment. He arrives in Bombay on 15th April, 2015 and joins the New Delhi office on 20th April, 2015. His wife and children join him in India on 20th October, 2015. The company allotted him a leased residence for his stay. This residence is occupied by him from the beginning of October 2015.

On 10th February 2016, he is transferred by his employer, on deputation basis, to be the regional chief to his employer's operations in South East Asia having headquarters in Hong Kong. He leaves New Delhi on 11th February 2016 and arrives in Hong Kong on 12th February 2016. George leaves behind his wife and children in India till 14th August 2017, when they leave along with him for Hong Kong. George had come to India earlier on 15th June 2017 on 2 months' leave. The members of the family occupied the residence till the date of departure to Hong Kong.

At the end of the period of deputation, George is reposted to India and joins the New Delhi office of his employer as chief of Indian operations on 31 January 2019.

In what residential status will George be assessable, for assessment year 2019-20, to Income tax in India?

Solution:

Step No. One: Calculation of Number of Days of Stay in India During Different Previous Years

[illegible]

Notes:

- 1. While counting the number of days of stay, both date arrival and date of departure has been considered
- 2. The problem states that he comes to India on 15th June 2017 for 2 months' leave. It is assumed that he departs India on 14th August, 2017.

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 60 days during the relevant previous year (i.e., 2018-19) And At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled Not Fulfilled

Since George has not fulfilled any of the conditions under Section 6(1), he is a **non-resident** for the assessment year 2019-20.

Illustration

Mr. Bhaskar, born and brought up in India, joined a company in Bahrain on 1^o October, 2014. He came back to India on 25 April, 2015 and went back on 25" May, 2015. He again came to India on 25th March, 2016 and left back on 22nd May, 2016. Due to acute illness, he came back to India on leave on 15th October, 2016 and joined back his duty on 1 August, 2018. He resigned from his job on 19 January, 2019 and came back to India on 19 February, 2019. Determine the residential status for the assessment year 2019-20.

Solution:

Step No. One: Calculation of Number of Days of Stay in India During Different Previous Years

P.Y	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	TOT
2018-2019	30	31	30	31	1	0	0	0	0	0	28	31	182
2017-2018													365
2016-2017	30	22	0	0	0	0	17	30	31	31	28	31	220
2015-2016	6	25	0	0	0	0	0	0	0	0	0	7	38
2014-2015	30	31	30	31	31	30	1	0	0	0	0	0	184
2013-2014													365
2012-2013													365
2011-2012													366
2010-2011													365
2009-2010													365
2008-2009													365

Notes:

- 1. While counting the number of days of stay, both the dates of arrival and departure have been considered.
- 2. The joining dates of company in Bahrain on 15 October 2014 and 15 August 2018 have been assumed as the date of departure from India.

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Fulfilled
(b) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Fulfilled
And At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled

Since, Bhaskar has fulfilled both the conditions under Section 6(1), he is **a resident**, for the assessment year 2018-19.

Note: Since Mr. Bhaskar is an Indian citizen who had left India for employment purposes, in condition under Section (6)(1)(b), 182 days have been considered instead of 60 days.

Step No. Three: Verification of Fulfillment of Conditions under Section 6(6)

Condition under Section 6(6)	Fulfilled or Not Fulfilled
(a) The Individual must be resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year (i.e., 2018-19)	Fulfilled
(b) The Individual must be in India for at least 730 days during 7 previous years immediately preceding the relevant previous year (i.e., between 01-04-2011 and 31-03-2018)	Fulfilled

Since Mr. Bhaskar has fulfilled both the conditions under Section 6(6), he is a resident and ordinarily a resident, for the assessment year 2019-20

Illustration

Mr. Xavier, a German national, is appointed in India as a senior scientific officer on 01-04-2014 On 31 January, 2016 he goes to Iran on deputation for a period of 3 years but leaves his and children in India.

On May 1, 2017 he comes to India and takes with him his family on 30 h June, 2017. He returns to India and joins his original job on 2nd February, 2019. Determine his residential status for the assessment year 2019-20.

Solution:

Step No. One: Calculation of Number of Days of Stay in India During Different Previous Years

[illegible]

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 60 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
And	
At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled

Note: Since Xavier is a foreign national, 60 days have been considered in the condition under Section 6(1)(b).

Since, Xavier has not fulfilled any condition under Section 6(1), he is Non-resident, for the assessment year 2019-20. The condition under Section 6(1) (b) is considered to be fulfilled only when both the parts of the condition are fulfilled. In this case, Xavier is not fulfilling the first part of the condition and hence, condition under Section 6(1) (b) is considered as 'not fulfilled'.

Illustration

Problem on Determination of Residential Status of Individual being Indian Citizen Travelling as Crew Member of a Ship

Mr. Narayan is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Mangalore Port on 6" June, 2018. From the following details for Previous Year 2018-19, determine the residential status of Mr. Narayan for Assessment Year 2019-20, assuming that his stay in India in the last 4 years (preceding Previous Year 2018-19) is 400 days and last 7 year (preceding Previous Year 2018-19) is 750 days:

Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Narayan	6 th June 2018
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Narayan	9 th December 2018

Solution:

Where an Indian citizen leaves India as a crew member of a ship, only condition under Section 6(1)(a) is applicable. Accordingly, if the individual is in India for 182 days or more during the relevant previous year, he will be a **Resident**.

In case of an **Indian citizen leaving India as a crew member of a foreign bound ship**, the period of stay of the individual in India shall not include - the period commencing from the date entered into the Continuous Discharge Certificate in respect of **joining the ship** for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of **signing off by that individual from the ship** in respect of such voyage.

'Eligible Voyage' for this purpose means a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic which has originated from any port in India and has its destination of any port outside India, or a voyage which has originated from any port outside India and has destination of any port in India.

In this case, Narayan is an Indian citizen and the voyage is an eligible voyage. Hence, for previous year 2018-19, the period between 6th June 2018 and 9th December 2018 must not be included in calculating the number of days of stay in India.

Accordingly, **187 days** (i.e., June - 25 days, July - 31 days, August - 31 days, September - 30 days, October - 31 days, November - 30 days, and December - 9 days) must not be considered. Consequently, Mr. Narayan is in India for only 178 days (i.e., 365 days – 187 days) during previous year 2018-19.

According to condition under Section 6 (1) (a), an individual must be in India for 182 days during relevant previous year to be considered as "Resident". Mr. Narayan's stay being less than 182 days during previous year 2018-19, he is a **Non-resident**.

Note: Since Mr. Narayan is a non-resident, his duration of stay during previous years preceding previous year 2018-19 is not relevant.

HINDU UNDIVIDED FAMILY {Sec. 6(2)}

1a. Resident

Hindu Undivided Family



A Hindu undivided family, firm or association of persons are resident in India in any previous year if the control and management of its affairs is situated wholly or partly in India during the relevant previous year, i.e., if even a part of their control and management is situated in India during the previous year, they will be called resident in India.

A resident H.U.F. will be ordinarily resident only when its Karta satisfies both the additional conditions of ordinarily residence as an individual.

In this context, the clause 'control and management' needs clarification. The expression, 'control and management of affairs' mean de facto and not merely the right to control and manage. The place of control and management is the place where the head and seat and dire, power are situated. It is not necessary that the control and management must be situated the place where the business or profession is being carried on. The place of business can be different from the place of its control and management. The control and management of affairs must be situated *wholly* outside India in order to make them non-resident.

1b. Resident and Ordinarily Resident

Residential Status [SECTION 6]

Resident and ordinarily resident/

Karta



Firm and Association of persons cannot be 'not ordinarily resident'.

A Hindu Undivided Family is 'not ordinarily resident in India, if, its **karta** or manager does not satisfy both the following additional conditions:

- (i) He (**karta**) has been resident in India (according to the rules applicable to an individual) in 2 out of 10 years, preceding that previous year, i.e., he fulfilled at least one of the basic conditions to become resident for at least two years; and
- (ii) He(**karta**) has been in India, during the seven years preceding that previous year, for a period amounting in all to at least 730 days.

1c. Resident but not ordinarily resident in India? Section 6(6)(b)]

Residential Status [SECTION 6]

Karta

Resident but not ordinarily resident



A HUF, which is resident in India, is said to be resident but not ordinarily resident in India during the relevant previous year, if the manager (Karta) of the HUF does not satisfy any one, or both of the conditions mentioned in clause (a) and (6) above or in other words, the karta satisfies any of the following two conditions:

(1) He has been a non-resident in India in 9 out of 10 previous years immediately preceding the relevant previous year,

OR

(2) He has been in India for a period of 729 days or less in 7 previous years immediately preceding the relevant previous year.

1d. Non-resident



Resident

VS

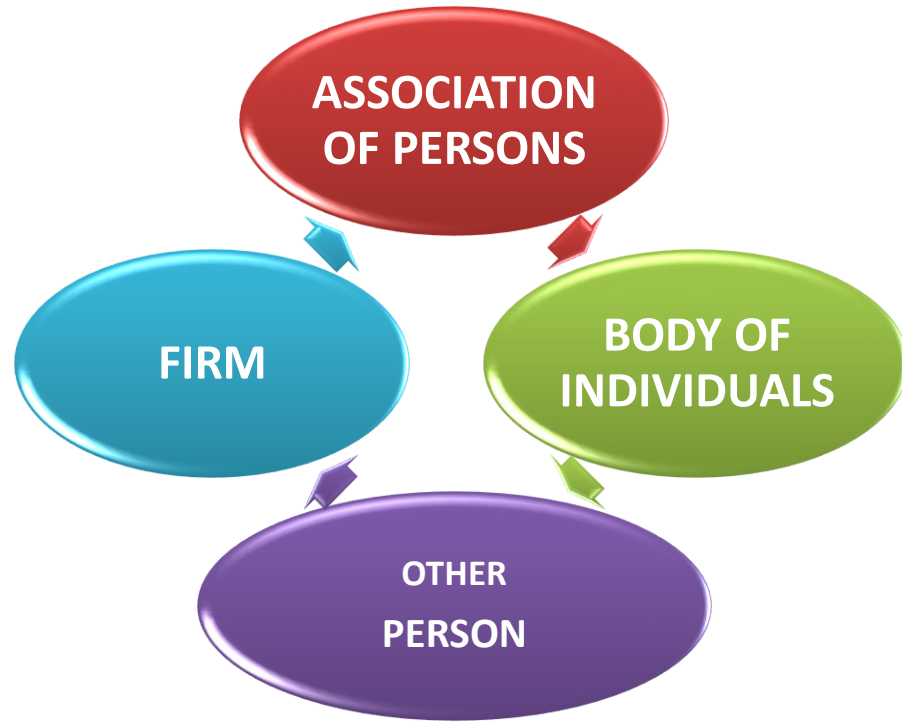


Non-Resident



He is 'non-resident' only when the control and management of their affairs is situated wholly outside India.

RESIDENTIAL STATUS OF FIRM, ASSOCIATION OF PERSONS (AOP), BODY OF INDIVIDUALS (BOI) AND OF OTHER PERSONS (EXCEPT COMPANIES) (SECTIONS 6(2) AND 6(4))



These entities may either be resident or non-resident in India for any previous year.

1a. When is a Firm, AOP, BOI, etc, said to be resident in India? A firm, AOP, etc. is said to be resident in India in any previous year in all cases except where during that year the control and management of its affairs is situated wholly outside India. In the case of a firm, the control and management is in the hands of the partners and therefore, if the partners generally meet in India regarding the affairs of the firm, then the firm is said to be resident in India.

1b. When is a Firm, AOP, BOI, etc. said to be Non-Resident in India? If the control and management of the affairs of these entities is wholly out of India during the relevant previous year then they are said to be non-resident. In other words, to be Non Resident, no part of the control and management should be in India.

COMPANIES (Sec. 6(3))



I. Resident

A company is said to be resident in India in any previous year, if :

- (i) It is an Indian company; or
- (ii) Its place of effective management, in that year, is in India.

Explanation: 'Place of effective management' means a place where key management and commercial decisions that are necessary for conduct of the business of an entity as a whole are, in substance made.

II. Not Ordinarily Resident

A Company is never 'not ordinarily resident'.

III. Non-resident

If a company does not satisfy both the aforesaid conditions of residence, it is said to be a 'non-resident' company. It means neither the company is an Indian company nor the place of its effective management is in India.

EVERY OTHER PERSON [Sec. 6(4)]



Every other person (local authority, artificial juridical person, e.g., Idols) is said to be resident in India in any previous year in every case, except where during that year the control and management of its affairs is situated wholly outside India.

It means the residence of every other person' is determined in the same manner as of a firm or association of persons.

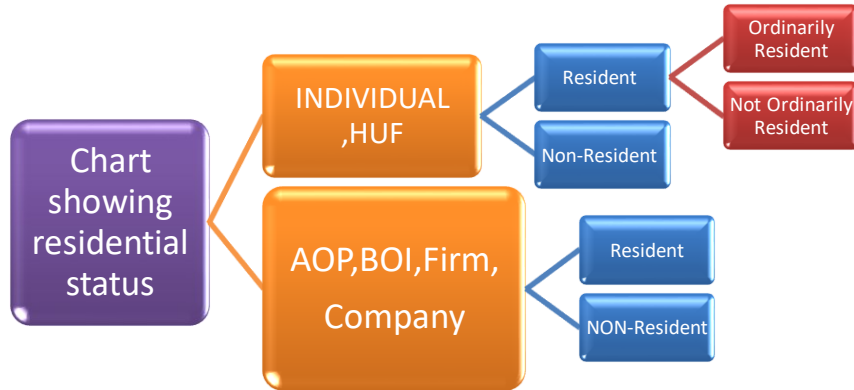
In brief, only an individual and a H.U.F. can be resident, not ordinarily resident or non-resident in India. All other persons can be either resident or non-resident in India.

If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income. Thus, different residential status for different sources of income for the same assessment year is not possible. [Sec. 6(5)]

It is the duty of the assessee to prove before the Assessing Officer whether he is resident or non-resident.

IMPORTANCE OF DETERMINING RESIDENTIAL STATUS

Since the determination of total income depends upon the residential status of an assessee, there is great importance of determining the residential status for every previous year separately.



Illustration

During the previous year 2017-18 R and Sons HUF was partly controlled from India by its karta R who is citizen of India but stays outside India. For the purpose of managing the affairs of the HUF, R has been regularly visiting India. Determine the residential status of the HUF for the assessment year 2018-19 if:

(A) R has been visiting India for 100 days every year for the last 12 years.

(B) R has been visiting India for 110 days every year for the last 12 years.

(C) R has been visiting India for the last 12 years. During the immediately preceding 4 previous years he was in India for 50 days every year and prior to that for 200 days every year.

Solution:

During the previous year 2017-88, the control and management of the affairs of the HUF was partly situated in India. Hence, the HUF is resident for the assessment year 2018-19.

It is further to be examined whether the HUF can be said to be "resident and ordinarily resident in India". For this purpose, the karta should satisfy both the following conditions:

(a) He (karta) has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year, and

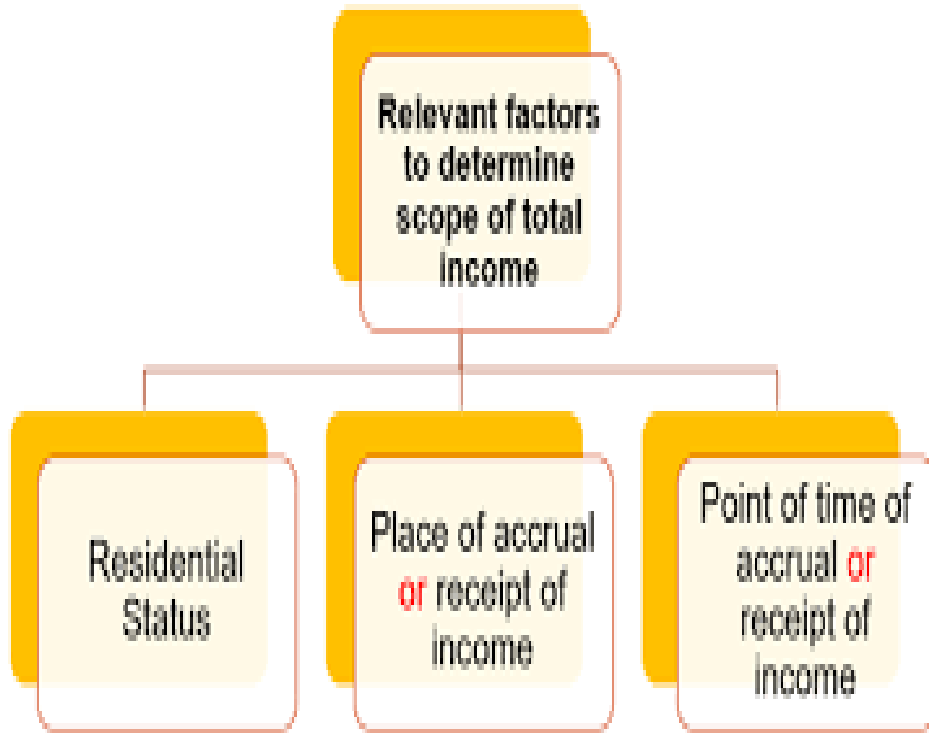
(b) He has been in India for a period of 730 days or more in 7 previous years immediately preceding the relevant previous year.

In case (A) R neither satisfies the first condition nor the second condition mentioned above as karta is a citizen of India. Where an individual is a citizen of India and who is outside India makes a visit to India he shall be said to be resident in India only when he was in Indian in the relevant previous year for 182 days as the conditions of 60 days along with 365 days in the 4 preceding previous years shall not apply. In this case 60 days shall have to be substituted by 182 days. Therefore, the HUF is resident but not ordinarily resident in India.

In case (B), R, although satisfies condition (b) mentioned above as he was here for 770 days in the past 7 years but he does not satisfy condition (a) above as he is not a resident in India in atleast two out of ten preceding previous years. Therefore, the HUF is resident but not ordinarily resident in India.

In case (C) R was non-resident for 4 preceding previous years but prior to that he was resident. Hence, the first condition of category B, being resident in at least 2 out of 10 preceding years is satisfied. Further, he has been in India for 800 days ($50 \times 4 + 200 \times 3$) during 7 years preceding the relevant previous year. Therefore, the second condition of being in India for 730 days or more is also satisfied. Hence, the HUF is resident and ordinarily resident in India.

SCOPE OF TOTAL INCOME ON THE BASIS OF RESIDENCE or INCIDENCE OF TAX



Incidence of tax on a tax-payer depends on his residential status and also on place and time of accrual or receipt of income. In other words Incidence of Tax refers to identifying the incomes that must be considered.

REQUIREMENTS FOR DETERMINING THE INCOMES OF THE ASSESSEE THAT MUST BE CONSIDERED



Identification of the incomes to be considered in computing taxable income is based on the following criteria:

1. Residential Status of the assessee
 2. Types of Income earned by the assessee
- Residential Status The previous chapter has covered in detail the types and determination of residential status for individual assessee. The residential status of individuals is classified into the following categories:
- (a) Resident and ordinarily a resident.
 - (b) Resident, but not ordinarily a resident.
 - (c) Non-resident.

Relationship between residential status and incidence of tax:

(a) Incidence of tax in case of Resident (Ordinary):

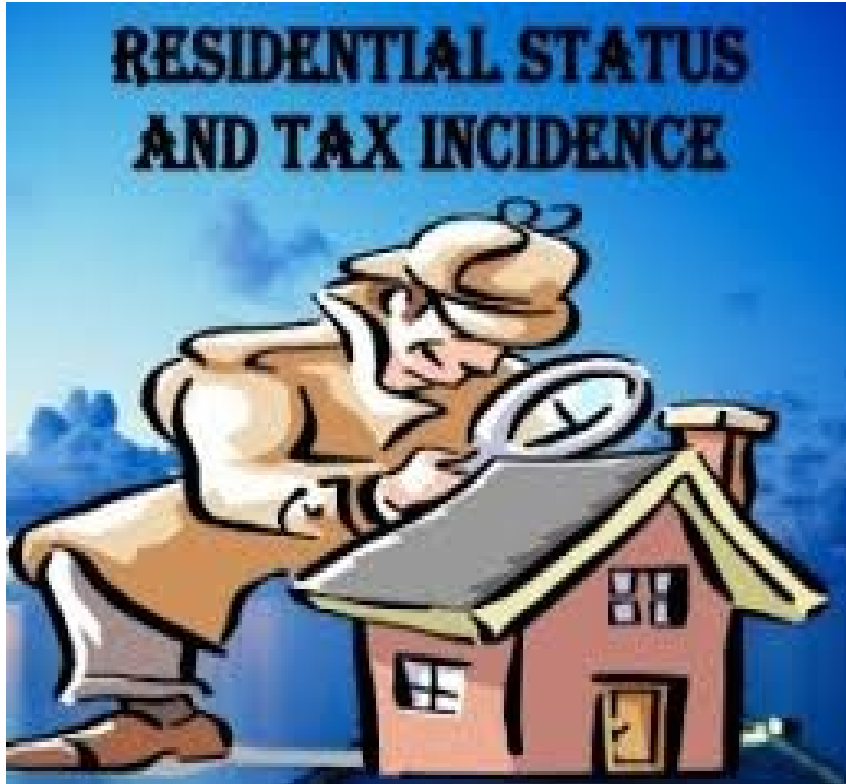


The total income of any previous year of a person who is a resident includes all income from whatever source derived which:

{Section 5(1)1}

- (a) is received or deemed to be received in India in such year by or on behalf of such person, whether accrued or arisen anywhere; or
- (b) Accrues or arises or is deemed to accrue or arise to him in India during such year, whether received anywhere; or
- (c) Accrues or arises to him outside India during such year.

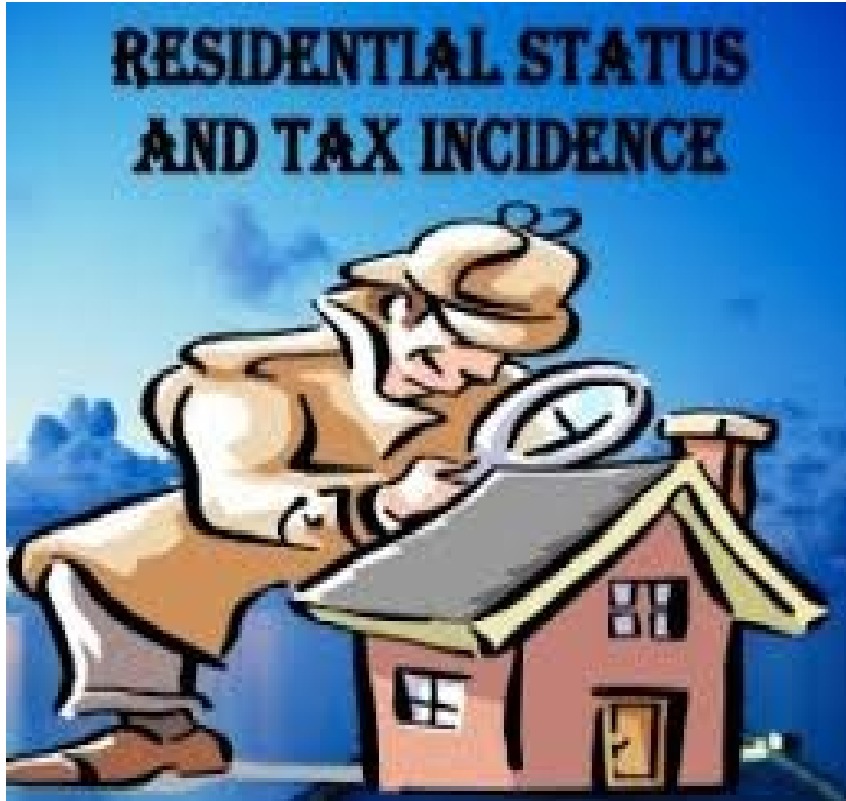
(b) Incidence of tax in case of Not Ordinarily Resident



The total income of any previous year of a person who is 'Not Ordinarily Resident' includes all income from whatever source derived which:

- (a) Is received or deemed to be received in India in such year by or on behalf of such person, whether accrued or arisen anywhere; or
- (b) Accrues or arises or is deemed to accrue or arise to him in India during such year, whether received anywhere; or
- (c) Accrues or arises to him outside India from a business controlled in or a profession set-up in India.

(c) Incidence of tax in case of Non-Resident

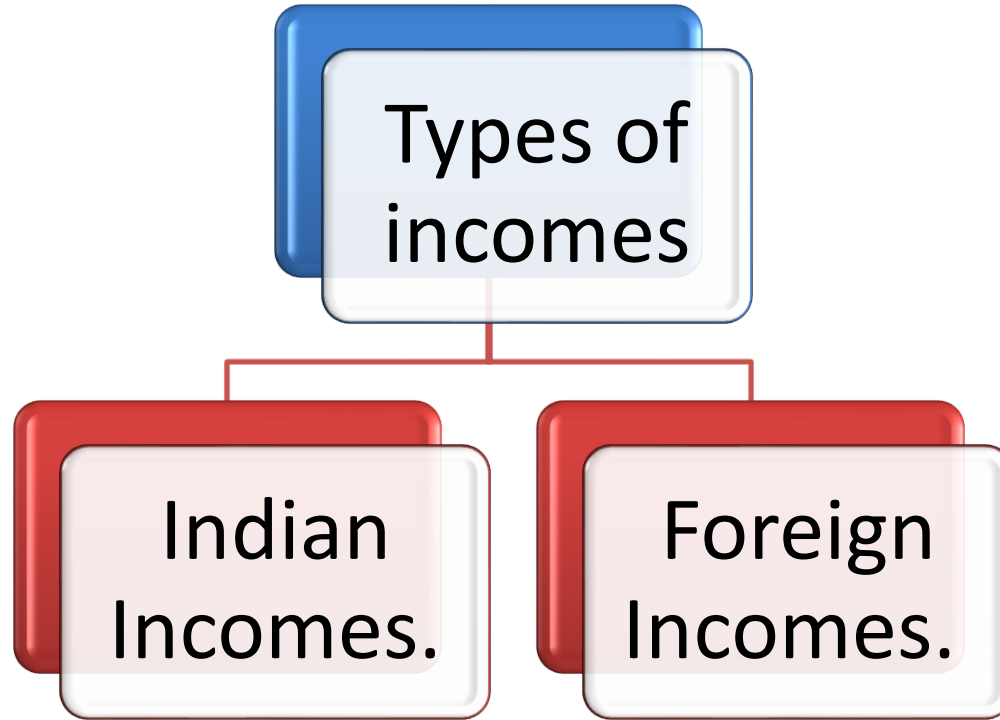


The total income of any previous year of a person who is non-resident includes all income from whatever source derived which :

- (a) Is received or deemed to be received in India in such year by or on behalf of such person, whether accrued or arisen anywhere; or
- (b) Accrues or arises or is deemed to accrue or arise to him in India during such year, whether received anywhere.

TYPES OF INCOME

For the purpose of determining the incomes of the assessee that must be considered', the incomes are classified into the following categories



Indian Income

An income is said to be 'Indian Income' when it is either,



1. Accrued in India, or Accrue or Arise in India



Accrue or arise means right to receive the income as against receipt of income. An income is said to **accrue in India** when the source of income is in India. For example, salary received from an employer in Bangalore, rent received for property let out in Lucknow, profits made from business in Hyderabad, profit made on sale of land in Cochin, interest on Debentures of Reliance Industries Ltd., interest on fixed deposit with Canara Bank, etc. When an income accrues in India, it can be considered as 'Indian income', irrespective of whether it is received in India or not

2. "Received' in India



The term 'received' means the receipt of income on the first occasion. An income is said to be **received in India** when the **first receipt** of the income is in India. An income, the first receipt of which is in India is 'Indian income', irrespective of whether it is accruing in India or not. For example, rent of property in Colombo sent to India by the tenant through cheque. The assessee deposits the cheque in his bank account in India. In this case, the first receipt of the rent is happening in India. And hence it becomes an Indian income. Where, the tenant deposits rent in the bank account of the assessee in Colombo and withdrawn by the assessee later, the first receipt of the rental income is not happening in India.

Thus, the foreign income of a non-resident is not taxable even if it is remitted to India unless it is received or deemed to be received in India.

3. 'Deemed to be received in India (Sec. 7 and Sec. 8)



Deemed to be received' means that the income has not been actually received, but it is deemed to be received under the Income Tax Act. Its instances are:

(i) Tax deduction at source is income deemed to be received by a person even though he never receives such income (u/s 198).

(ii) section 7 consider the following as deemed to be received by an assessee.

(a) Contribution made by the employer to the Recognised Provident Fund in excess of 12% of salary of the employee. **[Section 7(i)]**

(b) Interest credited to Recognised Provident Fund of the employee which is in excess of 9.5% p.a. **[section 7(i)]**

(c) Transferred balance from the Un-recognised Provident Fund to Recognised Provident Fund. **[Section 7(ii)]**

Contribution made by the Central Government or any other employer, during the previous year, to the account of an employee under the Notified Contributory Pension Scheme, referred to in Section 80 CCD. **[Section 7(iii)]**

(iii) Transfer of income without transfer of assets is deemed to be the income of transferor u/s 60 and 61.

(iv) Under section 8, the dividend distribution or deemed to be distributed u/s 2 (22) will be deemed to be distribution in the previous year.

(v) Income from undisclosed sources [sections 68,69,69A,69B,69C and 69D)

4. 'Deemed to Accrue or Arise' in India



The words 'deemed to accrue or arise' mean that the income has actually not accrued or arisen in India but it is deemed to accrue or arise in India under the Income Tax Act. Under section 9(1), the following incomes are deemed to accrue or arise in India:

SECTION 9



(1) Income is deemed to accrue or arise in India, if it accrues or arises, directly or indirect [Sec. 9(1)(1)]

- (i) Through or from any business connection in India; or
- (ii) Through or from any property in India; or
- (iii) Through or from any asset or source of Income in India; or
- (iv) Through the transfer of a capital asset situate in India.

Explanation: If all the operations of a business are not carried out in India, its income that will be deemed to accrue or arise in India shall be only such part of the income as is reasonable attributable to the operations carried out in India.

(2) Salary earned in India and received outside India. [(Sec. 9(1)(ii)]

(3) Salary payable by the government to a citizen of India for service outside India. [Sec. 9(1)(iii)]

(4) Dividend paid by an Indian Company outside India. [Sec. 9(1)(iv)]

SECTION 9



(5) Income by way of interest: Interest payable by the Indian Government is deemed to accrue or arise in India, whether it is paid on debts incurred or on moneys borrowed in India or outside India. [Sec. 9(1)(v)]

Interest payable by a person who is resident in India or by a non-resident person in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India is deemed to accrue or arise in India. But if it is payable in respect of any moneys borrowed or debt incurred for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

(6) Income by way of royalty: Income from royalty shall be deemed to accrue or arise in India, if it is payable by the Indian Government. [Sec. 9(1)(vi)]

Income from royalty payable by a person who is resident in India or by a non-resident person in respect of any right, property or information used or services utilised for the purpose of a business or profession carried on by such person in India or for making or earning any income from any source in India, is deemed to accrue or arise in India. If it is payable in respect of any right, property or information used or services utilised from the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

SECTION 9



(7) Income by way of fees for technical services: Income from fees for technical services shall be deemed to accrue or arise in India, if it is payable by the Indian Government. [Sec. 9(1)(vii)]

Income by way of fees for technical services payable by a person who is resident in India or by a person who is non-resident in India in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India, shall be deemed to accrue or arise in India. If it is payable in respect of services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

The income from following shall not be deemed to accrue or arise in India for non-residents:

- ❖ Merely purchase of goods in India for export.
- ❖ Collection of news and views in India for transmission out of India for business of running a news agency or publishing magazines etc
- ❖ Shooting of a cinematograph film in India

Foreign Income



An income is considered as foreign income, when the income neither accrues in India, nor is received in India.

The following table highlights the tax incidence in brief:

Incomes	Whether Taxable or Not		
	Resident	Not Ordinarily Resident	Non-Resident
(1) Income received in India whether accrued or arisen in India or outside India	Yes	Yes	Yes
(2) Income deemed to be received in India whether accrued or arisen in India or outside India.	Yes	Yes	Yes
(3) Income accruing or arising in India whether received in India or outside India.	Yes	Yes	Yes
(4) Income deemed to accrue or arise in India whether received in India or outside India.	Yes	Yes	Yes
Income received and accrued or arisen outside India from a business controlled in or a profession set-up in India.	Yes	Yes	No
(6) Income received and accrued or arisen outside India from a business controlled from outside India or a profession set-up outside India.	Yes	No	No
(7)Income received and accrued or arisen outside India from any other source	Yes	No	No
(8) Income accrued or arisen and received outside India in earlier years but later on remitted to India during the previous year.	No	No	No

Notes:

1. At this stage of assessment, we need to ascertain whether an income earned by the assessee during previous year, must be **CONSIDERED** or not. Whether such income is taxable or not cannot be ascertained at this stage.
2. The word 'received' given for an income can be considered as first receipt.
3. The word 'remitted' refers to payment made into India of an Income received outside India. Hence, 'remitted' does not refer to the first receipt in India.
4. Unless otherwise stated, an income can be assumed to be received in the place of accrual.
5. Unless otherwise stated, the business carried on by assessee can be assumed to be controlled and managed in the place where the business is carried on.

Illustration

Problem on Identifying the Incomes of the Assessee that must be considered in Computing Taxable income

Ascertain whether the following incomes can be considered in computation of taxable income of the assessee, when the assessee is

- (a) Resident and ordinarily a resident.
- (b) Resident, but not ordinarily a resident.
- (c) Non-resident.

Incomes

1. Salary income for serving Infosys, Bangalore.
2. Salary income from Infosys, China.
3. Salary Income from Google, USA, credited to assessee's HDFC Bank account in Bangalore.
- 4 Salary income from Wipro, Bangalore, credited to assessee's Citi Bank in USA.
- 5 Salary income for service in London, received there, remitted to India.
6. Salary for working as Ambassador to the Government of India in London,
7. Rent from let-out property at Hyderabad.
8. Rent from let-out property at Colombo, paid by tenant directly in India through cheque.
9. Rent from let-out property at Sydney, deposited by tenant in assessee's bank account in Sydney
10. Rent from let-out property in Patna transferred by tenant via net-banking to American Bank Account of the assessee in USA.
- 11 Income from business of the assessee in Trivandrum
- 12 Income from business of the assessee in Mumbai, profits received in London.
13. Income from business of the assessee in London, profits received in Kolkata.

14. Income from business of the assessee in New York controlled and managed from India.
15. Income from business of the assessee in Vienna, controlled and managed from there.
16. Income from business in Zurich, controlled from India - 60% of profits from the business is received in India.
17. Income from business in Goa - 75% of profits is received in New York.
18. Gain on sale of land located in Pune.
19. Gain on sale of land located in Islamabad.
20. Gain on sale of apartment in Miami for which consideration was received in India from the Buyer.
21. Gain on sale of jewellery in Dubai - 60% of profits were received in India.
22. Gain on sale of shares held for 3 years, through National Stock Exchange.
23. Agricultural Income from land in Peenya, Bangalore.
24. Agricultural Income from land located in Kenya.
25. Interest on deposits with Vijaya Bank, Bangalore.
26. Interest on deposit with Standard Chartered Bank, Nigeria.
27. Interest on Debentures of Tata Motors Ltd.,
28. Interest on Securities issued by the Government of Germany.
29. Interest on Debentures of a Private Limited Company in Italy, credited to assessee's bank account in Bangalore.
30. Dividends on Equity Shares of Hindustan Unilever Ltd.,
31. Dividends on Shares of Apple Inc, credited to the bank account in USA.
32. Winnings from Sikkim Lottery.
33. Winnings from British Lottery.
34. Royalty income from Vittam Publications, based in Bangalore.
35. Royalty Income from Mc Milan publishers, based in USA, for the sale of books in USA
36. Income from letting out machinery for temporary use to a friend in Dubai, credited to bank account in Dubai, remitted to India.

Solution:

Statement Showing Whether the Incomes Should be 'Considered' for Assessment or not

incomes	Type of incomes	Explanation	Should the Income be Considered in Computing Taxable Income, if the Assessee is		
			Resident and Ordinarily a Resident	Resident and but not Ordinarily a Resident	Non-Resident
1. Salary income for serving Infosys, Bangalore.	Indian	Salary accrues in the place of rendering service. Hence, the income is accruing in India	Must be considered	Must be considered	Must be considered
2. Salary income from Infosys, China.	Foreign	The income is accruing outside India and unless otherwise stated, is assumed to be received in the place of accrual	Must be considered	Must not be considered	Must not be considered
3. Salary Income from Google, USA, credited to assessee's HDFC Bank account in Bangalore.	Indian	The first receipt of the income is in India and hence it becomes in an Indian income	Must be considered	Must be considered	Must be considered
4 Salary income from Wipro, Bangalore, credited to assessee's Citi Bank in USA.	Indian	Salary accrues in the place of rendering service. Hence, the income is accruing in India	Must be considered	Must be considered	Must be considered

5 Salary incomes for service in London, received there, remitted to India.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered
6. Salary for working as Ambassador to the Government of India in London,	Indian	Salary is paid by the Government of India to an Indian citizen for rendering service outside India. It is an income 'deemed to accrue in India and hence an Indian income	Must be considered	Must be considered	Must be considered
7. Rent from let-out property at Hyderabad.	Indian	Source of income being in India, the income is accruing in India.	Must be considered	Must be considered	Must be considered
8. Rent from let-out property at Colombo, paid by tenant directly in India through cheque.	Indian	The income is directly received in India (i.e., the first receipt is in India). Hence, it is an Indian income	Must be considered	Must be considered	Must be considered
9. Rent from let-out property at Sydney, deposited by tenant in assessee's bank account in Sydney	Foreign	Income is accruing and received outside India	Must be considered	Must not be considered	Must not be considered
10. Rent from let-out property in Patna transferred by tenant via net-banking to American Bank Account of the assessee in USA.	Indian	The property being located in India and hence, the income is accruing in India	Must be considered	Must be considered	Must be considered

11 Income from business of the assessee in Trivandrum	Indian	The business is located in India and hence, the income is accruing in India	Must be considered	Must be considered	Must be considered
12 Income from business of the assessee in Mumbai, profits received in London.	Indian	The business is carried out in India and hence the income is accruing in India	Must be considered	Must be considered	Must be considered
13. Income from business of the assessee in London, profits received in Kolkata.	Indian	The profits are received in India, and hence it is an Indian income.	Must be considered	Must be considered	Must be considered
14 Income from business of the assessee in New York controlled and managed from India.	60% Indian Income 40% Foreign Income	Income accrued and received outside India	Must be considered	Must be considered	Must not be considered
15. Income from business of the assessee in Vienna, controlled and managed from there.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered
16. Income from business in Zurich, controlled from India - 60% of profits from the business is received in India.	60% Indian Income 40% Foreign Income	To the extent income is received in India, it is Indian income.	100% profit Must be considered	100% profit Must be considered	60% profit Must be considered

17. Income from business in Goa - 75% of profits is received in New York.	Indian	Income is accrued in India, since the business is carried out in India	100% profit Must be considered	100% profit Must be considered	100% profit Must be considered
18. Gain on sale of land located in Pune.	Indian	Income is accrued in India, since the land sold is in India	Must be considered	Must be considered	Must be considered
19. Gain on sale of land located in Islamabad.	Foreign	Income accrued outside India and assumed to be received at the place of accrual.	Must be considered	Must not be considered	Must not be considered
20. Gain on sale of apartment in Miami for which consideration was received in India from the Buyer.	Indian	Income is received in India	Must be considered	Must be considered	Must be considered
21. Gain on sale of jewellery in Dubai - 60% of profits were received in India.	60% Indian Income 40% Foreign Income	To the extent income is received in India, it is Indian income	100% profit Must be considered	60% profit Must be considered	60% profit Must be considered
22. Gain on sale of shares held for 3 years, through National Stock Exchange.	Indian	Income is accrued and received in India	Must be considered	Must be considered	Must be considered
23. Agricultural Income from land in Peenya, Bangalore.	Indian	Income is accrued and received in India	Must be considered	Must be considered	Must be considered

24. Agricultural Income from land located in Kenya.	Foreign	Income is accrued and outside India	Must be considered	Must not be considered	Must not be considered
25. Interest on deposits with Vijaya Bank, Bangalore.	Indian	Income accrued in India	Must be considered	Must be considered	Must be considered
26. Interest on deposit with Standard Chartered Bank, Nigeria.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered
27. Interest on Debentures of Tata Motors Ltd.,	Indian	Income accrued and received in India	Must be considered	Must be considered	Must be considered
28. Interest on Securities issued by the Government of Germany.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered

29. Interest on Debentures of a Private Limited Company in Italy, credited to assessee's bank account in Bangalore.	Indian	Income received in India	Must be considered	Must be considered	Must be considered
30. Dividends on Equity Shares of Hindustan Unilever Ltd.,	Indian	Income accrued and received in India	Must be considered	Must be considered	Must be considered
31. Dividends on Shares of Apple Inc, credited to the bank account in USA.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered
32. Winnings from Sikkim Lottery.	Indian	Income accrued and received in India	Must be considered	Must be considered	Must be considered
33. Winnings from British Lottery.	Foreign	Income accrued and received outside India	Must be considered	Must not be considered	Must not be considered
34. Royalty income from Vittam Publications, based in Bangalore.	Indian	Income accrued and received in India	Must be considered	Must be considered	Must be considered
35. Royalty Income from Mc Milan publishers, based in USA, for the sale of books in USA	Foreign	Income accrued and received outside India	Must be considered	Must be considered	Must be considered
36. Income from letting out machinery for temporary use to a friend in Dubai, credited to bank account in Dubai, remitted to India.	Foreign	Income accrued and received outside India	Must be considered	Must be considered	Must be considered

Notes:

1. At this stage, the effort is to ascertain whether an income must be considered or not in computing taxable income, and not whether it is taxable or exempt.
2. Unless otherwise stated, an income is assumed to be received in the place of accrual.

Problem on Computation of Taxable income based on Residential Status

Following are the incomes of Mohan during previous year 2018-19;

- (a) Interest on Saving Bank Deposit in Allahabad Bank, Delhi – Rs 1,200.
- (b) Income from agriculture in Africa, invested in Nepal - Rs 10,000.
- (c) Dividends received in U.K. from an American Company, out of which Rs 2,000 were remitted to India – Rs 10,000
- (d) Salary drawn for 3 months for working in Indian Embassy's Office in Australia and salary received there - Rs 72,000.
- (e) Income from a building situated in Pakistan, out of which Rs 10,000 was deposited in a bank in Pakistan, and the balance deposited in a Bank Account in India - Rs 15,000.
- (f) Pension received in Belgium for services rendered in India with a limited company - Rs 20,000
- (g) Agricultural Income from India - Rs 1, 00,000.
- (h) Profits from business in UK controlled from India - Rs 2, 00,000.

You are required to compute his gross total income of Mr. Mohan for the assessment year 2019-20, if he is - (i) a resident and ordinarily a resident; (ii) a resident, but not ordinarily a resident; and (iii) a non-resident.

Solution: Statement Showing Computation of Gross Total Income

Income	Analysis	Exempt /Taxable	Taxable, when Mohan is -		
			Resident, and Ordinarily Resident	Resident, But not Ordinarily a Resident	Non- Resident
(a) Interest on Saving Bank Deposit in Allahabad Bank, Delhi	Indian Income Must be considered in all cases.	Taxable	1,200	1,200	1,200
(b) Income from agriculture in Africa, invested in Nepal	Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	10,000	Nil	Nil
(c) Dividends received in U.K. from an American Company, out of which Rs 2,000 were remitted to India -	Foreign Income. Amount remitted to India does not represent received in India'. Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	10,000	10,000	10,000
(d) Salary drawn for 3 months for working in Indian Embassy's Office in Australia and salary received there	Indian Income, being Income deemed to accrue in India. Must be considered in all cases.	Taxable	72,000.	72,000.	72,000.
(e) Income from a building situated in Pakistan, out of which Rs 10,000 was deposited in a bank in Pakistan, and the balance deposited in a Bank Account in India	Rs 5,000 is Indian Income from a (on receipt basis) - It must be considered in all cases. Remaining 10,000 is Foreign Income - It must be considered only for "Resident and Ordinarily a Resident"	Taxable	15,000	5,000	5,000

Pension received in Belgium for services rendered in India with a limited company	Indian Income, being accrue in India. Must be considered in all cases.	Taxable	20,000	20,000	20,000
(g) Agricultural Income from India	Indian Income Must be considered in all cases.	Exempt U/s 10 (1)	Exempt	Exempt	Exempt
(h) Profits from business in UK controlled from India	Foreign Income. Must be considered only for 'Resident	Taxable	2,00,000	2,00,000	2,00,000

Notes:

1. Students can present only Income and Amount Columns in examinations. The Analysis and Taxability columns can be avoided.
2. All further problems and solutions are shown without Analysis and Taxability Columns.

Illustration

Mr. Anand receives the following incomes:

- (a) Salary Rs 24,000 from an Indian Company.
- (b) Dividend from a foreign company received in London Rs 30,000
- (c) Share of profit received in London from a business situated in Sri Lanka but controlled from India Rs 60,000.
- (d) Dividend received in Germany from an Indian Company Rs 28,000

Show the incomes that are to be considered in the computation of gross total income when Mr. A is: (a) Resident and Ordinarily Resident

(b) Resident but Not Ordinarily Resident and

(c) Non-Resident.

Solution:
Statement Showing Computation of Gross Total Income

Income	Analysis	Exempt /Taxable	Taxable, when Mr. Anand is -		
			Resident, and Ordinarily Resident	Resident, But not Ordinarily a Resident	Non-Resident
(a) Salary Rs 24,000 from an Indian Company.	Indian Income Must be considered in all cases.	Taxable	24,000	24,000	24,000
(b) Dividend from a foreign company received in London Rs 30,000	Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	30,000	Nil	Nil
(c) Share of profit received in London from a business situated in Sri Lanka but controlled from India Rs 60,000.	Foreign Income. Business Controlled from India Must be considered only for 'Resident.	Taxable	60,000	60,000	Nil
(d) Dividend received in Germany from an Indian Company Rs 28,000	Indian Income Must be considered in all cases.	Exempt	Exempt U/s 10 (34)	Exempt U/s 10 (34)	Exempt U/s 10 (34)

Illustration

Status Ms. Bharathi furnishes the following particulars of his income:

- (a) Royalty earned in India but received in Nepal Rs 46,000
- (b) Dividend from a foreign company received in Nepal Rs 56,000
- (c) Share of profit from a business situated in Nepal received in Burma but business is controlled from India Rs 42,000
- (d) Rent of house property situated in Nepal and received there Rs 1, 65,000
- (e) Speculation profit earned and received in America Rs 60,000

Show the incomes that are to be considered in the computation of gross total income when Ms. Bharathi is:

- (a) Resident and Ordinarily Resident
- (b) Resident but Not Ordinarily Resident and
- (c) Non-Resident.

Solution: Statement Showing Gross Total Income

Income	Analysis	Exempt /Taxable	Taxable, when Ms. Bharathi is -		
			Resident, and Ordinarily Resident	Resident, But not Ordinarily a Resident	Non-Resident
(a) Royalty earned in India but received in Nepal .	Indian Income Must be considered in all cases.	Taxable	46,000	46,000	46,000
(b) Dividend from a foreign company received in Nepal.	Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	56,000	Nil	Nil
(c) Share of profit from a business situated in Nepal received in Burma but business is controlled from India.	Foreign Income. Business Controlled from India Must be considered only for 'Resident.	Taxable	42,000	42,000	Nil
(d) Rent of house property situated in Nepal and received there.	Foreign Income. Must be considered in 'Resident and Ordinarily a Resident'.	Taxable	1,65,000	nil	nil
(e) Speculation profit earned and received in America.	Foreign Income. Must be considered in 'Resident and Ordinarily a Resident'.	Taxable	60,000	-	-

Illustration

Status Mr. Chandru furnishes the following particulars of his income:

(a) Interest on German Development Bonds (2/5th received in India) Rs 60,000

(b) Income from agriculture in Bangladesh (received there but later on 50,000 remitted to India)

Rs 1, 81,000

(c) Income from property in Canada received there (Rs 76,000 is used in Canada for meeting the educational expenses of Mr. C's son in USA and Rs 10,000 is later on remitted to India) Rs 86,000.

(d) Income from business in Kenya which is controlled from Bangalore (Rs 15,000 is received in Bangalore) Rs 65,000

(e) Dividend paid by an Indian Company but received in Canada Rs 46,500

(f) Past untaxed profit of Rs 10, 50,000 brought to India during the current previous year.

(g) Profit from business in Mysore but managed from London Rs 27,000

(h) Profit on sale of building in Mangalore but received in Sri Lanka Rs 4, 80,000

(i) Pension from a former employer in India received in Rangoon Rs 36,000

(j) Gift in foreign currency from a friend received in India Rs 80,000

Show the incomes that are to be considered in the computation of gross total income when Mr. Chandru is:

(a) Resident and Ordinarily Resident

(b) Resident but Not Ordinarily Resident &

(c) Non-Resident.

Solution: Statement Showing Computation of Gross Total Income

Income	Analysis	Exempt /Taxable	Taxable, when Mr. Chandru is -		
			Resident, and Ordinarily a Resident	Resident, But not Ordinarily a Resident	Non-Resident
(a) Interest on German Development Bonds received in India (60,000×2/5) received outside India (60,000 ×3/5)	Indian Income Must be considered in all cases. Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable Taxable	24,000 36,000	24,000 Nil	24,000 Nil
(b) Income from agriculture in Bangladesh (received there but later on 50,000 remitted to India) Rs 1, 81,000	Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	1,81,000	Nil	Nil
(c) Income from property in Canada received there (Rs 76,000 is used in Canada for meeting the educational expenses of Mr. C's son in USA and Rs 10,000 is later on remitted to India) Rs 86,000.	Foreign Income. Business Must be considered only for 'Resident.	Taxable	60,000	60,000	Nil
(d) Income from business in Kenya which is controlled from Bangalore received in India received outside India	Indian Income Must be considered in all cases. Foreign Income. Business Controlled from India Must be considered only for 'Resident. Must be considered in all cases.	Taxable Taxable	15,000 50,000	15,000 50,000	15,000 50,000
(e) Dividend paid by an Indian Company but received in Canada Rs 46,500	Indian Income	Exempt	Exempt	Exempt	Exempt

(f) Past untaxed profit of Rs 10, 50,000 brought to India during the current previous year.	Not an income at all.	Taxable	-	-	-
(g) Profit from business in Mysore but managed from London Rs 27,000	Indian Income Must be considered in all cases.	Taxable	27,000	27,000	27,000
(h) Profit on sale of building in Mangalore but received in Sri Lanka Rs 4, 80,000	Indian Income Must be considered in all cases.	Taxable	4,80,000	4,80,000	4,80,000
(i) Pension from a former employer in India received in Rangoon Rs 36,000	Indian Income Must be considered in all cases.	Taxable	36,000	36,000	36,000
(j) Gift in foreign currency from a friend received in India Rs 80,000	Indian Income Must be considered in all cases.	Taxable	80,000	80,000	80,000
Gross Total Income			10,15,000	7,12,000	6,62,000

Illustration

Mr. Dhananjay receives the following incomes:

- (a) Profit on sale of plant at London Rs 1, 50,000 (50% is received in India)
- (b) Profit on sale of plant at Delhi Rs 1, 00,000 (50% is received in London)
- (c) Salary from an Indian Company received in London Rs 60,000 (50% is paid for rendering services in India)
- (d) Interest on UK Development Bonds Rs 40,000 (entire amount is received in London)
- (e) Income from property in London received there Rs 30,000
- (f) Income from agriculture in London received there, 50% of which is used for meeting the hostel expenses of Mr. D's daughter in England and remaining amount is later on remitted to India Rs 50,000
- (g) Dividend received in London from a company registered in India but mainly operating from UK Rs 17,000
- (h) Profit from a business in Delhi Rs 50,000
- (i) Rental income from a property in Nepal deposited by the tenant in a foreign branch of a Indian Bank operating there Rs 1, 20,000

Show the incomes that are to be considered in the computation of gross total income where Mr. Dhananjay is:

- (a) Resident and Ordinarily Resident
- (b) Resident but Not Ordinarily Resident and
- (c) Non-Resident.

Solution: Statement Showing Computation of Gross Total Income

Income	Analysis	Exempt /Taxable	Taxable, when Mr. Dhananjay is -		
			Resident, and Ordinarily a Resident	Resident, But not Ordinarily a Resident	Non- Resident
(a) Profit on sale of plant at London received in India (1, 50,000 × ½) received outside India (1, 50,000 × ½)	Indian Income Must be considered in all cases. Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable Taxable	75,000 75,000	75,000 Nil	75,000 Nil
(b) Profit on sale of plant at Delhi Rs 1, 00,000 (50% is received in London)	Indian Income Must be considered in all cases.	Taxable	1,00,000	1,00,000	1,00,000
(c) Salary form an Indian Company received in London Rs 60,000 (50% is paid for rendering services in India)	Foreign Income. Business Must be considered all cases.	Taxable	60,000	60,000	60,000
(d) Interest on UK Development Bonds Rs 40,000 (entire amount is received in London)	Indian Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	40,000	Nil	Nil

(e) Income from property in London received there Rs 30,000	Indian Income Must be considered only for 'Resident and Ordinarily a Resident'	Taxable	30,000	Nil	Nil
(f) Income from agriculture in London received there, 50% of which is used for meeting the hostel expenses of Mr. D's daughter in England and remaining amount is later on remitted to India Rs 50,000	Foreign Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	50,000	Nil	Nil
(g) Dividend received in London from a company registered in India but mainly operating from UK Rs 17,000	Foreign Income	Exempt	Exempt	Exempt	Exempt
(h) Profit from a business in Delhi Rs 50,000	Foreign Income. Business Must be considered all cases.	Taxable	50,000	50,000	50,000
(i) Rental income from a property in Nepal deposited by the tenant in a foreign branch of a Indian Bank operating there Rs 1, 20,000	Indian Income Must be considered only for 'Resident and Ordinarily a Resident'.	Taxable	1,20,000	Nil	Nil
Gross Total Income			6,00,000	2,85,000	2,85,000

Illustration

Ms. Indira is a foreign citizen and visited India for the first time during the PY 2014–15 and stayed for 180 days. During the subsequent previous years her stay was as follows: 2015-16 - 58 days 2016-17 - 180 days; 2017-18 - 58 days and 2018–19 - 180 days.

Determine the residential status of Ms. Indira for the Assessment Year 2019-29 and show the amount to be considered in the computation of gross total income for the Assessment Year 2019-20

- (a) Consultation fee received from Indian Company Rs 65,000
- (b) Profit from business in America Rs 75,000 (Rs 25,000 received in India)
- (c) Profit from business in England Rs 90,000 (Business controlled from Bengaluru)
- (d) Income from agricultural operations in America Rs 50,000
- (e) Income from agricultural operations in Mandya Rs 80,000

Solution:

Step One: Determination of Residential Status

Ascertainment of Number of Days of Stay in India During Different Previous Years

Year	Total Number of Days of Stay
2018-2019	180
2017-2018	58
2016-2017	180
2015-2016	58
2014-2015	180

Step No. Two: Verification of Fulfillment of Conditions under Section 6(1)

Since, Ms. Indira has fulfilled one conditions under Section 6(1), he is **a resident**, for the assessment year 2018-19.

Condition under Section 6(1)	Fulfilled or Not Fulfilled
(a) The Individual must be in India for at least 182 days during the relevant previous year (i.e., 2018-19)	Not Fulfilled
(b) The Individual must be in India for at least 60 days during the relevant previous year (i.e., 2018-19) And At least 365 days during four previous years immediately preceding the relevant previous year (i.e., between 01-04-2014 and 31-03-2018)	Fulfilled Fulfilled

Note: Indira is a foreign citizen. Hence, in the condition under Section 6(1)(b), 60 days have been considered.

Step No. Three: Verification of Fulfillment of Conditions under Section 6(6)

Condition under Section 6(6)	Fulfilled or Not Fulfilled
(a) The Individual must be resident in India for at least 2 out of 10 previous years immediately preceding the relevant previous year (i.e., 2018-19)	Fulfilled
(b) The Individual must be in India for at least 730 days during 7 previous years immediately preceding the relevant previous year (i.e., between 01-04-2011 and 31-03-2018)	Not Fulfilled

Since Indira, a resident individual, has fulfilled only one of the conditions under Section 6(6), she is a 'resident, but not ordinarily a resident'.

Step Four:
Ascertainment of Incidence of Tax
Computation of Gross Total Income

incomes	Types of income	Rs
Consultation fee received from Indian company	Indian income	65,000
<i>Profit from business in America:</i>		
Received in India	Indian income	25,000
Received outside India	Foreign income	Nil
Profit from business in England, controlled from India	Foreign income	90,000
Agricultural income in USA	Foreign income	Nil
Agricultural income in India	Indian income	Exempt u/s 10((1)
Gross Total Income		1,80,000