

RESIDENTIAL STATUS OF INDIVIDUALS

Residential Status: –

(a) The incidence of tax on any assessee depends upon his residential status under the Act. The residential status of an assessee must be ascertained with reference to each previous year. A person who is resident in one year may become non-resident in another year or vice versa.

(b) The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.

What are Different Types of Residential Status in Case of Individuals: –

Following are the categories of the Residential Status of India under Income Tax Act, 1961.

1. Resident of India
2. Non resident of India
3. Deemed Resident of India

Resident of India is further divided under (i) Resident & Ordinary Resident and (ii) Resident but Not Ordinary Resident.

Determination of Residential Status (General Conditions):-

As per section 6(1) of Income Tax Act, 1961, Residential status is determined on the basis of number of days of stay in India.

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

- i. He has been in India during the previous year for a total period of 182 days or more

OR

- ii. He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the relevant previous year.

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If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non- resident.

The term “stay in India” includes stay in the territorial waters of India (i. e., 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.

It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business, or employment of the individual.

For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are considered to be in India.

Exceptions to General Conditions (Type 1): –

The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more.

1) Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India

Or

2) Indian citizen or person of Indian origin* who, being outside India comes on a visit to India during the relevant previous year whose total income, other than the income from foreign sources is Up to Rs. 15 lakhs during the previous year.

In other words, even if such persons were in India for 60 days or more (but less than 182 days) in the relevant previous year, they will not be treated as resident due to the reason that their stay in India was for 365 days or more during the 4 immediately preceding years.

Exceptions to General Conditions (Type 2): –

The following categories of individuals will be treated as resident in India only if he has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 120 days in the previous year.

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1) Indian citizen or person of Indian origin* who, being outside India comes on a visit to India during the relevant previous year whose total income, other than the income from foreign sources Exceeds Rs. 15 lakhs during the previous year.

*** A person is said to be of Indian origin if he or either of his parents or either of his grandparents was born in undivided India.**

Deemed resident [Section 6(1A)]: –

An individual, being an Indian citizen,

(i) having total income, other than the income from foreign sources exceeding Rs. 15 lakhs during the previous year would be deemed to be resident in India in that previous year, and

(ii) if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature, and

(iii) Who is not Resident as per Section 6(1) of Income Tax Act, 1961. (as Per General Conditions).

Resident and ordinarily resident/Resident but not ordinarily resident: –

Only individuals and HUF can be “Resident and ordinarily resident” or “resident but not ordinarily resident” in India. All other classes of assesseees can be either a resident or non-resident.

A Resident but not-ordinarily resident person is one who satisfies any one of the conditions specified u/s 6(6).

i. If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or

ii. If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less, or

iii. If such individual is an Indian citizen or person of Indian origin who, being outside India, comes on a visit to India in any previous year having total income, other than the income from foreign sources exceeding Rs. 15 lakhs during the previous year, who has been in India for 120 days or more but less than 182 days during that previous year, or

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iv. If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A).

If no condition is satisfied of the section 6(6) above in relation to the not-ordinarily resident, then person will be become resident and ordinarily resident.

Conclusions: –

1. An individual is said to be resident in India in any previous year, if He has been in India during the previous year for a total period of 182 days or more OR He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the relevant previous year subject to the exceptions given above.

2. Indian Citizen leave India as Crew Member of Indian Ship or for Employment Purpose, will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more.

3. Indian Citizen or Person of Indian Origin being Outside India comes on Visit during Previous Year Whose Total Income Excluding Foreign Income is up to 15 Lacs during Previous Year, will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more.

4. In Case of Indian Citizen or Person of Indian Origin being Outside India comes on Visit during Previous Year Whose Total Income Excluding Foreign Income is More 15 Lacs during Previous Year. If his stay period is 182 days or More during Previous year, He may be “Resident and ordinary Resident” or “Resident but not Ordinary Resident” based on Condition. However, His period of Stay is More than 120 days or more but less than 182 days during previous year, he will Always be “Resident but Not Ordinary resident”.

5. Deemed Resident will always be Resident but not Ordinary Resident.
