
UNIT 3 RESIDENTIAL STATUS AND TAX LIABILITY

Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Importance of Residential Status
- 3.3 Categories of **Residential** Status
- 3.4 Rules for **Determining** Residential Status
 - 3.4.1 Individual
 - 3.4.2 Non-Company **Plural** Entities
 - 3.4.3 Companies
 - 3.4.4 Every Other **Person**
- 3.5 Scope of Total **Income** on the Basis of Residence
 - 3.5.1 Resident.
 - 3.5.2 Not Ordinarily Resident
 - 3.5.3 Non-Resident
- 3.6 Kinds of Incomes
 - 3.6.1 Income Received in India
 - 3.6.2 Income Deemed to be Received in India
 - 3.6.3 Income Accruing or Arising in India
 - 3.6.4 Income Deemed to Accrue or Arise in India
- 3.7 Incidence of Tax
- 3.8 Let Us Sum Up
- 3.9 Key Words
- 3.10 Answers to Check Your Progress
- 3.11 Self-assessment Questions/Exercises

3.0 OBJECTIVES

After studying this unit, you should be able to :

- identify categories of assessees on the basis of residential status,
- determine the residential status of assessees,
- explain different types of incomes,
- determine tax liability.

3.1 INTRODUCTION

You are aware that Income Tax Act revolves around **assessee** and his income. In the previous units you have been familiarized with concepts such as assessee, previous year, assessment year etc., which are considered to be foundations of income tax. However, to determine tax liability of an **assessee** it is essential to **know** his residential status. In this unit, we intend to explain the method of applying the rules regarding residential status and thereby determining the scope of total income of an assessee.

3.2 IMPORTANCE OF RESIDENTIAL STATUS

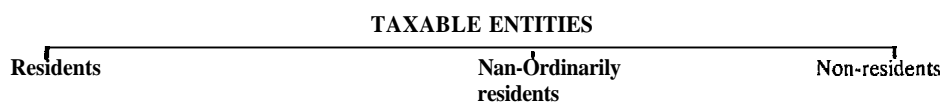
According to Section 4, of the **Income Tax, Act, 1961** tax is to be charged, on the income of the previous year of a person at the rate fixed for the assessment year, immediately following the previous year, by the Annual Finance Act **passed** by Parliament sometime in **April/May** every year. The tax liability of a **person** is **determined** on the basis of his **residence** in India in the previous year. **The** residential status of an **assessee** may not necessarily be the same in each year, he may be a resident in one year and a non-resident in the next. As such, clear identification of residential status is necessary. It is important to note, however, that the status of an **assessee** will be the same for all sources of income. The rules for determining the residential status are not the **same** for different types of assessees viz., individual, Hindu Undivided Family (HUF), firm and a company etc.

3.3 CATEGORIES OF RESIDENTIAL STATUS

Section 5 of the Income tax Act deals with the scope of total income. It states that the scope of total income of a person is determined by reference to his residence in India in the previous year.

On the basis of residence all taxable entities are divided into three categories, viz.

- a) Persons who are residents in India
- b) Persons who are not ordinarily residents in India
- c) Persons who are non-residents in India



For the purpose of determining the rules applicable in this regard the assesseees are divided into 4 groups, viz.

- i) Individuals,
- ii) Non-company plural entities,
(H.U.F., firms or other association of persons)
- iii) Companies, and
- iv) Every other person.

3.4 RULES FOR DETERMINING THE RESIDENTIAL STATUS

As stated earlier there are separate rules for determining the residential status of different types of assesses. The tests for residence of an individual are contained in Section 6(1), those for Hindu Undivided Families, firms or other association of persons are laid down in Section 6(2), those for companies in Section 6(3) and for every other person in Section 6(4).

3.4.1 Individual

An individual may either be resident, or not **ordinarily** resident, or non-resident, in any previous year depending upon the facts of the case.

A. Resident

The residential status of an individual now depends upon his stay in India, prior to the previous year 1982-83 his dwelling place was also relevant. He will be a resident in India (also referred to as ordinarily resident) if he satisfies anyone of the condition of Part I and both the condition of Part II.

Conditions of Part I (Sec. 6(1))

- a) He is in India in the previous year for a period, or periods amounting in all to 182 days or more,
- b) If he has been in India for a period or periods amounting in all to 365 days or more during the 4 years preceding the previous year and has been in India for 60 days or more during the previous year.

Explanations : In case of an individual

- i) Being a citizen of India if he leaves India in any previous year for the purpose of **employment** outside India, the period of 60 days in clause (b) above will be **extended** to 182 days or more.
- ii) Being a citizen of India or a person of Indian origin, who being outside India, comes on a visit to India in any previous year the **period** of 60 days mentioned in clause (b) will be 90 days or more (From 1.4.1990 these 90 days are extended to 150 days or more). A person is deemed to be of Indian origin if he, or either of his parents or any of his grand parents was born in undivided India.

Conditions of Part II (Sec. 6(6))

- a) If he has been resident in **India** in at least 9 out of the 10 years preceding the previous year, and.

- b) He has been in India for a period or periods amounting in all to 730 days or **more** during 7 previous years preceding **the** previous year.

Stay in India

His stay in India for at least 182 days during the previous year need not **necessarily** be a continuous one and at the same place, **It** is the total duration of his stay in **India** that **will** be considered for the purpose. **It is immaterial** whether he stayed in a **rented** house, or his own house, in a hotel or with some friends, **what** is important is that he must have stayed in India for a period of 182 days or more in the previous year.

Regarding his stay for at least 365 days, the stay may be regular or irregular or **only once** in four years preceding the previous year. But he must have stayed **in** India 365 days in all during the four years. The period of 4 years preceding the previous year means the period of 12 calendar months each immediately preceding the commencement of the relevant previous year.

Again **with** regard to the second condition of Part **I** i.e. his stay for 365 days or more, the stay need not be regular, it could be only once in four years preceding the previous year. It is the total stay which is significant which must be 365 days or **more** in the 4 years preceding the previous year.

Illustration 1

Mr. X an Indian citizen, left for Germany on August 1, 1988 for business. He stayed in Germany **upto** December, 31, 1989. He **came** to India on January 1, 1990 and did not go back. He was never out of India in the past. What will be his residential status for the previous year ending on March 31, 1990?

Solution

For the previous year 1989-90 and the Assessment year 1990-91, Mr. X is a Resident, Mr. X satisfied the second condition of Part **I**, **i.e.**, he has resided in India for 365 days during four years 1985-89 preceding the **previous year** and 60 days during the previous year (1989-90), since he has gone for business purpose. He also satisfies the other two conditions of Part **II**.

- a) He has been resident for nine out of ten years preceding the previous year and
- b) He has also lived in India for 730 days during seven years preceding the previous year.

B. Not Ordinarily Resident

If an individual satisfies any one of the two **conditions** of Part **I**, but does not satisfy both the conditions of **Part II**, he is said to be resident but **not ordinarily resident** or simply stated. He will be a "not ordinarily resident"

Illustration 2

Mr. Mukesh came to India for the first time in July 1988 and stayed in Delhi up to 31st March, 1990. Determine his residential status for the assessment year 1990-91?

Solution

For the assessment year 1990-91, Mr. Mukesh is resident but **not ordinarily** resident.

During the previous year 1989-90 Mr. Mukesh was in India for a period of **more** than 182 days and he there by fulfils the condition (a) of Part **I**. But he does **not** satisfy both the conditions of Part **II**. Therefore, he is resident but not ordinarily resident for the assessment year 1990-91.

C. Non-Resident

If an individual does not satisfy any one of the conditions of Part **I** he is said **to** be non-resident in that previous **year**. Whether he satisfies one **or** both conditions **of** Part **II**.

Illustration 3

Mr. X, a student of Delhi University leaves **India** for **Canada** for higher studies **on** August 15, 1985. During 1989-90 he came to India on July 12, 1989 and stayed **in** Delhi for a **period** of one month and again left for Canada, on August 10, 1989. Determine his residential status for the assessment year **1990-91**?

Solution

Mr. X is a non-resident for the assessment year 1990-91, as he stayed **in** **India** for only 30 days during the previous year 1989-90. As such he does not satisfy any **one** of the basic conditions of Part **I**. Therefore he is a non-resident.

Check Your Progress A

- 1) When is an individual treated as a 'resident' in India?
- 2) When is an individual treated as 'not ordinarily resident in India'?
- 3) Who is a non-resident?
- 4) After 25 years stay in India Mr. Mukesh went to U.S.A. on April 15, 1986 and came back to India on March 12, 1990. Determine his residential status for the assessment year 1990-91?
- 5) Mr. John came to India for the first time on July 10, 1989 and stayed upto February 28, 1990. Determine his residential status for the assessment year 1990-91.
- 6) Mr. Prasad is an Indian citizen who left for Japan on November 15, 1989 on personal work and he did not return during the previous year 1989-90. He was never out of India in the past. Determine his residential status for the assessment year 1990-91?

3.4.2 Non-Company Plural Entities

Under this section we will examine the rules regarding residential status of plural entities such as Hindu Undivided Family (HUF), firms and association of persons.

Hindu Undivided Family (Section 6(2).)

The residential status of an HUF depends on two factors, the location of control and management of its affairs and the residential status of its Karta:

Ordinarily Resident (Section 6(2))

A) HUF is said to be ordinarily resident in India in any previous year :

- a) If the control and management of its affairs is wholly or partly situated in India during the previous year.

The expression 'Control and Management' signifies controlling and directive power. In other words it means the 'head and brain.' Moreover the control and management should be de facto, (in effect) and not merely the right or power to control and manage.

If its manager (Karta) satisfies the following conditions of Section 6(6) :

- i) its manager has been resident in India in 9 out of 10 previous years preceding that year; and
- ii) its manager has, during the 7 years preceding that year, been in India for a period amounting in all to 730 days or more.

For the purposes of calculating the period of the manager's stay in India we shall add up, the stay in India of all the successive managers of the family, in case of the death of the first manager.

Illustration 4

A Hindu Undivided Family carries Import-Export business in India, Nepal, Sri Lanka and Pakistan. The Karta stays in India, and manages the affairs of HUF through employees and agents. What will be the status of the family for income-tax purposes?

Solution

The control and management of the affairs of the family is situated wholly in India and the manager stays in India and fulfils the conditions of Part II Section 6(6). Hence, the Hindu Undivided Family is resident in India.

B) Not Ordinarily Resident

A Hindu Undivided Family is said to be 'not ordinarily resident in India, if control and management of its affairs is situated wholly or partly in India during the previous year but its manager does not satisfy the conditions of Section 6(6).

C) Non-resident

A Hindu Undivided Family is said to be non-resident in such cases only where its control and management is situated wholly outside India during the previous year. If however the control and management is situated partly in India and the Karta satisfies the conditions of Part II Section 6(6) it becomes a resident in India.

Illustration 5

Head Office of AB a Hindu Undivided Family is situated in Dubai. The family is managed by Mr. A who is a resident in India in only 6 years out of 10 years preceding

the previous year 1989-90). Determine the residential status of the HUF for the assessment year 1990-91 if the affairs of the family business are (i) wholly controlled from Dubai. (ii) partly controlled from India.

Solution

- i) Here the affairs of HUF are controlled and managed from outside India. Therefore AB, a Hindu Undivided Family is **non-resident** for the assessment year 1990-91.
- ii) Under this situation the affairs of HUF are controlled and managed **partly from India**. Therefore the HUF is resident of India. However, it would be resident in India if Karta/Manager satisfies the conditions laid down in Part II Section 6(6) (b) below:
 - i) He has been resident in India, at least 9 out of 10 years preceding the previous year.
 - ii) He has been in India for a period or periods amounting in all to 730 days or more during the seven years preceding the previous year.

As the manager Mr. 'A' is resident in India in only 6 out of 10 years preceding the previous year, the HUF would be 'non-ordinarily resident' in India for the assessment year 1990-91.

Firms and other Association of Persons (Section 6(2))

Firms and other association of persons can fall under two categories only. They may either be residents or non-residents. The category of **non-ordinarily residents** does not apply to such assessee.

A) Resident

A firm or other association of persons is said to be resident in India in any previous year where during that year the control and management of its affairs is partially or wholly situated in India. The residential status of its partners in India is immaterial.

B) Non-Resident

A firm or an association of persons is said to be non-resident in such cases only where the **control** and management of its affairs is situated wholly outside India during the previous year.

Illustration 6

A firm has five partners who are permanent residents in India. The firm owns a rubber estate in Malaysia. The estate is managed and controlled by the partners in **India**, through an agent in Malaysia. Determine the residential status of the firm.

Solution

Even if the control and management of the firm is partly situated in India the firm becomes resident. Here, all the partners reside **in India** and manage at least a part of the affairs of the estate. As such the firm is resident in India.

3.4.3 Companies (Section 6(3))

Similar to firm, or other association of persons, companies can also be classified into two categories only. A company may either be a resident or non-resident.

A) Resident

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

- i) it is an Indian **company**, or
- ii) during the year, the control and management of its affairs is situated wholly in India.

Indian Company : Section 2(26)

Indian company means a company **formed** and registered under the Companies Act, 1956 and includes:

- i) a **company formed** and registered **under** any law relating to **companies formerly** in force in any part of India, other than the state of **Jammu** and **Kashmir** and the union territories,
- ii) a corporation **established** by or **under a central**, or **state** or provincial act.
- iii) any institution, **association** or body which is declared by the **Central Board of Direct Taxes** to be a company under Section 2(17).

- iv) in the case of **Jammu and Kashmir**, a company formed and registered under any law for the time being in force in that state.
- v) in the case of any of the union territories of **Dadra and Nagar Haveli, Daman and Diu and Pondicherry**, a company formed and registered under any law for the time being in force in that union territory.

In all the above cases, it is necessary that the registered or, as the case may be, the **principal** office of the company, corporation institution, association or body is in India.

Control and Management of the Affairs of the Company

A non-Indian company is resident in India if the control and management is wholly situated in India. The term "Control and Management" refers to "head and brain" which directs the affairs of policy framing, finance, disposal of profits and vital things concerning the management of a company.

A company may be resident in India even though its entire trading operations are carried on abroad. If the management and control is situated in India, the company is resident in India. It does not matter where it is registered and where the act of selling and buying of the goods takes place.

B) Non-Resident

If a company does not satisfy any of the aforesaid conditions of residence, it is said to be a 'non-resident' company. In other words if the company is not registered in India and its control and management is situated wholly or partially outside India, it is regarded as a non-resident.

Illustration 7

The Indian **chemicals limited** is a registered Indian company carrying business in India and in Gulf countries. The control and management of its affairs was partially situated in Riyadh (Saudi Arabia) during the year ending March 31, 1990. What will be the residential status of the company for the assessment year 1990-91?

Solution

The Indian chemicals limited is an Indian company, therefore, it should be treated as resident in India and the facts regarding control and management outside the country are immaterial.

Illustration 8

International Remedies is a registered company in Germany, and has a registered office in Germany, but the management and control is situated wholly in **Bombay** (India). What will be the residential status of the company for tax purpose?

Solution

As the company's control and **management** is situated wholly in India it is resident in India, and the location of the registered office of the company is immaterial.

In the above illustration if suppose the control and management is partially situated in **India**, then the company is non-resident in India for tax purpose.

3.4.4 Every other Person (Section 6(4))

A) Resident : Every other person (local authority, artificial, juridical person e.g. : Statutory Corporations) is said to be resident in India in any previous year if **the** control and management of its affairs is partly or wholly situated in **India**.

B) Non-Resident : Every other person is said to be non-resident if control and management of its affairs is situated wholly outside India. .

Note : Every other person is never a 'not ordinarily resident.'

Check Your Progress B

1) State whether each of the following statements is True or False:

- i) A company can never be a 'not ordinarily resident'
- ii) Indian company is a 'resident'
- iii) Hindu Undivided Family cannot be non-resident
- iv) **Firm &** other association of persons can never be 'not ordinarily resident'
- v) On the basis of residence, the persons are divided into 4 categories

- 2) Explain the procedure for determining an individual as resident in India?
- 3) Explain the procedure, for determining a company as resident in India?
- 4) Japan remedies is an International company dealing in pesticides, in India, registered in Tokyo and the control and management of its affairs is wholly situated in Tokyo. Determine the residential status of the company in India?;
- 5) A HUF carries toys business in India. Its control and management is partly situated in India and partly in Canada. The karta (manager) is non-resident in India for the previous year 1989-90. Determine the residential status of HUF in India for the assessment year 1990-91?

3.5 SCOPE OF TOTAL INCOME ON THE BASIS OF RESIDENCE — Section (5)

We have examined the rules determining the residential status of assessee. As stated earlier the scope of total income of an assessee depends on his residential status in the previous year. In the following sections we will explain the scope of total income for the different categories of assessee viz.

- i) residents
- ii) not-ordinarily residents
- iii) non-residents

3.5.1 Resident

The total income of any person, who is resident in the relevant previous year, includes all income from whatever sources derived which

- a) is received, or deemed to be received in India in such year by him or on his behalf; or
- b) accrues or arises or is deemed to accrue or arise to **him** in India during such year; or
- c) accrues or arises to him outside India during such year.

3.5.2 Not Ordinarily Resident

If the **assessee** is 'not-ordinarily resident', the total income of the relevant previous year includes all incomes from whatever sources derived which —

- a) is received or is deemed to be received in India in **such year** by or on behalf of such person; or
- b) accrues or **arises** or is deemed to accrue or arise to him in India during such year; or
- c) accrues or arises to him outside India deriving such 'year and is derived from business controlled in India or a profession set up in India.

Thus it will be seen that the basic difference between the scope of a **total** income of a resident and not ordinarily resident relates to the income which accrues or arises to him outside India. In case of a resident it is included in his total income irrespective of the source of such income. But in case of a not ordinarily resident it will be included in his total only if it is derived from a business which is controlled in or a profession set up in India.

3.5.3 Non-Resident

If the **assessee** is a non-resident in India, the total of the relevant previous year includes all income from whichever sources derived which —

- a) is received or is deemed to be received in India in such year by or on behalf of **such person**, or
- b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Thus non-residents are not liable in respect of **income accruing** or arising outside India even if it is remitted to India.

3.6 KINDS OF INCOME

It appears from the scope of total income that four types of incomes form part of the tax liability. They are :

- 1) Incomes received in India.
- 2) Incomes deemed to be received in India.
- 3) Incomes accruing or arising in India.
- 4) Incomes deemed to accrue or arise in India.

Let us now discuss them in detail.

3.6.1 Income Received in India

Income received in India is taxable in all cases irrespective of residential status of the assessee. The following points are worth noting :

- 1) Income received means the first receipt. It means, the income should be received by the assessee for the first time under his control, in India. For example, salary received by an employee in India is taxable. But salary received by a non-resident individual for the first time outside India and remitted to India afterwards cannot be taxed, because the income cannot be treated as received twice — once outside India and once inside it.
- 2) It is not necessary that income should be received in cash. It may be received in kind also. For example rent-free accommodation and certain other facilities provided to an employee are taxable as 'salary' in the hand of the employee though the income is not received in cash. Though income may be received in kind but for this to be so it is essential that what is received in kind should be the equivalent of cash or should be money's worth e.g. A debtor who gives his creditor a promissory note for the sum he owes can in no sense be said to pay his creditor.
- 3) Tax is attracted by any such income which is received in India whether accrued here or not.

3.6.2 Income Deemed to be Received in India'

The expression 'deemed to be received' only means that although such incomes are not received by the assessee they are treated by law as having been received.

The phrase 'statutory receipt' may conventionally be employed to cover such income. Instance of such statutory receipt are to be found in the provisions of the Act, e.g., Section 7 and Section 198 .

- a) Excessive contribution etc. to the Employee's provident fund. Rule 6 of part A of the Fourth Schedule to the Act provides that, that portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognized provident fund, as consists of the following terms, shall be deemed to have been received by the employee in that previous year
 - i) contributions made by the employer in excess of ten per cent of the salary of the employee and
 - ii) interest credited on the balance to the credit of the employee in excess of 12%.
- b) Portion of transferred balance to employee's credit on the date of recognition of Provident Fund Rule 11 of Part A of the fourth schedule provides for treatment of existing balances where recognition is first accorded to an old provident fund. According to this rule the Income Tax Officer shall make a calculation of the aggregate of all sums comprised in a balance transferred to the credit of an employee's account which would have been liable to tax had the fund been recognized on the date of its institution and such aggregate shall be deemed to be the income received by the employee,

Deduction of tax at source **Section 198**, Tax deducted at source according to the provisions of the Act are also deemed to be received by the assessee. Also any dividend paid by the company shall be deemed to be the income of the previous year in which it is declared, distributed or paid. Interim dividend shall also be deemed to be the income of the previous year in which it is unconditionally made available.

3.6.3 Income *Accruing* or *Arising* in India

Income is said to be received when it reaches the **assessee**, but when the **right to receive the income** becomes vested in the assessee, it is said to **accrue or arise**. **Accrual of income** means a stage where the **assessee** has acquired a **right to receive such income**, when the same income is actually received in the accounting year it is said to **arise**. **Income accrues** when the right to receive it comes into **existence** : but it **arises** when the method of accounting shows it in the shape of profits or **gains**.

The income must accrue or arise in India. If it accrues or arises outside **India**, it cannot be taxed under the hands of person **who** is non-resident in **India**.

3.6.4 *Income Deemed to Accrue or Arise in India*

Some incomes shall be deemed to accrue or arise in India even if such incomes, in reality, have not accrued or arisen in India. They are as **follows**

- 1) Income is deemed to accrue or arise in India, if it accrues or arises, **directly or indirectly**:
 - i) Through or from any business connection in India
 - ii) **Through or from** any property in India.
 - iii) Through or **from** any asset or source of income in India, and
 - iv) Through or **from** any **transfer** of a capital asset situated in India.

Explanation

- a) In case of a business of which all the operations are not carried out in India, **the incomes of the business deemed to accrue or arise in India shall be only that part of the income as is reasonably attributable to the operations carried in India.**
- b) In case of a non-resident no income shall be deemed to **accrue** or arise in India.
 - i) **Through or from operations** which are confined to the purchase of goods in India **for purposes of exports.**
 - ii) If he is engaged **in** the business of running a news agency or a publishing house from operations confined to collection of news or views in India for transmission out of India.
 - iii) Through or from the operations confined to shooting of **any cinematograph film** in India.
- 2) Any salary payable for services rendered in India will be regarded as income earned in India.
- 3) Salary payable by the Government to a citizen of India for the services rendered outside India.
- 4) **Dividend** paid by an Indian company **outside** India.
- 5) Income from interest, royalty or technical fee is deemed to accrue or arise **in India** if :
 - a) It is received by a non-resident.
 - b) It is payable by
 - i) The government
 - ii) **Resident in India who utilises it in India** for business or profession.
 - iii) Non-resident in India who utilises it for business or profession carried on **by him in India.**

Check Your Progress C

- 1) State whether the following are True or False :
 - a) It is not necessary that income should be received in cash.
 - b) The incidence of tax of an **assessee** depends on residential status of the **tax payer**.
 - c) Tax deducted at source is an 'income deemed to be received in India'.
 - d) Dividend paid by an Indian company outside India is not an 'Income deemed to accrue or arise in India.
- 2) **Name** the different kinds of Income
- 3) **Explain** 'Income deemed to **be** received in India.'

3.7 INCIDENCE OF TAX

Incidence of tax is the tax liability of an assessee on different incomes. It depends on his residential status. The following table indicates the tax incidence on income in different situations.

Table 1

Particulars of Income	Tax Liability in case of		
	Resident	Not ordinarily resident	Non-resident
1) Income received in India whether accrued in India or outside India.	Yes	Yes	Yes
2) Income deemed to be received in India whether accrued 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
5) Income received and accrued outside India from a business controlled in India or a profession set up in India.	Yes	Yes	No
6) Income received and accrued outside India from a business controlled from outside India or a profession set up outside India.	Yes	No	No
7) Income earned and received outside India but later on remitted to India.	No	No	No

Table 1 highlights that the tax incidence is the highest in the case of a resident and not ordinarily resident and lowest in the case of non-resident.

3.8 LET US SUM UP

The tax liability of a person is determined on the basis of his residence in India in the previous year. On the basis of residence, the persons are divided into three categories 'namely' (a) Resident (b) Not ordinarily resident (c) Non-resident. Further the categories of persons for tax liability have been classified into four groups 'namely' (a) Individual (b) Non-company plural entities (c) Company (d) Any other person.

The rules for determining the residential status are not the same for all the groups. Different conditions are to be satisfied by the concerned assessee to be a resident in India.

An Individual and a Hindu Undivided Family can be resident, not ordinarily resident and non-resident. A firm and other association of persons, a company and any other person can never be a not ordinarily resident. They can only be either resident or non-resident.

Four types of incomes have been mentioned for the purpose of tax liability.

- a) Incomes received in India.
- b) Incomes deemed to be received in India.
- c) Incomes accruing or arising in India.
- d) Incomes deemed to accrue or arise in India.

The incidence of tax depends on the residential status of an assessee. In case of a resident except income earned and received outside India but later on remitted to India, every other income attracts tax, and the tax incidence is the highest. On the other hand, tax incidence is the lowest in the case of non-resident, as only income which is accrued or received or deemed to accrue or deemed to be received in India, is liable to tax.

Not ordinarily resident in India attracts tax on every income except on 'Income received and accrued outside India from a business controlled from outside India or a profession set up outside India' and on 'Income earned and received outside India but later on remitted to India'. The incidence of tax is relatively higher when compared with 'non-resident'.

3.9 KEY WORDS

Incidence of **Tax** : Tax liability of an assessee.

Indian Company : A company registered in India under the Companies Act, 1956.

Karta : The head of the Hindu Undivided Family, may be Father or eldest son.

Residential Status : Residential status forms the basis for categorisation of **Income tax assessee** as **resident/not ordinarily resident/non-resident**. Different rules have been laid down for determining various types of assessee into the above 3 categories.

3.10 ANSWERS TO CHECK YOUR PROGRESS

- A) 4) Non-resident
5) Not ordinarily resident
6) Resident
- B) 1) i) True ii) True iii) False iv) True v) False
4) Non-resident
5) Non-resident
- C) 1) a) True b) True c) True d) False

3.11 SELF-ASSESSMENT QUESTIONS/EXERCISES

Questions

- 1) Explain the provisions of income tax act for an individual if he is a a) resident b) not ordinarily resident c) non-resident
- 2) What are the different categories into which the assessee are divided on the basis of residence?
- 3) State the conditions which a Hindu Undivided Family has to fulfil in order to be called resident in India.
- 4) Explain the scope of total income under the income-tax 1961.
- 5) What are the criteria for determining the residence of a firm and a company?
- 6) What is the basis of charge of income tax? Give the rules for determining this.

Exercises

- 1) Mr. Subha Rao, a citizen of India is residing at Bombay from 1960. For the first time he left India for Nepal on August 25, 1989, and returned on December 31, 1989. Determine his residential status for the year 1990-91?
(Answer : Resident)
- 2) Mr. Lohit, non-Indian citizen, came to India for the first time on July 13, 1989 and stayed up to January 28, 1990. Determine his residential status for the assessment year 1990-91?
(Answer : Not ordinarily resident)
- 3) Mr. Prakash left India for Kuwait on September 15, 1983 to take up a job in an electronic firm there. He returned to India on March 15, 1990 with an idea to settle in India for ever. What will be his residential status for the previous year 1989-90?
(Answer : Non-resident)
- 4) A Hindu Undivided Family is carrying on a business in manufacturing of coir at Delhi. The Karta is a resident in India for the previous year 1989-90. The control and management of affairs are wholly situated in India. Determine the residential status of HUF for the assessment year 1990-91?
(Answer : Resident)
- 5) Onida shipping company registered in India is dealing in cargo. The control and management of its affairs are situated partly in India and partly in U.K. Determine the residential status of the company in India?
(Answer : Resident)

- 6) ABC is a partnership firm dealing in Unani medicines in India. The control and management of its affairs are wholly situated in Bhutan. Determine the residential status of the firm in India?
(Answer : Non-resident)
- 7) Sri P.C. Reddy an Indian citizen has different sources of income in India and U.K.? He would like to know his tax liability if he is :
- 1) Resident 2) Not ordinarily resident 3) Non-resident in India in respect of the following incomes :
- Incomes from property in U.K.
 - Salary earned and received in India
 - Profits from a business situated in U.K. but controlled from India.
 - Past untaxed foreign income brought to India during the previous year.
 - Dividend paid by an Indian company and received in U.K.
 - Profit earned from a business in Hyderabad.

Answer

	Resident	Not Ordinarily Resident	Non-resident
a	yes	no	no
b	yes	yes	yes
c	yes	yes	no
d	no	no	no
e	yes	yes	yes
f	yes	yes	yes

Note: These questions and exercises will help you to understand the unit better. Try to write answers for them, but do not **submit** your answers to the University. These are for your practice only.