
UNIT 3 RESIDENTIAL STATUS AND TAX LIABILITY

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3.0 OBJECTIVES

After studying this unit, you should be able to:

- identify categories of assessee on the basis of residential status; determine the residential status of assessee;
- explain different types of incomes; and
- 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 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 in February every year. The tax liability of a person is determined based on 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 assessee 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.

Based on residence, the individuals and HUF entities are divided into three categories, viz.

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

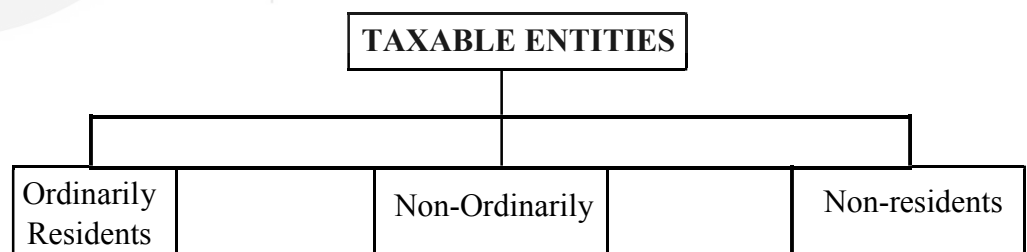


Fig. 3.1: Categories of Residential Status

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
- 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 assessee. The tests for residence of an individual are contained in Section 6(1), those for Hindu Undivided Families, firms or other associations 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 have any of the following residential status depending upon applicability of rules of Income Tax Act:

- a) Resident and Ordinarily Resident
- b) Not Ordinarily Resident
- c) Non-Resident

A) Resident and Ordinarily Resident:

Section 6(1) and Section 6(6)(a) of the Income Tax Act determines the Residential status of an Individual. Section 6(1) prescribes two conditions which may be treated as basic conditions and similarly, Section 6(6)(a) also prescribes two conditions which may be treated as additional conditions. An Individual shall be considered as Resident in India if he shall fulfil at least one basic condition and both the additional conditions.

Conditions of Part I or Basic Conditions:

- i) He must be physically present in India for a period of 182 days or more during the relevant previous year, or
- ii) He must be in India for a period of 60 days (182 days in some special circumstance) or more during the relevant previous year and 365 days or more for 4 years immediately preceding the relevant previous year.

Exception to the 'Basic Conditions'

- a) In the case of an individual being 'Citizen of India', if he leaves India during the previous year as a member of the crew of an Indian ship or for the purpose of employment outside India, he shall fulfil the basic condition No (ii) only where he is in India for at least 182 days instead of 60 days.
- b) In the case of an individual who is a 'Citizen of India' or a person of 'Indian Origin', if he is already outside India and comes on a visit to India during the previous year, he shall fulfil the basic condition No (ii) only when he is in India for at least 182 days instead of 60 days.

Conditions of Part II or Additional Conditions [Section 6(6)(a)]

- a) If he has been resident in India for at least 2 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 for 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. Anil citizen of Spain has been staying in India since 1985. He leaves India on 16.7.2022 on a visit to U.S.A. and returns on 4.1.2023. Determine his residential status for the previous year 2022-23.

Solution:

If Mr. Anil satisfies first condition (stay in India for at least 182 days) his stay in India during the previous year 1.4.2022 to 31.3.2023 is as under:

April,2022	30 days
May, 2022	31 days
June,2022	30 days
July,2022	16 days
August, 2022	Nil
September, 2022	Nil
October,2022	Nil
November, 2022	Nil
December,2022	Nil
January,2023	28 days
February,2023	28 days
March,2023	31 days

Thus, his total stay in India during the previous year is 194 days. As, he is in India for more than 182 days during the relevant previous year, he satisfies the first condition and is, therefore, a resident.

B) Not Ordinarily Resident

If an individual satisfies anyone of the two conditions of Part I, or basic condition but does not satisfy both the conditions or fulfils only one of the two additional 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. Mayank came to India for the first time in July 2022 and stayed in Delhi up to 31st March 2023. Determine his residential status for the assessment year 2023-24.

Solution:

For the assessment year 2023-24, Mr. Mayank is resident but not ordinarily resident. During the previous year 2022-23, Mr. Mayank was in India for a period of more than 182 days, and he thereby fulfils one of the basic conditions or condition (1) of Part I. But he does not satisfy both the additional conditions of Part II. Therefore, he is resident but not ordinarily resident for the assessment year 2023-24.

C) Non-Resident

If an individual does not satisfy anyone of the basic conditions or 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 or additional conditions.

Illustration 3

Mr. Anup left India for Canada on August 15, 2014. During 2022-23, he came to India on July 12, 2022, and stayed in Delhi for a period of one month and again left for Canada, on August 10, 2022. Determine his residential status for the assessment year 2023-24.

Solution:

Mr. Anup is a non-resident for the assessment year 2023-24, as he stayed in India for only 30 days during the previous year 2022-23. As such, he does not satisfy any of the basic conditions of Part I. Therefore, he is a non-resident.

Exceptions (section 6(1A)) applicable from AY 2021-22

In the following cases, an individual is deemed to be resident but not ordinarily resident even if he does not satisfy the two basic conditions:

1. An individual is deemed to be resident but not ordinarily resident if he satisfies the following 3 conditions:
 - i. He is an Indian citizen and not a foreign citizen (even though he may be a person of Indian origin)
 - ii. His total taxable income during the previous year (excluding income from foreign sources) is more than Rs. 15,00,000
 - iii. He is not liable to be taxed in any other country
2. An individual is deemed to be resident but not ordinarily resident if he satisfies the following 4 conditions
 - i. He is an Indian citizen or a person of Indian origin
 - ii. His total taxable income during the previous year (excluding income from foreign sources) is more than Rs. 15,00,000

- iii. He comes to India on a visit during the relevant previous year
- iv) He is in India for more than equal to 120 days (but less than 182 days) during the relevant previous year and more than equal to 365 days for 4 years immediately preceding the previous year

Check Your Progress A

- 1) When is an individual treated as a 'resident' in India?
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- 2) When is an individual treated as 'not ordinarily resident in India?'
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- 3) Who is a non-resident?
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- 4) After 25 years stay in India, Mr. Jatin went to U.S.A. on April 15, 2015, and came back to India on March 12, 2023. Determine his residential status for the assessment year 2023-24.
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- 5) Mr. John came to India for the first time on July 10, 2022 and stayed upto February 28, 2023. Determine his residential status for the assessment year 2023-24.
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- 6) Mr. Shankar Prasad is an Indian citizen who left for Japan on November 15, 2022 on personal work and he did not return during the previous year 2022-23. He was never out of India in the past. Determine his residential status for assessment year 2023-24.
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- 7) Explain the conditions which should be satisfied for an individual to be resident but not ordinarily resident.
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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.

3.4.2.1 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.

A) Ordinarily Resident [Section 6(2)]

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.

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

- i) Its manager has been resident in India in 2 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 purpose?

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 or additional conditions of Section 6(6)(a). 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 additional condition conditions of Section 6(6)(a).

C) Non-resident

A Hindu Undivided Family is said be a non-resident in such cases only where its control and management are 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 2 years out of 10 years preceding the previous year 2022-23. Determine the residential status of the HUF for the assessment year 2023-24, 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 2023-24.
- 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 ordinarily resident in India if Karta/Manager satisfies the conditions laid down in Part II Section 6(6)(a) below:
 - a) He has been resident in India at least 2 out of 10 years preceding the previous year.
 - b) He has been in India for a period or periods amounting in all to 730 days or more during the 7 years preceding the previous year.

As the manager, Mr. 'A' is resident in India in only 2 out of 10 years preceding the previous year, the HUF would be 'non-ordinarily resident' in India for the assessment year 2023-24.

3.4.2.2 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

According to section 6(2), 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 Residential status of a company [Section 6(3)]

A company is said to be resident in India, in a previous year, if-

- i) It is an Indian company, or
- ii) The company is foreign company, its place of effective management (POEM), in that year, is in India

A company is said to be non-resident in any previous year, if –

- i) It is not an Indian company, and.
- ii) Its place of effective management, in that year, is not in India.

‘Place of effective management’ means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity are in substance made.

Illustration 7

The Indian chemical limited is a registered Indian company carrying business in India and in Gulf countries. The control and management of its affair was partially situated in Riyadh (Saudi Arabia) during the year ending March 31, 2023. What will be the residential status of the company for the assessment year 2023-24?

Solution:

The Indian chemical 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 are 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 the control and management is partially situated in India, the company is non-resident in India for tax purpose.

3.4.4 Any 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: Firm and other Association of persons, companies and every other person can never be a ‘Not Ordinarily Resident.’

Check Your Progress B

- 1) State whether each of the following statements are 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 and other association of persons can never be ‘not ordinarily recipient’.

- 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) An HUF carries toys business in India. Its control and management are partly situated in India and partly in Canada. The Karta (manager) is non-resident in India for the previous year 2022-23. Determine the residential status of HUF in India for the assessment year 2023-24.

3.5 SCOPE OF TOTAL INCOME ON THE BASIS OF RESIDENCE

We have examined the rules determining the residential status of assessee as given in section 5 of Income Tax Act. 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 and ordinarily resident [Section 5(1)]
- ii) Not-ordinarily residents [Section 5(1)]
- iii) Non-residents [Section 5 (2)]

3.5.1 Resident and Ordinarily 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 during the previous year; or

- b) Accrues or arises or is deemed to accrue or arise to him in India during the previous 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 during the previous year; or
- b) Accrues or arises or is deemed to accrue or arise to him in India during the previous year; or
- c) Accrues or arises to him outside India during such year but derived from business controlled (wholly or partly) in India or a profession set up in India.

Thus, it will be seen that the basic difference between the scope of total income of an ordinarily 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 income only if it is derived from a business which is controlled (wholly or partly) in or a profession set up in India.

3.5.3 Non-Resident

If the assessee is a non-resident in India, the total income 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 during the previous year, 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.

Illustration 9

Sri P.C. Reddy, an Indian citizen has different sources of income in India and U.K.

- a) Income from property in U.K.
- b) Salary earned and received in India
- c) Profits from a business situated in U.K. but controlled from India.
- d) Past untaxed foreign income brought to India during the previous year.
- e) Dividend paid by an Indian company and received in U.K.
- f) Profit earned from a business in Hyderabad.

He would like to know his tax liability if he is:

- 1) Ordinarily resident 2) Not ordinarily resident 3) Non-resident in India in respect of the above incomes

Solution:

	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

Illustration 10

During the previous year 2022-23, Sumit Bansal has the following incomes:

	Particulars	Rs.
(a)	Salary income received in India for services rendered in Singapore.	3,90,000
(b)	Income from profession in India, but received in Germany	3,60,000
(c)	Property income in Uganda (out of which Rs. 2,40,000 was remitted to India.)	5,00,000
(d)	Profits earned from business in Bangalore.	1,50,000
(e)	Agricultural income in Kenya	1,60,000
(f)	Profits from a business carried on at Nepal but controlled from India	2,20,000

Compute the income of Sumit Bansal for the assessment year 2023-24, if he is (i) Resident and Ordinarily Resident (ROR), (ii) Not Ordinarily Resident (NOR), and (iii) Non-Resident in India (NR).

Solution:

Computation of Taxable Income of Sumit Bansal for the Assessment Year 2023-24

		ROR (Rs.)	NOR (Rs.)	NR (Rs.)
(1)	Income received in India, wherever it accrues Salary received in India for services rendered in Singapore.	3,90,000	3,90,000	3,90,000
(2)	Income accrued in India, wherever received			
	i) Profit earned from business in Bangalore	1,50,000	1,50,000	1,50,000
	ii) Income from profession in India but received in Germany	3,60,000	3,60,000	3,60,000

3)	Income accrued and received outside India			
	i) Property income in Uganda	5,00,000	-	-
	ii) Agricultural income in Kenya	1,60,000	-	-
	iii) Profits of a business carried on in Nepal but controlled from India	2,20,000	2,20,000	-
	Total Income	17,80,000	11,20,000	9,00,000

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) Income received in India. (Section 7)
- 2) Income deemed to be received in India. (Section 7)
- 3) Income accruing or arising in India. (Section 9)
- 4) Income deemed to accrue or arise in India. (Section 9)

Let us now discuss them in detail. -

3.6.1 Income Received in India

Any income received in India, during the previous year by an assessee is taxable, irrespective of the residential status of the assessee and the place of accrual of such income. The receipt of income refers to the income received by the assessee for the first time under his control. But, once amount is received as income, any remittance of the amount to another place does not result in receipt. 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 hands of the employee though the income is not received in cash. Though income may be received in kind, it should be equivalent of cash or should be in money's worth.

In case of non-resident, their foreign income is not assessable unless it is received in India. At the time the money is received in India, it is received as income from an outside source; such receipt will not be an income receipt. If a non – resident had already received money outside India as income or exempt income and he has transferred the money into India, in any year, such transfer will not count as income.

3.6.2 Income Deemed to be Received in India

The given below incomes shall be deemed to be received in India in the previous year:

- i) The contribution made by the central Government in the previous year to the account of an employee under a pension scheme u/s 80CCD.

- ii) Contribution made by the employer to the recognized provident fund in excess of 12% of the salary of the employee is the income deemed to be received.
- iii) Interest credited to the recognized provident fund of the employee which is in excess of 9.5% p.a is the income deemed to be received.
- iv) When an employee, who is member of an unrecognized provident fund, becomes member of a recognized provident fund, the accumulated amount transferred to a recognized provident fund from the unrecognized provident fund, is termed as 'transferred balance'. Employer's contribution and interest, thereon, included in the transferred balance, is the income deemed to be received.

3.6.3 Incomes Accruing or Arising in India

Income is said to be received, when it reaches the assessee, but where 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 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 in the hands of person who is non-resident in India.

3.6.4 Income Deemed to Accrue or Arise in India

The given below incomes shall be deemed to accrue or arise in India:

- i) Income from a business connection in India: Any income which arises, directly or indirectly, from any acting or a business connection in India, is deemed to be earned in India. Business connections may be in several forms: formation of a subsidiary company in India to carry business of the non – resident parent company, branch office in India or an agent of an organization of non – resident in India.
- ii) Income from any property, asset or source of income situated in India: Any income which arises from any property, movable or immovable, tangible, or intangible which is situated in India is deemed to accrue or arise in India.
- iii) Income from interest, royalty or technical fee is deemed to accrue or arise in India, if it is payable by: -
 - 1) Government, or
 - 2) A person who is a resident in India and use for the purpose of business or profession in India.
 - 3) A person who is a non–resident in India provided, the interest is payable in respect of money borrowed and used for business or profession carried on in India.

- iv) Salary payable by the Government to a citizen of India for the services rendered outside India.
- v) Any salary payable for services rendered in India will be regarded as income earned in India.
- vi) Income from the transfer of any capital asset situated in India regardless of the residential status of the transferor or transferee would be deemed to be income accruing or arising in India and would be taxable.

Check Your Progress C

- 1) State whether the following statements are True or False:
 - a) It is not necessary that income should receive in cash.
 - b) The incidence of tax of an assessee depends on residential status of the tax payer.
 - c) 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.

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- 3) Explain ‘Income deemed to be received in India.’

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3.7 INCIDENCE OF TAX

The below table 3.1 summarizes the provisions regarding incidence of tax.

Table 3.1: Provisions regarding incidence of tax

Particulars of Income		Whether taxable		
		Resident and Ordinarily Resident (ROR)	Non-Ordinarily Resident (RNOR)	Non-Resident (NR)
1)	Income received or deemed to be received in India whether earned in India or elsewhere.	Yes	Yes	Yes
2)	Income which accrues or arises or is deemed to accrue or arise in India during the previous year, whether received in India or elsewhere.	Yes	Yes	Yes
3)	Income which accrues or arises outside India and received outside India from a business controlled from India.	Yes	Yes	No
4)	Income which accrues or arises outside India and received outside India in the previous year from any other source.	Yes	No	No
5)	Income which accrues or arises outside India and received outside India during the years preceding the previous year and remitted to India during the previous year.	No	No	No

3.8 LET US SUM UP

The tax liability of a person is based on 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 a resident, not ordinarily resident and non-resident. A firm, association of persons, a company and any other person can never be a not ordinarily resident. They can be either resident or non-resident.

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

- a) Income received in India.
- b) Income deemed to be received in India.
- c) Income accruing or arising in India.
- d) Income deemed to accrue or arise in India.
- e) Income accrued and received outside India.

Tax incidence on a taxpayer in India depends upon his residential status. Whether an income earned by an individual, in or outside India, is taxable in India depends on the residential status of the individual rather than on his citizenship. People are often under the wrong impression that taking up foreign citizenship helps obtain tax benefits. However, the Income Tax Act, 1961 (Act) does not provide tax benefits based on a person's citizenship.

A Resident and ordinarily resident is subject to tax on his global income in India. Resident and non-ordinarily resident and non-residents are generally subject to tax in India only in respect of India source income (that is, income received, accruing, or arising in India or deemed to be received, accrued or arisen in India).

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 is the Karta.

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

3.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress A

- 4) Non-resident
- 5) Not ordinarily resident
- 6) Resident and ordinarily resident

Check Your Progress B

- 1) i) True ii) True iii) False iv) True
- 4) Non-resident
- 5) Not ordinarily resident

Check Your Progress C

- 1) a) True b) True c) False

3.11 TERMINAL QUESTIONS/ EXERCISES

- 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 is divided on the basis of residence?
- 3) State the conditions which a Hindu Undivided Family has to fulfil in order to be called as resident in India.
- 4) Explain the scope of total income under the Income Tax Act 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.
- 7) Mr. Lohit, non-Indian citizen, came to India for the first time on July 13, 2022 and stayed up to January 28, 2023. Determine his residential status for the assessment year 2023-24.

[Answer: Not Ordinarily Resident]

- 8) Mr. Prakash left India for Kuwait on September 15, 2016 to take up a job in an electronic firm there. He returned to India on March 15, 2023 with an idea to settle in India forever. What will be his residential status for the previous year 2022-23.

[Answer: Non-Resident]

- 9) 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 2022-23. The control and management of affairs are wholly situated in India. Determine the residential status of HUF for the assessment year 2023-24

[Answer: Resident and Ordinarily Resident]

- 10) 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]

- 11) 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]

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.