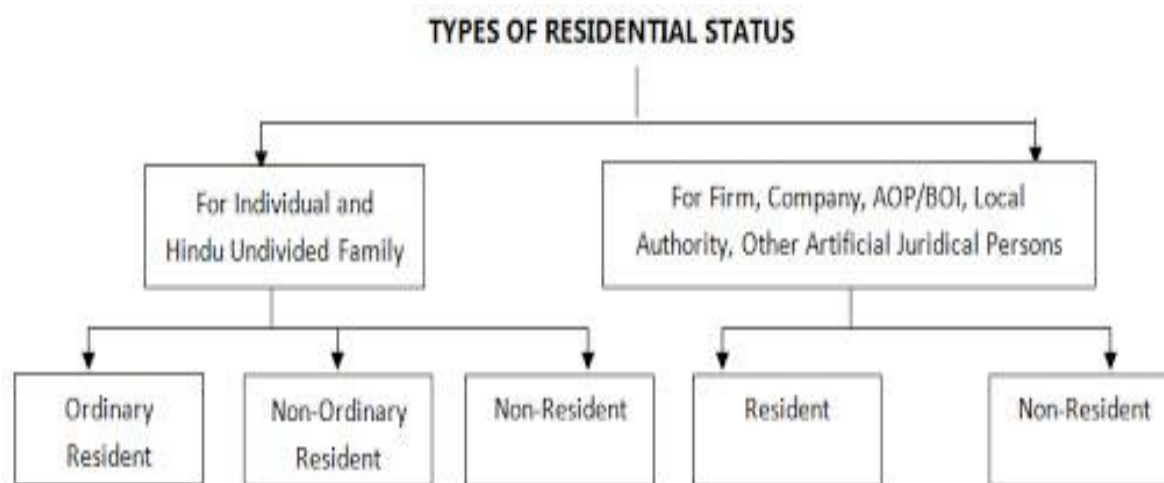


RESIDENCE AND TAX LIABILITY

1. Meaning and importance of residential status

The taxability of an individual in India depends upon his residential status in India for any particular financial year. The term residential status has been coined under the income tax laws of India and must not be confused with an individual's citizenship in India. An individual may be a citizen of India but may end up being a non-resident for a particular year. Similarly, a foreign citizen may end up being a resident of India for income tax purposes for a particular year.

Also to note that the residential status of different types of persons viz an individual, a firm, a company etc is determined differently. In this article, we have discussed about how the residential status of an individual taxpayer can be determined for any particular financial year.



2. How to determine residential status?

For the purpose of income tax in India, the income tax laws in India classify taxable persons as:

- a. A resident
- b. A resident not ordinarily resident (RNOR)

c. A non-resident (NR)

The taxability differs for each of the above categories of taxpayers. Before we get into taxability, let us first understand how a taxpayer becomes a resident, an RNOR or an NR.

Resident

A taxpayer would qualify as a resident of India if he satisfies one of the following 2 conditions :

1. Stay in India for a year is 182 days or more or
2. Stay in India for the immediately 4 preceding years is 365 days or more **and** 60 days or more in the relevant financial year

In the event an individual leaves India for employment during an FY, he will qualify as a resident of India only if he stays in India for 182 days or more. This otherwise means, condition (b) above of 60 days would not apply to him

Aarti Raote, Partner, Deloitte India explains, Mr A who has left India for the first time in November 2018 (i.e. his stay in India during the FY 2018-19 was 220 days) qualifies as ROR for tax purpose as his stay in India exceeds 182 days during the previous year 2018-19 and his stay in the 7 previous years more than 730 days as well as he is a resident of India in all the earlier previous years. "In such case, his global income would be subject to tax in India," she said.

Resident Not Ordinarily Resident

If an individual qualifies as a resident, the next step is to determine if he/she is a Resident ordinarily resident (ROR) or an RNOR. He will be a ROR if he meets both of the following conditions:

1. Has been a resident of India in at least 2 out of 10 years immediately previous years and
2. Has stayed in India for at least 730 days in 7 immediately preceding years

Therefore, if any individual fails to satisfy even one of the above conditions, he would be an RNOR.

However, the taxpayer will be treated as RNOR in India during the financial year only if he/she satisfies one of the additional conditions mentioned below:

- a.) His/her cumulative stay in India is 730 days or more during the 7 financial years immediately preceding the current financial year or;
- b.) He/she was a resident in India at least 2 out of 10 previous financial years immediately preceding the current financial year

Raote explains Mr B stayed in India for 185 days during the FY 2018-19. Therefore, he meets condition 1. However, his stay in India has not crossed more than 730 days during the period 1st April 2011 to 31st March 2018 immediately preceding the FY 2018-19. So, in this case, he does not meet condition A. Hence, Mr B qualifies as 'Resident but Not Ordinarily Resident' (RNOR). "In such case, only income that accrues and arises in India or that is deemed to accrue or arise in India is liable to be taxable in India," she said.

Non-resident

The individual qualifies as NR in India if he/she meets all the following conditions:
His/her cumulative stay in India during the financial year is less than 181 days and
His/her cumulative stay in India does not exceed 60 days or more during the financial year
His/her cumulative stay in India exceeds 60 days or more during the financial year but does not exceed 365 days or more during the 4 previous financial years

In such a scenario, say if Mr C stayed in India was for 40 days during the financial year, so he qualifies as 'Non-Resident' (NR) in India as he meets 3 conditions above. In case if the person has NR status, only India-sourced income and income received directly in India bank account, would be taxable.

3. Taxability

Resident: A resident will be charged to tax in India on his global income i.e. income earned in India as well as income earned outside India.

NR and RNOR: Their tax liability in India is restricted to the income they earn in India. They need not pay any tax in India on their foreign income.

Also note that in a case of double taxation of income where the same income is getting taxed in India as well as abroad, one may resort to the Double Taxation Avoidance Agreement (DTAA) that India would have entered into with the other country in order to eliminate the possibility of paying taxes twice.

Examples of residential status of an individual

- Miss Priyanka went to work outside India for first time.

i) She stayed in India from 01 April 2017 to 31 October 2017.

Solution: Miss Priyanka stayed in India for 214 Days (at least 182 days), she is said to be Resident in India for financial year 2017-18.

ii) She stayed in India from 01 April 2017 to 31 May 2017

Is she an Indian resident for the financial year 2017-2018?

Solution: Miss Priyanka stayed in India for 61 Days (at least 60 days), she is NOT said to be Resident in India for financial year 2017-18, since she left India for work. Therefore, only the first condition for determining the residential status would be applied.

- Mr Ajay came to India during 01 July 2017 to 28 Feb 2018 for the first time.

Solution: Since Mr. Ajay came to India for first time in last year and stayed for 243 days (31+31+30+31+30+31+31+28) (at least 182 days), he is resident Indian. But since he Does not satisfy any additional condition of 2 years or 730 days he will be termed as – Not ordinary resident of India.

(Q.1) During the previous year 2018-19, X, a foreign citizen, stayed in India for just 69 days. Determine his residential status for the assessment year 2019-20 on the basis of the following information:

- (i) During 2015-16, X was present in India for 366 days.
- (ii) During 2012-13 and 2011-12, X was in Japan for 359 and 348 days respectively and for the balance period in India.
- (iii) Mrs. X is 'resident' in India for the assessment year 2019-20.

Solution

- (i) To determine whether he is resident or not
 - He is resident for previous year 2018-19 as he satisfies the second condition as he was here during the previous year for 69 days and in the preceding 4 years for 366 days.
- (ii) To determine whether he is ordinarily resident or not
 - He should satisfy both of the additional conditions.

Year	Stay in India	Whether resident or non-resident
2017-18	Nil	Non-resident
2016-17	Nil	Non-resident
2015-16	366 days	Resident
2014-15	Nil	Non-resident
2013-14	Nil	Non-resident
2012-13	7 days	Non-resident
2011-12	17 days	Non-resident
2010-11	Nil	Non-resident
and earlier years	Nil	Non-resident

He was in India for less than 730 days in the 7 preceding previous years. He is also non-resident in 9 out of 10 previous years preceding the previous year.

Hence he is "resident but not ordinarily resident".

Question

- (a) R was born in Lahore in 1948. He has been staying in America since 1970. He came to visit India on 2.10.2018 and returns on 31.3.2019. Determine his residential status for the assessment year 2019-20.
- (b) Shane Warne, an Australian cricket player, has been coming to India since 1994-95 every year to play cricket and has been staying here for about 4 months. What will be his residential status for the assessment year 2019-20.

Solution

- (a) Non-resident as he neither satisfies the first conditions of 182 days nor the 2nd conditions as although he was in India during the previous year for 181 days (i.e. more than 60 days), but he was not in India for at least 365 days in the 4 preceding previous year.
- (b) Resident in India, as he is in India for more than sixty days in the previous year and was in India for more than 365 days in the 4 preceding previous years. Further, he satisfies both the conditions of category B. He was resident in at least 2 out of 10 previous year prior to relevant previous year and was in India for 730 days or more in the 7 preceding previous years. Hence, he is "resident and ordinarily resident in India".

Question

Particulars	Amount (Rs.)
(a) Interest paid by an Indian company but received in London	2,00,000
(b) Pension from former employer in India, received in USA	8,000
(c) Profits earned from business in Paris which is controlled in India, half of the profits being received in India	40,000
(d) Income from agriculture in Bhutan and remitted to India	10,000
(e) Income from property in England and received there	8,000
(f) Past foreign untaxed income brought to India	20,000

Determine the total income of 'A' for the assessment year 2019-20 if he is (i) Resident and ordinarily resident, (ii) Not ordinarily resident, and (iii) Non-resident in India.

Solution

	Resident and ordinarily resident	Not ordinarily resident	Non-resident
	(Rs.)	(Rs.)	(Rs.)
(a)	2,00,000	2,00,000	2,00,000
(b)	8,000	8,000	8,000
(c)	40,000	40,000	20,000
(d)	10,000	—	—
(e)	8,000	Nil	Nil
(f)	Nil	Nil	Nil
	2,66,000	2,48,000	2,28,000