

Residential Status

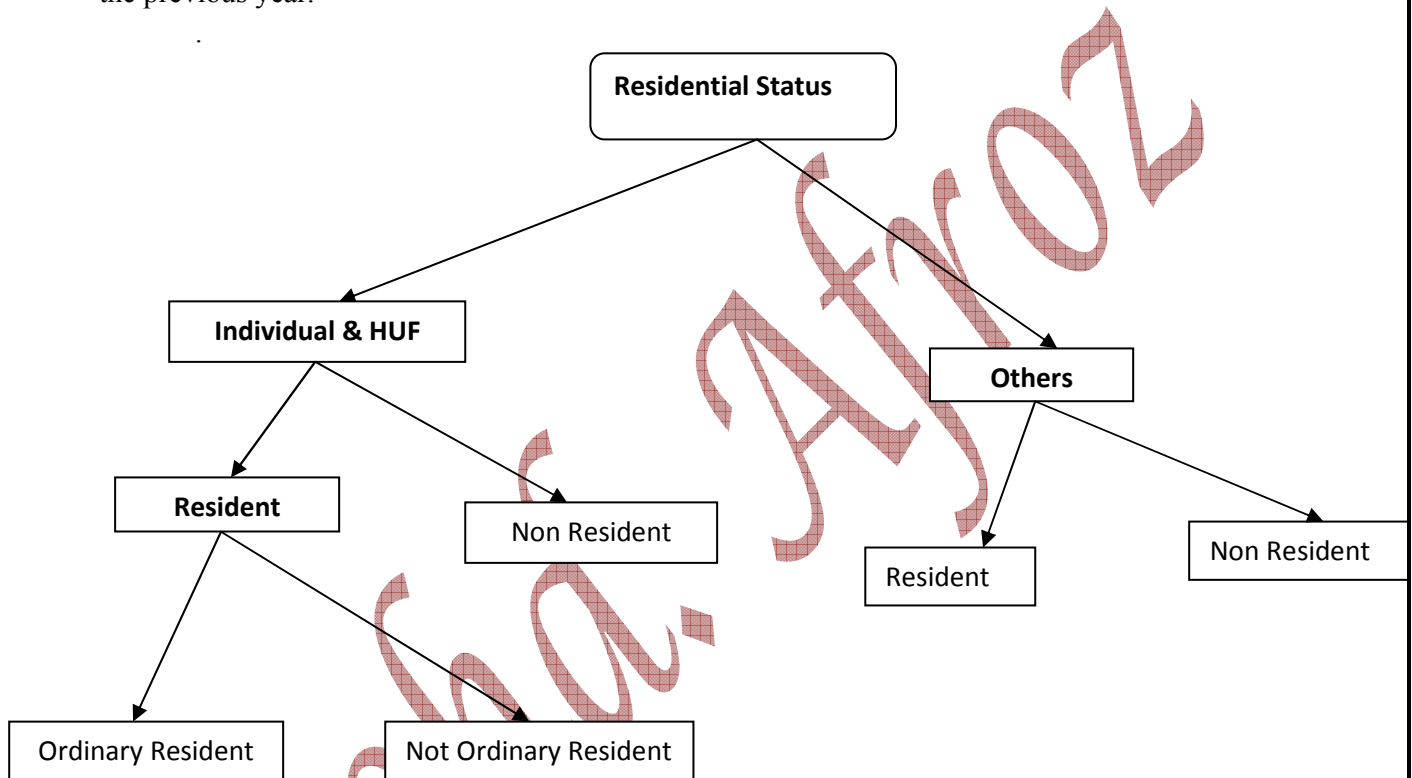
Total Income (Sec-5)

Total Income means the total amount of Income referred to in Sec. 5, in the Income-tax Act.

- ❖ Total income is computed under five heads of income. Income computed under each head is thereafter aggregated and the aggregate amount is known as Gross Total Income.
- ❖ From Gross Total Income, certain deductions are allowed under Sec. 80C to 80U and the balance income after deductions is known as Total Income.

Scope of total income (Sec-5)

We cannot compute total income of Assessee unless we don't know his residential status in India during the previous year.



Total income in case of Resident in India (Ind & HUF)

The following incomes from whatever source derived form part of Total Income in case of resident in India/ordinarily resident in India:

1. Any income which is received or is deemed to be received in India in the relevant previous year by or on behalf of such person.
2. Any income which accrues or arises or is deemed to accrue or arise in India during the relevant previous year.
3. Any income which accrues or arises outside India during the relevant previous year.

Total income in case of Resident but not ordinary resident in India (Ind & HUF)

Following income derived from whatsoever sources will be part of Gross total income in the previous year:

1. Any income which is received or is deemed to be received in India in the relevant previous

- year by or on behalf of such person.
2. Any income which accrues or arises or is deemed to accrue or arise to him in India during the relevant previous year.
 3. Any income which accrues or arises to him outside India during the relevant previous year if it is derived from a business controlled in or a profession setup in India.

Total income in case of Non- resident in India

Following income derived from whatsoever sources will be part of Gross total income in the previous year in case of non resident in India:

- Any income which is received or is deemed to be received in India in the relevant previous year by or on behalf of such person.
- Any income which accrues or arises or is deemed to accrue or arise to him in India during the relevant previous year.

Residential Status of an Individual [Sec. 6]

Basic Rules:

- Residential status is determined for each category of persons separately.
- Residential status is always determined for the every previous year separately.
- 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 source of income.
- A person may be a resident of more than one country for any previous year.
- Citizenship of a country and residential status of that country are separate concepts.
- It is the duty of the assessee to place all material facts before the assessing officer to determine his correct residential status.

When an individual is said to be resident of India?

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

- I. He is in India for a period or periods amounting in all to **182 days or more in the relevant previous year**; OR
- II. 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 preceding the relevant previous year.

An individual who is resident in India, shall be resident and ordinarily resident in India if he satisfies both the following conditions:

1. He has been **resident in India for at least 2 out of 10 previous years** immediately proceeding the relevant previous year. **AND**
2. He has been **in India for 730 days or more, during 7 previous years** immediately proceeding the relevant previous year.

When an individual is said to be resident but not ordinarily resident in India?

An individual who is resident in India is said to be "not ordinarily resident in India" if he does not satisfy any or both of the conditions mentioned in clause (1) and (2).

When an individual is said to be non resident in India?

An individual is said to be a non resident, where he is not leaving in India.

Note: While computing the period of 182 days, the day he enters India and the day he leaves India should both be treated as stay in India.

Where an individual is treated as being in India if he is at any place within the territorial waters of India or any place in India.

Residential Status of Hindu Undivided Family [HUF]

When HUF is said to be resident in India?

A HUF 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.

When is HUF said to be a resident and ordinarily resident in India?

The HUF shall be said to be resident and ordinarily resident in India if the Karta of the HUF satisfies both the following conditions:

(A) He (Karta) must be resident in **at least 2 out of 10 previous years** immediately preceding the relevant previous year

And

(B) He must be in India for **at least 730 days during 7 previous years** immediately preceding the relevant previous year.

When is HUF said to be resident but not ordinarily resident in India?

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 (B).

When HUF is said to be non-resident in India?

A HUF is said to be non-resident in India if during the previous year, the control and management of its affairs is situated wholly outside India.

Residential Status of Firm, Association of Persons (AOP), Body of Individuals (BOI) and of other persons (except companies)

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.

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.

Residential Status of a Company

When is a company said to be resident in India?

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

- (a) It is an Indian company, OR
- (b) During the relevant previous year, the control and
- (c) Management of its affairs is situated wholly in India.

When is a company said to be Non-resident in India?

A Company will be a non-Resident in any previous year if

- (a) It is not an Indian company; AND
- (b) The control and management of its affairs is situated wholly or partially outside India.

Incidence of Income

Income received and deemed to be received in India

Income received in India

Any income which is received in India, during the previous year by any assessee, is liable to tax in India, irrespective of the residential status of the assessee and the place of accrual of such income.

Receipts means the first receipt: The receipt of income refers to the first occasion when the recipient gets the money under his own control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in receipt within the meaning of this clause at the other place.

Income deemed to be received in India

The following incomes shall be deemed to be received in India in the previous year even in the absence of actual receipt:

- (i) Contribution made by the employer in excess of 12% of the salary of the employee to Recognised Provident Fund.
- (ii) Interest credited on the balance to the credit of the employee at a rate exceeding a rate fixed by the Central Government which at present is 9.5%.
- (iii) Transferred balance of un-recognised provident fund to a Recognised Provident Fund (It has been discussed in the Chapter on 'Income from Salaries');
- (iv) The contribution made, by the Central Government or any other employer in the previous year, to the account of an employee under a notified contributory pension scheme referred to in Section 80CCD;
- (v) Tax deducted at source is deemed to be received in the hands of the payee [Section 198];
- (vi) Investments, expenditure, cash credits detected during the previous year which is unexplained and cash, bullion, gold, jewellery or other valuable articles in respect of which the assessee offers no satisfactory explanation about the nature and source of its acquisition shall be treated as income deemed to be received. [Sections 68, 69, 69A, 69B and 69C];
- (vii) Deemed profit chargeable to tax under Sections 41 and 59.

Incomes which accrue or arise in India or are deemed to accrue or arise in India

Accrued or Arise in India:

'Accrue' means 'to arise or spring as a natural growth or result', to come by way of increase. 'Arising' means 'coming into existence or notice or presenting itself'. 'Accrue' connotes growth or accumulation with a tangible shape so as to be receivable. In a secondary sense, the two words together mean 'to become a present and enforceable right' and 'to become a present right of demand'.

Incomes which are deemed to accrue or arise in India:

The following incomes shall be deemed to accrue or arise in India

Income from a business connection in India: Any income which arises, directly or indirectly, from any activity or a business connection in India is deemed to be earned in India.

Business connections may be in several forms e.g. a branch office in India or an agent or an organization of a non-resident in India. Formation of a subsidiary company in India to carry on the business of the non-resident parent company would also be a business connection in India.

In the case of a Non-Resident the following shall not, however, be treated as business connection in India:

- (1) Operations confined to purchase of goods in India for purpose of exports;
- (2) Operations confined to collection of news and views for transmission outside India by or on behalf of Non-Resident who is engaged in the business of running news agency or of publishing

newspapers, magazines or journals;

(3) Operations confined to shooting of cinematograph films in India if such Non-Resident is:

- a. An individual: He should not be a citizen of India; or
- b. A firm: The firm should not have any partner who is a citizen of India or who is resident in India; or
- c. A company: The company does not have any shareholder who is a citizen of India or who is resident in India.

(3) In the case of a business of which all the operations are not carried out in India, only such part of the income as is reasonably attributable to operations carried out in India shall be treated as deemed to accrue or arise in India.

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.

Income from the transfer of any capital asset situated in India: Where the capital asset is situated in India, regardless of the residential status of the transferor or the transferee, capital gain, arising on its transfer, would be deemed to be income accruing or arising in India and hence would be taxable.

Any income which falls under the head 'Salaries' if it is earned in India: Any income payable for services rendered in India shall be regarded as income earned in India though it may be paid in India or outside. It will also include salary of the rest period.

or leave period which is preceded and succeeded by service rendered in India and forms part of the service contract of employment.

Salary payable by the Government to an Indian citizen/national for services rendered outside India:

The following conditions have to be satisfied before such income is treated as deemed to accrue or arise in India:

- (i) Income should be chargeable under the head 'Salaries';
- (ii) The payer should be Government of India;
- (iii) The recipient should be an Indian citizen — whether Resident or Non-Resident;
- (iv) The services should be rendered outside India.

While salary of Indian citizen in the above case shall be deemed to accrue or arise in India but all allowances or perquisites paid outside India by the Government to the above Indian citizens for their rendering services outside India are exempt under Section 10(7).

Dividend paid by an Indian company outside India: Dividend paid by an Indian company outside India is deemed to accrue or arises in India

Interest payable by:

- (i) Government; or
- (ii) A person who is a resident in India, except where interest is payable in respect of money borrowed and used for the purpose of business or profession carried on outside India or earning any income from any source outside India; or
- (iii) A person who is a non-resident in India provided interest is payable in respect of money borrowed and used for a business or profession carried on in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

Royalty payable by:

- (i) Government; or
- (ii) A person who is a resident in India except where it is payable in respect of any

right/information/property used for the purpose of a business or profession carried on outside India or earning any income from any source outside India; or
 (iii) A person who is a non-resident provided royalty is payable in respect of any right/information/property used for the purpose of the business or profession carried on in India or earning any income from any source in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

Fees for technical services payable by:

- (i) Government; or
- (ii) A person who is a resident in India, excepting where services are utilised for a business or profession carried on outside India or earning any income from any source outside India; or
- (iii) A person who is a non-resident provided fee is payable in respect of services for a business or profession carried on in India or earning any income from any source in India, shall be income which is deemed to accrue or arise in India in the hands of the recipient.

Notes:

1. Any income which is either received in India or deemed to be received in India is taxable in India, irrespective of the residential status.
2. Any income which is either earned in India or is deemed to be earned in India is taxable in India, irrespective of the residential status.
3. For a Resident in India (for individual & HUF, resident and ordinarily resident in India) all global income, wherever earned/received is taxable in India.
4. For a non-resident, an income is taxable only if it is either earned in India or it is received in India.
5. For not ordinarily resident, income earned and received outside India will be taxable, only when it is from a business or profession controlled or set up in India.

When the income of Assessee will be taxable:

S.No	Particulars	ROR	NOR	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