

# RESIDENTIAL STATUS

**SUBJECT: INCOME TAX**

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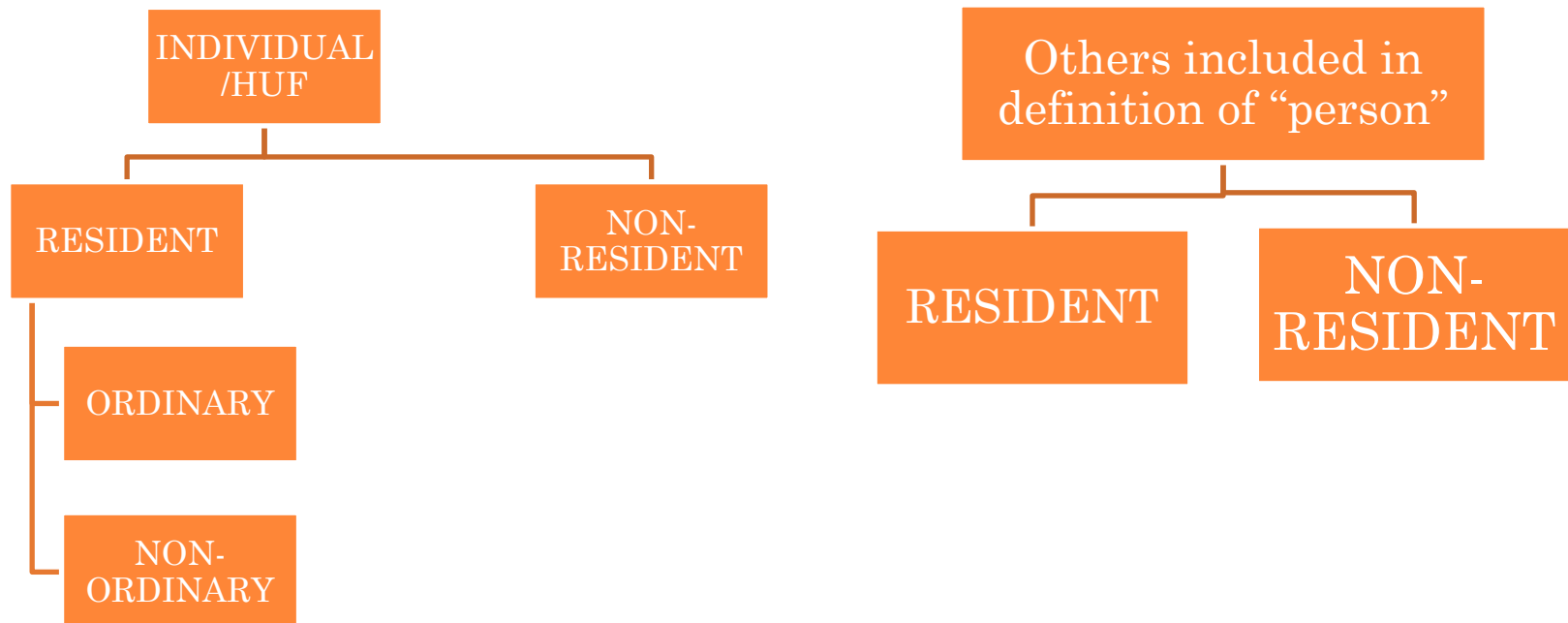
# WHY STUDY RESIDENTIAL STATUS?

- Tax incidence on an assessee depends on his residential status. For instance, whether an income, accrued to an individual outside India, is taxable in India depends upon the residential status of the individual in India.
- Similarly, whether an income earned by a foreign national in India or outside India is taxable in India depends on the residential status of the individual, rather than on his citizenship.
- Therefore, the determination of the residential status of a person is very significant in order to find out his tax liability.

# TAXABLE ENTITY

- A taxable entity can be:
  - An Individual,
  - A Hindu Undivided Family,
  - A firm,
  - An Association of Persons,
  - Joint stock company and
  - any other person.

- The following table explains how these are subcategorized with respect to their residential status.



# IMPORTANT CONSIDERATIONS

- Residential status for each previous year - Residential status of an assessee is to be determined in respect of each previous year as it may vary from previous year to previous year.
- Different residential status for different assessment years - An assessee may enjoy different residential status for different assessment years.
- Resident in India and abroad - It is not necessary that a person, who is “resident” in India, cannot become “resident” in any other country for the same assessment year. A person may be resident in two (or more) countries at the same time. It is, therefore, not necessary that a person who is resident in India will be non-resident in all other countries for the same assessment year.

# DETERMINING THE RESIDENTIAL STATUS OF AN INDIVIDUAL

Section 6(1): This section applies to individuals. If an individual is to qualify as resident of India, he has to fulfill *at least one* of the following two conditions:

Condition	Explanation
1	He is in India in the previous year for a period of 182 days or more
2	He is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year

## EXCEPTIONS:

- In the following two cases, an individual needs to be present in India for a period of 182 days or more in order to become resident in India:
  1. An Indian citizen who leaves India during the previous year for the purpose of taking employment outside India
  2. An Indian citizen leaving India during the previous year as a member of the crew of an Indian ship.
  3. An Indian citizen or a person of Indian origin who comes on visit to India during the previous year (a person is said to be of Indian origin if either he or any of his parents or any of his grand parents was born in undivided India).

# DETERMINING IF A RESIDENT IS AN ORDINARY RESIDENT

- Section 6(6): This section applies to individuals. If an individual is to qualify as an **ordinary** resident of India, he has to fulfill *both* of the following two conditions in addition to fulfilling the criteria as provided in section 6(1).

Condition	Explanation
1	He has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
2	He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

**Individuals satisfying conditions of Sec 6(1) but not Sec 6(6) will be classified as Resident Non ordinary individuals.**



- It will be worthwhile to note the following propositions:
  1. It is not essential that the stay should be at the same place. It is equally not necessary that the stay should be continuous. Similarly, the place of stay or the purpose of stay is not material.
  2. Where a person is in India only for a part of a day, the calculation of physical presence in India in respect of such broken period should be made on an hourly basis. A total of 24 hours of stay spread over a number of days is to be counted as being equivalent to the stay of one day.

# DETERMINING THE RESIDENTIAL STATUS OF HUF

- Section 6(2): This section applies to Hindu Undivided Family. *The distinction under this section is made as:*  
*“A Hindu undivided family is said to be resident in India if control and management of its affairs is wholly or partly situated in India. A Hindu undivided family is non-resident in India if control and management of its affairs is wholly situated outside India.”*
- Control and management is situated at a place where the head, the seat and the directing power are situated.

- Section 6(6)(b): A resident Hindu undivided family is an ordinarily resident in India if the karta or manager of the family business satisfies the following two additional conditions:

Condition	Explanation
1	He has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year.
2	He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

# ILLUSTRATION 1

## Question :-

X left India for the first time on May 20, 2003. During the financial year 2005-06, he came to India once on May 27 for a period of 53 days. Determine his residential status for the assessment year 2006-07.

## ANSWER:-

Since X comes to India only for 53 days in the previous year 2005-06, he **does not satisfy any of the basic conditions** laid down in section 6(1). He is, therefore, **non-resident in India** for the assessment year 2006-07.

## ILLUSTRATION 2

### Question :-

X comes to India, for the first time, on April 16, 2003. During his stay in India up to October 5, 2005, he stays at Delhi up to April 10, 2005 and thereafter remains in Chennai till his departure from India. Determine his residential status for the assessment year 2006-07.

Answer: During the previous year 2005-06, X was in India for 188 days. He is in India for more than 182 days during the previous year and, thus, he satisfies condition the basic condition. Consequently, he becomes resident in India.

To determine whether X is ordinarily resident or not, one has to test the two additional conditions as laid down by section 6(6) (a) :

Condition (i) - This condition requires that X should be resident in India in at least 2 years out of 10 years preceding the relevant previous year. X is resident in India for the previous years 2003-04 and 2004-05.

Condition (ii) - This condition requires that X should be in India for at least 730 days during 7 years immediately preceding the previous year. X is in India from April 16, 2003 to March 31, 2005 (i.e., 716 days).<sup>14</sup> X satisfies one of the basic conditions and only one of the two additional conditions. X is, therefore, resident but not ordinarily resident in India for the assessment year 2006-07.

# RESIDENTIAL STATUS OF FIRM/ASSOCIATION OF PERSONS

- As per section 6(2), a partnership firm and an association of persons are said to be resident in India if control and management of their affairs are wholly or partly situated within India during the relevant previous year.
- They are, however, treated as non-resident in India if control and management of their affairs are situated wholly outside India.

# RESIDENTIAL STATUS OF COMPANY

- As per section 6(3), an Indian company is always resident in India.
- A foreign company is resident in India only if, during the previous year, control and management of its affairs is situated wholly in India.
- However, a foreign company is treated as non-resident if, during the previous year, control and management of its affairs is either wholly or partly situated out of India.



# ILLUSTRATION

- A Ltd. Is an Indian Co. It carries on business in New Delhi and London. The entire control and management of the company is situated outside India. 80% of the total income of the company is from business in London. What is the residential status of of A ltd.

# RESIDENTIAL STATUS OF ANY OTHER PERSON

- As per section 6(4), every other person is resident in India if control and management of his affairs is, wholly or partly, situated within India during the relevant previous year. On the other hand, every other person is non-resident in India if control and management of its affairs is wholly situated outside India.

- For other persons:
  - For Indian Income, it shall be taxable, whether the person is resident or not resident doesn't matter.
  - Foreign income is taxable in India, only if it is earned by a resident in India but not taxable in India if it is earned by a non-resident.

# INCIDENCE OF TAX

PARTICULARS	OR	NOR	NR
Income received or deemed to be received in India whether earned in India or elsewhere	Yes	Yes	Yes
Income accrues or arises or is deemed to accrue or arise in India, whether received in India or elsewhere	Yes	Yes	yes
Income which accrues or arises outside India and received outside India from a business controlled from India	Yes	Yes	no
Income which accrues or arises outside India from any other source	Yes	no	no
Income which accrues or arises outside India and received outside India during the years preceding the Pys and remitted to india during the PY	No	No	No

**THANK YOU**