

Important Definitions

1. **Assessee** - Any individual who has income earned or losses incurred, and is liable to pay taxes on these to the government in a particular assessment year, is an assessee.

Categories of the assessee –

➤ **Normal Assessee**

- a person against whom proceedings are going on under the Income Tax Act, despite the fact that any tax or other amount is payable by him or not;
- a person who has undergone loss and filed a return of loss u/s 139(3);
- a person by whom some amount of interest or tax or penalty is payable under the income tax Act;
- any person who is entitled to refund of tax under this Act.

➤ **Representative Assessee**

- A person may not be liable for his own income or loss but he might also be liable for the income or loss of other persons say for example agent of a non-resident, guardian of a minor or a lunatic person, etc. In such cases, the person responsible for the assessment of the income of such a person is called representative assessee. Such a person is deemed to be an assessee.

➤ **Deemed Assessee**

- In the case of a deceased person who has died after writing down his will, the administrators of the property of the deceased are deemed as assessee.
- In case if a person dies intestate (without writing down his will) the eldest son or other legal heirs of the deceased person are deemed as assessee.
- In case a minor, lunatic or an idiot person has income taxable under the Income Tax Act, their guardian is deemed to be an assessee.
- In case a non-resident has income in India, any person acting on his behalf is deemed as an assessee.

2. **Person** – According to Income Tax Act 1961, A Person can be any of the following:

- Individual
- Hindu Undivided Family
- Company

- Firm
 - Association of persons (AOP)
 - Body of Individuals (BOI)
 - Local Authority
 - Other Artificial Judicial Person
3. **Income** – Income tax is levied on the income of a person, thus it is significant to understand the concept of income as per the income tax act. The income tax act, 1961 provides a lengthy definition of income which comprised of profit and gains, dividends, voluntary contributions, perquisites, allowances, discharge of an obligation, compensation receipts, profits on sale of license, cash assistance received against exports, recovery of loss or expenditure, recovery of bad debts, any wins from lottery, crossword puzzles, races, card games, gambling, betting, etc.
4. **Total Income** – The total income of an assessee is calculated only after considering the deductions under section 80CCC to section 80U from the gross total income. Thus, the assessee needs to make payment of income tax that is levied on his/her total income while the part of his income which is exempted from tax must not be included in the total income.

Basis of Charge (Residential Status)

Introduction to Residential Status

All Taxable entities are divided in the following categories for the purpose of determining Residential Status :

- a. An individual
- b. A Hindu Undivided Family (HUF)
- c. A Firm or an Association of Person (AOP)
- d. A joint stock company ; and
- e. Every other person

Tax is levied on total income of assessee. Under the provisions of Income Tax Act, 1961 the total income on each person is based upon his Residential Status. Sec. 6 of the Act divides the assessable persons into Three Categories :

1. Resident ;
2. Resident but Not ordinarily Resident ; and
3. Non-Resident.

RESIDENTIAL STATUS OF AN 'INDIVIDUAL'

An individual may be ...

- (a) Resident and ordinarily Resident in India
- (b) Resident and not-ordinarily Resident in India;
- (c) non-resident in India.

(a). Resident and Ordinary Resident [Section 6 (1), 6(6)(a)]

To determine the Residential Status of an Individual, [Section 6 (1)] prescribes Two Test. An individual who fulfils any one of the following Two Tests is called Resident under the provisions of this Act. These Tests are :

Test No. 1. Stay in India for 182 days or more.

If an individual has to become Resident of India during any previous year, his / her personal stay in India during that year is a must although the number of days of stay differs in the two tests. It means that if an individual does not stay in India at all in any previous year, he cannot be Resident of India in that year. Stay in India means that the individual should have stayed in India territory and anywhere (cities, villages, hills, even Indian territory waters) for such number of days.

The period of 182 days need not be at a stretch. But physical presence for an aggregate of 182 days in the relevant previous year is enough. The Status of Resident is not linked with any particular place or town or house.

The onus to prove the number of days of stay in India lies on the assessee. It is for him to prove, if he desires to be taxed as non-resident or not ordinarily resident.

Test No. 2. Presence for 365 days during the Four preceding Previous Year and 60 days or more in that relevant Previous Year.

A person may be frequent visitor to India. In his case, the residential status will be determined on the basis of his presence in India for 365 days in four years immediately preceding the relevant Previous year. Along with this his presence for 60 days during the relevant previous year is another essential conditions to be fulfilled. The purpose, object or reason of visit to and stay in India has nothing to do with the determination of residential status.

Explanations :

For Indian Citizen going abroad on a Job or as a member of crew of an Indian ship [Explanation (a)]

In case of Indian citizen who is going outside Indian for a Job and his contact for such employment outside India has been approved by the Central Government or he is a member of crew of an Indian Ship, Test (a) U/s 6(1) remains same but in Test (b) words '60 days' have been replaced to 182 days.

For Indian Citizens and Persons of Indian Origin [Explanation (b)]

For such person Test (a) remains the same but in Test (b)) words '60 days' have been replaced to

182 days.

(A person shall be deemed to be of Indian origin if he or either of his parents or any of his grand parents was born in India or undivided India .)

(b) Resident but Not-Ordinarily Resident [Section 6(6)]

An individual who is resident u/s 6(1) can claim the beneficial status of N.O.R. if he can prove that :

(a) He was non resident in India for 9 previous years out of 10 previous years preceding the relevant previous year.

OR

(b) He was in India for a period or periods aggregating in all to 729 days or less during seven previous years preceding the relevant previous year.

An individual who is Resident u/s 6(1) can be subdivided into two categories :

(i) Ordinary Resident ; or

(ii) Not ordinarily Resident

(c) Non- Resident [Section 2(30)]

Under Sec. 2(30) of the Income Tax Act, 1961 an assessee who does not fulfill any of the two conditions given in Sec. 6(1) (a) or (b) would be regarded as “ Non-Resident” assessee during he relevant previous year for all purposes of this Act.

Residential Status OF ‘H.U.F.’ , ‘FIRM’ , ‘ A.O.P.’

Section 6(2) of the Act provides that status of these persons shall be determined as per Tests given below :

. Resident [Section 6(2)]

It means that if a H.U.F. , FIRM, AOP is controlled from India even partially it will be Resident assessee.

The Control and management of affairs refers to the controlling and directing power, the Head and the Brain. It means that decision making power for vital affairs is situated in India. The control and management means de facto control and management and not merely the right to control or manage.

In case of a Firm, it is said that the control and management of firm is saturated at a place where partners meet to decide the affairs of the firm. If such place is outside India , it will be said that the control and management is outside India.

Non- Resident [Section 2(30)]

A H.U.F. , FIRM, AOP shall be Non-Resident if the control and management affairs is situated

wholly outside India.

4. Not Ordinarily Resident [Section 6(6)b]

H.U.F. will be 'Not Ordinarily Resident' if :

- (i) its manager (Karta) has not been resident in India in 9 out of 10 previous year preceding the relevant accounting year ; or
- (ii) the manage had not , during the 7 previous year preceding the relevant accounting year been present in India for a period or periods amounting in all to 730 days.

While determining the Residential Status of a Firm or HUF Is should be noted that Residential Status of Partners or co-parceners of a HUF is of immaterial consideration. What is important to note is that from where the business is being controlled. There may be a situation where all the partners of a Firm are Resident in India but even then that Firm may be Non-Resident if its full control and management lies outside India.

Residential Status Of A 'COMPANY' [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. Conversely, a Foreign Company is treated as Non-Resident if, during the previous year, Control and Management of its affairs is either wholly or partially situated out of India.

Residential Status Of ' Every Other Person' [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.

