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Scope of Total Income and Residential Status

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Relevance

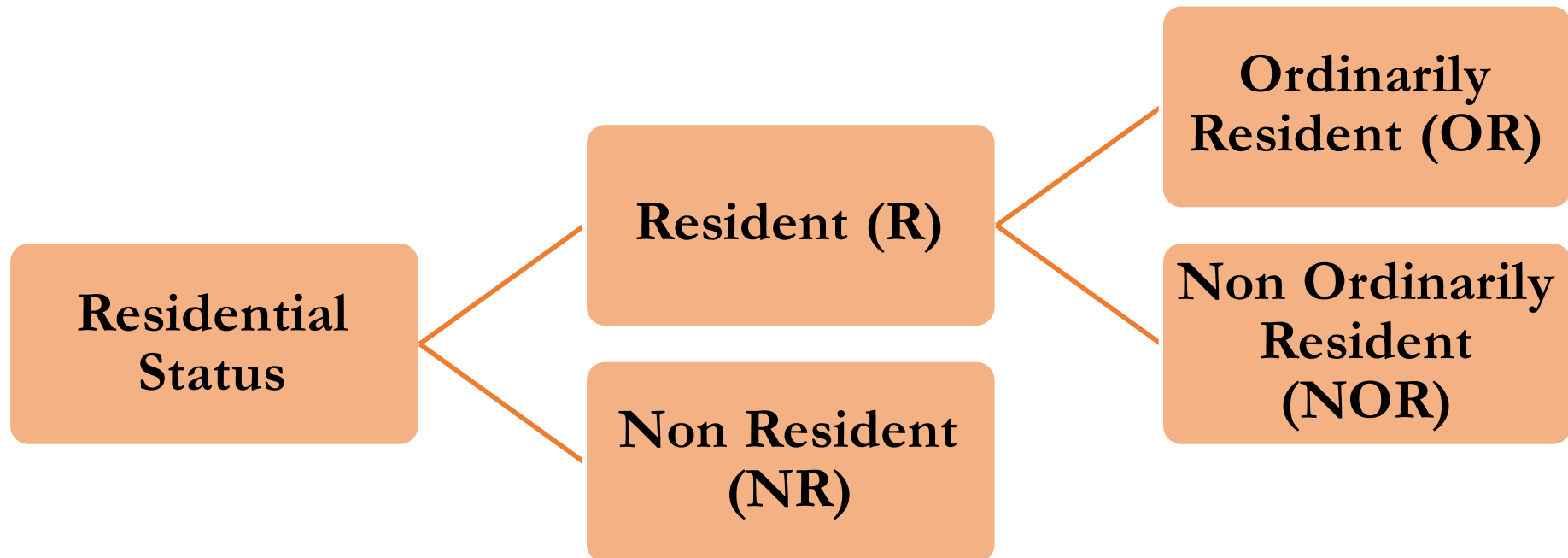
Determination of Taxability under the Income Tax Act, 1961

According to the Act, Citizenship doesn't determine the Residential Status

Taxpayer has to pay tax according to his residential status in a particular financial year



Classification





Residential Status

Section 6 (1) of the Income Tax Act:

For the purposes of this Act, An individual is said to be **resident in India** in any previous year, if —

- He is in India in that year for a period or periods amounting in all to 182 days or more ; or
- He is in India for 60 days or more during the relevant previous year,

and

has within the 4 years preceding that year been in India 365 days or more.



Amendment in Section 6 (1) Explanation 1 Clause (b)

Explanation. 1 to section 6(1) : In the case of an individual,

- (a) being a citizen of India, who leaves India for the purposes of employment outside India, the period of 60 days as stated above shall be substituted by 182 days.
- (b) **being a citizen of India, or a person of Indian origin who, being outside India, comes on a visit to India in any previous year, the period of 60 days as stated above shall be substituted by 182 days**

Amendment in Explanation 1 Clause (b) w.e.f Assessment year 2021-22

being a citizen of India, or a person of Indian origin who, being outside India, comes on a visit to India in any previous year, the period of 60 days as stated above shall be substituted by 182 days

“and in case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding 15 lacs during the previous year,” for the words “60 days” occurring therein, the words “120 days” shall be substituted;



Amendment in Section 6 (1) Explanation 1 Clause (b)

Amendment in Explanation 1 Clause (b) w.e.f Assessment year 2021-22

1. In case of Indian Citizen or PIO having Indian Income up to Rs. 15 Lakhs in a year - **No Change** i.e. relaxation upto 182 days continues.
2. In case of Indian Citizen or PIO having Indian Income Exceeding Rs. 15 Lakhs in a year, the 60 days is replaced with 120 days. i.e. **relaxation reduced to 119 days from 181 days.**



Analysis of the Amendments

Section 6(1)

S.No.	Indian Citizen or Person of Indian Origin who being outside India comes to visit India during the year, whose stay in India in the immediately preceding 4 years exceeds 365 days and who stays in India for:	Total Income (other than income from foreign sources)	Effect of Amendments
1	Less than 120 days	Any level of income	No
2	120 days or more but less than 182 days	Less than or equal to Rs. 15 Lakhs	No
3	120 days or more but less than 182 days	More than Rs. 15 Lakhs	Yes (Will become Resident)
4	182 days or more	Any level of income	No



New section 6 (1A) w.e.f Assessment year 2021-22 Deemed Resident

New Sub - Section (1A) introduced in Section 6 of Income Tax Act:

(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature;

Hence Individual being Indian Citizen,

-having Indian Income exceeding Rs. 15 Lakhs and

**-not liable to tax in any other country for the reason of
Domicile/Residence etc.**

shall be deemed to be resident in India.

It may be noted that the new sub-section (1A) overrides section 6(1)



Amendments in Section 6(6) Not Ordinary Resident

Additional Conditions:

Section 6(6): A person is said to be "not ordinarily resident" in India in any previous year if such person is—

Clause (a) was non - resident for 9 out of 10 previous years preceding that year OR

stayed in India for less than 730 days during 7 preceding years to the relevant year

There is no change in the clause (a)

The Clause (b) relates to HUF and there is no change

The clause (c) and clause (d) have been added to section 6(6)



Amendments in Section 6(6) “Not Ordinary Resident”

Additional Conditions under section 6(6) in addition to clause (a) and clause (b):

Section 6(6)....

Clause (c) - PIO or Citizen of India who are classified as a resident due to reduction in limit of relaxation to 120 days from 182 days in clause (b) of explanation (1), shall be treated as "Not - Ordinarily Resident"

OR

Clause (d) - Indian Citizen who is classified as deemed resident under Section 6(1A) shall be treated as "Not - Ordinarily Resident"



Scope of Taxability

- An **Ordinarily Resident (ROR)** is liable to pay tax on his Global Income i.e., income earned within India as well outside India.
- A **Non Ordinarily Resident (NOR)** is taxed on income that accrues or arises in India or the Income that accrues or arises outside India but is derived from a business controlled in or profession set up in India during the Financial Year. Any other income that accrues or arises outside India is not taxable.
- A **Non Resident (NR)** is taxed only on the income that is received in India or the income that accrues or arises in India during the Financial Year. Income that accrues or arises outside India is not taxable.



Impact of Amendments

Increase in scope of total income

Increase in scope of total income: Income that accrues or arises outside India but is derived from business controlled in or profession set up in India to become chargeable to tax in India in the hands of such individuals

S.No.	Nature of Income	Resident (OR)	Resident (RNOR)	NR
1	Income received or deemed to be received in India	√	√	√
2	Income accruing or arising or deemed to be accruing or arising in India	√	√	√
3	Income though accruing or arising outside India but derived from a business controlled in or a profession set up in India	√	√	X
4	Income accruing or arising outside India other than income of such nature mentioned in S. No. 3 above	√	X	X
5	Income received outside India	√	X	X



Know More on
Income from Foreign sources



Income from foreign sources

- **The new provisions will be applicable only if:
the ‘total income, other than the income from foreign sources and it exceeds Rs 15 lakhs’.**
- **“Income from foreign sources” has been defined to mean income which accrues or arises outside India**
Except
 - i. Income derived from a business controlled from India or**
 - ii. Income derived from a profession set up in India.**



Income from foreign sources

- For computing the threshold of Rs. 15 lakhs, the total income will include any income other than income that accrues or arises outside India except where such income is derived from a business controlled in or a profession set up in India
- The following incomes will be includible while computing the threshold of Rs. 15 lakhs:
 - a) income that accrues or arises in India or is deemed to accrue or arise in India,
 - b) Income that is received in India or is deemed to be received in India,
 - c) Income that accrue or arise outside India but is derived from a business controlled in or a profession set up in India



Examples

Income includible while examining the applicability of threshold of INR 15 Lakhs

- **Income From Salary earned in India**
- **Rental Income from a property situated in India.**
- **Income from a business in India.**
- **Income from a profession in India.**
- **Capital gain arising on transfer of a property situated in India.**
- **Capital gain arising on transfer of shares of a company of an Indian Company.**
- **Capital gain arising on transfer of shares of a company which derives its value substantially from property situated in in India.**
- **Dividend income received from an Indian Company.**
- **Interest income received from a resident in India.**



Examples

Income Not Includible while examining the applicability of threshold of INR 15 Lakhs

- **Salary income received on account of services rendered outside India**
- **Dividend income from a foreign company.**
- **Capital gain arising on transfer of an asset situated outside India**
- **Rental income from property situated outside India**
- **Business income from foreign sources not controlled from India.**
- **Any other income from a foreign source like Interest, casual income, etc.**



Whether such nature of income exemption in respect of which is given with reference to status of “non-resident” under the Act is to be considered while computing threshold of INR 15 lakhs?

- **Example:** Section 10(15(ix)) provides exemption to a non-resident in respect of any income by way of interest payable by a unit located in an International Financial Services Centre in respect of monies borrowed by it on or after the 1st day of September, 2019
- In such cases, **two views** may be possible:
 - **– First view: Residential status should be evaluated first**
Under this view, the first step will be to evaluate the residential status. Accordingly, the exemption that are available to non-resident should be considered to be not available till ascertainment of residential status. Consequently, any such income should be considered while computing total income for evaluating applicability of INR 15 lakhs threshold
 - **– Second view: Exemption available to non-residents to be considered to be available**
Under this view, exemption available to non-residents should be considered to be available by considering such individuals as non-resident and accordingly any such exempt income will not be considered while computing total income for evaluating applicability of INR 15 lakhs threshold. However, if the total income still exceeds INR 15 lakhs and consequently such individual qualifies as RNOR, such exemption that are available to non-resident will not be available

Consequences of Amendments



Impact of Amendments

An individual who prior to the amendment 'non-resident' will pursuant to the amendment qualify as a 'resident but a not ordinarily resident' (RNOR)

RNOR is considered to be a "resident" under the ACT for exemptions, deductions, tax rates applicability, TDS applicability, etc. in view of the fact that as per definition of 'non resident' under section 2(30) of the Act, RNOR is considered to be a non resident only for the purpose of section 92, 93 and 168



Impact of Amendments

Once an individual qualifies as not-ordinarily resident pursuant to the amendment, the following consequences will follow:

- **Increase in Scope of Total Income:** Income that accrues or arises outside India but is derived from business controlled in or profession set up in India will now become taxable in India in the hands of such individual
- **Loss of Exemptions:** Various exemptions that are available in the hands of non-residents will be lost once the status changes to RNOR. However, exemptions in respect of interest on NRE account balance and FCNR deposits will not be impacted by the amendment
- **Loss of Concessional Rate of Tax/Presumptive Scheme Benefits:** Various nature of income that are taxable at concessional rates in the hands of non-residents (5% to 20%) will become taxable at normal slab rate applicable.



Consequences of Amendments

- **Benefits provided under DTAA lost:**

When an individual becomes resident of India as well, the importance of tie breaker rule will increase to determine status of residence of the individual under the DTAA. If individual qualifies as resident of India after applying the tie breaker test, various concessions given under the DTAA with regard to capital gain, dividend, etc will be lost

- **Schedule of Reporting of Foreign Assets in ITR:**

When an individual qualifies as a resident (including RNOR), he will be required to furnish all details of Foreign Assets in the return of income disclosing details of all assets held outside India



Consequences of Amendments

- **TDS Implications**

TDS Provisions in ITA are broadly categorized based on residential status of payee. Section 195 mandates deduction of tax from any payment being made to non - residents at Income Tax Rates.

Such deduction is to be made on gross payment and not only on income component unless Non - Residents obtain lower deduction certificate.

The recent amendments have potential to change the residential status of certain Individuals from "Non - Resident" to "Not Ordinarily Resident".

"Not - Ordinarily Resident" is a sub - category of "resident". Consequently, payment to such Individuals shall mean payment to a resident. Hence, provisions of Section 195 will not be attracted in such cases.



Determination of status
of 'Resident' under
Double Tax Avoidance
Agreement ('DTAA')



Determination of status of residence of an individual under DTAA between India and UAE

Article 4

Resident

India-UAE DTAA considers an individual to be resident in India if such individual is liable to tax in India on account of reason of his resident status as per the Income Tax Act. Thus, any individual who is resident under the Act pursuant to the amendment will be considered to be resident of India under the DTAA as well

DTAA considers an individual to be resident of UAE if his period of stay in UAE is 183 days or more in calendar year. Tax year as per Income Tax Act is Financial Year (April – March). In such a case, period of stay of 183 days to be seen in Financial year and not calendar year.



Determination of status of residence of an individual under DTAA between India and UAE

- **In case total period of stay during the Financial year in UAE is 183 days or more, such individual will qualify resident of UAE as per the India –UAE DTAA**
- **If individual qualifies to be resident of both the countries as per the test prescribed under DTAA, then tie breaker rule to be applied**



Determination of status of residence of an individual Under DTAA between India and UAE Tie Breaker Rule application

- **Permanent home:** Permanent home means a home arranged and retained for permanent use; not intended for short duration
- **Personal and economic relations:** Personal relations - family and social relations
- **Economic relations** - place of business, major source of income etc
- **Habitual abode:** Frequency, duration, and regularity of stays that are part of the settled routine of an individual's life
- **Nationality:** Country of which the individual is a national
- **Competent authorities:** Both the countries to determine the residential status if residential status cannot be determined by applying the tie breaker rule

*Tie breaker rule to be applied in the above order. **Importance of tie breaker rule to increase as an individual is more likely to qualify as resident of both countries pursuant to the amendment***



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