

Determination of Residential Status under Income Tax Act, 1961



Income Tax Department

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BASIS FOR INCOME TAX LIABILITY IN INDIA

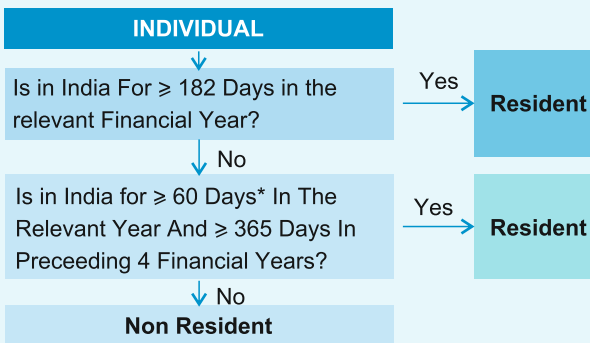
- The tax liability of a person under the Income-tax Act depends upon his residential status in the financial year in which the income accrues or arises to him or is received by him. Financial year means the period of twelve months commencing on the 1st day of April every year. The residential status may change from year to year. Residential status under the Income Tax Act is different from the residential status under Citizenship act, FEMA, Aadhar Act and other Acts. A person may be a resident in more than one country in the same year, depending upon the tax laws of the relevant country.

WHO IS A NON-RESIDENT?

A person who is not resident in India, is a non-resident.

WHO IS A RESIDENT?

- Individual:** The test for determining the Residential Status of an individual can be understood with the help of the following flowchart:



*Liberalized provisions apply for certain categories, as below:

A person

- who is an Indian citizen and who leaves India during the previous year for the purpose of employment or
- Indian citizen who leaves India as a member of the crew of an Indian ship or
- an Indian citizen or a Person of Indian Origin who comes to India on a visit during the previous year;

who has spent 365 days or more in India in the preceding four years will not lose his 'Non-Resident' status, unless his stay in India is 182 days or more during the financial year.

A person of Indian origin is one if he, or either of his parents or any of his grand parents, was born in undivided India.

Thus, the residential status of an individual generally depends on his physical presence or period of stay in India and not on his nationality or domicile.

2. A Hindu undivided family (HUF) or a firm or all association of persons is said to be resident in India in every case except where the control and management of its affairs is situated wholly outside India, during the financial year. Thus, where the control and management of its affairs is situated even partly in India, a firm, etc., becomes a resident in India.
3. An Indian Company is a resident of India. Foreign company is said to be resident in India if its Place of Effective Management (POEM), in that year, is in India during the financial year. "Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of entity as a whole are, in substance made.

CATEGORIES OF RESIDENTS

- 1 Residents are further divided into two categories (a) resident and ordinarily resident, and (b) resident but not ordinarily resident. The status of 'resident but not ordinarily resident' is available only to the individuals and Hindu undivided families.
- 2 An individual is said to be a "not ordinarily resident" in India in any financial year if:
 - a) he has been a non-resident in India in nine out of ten financial years preceding that year; or
 - b) he has been in India for a period of 729 days or less during the seven financial years preceding that year.

Thus an individual would be a "not ordinarily resident" (NOR) if he fulfils either of the aforesaid tests.

Some implications:

- (i) A newcomer to India would remain NOR for the first two financial years at least of his stay in India.
- (ii) where a person who is a resident in India goes abroad and remains non-resident for at least nine out of the next ten financial years, he would on his return be treated as NOR for at least the two financial years (the financial year of returning to India and the immediately subsequent financial year).

Another implication is that a person may have been a resident or a non resident in India during the seven preceding financial years but if he was in India for 729 days or less during those seven preceding financial years, he will then be treated as NOR."

- 3 A **Hindu undivided family** is said to be 'not ordinarily resident' in India if its manager is 'not ordinarily resident' in India. For the purpose of calculating the length of the manager's stay in India, the periods of stay in India of the successive managers of a Hindu undivided family during its continued existence have to be added up.

Taxability of Income based on Residential Status

Sl.	Source	Resident and Ordinary Resident (OR)	Resident but Not Ordinary Resident (NOR)	Non-resident (NR)
1	Income received or deemed to be received in India during the year	Yes	Yes	Yes
2	Income accruing or arising or deemed to accrue or arise in India during the year	Yes	Yes	Yes
3	Income accruing or arising outside India during the year from a business controlled in or a profession set up in India.	Yes	Yes	Yes
4	Income accruing/ arising in India from a business/profession controlled/set up outside India	Yes	Yes	Yes, to the extent the income is attributable to operation in India

Income received outside and then remitted to India is considered as received outside India. If the income earned outside India is directly credited in the bank account of a Non-Resident in India, it is considered as received in India and hence is subjected to tax in India. However, salary accrued to a Non-Resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in NRE account maintained by such Non-Resident sea farer with an Indian Bank.

DIRECTORATE OF INCOME TAX
 (Public Relations, Publications & Publicity)
 6th Floor, Mayur Bhawan, New Delhi

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This brochure should not be construed as an exhaustive statement of the law. For details - reference should always be made to the relevant provisions in the Act and the Rules.