

Income Tax Law: What is the Residential Status for Income Tax?



Importance of Residential Status:

Residential Status play important role to define scope of income or nexus of government over the income. Before computing tax on income, we have to define the residential status of person. Once we know the Residential Status of person, then we have to analyse which income is covered under ambit of specified government as per law made by government. Categorisation of Residential Status mostly depends upon, how a person connected with specified government/country.

✓ **Categorisation of Residential Status of individual as per income tax act 1961:**

There are TWO types of Status of individual as per income tax act 1961.

1) Resident (R) and 2) Non-Resident (NR)

Further Resident Categorised in TWO part

a) Resident but ordinary resident (ROR) b) Resident but not ordinary resident(RNOR)

✓ **How to Categorised Status of a person:**

Section 6(1) prescribes two tests.

Test: 1

An individual who fulfils any one of the following two tests (a or b) is called Resident under the provisions of this Act. If not fulfil any condition is called Non – Resident. These tests are:

(a) If he is in India during the relevant previous year for a period amounting 182 days or more.

OR

(b) If he was in India for a period amounting in all to 365 days or more during the four years preceding the relevant previous year. AND Stayed in India 60 days or more in that relevant previous year.

Test: 2

After fulfilling one of the above two tests, an individual becomes resident of India. Further to become, an ordinary resident of India an individual has to in addition to Test A fulfill both the following two conditions:

1. He has been resident of India in at least 2 previous years out of 10 previous years immediately prior to the previous year.

AND

2. He has stayed in India for at least 730 days in 7 previous years immediately prior to the previous year in question.

If a person not fulfil both conditions simultaneously than he can claim the beneficial status of Resident but not ordinary resident (RNOR)

According to Explanation 1 an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days or more instead of 60 days in that year. This provision provides relaxation to an Indian citizen or a person of Indian origin allowing them to visit India for longer duration without becoming resident of India. This provision is misused as Tax planning by Indian to declare himself as non-resident means out of the scope of Resident

The Finance Act 2020 applicable for AY 21-22 has altered the Provision for Indian Citizens and Persons of Indian Origin.

Accordingly, the period of 182 days specified in the Explanation has been reduced to 120 days. with total income other than income from foreign sources more than Rs. 15 lacs.

Therefore, new condition for Indian citizens and Indian origin to become a resident is as follows :

(a) If he is in India during the relevant previous year for a period amounting 182 days or more.

OR

(b) If he was in India for a period amounting in all to 365 days or more during the four years preceding the relevant previous year. AND Stayed in India 120 days or more in that relevant previous year.

The Finance Act 2020 also introduced the **concept of Deemed Resident**.

Thus, according to the new Provision introduced, those Indian citizens having total Income other than Income from foreign sources exceeds Rs. 15 lacs, who don't have a domicile or residence in any other country, will be Deemed to be Resident of India.

✓ **Scope Income Taxability**

Section 5 of the Income Tax Act,1961 provides for the scope of Income taxable according to the residential status. Income tax provisions lay that

For an ordinary resident, all income is taxable in India including the income earned or arising outside India.

For a not-ordinarily resident, in addition to income received or accrued in India, income of business controlled from India or profession set up in India is taxable.

For a non-resident ,Only the income received or accrued in India is taxable.