

## RESIDENTIAL STATUS AND ITS EFFECT ON TAX INCIDENCE

Incidence of taxation varies according to the residential status of an assessee in the previous year. Hence, the determination of residential status is very important so that an assessee may be correctly assessed to tax.

### Residence of an Individual

An individual may be:

- (i) Resident and ordinarily resident, or
- (ii) Resident but not ordinarily resident, or
- (iii) Non-resident.

If an individual satisfies one basic condition of Point A, he becomes resident. The status of 'ordinarily resident' or 'not ordinarily resident' depends on whether he satisfies the two additional conditions of Point B or not. If he satisfies both the additional conditions of Point B, he is 'resident and ordinarily resident'. If he does not satisfy the two additional conditions, he is 'resident but not ordinarily resident'. If the assessee does not satisfy any one of the basic conditions of Point A, he is 'non-resident'.

#### (i) Resident and ordinarily resident

An individual is resident and ordinarily resident if he satisfies any one basic condition of Point A and the two additional conditions of Point B.

## Conditions of Part A

An individual may fulfil any one of the two <sup>basic</sup> conditions as given below!

(a) Stay in India for a total period of 182 days or more in the previous year

!- He must be in India for a total period of 182 days or more in the relevant previous year (for which the residential status is to be determined). The stay of 182 days or more may not be a continuous one. It is sufficient if it is for a minimum period of 182 days in the aggregate. Moreover, the place of stay or the purpose of stay is immaterial. It is not necessary that the individual should stay at the same place during the period.

(b) Stay in India for 60 days or more in the previous year, and 365 days or more in 4 years preceding the previous year

!- He must be in India for 60 days or more during the relevant previous year, and for 365 days or more within the 4 years preceding that previous year.

The above rule of residence is, however, subject to the following exceptions:

(i) Where an Indian citizen or person of Indian origin who is abroad (whether rendering services outside or not), comes on a visit to India in the previous year, the period of "60 days" referred to in (b) above is extended to 182 days.

(ii) Where an Indian citizen who leaves India in any previous year for the purpose of

employment outside India nor who leaves India as a member of the crew of an Indian ship, he can not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. (3)

### Conditions of Part B -

There are two additional conditions, both of which must be satisfied by the assessee.

(1) Resident in 2 out of 10 previous years preceding the relevant previous year :- He has been resident in India in 2 out of 10 previous years preceding the relevant previous year. In other words, he must have satisfied any one condition of Part A i.e. (a) or (b) for 2 out of 10 previous years immediately preceding the relevant previous year; and

(2) Stay in India for 730 days or more in 7 previous years preceding the relevant previous year :- He has been in India for a total period of 730 days or more during the 7 previous years preceding the relevant previous year.

(ii) Resident but not ordinarily resident :- An individual is 'resident but not ordinarily resident' in any previous year if he satisfies any one condition of Part A i.e. (a) or (b), but does not satisfy both the conditions of Part B, or satisfies only one condition of Part B.

Non-resident - An individual is 'non-resident' in India in the relevant previous year if he does not satisfy any one condition of Part A i.e. (a) or (b).

### Residence of Hindu Undivided Family

A Hindu Undivided Family may either be (i) resident and ordinarily resident, or (ii) resident but not ordinarily resident, or (iii) non-resident in India in any previous year depending upon the facts of the case.

1) Resident and ordinarily resident - A Hindu Undivided Family is 'resident and ordinarily resident' in India in any previous year if the following conditions are satisfied:

(a) Any part of control and management of its affairs to be situated in India - The control and management of its affairs either wholly or partly must be situated in India in the previous year. If no part of control and management of its affairs is situated in India in the previous year, it can not be resident in India in that year. Therefore, any part of control and management of its affairs must be situated in India in the previous year.

The control and management are situated where the decisions concerning the affairs of family are taken. If all such decisions are taken abroad, the control and management are wholly situated outside India. The mere fact that the Karta is in India in the previous year does not constitute control and management in India.

(i) Karta to be resident in 2 out of 10 <sup>(3)</sup> previous years immediately preceding the previous year of the family! - The Karta has been resident in India in 2 out of 10 previous years, immediately preceding the relevant previous year of the family. In other words, the Karta must satisfy any one condition of clauses (a) and (b), as applicable to an individual for 2 previous years out of 10 years, preceding the relevant previous year of the family, and

(ii) Stay of Karta in India for 720 days or more in 7 previous years, preceding the relevant previous year of the family! - The Karta has been in India for a total period of 730 days or more during the 7 previous years, immediately preceding the relevant previous year of the family.

(ii) Resident but not continuously resident! - Hindu Undivided Family is 'resident but not continuously resident' in India in any previous year if the following conditions are satisfied:

(a) Any part of control and management of its affairs is situated in India in the previous year.

(b)(i) The Karta of the Hindu Undivided Family has not been resident in India in 2 out of 10 previous years, immediately preceding the previous year of the family, or

(ii) The Karta of the Hindu Undivided Family has not been in India for 720 days in 7 previous years preceding the

relevant previous year of the family.

(iii) Non-resident :- The Hindu Undivided Family is non-resident in India in the previous year if the control and management of its affairs is wholly situated outside India.

### Residence of Firm or Association of persons

A firm or association of persons may either be resident or non-resident in India in any previous year depending upon the facts of the case.

(i) Resident :- A firm or association of persons is resident in India in any previous year if the control and management of its affairs either wholly or partly is situated in India in the relevant previous year. If no part of control and management of its affairs is situated in India in the previous year, it can not be resident in India in that previous year. Therefore, any part of control and management of its affairs must be situated in India in the previous year.

Control and management of the firm are vested in its partners, and in case of association of persons, it is vested in the Principal Officer. Control and management are situated where decisions are taken concerning the vital policies of the institutions such as extension and contraction of business, raising of finances and their appropriations for specific purposes, the appointment and removal of staff etc.

2. non-resident :- A firm or association<sup>(4)</sup> of persons is non-resident in India in any previous year if the control and management of its affairs are wholly situated outside India in the relevant previous year.

### Residence of Company

A company may either be resident or non-resident in India in any previous year depending upon the facts of the case.

(i) Resident :- The company is resident in India in any previous year if any one of the following two conditions is satisfied:

(a) Indian company :- If it is an Indian company, it is always resident in India in the previous year. The place of control and management is of no relevance in this case. It may be wholly or partly situated outside India.

(b) Control and management wholly in India

:- A non-Indian company is resident in India in the relevant previous year if control and management of its affairs are wholly situated in India in that year. Thus, a foreign company may also be resident in India in the relevant previous year if no part of control and management of its affairs is situated outside India in that year.

(ii) non-resident :- A company is non-resident in India in the previous year if it is neither an Indian company nor is it a company controlled and managed wholly in India.

company, the control and management of whose affairs are wholly situated in India in that year.

### Scope of Total Income (or Incidence of Tax)

The scope of total income varies according to the residential status of an assessee. The incidence of taxation is the highest on 'resident & ordinarily resident', a little lower on 'not ordinarily resident', and lowest on 'non-resident' assessee. This fact is evident from the rules (tabulated below) which determine the scope of total income of an assessee in any previous year.

| Particulars of income                                                                                                                                                                                    | Taxability of income according to the residential status of an assessee |                                      |              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------|--------------|
|                                                                                                                                                                                                          | Resident or Resident and ordinarily resident                            | Resident but not ordinarily resident | Non-resident |
| (1)                                                                                                                                                                                                      | (2)                                                                     | (3)                                  | (4)          |
| (a) Income received in India in previous year, whether <del>received</del> <sup>accrued</sup> <del>in respect of</del> <sup>whether</sup> the place of account is in India or outside India              | Taxable                                                                 | Taxable                              | Taxable      |
| (b) Income deemed to be received in India in previous year, whether <del>received</del> <sup>accrued</sup> <del>in respect of</del> <sup>whether</sup> the place of account is in India or outside India | Taxable                                                                 | Taxable                              | Taxable      |
| (c) Income accruing or arising in India in previous year, <del>whether received</del> <sup>whether</sup> <del>in respect of</del> <sup>the place of receipt</sup> received in India or outside India.    | Taxable                                                                 | Taxable                              | Taxable      |

| (1)                                                                                                                                                                  | (2)         | (3)         | (4)         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|
| (1) Income deemed to accrue or arise in India in previous year, <del>whether or not</del> <sup>whether</sup> received in India or outside India                      | Taxable     | Taxable     | Taxable     |
| (2) Income accrued and received <del>outside India</del> <sup>outside India</sup> in previous year from a business controlled, or from a profession set up in India. | Taxable     | Taxable     | Not taxable |
| (3) Income accrued and received <del>outside India</del> <sup>outside India</sup> in previous year from a business controlled or a profession set up outside India   | Taxable     | Not taxable | Not taxable |
| (4) Income (not being from a business/profession) received and accrued outside India                                                                                 | Taxable     | Not taxable | Not taxable |
| (5) Income accruing or arising outside India in any past previous year, brought to India in the previous year                                                        | Not taxable | Not taxable | Not taxable |

#### Notes:

- (1) It may be noted that the first four incomes are chargeable to tax in respect of all assesses.
- (2) The tax incidence is the highest in the case of resident or resident and ordinarily resident assessee, as income accruing in any part of the world attracts incidence of tax in India.
- (3) The tax incidence is the lowest in the case of a non-resident, as only that income which is accrued or received or deemed to accrue or deemed to be received in India is liable to tax.
- (4) In the case of a resident but not ordinarily resident taxpayer income received and accrued outside India is taxable in India only if
  - (a) it is derived from a business or profession,
  - (b) the business is controlled from India or the profession is set up in India.