

## **Quadrant II – Transcript and Related Materials**

**Programme: Bachelor of Commerce (Second year)**

**Subject: Commerce**

**Paper Code: COC 109**

**Paper Title: Income Tax (Direct Tax)**

**Title of the Unit: Unit 1- Introduction**

**Module Name: Residential status in India**

**Module No: 6**

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### **Notes**

In this module we have explained the residential status of individuals and HUF U/s 6 of the Income tax act 1961.

#### **Residential Status- Sec.6:**

The incidence of tax on any assessee depends upon the residential status under the income tax act. There are two types of taxpayers who are either resident or non-resident in India.

Different taxable entities – For all purpose of income tax, taxable entities are divided in following five categories for determining residential status: An individual; Hindu undivided family; firm or an association of persons; joint stock company; and Every other person.

#### **Different residential status –**

Tax payers are classified into three broad categories on the basis of their residential status

- (a) Resident and ordinary resident
- (b) Resident but not ordinary resident
- (c) Non – resident.

However, a resident individual or a HUF has to be

- (a) Resident and ordinarily resident, or
- (b) Resident but not ordinarily resident.

Therefore, an individual and a Hindu undivided family can either be:

- a) Resident and ordinarily resident in India (R, &O R); or
- b) Resident but not ordinarily resident in India (R but N.O.R); or
- c) Non-resident in India (NRI)

All other assesses (viz., a firm, an association of persons, a joint stock company and every other person) can either be:

- a) Resident in India; or
- b) Non-resident in India

**Points to be noted:**

Residential status for each previous year –Residential status of an assessee may vary from previous year to previous year.

Different residential status for different incomes in same assessment year not possible - If a person is resident in a P.Y. for one source of income , he shall be deemed to be resident in India in that P.Y. for all other sources of income also Sec6(5).

Different residential status for different assessment year- An assessee may enjoy different residential status for different assessment years.

Resident in India and abroad – A person may be resident in two or more countries at the same time for the same A. Y

Onus of proof – whether ‘resident ‘or non-resident’ it is assessee duty to place all relevant facts before the income tax authorities.

How to determine residential status of an individual Sec.6:

An individual may be

- (a) Resident and ordinarily resident in India,
- (b) Resident but not ordinarily resident in India or
- (c) Non-resident in India.

Resident and ordinarily resident- follow the following steps-

Step 1:- first find out whether such individual is” resident” in India.

Step 2:- If such individual is 'resident' in India then find out whether he is 'ordinarily resident' in India. (However if such individual is a "non-resident" in India, then no further investigation is necessary.)

Two sets conditions:

First set        two basic conditions Sec 6(1),

Second set    two additional conditions Sec 6(6).

**Basic conditions Sec 6(1) to test whether an individual is 'resident 'in India:**

Under section 6(1) an individual is said to be resident in India in any previous year, if he satisfies at least one of the following basic conditions-

- i.        He is in India in the previous year for a period of 182 days or more
- ii.       He is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year

**EXCEPTIONS-** The aforesaid rule of residence is subject to the following exceptions (where residential status is determined only on the basis of 1st Basic condition):

Exception one – By virtue of explanation (a ) to section 6(1) the period of" 60 days " referred to in (ii)above has been extended as follows –

Assessment year who can take benefit of extended period

From AY 1990-91 onward an Indian citizen who leaves India during the previous year for the purpose of employment outside India or an Indian citizen who leaves India during the P.Y as a member of the crew of an Indian ship, has been extended to 182 days

Exception two – By virtue of explanation (b) to section 6(1), the period of "60 days" referred to in (ii) above has been extended as follows-

From AY 1995-96 onwards an Indian citizen or a person of Indian origin who comes on a visit to India during the P.Y. has been extended to 182 days

Note - A person is deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India. It may be noted that grand –parents include both maternal and paternal grandparents.

**Additional conditions Sec 6(6) to test whether a resident individual is 'ordinarily resident' in India:**

A resident individual is treated as "resident and ordinarily resident" in India if he satisfies the following two additional conditions –

(i) He has been resident in India in at least 2 out of 10 PY immediately preceding the relevant P Y

(ii) He has been in India for period of 730 days or more during 7 years immediately preceding the relevant PY

- Thus, an individual becomes resident and ordinarily resident in India if he satisfies at least once of the basic conditions and both the additional conditions.
- It is not necessary that the stay should be at the same place. It is also not necessary that the stay should be continuous. Similarly the place of stay or the purpose of stay is immaterial
- Where a person is in India only for a part of a day the calculation of physical presence in India in respect of such broken period should be made on an hourly basis. A total of 24 hours of stay spread over a number of days is to be counted as being equivalent to the stay of one day.
- However, if data is not available to calculate the period of stay of an individual in India in terms of hours then the day on which he enters India as well as the day on which he leaves India shall be taken into account as stay of the individual in India.
- A stay by an individual on a yacht moored in the territorial waters of India would be treated as presence in India for the purpose of this section.

**Resident but 'not ordinarily' resident** – An individual, who satisfies at least one of the basic conditions but does not satisfy the two additional conditions, is treated as a resident but not ordinarily resident in India as under:

- ❖ If he satisfies at least one of the basic conditions but none of the additional conditions
- ❖ If he satisfies at least one of the basic conditions and one of the two additional conditions

**Non-resident** – An individual is a non- resident in India if he satisfies none of the basic conditions. In the case of non-resident; additional conditions are not relevant.

## **How to find out residential status of a Hindu undivided family Sec 6 (2)**

A Hindu undivided family (like an individual) is either

- (a) Resident and ordinarily resident in India
- (b) Resident but not ordinarily resident in India ,or
- (c) Non-resident in India

When a HUF is 'resident' or 'non-resident' – it depends on control and management of its affairs.

Place of control      Residential status of HUF

Control and management of the affairs of a HUF is

- i. Wholly in India → Resident
- ii. Partly in India and partly outside India → Resident
- iii. Wholly out of India → Non-resident

Note – In order to determine whether a HUF is resident or non-resident, the residential status of the Karta during the P.Y. is not relevant. His residential status is considered to determine whether a resident family is "ordinarily resident".

What is control and management?

- Means de facto control and management and not merely the right to control or manage.
- It is situated at a place where the head, the seat and the directing power are situated
- The mere fact that the family has a house in India or the Karta is in India, in the previous year does not constitute that place as the seat of control and mgt of the affairs of the family
- Decisions concerning the affairs of the family should be taken at that place.
- Although, it is Karta who normally has control and mgt of the affairs .Therefore, the mere fact of absence of Karta in India does not make the HUF non – resident.

When a resident HUF is 'ordinarily resident' in India

A resident HUF is an ordinarily resident in India if Karta or manager of the family(including successive kartas) satisfies the following two additional conditions as laid down by section 6(6)(b):

Additional condition

Karta has been resident in India in at least 2 out of 10 previous years

(As per the basic Condition) immediately preceding the relevant PY.

Additional condition

Karta has been resident in India for a period of 730 days or more during 7 years

Immediately preceding the PY.

If Karta or manager of a resident HUF does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.