SUBJECT: INCOME TAX

TOPIC: RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME

INTRODUCTION TO INCOME TAX:

Income tax is the most significant direct tax. It is levied on total income of the person earned in the previous year. A person includes an individual, Hindu Undivided Family, Association of Persons, Body of Individuals, a firm and a Company. There is no shifting of burden of tax on other person and it is progressive in nature. List I in the Seventh Schedule to Article 246 of the Constitution has given power to make laws on taxes on income other than agricultural income.

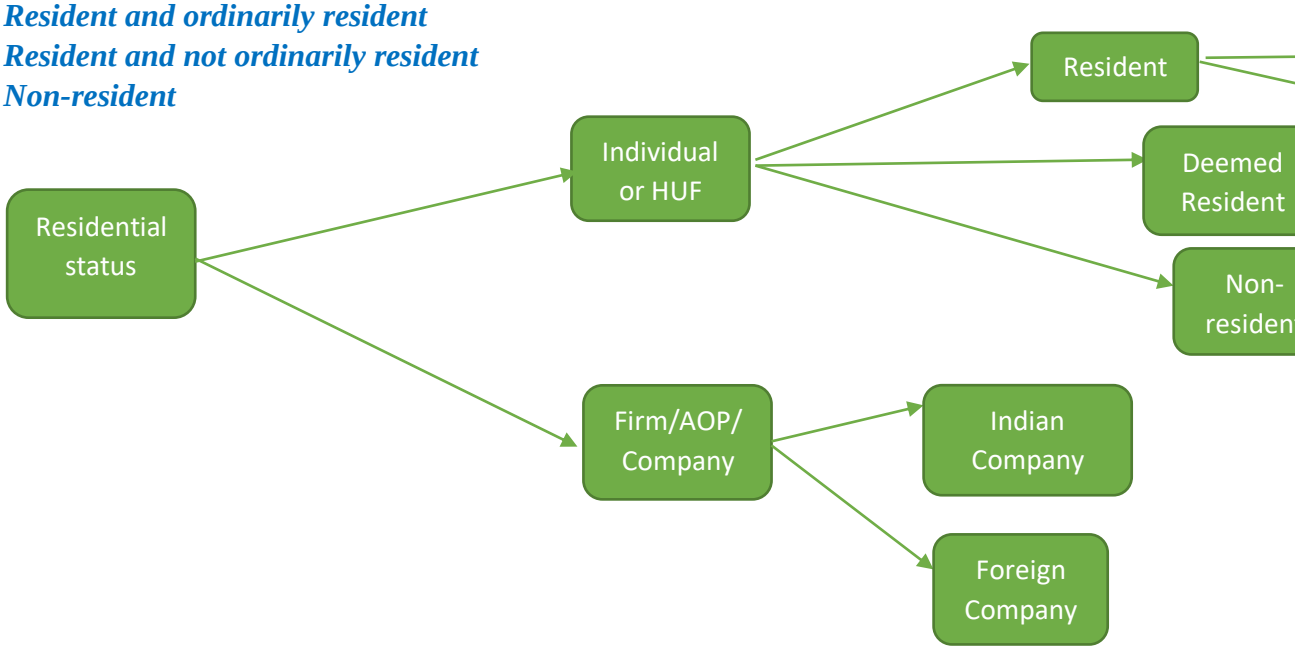
PART A: RESIDENTIAL STATUS: [SECTION 6]

I. Residential status in case of individual [Sec 6(1)]

The first step in calculation of Total income of a person for the purpose of levy of Income Tax is determination of residential status of the person. The incidence of tax depends on the residential status of the person according to Income Tax Act 1961. It can be different for every year say a person can be a resident for one year and a non-resident for the next assessment year based on the number of days of his stay in India. Residential status has got nothing to do with citizenship of an individual for example a person can be a citizen of India but can be a non-resident for a particular year.

Therefore as per Income tax Act the criteria to find the residential status of a person for a particular assessment year is based on number of days of his stay in India in the previous year, based on which the tax payers are classified into three broad categories as follows:

1. ***Resident and ordinarily resident***
2. ***Resident and not ordinarily resident***
3. ***Non-resident***



1) *BASIC CONDITIONS* **:**

A. ***General Rule:***
   i. ***Stays in India during the previous year is 182 days or more.***
   (OR)
   ii. ***Stays in India for 60 days or more during previous year and 365 days or more during 4 preceding previous years***

B. ***Exception to the general rule where only 182 days or more is considered:***
   i. ***Indian citizen who leaves India during the relevant previous year as a member of the crew of an Indian ship or for the purpose of employment outside India.***
   ii. ***Indian citizen or Person of Indian origin[1] who being outside India comes on a visit to India.***

[1]Person is of Indian origin if he or his parents or grandparents were born in undivided India.

C. ***Exceptions where 120 days in previous year and 365 days in 4 preceding previous years is considered:***
   i. ***Indian citizen or person of Indian origin***
   ii. ***Has Total Income other than foreign income greater than 15L in previous year.***

2) ***ADDITIONAL CONDITIONS :***
   i. ***Non-resident for 9 years out 10 preceding previous years.***
   ii. ***Stays in India for 729 days or less in 7 preceding previous years.***

DEEMED RESIDENT [SECTION 6 (1A)] : Indian citizen having Total income exceeding 15L in previous year and is not liable to tax in any other country by reason of his residence or domicile or any other similar criteria.
NOTE : Deemed resident is always resident but not ordinarily resident.

CATEGORIES	*Resident and ordinarily resident*	*Resident but not ordinarily resident*	*Non-resident*	*Deemed resident*
Satisfies at least one basic condition	✓	✓	✗	✓
Satisfies none of the basic condition	✗	✗	✓	✗
Satisfies any one or both additional condition	✗	✓	✗	✓
Satisfies none of the additional condition	✓	✗	✗	✗

II. ***Residential status in case of HUF/AOP/Firm [Sec 6(2)]***
   a. ***HUF: If control and management of its affairs is situated wholly/partly in India then "Resident". Further HUF can be resident and ordinarily resident or resident but not ordinarily resident if karta satisfies basic and additional***

conditions. If control and management is wholly outside India then "Non-

Particulars	*Resident and ordinarily resident (ROR)*	*Resident not ordinarily resident (RNOR)*	*Non-resident (NR)*
Income received/deemed to be received in India	*TAXABLE*	*TAXABLE*	*TAXABLE*
Income accrued/arise/deemed to accrue/arise in India	*TAXABLE*	*TAXABLE*	*TAXABLE*
Income accrue/arise outside India: *a. Business controlled/Profession setup in India* *b. Any other income*	 *TAXABLE* *TAXABLE*	 *TAXABLE* *NOT TAXABLE*	 *NOT TAXABLE* *NOT TAXABLE*

resident".

b. AOP/Firm: If control and management of its affairs is situated wholly /partly in India then "Resident" otherwise "Non-resident".

III. Residential Status in case of Company [Sec 6(3)]

Resident: a) If it's an Indian Company

b) Place of effective management in India at any time in that year

Non-resident: If place of effective management is outside India.

PART B: SCOPE OF TOTAL INCOME [SECTION 5]

The scope of total income depend upon three important consideration:

i. Residential status

ii. Accrual/receipt and whether actual/deemed

iii. Point of time of accrual/receipt

NOTE:

- ***In case of ROR Global income is taxable (Indian and Foreign income)***

- ***In case of RNOR Indian income is taxable, foreign income is taxable only if Business/profession is in India.***
- ***In case of NR only Indian income is taxable.***

INCOME DEEMED TO ACCRUE/ARISE IN INDIA:

1) ***Income accruing outside India from <u>Business Connection</u> in India.***
   Exceptions : ***Not taxable***
   i. ***Income arising to Non-resident for purchase of goods from India for export purpose.***
   ii. ***Income from collections of news/views in India for transmitting out of India in case of Non-resident carrying business of running news agency/newspaper publishing.***
   iii. ***Income from shooting cinematographic films by non-resident Indian company whose shareholders are not Indian citizens and resident in India.***
   iv. ***Foreign company engaged in mining of diamonds in SEZ.***
2) ***Income arising from asset/source of income/property in India***
3) ***Transfer of capital asset in India.***
4) ***Salary payable by Government of India for services rendered by a citizen outside India.***
5) ***Salary for services rendered in India.***
6) ***Interest income/Royalty income/Fees for technical services payable by:***
   a) ***Government***
   b) ***Resident provided money used in India***
   c) ***Non-resident provided money used and business/profession setup in India***

<u>NOTE ON DIVIDEND INCOME</u>:

- ***Deposits with Indian company but interest received outside India is taxable in all cases***
- ***Dividends from Indian company received anywhere is taxable in all cases***
- ***Dividends from foreign company received in India is taxable in all cases***
- ***Dividends from foreign company received outside India is taxable only in case of ROR.***

STAR POINTS TO NOTE:

- ***Remittance or transfer from outside India to India does not deemed to accrue/arise in India and hence not taxable.***
- ***Past untaxed profits brought to India is not taxable.***
- ***Income which is accruing outside India but included in the Balance sheet which is prepared in India is not taxable.***
- ***Income taxed on accrual basis cannot be again taxed on receipt basis as it amounts to double taxation.***