

# Determination of Residential Status under Income-tax Act, 1961



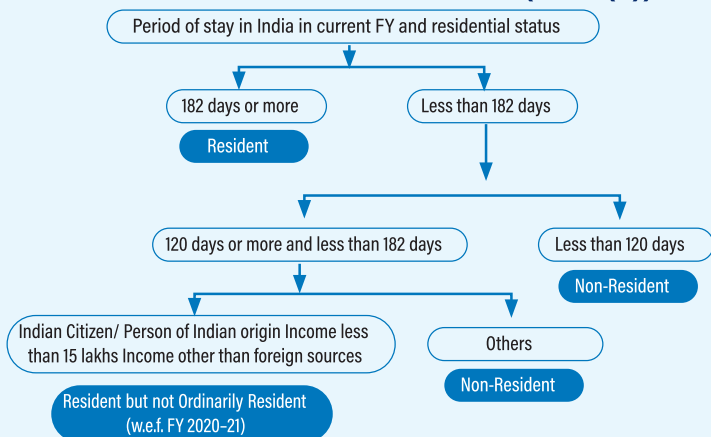
Income Tax Department  
Central Board of Direct Taxes

# 1. 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, Aadhaar 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. Generally, residential status is determined on basis of length of stay in India. *Wherever, applicable, determination of residential status may also be subject to provisions of DTAA.*

## 2. RESIDENCE OF AN INDIVIDUAL: (Sec 6(1))



## 2.1 A Hindu Undivided Family (HUF)

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. (Sec 6(2))

## 2.2. An Indian Company

It 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. (Sec 6(3)). The guiding principles in relation to PoEM determination are dealt by Central Board of Direct Taxes (CBDT) vide Circular No. 06/2017 dated 24.01.2017.

## 3. CATEGORIES OF RESIDENTS

There are three categories of Residential Status under Income Tax Act, 1961.



### 3.1. Resident of India: Sec 2(42)

“Resident” means a person who is resident in India within the meaning of Section 6;

An individual is said to be resident in India in any previous year, if he satisfies at least **one of the following two conditions** — Sec 6(1)

- (a) He is in India in the previous year for a period of 182 days or more. Sec 6(1)(a)
- (b) 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. Sec 6(1)(c)

**Exceptions:** In case of the following categories of individuals, condition as mentioned in. Sec 6(1)(c) has been relaxed.

**Exception (1)** Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India. Condition of 60 days or more has been relaxed to 182 days or more. **(Explanation 1(a) to section 6(1)).**

**Exception (2)** Indian citizen or person of Indian origin who, being outside India comes on a visit to India during the relevant previous year (i) whose total income, other than the income from foreign sources exceeds to Rs. 15 Lakh during the previous year. Condition of 60



days or more has been relaxed to 120 days or more,  
(ii) where it does not exceeds Rs 15 Lakh, condition of  
60 days or more has been relaxed to 182 days or more  
**(Explanation 1(b) to section 6(1)).**

### **3.2 Resident but Not Ordinary Resident: Sec 6(6)**

(a) An individual or (HUF whose manager) has been a non-resident in India in nine out of the ten previous years preceding that year, or

Has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less;

(b) A citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days



### 3.3 Deemed Resident: 6(1A)

Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

## 4. DETERMINATION OF RESIDENTIAL STATUS

The term "India" for computing stay in India is defined in Sec 2(25A) of the Income-tax Act, as under:

"India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;

## 5. TAXABILITY OF INCOME OF PERSONS WITH DIFFERENT STATUS ARE AS UNDER

S. No.	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
5	Income accruing/ arising outside India during a year from a foreign source	Yes	No	No


It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business, or employment of the individual.


For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are ordinarily considered to be in India.





Income received outside and then remitted to India is considered as received outside India. Further, 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 Seafarer with an Indian Bank.



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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 Acts and the Rules

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