IMPORTANCE & TYPES OF RESIDENTIAL STATUS

The taxability of an individual in India depends upon his residential status in India for any particular financial year. The term residential status has been coined under the income tax laws of India and must not be confused with an individual's citizenship in India. An individual may be a citizen of India but may end up being a non-resident for a particular year. Similarly, a foreign citizen may end up being a resident of India for income tax purposes for a particular year. Also, to note that the residential status of different types of persons viz an individual, a firm, a company etc is determined differently.

For the purpose of income tax in India, the income tax laws in India classifies taxable persons as:

1. A resident
2. A resident not ordinarily resident (RNOR)
3. A non-resident (NR)

RESIDENTIAL STATUS

A taxpayer would qualify as a resident of India if he satisfies one of the following 2 conditions:

1. Stay in India for a year is **182 days or more** or
2. Stay in India for the immediately **4 preceding years is 365 days or more and 60 days or more** in the relevant financial year

In the event an individual who is a citizen of India or person of Indian origin leaves India for employment during an FY, he will qualify as a resident of India only if he stays in India for 182 days or more. Such individuals are allowed a longer time greater than 60 days and less than 182 days to stay in India.

The Finance Act 2020 has amended the residency provisions to include Indian citizen/ Person of Indian Origin, who comes to visit India shall now be considered as RNOR subject to the following conditions:

- Total income other than foreign income is Rs 15 lakh or more,
- The individual has stayed in India for more than 120 days but less than 182 days in the previous year, or
- The individual has stayed in India for 365 days or more in four years preceding the previous year

Before this amendment, such individuals were classified as non-residents. Due to the amendment mentioned above, **the individual's residential status may be classified as RNOR**, which will lead to loss of DTAA benefits, increased scope of total income for taxability, loss of various exemptions allowed, etc.

It is to be further noted that in the above amendment, an individual staying for more than 182 days shall be classified as a resident irrespective of the level of income in the previous year.

NOTE: *Income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in India or profession set up in India).*

Finance Act 2020 introduced the concept of '**Deemed residency**'. According to this, Citizens of India earning more than Rs 15 lakh from Indian sources shall be deemed a resident of India if they are not liable for payment of taxes in any other country. The deemed residents shall be classified as RNOR with effect from the financial year 2020-21. This amendment was brought in force to tax the incomes of the Indian citizens who are not liable to pay tax in any country.

RESIDENT NOT ORDINARILY RESIDENT

If an individual qualifies as a resident, the next step is to determine if he/she is a Resident ordinarily resident (ROR) or an RNOR. He will be a ROR if he meets both of the following conditions:

1. Has been a resident of India in at least 2 out of 10 years immediately previous years and

2. Has stayed in India for at least 730 days in 7 immediately preceding years

Therefore, if any individual fails to satisfy even one of the above conditions, he would be an RNOR.

TAXABILITY

Resident: - A resident will be charged to tax in India on his global income i.e. income earned in India as well as income earned outside India.

NR and RNOR: - Their tax liability in India is restricted to the income they earn in India. They need not pay any tax in India on their foreign income. Also note that in a case of double taxation of income where the same income is getting taxed in India as well as abroad, one may resort to the Double Taxation Avoidance Agreement (DTAA) that India would have entered into with the other country in order to eliminate the possibility of paying taxes twice.