

Residential Status for Income Tax – Individuals & Residents

1. Meaning and importance 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. In this article, we have discussed about how the residential status of an individual taxpayer can be determined for any particular financial year

2. How to determine residential status?

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

- a. A resident
- b. A resident not ordinarily resident (RNOR)
- c. A non-resident (NR)

The taxability differs for each of the above categories of taxpayers. Before we get

into taxability, let us first understand how a taxpayer becomes a resident, an RNOR or an NR.

Resident

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 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. However, from the financial year 2020-21, the period is reduced to 120 days or more for such an individual whose total income (other than foreign sources) exceeds Rs 15 lakh.

In another significant amendment from FY 2020-21, an individual who is a citizen of India who is not liable to tax in any other country will be deemed to be a resident in India. The condition for deemed residential status applies only if the total income (other than foreign sources) exceeds Rs 15 lakh and nil tax liability in other countries

or territories by reason of his domicile or residence or any other criteria of similar nature.

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.

From FY 2020-21, a citizen of India or a person of Indian origin who leaves India for employment outside India during the year will be a resident and ordinarily resident if he stays in India for an aggregate period of 182 days or more. However, this condition will apply only if his total income (other than foreign sources) exceeds Rs 15 lakh.

Also, a citizen of India who is deemed to be a resident in India (w.e.f FY 2020-21) will be a resident and ordinarily resident in India.

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

business controlled in India or profession set up in India).

Non-resident

An individual satisfying neither of the conditions stated in (a) or (b) above would be an NR for the year.

3. 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.

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