# TAXATION

## 3rd SEMESTER

TOPIC:

# RESIDENTIAL STATUS

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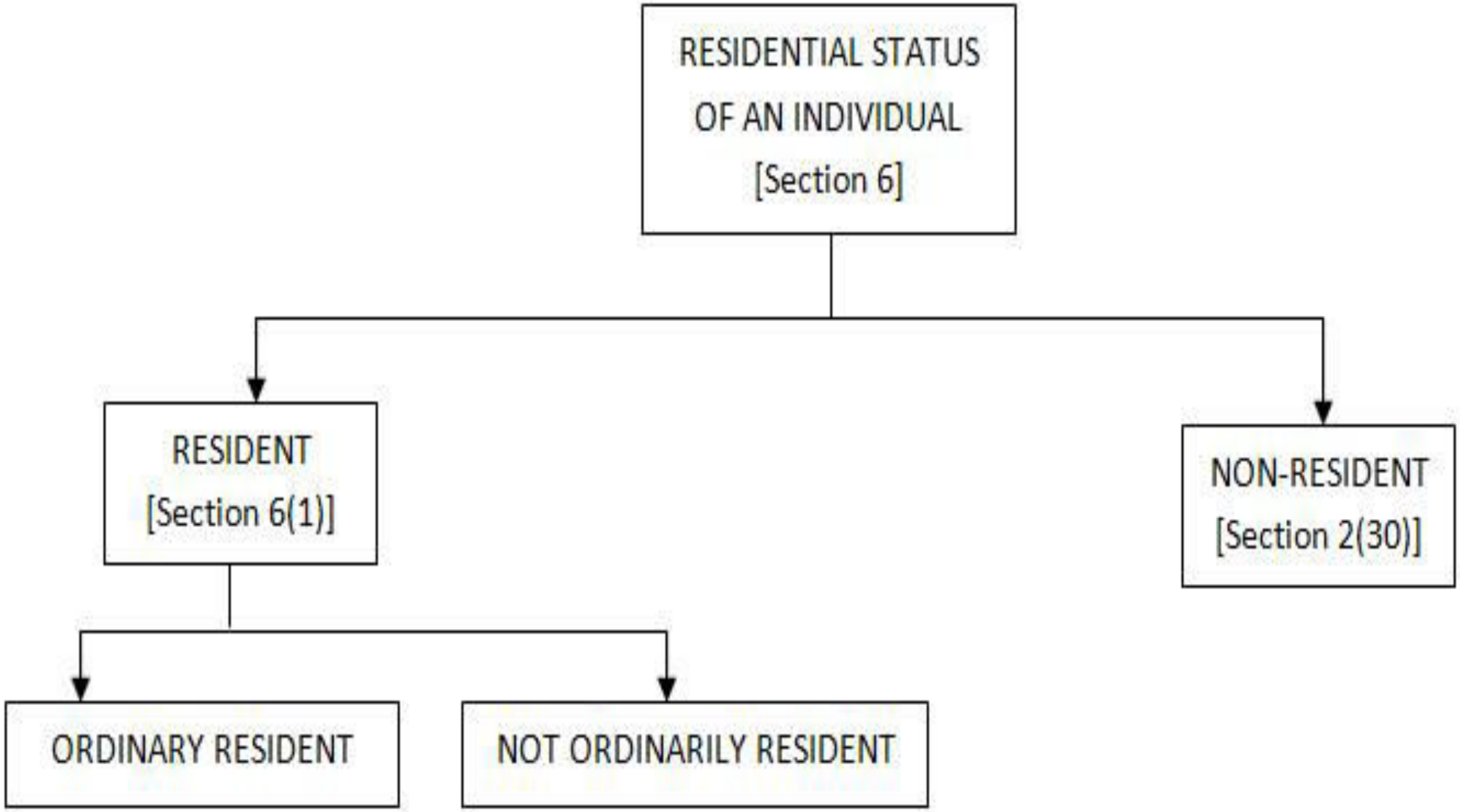
LECTURER IN COMMERCE

# RESIDENTIAL STATUS AS PER INCOME TAX ACT

According to the Income Tax Act, 1961, taxation depends on the resident status of an individual/company. Although you have read about the different categories classified under the income tax rules, there is a possibility that you are unsure of how they vary. It is recommended to understand it with the following examples:

- ✓ Resident
- ✓ Resident Not Ordinarily Resident
- ✓ Non-Resident

# Residential Status of an 'Individual' (Section-6) - under Income Tax Act



# RESIDENTIAL STATUS

## 1. Resident

A resident taxpayer is an individual who satisfies one of the following conditions:

- Resides in India for a minimum of 182 days in a year.
- Has resided in India for a minimum of 365 days in the immediately preceding four years. In addition, he must reside in India for a minimum of 60 days in the current financial year.

Consider the case of Mr D, Business Head for Asia Pacific regions for a private firm. Mr D was born and brought up in India. He has to travel to various locations of the continent for business purposes.

He has spent 200 days travelling in the current financial year. Also, he has been travelling abroad from the past two years and has stayed out of India for about 400 days in this period. When you consider this information to figure out the resident status of Mr. D, you will understand that he has only spent 165 days in India during the current financial year. That proves the first condition wrong. It is given that Mr. D has been travelling only from the past two years.

Also, it is said that he has travelled for 400 days in the past two years. That means, in the past four years, Mr. D has stayed in India for more than 365 days (1061 days). You must remember that he has stayed for 165 days in the current year. Therefore, the second condition holds good. Mr. D is a resident taxpayer.

## 2. Resident Not Ordinarily Resident

There is a further classification under the resident status – Resident Ordinarily Resident (ROR) and Resident Not Ordinarily Resident (RNOR). If both the conditions below are met, he will be a ROR:

- He has resided in India for at least 2 out of 10 immediate previous years.
- He has resided in India for at least 730 days in seven immediately previous years.

Considering the example of Mr D, both the conditions are satisfied. Therefore, he can be considered as Resident Ordinarily Resident.

Alternatively, consider that he had to work from the headquarters of his firm, located in Kota Kinabalu, Malaysia for the past six years. He has only visited his parents for a week, twice a year during this time. That means, he has resided in India for 449 days in the past six years and the same applies for the current financial year too. In this case, one condition is not met. Therefore, Mr D is RNOR.

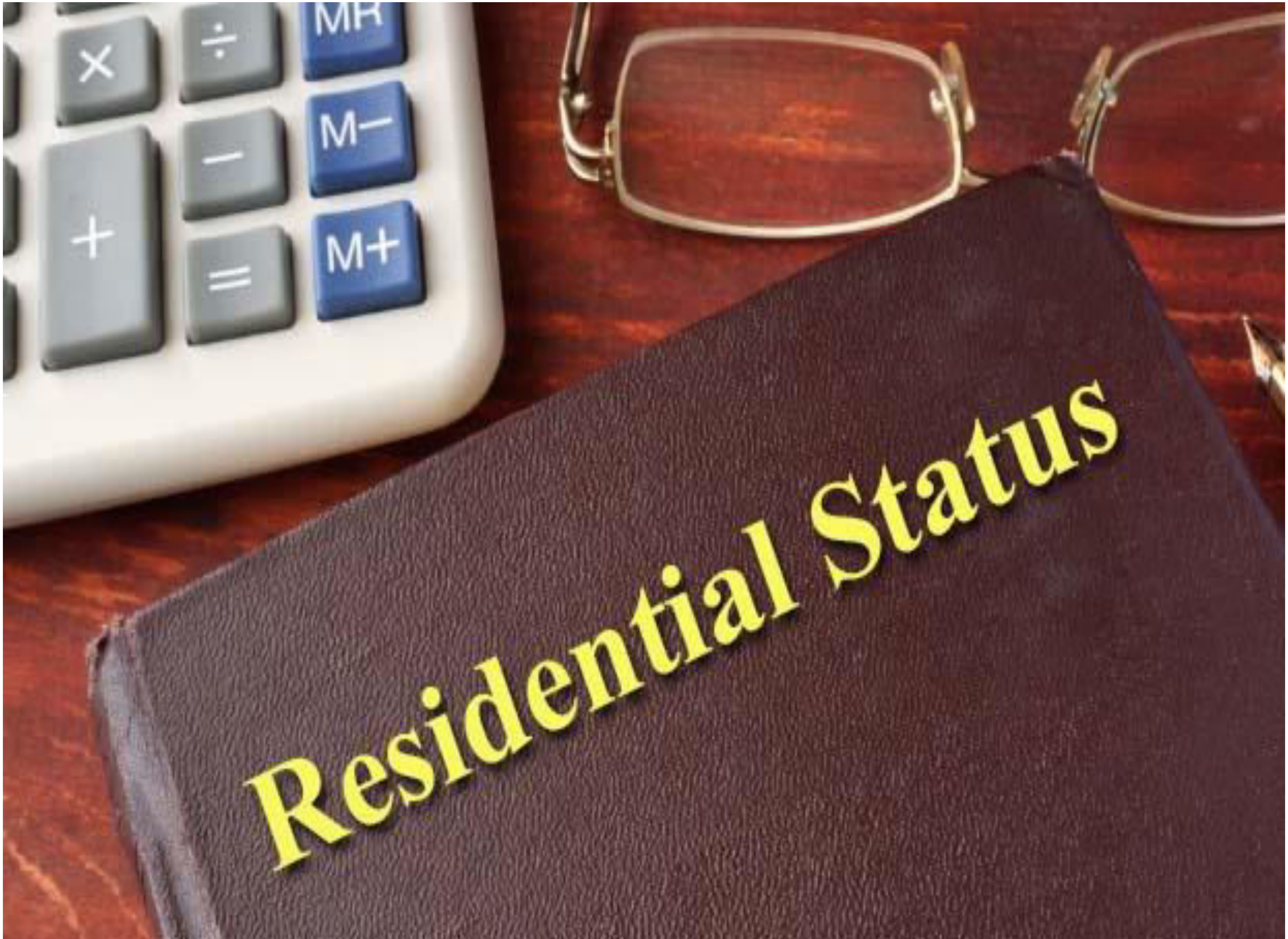
## 3. Non-Resident

An individual who does not fall under either of the above categories can be considered as a non-resident. For example, Ms G went to London to join a reputed university for a graduation course (three years). While studying there, her professor suggested her to join a post-graduate course at the same university (two years).

She had to get an internship certificate to complete the course. Upon completion, the firm offered her a permanent position. She has been an employee there for the past four years. That is, Ms G has stayed out of India for nine years now. She receives rental income from the property that she inherited from her parents. Both the conditions applicable for ROR are not satisfied. That makes Ms G a non-resident.

It is important to determine the residential status of a person since the taxability of income of a person depends on his residential status during that financial year. For example, a person resident in India is liable to pay tax in India on his global income.

As per section 6 of the Income-tax Act, 1961, all the assessees are divided in the following categories for the purpose of determining their residential status:


MR
M−
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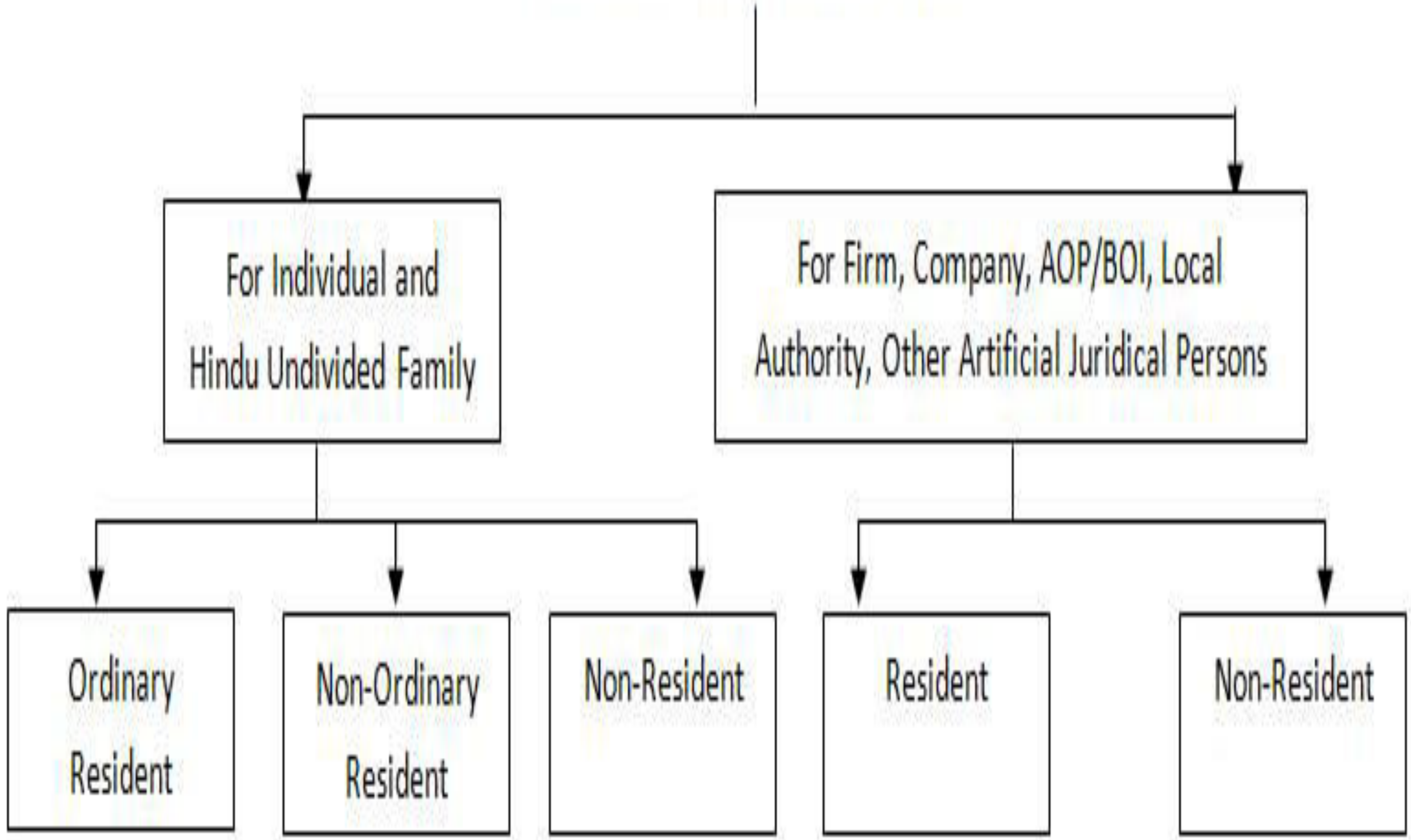
Residential Status

# TYPES OF RESIDENTIAL STATUS



I. Individual,

II. Hindu undivided family,

III. Company, and

IV. Every other person

**Types of Residential Status:**

An assessee can be categorized into following residential status during the previous year:

A) Resident in India

B) Non-Resident in India

A resident individual and HUF are further sub-categorized in to following status:

A) Resident and Ordinarily Resident

B) Resident but Not-ordinarily Resident

## I. Individual:

The residential status of individual for the purpose of taxation is determined on the basis of his physical presence in India during the previous year (April 1 to March 31) and preceding previous years. An individual is said to be a resident of India if he is:

1) Physically present in India for a period of 182 days or more in the previous year, or

2) Physically present in India for a period of 60 days or more during the relevant previous year and 365 days or more in aggregate in four preceding previous years.

If a person doesn’t meet any of the above two conditions then he is said to be a non-resident in India for the purpose of taxation in India.

A resident individual is further classified into ‘Resident but not Ordinarily Resident’ if:

1) His stay in India is of 729 days or less in previous 7 years; and

2) He was considered as ‘non-resident’ in 9 out of previous 10 years.

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## II. HUF:

An HUF is said to be resident in India if the control and management of HUF is in India. A resident HUF is further classified into 'Resident but not Ordinarily Resident' if:

a) Stay of Karta in India is 729 days or less in previous 7 years; and

b) Karta was considered as 'non-resident' in 9 out of previous 10 years.

If control and management of HUF is situated wholly outside India then HUF shall be treated as non-resident.

## III. Company:

An Indian Co. is always treated as resident in India. However, in the case of a Foreign Co., it shall be treated as resident in India if the Place of Effective Management (POEM) of Foreign Co. is in India. If POEM of Foreign Co. is outside India then it shall be treated as non-resident in India.

## IV. Every other person:

In case of every other person, i.e., Firm/BOI/AOP, they will be treated as resident in India if control and management of person is situated in India. If it is situated outside India then status will be non-resident.

It must be noted that if a person is resident in India in a previous year in respect of any source of income, he is deemed to be resident in India in respect of all other sources of income.

An assessee is not allowed to claim different residential status for his different sources of income. So, before calculating income during the year, it is most important to calculate the residential status of the assessee during the previous year.

**Taxability of income in case of ordinary resident person:**

A resident assessee shall be liable to pay tax in India on the following incomes:

1. Income received or is deemed to be received by him in India in the previous year.

2. Income accrues or arises or is deemed to accrue or arise to him in India during such year.

3. Income accrues or arises to him outside India during such year.

**Taxability of income in case of non-ordinary resident person:**

A resident but not ordinarily resident individual and HUF shall be liable to pay tax in India on the following incomes:

1. Income received or is deemed to be received by him in India in the previous year.

2. Income accrues or arises or is deemed to accrue or arise to him in India during such year.

3. Income accrues or arises to him outside India during such year if it is derived from a business controlled from India or from a profession setup in India.

## Taxability of income in case of non-resident person:

In case of a non-resident assessee, being an individual, HUF, partnership firm, company or other person, following incomes shall be taxable in India:

1. Income received or is deemed to be received in India by such person in the previous year.
2. Income accrues or arises or is deemed to accrue or arise to such person in India during such year.

# Income Tax Act - Determining the Residential Status of an Individual

Determining the residential status is essential during the time of income tax filing. There are different taxable incomes and some exceptions regarding the residential status in India.

Section 6 (1) of the Income Tax Act, 1961, offers two sets of parameters to determine whether a particular person is an Indian citizen or not. If the said individual falls under any one of the following criterias, he/she will be a resident of the country. These are:

If the individual has resided in India during the relevant financial year that amounts to a total of 182 days or more.

If the individual has resided in India for four consecutive years before the relevant financial year that amounts to a total of 365 days or more.

Meeting with the above mentioned parameters qualifies an individual as a resident of the country, however, in order to become an ordinary citizen of the country, one has to meet with the following standards:

If the individual has been an Indian citizen for two consecutive financial years out of ten financial years, that falls immediately before the relevant financial year.

If the individual has resided in India for seven consecutive financial years immediately before the financial year in question.

**Why is the residential status of a person important for Income Tax?**

Any salaried or self-employed individual residing in India will be subjected to the age-old Income Tax based on their residential status. At the time of Income Tax return filing, it is very important to determine the residential status of a person, since it is the most important component in the realm of taxation.

Multiple taxpayers are subjected to a wide range of taxable incomes. Let us look at them in detail with the help of the following table:

| Details and Particulars | Ordinary Resident and Resident | A non-ordinary resident | NRI |
|---|---|---|---|
| If the income is received in India, irrespective of whether it has its source in India or not | Yes | Yes | Yes |
| Income ensuing in India or is expected to ensue in India during the relevant financial year, irrespective of whether it has its source in India or not | Yes | Yes | Yes |
| If an individual is receiving his income anywhere outside India, but the business is being handled from India | Yes | Yes | No |
| Income ensuing outside India and received in the same place in the relevant financial year from other sources | Yes | No | No |

# Residential Status in India: Things to Keep in Mind

1. **Income Receipt:** To levy Income Tax, it is of utmost importance that you save the first receipt. If a certain amount of money received outside India is subsequently dispatched to India, it will be considered a foreign receipt. Merely because there is an issue of remittance involved, does not make the amount an income received in India.
2. **Citizenship Vs Residential Status:** There is an enormous difference between the two notions

A citizen may not be a resident in the same country. In comparison with this, an individual being a citizen of a foreign country may still be an Indian citizen.

**3.Stay Period Calculation**: Calculating an individual's period of stay is essential to the concept of residential status. It is important to note here that the stay does not necessarily have to be ongoing in nature. Elements such as the total number of days spent at a time are important for computation. The individual's stay can be at any location, and not necessarily in the same place

THANK YOU