

# Tax Treatment of Foreign Income of Persons Resident in India

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**Abstract** - The term income tax refers to a type of tax that governments impose on income generated by business and individuals. tax is the major source of revenue for the government, the development of any country's economy largely depends on the tax for understand clearly in India taxes are divided into two types they are direct tax, indirect tax. for calculate the income tax there will be used some of the terms they are assesses, previous year, assessment year, residential status, gross total income, total income.

Resident status is nothing but the taxability of an individual in India depends upon his residential status in India for any particular financial year. The time period residential status has been created under the income tax laws of India and must not be confused with an individual's citizenship of 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 non-resident of India for income tax purposes for a particular year. Also, to be aware that the residential status of various types. And there will be tax relief at the foreign income of the resident, tax liability of a resident on his foreign income & on a foreign income of a person not ordinary resident.

**Index Terms** – Income tax, residential status, tax relief at foreign income of the resident in India.

## INTRODUCTION

The term income tax refers to a type of tax that governments impose on income generated by business and individuals. tax is the major source of revenue for the government, system in India is a three-tier system that is primarily based among the central government, state governments and the local government organizations.

Tax incidence on an assesses depends on his residential status. For instance, whether an income, accrued to an individual outside India, is taxable in India depends up on the residential status of the individuals in India. Similarly, whether an income

earned by a foreign national in India or outside India is taxable in India depends on the resident status of the individuals rather than on his citizenship. the determination of the resident status of a person is very significant in order to find out his tax liability

## OBJECTIVES

- In These articles focusing on the person who is resident in India, but his earnings outside India for that person also need to pay tax in India.
- In these articles we are focusing on tax treatment of foreign income of a person resident in India.

## RESEARCH METHODOLOGY

this research is purely based on secondary data. data was obtained from available sources such as journals, text books, information from the local newspapers, on-this line published articles, and internet search engines among others

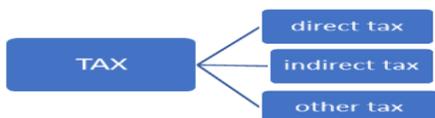
## TAX

let us begin by understanding the meaning of tax. tax is a fee charged by a government on product, income or activity. tax is the major sources of revenue for the government. the development of any country economy largely depends on tax.

India has a well-developed tax structure. the power to levy taxes and duties is distributed among the three tiers of government, in accordance with the provisions of the Indian constitution. the main taxes/duties that the union government is empowered to levy: - income tax (except tax on agricultural income, which the state governments can levy), customs duties, central excise and sales tax and service tax. the principal taxes levied by the state governments are: - sales tax (tax on intra-state sale of goods), stamp duty (duty on transfer of property), and state excise (duty on manufacture of alcohol), and land revenue (levy on land used for

agricultural/non-agricultural purposes), duty on entertainment and tax on professions & callings. the local bodies are empowered to levy tax on properties (buildings, etc.), octroi (tax on entry of goods for use/consumption within areas of the local bodies), tax on markets and tax/user charges for utilities like drainage, water supply etc

#### TYPES OF TAXES



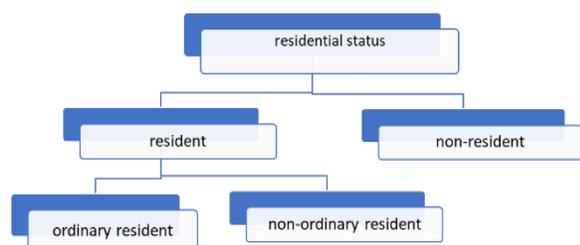
#### RESIDENTIAL STATUS

The residential status of the assesses as per income tax act of 1961. The taxability of an individual in India depends upon his residential status in India for any particular financial year. The time period residential status has been coined under the income tax laws of India and must not be confused with an individual's citizenship of 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 non-resident of India for income tax purposes for a particular year. Also, to be aware that the residential status of several types.

The following norms has kept in mind while deciding the residential status of an assesses. All taxable entities are divided in the following categories for the purpose of determining resident status they are

- a. An individual,
- b. A Hindu undivided family,
- c. A firm or an association of person,
- d. A joint stock company,
- e. even other person.

#### TYPES OF RESIDENTS AS PER INCOME TAX ACT



#### RESIDENT

An individual is said to be resident in India in any financial year if he has been in India during that year. for a period of 182 days or more for a period of 60 days or more and has also been in India within the preceding four years for a period of 365 days or more. However, the period of 60 days is increased to 182 days.

1. in the case of a citizen of India or a person of Indian origin who has been outside India and comes on a visit to India.
2. in a case when a citizen of India leaves India for purposes of employment outside India or as a member of the team of an Indian ship.

A person of Indian origin is one if he, or either of his parents or any of his grandparents, was born in undivided India. Thus, the residential status of an individual generally depends on his physical presence or period of stay in India and not on his nationality or domicile

A Hindu undivided family or a firm or all association of person is said to be resident in India in every case except where the control and management of its affairs is situated exclusively 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

A company is said to be resident in India if it is an Indian company or its place of effective management in that year is in India during the financial year where place of effective management means a place where key management and commercial decisions that are compulsory for conduct of business entity as a whole are in material made.

#### CATEGORIES OF RESIDENTS

Residents are divided into two classes resident and ordinary resident, resident but not ordinarily resident. The status of resident but not ordinarily resident and resident and ordinary resident

#### RESIDENT BUT NOT ORDINARILY RESIDENT

is obtainable only to the Hindu undivided families and individuals. In these an individual is said to be a not ordinary resident in India any financial year if he has been a non-resident in India in nine out of ten financial

years preceding that year or he has been in India for a period of 729 days or less during the seven financial years preceding that year. Thus, an individual would be a “not ordinarily resident (NOR) if he fulfils either of the aforesaid tests. One implication is that a newcomer to India would remain NOR for the first two financial years at least of his stay in India. Similarly, where a person who is a resident in India goes abroad and remains non-resident for at least nine out of the next ten financial years, he would on his return be treated as NOR for at least the two financial years (the financial year of frequent to India and the directly subsequent financial year). Another suggestion is that a person may have been a resident or a non-resident in India during the seven preceding financial years but if he was in India for 729 days or less during those seven preceding financial years, he will then be treated as non-ordinarily resident (NOR). A Hindu undivided family is said to be ‘not ordinarily resident’ in India if its manager is ‘not ordinarily resident’ in India. For the purpose of calculating the length of the manager’s stay in India, the periods of stay in India of the successive managers of a Hindu undivided family during its continued existence to be added up.

#### PERSON RESIDENT AND ORDINARILY RESIDENT

The income which accrues or arises to him outdoor India isn't to be included in his total income unless it is derived from a business managed in or a career set up in India the expressions “accrue” and “obtained” are to be understood of their simple general meaning, as there is no specific definition thereof within the Income-tax Act. The expressions “accrue” and “arises” are used in contradistinction to the expression “obtained” and indicate a right to receive income.

#### Non-resident (NRI)

Income earned in India only will be subject to income tax in India. If a person does not satisfy the conditions mentioned for being resident of India, then he is considered as non-resident individual (NRI)

#### SCOPE OF TOTAL INCOME

section-5 of income tax act 1961 provides scope of total income in case a person who is resident, not an

ordinarily resident in India and person who is a non-resident which includes. Income can be from any sources: which is received or is deemed to be received in India in such year by or on behalf of such person or accrues or arises or is deemed to accrues or arise to him in India during such year or accrues or arises to him outside India during such year.

#### Scope of total income under section 5 of income tax act of 1961

Sl. no	Particulars	Resident ordinary resident	Resident not ordinary resident	Non-resident
1	Income received in India	taxed	taxed	Taxed
2	Income deemed to be received in India	taxed	taxed	Taxed
3	Income accrues or arises in India	taxed	taxed	Taxed
4	Income deemed to accrues or arises in India	taxed	taxed	Taxed
5	Income accrues or arises outside India	taxed	No	No
6	Income accrues or arises outside India from business/profession controlled/set up in India	taxed	taxed	No
7	Income other than above (no relation in India)	taxed	No	No

#### BASES FOR TAX LIABILITY IN INDIA

The tax legal responsibility of a person under the Income-tax Act depends upon his residential fame within the economic year in which the profits accrue or arises to him or is obtained by way of him. Financial year method the length of 12 months taking off on the 1<sup>st</sup> day of April every 12 months. The take a look at of determining residential fame of an individual is laid down in section 6 of the Income-tax Act.

The provisions regarding scope of overall earnings which is liable to income-tax in India are contained in section five of the Income tax Act.

In the case of someone who is resident, the total profits of any financial yr. consist of all profits from anything supplies derived which is obtained or is deemed to be obtained in India in such 12 months by means of him or on his behalf, or accrues or arises to

him or is deemed to accrue or get up to him in India during such yr. or accrues or arises to him out of doors India for the duration of such 12 months However, within the case of someone not primarily resident in India, the income which accrues or arises to him out of doors India isn't always to be included in his total earnings until it's miles derived from a enterprise managed in or a profession set up in India.

#### TAX TREATMENT OF FOREIGN INCOME OF PERSON RESIDENT IN INDIA

Tax treatment on foreign income of person who is resident in India. The persons who are resident in India are of two types. According to these types tax treatment on foreign income of person resident in India are treated.

#### TAX LIABILITY OF A RESIDENT ON HIS FOREIGN INCOME

The total world profits of a resident are susceptible(liable) to income tax in India. The abroad income i.e., income accruing or arising outside India in any financial year is susceptible to income-tax in that year even if it is not received or brought into India. There is no get away from legal responsibility to income-tax even if the remittance of income is limited by using the foreign countries. However, in the case of income Arising in a foreign country the legal guidelines of which restrict or restrict the remittance of cash to India, proceedings can't be taken towards the assesses for recovery of the tax assessed and due in appreciate of such abroad income until the prohibition or limit is removed.

Income which has been protected in the overall income of a resident on the basis that it has accumulated or arisen to him outside India, isn't always to be so covered once more on the basis that it is received or deemed to be acquired in India.

#### TAX LIABILITY ON A FOREIGN INCOME OF A PERSON NOT ORDINARY RESIDENT

In case of a person resident but not ordinary resident, income accruing or rising to him outside India in any financial year is not liable of income-tax in India only if:

1. it is not derived from a commercial enterprise controlled in or an occupation set up in India.
2. it is not received or deemed to be received in India in such year by him or on his behalf and
3. it isn't deemed to accrue or arise to him in India all through such year.

Thus, the income-tax exemption on foreign income is restrained to instances wherein income not only accrues or arises abroad but is also obtained foreign and is neither deemed to accrue or arise nor deemed to be received in India below the provisions of the Income-tax Act. But the income-tax exemption might no longer be lost simply due to the fact the foreign earnings received abroad is subsequently brought into India.

The expression "business managed in India" means that the "head and brain" of the trading journey should be situated in India and must direct the business activities from India. Like income derived from a business controlled in India, incomes derived from a profession set up in India is also excluded from the scope of the foreign incomes. The expression "profession" consists of vocation as kindly. A profession established foreign and afterwards established and continuous in India could fall with in the category of a profession installation in India. The regulation especially provides that profits accruing or arising outside India is not to be deemed to be obtained in India by purpose most effective of the fact that it's far taken into account in a balance sheet organized in India. Thus, no amount of book-keeping or entries inside the accounts kept in India might be equal to receipt of earnings from abroad.

According to Section 9 of the Income-tax Act consists of provisions in appreciate of incomes deemed to accrue or arise in India. These are:

- (I) All earnings accruing or arising, whether or not directly or indirectly.
    - (a) thru or from any business connection in India.
    - (b) thru or from any belongings in India.
    - (c) through or from any asset or supply of earnings in India.
    - (d) thru the transfer of a capital asset located in India.
- The Finance Act 2012 inserted clarificatory amendments with retrospective impact from Assessment Year 1962-1963 to make clear that an asset or capital asset, being any percentage or interest

in a business or entity registered or incorporated outside India shall be deemed to be situated in India if the percentage or interest derives, indirectly or directly, its value extensively from the assets placed in India.

(ii) Income which falls below the head “Salaries”, if it is earned in India. Salary payable for offerings rendered in India is appeared as earnings earned in India, even though the employment contract is achieved out of doors India and the salary is also payable outside India.

(iii) Income chargeable below the top “Salaries” payable by means of the Government to a citizen of India for carrier out of doors India.

(iv) A dividend paid via an Indian organisation outside India.

(v) Interest income if it is payable by way of:

(a) the Central Government or any State Government,  
(b) a resident, besides where in the interest is payable in appreciate of any debt incurred or any moneys borrowed and used for the functions of a business or profession carried on through him out of doors India or for the functions of making or earning any incomes from any source outside India.

(c) a non-resident in appreciate of any debt incurred or any moneys borrowed and used for the motive of a business or profession carried on by way of him in India.

(vi) Royalty if it's payable by using:

(a) the central government or any state government.  
(b) a resident, besides in which the royalty is payable in appreciate of any proper, assets or facts used or services utilised for the purposes of a business or profession carried on by way of him out of doors India or for the purposes of making or incomes any profits from any supply outdoor India.

(c) a non-resident, where the royalty is payable in recognize of any proper, assets or information used or offerings utilised for the purposes of a enterprise or profession carried on through such individual in India or for the functions of creating or earning any earnings from any supply in India.

(vii) Income by way of fees for technical services if it is payable with the help of:

(a) the Central Government or any State Government,  
(b) a resident, besides where the costs are payable in respect of offerings utilised in a business or profession carried on by way of him outside India or for the

functions of making or incomes any earnings from any supply out of doors India.

(c) a non-resident, in which the costs are payable in appreciate of services utilised in a business or profession carried on by using such character in India or for the functions of making or incomes any income from any supply in India.

#### TAX RELIEFS AT THE FOREIGN INCOMES OF THE RESIDE

The income-tax provides some of reliefs, either through way of entire exemption or through manner of deduction from the gross total profits, in respect of the foreign profits of the resident. Further, income-tax exemption is provided below the United Nations (Privileges and Immunities) Act, 1947 at the salaries of the officials of the United Nations, its specialised businesses and certain other worldwide corporations notified by means of the Central Government.

#### THESE RELIEFS, ‘HEAD OF PROFITS-WISE’, ARE AS UNDER: SALARIES

‘Salary’ way all remuneration paid or due below an express or implied agreement of employment except that received by way of a subordinate of a firm from the company. It consists of wages, annuity or pension, gratuity, prices, commission, perquisites or income in lieu of or further to any earnings or wages or any improve of revenue or leave salary encashment.

The exemptions and deductions available within the Income-tax Act at the foreign income by manner of salaries are indicated in following passages

#### EXEMPTION AT THE ALLOWANCES PAID THROUGH GOVERNMENT

Any allowance or perquisite paid or allowed as such outside India by the Central Government or a State Government to a citizen of India for rendering services outside India, is exempt from income-tax. The applicable provisions are contained in segment 10(7) of the Income tax Act.

#### EXEMPTION OF FOREIGN INCOME OF PERSONS ASSIGNED TO RESPONSIBILITIES IN INDIA UNDER COOPERATIVE TECHNICAL HELP PROGRAMMES

In the case of people that are assigned to responsibilities in India in reference to any cooperative technical assistance programmes and projects, according with a settlement between the Central Government and the Government of a foreign State, their foreign income is exempt from income-tax in the event that they pay any earnings or social protection tax on such incomes to the foreign State. To qualify for the exemption, such income should not be deemed to have accrued or arisen in India. Further, the phrases of the settlement among the two governments need to provide for such exemption. The applicable provisions of this exemption are contained in section 10(8) of the Income-tax Act.

Income-tax exemption on the aforesaid traces has Also been provided on the foreign income of an individual who is assigned to duties in India in connection with any technical help programme and project in accordance with a settlement entered into by means of the Central Government and a worldwide enterprise. The exemption is available most effective if the subsequent conditions are satisfied, namely:

- the individual is an employee of the representative referred to in segment 10 (8A) which offers that a consultant method a person engaged through an international organization in reference to any technical assistance programme in accordance with an agreement among that agency and the Central Government.
- he is both no a citizen of India or being a citizen of India, is not ordinarily resident in India.
- the agreement of service of the man or woman is approved through the Additional Secretary, Department of Economic Affairs, in the Ministry of Finance, Government of India in concurrence with Member (Income-tax) of the Board.

The relevant provisions of this exemption are contained in Section 10(8B) of the Income-tax Act.

#### EXEMPTION BELOW THE UNITED NATIONS ACT, 1947(PRIVILEGES & IMMUNITIES)

The United Nations (Privileges and Immunities) Act, 1947, provides exemption from income-tax on the salaries and remunerations paid by using the United Nations to its officials. Thus, the people who are resident in India in any financial yr. and are in receipt of income through way of salaries and remunerations

from the United Nations as officials thereof, are exempt from income-tax on such income. As the expression “salaries” below the Income-tax Act consists of pension also, the pension obtained from the United Nations by its former officers, is also exempt from income-tax.

Under section 3 of the United Nations (Privileges and Immunities) Act, 1947, the Central Government has the power to extend the gain of the income-tax exemption to the officers of other worldwide organizations on the lines of such exemption to U.N. Officials. The gain of Income-tax exemption has been continued to the representatives and officers of the following specialised agencies of the United Nations or different global organisations.

#### SOME OF THE SPECIALISED AGENCIES OF UNITED NATIONS

- (i) International Civil Aviation Organisation,
- (ii) World Health Organisation,
- (iii) International Labour Organisation,
- (iv) Food and Agriculture Organisation of the United Nations,
- (v) United Nations Educational, Scientific and Cultural Organisation,
- (vi) International Monetary Fund,
- (vii) International Bank for Reconstruction & Development (World Bank),
- (viii) Universal Postal Union,
- (ix) International Atomic Energy Agency.

The Ministry of External Affairs has also clarified that the United Nations officials and the technical support experts may be treated at par. Moreover, the technical difference within the be counted of extending privileges among officers and authorities on project has been disbursed with. As a result, specialists on project are also entitled to the equal privileges and immunities as are enjoyed by the officials of the United Nations.

The administration of the United Nations (Privileges and Immunities) Act vests within the Ministry of External Affairs (U.N. Division).

#### PROFITS AND GAINS OF BUSINESS OR PROFESSION

Income from business or profession is computed according with the provisions of sections 28 to 44DB

of the Income-tax Act. The expression business or profession includes any exchange, trade, manufacture or vocation.

The deductions available inside the Income-tax Act on the foreign income by manner of income and profits of business or profession are indicated inside the subsequent passage.

#### INCOME FROM HOUSE PROPERTY AND CAPITAL GAINS

Income from house property is computed in accordance with the provisions of sections 22 to 27 of the Income-tax Act. It is decided as regards to its annual value i.e., the sum for which the assets would possibly moderately be anticipated to be let from year to year. However, in which any belongings are tenanted and the yearly rent acquired or receivable by the proprietor is in extra of the sum for which the assets would possibly moderately be predicted to be allow from year to 12 months, the real rental received or receivable is taken as the annual price of the assets. Sections 45 to 55A of the Income-tax Act deal with the provisions referring to computation of earnings from capital gains and the several exemptions and deductions allowable in respect of the equal.

There is not any particular tax relief provided in respect of the foreign profits of the residents falling below the aforesaid two sources of income (besides for income from business/profession of a Resident but Not Ordinarily Resident where the business is managed outside India, or the profession is installation outside India)

#### INCOME FROM OTHER RESOURCES

Sections 56 to 59 of the Income-tax Act deal with the provisions for computation of income below the head Income from other sources. This is a residuary head protecting all income which do now not fall under any of the heads of income mentioned mainly in the Income-tax Act, i.e., salaries, profits from house property, earnings and gains of business or career, and capital gains. There isn't any unique deduction to be had for foreign profits of the resident falling under this head.

#### FINDING

In this article we finding that residential status of an assessed, tax on foreign income of an assessed resident

in India. Tax reliefs at the foreign income of the resident.

In this article we find that what are the treatments occurs of a person who is earning forging income of a person resident in India.

#### CONCLUSION

I concluded that taxes are paid not only persons in India but also who are the persons outside India (foreign countries) and the foreign income of a person resident in India are also eligible to pay the tax.

#### REFERENCE

- [1] Income tax: theory law and practice: gaur and Narang, Kalyani publishers.
- [2] Income tax department, [www.incometaxindia.gov.in@income tax India 2018](http://www.incometaxindia.gov.in@income tax India 2018).
- [3] h. prem raja ca. Sridhar dubaka, Sri hamsraala publication.