Learning Objectives

1. Significance of Residential Status in relation to determining the total Income taxable in India of a person
2. Types of Residential Status
3. Rules for determining residential Status for different categories of persons
4. Rules for determining the Status of Resident Ordinary and Not Ordinary in case of Individual and HUF
5. Ability to solve problems relating to residential Status
6. Rules for determining the Scope of total Income that will be taxable in India Vis a Vis the Residential Status of a person
Country has right to tax ALL Income of its Residents

Country has right to tax ONLY such Income of Non Residents which in some way are connected to that country and NOT ALL Income
Significance Of Residential Status

For instance, whether an Income, accrued to an Individual outside India, is taxable in India depends upon the residential Status of the Individual in India.

Similarly, whether an Income earned by a foreign national in India (or outside India) is taxable in India, depends on the residential Status of the Individual, rather than on his citizenship. Therefore, the determination of the residential Status of a person is very significant in order to find out his tax liability.
Reasons for Country to Levy Tax

Country provides Welfare, Security, Basic Amenities, Infrastructure and other benefits to Residents and in return expects Residents to pay tax.

Country provides an opportunity / source to earn Income for Non Residents and in return expect Non Residents to pay tax on Income earned from that country.
Importance of Residential Status for Tax

Only after determining the residential Status of a person one can decide what Income is taxable in that country.

Step 1: Determine Whether Income or Not

Step 2: Determine Whether Person Resident or Non Resident

Step 3: What Income (in terms of earned in which country) is liable for tax in that country

Step 4: Apply the computation rules on such Income and determine the taxable amount

Step 5: Apply the appropriate tax rates and determine the tax liability
Different countries use different criteria to determine residential status. Some of the criteria's used are:

- Citizenship
  No. of days stay in that country
- Having home in that country
- Registered / Incorporated in that country
- Having Place of management in that country
In India the following criteria is used for determining residential Status:

- No of Days Stay
- Place of Incorporation
- Place of Management

Different criteria used for different categories of persons
Criteria Vs. Category of Person

Individuals
- Number of days stay in India

Others
- Place of Incorporation (in case of Company)
- Place of Management
Categories of residential Status

For tax purpose all tax payers are classified into following 2 broad categories based on residential Status:

- RESIDENTS and
- NON RESIDENTS

Residents are in few cases sub classified into following 2 categories:

- RESIDENT AND ORDINARILY RESIDENT
- RESIDENT BUT NOT ORDINARILY RESIDENT
Pictorial Representation of Residential Categories

Residential Status

Resident

Resident and Ordinarily Resident (ROR)

Non Resident

Resident but Not Ordinarily Resident (RNOR)
Timing - Determining Residential Status

- Tax Assessment to determine tax liability is done separately for every assessment year.
- Every Assessment year is in relation to a specific Previous Year.
- Thus, Residential Status should also be determined for every specific Previous Year.
- For Every Year, determine Residential Status of the person and then determine the Scope of total Income for that year.
- Residential Status is to be determined for every specific previous year and can vary from year to year.
A person who is Resident in one year may become Non Resident in another year and vice versa.

A person who is Resident but Not Ordinarily Resident (RNOR) may become Resident and Ordinarily Resident (ROR) in another year.

Residential Status can vary from year to year and need not be constant.
Determination of Residential Status is very important as it decides what Income of a person will be taxable in India.

Different criteria used for different categories of person to determine residential Status as no. of days stay in India, place of management etc.

Based on residential Status tax payers are broadly categorized into Residents and Non Residents.

Further Residents are categorized into Ordinarily Residents (ROR) and Not Ordinarily Residents (RNOR).

Summary Till Now...
Sec 6 of Income Tax Act 1961 lays down the provisions for determining the residential Status of a person for a particular previous year.

Sec 6(1): Provisions for Individuals

Sec 6(2): Provisions for Hindu Undivided Families

Sec 6(3): Provisions for a Company

Sec 6(4): Provisions for every other person

Sec 6(6): Provisions for Resident but Not Ordinarily Resident in case of Individuals and HUF
Residential Status for Individuals

An Intro.
Residential Status for Individuals

Step 1: Determine whether a person is Resident or Non-Resident as per Sec 6(1)

Step 2: If he is Resident, then determine if he is Resident Ordinary (ROR) or Resident but Not Ordinarily Resident (RNOR)
Under section 6(1), an Individual is said to be Resident in India in any previous year, if he satisfies any one of the following conditions:

- (i) He has been in India during the previous year for a total period of 182 days or more, or
- (ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If the Individual satisfies ANY ONE of the conditions mentioned above, he is a Resident. If both the above conditions are not satisfied, the Individual is a non-resident.
## Residential Status for Individuals

<table>
<thead>
<tr>
<th>BASIC CONDITION (A)</th>
<th>BASIC CONDITION (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>He is in India in the previous year for a period of 182 days or more</td>
<td>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</td>
</tr>
<tr>
<td>If more than 182 days no need to look at Basic Condition B</td>
<td>If in a previous year stay is more than 60 days and less than 182 days, Basic Condition B needs to be examined</td>
</tr>
<tr>
<td>For PY 12-13, one has to examine if the no. of days stay during 1st April 12 to 31st March 13 is 182 days or more</td>
<td>For PY 12-13, one has to examine if the no. of days stay during 1st April 12 to 31st March 13 is 60 days or more and during the period 1st April 08 to 31st March 12 the stay is 365 days or more</td>
</tr>
</tbody>
</table>
Basic Conditions

182 STAY DAYS IN FINANCIAL YEAR
OR
60 DAYS IN FINANCIAL YEAR PLUS 365 DAYS IN PREVIOUS 4 YEARS

One is satisfied

Resident

Both not satisfied

Non Resident
Residential Status for Individuals

“Stay in India” need not be continuous period of stay, aggregate period of stay, even in breaks has to be considered

- For Eg: If a person comes to India during PY 12-13, 3 times in that PY, say from 1st May to 15th May, 20th Sept to 31st Oct and again from 1st Jan to 31st March, The total period of stay to be considered will be 15 + 51 + 90 days = 156 days

The Stay need not be an active one or it need not be at Any One place of residence, business or employment

- For Eg: the stay during 1st May to 15th May even if it was on a holiday, the same to be counted. The second trip may be for business and the third trip above may be for employment. For purpose of residential Status calculation all 3 trips to be counted.
For the purpose of counting the no. of days stay, both the date of arrival and date of departure needs to be counted and not the no. of hours stayed on the date of arrival or departure.

Say, in the first trip, if the person came to India even at 11:00PM on 1st May and left India on 1:00AM on 15th May, both 1st May and 15th May will be counted.

The Date of Arrival and Departure are considered as per the stamping dates on the Passport, which does not have any time stamp.
Residential Status for Individuals

- Stay includes stay in the territorial waters of India (i.e., 12 Nautical miles (22KM) into the sea from the Indian coastline).

- Even the stay in a Ship or boat or barge or any other type of vessel or equipment marooned in the Indian territorial waters will be considered for calculating the period of stay.

- For Eg: In the earlier example if during 1st Aug to 30th Aug if that person was working on a Ship marooned in Indian territorial waters, then his total stay in India will be 156 + 30 days = 186 days. Which may make him a Resident as per Basic Condition A.
Residential Status for Individuals

Residence of a person as per Indian tax laws has nothing to do with citizenship or domicile. It just depends upon the actual no. of days stayed in India. Thus, an Individual can be Resident of more than one country in a given year based on different criteria's used in different countries.

A person having stayed in India for more than 182 days is a Resident in India and at the same time he being a US Citizen can be a Resident of US for US Tax purpose as per US tax laws.
There are certain exceptions to Basic Condition B, where instead of 60 days, it is replaced by 180 days.

In the following cases the person will be considered as Resident only if their stay in India is 182 days or more rather than the criteria of 60 days in the year plus 365 days in past 4 years.

- An Indian citizen who leaves India during the previous year for the purpose of employment outside India or who leaves India during the previous year as a member of the crew of an Indian ship, OR
- Indian citizen or a person of Indian origin who comes on a visit to India during the previous year
What is considered as leaving for purpose of employment outside India:
- leaving Indian employment and going outside India for taking up new employment
- Indian company sending on secondment (transfer of employment) to associated foreign company.

What is NOT considered as leaving for employment outside India:
- leaving India on Business Travel
- leaving India to study abroad and incidentally work outside India
- Deputation outside India to associated company but employment contract continues to be with Indian company.

Exceptions to Basic Condition B
A person is said to be of Indian origin if he or either of his parents or either of his grandparents were born in undivided India.

PIO Status is examined only for those who are not Indian Citizens (i.e., for those who do not hold Indian Passport).

If Mr. Smith, a UK Citizen born to UK Parents and his Father’s Mother also a UK Citizen was born in undivided India, then Mr. Smith is considered as a Person of Indian Origin.
The no. of days stay in India should be on a visit to India and not on employment or any other purpose.

Mr Harish an Indian Citizen, employed with Microsoft US was in India on a business visit to Microsoft India for 50 days and he was later seconded to Microsoft India from 1st Jan 2013. Can the Second Exemption be applicable to Mr Harish.

His total stay in India is 50 + 90 day = 140 days. However his stay in India has exceeded 60 days and his second visit of 90 days was not on a visit, it is on employment. Thus the second exemption is not available.
Ms Pinky a Student in US and PIO came to India in FY 12-13 for medical treatment and stayed in India for 95 days and in the past 4 years had stayed in India for more than 365 days. Is she entitled for exemption of the 60 days as per second exemption.

For the second exemption to be eligible the person should be engaged outside India in an employment, business or profession or any other vocation in US. As she is only a Student in US she will not be eligible to claim the second exemption of replacing 60 days with 182 days.
This is termed as Transitory beneficial provisions for transiting between Residence to Non Residence.

During this Status most of the benefits of Non Residence is available to such Resident tax payers. This is only for a short term period.

This Residential Status is helpful for those who have become Residents in India for a short period of time, say for those who have come on a secondment to India for a period of 2-3 years or less.

This special Status available only for Individuals and HUFs.
A Not Ordinarily Resident (Resident but Not Ordinarily – RNOR) person is one who satisfies ANY ONE of the conditions specified under Sec 6(6) which is:

i) If such Individual has been non-Resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or

(ii) If such Individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.
In simple terms, an individual is said to be Resident and Ordinarily Resident (ROR) if he satisfies BOTH the following conditions:

(i) He is a Resident in any 2 out of the last 10 years preceding the relevant previous year, and

His total stay in India in the last 7 years preceding the relevant previous year is 730 days or more.

The above conditions are commonly termed as Additional Conditions 1 & 2.
Additional conditions:
• “Resident” in India in at least two out of ten financial years preceding the relevant financial year; and
• Present in India for 730 days or more during the 7 financial year preceding the relevant financial year

Generally, an expatriate coming to India for the first time will qualify as ROR in the 3rd or 4th year.
Case 1
If he satisfies at least one of the basic conditions, but NONE of the additional conditions

Case 2
If he satisfies at least one of the basic conditions “AND” one of the two additional conditions
Illustrations For Review
Illustration 1: Chris Gayle, the West Indies cricketer comes to India for 100 days every year. Find out his residential Status for the A.Y. 2013-14.

Solution:

• For the purpose of his residential Status in India for A.Y. 2013-14, the relevant previous year is 2012-13.

Step 1: The total stay of Chris Gayle in the last 4 years preceding the previous year is 400 days (i.e. $100 \times 4$) and his stay in the previous year is 100 days. Therefore, since he has satisfied the second condition in section 6(1), he is a resident.

Step 2: Since his total stay in India in the last 7 years preceding the previous year is 700 days (i.e. $100 \times 7$), he does not satisfy the minimum requirement of 730 days in 7 years. Any one of the conditions not being satisfied, the Individual is Resident but not ordinarily resident.

Therefore, the residential Status of Chris Gayle for the assessment year 2013-14 is Resident but not ordinarily resident.
Mr. B, a Canadian citizen, comes to India for the first time during the P.Y.2008-09. During the financial years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, he was in India for 55 days, 60 days, 90 days, 150 days and 70 days respectively. Determine his residential Status for the A.Y.2013-14.

Solution:

During the previous year 2012-13, Mr. B was in India for 70 days and during the 4 years preceding the previous year 2012-13, he was in India for 355 days (i.e. 55+ 60+ 90+ 150 days), i.e less than 365 days in past 4 years

Thus, he does not satisfy section 6(1). Therefore, he is a non-Resident for the previous year 2012-13, i.e for AY 2013-14.
Mr. C, a Japanese citizen left India after a stay of 10 years on 1.06.2010. During the financial year 2011-12, he comes to India for 46 days. Later, he returns to India for 1 year on 10.10.2012. Determine his residential Status for the A.Y. 2013-14.

Solution

- During the previous year 2012-13, Mr. C was in India for 173 days (i.e. 22+ 30+ 31+ 31+28+ 31 days). His stay in the last 4 years is:
  - 2011-12 - 46
  - 2010-11 - 62 (i.e. 30 + 31 + 1)
  - 2009-10 - 365 (since he left India on 01.06.2010 after 10 years)
  - 2008-09 - 365 (since he left India on 01.06.2010 after 10 years)
  - 838

Mr. C is a Resident since his stay in the previous year 2012-13 is 173 days and in the last 4 years is more than 365 days.

For the purpose of being ordinarily resident, it is evident from the above calculations, that his stay in the last 7 years is more than 730 days and

(ii) since he was in India for 10 years prior to 1.6.2010, he was a Resident in at least 2 out of the last 10 years preceding the relevant previous year. Therefore, Mr. C is a Resident and ordinarily Resident for the A.Y.2013-14.
Mr. D, an Indian citizen, leaves India on 22.9.2012 for the first time, to work as an officer of a company in France.

Determine his residential Status for the A.Y. 2013-14.

Solution

During the previous year 2012-13, Mr. D, an Indian citizen, was in India for 175 days (i.e. 30+ 31+ 30+31+ 31+22 days). He does not satisfy the minimum criteria of 182 days.

Also, since he is an Indian citizen leaving India for the purposes of employment, the exemption under second condition under section 6(1) is applicable to him. Therefore, Mr. D is a non-Resident for the A.Y.2013-14.
Residential Status of Persons other than Individuals
The criteria for determining the residential Status of persons other than Individual is based on the Place where Control & Management of the entity is located at.

The expression “control and management” referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents. The business may be done from outside India and yet its control and management may be wholly within India.
Control and management of a business is said to be situated at a place where the head and brain of the adventure is situated.

The place of control may be different from the usual place of running the business and sometimes even the registered office of the assessee.

Control and management of a business need not necessarily be done from the place of business or from the registered office of the assessee.

Control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.
Residential Status of HUF
A HUF would be **Resident** in India if the control and management of its affairs is situated wholly or partly in India.

If the control and management of the affairs is situated **wholly outside India** it would become a **non-resident**.
# Residential Status of HUF–Sec 6(2)

<table>
<thead>
<tr>
<th>Place of Control &amp; Management of HUF</th>
<th>Residential Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly in India</td>
<td>Resident</td>
</tr>
<tr>
<td>Wholly out of India</td>
<td>Non -Resident</td>
</tr>
<tr>
<td>Partly in India and Partly Out of India</td>
<td>Resident</td>
</tr>
</tbody>
</table>
HUF – NOT Ordinarily Resident Status

If the HUF is resident, then the Residential Status of the Karta determines whether it is Resident and ordinarily Resident or Resident but not ordinarily resident.

If the Karta is ROR, then the HUF is ROR and if the Karta is RNOR, then HUF is RNOR.
### HUF- ROR Status

<table>
<thead>
<tr>
<th>Additional Condition (i)</th>
<th>Kartha has been Resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Condition (ii)</td>
<td>Kartha has been present in India for a period of 730 days or more during 7 yrs immediately preceding the relevant previous yrs</td>
</tr>
<tr>
<td></td>
<td>IF KARTHA OR MANAGER OF RESIDENT HUF DOES NOT SATISFY “THE TWO” ADDITIONAL CONDITIONS, THE FAMILY IS TREATED AS RESIDENT BUT NOT ORDINARILY A RESIDENT IN INDIA</td>
</tr>
</tbody>
</table>
The business of a HUF is transacted from Australia and all the policy decisions are taken there. Mr. E, the karta of the HUF, who was born in Kolkata, visits India during the P.Y.2012-13 after 15 years. He comes to India on 1.4.2012 and leaves for Australia on 1.12.2012. Determine the residential Status of Mr.E and the HUF for A.Y. 2013-14.

Solution

• (a) During the P.Y.2012-13, Mr. E has stayed in India for 245 days (i.e. 30+31+30+31+31+ 30+31+30+1 days). Therefore, he is resident. However, since he has come to India after 15 years, he cannot satisfy any of the conditions for being ordinarily resident.

• Therefore, the residential Status of Mr. E for the P.Y. 2012-13 is Resident but not ordinarily resident.

• (b) Since the business of the HUF is transacted from Australia and nothing is mentioned regarding its control and management, it is assumed that the control and management is also wholly outside India. Therefore, the HUF is a non-Resident for the P.Y. 2012-13.
Residential Status of Companies

An Intro.
A company is said to be Resident in India if -

- (i) it is an Indian company as defined under section 2(26), or
- (ii) its control and management is situated wholly in India during the accounting year.

Thus, every Indian company is Resident in India irrespective of the fact whether the control and management of its affairs is exercised from India or outside.

But a company, other than an Indian company, would become Resident in India only if the entire control and management of its affairs is in India.

The control and management of the affairs of company are said to be exercised from the place where the directors meeting (not shareholders meetings) are held, decisions taken and directions issued.
### Residential Status of a Co. [Sec 6 (3)]

Note: A Company can never be "ordinarily" or "not ordinarily resident" in India

<table>
<thead>
<tr>
<th>Place of Control</th>
<th>An Indian Company</th>
<th>A company other than Indian Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Wholly in India</td>
<td>Resident</td>
<td>Resident</td>
</tr>
<tr>
<td>• Wholly Out of India</td>
<td>Resident</td>
<td>Non-Resident</td>
</tr>
<tr>
<td>• Partly in India and partly outside India</td>
<td>Resident</td>
<td>Non-Resident</td>
</tr>
</tbody>
</table>
Residential Status of Firms & Associations
A Firm and an AOP would be **Resident in India** if the **control and management** of its affairs is **situated wholly or partly** in India.

Where the **control and management** of the affairs is **situated wholly outside India**, the Firm would become a **non-resident**.
Scope of Total Income and Residential Status
Scope of Total Income and Residential Status

Sec 5
• lays the foundation for what Income is liable to tax in India

Sec 5
• provides the Scope of total Income in terms of the Residential Status of the person.
• Incidence of tax on any person depends upon his Residential Status
Following criteria needs to be considered for any Income to be included in the Scope of total Income liable for tax in India:

<table>
<thead>
<tr>
<th>Residential Status of the assessee</th>
<th>Place of accrual or receipt of Income (actual or deemed)</th>
<th>Point of time of accrual or receipt of Income</th>
</tr>
</thead>
</table>

Total Income Taxable In India
**Indian Income & Foreign Income**

<table>
<thead>
<tr>
<th>Status of Income</th>
<th>Whether Income is received (or deemed to be received) in India during the relevant year</th>
<th>Whether Income accrues (or arises or is deemed to accrue or arise) in India during the relevant year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Income</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Indian Income</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Indian Income</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Foreign Income</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
The total Income of a Resident and Ordinarily Resident would consist of:

- Income received or deemed to be received in India during the previous year
- Income which accrues or arises or is deemed to accrue or arise in India during the previous year
- Income which accrues or arises outside India even if it is not received or brought into India during the previous year

Total Income of a Resident & Ordinary Resident
For a Resident all Income received or accrued irrespective of the place where it is received or accrued is taxable in India.

Global Income is taxable in India – whether it accrues or received in India or Outside India.
For RNOR, only Income that is received or accrued in India (including deemed receipt or accrual) is taxable in India.

Exception to above:
- Income derived from a business controlled from or profession set up in India even if the Income is accrued or arises outside India.

For Resident But Not Ordinarily Resident the Scope of total Income includes all Income that is included for a ROR except for Income accruing or arising outside India.
For a Non Resident the Scope of total Income includes only:

- Income received or deemed to be received in India in the previous year
- Income which accrues or arises or deemed to accrue or arise in India during the previous year

For a NON Resident:

- Income accruing or arising outside India is not liable for tax in India
Tax incidence for Individual & HUF

Indian Income of Individuals & HUF

- ROR: Taxable in India
- RNOR: Taxable in India
- NR: Taxable in India
### Tax incidence for Individual & HUF

<table>
<thead>
<tr>
<th>Foreign Income</th>
<th>ROR</th>
<th>RNOR</th>
<th>NR</th>
</tr>
</thead>
<tbody>
<tr>
<td>If it is business Income and business is controlled wholly or partly from India or Profession set up in India</td>
<td>Taxable in India</td>
<td>Taxable in India</td>
<td>Not Taxable in India</td>
</tr>
<tr>
<td>If it is business Income and business is controlled outside India or profession outside India</td>
<td>Taxable in India</td>
<td>Not Taxable in India</td>
<td>Not Taxable in India</td>
</tr>
<tr>
<td>Any other Foreign Income (like salary, rent, interest, etc.)</td>
<td>Taxable in India</td>
<td>Not Taxable in India</td>
<td>Not Taxable in India</td>
</tr>
</tbody>
</table>
Tax Incidence for Other Tax Payers

Residents
- Indian Income
  - Taxable in India

Foreign Income
- Taxable in India

Non Residents
- Indian Income
  - Taxable in India

Foreign Income
  - Not Taxable in India
Mrs. Diana, a French National, got married to Mr. Ravi of India in Paris on 1-4-09 and came to India for the first time on 1-12-09.

She continued in India till 31-7-10 and left back to Paris on 1-8-2010.

She returned to India on 1-3-11.

When in India she purchased a property in Calcutta and earned rental Income of Rs.30,000/- pm from 1-4-10.

She also received gifts from friends of in laws of Rs.75,000/-.

During the PY 10-11 she also earned Interest Income of Euro 1000 in Paris and Capital Gains of GBP 2000 in UK.

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When in India she purchased a property in Calcutta and earned rental Income of Rs.30,000/- pm from 1-4-10.

She also received gifts from friends of in laws of Rs.75,000/-.

During the PY 10-11 she also earned Interest Income of Euro 1000 in Paris and Capital Gains of GBP 2000 in UK.

Compute

Her Residential Status for AY 11-12
What is Indian Income and what is foreign Income
What Income is taxable in India
Will her Residential Status change if her stay in India is more than 365 days in the preceding 4 years.
In that case, Determine what Income is taxable in India
Solution

Part 1

• Residential Status of Diana for AY 11-12

Workings

• Relevant PY is 10-11, i.e Stay during 1 April 10 to 31 Mar 11
• Stay between 1st April 10 to 1st Aug 10 = 30+31+30+31+1=123 days
• Stay in second visit 1st Mar 11 to 31st March 11 = 31 days
• Total aggregate stay during PY 10-11 = 154 days (Stay more than 60 days)
• Stay in India past 4 years, i.e in PY 09-10, 08-09, 07-08,06-07 is between 1st Dec 09 to 31st March 10 = 1+31+28+31=91 days

Conclusion

• Stay in India in PY 10-11 is more than 60- days, Diana is not an Indian citizen or PIO, thus no exemption to substitute 182 days. To examine if in last 4 years stay exceeds 365 days, Since Stay is only 91 days in last 4 years, Diana is Non Resident for PY 10-11 or AY 11-12
Part 2

- Determine the nature of Income earned by Diana

Indian Income

- Rent earned from property in India is accrued in India and thus it is Indian Income
- Gift more than 75,000 received from Non relatives in India is received in India and more than exemption limit of 50,000 and thus it is Indian income

Foreign Income

- Interest earned in Paris is accrued and received outside India and thus it is Foreign Income
- Capital Gains earned in UK is accrued and received outside India and thus Foreign Income
Solution

Part 3
• What income is taxable in India

Analysis
• Diana is a Non Resident
• For a NR only Indian Income is Taxable in India and not Foreign Income

Conclusion
• The only Indian income is the rent from the property of 3,60,000 per annum and Gift from Non relatives of Rs.75,000/- is liable to Tax in India
• The foreign income of Interest earned in Paris of Euro 1000 and Capital Gains earned in UK of GBP 2000 is not liable for tax in India
Part 3

- Residential Status if stay in India in last 4 years is more than 365 days

Analysis

- Stay in India during PY 10-11 is 154 days
- Stay is last 4 years is more than 365 days
- She is not an Indian Citizen or PIO to get exemption of 182 days instead of 60 days
- Even if she is a PIO, she is not on Visit to India, she has come to India after marrying an Indian. This can not be considered as visit, thus no exemption of 60 days

Conclusion

- Since her stay is more than 60 days and more than 365 days in last 4 years she is Resident in India
- If we are assuming her stay in India in the last 7 years is less than 730 days and thus her status will be Resident but Not Ordinarily Resident in India
- If we assume her stay in India is last 7 years is more than 730 days and she has been a resident for more than 2 years in last 10 years, she will be Resident Ordinary in India
Part 4

- Taxable Income if she is ROR or RNOR

RNOR

- Only Indian income is taxable – i.e rent and gift
- Foreign income is not taxable- interest in Paris and Capital gains in UK

ROR

- Indian Income and Foreign income is taxable in India
- All income earned by her is taxable in India
Lesson Summary

Residential Status
- Resident and Non Resident
- ROR and RNOR

Criteria
- No. of Days stay in India
- Indian company incorporated in India
- Place of Control and Management

Scope of Total Income
- Resident & ROR : Indian Income & Foreign income liable for tax in India
- Non Resident & RNOR : Only Indian income liable for tax in India with an exception for Foreign income in relation to business in India for RNOR
Thank You

CA. Vivek DS