

RJA

RAJPUT JAIN & ASSOCIATES



CHARTERED ACCOUNTANTS

Residential Status

for the purpose

of Income Tax





Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India).The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders.

Focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service. Rajput Jain & Associates, a professional firm, offers its clients a full range of services, to serve better and to bring bucket of services under one roof, the firm has merged with it various Chartered Accountancy firms pioneer in diversified fields Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials.

We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

RESIDENTIAL STATUS

In India the charge of income tax and scope of taxable income varies with factor of residence.

There are 2 categories of taxable entities viz.

- Residents
- Non-Residents

Residents are further classified into two sub-categories

- Resident and ordinarily resident
- Resident but not ordinarily resident



DETERMINATION OF RESIDENTIAL STATUS OF AN INDIVIDUAL

The residential status of an individual is to be determined on the basis of period of stay of that individual in India and is computed separately for each year.

If an individual satisfies any one of the following condition, he is said to be resident in India for that financial year and those conditions are:-

182

He is in India for 182 days or more in that financial year.

60

365

He is in India for 60 days or more during that financial year and has been in India for 365 days or more during 4 previous years immediately preceding the relevant financial year.

If any one of the above condition is satisfied, the individual is said to be resident of India. However if none of the condition is satisfied, he is said to be a non-resident.

EXCEPTION TO RESIDENTIAL STATUS

There are 2 exceptions to the rule of classification of Residential Status:-

- In case of an individual, who is a citizen of India and who leaves India in any financial year for the purpose of employment outside India, the condition of “60 days of stay in India in that financial year and stay of 365 days or more during 4 previous years immediately preceding the relevant financial year” shall not be applicable and the condition of “stay in India for 182 days or more” would only be applicable.**
- In case of an individual who is citizen of India or a person of Indian origin and who being outside India comes on a visit to India in any financial year, the condition of “60 days of stay in India in that financial year and stay of 365 days or more during 4 previous years immediately preceding the relevant financial year” shall not be applicable and the condition of “stay in India for 182 days or more” would only be applicable.**

CLASSIFICATION OF ORDINARY RESIDENT & NON-ORDINARY RESIDENT

As per sub-section 6 of section 6, a person shall be not ordinary resident in India if he satisfies any one of the following conditions:-

- He has been a non-resident in 9 out of 10 years immediately proceeding the financial year.
- He has been in India for a period of 729 days or less in previous years immediately preceding The financial year.

If any of the above condition is satisfied by the individual then that person is said to be “Resident but not ordinary resident” in India.

If none of the above condition is satisfied by the individual then the person is “Resident and ordinary resident” in India.

CLASSIFICATION OF NON RESIDENT

A “Non-Resident” is an individual who is a citizen of India or a person of Indian origin who is not a resident of India. Thus, in order to determine whether an individual is a non-resident Indian or not, his residential status is required to be determined under Section 6. As per Section 6 of Income tax Act, an Individual is said to be a non-resident in India if he is not a resident in India and an Individual is deemed to be resident in India in any previous year if he satisfies any of the following conditions:

- If he is in India for 182 days or more during the previous year

OR

- If 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.

However, condition No. 2 does not apply where an individual being citizen of India or a person of Indian origin, who being outside India, comes on a visit to India during the previous year. A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.

RESIDENTIAL STATUS OF HINDU UNDIVIDED FAMILY, FIRM OR AOP

A partnership firm or an association of persons or Hindu undivided family is said to be resident in India if:

“The control and management of its affairs are wholly or partly situated within India during the relevant previous year. It will be a non-resident only when control and management of its affairs are wholly situated outside India.”

RESIDENTIAL STATUS OF A COMPANY

Section 6(3) as amended by the Finance Act, 2015, with effect from 1st April, 2016 to provide that a company is said to be resident in India in any previous year, if-

- It is an Indian company; or
- Its place of effective management in that year is in India .

"place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.

SCOPE OF TAXATION

SOURCES OF INCOME	RESIDENT & ORDINARY RESIDENT	RESIDENT & NOT ORDINARY RESIDENT	NON RESIDENT
Indian Income			
Income received or deemed to be received in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise out side India, but first receipt is in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Foreign Income			
Income accruing or arising or deemed to accrue or arise outside India and received outside India, during the current financial year	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising or outside India from a Business/ profession controlled in/from India during the current financial year	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising out side India and received outside India during the year preceding the year and remitted to India during previous year	Taxable in India	Not Taxable in India	Not Taxable in India

EXCEPTIONS TO THE RULE OF TAXABILITY

Generally, income of previous year is taxed (i.e., assessable) in the immediately following assessment year.

However, in following cases, income of previous year is taxed in the previous year itself:-

- **Income of a person leaving India [Section 174]**

If following conditions are satisfied

- (i) It appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry.
- (ii) Such a person has no present intention of returning to India.

- **Income of a person likely to transfer property to avoid tax [Section 175]**

If following conditions are satisfied

- (i) It appears to the Assessing Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose off or otherwise part with any of his assets.
- (ii) The intention of such sale, transfer, etc, is with a view to avoid payment of any liability under the provisions of the Act

- **Income of discontinued business or profession [Section 176]**

If a business or profession is discontinued during a year, then the income from the first day of the assessment year till the date of discontinuation can be charged to tax by the Assessing Officer in the assessment year in which the business is discontinued or in the immediately following assessment year.

- **Income from shipping business of non-residents [Section 172]**

If following conditions are satisfied

- (i) The assessee is a non-resident.
- (ii) He owns a ship or a ship is chartered by him.
- (iii) The ship carries passengers, livestock, mail or goods shipped at a port in India.

- **Income of bodies formed for short duration [Section 174A]**

- (i) It appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person has been formed or established or incorporated for a particular event or purpose.
- (ii) Above entity is likely to be dissolved in the assessment year in which such an entity was formed or established or incorporated or immediately after such assessment year.



CONTACT US

Disclaimer



No part of this article may be reproduced, reprinted or utilized in any form or by any means electronic or mechanical without prior permission of the publisher. While every care is taken in compilation of information contained herein, the publisher cannot accept any responsibility for error or omission or for the use of trademark, copyrights, brand name, logos or other identifying symbols provided in supporting and participating companies and organizations. However all possible and reasonable care has been taken to ensure that the information in this newsletter is as accurate and up-to-date at the time of printing. This publication is for internal use only.

CORPORATE OFFICE

**P-6/90, Connaught Place, Connaught Circus,
New Delhi-110001, India.**

Phone No: +91-9811322785; 011-23343333.

RAJPUT JAIN & ASSOCIATES

www.carajput.com

**P-6/90, Connaught Circus
Connaught Place**

New Delhi 110001 INDIA

Telephone: +91 011-23343333

Email: info@caindelhiindia.com



We are the exclusive member in India of the Association of International Tax Consultants, an association of independent professional firms represented throughout worldwide.