**Semester: IV (UG)**

**Subject: Taxation I**

**Name of the Teacher: Dr. Sujit Kumar Roy (SKR)**

**Lecture Note # 2**

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**Residential Status and Scope of Total Income**

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**Learning objectives:** When you finish reading this note, you will be able to:

* determine the residential status of various types of assessees (Company assessee is excluded from your syllabus);
* solve the numerical sums on the determination of residential status. This type of problems is quite favourite with the paper setters;
* given the residential status of an assessee and his/her income from various places ( inside India , outside India), compute his total income;

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2.1. **Introduction**: For all practical purposes, the gamut of taxation depends on three most important considerations, e.g. (a) The place of earning the income (b) the period during which the income was earned; and (c ) the residential status of the assessee. Section 5 of the Income Tax Act 1961, provides the meaning and scope of total income in terms of residential status of an assessee. For the purpose of assessment, the meaning of residential status is, therefore, important.

**2.2. Different types of residential status** :

The Act contemplates only three categories of assessees based on the period of their stay in India. These three categories are :

(a) Resident and ordinarily resident in India,

(b) Resident but not ordinarily resident in India, and

(c) Non-resident

*One must also remember the following points:*

* Residential status of an assessee shall be determined for each of the previous years so that a person is ‘resident and ordinarily resident’ for one previous year but for another previous year he is a ‘resident but not ordinarily resident’ or ‘non-resident’.
* Residential status and citizenship are not the same thing. Citizenship determines a person’s political domicile. Except for the Explanations to Section 6(1), it has no apparent relation with the residential status of an assessee. But residential status depends on a person’s actual stay in India, not on his place of birth or citizenship.

**2.3.** **Determination of residential status of different types of assessees :** In this section we shall discuss the rules for determination of : A. Residential status of an individual; B. Residential status of a Hindu undivided family ; C. Residential status of a firm and association of persons.

**A. . How residential status of an individual is determined:**

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| For any assessment year an individual may be : (a) a resident and ordinarily resident in India, or (b) a resident but not ordinarily resident in India, or (c) a non-resident in India.  ● **Resident and ordinarily resident :** An individual is said to be resident and ordinarily resident in India if he satisfies at least **one** of the **basic conditions** mentioned under Section 6(1) and **both** the **additional conditions** mentioned under Section 6(6)(a).  **Basic conditions *[Section 6(1)]* :** An individual is said to be a resident in India in any previous year, if he :  (a) is in India in that year for a period or periods amounting in all to 182 days or more *[Section 6(1)(a)],* or  (b) is in India in that year for a period or periods amounting in all to 60 days or more and 365 days or more during the four years preceding the previous year *[Section 6(1)(c)]*.  **Exceptions :** In the case of an Indian citizen, the aforesaid rules are, however, subject to the following exceptions :  (i) an Indian citizen who leaves India in any previous year as a member of the crew of an Indian ship or for the purposes of employment outside India, the period of 60 days mentioned in (b) above shall be taken to be 182 days *[Explanation (a) to Section 6(1)]* ; and  (ii) an Indian citizen or a person of Indian origin, who being outside India, comes on a visit to India in any previous year, the period of 60 days mentioned in (b) above shall be taken to be 182 days *[Explanation*  *(b) to Section 6(1)]*.  (iii) In the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed *[Explanation 2 to Section 6(1).*  The effect of these exceptions is that an Indian citizen shall not be treated as resident in India unless he or she stays in India for a minimum period of 182 days during the previous year.  **Additional conditions *[Section 6(6)(a)]* :** When an individual satisfies any one of the aforesaid basic conditions, he is called a **resident** in India. But in order to be called a resident and ordinarily resident in India, he or she has to fulfil both the additional conditions mentioned below :  (a) he or she has been a resident in India in at least 2 out of 10 previous years preceding the relevant previous year ; and  (b) he or she has been in India for a period or periods amounting in all to 730 days or more during the 7 years preceding the relevant previous year.  ● **Resident but not ordinarily resident :** An individual is said to be a resident but not ordinarily resident in India if he satisfies any one of the basic conditions mentioned in Section 6(1), but does not satisfy both the additional conditions mentioned under Section 6(6)(a).  ● **Non-resident :** An individual is said to be a non-resident in India if, during the previous year, he or she does not fulfil any one of the basic conditions mentioned under Section 6(1). Fulfilment of additional conditions is not necessary in this case. |

**B. How residential status of a Hindu undivided family is determined?[ [Sections 6(2) and 6(6)(b)] :** Like an individual, a Hindu undivided family may be : (1) a resident and ordinarily resident, (2) a resident but not ordinarily resident, and (3) non-resident.

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| ● **Resident and ordinarily resident :** According to Section 6(2), a Hindu undivided family shall be called a resident in India in any previous year if the control and management of its affairs is wholly or partly situated in India.  A Hindu undivided family shall be called a resident and ordinarily resident in India if the manager or *karta* of the family fulfils the following two additional conditions mentioned under Section 6(6)(b) :  (a) the manager or *karta* has been resident in India at least in 2 out of 10 previous years preceding the relevant previous year, and  (b) the manager or *karta* has been in India for a period of 730 days or more during the 7 previous years preceding the relevant previous year.  ● **Resident but not ordinarily resident :** A Hindu undivided family is said to be resident but not ordinarily resident in India if, during the previous year, the control and management of its affairs is wholly or partly situated in India, but the manager or *karta* of the family does not satisfy both the additional conditions mentioned under Section 6(6)(b).  ● **Non-resident :** According to Section 6(2), a Hindu undivided family is said to be non-resident in India in any previous year if the control and management of its affairs is situated wholly outside India. |

**C. Residential status of firm and association of persons [Section 6(2)] :** A firm or an association of person can be either a resident or non-resident. There cannot be residentialstatus like “ordinary” or “not ordinarily resident”.

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| ● **Resident:** According to Section 6(2), a firm or an association of persons is said to be resident in India if during the previous year the control and management of affairs of the firm or association of persons is wholly or partly situated in India.  ● **Non-resident:** According to Section 6(2), a firm or an association of persons is said to be non-resident in India if during the previous year the control and management of their affairs are situated wholly outside India. |

**2.4. Residential status and the scope of total income [ Section 5]:**

1. **Scope of total income of resident and ordinarily resident assessee *[Section 5(1)]* :**

The incidence of tax or the scope of total income of any previous year of an assessee who is resident and ordinarily resident would, under Section 5(1), consist of :

(a) income received or deemed to be received in India during the previous year by or on behalf of such person, or

(b) income which accrues or arises or is deemed to accrue or arise to him in India during the previous year, or

(c) income which accrues or arises to him outside India during the previous year.

**B. Scope of total income of resident but not ordinarily resident assessee *[Section 5(1)]*:**

The incidence of tax or the scope of total income of any previous year of an assessee who is resident but not ordinarily resident would, under proviso to Section 5(1), consist of :

(a) income received or deemed to be received in India during the previous year by or on behalf of such person ; or

(b) income which accrues or arises or is deemed to accrue or arise to him in India during the previous year ; or

(c) income which accrues or arises to him during the previous year outside India from a business controlled in or profession set up in India.

**C. Scope of total income of non-resident assessee *[Section 5(2)] :***

The incidence of tax or scope of total income of an assessee who is a non-resident, would, under Section 5(2), consist of :

(a) income which is received or is deemed to be received in India during the previous year by or on behalf of such person ; or

(b) income which accrues or arises or is deemed to accrue or arise to him in India during the previous year.

**Picture at a glance** :

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| Income | Resident and ordinarily resident | Resident but not ordinarily resident | Non-resident |
| Income received in India or deemed to be received in India —whether accrued in India or accrued outside India. | Taxable | Taxable | Taxable |
| Income accruing or arising in India or deemed to arise or accrue in India — whether received in India or received outside India. | Taxable | Taxable | Taxable |
| Income accruing or arising outside India from a business or profession set up in or controlled from India. | Taxable | Taxable | Not taxable |
| Income accruing or arising outside India from a business controlled from outside India or a profession set up outside India. | Taxable | Taxable | Not taxable |
| Income received outside India and subsequently remitted to India — whether taxable at the time of remittance. | Taxable | Not taxable | Not taxable |

**Given the rules for the determination of the residential status of different types of assessees, let us proceeded to solve some numerical questions on the topic.**

**Problem 1:** Mr. Roy, a citizen of India, is employed with XYZ Ltd. at Kolkata. He left India for the first time on June 30, 2018 for the purpose of working on a project of his employer company in U.S.A. After completion of the project he came back to Kolkata on January 1, 2020. Determine his residential status for the assessment years 2019-20 and 2020-21. [ **C.U. B.Com. (H) 2014**]

For the assessment years 2013-14 and 2014-15, the previous years are the financial years 2012-13 and 2013-14

respectively. During these years he was present in India as below:

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| PY | Month | No. of days |
| 2018-19 (A.Y. 2019-20)  2019-20 ( A.Y. 2020-21 ) | April - June 30  January - March | [30 + 31 + 30] = 91 days  [31 + 28 +31] = 90 days |

According to the Explanation(a) to Section 6 (1), an Indian citizen who leaves India in any year for the purpose of employment, he will not be treated a resident in India unless he has stayed in India for 182 days or more in that year. Similarly, under the Explanation(b) to the same section, an Indian citizen or a person of Indian origin, who comes on a visit to India, he/she will not be treated as a resident in India unless he/she has stayed in India for a

period of 182 days or more during that year.

In consequence, both for the assessment years 2019-2020 and 2020-2021, Mr. Roy will be a non-resident in India.

**Problem 2:**

Brown, a citizen of the Bahamas, came to India for the first time on 10th August, 2014 and stayed up to 5th March, 2015. Subsequently he stayed in India during 2015-16, 16-17, 17-18, 18-19 and 19-20 for 120 days, 110 days, 100 days, 85 days and 62 days respectively. Determine his residential status for the A.Y. 2020-21.

During the previous year 2019-20, he earned income of Rs. 2,50,000 from a business in the Bahamas which is controlled from India.

Discuss the taxability of such income in India. [**CU B.Com. (H) 2012]**

**Solution**

(i) For the assessment year 2020-21 the relevant previous year is the financial year 2019-20.

During the relevant previous year Brown was present in India for 62 days and in the four previous years preceding the relevant previous year he was present in India for 415 days [120 + 110 + 100 + 85].

Brown thus fulfils one of the basic conditions mentioned under section 6(1). However, being in India for the first time in 2014, it is not possible for him to fulfil both the additional conditions mentioned under Section 6(6) (a), i.e.

(i) Resident in India for at least 2 years out of 10 years preceding the relevant previous year ; and

(ii) Presence in India for 730 days or more during the 7 years preceding the relevant previous year.

Therefore, for the previous year 2019-20, Brown is a resident but not ordinarily resident in India.

(ii) Under Section 5 (1), the scope of total income of a resident but not ordinarily resident includes income which is received or which accrues or arises to him during the previous year outside India from a business controlled from India.

In view of this, Brown will be liable to pay tax on his income from a business in the Bahamas.

**Problem 3:**

During the financial year 2013-14 Sri Avirup Acharya had the following incomes. Compute the

income of Sri Acharya if he is (i) Not ordinarily resident and (ii) Non-resident in India.

(i) Income from profession in India but received in USA Rs. 1,00,000

(ii) Agricultural income accrued and received in Australia Rs. 20,000

(iii) Income from business in Indonesia not brought into India Rs. 3,00,000. The business is controlled

from India.

(iv) Property income accrued and received in London (out of which Rs. 40,000 was remitted to

India). Rs. 1,30,000

(v) Interest from deposits with an African company but received in India. Rs. 75,000. [ **CU B.Com. H. 2010**]

**Solution**:

Computation of total income of Shri Avirup Acharya for the assessment year 2220-2021 relating to the previous

year 2019-2020.

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|  | Not ordinarily resident  Rs. | Non -resident  Rs. |
| (i)Income from profession in India but received in the USA  (ii) Agricultural income accrued and received in Australia  (iii)Income from business in Indonesia, which is controlled from India  iv) Property income accrued and received in London  (v) Interest from deposits with an African company but received in India  Gross Total Income  Less; Deductions u/s 80C – 80U | 1,00,000  -  3,00,000  -  75,000 | 1,00,000  -  -  -  75,000 |
| 4,75,000  Nil | 1,75,000  Nil |
| 4,75,000 | 1,75,000 |

**Exercise** :

1. Mr. S, a resident of USA, came to India for the first time on May 1, 2013 He stayed here without any break for 3 years and left for South Africa on May 1, 2016. He returned to India on April 1, 2017 and went back to USA on December 1, 2017. He was posted back to India on January 20, 2020 and is still here. Determine his residential status for the assessment year2020-21. [ **CU B.Com. H. 2006**]

**Ans**: Resident and ordinarily resident in India.

1. When is an individual said to be “Resident” in India ? [[ **CU B.Com. H. 2007]**
2. Mr. Smith is a foreign citizen. Since 1990 he visits India every year in the month of April for 100 days. Find out the residential status or Mr. Smith for the assessment year 2014-15. **CU B.Com. H. 2008]**

**Ans**: *If Mr. Smith is not a person of Indian origin:* resident but not ordinarily resident in India. *If Mr. Smith is a person of Indian origin:* non-resident in India.

1. When is an individual said to be a ‘Resident and ordinarily resident’ in India ? . **CU B.Com. H. 2009]**
2. A foreign citizen came to India with a job on 7th March, 2020 and settled here. What will be his residential status for the assessment year 2020-2021 ? Give reasons. [ Ans. Non-resident]
3. A, an engineer, left India for London on 5th March, 2019 for taking practical training there. He returned to India on 24th March, 2020. He was never out of India in the past.

State, giving reasons, the residential status of A for the previous year 2019-2020. [ Ans. Non-resident]

1. Amarnath came to India for the first time on 1st April, 2013. He left India for England on 20th March, 2017 and returned to India on 21st June, 2019. Since then, he has been staying in India without break.

Determine his residential status for the assessment year 2020-2021. [ **Resident and ordinarily resident]**

***8.*** Mr Howard, an Australian citizen, comes to India for the first time on 25th June, 2019. On 11th September, 2019, he leaves for Dhaka, Bangladesh, on a business trip. He came back to India on 1st January, 2020 and finally leaves India on 14th January, 2020. What will be the residential status of Mr. Howard for the assessment year 2020-2021 ? [ Non-resident]

**9.** Dr. Basu, a professor of Calcutta University, leaves India for the first time on 30th September, 2019 to join in an equivalent post in the University of Nigeria. Till 31st March, 2220, he did not return to India. Determine the residential status of Dr. Basu for the assessment year 2020-2021. What will be his residential status if he leaves India on 28th September, 2019 ? [Resident and ordinarily resident ; non-resident if goes on 28th Sept. ]

**10.** Mr. Majumder, a Bengali gentleman from Kolkata, is permanently settled in England since 1980. He, however, visits India every year for 100 days. Determine the residential status of Mr. Majumder for the assessment year 20120-2021. .. Resident and ordinarily resident ; non-resident if person of Indian origin]

**11.** Dr. Chatterjee, who was teaching accountancy for the last 20 years in a university in New Zealand, finally returns to Kolkata on 25th February, 2020. Since then he was living here permanently.

Determine the residential status of Dr. Chatterjee for the previous year 2019-2020. [**Non-resident**]

**12.** Shri Amalan Majumder furnishes the following particulars of his income for the previous year 2019-2020 :

(i) Received Rs. 5,000 in India which was accrued in Africa,

(ii) Rs. 20,000 earned in India but received in England.

(iii) Rs. 20,000 earned and received in England but brought to India.

(iv) Rs. 10,000 earned and received in England from a business which was controlled from England. The amount was deposited in a bank account there.

(v) Rs. 5,000 untaxed foreign income from Bangladesh and brought into India during the previous year.

State which of these incomes will be taxable in India during the previous year if Mr. Majumder is (a) Resident and ordinarily resident (b) Not ordinarily resident (c) Non-resident.

[And. (a) Rs. 55,000; (b) Rs. 25,000 (c) Rs. 25,000]

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| **Reference : Principles and Practice of Direct Tax ( Taxation 1- Semester IV) 17th Edition** |