



RAMA UNIVERSITY

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FACULTY OF COMMERCE AND MANAGEMENT

COURSE: B.COM VI SEM.

SUBJECT: Corporate Tax Planning

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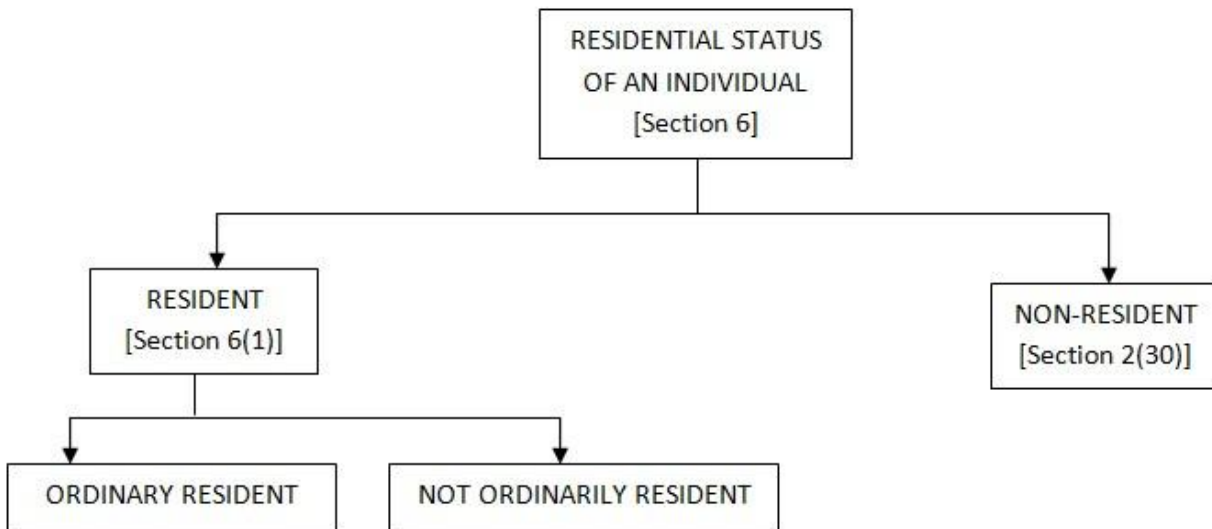
LECTURE: 05

NAME OF FACULTY: DR. PALASH BAIRAGI

LECTURE-05



RESIDENTIAL STATUS OF AN 'INDIVIDUAL' (SECTION-6) - UNDER INCOME TAX ACT.



When an individual is said to be 'Resident' in India ?

An individual is said to be resident in India if he satisfies any one of the following two conditions:

He is in India for a period or periods amounting in all to 182 days or more in the relevant previous year;

OR

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

Exceptions/Concession: There are two exceptions/concession to the above rule:

1. In case of an individual, who is a citizen of India and who leaves India in any previous year for the purposes of employment outside India, the condition No. 2 supra (mentioned above) shall not be applicable for the relevant previous year in which he leaves India. In other words, for that particular previous year in which he leaves India for the purposes of employment outside India he shall be called resident only when he satisfies the condition No. 1 mentioned

above. Similarly in case of an individual who is a citizen of India and who leaves India in any previous year as a member of the crew of an Indian ship, the condition No. 2 supra shall not be applicable.

2. In case of an individual, who is a citizen of India, or is a person of Indian origin, who, being outside India, comes on a visit to India in any previous year, the condition No. 2 mentioned above in his case also shall not be applicable. In other words, he shall not be a resident in India unless his stay in India is atleast 182 days during the relevant previous year in which he visits India.

When an individual is said to be 'Resident and Ordinarily Resident' in India ? [Sec. 6(1), 6(6)(a)]

An individual who is resident in India, shall be resident and ordinarily resident in India if he satisfies both the following conditions—

He has been 'Resident in India' for at least 2 out of 10 previous years immediately preceding the relevant previous year.

This means that he must have satisfied any one of the conditions, with exceptions/concession (given above) for being a resident for at least 2 out of 10 previous years immediately preceding the relevant previous year.

AND

He has been in India for 730 days or more, during 7 previous years immediately preceding the relevant previous year.

When an individual is said to be 'Resident but Not Ordinarily Resident' in India ? [Section 6(6)(a)]

An individual who is resident in India is said to be "Not Ordinarily Resident in India" if he does NOT Satisfy any or both of the conditions mentioned ABOVE i.e. case of Resident and Ordinary Resident..

When an individual is said to be 'Non-Resident' in India [Section 2(30)]

An individual is said to be a 'Non-Resident', if he is NOT a 'Resident' in India i.e. none of the conditions (with exception/concession) mentioned in ABOVE para is satisfied.

Example :

Rickey Pointing, an Australian cricketer has been coming to India for 100 days every year since 2005-06:

(a) Determine his residential status for the assessment year 2018-19.

(b) Will your answer be different if he has been coming to India for 110 days instead of 100 days every year.

Solution :

(a) Rickey Pointing satisfies the second condition of category (A) because he is in India for more than 60 days during the relevant previous year and for 400 days during four years preceding the relevant previous year. Therefore, he is a resident.

Further, in this case, although he satisfies the first condition of category (B) of being resident for at least 2 out of 10 preceding previous years but he does not satisfy the second condition of category (B) as during 7 years preceding the previous year, he is in India for only 700 days. He shall, therefore, be a resident but not ordinarily resident in India.

(b) Yes. He will, in this case, be resident and ordinarily resident in India. He satisfies both conditions of category (B) as he was in India for 770 days in the last seven years and he was resident for at least 2 previous years out of 10 previous years immediately preceding the relevant previous year.
