



# RAMA UNIVERSITY

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**FACULTY OF COMMERCE AND MANAGEMENT**

**COURSE: B.COM III SEM.**

**SUBJECT: Income Tax Laws and Practice**

**SUBJECT CODE: BCH 320**

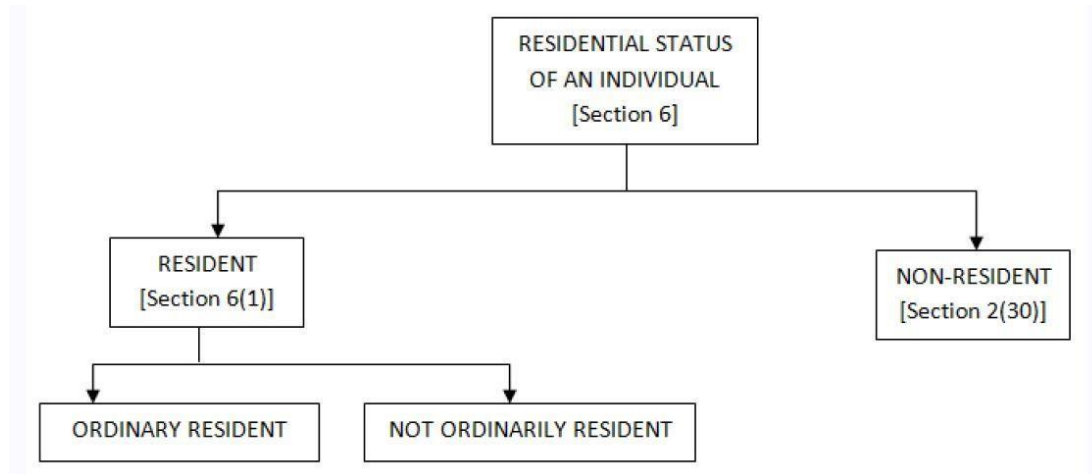
**LECTURE: 10**

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## LECTURE-10



## 4. RESIDENTIAL STATUS AND TAX LIABILITY



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.

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.

### ***Important explanations :***

— Relevant previous year means the previous year for which the residential status is being determined.

— In computing the period of stay in India, it is not necessary that the stay should be for a continuous period. What is to be seen is the total number of days' stay in India during the relevant previous year.

— It is also not necessary that the stay should be only at one place. e.g., he may stay at Bombay for 90 days and then go out of India. On return in the same previous year, he may stay at Delhi for 120 days during the same previous year. His total stay in India will be 210 days for that previous year.

— In computing the period of 182 days, the day the individual enters India and the day he leaves India should both be treated as stay in India.

— Place and purpose of stay in India is immaterial. Presence in territorial waters of India would also be regarded as presence in India.

*Meaning of employment:* The term employment is not defined in the Income-tax Act.

A man may employ himself so as to earn profits in many ways. Thus he can set up an independent practice abroad or businessman can shift his business activities to a foreign country. A person merely undertaking tours abroad in connection with his employment in India would not be eligible for the relaxation provided under exception 1.

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.

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.

Rule of Residence in brief in Table Format : The table given below highlights the rule of residence in brief for the assessment year 2018-19 & 2019-

**TABLE****BASIC CONDITIONS AT A GLANCE**

<i>In the case of an Indian citizen who leaves India during the previous year for the purpose of employment or, in the case of an Indian citizen who leaves India during the previous year as a member of the crew of an Indian ship</i>	<i>In the case of an Indian citizen or a person of Indian origin (who is abroad) who comes to India on a visit during the previous year</i>	<i>In the case of an individual [other than an individual mentioned in columns (1) and (2)]</i>
(1)	(2)	(3)

**Residential Status Of An Individual (Section-6)**

a. Presence for at least 182 days in India during the previous year 2017-18  b. Non-functional	a. Presence for at least 182 days in India during the previous year 2017-18  b. Non-functional	a. Presence for at least 182 days in India during the previous year 2017-18  b. Presence for at least 60 days in India during the previous year 2017-18 and 365 days during April 1, 2013 to March 31, 2017.
<b>ADDITIONAL CONDITIONS AT A GLANCE</b>		
1. Resident in India in at least 2 years out of previous years 2007-08 to 2016-17 [or must satisfy at least one of the basic conditions, in 2 out of 10 immediately preceding previous years] (i.e., during the previous years 2007-08 to 2016-17).		

2. Presence of at least 730 days in India during April 1, 2010 and March 31, 2017.

RULES OF RESIDENCE AT A GLANCE		
<i>Resident and Ordinarily Resident</i>	<i>Resident and Not-Ordinarily Resident</i>	<i>Non-Resident</i>
Must satisfy at least one of the basic conditions and both of the additional conditions [i.e., one of (a) or (b) and both of (1) and (2)]	Must satisfy at least one of the basic conditions and one or none of the additional conditions [i.e., one of (a) or (b) and one or none of (1) or (2)]	Should not satisfy any of the basic conditions.

