

# INCOME TAX AMENDMENTS

## RESIDENTIAL STATUS

### 1) **Deemed resident [Section 6(1A)]**

An individual, being an Indian citizen,

- having total income, other than the income from foreign sources,
- exceeding INR 15 lakhs during the previous year would be
- **deemed to be resident** in India in that previous year,
- if he is **not liable to pay tax in any other country or territory** by reason of his domicile or residence or any other criteria of similar nature.

However, this provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).

### 2) **Determination of Residential Status of Individuals – Exceptions/Special Conditions**

In the following cases, a person shall be considered as a resident only if it satisfies the first condition i.e. stay during relevant PY is 182 days or more and we will not test the second condition.

1. An Indian citizen who leaves India during the previous year:

- For the purpose of employment outside India, or
- As a member of crew of an Indian ship.

2. An Indian citizen or a person of Indian origin, who comes on a visit to India during the PY.

However, such person having total income, other than the income from foreign sources exceeding INR 15 lakhs during the previous year will be treated as resident in India if -

- the period of his stay during the relevant previous year amounts to 182 days or more, or
- 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 120 days in the previous year.

– “Income from foreign sources” means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.

### 3) **Resident and Not ordinarily resident**

A not-ordinarily resident person is one who satisfies any one of the conditions specified u/s 6(6).

- 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, or
- iii) If such individual is an Indian citizen or person of Indian origin (who, being outside India, comes on a visit to India in any previous year) having total income, other than the income from foreign sources exceeding INR 15 lakhs during the previous year, who has been in India for 120 days or more but less than 182 days during that previous year, or
- iv) If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A) [It may be noted that a deemed resident will always be a resident but not ordinarily resident].

### Concept Problem 1

Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years.

- a) Find out his residential status for the assessment year 2021-22.
- b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in Australia and represents the Australian cricket team?
- c) What would be your answer if Srinath had visited India for 120 days instead of 100 days every year, including P.Y.2020-21?

### Solution

#### (a) Determination of Residential Status of Mr. Brett Lee for the A.Y. 2021-22:

Period of stay during previous year 2020-21 = 100 days

Calculation of period of stay during 4 preceding previous years (100 x 4=400 days)

2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days
<b>Total</b>	<b>400 days</b>

Mr. Brett Lee has been in India for a period more than 60 days during previous year 2020-21 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the assessment year 2021-22.

Computation of period of stay during 7 preceding previous years = 100 x 7=700 days

2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days
2015-16	100 days
2014-15	100 days
2013-14	100 days

Total	700 days
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Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the assessment year 2021-22. (See Note below)

Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2020-21 relevant to the assessment year 2021-22.

**Note:** An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,

- 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 this case, since Mr. Brett Lee satisfies condition (ii), he is a not-ordinarily resident for the A.Y. 2021-22.

- (b) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in Australia, comes on a visit to India, he would be treated as non-resident in India, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.
- (c) In this case, if Srinath's total income (excluding income from foreign sources) exceeds INR 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2020-21, since his stay in India is 120 days in the P.Y.2020-21 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) does not exceed INR 15 lakh, he would be treated as non-resident in India for the P.Y.2020-21, since his stay in India is less than 182 days in the P.Y.2020-21.

#### 4) Business Connection

##### Concept of Significant Economic Presence Removed and new Provisions Added!!

##### Income attributable to the operations carried out in India includes:

- a) Income from advertisement targeting customers residing in India or accessing advertisement through Internet Protocol Address ('IPA') located in India
- b) Income from sale of data collected from persons residing in India or using IPA located in India
- c) Income from sale of goods and services using data collected from persons residing in India or using IPA located in India

##### 5) Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India.

Accordingly, dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would NOT be deemed to be income accruing or arising in India by virtue of the provisions of section 9(1)(i).

##### 6) Dividend paid by an Indian company outside India [Section 9(1)(iv)]

Dividends paid by an Indian company outside India is deemed to be accrue or arise in India and would be taxable in the hands of shareholders at normal slab rates.

Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty w.e.f. A.Y.2021-22.

## HOUSE PROPERTY

### 7) Treatment of Unrealized Rent [Explanation to Section 23(1)]

Unrealized Rent means such rent which is **irrecoverable** and is considered to be loss i.e., bad debt.

In such cases, while computing GAV, **expected rent** shall be computed for **full year**.

While computing **actual rent received or receivable**, such **unrealized rent shall be excluded**.

GAV shall be

- **Higher** of expected rent and rent received/receivable (**no special treatment like vacancy**).

**Important:** The income-tax returns, however, permit **deduction of unrealized rent from gross annual value**. If this view is taken, the unrealized rent should be deducted only after computing gross annual value.

### Concept Problem

Ganesh has a property whose municipal valuation is INR 2,50,000 p.a. The fair rent is INR 2,00,000 p.a. and the standard rent fixed by the Rent Control Act is INR 2,10,000 p.a. The property was let out for a rent of INR 20,000 p.m. However, the tenant vacated the property on 31.1.2021. Unrealized rent was INR 20,000 and all conditions prescribed by Rule 4 are satisfied. He paid municipal taxes @8% of municipal valuation. Interest on borrowed capital was INR 65,000 for the year. Compute the income from house property of Ganesh for A.Y. 2021-22.

### Solution

Computation of income from house property of Ganesh for A.Y. 2021-22.

Particulars	Amount
<b>Gross Annual Value</b>	<b>1,80,000</b>
a) Fair Rent	2,00,000
b) Municipal Value	2,50,000
c) Higher of (a) or (b)	2,50,000
d) Standard Rent	2,10,000
e) Expected Rent {Lower of c or d}	2,10,000
f) Rent received /receivable (20,000 x 9)	1,80,000
If there was no vacancy, in that case, rent received/ receivable would be 220,000 which is more than expected Rent, therefore GAV shall be rent received /receivable i.e. 180,000	
Less: Municipal Tax (8% of 250,000)	20,000
<b>Net Annual Value</b>	<b>1,60,000</b>
Less: 30% of NAV u/s 24(a)	48,000
Less: Interest on capital borrowed u/s 24 (b)	65,000
<b>Income under the head House Property</b>	<b>47,000</b>

**Note** – Alternatively, if as per income-tax returns, unrealized rent is deducted from GAV, then GAV would be INR 2,00,000, being the actual rent, since the actual rent is lower than the expected rent of INR 2,10,000 owing to

vacancy. Thereafter, unrealized rent of INR 20,000 and municipal taxes of INR 20,000 would be deducted from GAV of INR 2,00,000 to arrive at the NAV of INR 1,60,000.

## OTHER SOURCES

### 8) Taxability of Gift – Receipt of Immovable Property for Inadequate Consideration [Sec 56(2)(x)]

If immovable property has been received for a consideration which is less than the stamp duty value and the difference between the stamp duty value and consideration is more than the higher of –

- i) INR 50,000 and
- ii) **10%** of consideration,

the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the Assessee as “Income from other sources”.

### 9) Taxability of Dividend including deemed dividend

Any income by way of dividends received from a company, **whether domestic or foreign**, is

- taxable in the hands of shareholder at
- normal rates of tax.

Further, deduction is allowed for Interest expenditure to earn such income. However, such interest expenses **cannot exceed 20% of such income included in total income, without deduction under this section.**

Further, no deduction by way of commission or remuneration to a banker or any other person.

However, dividend distributed by a domestic company **before 1.4.2020** and

- received by the shareholders on or after 1.4.2020 and on which tax u/s 115-O, if applicable, has been paid
- would be exempt in the hands of the shareholders.

### MCQ

Mr. X aged, 61 years, received dividend of INR 12,00,000 from ABC Ltd. in P.Y. 2020-21. Interest on loan taken for the purpose of investment in ABC Ltd., is INR 3,00,000. Income included in the hands of Mr. X for P.Y. 2020-21 would be -

- a) 12,00,000
- b) 9,60,000
- c) 9,00,000
- d) 2,00,000

**Upto F.Y. 2019-20**, domestic company was liable to pay additional income-tax u/s 115-O @ 15% [30%, in respect of deemed dividend u/s 2(22)(e)] on dividend distributed by it, consequent to which dividend was exempt in the hands of shareholder u/s 10(34) except dividend chargeable to tax u/s 115BBDA.

Specified assessee, resident in India, was liable to pay tax @ 10% on aggregate dividend received exceeding INR 10 lakhs u/s 115BBDA. Aggregate dividend for the purpose of section 115BBDA shall not include dividend u/s 2(22)(e).

### 10) Income from the UTI or Mutual Fund notified under section 10(23D)

If any person has received any interest or dividend from the **UTI or Mutual Fund notified under section 10(23D)**, such income is exempt from income tax u/s **10(35)**.

It is very important to note here that exemption under section 10(35) of the Income Tax Act shall **not be available to income arising in respect of units received on or after 1<sup>st</sup> April 2020**.

Further, deduction is allowed for Interest expenditure to earn such income. However, such interest expenses **cannot exceed 20% of such income included in total income, without deduction under this section**.