

TAXATION TIMES

May 2022

A word cloud featuring various tax-related terms. The largest words are 'income tax' and 'taxation times'. Other prominent words include 'case laws', 'taxpayer', 'tax officer', 'tax', 'taxation', 'resident', 'withholding tax', 'circulars', 'assessing officer', 'judicial precedents', 'residential status', 'notifications', 'individual taxation', 'cbdt', 'non-resident', 'dtaa', 'tds', 'itat', and 'taxpayer'.

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Introduction

India is rapidly emerging as a preferred investment destination & this is clearly indicated by the fact that FDI inflows have increased 20- fold in the last twenty years. As per a recent Press Release issued by the Government, India has received the highest ever FDI of USD 83.57 million in 2021 – 2022. The FDI equity inflow in the manufacturing sectors has increased by 76 percent in 2021 – 2022 (USD 21.34 million) as compared to 2020 – 2021 (USD 12.09 billion). In terms of top investor countries, Singapore is at the apex with 27% followed by USA at 18%.

These statistics clearly bear witness to the efforts which are undertaken by the Government to promote the Make in India campaign & to ensure that India remains an attractive & investor friendly destination.

Here's what we have in store in this month's Taxation Times:

- a. Taxation of an individual in India depends upon his residential status. The Income Tax Act 1961 defines certain parameters to determine the residential status which are elaborated in detail in an article in the present edition;
- b. Case Laws from various courts & jurisdictions;
- c. Tax Compliance Calendar – June 2022;
- d. Circulars & Notifications – May 2022

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!
Best Regards,
UJA Tax Team



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Article

Residential Status of an Individual & Incidence of Tax

Taxation of individuals in India is primarily based on the number of days they have been in India during the relevant previous year & the preceding previous years. An exercise to determine if an individual is a resident in India or no is to be undertaken every year.

In India, following are the types of residential status for individuals:

- Resident & Ordinary Resident (ROR);
- Resident & Not Ordinarily Resident (RNOR);
- Non – Resident (NR)

s. 6 of the Income Tax Act 1961 ('ITA') lays down provisions relating to the residential status of an individual.

Under s. 6(1) of the ITA, an individual is said to be a resident in India when **any one** of the following two conditions are satisfied:

- a. He is in India for a period of 182 days or more in the previous year; or
- b. He is in India for a period of 60 days or more during the previous year & 365 days or more during the 4 years in the immediately preceding previous year.

If, none of the above two conditions are met, an individual shall qualify as a **Non – Resident** for the previous year.

The ITA is liberal on the provisions for a Person of Indian Origin (PIO) (i.e a foreign citizen who held an Indian passport at anytime or whose parents/grandparents/great grandparents were citizens of India) or an Indian citizen who leaves India for employment abroad.

- i. For an Indian Citizen who leaves India for employment abroad during the previous year, the period of '60 days' referred to in clause b above is substituted by 182 days;
- ii. For an Indian citizen or a PIO having taxable income in India is less than INR 15 lakhs (i.e INR 1.5 million), the period of '60 days' referred to in clause b above is substituted by 182 days.

Here, it is pertinent to note that w.e.f AY 2021 – 2022, for an Indian citizen or a PIO having taxable income in India exceeding INR 15 lakhs (i.e INR 1.5 million), the period of '60 days' referred to in clause 'b' above is substituted by 120 days. Thus, for an Indian Citizen/PIO having taxable income of more than 15 lakhs if his stay in India during the previous year exceeds 120 days & 365 days in the preceding previous four years, he qualifies as a resident.

S. 6(6) of the ITA prescribes two additional conditions under which need to be satisfied for an individual to qualify as a 'resident & ordinarily resident'

- i. He has been a resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year;
- ii. He has been in India for a period of 730 days or more during the 7 years immediately preceding the relevant previous year

Therefore, an individual is said to be a ROR when one of the conditions specified by s. 6(1) of the ITA are satisfied & both of the conditions specified in s. 6(6) of the ITA are satisfied.

Summary

Resident & Ordinarily Resident	An individual satisfies atleast one condition specified under s. 6(1) & both the additional conditions specified under s. 6(6) of the ITA.
Resident but not Ordinarily Resident	An individual satisfies atleast one condition specified under s. 6(1) & either one or none of the additional conditions specified under s. 6(6) of the ITA.
Non – Resident	An individual satisfies neither of the conditions specified under s. 6(1) nor any of the conditions specified under s. 6(6) of the ITA.

Illustration

Scenario I

Mr. X is a person of Indian origin. His income in India during the Financial Year ('FY') 2021 – 2022 & FY 2020 – 2021 is less than INR 15 lakhs (or INR 1.5 million). His number of days of stay in India for the period from FY 2012 – 2013 to FY 2021 – 2022 is as under:

Financial Year	Number of Days of Stay in India
2021 - 2022	167
2020 – 2021	131
2019 - 2020	139
2018 – 2019	141
2017 – 2018	164
2016 – 2017	168
2015 – 2016	174
2014 – 2015	162
2013 – 2014	139
2012 – 2013	143

Analysis: Mr. X residential status for the period from FY 2017 – 2018 to FY 2021 – 2022 is as under:

Period of Stay in India & Residential Status

Part	S.No	Particulars	Financial Year				
			2021 - 2022	2020 - 2021	2019 - 2020	2018 - 2019	2017 - 2018
A		As per s. 6(1), atleast one of the two basic conditions are required to be satisfied to qualify as a resident:					
	a	he is in india the previous year for a period of 182 days or more	No	No	No	No	No
	b	he is in india for a period of 182 days or more during the previous years and 365 or more during 4 years immediately preceding the previous year	No	No	No	No	No
B		As per s. 6(1), atleast one of the two basic conditions are required to be satisfied to qualify as a resident:					
	a	He has been resident in india in atleast 2 out of 10 previous years immediately preceding the relevant previous years	No	No	No	No	No
	b	He has been resident in india for a period of 730 days or more during 7 years immediately preceding the relevant previous years	Yes	Yes	Yes	Yes	Yes
C		Residential Status	Non Resident	Non Resident	Non Resident	Non Resident	Non Resident

Scenario II

Mr. A (a foreign national, not being a person of Indian origin) comes to India for the first time for employment during FY 2018 – 2019. His period of stay in India is as under :

Financial Year	Number of Days of Stay in India
2021 - 2022	202
2020 – 2021	189
2019 - 2020	301
2018 – 2019	186

Analysis : Mr. A's residential status for the period from FY 2018 – 2019 to FY 2021 – 2022 is as under:

Part	S.No	Particularsa	Financial Year			
			2021 - 2022	2020 - 2021	2019 - 2020	2018 - 2019
A		As per s. 6(1), atleast one of the two basic conditions are required to be satisfied to qualify as a resident:				
	a	He is in indian in the previous years for a period of 182 days or more	Yes	Yes	Yes	Yes
	b	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 years	Yes	Yes	No	No
B		As pers.6(6),a resident is treated as a "resident & ordinarily resident" if the following two additional condition are satisfied:				
	a	He has been resident in india in atleast 2 out of 10 previous years immediately preceeding the relevant previous year	Yes	Yes	No	No
	b	He has been in india a for a period of 730 days or more during 7 years immediately preceding the relevant previous year.	No	No	No	No
C		Residential Status	Resident but not ordinarily resident	Resident but not ordinarily resident	Resident but not ordinarily resident	Resident but not ordinarily resident

Residential Status & Tax thereon

To determine the tax implications on residential status, it is first essential to understand the type of income which will be taxable in India i.e Indian Income or Foreign Income.

Indian Income:

- i. Income received in India or accrued in India during the previous year;
- ii. Income received in India but accrued outside India during the previous year;
- iii. Income received outside India but accrued in India during the previous year.

Foreign Income: Income not received (or deemed to be received) or accrued (or deemed to accrue) in India during the previous year.

Incidence of Tax

Residential Status	Indian Income	Foreign Income
Resident & Ordinarily Resident	Taxable in India	Taxable in India
Resident but not Ordinarily Resident	Taxable in India	Following foreign income is taxable in India : <ul style="list-style-type: none"> ➤ Business income derived from business wholly/partly controlled in India; ➤ Income from profession which is set up in India.
Non – Resident	Taxable in India	Not Taxable in India

Individual Income Tax

Finance Act 2020 has introduced an alternative tax regime for individuals. Taxpayers have the option to choose the option between the old tax regime or new tax regime to file their taxes.

Under the new tax regime, individual taxpayers will not be eligible to get exemptions such as standard deduction, leave travel concession, house rent allowance (HRA), tax exemptions, donations to charitable institutions etc.

If the taxpayer opts for the old tax regime, exemptions and deductions such as standard deduction, leave travel concession, HRA, contribution to public provident fund, insurance premium paid etc. can be claimed.

Tax Slab under the Old Tax Regime

Tax Slab	Individuals < 60 years of age	Individuals > 60 years < 80 years of age	Individuals > 80 years
Upto INR 2,50,000	NIL	NIL	NIL
INR 2,50,000 - INR 3,00,000	5%	NIL	NIL
INR 3,00,000- INR 5,00,000	5%	5%	NIL
INR 5,00,000 - INR 10,00,000	20%	20%	20%
Above INR 10,00,000	30%	30%	30%

Tax Slabs Under the New Tax Regime

Tax Slab	Tax Rate
Upto INR 2,50,000	NIL
INR 2,50,000 - INR 5,00,000	5%
INR 5,00,000 – INR 7,50,000	10%
INR 7,50,000 – INR 10,00,000	15%
INR 10,00,000 – INR 12,50,000	20%
INR 12,50,000 – INR 15,00,000	25%
Above INR 15,00,000	30%

The above tax rates are subject to surcharge & Health and Education Cess (HEC)

Surcharge:

- a. 10% of income tax where income exceeds INR 50,00,000.
- b. 15% of income tax where income exceeds INR 1,00,00,000.
- c. 25% of income tax where income exceeds INR 2,00,00,000.
- d. 37% of income tax where income exceeds INR 5,00,00,000.

HEC : 4% of income tax & surcharge.

Case Laws

01

[ACIT V/s Radaan Media Works \(I\) Ltd. \[2022\] 137 taxmann.com \(Chennai Trib\)](#)

Expenditure incurred by a taxpayer in the business of production & marketing of tele-serials & tele-films is revenue & allowable as a deduction even though the income generated is spread over a period of 2-3 years : Chennai ITAT

Facts: The taxpayer – *Radaan Media Works (I) Ltd* is engaged in the business of production & marketing of tele serials & tele films. The assessment under s. 143(3) of the Income Tax Act ('ITA') was concluded determining a total income of INR 36,19,440/- as against a returned income of INR 32,44,024/-. Subsequently, the assessment was reopened under s. 147 of the ITA. During the course of the re-assessment proceedings, the Ld.

Assessing Officer (Ld. AO) observed that the taxpayer has claimed deduction towards production expenses of tele serials as revenue expenditure. After considering the relevant submission of the taxpayer, the Ld. AO stated that the production expenses of tele serials were in the nature of capital expenditure & therefore disallowed the expenses claimed by the taxpayer & allowed 25% of depreciation on total expenditure. The balance amount was disallowed and added back to his total income.

The Ld. Commissioner of Income Tax (Appeals) [CIT(A)] placing reliance on the decision in the case of *Television Eighteen India Ltd & Guruji Entertainment Network Ltd.* deleted the disallowance upheld by the Ld. AO.

Issue: Whether expenditure incurred by the taxpayer towards cost of production of exhibition of tele-serials & production of tele serials is capital in nature or revenue in nature.

Decision: When a taxpayer is engaged in the production & exhibition of tele-films, the expenditure incurred for production of tele-serials cannot be regarded as capital in nature as it does not give any enduring benefit to the taxpayer nor does it create any new asset. This view is fortified by the decision of the Hon'ble Delhi High Court in *Television Eighteen India Ltd. (supra)* after considering CBDT

circular No. 16/2015 dtd. 6th October 2015 wherein it was clearly held that production of abandoned feature film is to be treated as revenue expenditure & allowed as per provisions of s. 37 of the ITA. Although, in the said case, it was the cost of production of an abandoned feature film, however, it does not make a difference whether tele serials or films is abandoned or continued for exhibition to the audience.

Accordingly, the expenditure incurred by the taxpayer towards cost of production of tele serials is revenue in nature.

02

[ACIT \(Intl. Taxation\) V/s DHVBV Indian Branch Office \(ITA No. 6641/Del/2017\)](#)

Contracts which are executed in India for a substantially long period of time by a foreign company or it's branch office in India constitute a PE in India & the income so generated is to be taxed on net basis at 40% under s. 44DA of the Income Tax Act 1961 : Mumbai ITAT

Facts: The taxpayer - *DHV BV Indian Branch Office* is a non – resident company incorporated under the laws of Netherlands engaged in the business of providing consulting services for transportation, water supply, sewage, sold waste management etc. The taxpayer also had a Branch office in India. During the course of the assessment proceedings, the Ld. Assessing Officer ('AO') observed that the taxpayer had offered income from National Highway Authority of India at 20% under s. 44D r.w.s 115A of the Income Tax Act 1961 ('ITA') & had offered from Indian Branch Office income from Jammu & Kashmir project & income from Kolkata project on net basis.

The Ld. AO taxed the total income of the taxpayer on gross basis. Aggrieved, the taxpayer carried the matter before the CIT(A). The CIT(A) following the order of his predecessor in the taxpayers own case for AY 2011 – 2012 directed the Ld. AO to tax the income from contracts under s. 44DA of the ITA.

Aggrieved, the Revenue has preferred an appeal before the Hon'ble Income Tax Appellate Tribunal ('ITAT').

Issue: The issue in the present case is if the receipts are required to be taxed on gross basis or receipt basis?

Decision: The Hon'ble ITAT relying on the decision of the Coordinate Bench in the case of the taxpayer has upheld the action of the taxpayer. The Tribunal had observed that on the basis of the documents & contract agreements which were furnished before the AO, it was quite evident that the activities of each contract were rendered for more than 6 months. Further, the details of the personnel & duration reveals that the contracts were established for a relatively long duration of time & the time spent in India by the taxpayer/sub contractor constituted a PE. Therefore, the CIT(A) has rightly held that the income earned by the taxpayer under such contracts is effectively linked to a PE & taxable at 40% on net basis.

03

Jayaram Rangan – (2022) 138 taxmann.com 100 (Chennai Trib)

Professional Fees cannot be Treated as Salary Income merely because it was paid to Managing Director - Chennai ITAT

Facts: The taxpayer – *Jayaram Rangan* an individual received sitting fees & consultancy fees from two companies and treated the same as professional income and claimed various expenses against the same. The Ld. Assessing Officer observed that the taxpayer was a Managing Director & since he was in charge of the overall operations of the company, he assessed the 'consultancy fees' as income from 'salary' disallowing the various expenses claimed by the taxpayer.

Here, it was to be noted that the taxpayer had raised professional invoices along with service tax every month & the company had paid professional charges every month after deducting TDS at the applicable rates under s. 194J of the Income Tax Act 1961. The taxpayer had maintained regular books of accounts & his books were audited under s. 44AB of the ITA.

Issue: Since the taxpayer was a Managing Director of the company can he claim remuneration received as 'professional fees' & thereby claim expenses against such income?

Held: The Hon'ble Chennai ITAT has held that there is no restriction in law for appointing consultant/professional as a managing director. Merely because the taxpayer was designated as Managing Director, it cannot be held that professional fees received from the company should be treated as salary which is derived as an employer - employee relationship. Accordingly, the Ld. Assessing Officer was directed to treat the income of the taxpayer as 'income from profession' & also allow expenses against such professional income.

04

IQVIA AG V/s Dy. Commissioner of Income Tax (ITA No. 1203/Mum/2021)

Subscription Fees received by the taxpayer being a foreign company is not taxable as royalty in terms of India - Switzerland DTAA - Mumbai ITAT

Facts: IQVIA AG ('the taxpayer') is a company incorporated under the laws of Switzerland & its entire control & management are in Switzerland. The taxpayer is engaged in the business of providing market research reports ('IQVIA Reports') on the pharmaceutical sector to its clients at a pre-determined subscription price. The taxpayer grants non-exclusive & non-transferable license to use the IQVIA reports provided to the customers thereby restricting the use of information by customer for its own benefit, backup etc. The IQVIA reports are not in the nature of any literary, artistic or scientific work and even otherwise there is no grant of any copyright by the taxpayers to its customers.

During the course of the assessment proceedings, the Ld. Assessing Officer ('AO') observed that the taxpayer had earned subscription fees of INR 46,24,44,838 from its Indian customers which it claimed as exempt in terms of Article 7 r/w Article 5 of India - Switzerland DTAA. The Ld. AO treated the subscription fees received from the Indian customers as Royalty under the provisions of the Income Tax Act 1961 and India - Switzerland DTAA.

Issue: Is subscription fees received by the taxpayer being a foreign company taxable as royalty?

Held: The Hon'ble Mumbai ITAT relied on the decision of the taxpayer as upheld by the Co-ordinate Bench for AY 2013 - 2014 wherein it was held that **subscription fees received by the taxpayer is not taxable as 'Royalty'**. Reliance was placed on the decision of the **Hon'ble Bombay High Court in the case of Dun & Breadstreet Information Services India Pvt Ltd & AAR in case of Ericsson Telephone Corpn. India** wherein it has been clearly held that when the taxpayer is not taxable under the respective provisions of the DTAA, then there is no occasion to examine the taxability under the Income Tax Act 1961 since the provisions of the Income Tax Act 1961 apply only when these are more beneficial to the assessee vis-à-vis the applicable DTAA.

Held : The Hon'ble Tribunal decided in favour of the taxpayer relying on the decision of the Hon'ble Madras High Court has to be ascertained that a particular building or premises is a commercial asset or house property. in the case **CIT v. V.S.T. Motors (P.) Ltd.** In the said decision, it first If the premises were a commercial asset, then the income derived therefrom would amount to business income, otherwise it would be income derived from property assessable under the head "Property income". Therefore, the rental income derived therefrom was rightly assessable under the head "Business income".

05

When taxpayer lets out commercial space on license basis along with amenities, it is liable to be taxed as business income & not house property.

Facts: GV Foundations P Ltd ('the taxpayer') had let out certain properties along with other amenities. In the return of income, the same was claimed as business income. However, the Ld. Assessing Officer ('AO') disallowed the said claim treating the same as income from house property based on the decision of **CIT v. Chennai Properties & Investments Ltd.**

The Ld. CIT(A) placing reliance on the decision of **Shambhu Investment (P.) Ltd. v. CIT** upheld the action of the AO.

The taxpayer preferred an appeal before the Hon'ble Tribunal which accepted the plea of the respondent/assessee that they had given the commercial space only on licence basis and therefore, the income had to be assessed under the head 'business income' and allowed the appeals.

The Revenue has preferred an appeal before the Hon'ble High Court.

Issue: Is the rent received by the taxpayer from letting out of business premises along with tables & chairs assessable as business income or income from house property?

Circulars & Notifications

A. Circulars:

- a. The CBDT issues guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961 in order to incentivise infrastructure investments by specified persons in India.

<https://incometaxindia.gov.in/communications/circular/circular-no-10-2022.pdf>

- b. The CBDT issues guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961 in order to incentivise infrastructure investments by specified persons in India.

<https://incometaxindia.gov.in/communications/circular/circular-9-2022.pdf>

B. Notifications:

- a. The CBDT amends the Income Tax Rules 1962 called as the Income Tax (12th Amendment), Rules, 2022 and amends rule 44E 'Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages' effective from the date of their publication in the Official Gazette.

https://incometaxindia.gov.in/communications/notification/notification_no_49_2022.pdf

- b. The CBDT amends the Income Tax Rules 1962 called as the Income Tax (13th Amendment), Rules, 2022 and amends rule 2DC 'Computation of minimum investment and exempt income for the purposes of clause (23FE) of section 10 of the Income Tax Act, 1961.

<https://incometaxindia.gov.in/communications/notification/notification-no-50-2022.pdf>

- c. The CBDT has notified new Rules 114BA & 114BB and amended Rule 114 to the Income Tax Rules 1962 'transactions wherein it is mandatory for a person to obtain Permanent Account Number (PAN) and quote on all relevant documents' effective after the expiry of fifteen days from the date of their publication in the Official Gazette.

<https://incometaxindia.gov.in/communications/notification/notification-no-53-2022.pdf>

- d. The Central Government makes 'Faceless Penalty (Amendment) Scheme, 2022' amending Faceless Penalty Scheme, 2021 which is effective after the expiry of fifteen days from the date of their publication in the Official Gazette.

https://incometaxindia.gov.in/communications/notification/notification_no_54_2022.pdf

- e. The Central Government makes amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes published in the Gazette of India, Extraordinary vide number S.O. 118(E), dated the 12th January, 2021

https://incometaxindia.gov.in/communications/notification/notification_no_55_2022.pdf

Tax Compliances for June 2022

7 June 2022

Due date for deposit of Tax deducted/collected for the month of May, 2022.

14 June 2022

Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of April, 2022

15 June 2022

Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March, 2022

First instalment of advance tax for the assessment year 2023-24

Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2021-22

30 June 2022

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194IB and 194-M in the month of May, 2022

Return in respect of securities transaction tax for the financial year 2021-22

Furnishing of Equalisation Levy statement for the Financial Year 2021-22

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