

Topic: Residential Status (Part-3)

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HINDU UNDIVIDED FAMILY (HUF) [SEC. 6(2)]

An HUF can be either a resident or non-resident in India. Again, a resident HUF can further be classified as 'Ordinarily resident' and 'Not ordinarily resident'.

Resident HUF: When the control & management of affairs of HUF is wholly or partly situated in India

Control & management means –

- Controlling & directive power;
- actual control & management (mere right to control & manage is not enough);
- Central control & management and not the carrying out of day to day affairs. If the relevant previous year, then it is treated as resident in India.

The place of central control & management is situated where the head, the seat & the directing power is situated.

Non-resident HUF: An HUF is non-resident in India if the control & management of its affairs is wholly situated outside India.

Ordinarily resident in India: If the 'karta' or manager of a resident HUF satisfies both additional conditions given u/s 6(6), HUF is said to be an ordinarily resident. If the 'karta' or manager of a resident HUF do not satisfy both additional conditions given u/s 6(6), HUF is said to be a not-ordinarily resident.

Tax point: Residential status of the karta for the previous year is not important but his status for preceding 10 years is important.

COMPANY [SEC. 6(3)]

Resident Company: An Indian company is always a resident in India.

A non-Indian company is said to be a resident in India, if its place of effective management, in that year, is in India. "Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.'

Non-Resident Company: If place of effective management, in that year, is not in India, the said company is nonresident in India for the relevant previous year.

Tax point: In case of company, there is no sub-division like 'Ordinarily resident' or 'Not ordinarily resident'.

FIRM OR AN ASSOCIATION OF PERSONS (AOP) OR BODY OF INDIVIDUALS (BOI) [SEC. 6(4)]

Resident: A firm or an AOP or BOI is said to be a resident in India, if control & management of its affairs are wholly or partly situated in India during the relevant previous year. Control & management is vested in hands of partners in case of firm and principal officer in case of an AOP/BOI.

Non-resident: If control & management of its affairs are situated wholly outside India, then it is a non-resident in India.

Tax point: In case of firm or BOI or AOP, there is no subdivision like 'Ordinarily resident' or 'Not ordinarily resident'.

ANY OTHER PERSON

Resident: Any other assessee will be treated as resident in India if the control & management of its af-fairs is situated wholly or partly in India.

Non-Resident: If control & management of affairs of the assessee, are situated wholly outside India, it is a nonresident in India.

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