RESIDENTIAL STATUS UNDER INCOME TAX ACT AND FEMA & BANK ACCOUNTS FOR NRIS

A Brief Note on Residential Status Of A Person Based On Provisions Of The Income Tax Act and Foreign Exchange Management Act And Banking Accounts for Non-Resident Indians

In a layman's language, a Non-resident means a person who does not reside in India, or who is a foreigner.

The residential status of a person under the Indian tax laws is governed by section 6 of the Income Tax Act, 1961. For purposes of taxability of a person's income, a person can be a Resident (R), Resident but Not-ordinarily Resident (RNOR) and Non-Resident (NR). Once a person's residential status is determined, his incidence of tax is easy to be calculated. The note below attempts to explain how a person can identify his tax liability under the Income Tax Act vis-à-vis his residential status for any financial year. Person here means an INDIVIDUAL. The method of determining residential status in case of a HUF, Firm and Company is not covered.

FORMULA TO CALCULATE A PERSON'S RESIDENTIAL STATUS

A person is RESIDENT in India if:

A). He has stayed in India in that year for a period OF ATLEAST one hundred eighty two days. For example, in the Financial Year 2012-13, he has stayed in India for a minimum of 182 days, either at a stretch or in parts; OR

B). He has stayed in India in that year for a period of sixty days AND three hundred sixty five days over a period of four years prior to that year. For examples, if a person has stayed in India for 60 days in FY 2012-13, he should have also stayed in India for a total of 365 days during the period FY 2008-09, FY 2009-10, FY 2010-11 and FY 2011-12. In such a situation, the person will be a RESIDENT. The period of stay of 365 days will be counted in totality over 4 years and the person could have stayed in India in intervals as per his convenience. Both the requirements, that of being in India for 60 days in the year (say for ex. FY 2012-13) and 365 days (for the 4 year period from FY 2008-09 to FY 2011-12) are to be fulfilled together.

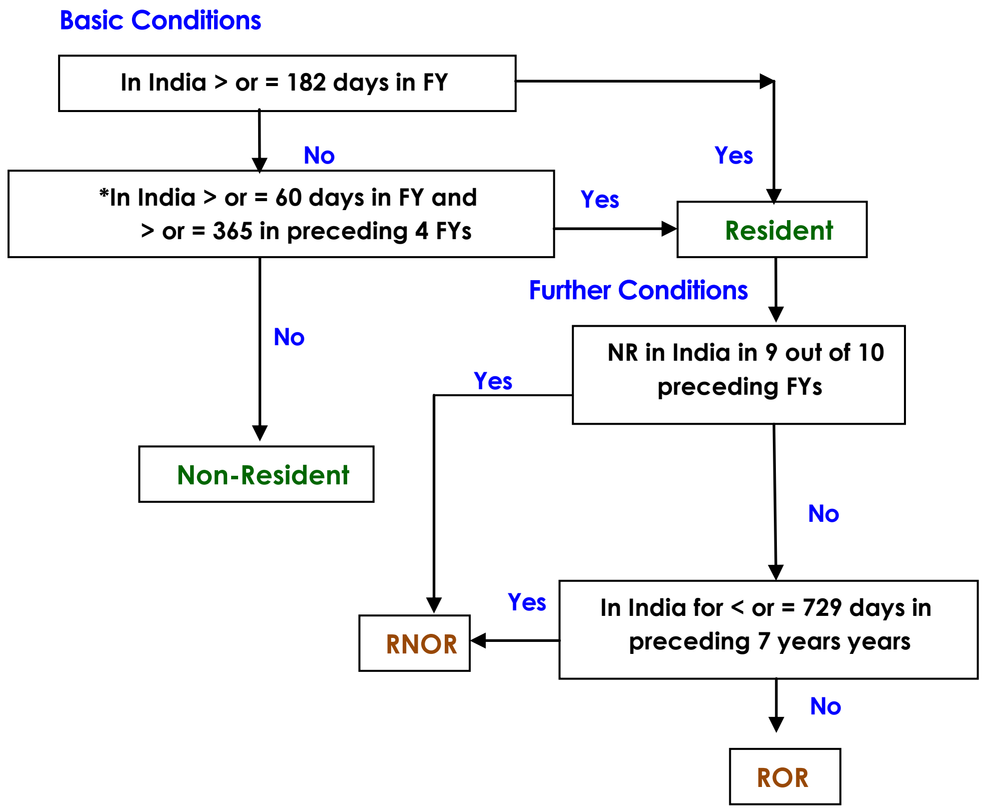
The passport will be the final and conclusive proof of the person's entry into and exit from India to calculate the period. A person is **NOT-ORIDNARILY RESIDENT** if:

a. He has been non-resident in India in nine out of ten years prior to the year in which the status is being determined. For example, for calculating the status of a person for FY 2012-13, if the person has been a Non-Resident for NINE out of TEN financial years, beginning from FY 2001-02 to FY 2011-12, then he will be a Not-Ordinarily Resident; OR

b. He has been in India during the seven years prior to the year, for a total period of less than seven hundred twenty nine days, for ex. for FY 2012-13, he should have been in India during the period FY 2004-05 to FY 2011-12 for not more than 729 days.

If a person does fit in the conditions mentioned above to be treated a RESIDENT or NOT-ORDINARILY RESIDENT then he is automatically deemed to be a **NON-RESIDENT.**

The formula is explained herein below by way of a flow chart.



TAX INCIDENCE

A. In case of a Resident & Ordinarily Resident, his income earned anywhere around the globe is taxable in India, subject to provisions of Double Taxation Avoidance Agreement if applicable to the countries in which such income is earned.

B. In the case of a Resident but Not Ordinarily Resident – income is taxable in India if income is earned or received in India, or income is deemed to be earned in India or income arises out of business controlled in India.

C. In case of a Non-resident, only income actually earned in India or which is deemed to be earned in India is taxable.

INCOME FROM INVESTMENTS IN CASE OF A NON-RESIDENT

Interest received by a non-resident from any person in India or from the government is taxable in India.
Following are some of the incomes from investments in India which are exempt from tax in case of a nonresident:

1. Interest credited to an NRE Account of non-resident Indians

2. Interest paid by a scheduled bank on RBI approved foreign currency deposits.

3. Certain specified dividends and income in respect of units of mutual funds. The above list of incomes from investment is not exhaustive as there are other types of incomes which are not subject to tax, but may not be directly applicable to an **INDIVIDUAL.**

NON-RESIDENT INDIAN (NRI)

The definition of a Non-resident Indian is significant for any person, who is either a citizen of India, or a person of Indian origin (PIO) and who is not resident in India. It is important in terms of its implications under Income Ta x Act, FEMA and laws governing investments in India.
The Income Tax Act under section 115C (e) defines a Non-resident Indian as an individual, being a citizen of India or a person of Indian origin who is not a 'resident'. Thus, a person, who is either an Indian citizen or a PIO but who does not fit in the formula for being called a RESIDENT in India, is a NON-RESIDENT INDIAN. A person is deemed to be a PIO if he or either of his parents or any of his grandparents, was born in undivided India. Foreign Exchange Management Act defines a NRI as 'an individual who *stays in India* for more than one hundred and eighty two days during the course of the preceding financial year will be treated as a **person resident in India**.' The exceptions to this definition state that:

- If a person goes/stays outside India for (a) taking up a job, (b) carrying on any business or any vocation, or (c) for any other purpose, *for an uncertain period,* he will be treated as a person resident outside India, that is a **Non-Resident Indian;** AND
- If a person who is residing abroad, comes/stays in India for (a) taking up a job, (b) carrying on any business or any vocation, or (c) for any other purpose, *for an uncertain period,* he will be treated as person **Resident in India.**

Thus, it can be seen that the term NRI has different definitions under various laws in India. FEMA and various rules and regulations under FEMA, have different definitions of the term NRI.

NON-RESIDENT INDIANS AND BANKING ACCOUNTS

(Source: http://rbi.org.in)

As per the guidelines issued by the Reserve Bank of India from time to time, NRIs are allowed to open and operate certain type of banking accounts. The guidelines are in the form of Master Circulars and various Master Circulars are issued by the RBI on various matters. The latest Master Circular relating to interest rates on Rupee Deposits held in Domestic, Ordinary Non-Resident (NRO) and Non-Resident (External) (NRE) Accounts was issued on July 1, 2013. The salient features of the Master Circular are explained in the following paragraphs.

Ordinary Non-Resident (NRO) Accounts

NRIs can open NRO Deposit Accounts for collecting their funds from local bona-fide transactions. Since NRO is a Rupee deposit account, the exchange rate fluctuation risk is borne by the account holder himself. NRO Accounts can be maintained as savings, current, recurring or term deposits. The principal of NRO deposits is non-repatriable, but current income and interest earning can be repatriated. A NRI/PIO can remit an amount, not exceeding USD 1 million per financial year, out of balances held in NRO account/sale proceeds of assets/assets acquired in India by him, by way of inheritance or legacy, subject however to, providing evidence of such acquisition, inheritance or legacy as the case may be. There are further additional compliances that need to be met in order to repatriate the proceeds up to the limit stated hereinbefore.

Non Resident (External) (NRE) Accounts

The Non-Resident (External) NRE Account, also known as the NRE Scheme, was introduced in 1970. Any NRI can open an NRE Account with funds remitted to India through a bank abroad. This is a repatriable account and transfer from another NRE Account is also permitted. An NRE Account may be opened as a savings, current or term deposit account. A NRI can use his NRE Account to make local payments also. Since an NRE account is a Rupee deposit account, the depositor is exposed to exchange risk. NRIs and PIOs have the option to credit their current income to NRE Rupee accounts, provided the Authorised Dealer (AD) is satisfied that the credit represents current incomes of the non-resident account holder and such income is credited after giving due effect to tax at source thereon.

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.— Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly: Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.— Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.— Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. or seventy-five per cent., as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.— Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income, then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.— Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income: Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.— Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—

(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2014, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

- **(i)** the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,
- **(ii)** the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,
- **(iii)** the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the

previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011or the 1st day of April, 2012 or the 1st day of April, 2013,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2012 or the 1st day of April, 2013,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2012, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2013,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2013, shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2014.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2015, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous year relevant to the assessment years commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010 or the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2011 or the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2011, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2012 or the 1st day of April, 2013 or the 1st day of April, 2014,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2012, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2013 or the 1st day of April, 2014,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2013, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2014,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2014, shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2015.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in the First Schedule to the Finance Act, 2006 (21 of 2006) or of the First Schedule to the Finance Act, 2007 (22 of 2007) or of the First Schedule to the Finance Act, 2008 (18 of 2008) or of the First Schedule to the Finance (No.2) Act, 2009 (33 of 2009) or of the First Schedule to the Finance Act, 2010 (14 of 2010) or of the First Schedule to the Finance Act, 2011 (8 of 2011) or of the First Schedule to the Finance Act, 2012 (23 of 2012) or of the First Schedule to the Finance Act, 2013 (17 of 2013) shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9.— Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be nil.

Rule 10.— The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.— For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

VARIOUS ASSESSMENTS UNDER THE INCOME TAX LAW

Every taxpayer has to furnish the details of his income to the Income-tax Department. These details are to be furnished by filing up his return of income. Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department. The Income Tax Department examines the return of income for its correctness. The process of examining the return of income by the Income Tax department is called as "Assessment". Assessment also includes re-assessment and best judgment assessment under section 144.

Under the Income-tax Law, there are four major assessments given below:

- Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
- Assessment under section 143(3), i.e., Scrutiny assessment.
- Assessment under section 144, i.e., Best judgment assessment.
- Assessment under section 147, i.e., Income escaping assessment.

(A) Assessment under section 143(1)

This is a preliminary assessment and is referred to as summary assessment without calling the assessee (i.e., taxpayer).

Scope of assessment under section 143(1)

Assessment under section 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. At this stage, the total income or loss is computed after making the following adjustments (if any), namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim (*), if such incorrect claim is apparent from any information in the return;

For the above purpose "an incorrect claim apparent from any information in the return" means a claim on the basis of an entry in the return :-

(i) of an item which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information is required to be furnished under the Act to substantiate such entry and has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

Procedure of assessment under section 143(1)

- After correcting arithmetical error or incorrect claim (if any) as discussed above, the tax and interest, if any, shall be computed on the basis of the adjusted income.
- Any sum payable by or refund due to the taxpayer shall be intimated to him.
- An intimation shall be prepared or generated and sent to the taxpayer specifying the sum determined to be payable by, or the amount of refund due to the taxpayer.

- An intimation shall also be sent to the taxpayer in a case where the loss declared in the return of income by the taxpayer is adjusted but no tax or interest is payable by or no refund is due to him.
- The acknowledgement of the return of income shall be deemed to be the intimation in a case where no sum is payable by or refundable to the assessee or where no adjustment is made to the returned income.
- The processing of a return under section 143(1) shall not be necessary, where a notice has been issued to the assessee under section 143(2), i.e., a notice for scrutiny assessment has been issued to the taxpayer.

Time-limit

Assessment under section 143(1) can be made within a period of one year from the end of the financial year in which the return of income is filed.

(B) Assessment under section 143(3)

This is a detailed assessment and is referred to as scrutiny assessment. At this stage a detailed scrutiny of the return of income will be carried out. At this stage a scrutiny is carried out to confirm the correctness and genuineness of various claims, deductions, etc., made by the taxpayer in the return of income.

Scope of assessment under section 143(3)

The objective of scrutiny assessment is to confirm that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.

To confirm the above, the Assessing Officer carries out a detailed scrutiny of the return of income and will satisfy himself regarding various claims, deductions, etc., made by the taxpayer in the return of income.

Procedure of assessment under section 143(3)

- If the Assessing Officer considers it necessary or expedient to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, then he will serve on the taxpayer a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the taxpayer may rely, in support of the return.
- To carry out assessment under section 143(3), the Assessing Officer shall serve such notice in accordance with provisions of section 143(2).
- Notice under section 143(2) should be served within a period of six months from the end of the financial year in which the return is filed.
- The taxpayer or his representative (as the case may be) will appear before the Assessing Officer and will place his arguments, supporting evidences, etc., on various matters/issues as required by the Assessing Officer.
- After hearing/verifying such evidence and taking into account such particulars as the taxpayer may produce and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant materials which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the taxpayer and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Time-limit

As per section 153, assessment under section 143(3) shall be made within a period of two years from the end of the relevant assessment year.

(C) Assessment under section 144

This is an assessment carried out as per the best judgment of the Assessing Officer on the basis of all relevant material he has gathered. This assessment is carried out in cases where the taxpayer fails to comply with the requirements specified in section 144.

Scope of assessment under section 144

As per section 144, the Assessing Officer is under an obligation to make an assessment to the best of his judgment in the following cases:-

- If the taxpayer fails to file the return required within the due date prescribed under section 139(1) or a belated return under section 139(4) or a revised return under section 139(5).
- If the taxpayer fails to comply with all the terms of a notice issued under section 142(1).

Note: The Assessing Officer can issue notice under section 142(1) asking the taxpayer to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

- If the taxpayer fails to comply with the directions issued under section 142(2A).

Note : Section 142(2A) deals with special audit. As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied, then the Assessing Officer will direct the taxpayer to get his accounts audited from a chartered accountant nominated by the principal chief commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.

- If after filing the return of income the taxpayer fails to comply with all the terms of a notice issued under section 143(2), i.e., notice of scrutiny assessment.
- If the assessing officer is not satisfied about the correctness or the completeness of the accounts of the taxpayer or if no method of accounting has been regularly employed by the taxpayer.

From the above criteria, it can be observed that best judgment assessment is resorted to in cases where the return of income is not filed by the taxpayer or if there is no cooperation by the taxpayer in terms of furnishing information / explanation related to his tax assessment or if books of accounts of taxpayer are not reliable or are incomplete.

Procedure of assessment under section 144

- If the conditions given above calling for best judgment are satisfied, then the Assessing Officer will serve a notice on the taxpayer to show cause why the assessment should not be completed to the best of his judgment.

- No notice as given above is required in a case where a notice under section 142(1) has been issued prior to the making of an assessment under section 144.
- If the Assessing Officer is not satisfied by the arguments of the taxpayer and he has reason to believe that the case demands a best judgment, then he will proceed to carry out the assessment to the best of his knowledge.
- If the criteria of the best judgment assessment are satisfied, then after taking into account all relevant materials which the Assessing Officer has gathered, and after giving the taxpayer an opportunity of being heard, the Assessing Officer shall make the assessment of the total income or loss to the best of his knowledge/judgment and determine the sum payable by the taxpayer on the basis of such assessment.

Time-Limit

As per section 153, assessment under section 144 shall be made within a period of two years from the end of the relevant assessment year.

(D) Assessment under section 147

This assessment is carried out if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.

Scope of assessment under section 147

- The objective of carrying out assessment under section 147 is to bring under the tax net any income which has escaped assessment in original assessment.
- Original assessment here means an assessment under sections 143(1), 143(3), 144 and 147 (as the case may be).
- In other words, if any income has escaped (*) from being taxed in the original assessment made under section 143(1) or section 143(3) or section 144 or section 147, then the same can be brought under tax net by resorting to assessment under section 147.
- (*) In the following cases, it will be considered as income having escaped assessment: Where no return of income has been furnished by the taxpayer, although his total income or the total income of any other person in respect of which he is assessable during the previous year exceeded the maximum amount which is not chargeable to income-tax.
- Where a return of income has been furnished by the taxpayer but no assessment has been made and it is noticed by the Assessing Officer that the taxpayer has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.
- Where the taxpayer has failed to furnish a report in respect of any international transaction which he was required to do under section 92E.
- Where an assessment has been made, but:
  (i) income chargeable to tax has been under assessed; or
  (ii) income has been assessed at low rate; or
  (iii) income has been made the subject of excessive relief; or

(iv) excessive loss or depreciation allowance or any other allowance has been computed;

- Where a person is found to have any asset (including financial interest in any entity) located outside India.

Procedure of assessment under section 147

- For making an assessment under section 147, the Assessing Officer has to issue notice under section 148 to the taxpayer and has to give him an opportunity of being heard. The time-limit for issuance of notice under section 148 is discussed in later part.
- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, then he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section. He is also empowered to re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.
- Items which are the subject matters of any appeal, reference or revision cannot be covered by the Assessing Officer under section 147.

Time-limit for completion of assessment under section 147

As per section 153, assessment under section 147 shall be made within a period of one year from the end of the financial year in which notice under section 148 is served on the taxpayer.

Time-limit for issuance of notice under section 148

¬ Notice under section 148 can be issued within a period of 4 (*) years from the end of the relevant assessment year. If the escaped income is Rs. 1,00,000 or more and certain other conditions are satisfied, then notice can be issued upto 6 years from the end of the relevant assessment year.

¬ In case the escaped income relates to any asset (including financial interest in any entity) located outside India, notice can be issued upto 16 years from the end of the relevant assessment year.

Notice under section 148 can be issued by AO only after getting prior approval from the prescribed authority.

MCQ ON VARIOUS ASSESSMENTS UNDER THE INCOME TAX LAW

Q1. The checking of the return of income by the taxpayer before filing the return of income is called assessment.

(a) True (b) False

Correct answer: (b)

Justification of correct answer:

Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department. The Income Tax Department examines the return of income for its correctness. The process of examining the return of income by the Income-Tax department is called as "Assessment".

Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q2. Assessment under section 143(1),is known as scrutiny assessment.

(a) True (b) False

Correct answer: (b)

Justification of correct answer:

Assessment under section 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. This assessment is known as Summary assessment without calling the assessee Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q3. Assessment under section 144 is known as best judgment assessment.

(a) True (b) False

Correct answer: (a)

Justification of correct answer:

Assessment under section 144 is known as best judgment assessment. This is an assessment carried out as per the best judgment of the Assessing Officer. This assessment is carried out in a case where the taxpayer fails to comply with the requirements specified in section 144.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

Q4. Which of the following can be corrected while processing the return of income under section 143(1)?

(a) any arithmetical error in the return (b) any mistake in the return of income

(c) any error in the return of income (d) any claim by the taxpayer which is against law

Correct answer: (a)

Justification of correct answer:

Assessment under section 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. At this stage, the total income or loss is computed after making the following adjustments (if any), namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.

Thus, option (a) is the correct option. .

Q5. Assessment under section 143(1) can be made within a period of _____year from the end of the financial year in which the return of income is filed.

(a) four **(b)** three

(c) two **(d)** one

Correct answer: (d)

Justification of correct answer:

Assessment under section 143(1) can be made within a period of one year from the end of the financial year in which the return of income is filed.

Thus, option (d) is the correct option.

Q6. Notice under section 143(2) (i.e. notice of scrutiny assessment) should be served within a period of _______from the end of the financial year in which the return is filed.

(a) six months **(b)** one years

(c) two years **(d)** eighteen months

Correct answer: (a)

Justification of correct answer:

To carry out assessment under section 143(3), the Assessing Officer should serve a notice under section 143(2).Notice under section 143(2) should be served within a period of six months from the end of the financial year in which the return is filed.

Thus, option (a) is the correct option.

Q7. Assessment under section 143(3) shall be made within a period of ____years from the end of the relevant assessment year.

(a) four **(b)** three

(c) two **(d)** one

Correct answer: (c)

Justification of correct answer:

As per section 153, assessment under section 143(3) shall be made within a period of two years from the end of the relevant assessment year.

Thus, option (c) is the correct option.

Q8. Assessment under section 144 shall be made within a period of _____ years from the end of the relevant assessment year.

(a) four (b) three

(c) two (d) one

Correct answer: (c)

Justification of correct answer:

As per section 153, assessment under section 144 shall be made within a period of two years from the end of the relevant assessment year.

Thus, option (c) is the correct option. .

Q9. The objective of carrying out assessment under section 147 is to bring under the tax net any money, bullion, jewellery, valuable article, etc. which are undisclosed.

(a) True (b) False

Correct answer: (b)

Justification of correct answer:

The objective of carrying out assessment under section 147 is to bring under the tax net any income which has escaped assessment in original assessment.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q10. Assessment under section 147 shall be made within a period of two year from the end of the financial year in which notice under section 148 is served on the taxpayer.

(a) True (b) False

Correct answer: (b)

Justification of correct answer:

As per section 153, assessment under section 147 shall be made within a period of one year from the end of the financial year in which notice under section 148 is served on the taxpayer.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

SOME TYPICAL ISSUES RELATING TO AUDIT

(A) Areas to be covered while conducting the audit of an NGO incorporated as a company under section 8 of the Companies Act, 2013:

While planning the audit of a Non- Governmental Organisation (NGO), the auditor may concentrate on the following:

- Knowledge of the NGO's work, its mission and vision, areas of operations and environment in which it operates; and
- Reviewing the legal form of the organisation and its Memorandum of Association, Articles of Association, rules and Regulations.
- Reviewing the NGO's Organisation chart, Financial and Administrative Manuals, Project and Programme Guidelines, Funding Agencies Requirements and Formats, budgetary policies, if any.
- Examination of minutes of the Board/Managing Committee/Governing Body/Management and Committees thereof to ascertain the impact of any decisions on the financial records.
- Study the accounting system, procedures, internal controls and internal checks existing for the NGO and verify their applicability.

The audit programme should include in a sequential order all assets, liabilities, income and expenditure ensuring that no material is omitted:

- Corpus Fund: The contributions/grants received towards corpus be vouched with reference to the letters from the donor(s). The interest income be checked with investment Register and physical investments in hand.

- Reserves: Vouch transfers from projects/programmes with donors letters and board resolutions of NGO. Also check transfers and adjustments made during the year.
- Ear-marked Funds: Check requirements of donors' institutions, board resolution of NGO, rules and regulations of the schemes of the ear-marked funds.
- Project/Agency Balances: Vouch disbursements and expenditures as per agreements.
- Loans: Vouch loans with loan agreements receipt counter –foil issued.
- Fixed Assets: Vouch all acquisitions/sale or disposal of assets including depreciation and the authorisations for the same. Also check donor's letters/agreements for the grants. For immovable property, check title, etc.
- Investments: Check Investment Register and the investments physically ensuring that investments are in the name of the NGO. Verify further investments and disinvestments for approval by the appropriate authority and reference in the bank accounts for the principal amount and interest.
- Cash in Hand and Bank Balance: Physically verify the cash in hand and imprest balance, at the close of the year. Check the bank reconciliation statements and ascertain details for old outstanding and unadjusted amounts.
- Stock in Hand: Verify stock in hand and obtain certificate from the management for the quantities and valuation of the same.
- Programme and Project Expenses : Verify agreement with donor/contributor (s) supporting the particular programme or project to ascertain the conditions with respect to undertaking the programme/project and accordingly, in the case of programmes/projects involving contracts, ensure that income tax is deducted, deposited and returns filed and verify the terms of the contract.
- Establishment Expenses: Verify that provident fund, life insurance and their administrative charges are deducted, contributed and deposited within the prescribed time. Also check other office and administrative expenses such as postage, stationery, travelling, etc.
- Check in details the contribution and grants for projects and programs, receipts from Fund arising programmes, Membership Fee and any Subscription related matters and any other matters that are related to Interest and Dividends.

(B) Mr. A. Bhagat is a whole time director of Bhagirathi Ltd. Recently he visited Australia for an official purpose. list the steps to be followed while conducting the audit of foreign travelling expenses of Mr. A. Bhagat.

Travelling expenses are normally payable according to rules approved. Where no rules exist, the auditor should recommend that these be framed for controlling the expenditure.

In the absence of T.A. Rules, the expenditure should be vouched on the basis of actual expenditure incurred. A voucher should be demanded for all items of expenses incurred, except those which are capable of independent verification.

As regards travelling expenses claimed by directors the auditor should satisfy himself that these were incurred by them in the interest of the business and that the directors were entitled to receive the amount from the business.

The voucher for travelling expenses should normally contain the under mentioned information:

- Name and designation of the person claiming the amount.
- Particulars of the journey.
- Amount of railway or air fare.
- If the journey was undertaken by air, the boarding pass of travel should be attached to the voucher, this should be inspected. For travel by rail or road, in the foreign land the amount of the fare claimed should be checked from some independent source.

- Visa for travel — which shows the purpose of travel.
- Amount of Foreign exchange — Sanctioned for the travel including the authenticity/jurisdiction of the sanctioning authority. Sanction given by the board , if any
- Proof of foreign exchange — Additional purchased, if any, in that foreign land or anytime during the course of the journey.
- Mode of payment of expenses — Cash or card. Card used in that foreign land to either procure goods or to receive services in that land.
- Whether any unutilized forex or not — If yes, whether the same exchanged in INR ? Receipt of Exchange to be verified.
- D.A. for foreign travel – Whether paid as per norm or not and whether the same was paid in forex or in INR?
- Particulars of boarding and lodging expenses and in the case of halting allowance the rates thereof should be verified.