

## CHAPTER 02

## Residential Status

- Taxability of income would depend not only on its Nature & Place of its Accrual/Receipt but also upon the Assessee's Residential Status.
- Residential status of an assessee determined separately for each Previous year.
- Citizenship of a country & residential status of that country are 2 separate concepts.

Types of Residential StatusPoint to Remember:

- ✚ Only Individuals & HUF can be resident & ordinarily resident (ROR).
- ✚ All other classes of assessee can be either a Resident or Non-Resident.

Determination of Residential Status of Different Assessee.INDIVIDUALBASIC CONDITIONS {Sec 6(1)}

1. He has been in India for total period of 182 days or more during PY **OR**
2. (a) He has been in India for at least 60 days in the relevant PY **AND**  
(b) He has been in India for at least 365 days during Last 4 PYs.

Individual satisfy **ANY 1 Condition** → Resident [Check Additional Conditions].

If Both conditions are **NOT** satisfied → Non-Resident.

ADDITIONAL CONDITION {Sec 6(6)(a)}

To determine whether an Individual is ROR or RNOR, check 2 Additional conditions.

1. His Total Stay in India in Last 7 P.Y is 730 days or more **AND**
2. He is a Resident in Any 2 P.Y out of Last 10 P.Y

**CRUX:** If an Individual Satisfy:

→ **Both** Additional conditions → He is **ROR**.

→ **None or one** of the Additional conditions → He is **RNOR**.

### EXCEPTIONs

Following Individuals will be Resident only if Period of Stay during PY is 182 days or more.

[2nd basic Condition → NA in the following cases]

- (i) **Indian Citizen** who **leaves** India during PY as a **Member of Crew** of **Indian ship** or
- (ii) **Indian Citizen** who **leaves** India during PY for **employment/ BP/ VOCATION** outside India;
- (iii) **Indian Citizen** or **Person of Indian Origin** who **comes** on visit to India in PY [Such Person must be engaged in employment/business outside India]

✚ **Person of Indian Origin:** If the person or his parents or his grandparents were born in **Undivided India**. Grandparents include both maternal & paternal grandparents.

✚ **RULE 126:** Clarification regarding **FOREIGN BOUND SHIPS** where destination of the voyage is outside India [Explanation 2 to Section 6(1)]

Period of Stay in India of an Individual (**Indian Citizen**) leaving India as a **Member of Crew** of **Foreign Bound ship** shall not include the following period in respect of an eligible voyage:

Period Commencing from	Ending on
Date entered into CDC for joining the ship	Date entered into the CDC for signing off.

**Eligible voyage:** A voyage by a ship engaged in carriage of passengers/freight in international traffic:

- (a) For voyage having originated from any port in India → Destination should be any port o/s India.
- (b) For voyage having originated from any port o/s India → Destination should be any port in India.

CDC is like an identity card for a sailor. The master of vessel signs the documents each time.

### **Amendments Introduces by FA 2020**

- \* **Indian Citizen** or **Person of Indian Origin** who being outside India, comes on visit to India in PY total income is **upto 15 lakh** (excluding foreign income) will be treated as resident in India if his stay **182 days** or more.

*	<p>In the above case if total income <b>exceed 15 lakhs</b> during the previous year will be treated as resident in India if his stay <b>182 days or more</b>, {Sec 6(6)(a)} <b>or</b></p> <p>If his stay <b>less than 182 days</b> in India but <b>at least 120</b> (instead of 60 days) days in the PY &amp; has been in India during the <b>4 years</b> immediately PPY for a total period of <b>365 days or More</b>, then always treated as RNOR {Sec 6(6)(c)} (Don't check additional condition)</p> <p><u>CRUX:-</u></p> <ol style="list-style-type: none"> <li>1. Less than 120 days or if past 4 year less than 365 days = NR (Now Sec 6(1A) apply)</li> <li>2. More than or equal to 120 days but less than 182 days (upto 181 days) then RNOR.</li> <li>3. 182 days or more irrespective of income</li> </ol> <p><b>Both</b> additional conditions satisfied then ROR (2-year Resident in 10 PPY &amp; 730 days stay in last 7 PPY) otherwise i.e., any one condition then RNOR.</p>
✚	<p><b>Deemed resident [Section 6(1A)] -</b></p> <p>An individual, being an <b>Indian citizen</b>, having total income (excluding foreign income) exceeding ₹ 15 lakhs during the PY would be deemed to be resident in India in that PY, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature &amp; he is always treated as RNOR {Sec 6(6)(d)}.</p> <p>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).</p> <p><b>Income from foreign sources:</b> - income which accrues or arises outside India (except income from business or profession set up in India) and which is not deemed to accrue or arise in India.</p> <p><b>Meaning of "liable to tax"</b> - Liable to tax, means there is an income-tax liability on such person under the law of that country for the time being in force. It also includes a person who has subsequently been exempted from such liability under the law of that country.</p>
	<b>Points to Remember:</b>
✚	Continuous Stay in India → Not Necessary. (366 Days in P.Y 2023-24)
✚	Each block of 24 hours shall be taken as 1 day (less than 24 hours shall be ignored).
✚	Date of Arrival & Departure → Considered to be in India for counting days stayed in India.
✚	Individual can be resident in more than 1 country, but he can be citizen in ONLY 1 Country.
✚	Stay in TWI (12NM) shall also be considered as stay in India. E.g., In a Ship or boat.

**HUF**

If Control & Management is situated wholly/partly in India	Resident
If Control & Management is situated wholly outside India	NR

**Determination of ROR/RNOR**

No Need to Check Basic Conditions For Karta

Status of KARTA will determine whether HUF is ROR/RNOR.

✚ If KARTA is ROR → HUF is ROR &

✚ If KARTA is RNOR → HUF is RNOR.

**FIRM/AOP/BOI/LA/AJP**

If Control & Management is situated wholly/partly in India	Resident
If Control & Management is situated wholly outside India	NR

**Meaning of Control & Management (C&M)**

✚ C&M refers to **Central C&M** & not day-to-day business activities by employees, servants, or agents. Business may be done from outside India & yet its C&M may be within India. **C&M is situated at a place where "head & brain" is situated.**

✚ C&M → Place where 'Controlling & Directing power' works (with some permanence).

**COMPANY**

A Company shall be **Resident** in India if:

1. It is an **Indian company**; Always **RESIDENT** (Even **POEM** out of India)
2. **POEM** is in **India** in that PY (Other than Indian Company).

**POEM**: A Place where key management & commercial decisions necessary for the conduct of the business of entity are substantially made.

## Scope of Total Income [Sec 5]

### Indian Income

1. Income Received or deemed to be received in India OR
2. Income Accrued / Arise or deemed to be accrued / arise in India.

### Foreign Income

Income which is NEITHER received in India NOR Accrued / Arise in India. i.e., other than Indian income.

## SCOPE OF TOTAL INCOME

### (I) INDIVIDUAL / HUF

Nature of Income	Tax Treatment		
	ROR	NOR	NR
Indian Income	Taxable	Taxable	Taxable
Foreign Income	Taxable	Only 2 types of Foreign Incomes are taxable** Others foreign incomes are not taxable in India.	Not Taxable

\*\*Following Foreign Incomes are taxable in the hands of RNOR:

1. Income from Business carried on o/s India which is controlled wholly/partly from India.
2. Income from Profession carried on o/s India which set up in India.

Note: No other foreign Income (Salary, Rent, Interest etc.) is taxable in India to RNOR.

### (II) Other Assessee

Nature of Income	Tax Treatment	
	Resident	NR
Indian Income	Taxable	Taxable
Foreign Income	Taxable	Not Taxable

### Points to Remember:

- ✚ Indian Income → Taxable to EVERYONE (R/NR).
- ✚ ROR → Every Income (Indian/Foreign) is Taxable.

**Circular:** Clarification regarding liability to tax in India of NR Seafarer receiving Remuneration in NRE (Non-Resident External) A/c maintained with Indian Bank. Income by way of salary, received by non-resident seafarers, for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) & received into NRE bank A/c maintained with an Indian bank shall not be included in the total income.

### Meaning of Some Important Terms

#### \* Receipt of Income

First occasion(time) when the recipient gets money under his control. Any Further Remittance/Transmission of the received amount to another place/person does not result in "Receipt" in the hands of subsequent recipient.

#### \* Sec 7 Income deemed to be received in India

- (i) Employer's Contribution to RPF in excess of 12% of salary.
- (ii) Interest credited to RPF of the Employee in excess of 9.5% p.a.
- (iii) Amount transferred from URPF to RPF (Employer's contribution & its interest).
- (iv) Contribution made by CG/other employer in the PY under Pension scheme [80CCD] to the account of employee.

#### \* Accrual of Income

- ✚ Accrue means the right to receive income.
- ✚ Due means the right to enforce payment of the accrued income.

#### Examples:

1. Salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st Dec or 1st Jan.
2. Interest on Government securities payable on specified dates arise during the period of holding but will become due for payment on specified dates.

#### Explanation to Section 5

1. Income accruing/arising outside India shall not be deemed to be received in India merely because it is taken into account in Balance Sheet prepared in India.
2. Income taxed on Accrual basis cannot be assessed again on Receipt basis, as it will amount to double taxation.

### \* Incomes Deemed to Accrue or Arise in India [Sec 9]

Some Incomes are deemed to accrue/arise in India **even though they actually accrue outside India.**

#### 1. Income From Business Connection in India

Income arises outside India by virtue of such Business Connection to the assessee.

It will be deemed that such income has accrued in India & will be taxable in India.

**Meaning of Business Connection:**

Any **Business Activity** carried out through a person acting on behalf of NR. Agent must satisfy following conditions to form Business Connection:

(a) Agent of NR must have **Authority to conclude contracts** on behalf of NR. Such contract

- Should be in the name of NR.
- Should be for Provision of Services by that NR.
- Should be for the transfer of ownership of Property owned by that NR.
- Should be for **granting of Right to use** Property owned by that NR/under control of NR; or

(b) He habitually **maintains stock** of goods/ merchandise from which he regularly delivers goods/merchandise in India on behalf of NR; or

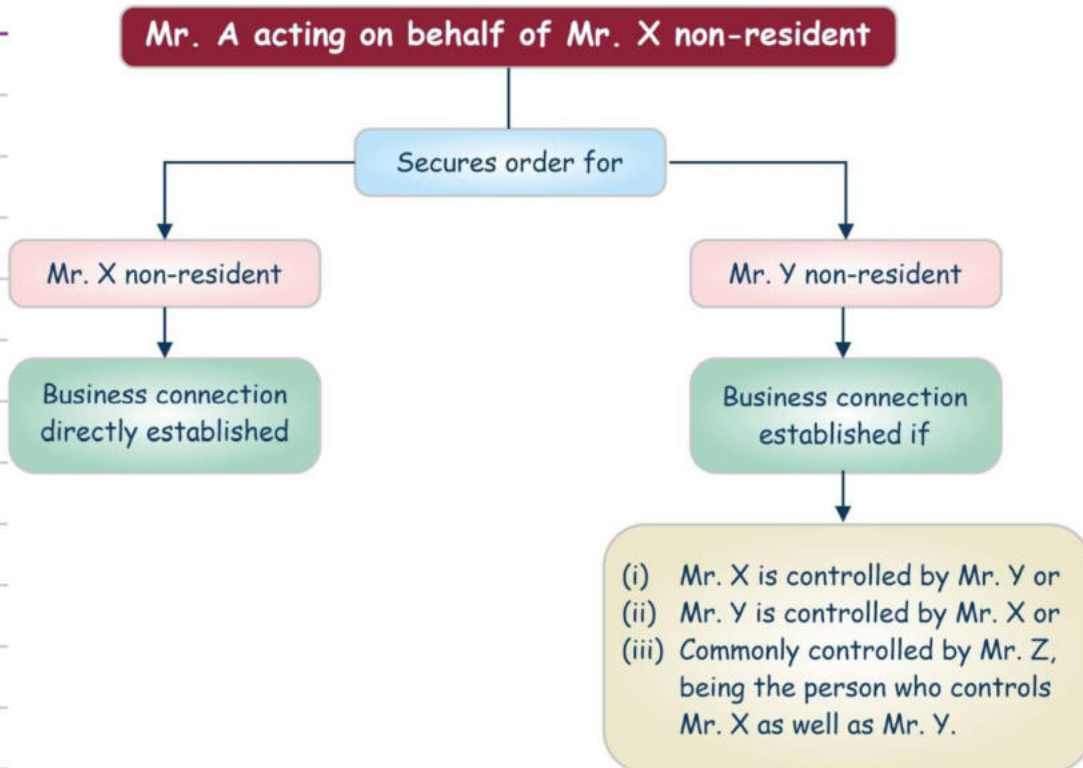
(c) Where he **habitually secures orders** in India (mainly or wholly) for NR.

**Note:** If agent's authority is limited to purchase of goods for NR, NO business connection exists.

#### ONE AGENT - 2 NR:

There may be situations when a person acting on behalf of NR **secures order for another NR** too. Business connection **for other NR** is established if:

- (a) such other NR controls the NR or
- (b) such other NR is controlled by the NR or
- (c) such other NR is subject to same control as that of NR.



#### Examples of Business Connection:

- (a) Branch office in India or Agent of a NR in India or an organization/factory of a NR in India.
- (b) Appointing an agent in India for systematic & regular purchase of Raw Material or for sale of NR's goods for other business purpose.
- (c) Formation of subsidiary company in India to carry on business of NR parent company.
- (d) Any profit of NR which can be reasonably attributable to such part of operations carried out in India through business connections in India are deemed to be earned in India.

**Independent Agent:** Agent who do not work mainly or wholly for NR: Where NR carries on business through broker/commission agent, there will be NO business connection if such a person is acting in ordinary course of his business. E.g., OYO, Agoda, Booking.Com.

2. Significant Economic Presence of NR in India constitutes Business Connection**Deemed Business Connection**

	Nature of transaction	Condition
(a)	In respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India	Aggregate of payments arising from such transaction or transactions during the previous year should exceed ₹ 2 crores.
(b)	Systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be at least ₹ 3 lakhs

Above transactions [(a) & (b)] shall constitute significant economic presence in India, whether or not

- (i) Agreement for such transactions or activities is entered in India; or
- (ii) NR has a residence or place of business in India; or
- (iii) NR renders services in India.

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

**Note:** This provision has been inserted to cover digitalized businesses, which do not require physical presence of itself or any agent in India within the scope of section 9(1)(i).

**Following Shall Not be Treated as Business Connection in India**

- (a) Purchase of Goods in India for Export by NR
- (b) Collection of News & Views in India for transmission out of India by NR
- (c) Shooting of Cinematograph films in India by NR, if such NR is:
  - (i) Individual, who is not a citizen of India or
  - (ii) Firm which does not have any partner who is a Citizen of India or who is Resident in India;
  - (iii) Company which does not have any Shareholder who is a Citizen of India or who is Resident in India.

(d) Display of Rough Diamonds in SNZ by Foreign Company.

Display of uncut & unassorted diamonds (without any sorting or Sale) in any SNZ notified by CG.

3. Income from Property or Asset or Source of Income in India

Income from Property/Asset situated in India → Deemed to accrue in India.

Ex: Rent paid o/s India for use of machinery/buildings situated in India is deemed to accrue in India.

Ex: Deposits with an Indian company for which interest is received o/s India.

4. Capital Gain on Transfer of a Capital Asset Situated in India

✚ Capital Gain on Transfer of Capital Asset situated in India is deemed to accrue in India even if: - Place of Registration of Document of Transfer is in India or outside India; & Place of Payment of consideration for transfer is in India or outside India.

✚ Capital Asset (being Share/Interest in a company registered or incorporated outside India) shall be deemed to be situated in India, if Share/Interest derives its value substantially from the assets located in India.

5. Dividends Paid by Indian Co. O/s India → Deemed to Accrue in India.

E.g., Elon Musk (NR) invested in TaTa Motors (R) & TaTa motors pay dividend to Elon Musk.

6. Income From Salaries

✚ Salary is deemed to accrue/arise at the place where the services are rendered.

✚ Salaries payable by Government to a citizen of India for services rendered outside India would be deemed to accrue India (even if services are rendered outside India). However, Allowances & Perquisites paid outside India by Government are exempt u/s 10(7).  
Exception u/s 9(2): Pension payable outside India by the Government to its officials & judges who permanently reside outside India shall not be deemed to accrue or arise in India.

7. Interest, Royalty, Fees for Technical Services Paid to Non-Resident

Interest, royalty, FTS is deemed to accrue/arise in India if it is:

(i) Payable by Government of India (CG/SG): **Always** deemed to accrue/arise in India

(ii) Payable by Resident: Income deemed to accrue/arise in India

Exceptions: [In following cases, income is not deemed to accrue in India]

- If borrowed money is used by the payer of interest {R} for a **business/profession carried on outside India** or for earning any income from the source outside India.
  - Payment of Royalty or Technical fees related to a **Business/profession** carried on by the payer outside India or for earning any income outside India.
- (iii) Payable by Non- Resident: deemed to accrue/arise in India in **below cases only**.
- If borrowed money is used by the payer of Interest (NR) for a business/profession carried on in India ~~or for earning any income in India~~.
  - Payment of Royalty or FTS related to a Business/profession carried on by the payer in India or for earning any income in India.

Exception: Interest on money borrowed by NR for any purpose other than business or profession in India will NOT be deemed to accrue or arise in India.

Ex: If a NR 'A' borrows money from a non-resident 'B' & invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.

Note: Income by way of Interest, Royalty, FTS from services utilized in India would be deemed to accrue in India in case of a NR & be included in his total income, whether or not such services were rendered in India & whether or not NR has a residence or place of business or business connection in India.

Note:

1. Lumpsum royalty not deemed to accrue / arise in India in respect of Computer software.
2. Consideration for use or right to use of computer software is covered under royalty.
3. If property t/f & taxable under capital gain then it will not cover under royalty.
4. **Meaning of Royalty:** The term 'royalty' means consideration (including any lumpsum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains') for:
  - (i) the transfer of all or any rights (including the granting of licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

- (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
- (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
- (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
- (v) the use or right to use any industrial, commercial or scientific equipment;
- (vi) the transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.  
Note: Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty.
- (vii) the rendering of any service in connection with the activities listed above.

5. **Meaning of Fees for technical services** means any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel). However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'

8. Money Paid By Resident Indian to a NR (Non-Corporate)/Foreign Company

✚ Any sum of money paid (without consideration) by Indian resident person to a NR (non-corporate) or foreign company on or after 5.7.2019

✚ would be deemed to accrue or arise in India if the same is chargeable to tax u/s 56(2)(x).

✚ Section 56(2)(x): If aggregate sums received exceeds ₹ 50,000 in a FY.

**CHART FOR SEC 9 (SOURCE: - ICAI MATERIAL)**

**Income deemed to accrue or arise in India [Section 9(1)]**

