

CHAPTER - 2

RESIDENTIAL STATUS

1. **Residential status on the basis of number of days of stay in India -** Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies **any one** of the following conditions:

- (i) He has been in India during the previous year for a total period of **182 days or more**, or
- (ii) He has been in India during the **4 years immediately preceding** the previous year for a total period of **365 days or more** and has been in India for **at least 60 days in the relevant previous year**.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are **not satisfied**, the individual is a **non-resident**.

Exceptions:

The following categories of individuals will be treated as resident in India **only if the period of their stay during the relevant previous year amounts to 182 days or more**. In other words, even if such persons were in India for 60 days or more (but less than 182 days) in the relevant previous year, they will not be treated as resident due to the reason that their stay in India was for 365 days or more during the 4 immediately preceding years.

- (1) **Indian citizen**, who **leaves India** during the relevant previous year as a **member of the crew** of an Indian ship or **for purposes of employment outside India**, or

(2) **Indian citizen** or **person of Indian origin** who, being outside India comes on **a visit to India** during the relevant previous year and his **TOTAL INCOME** (other than income from ^Xforeign sources) is **15 lakhs or less**.

However, such person having **total income, other than the income from *foreign sources** [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], **EXCEEDING ` 15 LAKHS DURING THE PREVIOUS YEAR** will be treated as resident in India if -

- the period of his stay during the relevant previous year amounts to **182 days or more, or**
- he has been in India during the **4 years immediately preceding the previous year** for a total period of **365 days or more** and has been in India for at least **120 days in the previous year**.

(2) *** Deemed resident [Section 6(IA)]** - An individual, being an **Indian citizen**, having total income, **other than the income from foreign sources** [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], **exceeding ` 15 lakhs during the previous year would be deemed to be resident in India in that previous year**, if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

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

* Even if he has not stayed in India for a single day.

*** Income from Foreign Sources** means income which **accrue @ arise** of India but shall not include

- Income which are deemed to be accrue @ arise in India u/s 9.
- Income derived abroad from a business controlled from India

India for the purpose of employment.

* RULE - 126 Computation of period of stay in India in crew member cases:

- Deemed outside India → Date of joining to date of signing off.
- Days in India → 365(-) Deemed outside India.

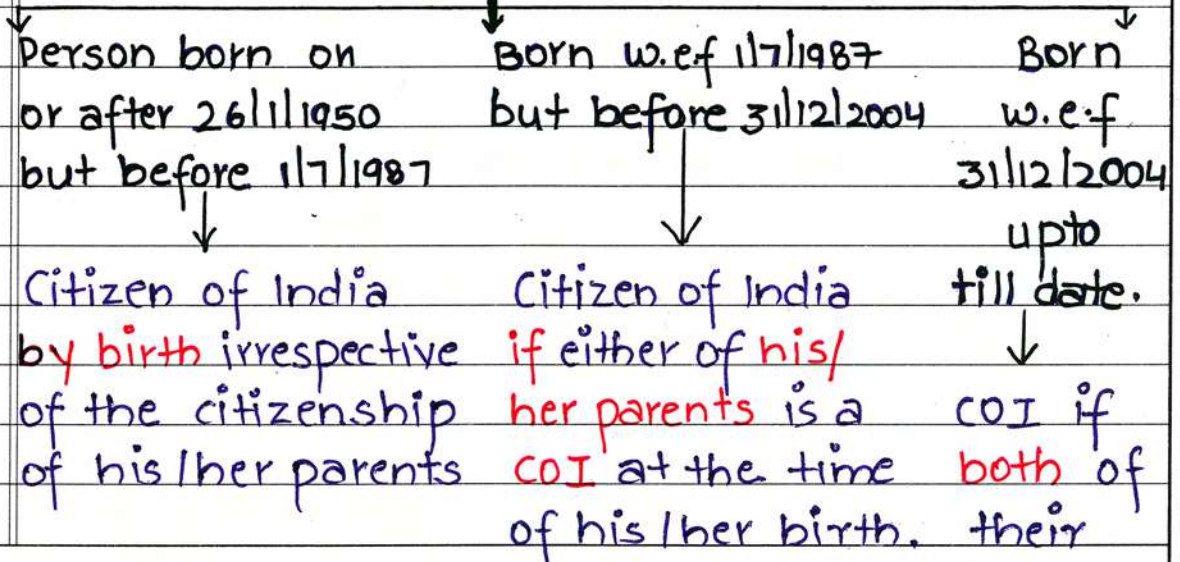
→ If 182 days or more then resident in India.

* Definition of Indian Origin (Sec. 115C)

- If he, either of his parents or any of his grand parents are born in undivided India (i.e before 1947) Eg. Dada, Dadi, Nana, Nani
- Undivided India includes Bangladesh, India and Pakistan.

* Definition of citizen of India (Sec-3 of Indian citizen Act, 1955)

Assessee



Remarks

parents are
COI at the
time of birth.

➤ IF ASSESSEE (INDIVIDUAL/HUF) BECOME RESIDENT.

Further two Category

ROR

If both additional conditions are satisfied.

RNOR

If any one additional condition is not satisfied (OR) both not satisfied.

Additional Conditions

(a) Resident in India in any 2 out of 10 immediately preceding relevant previous years, and;

(b) Present in India for 730 or more during 7 immediately preceding relevant previous year.

IF NOT SATISFIED

CRUX :

Conditions	C-I	C-II	C-III	C-IV	C-V	C-VI	C-VII	C-VIII	C-IX
BC ₁	✓	X	✓	✓	✓	X	X	X	✓
BC ₂	X	✓	✓	X	X	✓	✓	✓	✓
AC ₁	✓	✓	✓	✓	X	✓	✓	X	X
AC ₂	✓	✓	✓	X	✓	X	X	✓	X
Remarks	ROR	ROR	ROR	RNOR	RNOR	RNOR	RNOR	RNOR	RNOR

Resident and ordinarily resident/Resident but not ordinarily resident

Only individuals and HUF can be “resident but not ordinarily resident” in India. All other classes of assesseees can be either a resident or non-resident. A not-ordinarily resident person is one who satisfies any one of the conditions specified u/s 6(6).

- (i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- (ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less, or
- (iii) If such individual is an Indian citizen or person of Indian origin (who, being outside India, comes on a visit to India in any previous year) having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (other than income derived from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ` 15 lakhs during the previous year, who has been in India for 120 days or more but less than 182 days during that previous year, or
- (iv) If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A) [It may be noted that a deemed resident will always be a resident but not ordinarily resident].

Analysis & Example: [We will Discuss in Amendment Class] [SUMMARY DIAGRAM]

Analysis of Amendment

INDIVIDUAL
 +
 Indian citizen | Indian origin
 residing in India
 +
 Total Income > ₹15 LAKH
 [Except F.S.I]
 +
 Liability to pay tax in any
 other country or territory

YES

No

Period of Stay
 in India is
 LESS THAN 120
 DAYS

Period of Stay
 in India is
 120 days @ more
 but less than 182
 days in R.P.Y

Period of
 Stay in
 India is
 182 days @
 More

+
 365 days @ more
 in 4 I.P.P.Y

RESIDENT &
 R+NOR

RESIDENT
 & For RoR
 and R+NOR
 Check both
 Add. Condition

Deemed Resident
 U/S 6(1A) even if
 he was not in India
 during that P.Y even
 a single day.

[Assume he is not a
 resident as per 6(1)]

Applicable only
 for Indian Citizen

Example

Mr. Binod is living in Dubai Since 1980. He Comes to India to meet his parents on 15/6/2021 and leaves India for Dubai on:

- CASE I 16/10/2021 [Assume - 370 days in 4 I.P.P.Y]
- CASE II 18/12/2021 [700 days in 7 I.P.P.Y]

Mr. Binod has the following Incomes :

- i) Income arise in India = 7,00,000
- ii) Income received @s India = 6,00,000
but deemed to be arise in India
- iii) Income arising in Dubai and not received in & deemed to arise in India = 30,00,000
- iv) Income arising in Dubai from a business controlled from India = 11,00,000

Determine the R-Status of Mr. Binod and what will be your Answer if above income is less than 15 lakh (other than F.S.I)

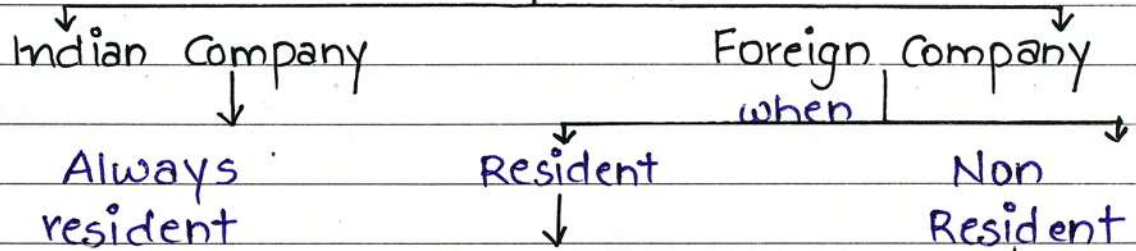
Answer: STAY IN INDIA = 15/6/21 to 16/10/21 [124 days & 365 days @ max in 4 I.P.P.Y]

CASE-1 Total Income = 24,00,000 (except F.S.I) CASE-2 15/6/20 to 18/12/21 = 187 days

R-Status = R + NOR Resident + RNOR
 [Amendment]
 Taxable Income = 24,00,000
 (T.I = 24,00,000)

Yes, Answer will be different since Mr. Binod will become 'NR' Amendment N.A. [T.I = 7,00,000 + 6,00,000]

➤ RESIDENTIAL STATUS OF COMPANIES

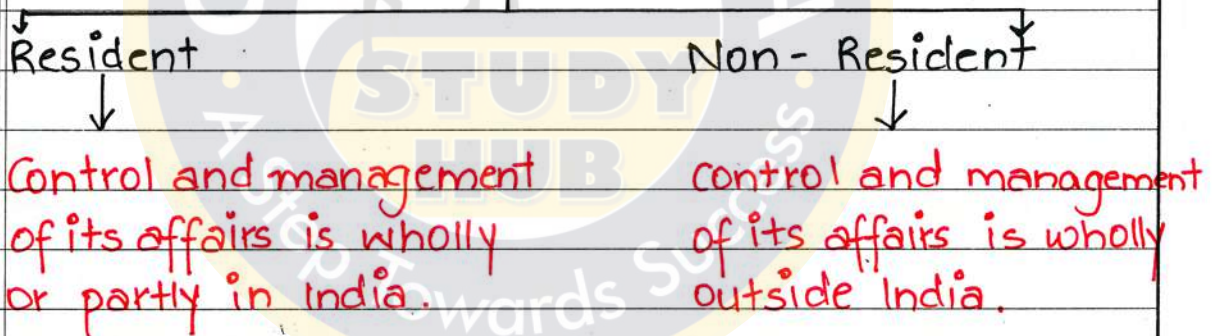


For
POEM
guides
lines,
refer
book

If T.O is more than 50 crore.
If any F.co. whose T.O is upto 50 cr. than such co. will always be deemed as N.R

Place of effective management outside India.

➤ RESIDENTIAL STATUS OF OTHER ASSESSEE.



➤ SECTION - 9 INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

- Salary income if service rendered in India.
- salary from Govt. of India to an Indian citizen
- Income from property situated in India.
- Income from Transfer of Capital asset situated in India.

Capital asset being share in a company incorporated outside India - deemed to be situated in India, if the share derives directly

Remarks

or indirectly, its value substantially from the assets located in India.

- Interest, royalty, fees
 - paid by SGI/CGI
 - paid by non-govt. if USED IN INDIA
- Income from a # business connection in India.

Exceptions in case of non-resident.

- Purchase of goods in India for export.
- Collection of news and views for transmission outside India by NR.
- shooting of films in India if such NR is
 - An individual if he is not a citizen of India.
 - Firm if no partner is citizen or resident of India.
 - Company if no shareholder is citizen or resident of India.

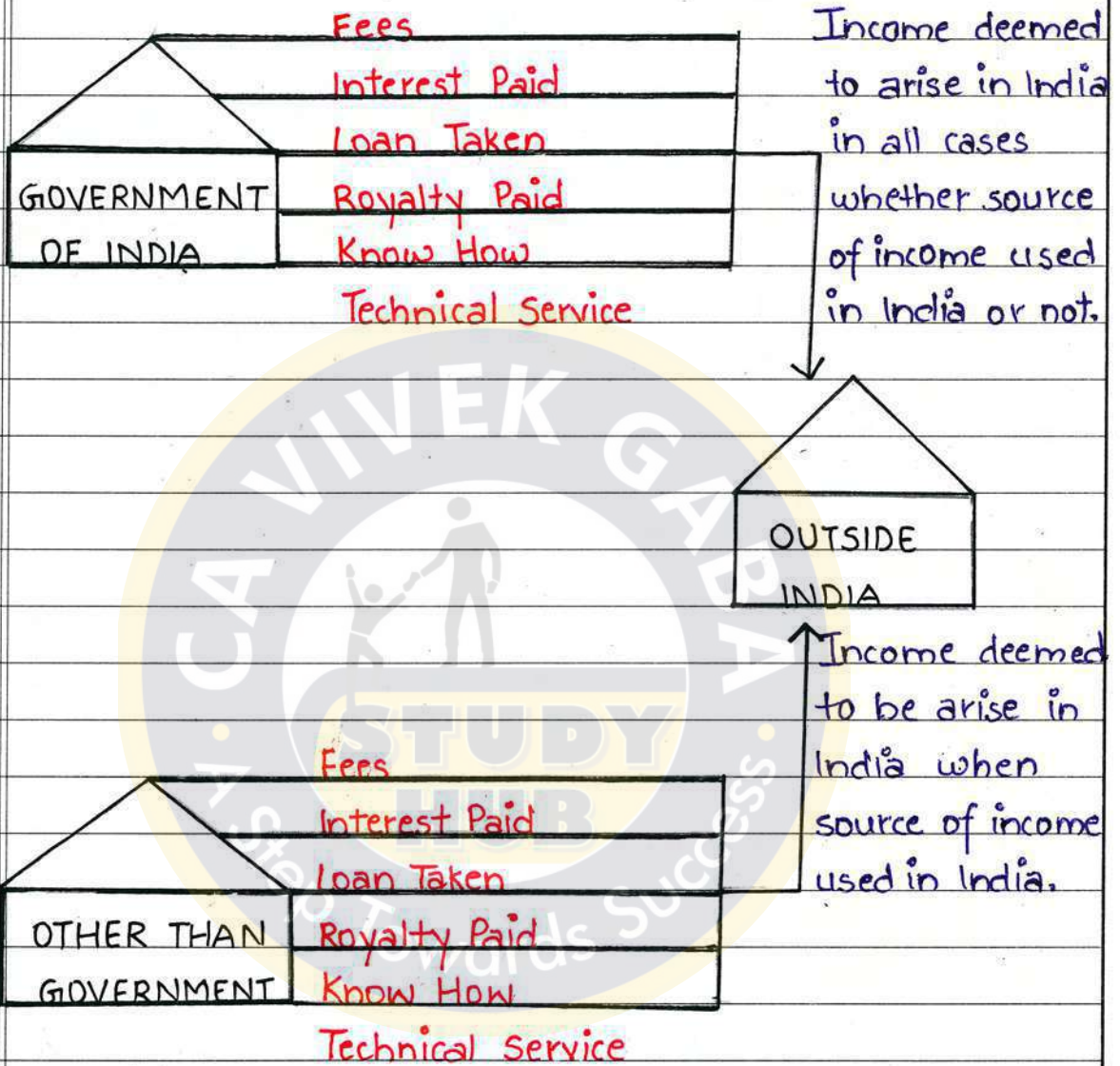
Latest Amendment

business connection includes Significance Economic Presence in India.

Significance Eco. Presence means

① Business carried by NR with any person in India \leftarrow Payment received in a.f.y $\geq 2cr.$ India

② Systematic and Continuous Soliciting of business activities in India $\xrightarrow{\text{USERS in India}} \geq 3laks$



Remarks