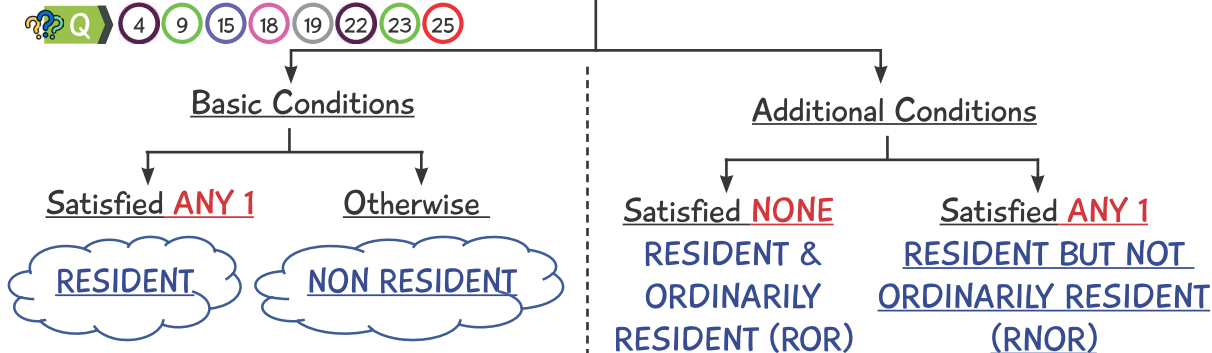


2

RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME

Part A – Residential Status

Residential Status of INDIVIDUAL



1

Stay of ≥ 182 days in India during current FY

- Stay of 729 days or less in India during 7 immediately preceding FYs
- Non resident for 9 out of 10 immediately preceding FYs

2

OR

Stay of 60 days or more in India during current FY

AND

Stay of 365 days or more in India during 4 years immediately preceding FY

- All of the following conditions are satisfied: -
 - He is an "Indian Citizen OR a person of Indian origin";
 - He, being outside India, comes on a VISIT to India during the relevant PY;
 - His "Total income OTHER THAN the income from foreign sources" > Rs. 15 Lakhs during FY; AND
 - His Stay IN India during the FY is 120 days or more but LESS THAN 182 days.
- He is an Indian CITIZEN who is DEEMED to be Resident IN India under clause (1A)

If Resident – check for additional conditions

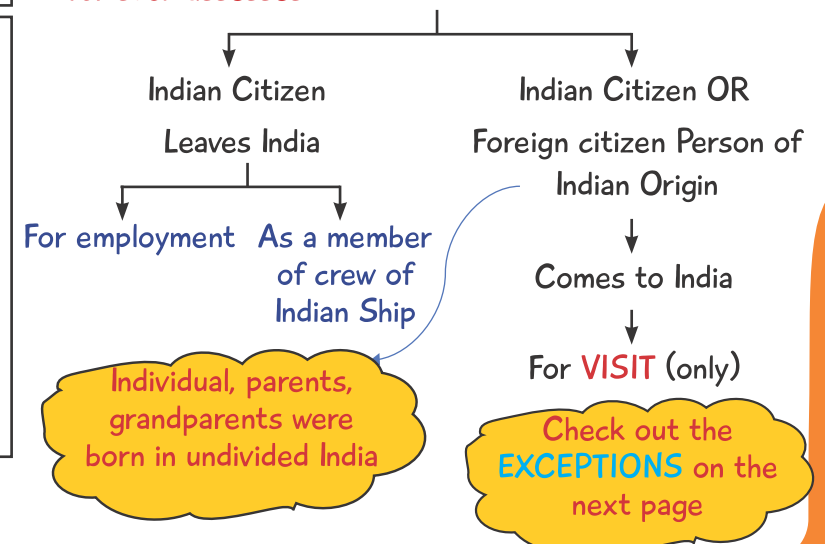
If NR – No need to check additional conditions

Additional Notes:

- In the absence of information, **date of arrival and date of departure**, both shall be included in no. of days stayed in India.
- Stay need **not be continuous** in India.
- Stay can be anywhere in India including territorial water of India [12 NM]
- Purpose of visiting is irrelevant.
- Residential status - Nothing to do with **citizenship**
- Residential status has to be determined for every A. Y. independently.

Exceptions to general method of "determination of Residential Status" given above

In following assesseees, we only check the 182 days condition for determining whether Individual is Resident or not, i.e. the 60+365 days condition is NOT applicable for such assesseees



Exception - applicable **ONLY** for persons coming to India for VISIT (second point above)

If SUCH "Indian Citizen/person of Indian Origin" has "Total Income OTHER THAN the income from Foreign Sources" (i.e. Indian Income) > Rs.15 Lakhs during the PY, he will be treated as **RESIDENT** in India IF –

1. Stay IN India \geq **182 days** during THE PY; OR
2. Stay IN India for \geq **120 days** during THE PY
AND
Stay IN India \geq **365 days** in PRECEDING 4 PYs

Amit is an Indian citizen, employed in Bali. Total income is Rs 25,00,000. Income from foreign sources is Rs 5,00,000.

Visits India for 125 days during the previous year. Discuss. Also discuss if the foreign sourced income is Rs 12,00,000.

For persons leaving India as a crew member of Indian Ship - Rule 126 Income Tax Rule, 1962

Special Method of computation of no. of days stayed in India for a person who is an Indian Citizen working on Indian Foreign going ship [As per continuous Discharge Certificate]



??Q 1

| | | | | | | |
|----------------------------|---|----------------------------------|-----|-----------------------|-----|--|
| No of days stayed in India | = | Total days in one FY (365 / 366) | (-) | No of days as per CDC | (-) | Additional days stayed outside India (He can be o/s India for personal reason say vacation) |
|----------------------------|---|----------------------------------|-----|-----------------------|-----|--|

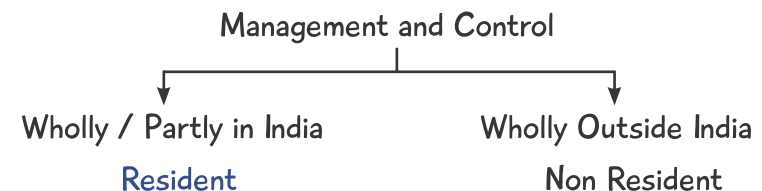
Consider Start date and End date as per CDC – assume that those many days he is **OUTSIDE INDIA**

DEEMED Resident [Section 6(1A)]:-

1. An individual, being an **INDIAN CITIZEN**, having "Total Income **OTHER THAN the Income from foreign sources**" (i.e. Indian Income) > Rs.15 lakhs during the PY would be **DEEMED** to be Resident in India in **THAT PY**, 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".
2. However, **THIS** provision will **NOT** apply in case of an individual who **IS** a resident of India in the PY as per section 6(1).

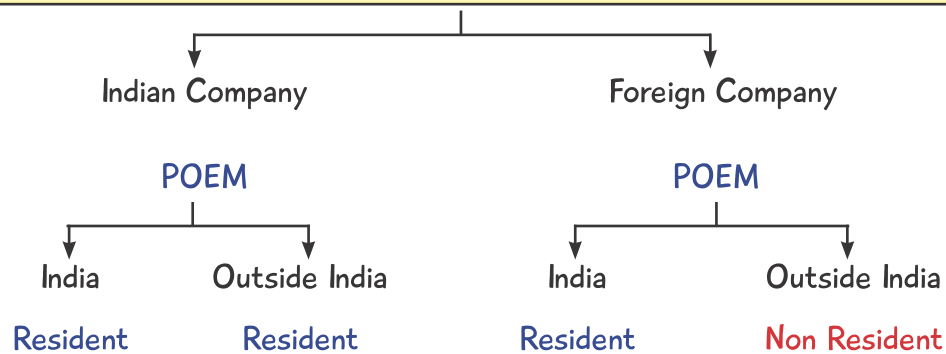
Income which accrues/arises **OUTSIDE** India (**EXCEPT** Income from a business controlled from or profession set up in India) which is **NOT DEEMED** to accrue or arise **IN** India

Residential Status of HUF ??Q 4



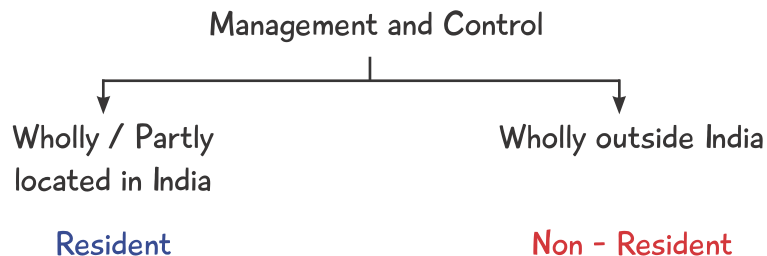
*ROR / RNOR depends upon Karta

Residential Status of Company



1. RIL → POEM → in India → _____
2. Apple Inc → POEM → O/S India → _____
3. Apple Inc → POEM → in India → _____
4. RIL → POEM → O/S India → _____

Residential Status of Firm / AOP / LLP



Part B - Scope of total income



Q

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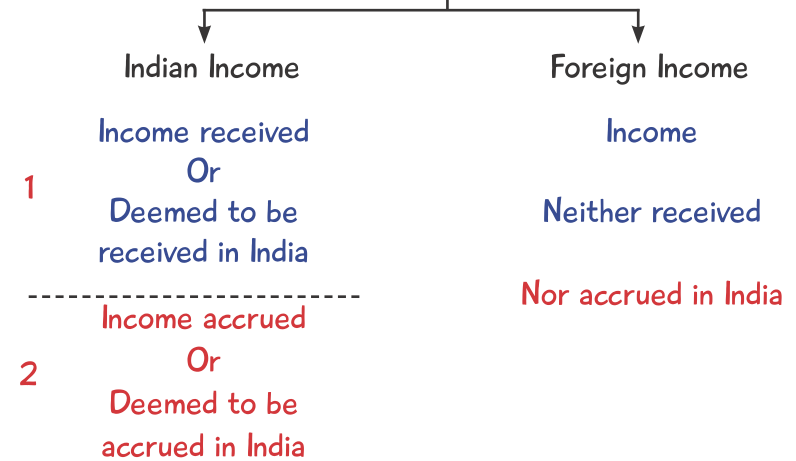
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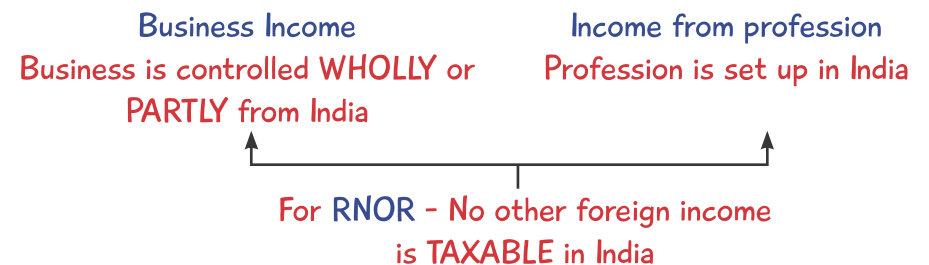
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| Tax treatment for individuals and HUF | | | | Tax treatment for other assesses | | |
|---------------------------------------|---------|----------------|-------------|----------------------------------|---------|-------------|
| Income | ROR | RNOR | NR | Income | ROR | NR |
| Indian Income | Taxable | Taxable | Taxable | India Income | Taxable | Taxable |
| Foreign Income | Taxable | (*) Check NOTE | Not Taxable | Foreign Income | Taxable | Not Taxable |


Following 2 foreign incomes are taxable to RNOR even if it accrues outside India



| Receipt of income | |
|---------------------------------------|---|
| Income received in India | <ol style="list-style-type: none"> 1. Receipt → First occasion (time) when the recipient gets money under his control 2. Any Further Remittance/Transmission of the received amount to another place/person does not result in "Receipt" in the hands of subsequent recipient |
| Income deemed to be received in India | <ol style="list-style-type: none"> 1. Employer's Contribution to RPF in excess of 12% of salary. 2. Interest credited to RPF of the Employee in excess of 9.5% p.a. 3. Amount transferred from URPF to RPF (Employer's contribution & its interest). 4. Contribution made by CG/other employer in the PY under Pension scheme [80CCD] to the account of employee. 5. Any Tax deducted at source |

| Accrual of income |
|--|
| <ul style="list-style-type: none"> • Accrue means the right to receive income • Due means the right to enforce payment of the accrued income • Income taxed on accrual basis – NOT to be taxed again on receipt basis |

Ex - 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.

| Income deemed to accrue or arise in India [Section 9] |
|---|
| <ol style="list-style-type: none"> 1. Income of a NR from a business connection in India  <ol style="list-style-type: none"> i. Bus. Connect - includes - Any business activity carried out through a person acting on behalf of Non Resident [NR] - Branch office, Agent etc. Note - Even if such income arises outside India, it will be deemed that such income has accrued in India & will be taxable in India ii. Person acting on behalf of NR - Agent must satisfy following conditions : <ul style="list-style-type: none"> • Agent must have authority to conclude the contract on behalf of NR • He habitually maintains stock of goods / from which he regularly delivers goods / merchandise in India on behalf of NR • Where he habitually secures orders in India for NR Note - If agent's authority is limited to purchase of goods for NR, NO business connection exists iii. Business connection for other Non-Resident is established if <ul style="list-style-type: none"> • Such other NR controls NR OR • Such other NR is controlled by the NR OR • Such other NR is subject to same control as that of NR |

Income deemed to accrue or arise in India [Section 9]

iv. Examples of Business Connection:

- Branch office in India or Agent of a NR in India or an organization/factory of a NR in India.
- Appointing an agent in India for systematic & regular purchase of Raw Material or for sale of NR's goods for other business purpose.
- Formation of subsidiary company in India to carry on business of NR parent company.
- 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

Which income is taxable?

ONLY SUCH PART of income as is REASONABLY ATTRIBUTABLE to the operations carried out IN INDIA shall be DEEMED to accrue/arise IN India.

Significant Economic Presence

SEP of a NR in India shall also constitute business connection in India.

WHAT IS SEP?

| Nature of transaction | Condition |
|--|--|
| Any goods, services or property carried out by NR 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 FY should <u>> 2 crores.</u> |
| Systematic and continuous soliciting of business activities or engaging in interaction with users in India | Number of users should be <u>atleast 3 Lakhs</u> |

Further, the above transactions or activities shall constitute SEP in India, whether or not,

Agreement for such transactions or activities is entered in India;

NR has a residence or place of business in India; or

NR renders services in India;

Following shall not be treated as business connection in India

| | | |
|---|---|--|
| 1 | Purchase of Goods in India for Export by NR | <ul style="list-style-type: none"> No Income shall be deemed to accrue in India from operations which are confined to purchase of goods in India for Export by NR |
| 2 | Business whose All operations are not carried out in India | <ul style="list-style-type: none"> Proportionate Income attributable to the operations carried out in India shall be deemed to accrue or arise in India. Income which cannot be attributed to the operations in India shall not be deemed to accrue / arise in India |
| 3 | Collection of News & Views in India for transmission out of India by NR | <ul style="list-style-type: none"> If a person engaged in business of News agency etc, Income from activities which are confined to the collection of news & views in India for transmission out of India is not deemed to accrue in India. |
| 4 | Shooting of Cinematograph films in India by NR | <p>Income from operations confined to shooting of any cinematograph film in India, if such NR is:</p> <ol style="list-style-type: none"> Individual, who is not a citizen of India or Firm which does not have any partner who is a Citizen of India or who is Resident in India; Company which does not have any Shareholder who is a Citizen of India or who is Resident in India |
| 5 | Display of Rough Diamonds in SNZ by Foreign Company | <p>Income from the activities carried out by Foreign Company which are confined to display of uncut & unassorted diamonds (without any sorting or Sale) in any SNZ notified by CG</p> |

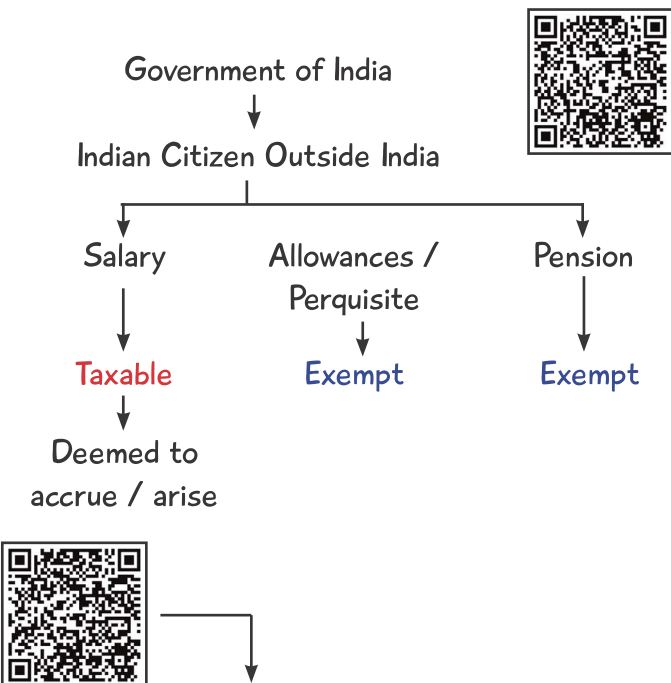
- (ii) income from property or asset or source of income in India
Income from Property/Asset situated in India → Deemed to accrue in India

Examples

- Rent paid o/s India for use of machinery/buildings situated in India is deemed to accrue in India.
- Deposits with an Indian company for which interest is received o/s India

- (iii) 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.
 - Dividend declared by a foreign company outside India i.r.o shares which derive their value substantially from assets situated in India would NOT be deemed to be income accruing in India.

(iv) Salary Income - Deemed to accrue at the place where services are rendered

**NOTE**

Pension payable outside India by Government to its officials & judges who permanently reside outside India not deemed to accrue in India & thus **NO TAX**

(vi) Dividend paid by an Indian company outside India

Dividends paid by an Indian company outside India is deemed to be accrue and arise in India and would be taxable in the hands of shareholders at normal slab rates.

| Income | OR | NOR | NR |
|---|----|-----|----|
| (1) Indian Income | ✓ | ✓ | ✓ |
| (2) Foreign Income <ul style="list-style-type: none"> • Business controlled from India, OR • Profession set up in India | ✓ | ✓ | X |
| (3) Other Foreign Income | ✓ | X | X |
| (4) Capital Receipt | X | X | X |
| (5) Exempt Income | X | X | X |
| (6) Dividend paid by Indian Company outside India | ✓ | ✓ | ✓ |

(v) Interest / Royalty / Fees for Technical services paid



| Taxable if paid by | Tax Treatment |
|--------------------|--|
| GOI → NR | Always Taxable to NR if paid by Gol. |
| Resident → NR | Not taxable to Recipient NR in following cases : (i) If Borrowed Money is used for business / profession o/s India (ii) If Royalty / FTS are for business / profession o/s India. |
| NR → NR | Taxable : (i) If Borrowed Money is used for Bus/Prof in India by NR (ii) If Royalty / FTS are for Business / Profession in India. Not Taxable : If BM is used by NR for other than Business / Profession. |

(vii)

Indian R $\xrightarrow[\text{Property gifted in exceed of 50,000}]{\text{any sum paid without C}}$ a. Non Corporate NR
b. Foreign Co.
c. RNOR (w.e.f. FA2023)

such sums will be deemed to accrue in India taxable