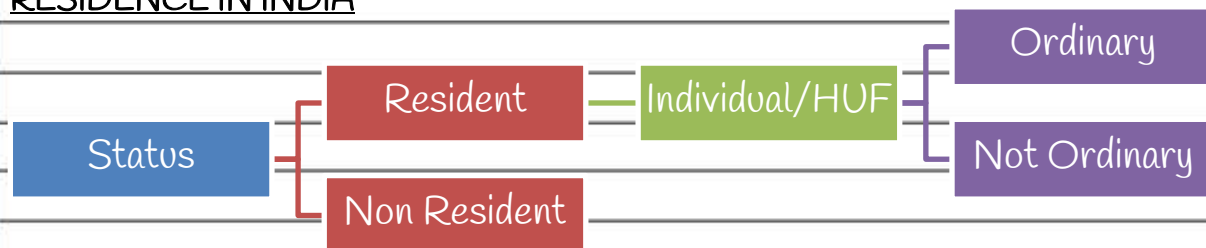


RESIDENCE AND SCOPE OF TOTAL INCOME

What we would learn in this session

1. Learn to determine residential status of a person
2. Learn how a person's residential status affects the scope of total income
3. Apply what you have learnt in real examples

RESIDENCE IN INDIA



Section 6. For the purposes of this Act, –

(1) An **individual** is said to be resident in India in any **previous year**, if he –

- a. is in India in that year for a period or periods amounting in all to **182 days** or more; or
- c. having within the **4 years** preceding that year been in India for a period or periods amounting in all to **365 days** or more, is in India for a period or periods amounting in all to **60** or more in that year.

*Period of stay includes both the day of arrival as well as departure.

→ Explanation 1 (a) and 1 (b)

Exclusions

- Crew of an Indian Ship or for foreign employment
- **Indian citizen or PIO*** comes on a visit to India
 - TI for PY from Indian source ₹15 L or less
 - TI from Indian sources exceeding ₹15 Lakhs

*If he or his parents or any of his grand parents were born in "Undivided India"

Example 1:

	Hema	Rekha	Jaya	Sushma
Period of Stay in India during PY	182	120	60	50
4 Years stay preceding the PY	320	350	365	1400

(1A) Notwithstanding anything contained in clause (1),

an individual, being a **citizen of India**,

→ having TI from Indian sources, exceeding ₹15 Lakhs during the PY

→ shall be **deemed** to be resident in India in that previous year,

→ 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

Explanation—For the removal of doubts, it is hereby declared that this clause shall not apply in case of an individual who is said to be resident in India in the previous year under clause (1).

(6) A person is said to be "**not ordinarily resident**" in India in any previous year if such person is—

a. an individual who has been a **non-resident** in India in **9** out of the 10 previous years preceding that year, **or**

has during the **7** previous years preceding that year been in India for a period of, or periods amounting in all to, **729** days or less; or

* So as a corollary, if he does not satisfy both the conditions, he becomes ordinarily a resident.

b. a **HUF** whose manager satisfies either of the above conditions applicable to an Individual. or

c. a **C/PIO**, with substantial Indian income, as referred to in item (b) of Ex 1 of clause (1), who has been in India for periods amounting in all to 120 days or more but less than 182 days; or

d. a citizen of India who is **deemed** to be resident in India under clause (1A).

Example 2:

Residents during PY →	Hema	Rekha	Jaya	Sushma
Status during last 10 Years				
Residents	2	4	1	0
Non-Residents	8	6	9	10
Stay in last 7 years	730	729	729	805

Remember

1. Once residential status of a person during the year is that of Non-Resident, his stay in the earlier previous year becomes irrelevant.
2. Citizenship is irrelevant in order to arrive at Residential Status.

Section 6. For the purposes of this Act, –

- (1) A **HUF**, firm or other **AOP** is said to be resident in India in any previous year in every case except where during that year the control and management* of its affairs is situated **wholly outside** India.

* refers to the central control and management and **not** to the carrying on of day-to-day business by servants, employees or agents. Place of business may be different from the place of control.

Remember: As per Section 6(6) the **manager/karta** of **HUF** has to be tested for Ordinarily or Not-Ordinarily Residency.

Example 3:

The business of a HUF is transacted from Australia and all the policy decisions are taken there. Mr. Eno, the Karta of the HUF, who was born in Kolkata, visits India during the P.Y. 2019-20 after 15 years. He comes to India on 1.4.2019 and leaves for Australia on 1.12.2019. Determine the residential status of Mr. Eno and the HUF for A.Y. 2020-21.

- A) If control and management of HUF was done only by Mr. Eno
- B) If other co-parceners managed the business when Mr. Eno was in India.

Section 6. For the purposes of this Act, –

- (2) A **company** is said to be a resident in India in any previous year, if –

- (i) it is an **Indian** company; or
- (ii) its place of effective management (**POEM**)*, in that year, is in India.

* means a place where key management and commercial decisions that are necessary or the conduct of business of an entity as a whole are, in substance made.

Example 4:

Cos. with No Indian Operations	Lal Ltd	Bal Inc	Pal & co.	Hal Corp.
Place of Incorporation	India	US	Mauritius	India
Resident Shareholders	0/10	10/10	2/5	23/50
Place of Management	London	Mumbai	Mumbai	Delhi
Board meeting held in India	0/10	10/10	8/10	5/5

SCOPE OF TOTAL INCOME

Section 5.

(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a **resident** includes **all income** from whatever source derived which—

- a. is received or is deemed to be received **in India** in such year; or
- b. accrues or arises or is deemed to accrue or arise to him **in India** during such year ; or

c. accrues or arises to him **outside India** during such year:

→ Clause (c) is **NA** for NR as per Sec. 5(2)

→ Clause (c) Applies with modification for NOR

Foreign income to be included **only if** derived from a business **controlled** in or a profession set up in India

[Proviso to Section 5(1)]

Remember

1. Income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation (Explanation 2 to section 5)
2. Merely because a particular item of foreign income is included in financial statements prepared in India, ipso facto, do not mean that the said income is received in India. (Explanation 1 to section 5)

	Tom	Dick	Harry	Francis
Residential Status	R	ROR	NOR	NR
1.Rent from property in India	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.Foreign business controlled outside India	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.Foreign business not controlled from India	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.Interest received and accrued outside India	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.Income earned outside India in 14-15 remitted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INCOME DEEMED TO BE RECEIVED

Section 7. The following incomes shall be deemed to be received in the previous year :—

- (i) Annual accretion in a recognized **provident fund**, to the extent of amount in excess of 12% of salary or interest credited in excess of 9.5% p.a.
- (ii) Transfer of Unrecognized **provident fund** to RPF being employer's contribution and interest thereon.
- (iii) Employers contribution to **Pension Fund** u/s. 80CCD.

INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

Section 9.

(1) The following incomes shall be deemed to accrue or arise in India :—

(ii) income which falls under the head "**Salaries**", if it is earned in India

Services rendered in India ←

Rest or Leave Period forming part of Service Contract ←

(iii) **Salary** paid by government to citizen of India for service outside India.

(iv) a **dividend** paid by an Indian company outside India

(v) income by way of **interest** payable by

a. Government,

b. a resident **except** when the borrowings is used for business or profession or any other source of income located outside India.

c. a non-resident when the borrowings is used for business or profession located in India. (or in case of Royalty and Technical Services any other source of income in India)

(vi) income by way of **royalty** payable by (v) above, except lumpsum royalty paid for acquisition of computer software from a NR.

[Covers both industrial as well as copyright royalties]

(vii) income by way of fees for **technical** services payable by (v) above.

Remember

1. Consideration for use or right to use of computer software is royalty
2. Payment of royalty, may or may not involve transfer of possession or control.

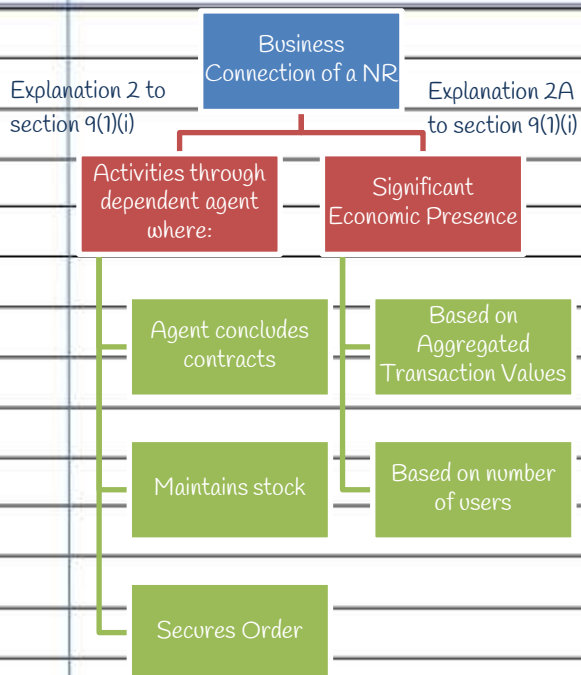
(viii) Monetary gifts by resident to non-corporate NR or foreign company

(i) all income accruing or arising,

→ whether directly or indirectly,

→ through or from

- any **business connection*** in India,
- or any **property** in India or
- any asset or **source of income** in India, or
- the transfer of a **capital asset** situated in India.



Notes:

1. Business connection, even if established, only so much of income as is **attributable** to the transactions or activities carried out in India shall be deemed to accrue or arise in India.

2. No business connection in case of **independent agents**.

3. The application of Explanation 2A to section 9(1)(i) is **deferred** until AY 2022-23.

4. Specific activities excluded from the scope of business connection: [Explanation 1 to Section 9(1)(i)] in case of a non-resident
- Business** (except those having business connection), in respect of which all the operations are not carried in India.
 - Non-resident purchasing goods in India for **export**.
 - Collection of **news** and views in India for transmission out of India
 - Shooting of cinematograph **films** in India
 - Activities confined to **display of rough diamonds** in notified zones by foreign companies engaged in mining of diamonds.

Q Shri. Sogriva, an Indian Citizen, who is living in Delhi since 1980 left for Colombo on 01.07.2020 for employment. He came back to India on 03rd January, 2021 on a visit and stayed for 4 months. His residential status is:

- Resident and Ordinarily Resident
- Not Ordinarily Resident
- Non-Resident
- Resident