RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME [SEC 5 TO 9]

Residential Status of an Individual [Sec 6(1)]

An individual is *resident* in India if he satisfies *any one* of the following two conditions:

i. He is in India for *182 days or more* in the relevant previous year *or*
ii. He is in India for *60 days or more* during the relevant previous year and for *365 days or more* during *4 years* immediately preceding the previous year.

If he does *not satisfy any one* of the conditions above, he shall be *non-resident.*

Condition (ii) above is not applicable in following cases (means in following cases a person shall be resident of India *only* when he is in India for *182 days or more* in the previous year):

a. If *Indian Citizen* leaves India during the previous year for *employment outside India* or as a *member of crew of an Indian Ship*
b. If *Indian citizen* or *person of Indian origin* visits India during previous year.

Other points:

- Residential status is determined for *every year* separately
- India includes *territorial waters* of India.
- Employment includes *self-employment*
- In computing the period of 180 days, the day of entry into India and the day of exit from India shall be included.
- Person of Indian origin is a person who *himself* or *any of his parents* or *any of his grandparents* was born in *undivided India* before 15th August 1947.
- After determining the residential status of individual/HUF, these persons are *further checked* whether they are ordinarily resident or not ordinarily resident.

An individual who is resident in India shall be *resident and ordinarily resident (ROR)* in India if he satisfies *both* the following conditions:

i. He has been *resident* in India for at least *2 out of 10* previous years immediately preceding the relevant previous year

And

ii. He has been in India for *730 days or more* during *7* previous years immediately preceding the relevant previous year.

If he does *not* satisfy *any or both* of the above conditions, he shall be *resident but not ordinarily resident (RNOR)* in India.

Residential Status of HUF [Sec 6(2)]

A HUF is said to be *resident* in India when during that year *control and management* is situated *wholly or partly* in India. In other words it will be *non-resident in India if no part of the control and management of affairs is situated in India.*

Control and management lies at the place where decision regarding the affairs of the HUF are taken.

A resident HUF is said to be *resident and ordinarily resident* in India if the *karta* of the HUF satisfies both the following conditions:

i. He has been *resident* in India for at least *2 out of 10* previous years immediately preceding the relevant previous year

And

ii. He has been in India for *730 days or more* during *7* previous years immediately preceding the relevant previous year.

If the karta of HUF does *not satisfy any or both* of the above conditions, then HUF shall be *resident but not ordinarily resident* in India.

Residential Status of Firms, AOP, BOI etc [Sec 6(2), 6(4)]

A Firm, AOP, BOI etc is said to be *resident* in India when during that year *control and management* is situated *wholly or partly in India*. In other words it will be non-resident in India if no part of the control and management of affairs is situated in India.

Control and management lies at the place where decision regarding the affairs of the firms etc are taken.

Residential Status of Companies[Sec 6(3)]

Indian Company is *always resident* in India

Foreign Company is *resident* in India if control and management of its affairs is *situated wholly in India* during relevant previous year i.e. if all the board meetings of the foreign company is held in India, then it shall be resident, otherwise non-resident.

Scope of Total Income/ Incidence of Tax [Sec 5]

Scope of total income is according to residential status of assessee.

1. **Resident in India/ ordinarily resident in India**

   A person is assessable to tax in respect of income which

   i. Is *received or deemed to be received in India* by him or on his behalf
   ii. Accrues or arises or *deemed to accrue or arise to him in India*
   iii. Accrues or arises to him *outside India*

2. **Resident but not ordinarily resident in India**

   A person is assessable to tax in respect of income which

   i. Is *received or deemed to be received in India* by him or on his behalf
   ii. Accrues or arises or *deemed to accrue or arise to him in India*
   iii. Accrues or arises to him *outside India* from a *business controlled in or profession set up in India.*

3. Non-resident in India

A person is assessable to tax in respect of income which

i. Is *received or deemed to be received in India* by him or on his behalf
ii. Accrues or arises or *deemed to accrue or arise to him in India*

Other points:

- Received in India means *first receipt in India*. If an income is received first outside India and then subsequently remitted to India, it shall be treated as received outside India.
- *Past untaxed profits* shall not be considered to be income of the current year in any case.

Particulars of Income	**ROR**	**RNOR**	**NR**
Income received or deemed to be received in India	Taxable	Taxable	Taxable
Income accrue or arises or deemed to accrue or arises in India	Taxable	Taxable	Taxable
Income earned outside India	Taxable	Taxable (only which is earned from a business/profession controlled from India)	Not Taxable

Income received or deemed to be received in India [Sec 7]

Income received in India: Any income which is received in India is liable to tax in India, whether the person receiving income is resident or non- resident. 'Received in India' means first receipt.

Income deemed to be received in India: Following incomes shall be deemed to be received in India even in the absence of actual receipt:

i. Contribution by employer to recognized provident fund in excess of 12% of salary of employee

ii. Interest credited to RPF in excess of 9.5%
iii. Transferred balance from unrecognized PF to RPF
iv. Contribution by Government/Employer to notified pension scheme

Dividend Income [Sec 8]

Dividends from Indian company shall *always be deemed to accrue or arise in India*. However, as per Sec 10(34), such dividend is exempt in the hands of shareholder.

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

Following income shall be *deemed to accrue or arise* in India:

i. Income from any *property, asset or source of income* in India
ii. Income from the *transfer of any capital asset* situated in India
iii. Any income from *salary* if it is payable for *services rendered in India*
iv. Salary (not allowances) *payable by the government* of India to an *Indian citizen* for *services rendered outside India*

v. Interest payable by
   a. Government or
   b. Resident in India *if* money is used by the borrower for the purpose of *business or profession or earning any income from any source in India* or
   c. Non-resident in India if money is used by the borrower for the purpose of *business or profession in India*

vi. Royalty payable by
   a. Government or
   b. Resident in India *if* services are utilized for the purpose of *business or profession or earning any income from any source in India* or
   c. Non-resident in India *if* services are utilized for the purpose of *business or profession or earning any income from any source in India*

vii. Fees for technical services payable by
   a. Government or
   b. Resident in India *if* services are utilized for the purpose of *business or profession or earning any income from any source in India* or
   c. Non-resident in India *if* services are utilized for the purpose of *business or profession or earning any income from any source* in India

viii. Income from a ***business connection*** in India

Any income which arises, directly or indirectly, from any activity or a business connection in India is deemed to be earned in India. If all business activities are not carried out in India, then only such part of income, as is *reasonably attributable to the operations carried out in India*, is taxable

Examples of business connection includes
   i. branch office in India,
   ii. agent of non-resident entering into contracts,
   iii. Subsidiary in India
   iv. maintaining stocks etc

However in case of *non-resident*, following shall *not* be treated as business connection in India:

i. *Purchase* of goods in India for purpose of *exports*

ii. *Collection of news and views* for transmission outside India by *non-resident* who is engaged in the business of running news agency or of publishing newspapers, magazines or journals

iii. *Shooting of films* in India if
   a. In case of individual – he is *not a citizen* of India
   b. In case of Firm – *none of the partner is citizen or resident* of India
   c. In case of company – *none of the shareholder is citizen or resident* of India