

Sec. 5 to Sec. 9

Sec 5 Scope of Total Income

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

- o Is **received or deemed to be received** in India by him or on his behalf
- o **Accrues or arises or deemed to accrue or arise** to him **in India**
- o 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

- o Is received or deemed to be received in India by him or on his behalf
- o Accrues or arises or deemed to accrue or arise to him in India
- o 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

- o **Is received or deemed to be received in India** by him or on his behalf
- o **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

Sec. 6

Residential status of the assessee

Residential Status of an Individual

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

It 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 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

- 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 decisions 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 Companies

- 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 are held in India, then it shall be resident, otherwise non-resident.

Residential Status of Firms, AOP, BOI etc

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

Sec 7

Income received or deemed to be received in India

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**

- o Contribution by employer to recognized provident fund in excess of 12% of salary of employee
- o Interest credited to RPF in excess of 9.5%
- o Transferred balance from unrecognized PF to RPF
- o Contribution by Government/Employer to notified pension scheme

Sec 8

Dividend Income

- 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.

Sec 9

Income deemed to accrue or arise in India

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

- **Any income from salary** if it is payable for services rendered in India
- **Salary** (not allowances) payable by the government of India to an Indian citizen for services rendered outside India
- Interest payable by
 - Government or
 - 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
 - Non-resident in India if **money is used** by the borrower for the purpose of business or profession in India
- Royalty payable by
 - Government or
 - Resident in India if **services are utilized** for the purpose of business or profession or earning any income from any source in India or
 - Non-resident in India if **services are utilized** for the purpose of business or profession or earning any income from any source in India
- Fees for technical services payable by
 - Government or
 - Resident in India if **services are utilized** for the purpose of business or profession or earning any income from any source in India or
 - Non-resident in India if **services are utilized** for the purpose of business or profession or earning any income from any source in India
- 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

- o branch office in India,
- o agent of non-resident entering into contracts,
- o Subsidiary in India
- o maintaining stocks etc

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

- o Purchase of goods in India for purpose of exports
- o 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
- o Shooting of films in India if
 - In case of individual – he is not a citizen of India
 - In case of Firm – none of the partner is citizen or resident of India
 - In case of company – none of the shareholder is citizen or resident of India