

Chapter 2

Residence and Scope of Total Income

Section 6: Residential Status: 3 broad categories

- Resident and ordinarily resident (ROR)
- Resident but not ordinarily resident
- Non-resident (NR)

Residential status of individuals u/s 6(1): Individual is resident in India in any PY, if he satisfies any one of the foll conditions

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

Note: (1) If both conditions are not satisfied then non-resident.

- (2) Stay includes 12 nautical miles in the sea from Indian coastline
- (3) # of days include both departure and arrival date.

Exceptions to Sec 6(1): (i) Indian Citizens who leave India during the relevant PY as a member of the crew of an Indian ship or for purpose of employment outside India [or]

- (ii) Indian citizen or person of Indian origin engaged outside India in an employment of a business or profession & in any other vocation, who comes on a visit to India in any PY.

Resident and ordinarily resident / Resident but not ordinarily resident
Only individuals & HUF can be resident but not ordinarily resident in India. A not-ordinarily resident person is one who satisfies any one of the conditions specified in s 6(6).

- (i) individual has been non-resident in India in any 9 out of the 10 PY preceding the relevant PY
- (ii) individual has during 7 PYs preceding the relevant PY been in India for a period of 729 days or less.

i.e., Individual is resident and ordinarily resident if he satisfies both the conditions

- (i) Resident 2 out of 10 PY
- (ii) Stay in 7 PY is 730 days & more.

Residential status of HUF / firms / AOP / LA / AJP:

- (i) Resident: if control & management of its affairs is situated wholly or partly in India
- (ii) NR: control & mgmt is situated wholly outside India.

Residential status of Companies:

- (i) if it is an Indian Company
- (ii) its place of effective management in that year, is in India

"Place of effective management": to mean a place where key management & commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made [explanatory to Sec 6(3)]

Scope of Total Income Sec 5: based on 3 points

- i) the residential status of the assessee
- ii) the place of accrual or receipt of income, whether actual & deemed and

(iii) the point of time at which the income had accrued to & was received by & on behalf of the assessee.

Points for ROR Sec 5(1) income includes.

- income received & deemed to be received in India during PY.
- income which accrues & arises & is deemed to accrue & arise in India during PY and
- income which accrues & arises outside India even if it is not received or brought into India during the PY.

R NOR → a and b

Fd - (c) only if business, ^{controlled in India} profession is set up in India or controlled

NR - a and b.

Sec 7 : Income deemed to be received in India

- Contribution in excess of 12% of salary to recognised provident fund
- Interest credited in excess of 9.5% p.a to (RPF)
- Contribution by Central Govt. or employer under a pension scheme u/s 80CCD
- Amount ~~also~~ transferred from unrecognised PF to RPF (being the employer's contribution and ~~the~~ interest)

Section 9 : Income deemed to accrue & arise in India : Some income accrues or arises in India even though they actually accrue & arise outside India. as per Sec 9(1)(i), (ii), (iii) & (iv), (v), (vi), (vii).

Sec 9(1)(i) : Income accruing & arising outside India directly & indirectly through & from

- any business connection in India
- any property/asset & source of income in India
- Transfer of capital asset situated in India

- (iii) Sec 9(1)(ii) : Salary earned for services rendered in India
- Sec 9(1)(iii) : income chargeable under the head "Salaries" payable by the ~~Govt~~ Government to a citizen of India for services outside India
- Sec 9(1)(iv) : Dividend paid by Indian Company outside India

Sec 9(1)(v)
Interest, if payable by

Sec 9(1)(vi)
Royalty, if payable by

Sec 9(1)(vii)
Fees for technical services, if payable by

Person resident in India

Government

A non-resident

Exceptions

If the money borrowed and used for technical services & royalty services are utilised for the purpose of business or profession carried on outside India

If money is borrowed and used for the purpose of business or profession carried on in India

If the money borrowed and used for technical or royalty services are utilised for making income from any source outside India

If technical services & royalty services are utilised for the purpose of business or profession carried on in India & making income from any source in India