Part D - International Taxation

1 Residential Status and Accrual of Income

Chapter MAP

Part A	Part B	Part C
Residential Status of a. Individual b. HUF c. Company d. Firm / AOP e. Other Person	Accrual of Income in case; a. Individual b. Firm / Company / AOP / BOP	a. POEM Guidelines b. Section 9 [Interest / Royalty / FTS] c. Income from Business Connection - Other than Int / Royalty / FTS d. Significant Economic Presence - Explanation 2A to Sec 9(1) e. Gift Provision

• Residential Status of Individual

Sec 6(1) **Rule 1 - Basic Condition:** To determine whether an assessee is a Resident or not

Particular	Conditions
1) An Indian citizen who leaves India during the previous year - for the purpose of employment outside India - as member of crew of an Indian ship	Condition 1 He/she is in India for a period of 182 days or more (Current PY) OR He will be RESIDENT if above option satisfied
2) Indian citizen / a Person of Indian origin (PIO) who comes on a visit to India during the previous year AND having total income, other than the income from foreign sources is Rs. 15 Lakh or Less.	Condition 1 He/she is in India for a period of 182 days or more (Current PY) OR He will be RESIDENT if above option satisfied
3) Indian citizen / a Person of Indian origin (PIO) who comes on a visit to India during the previous year AND having total income, other than the income from foreign sources is Exceeding Rs. 15 Lakh.	Condition 1 He/she is in India for a period of 182 days or more (Current PY) OR Condition 2 He/she is in India for period of - **120** days or more in the previous year AND - 365 days or more during 4 years immediately preceding the previous year RESIDENT - If any one of the above condition is satisfied Note : If his stay in India > 120 Days but < 182 days --> He will be RNOR (As per sec 6(6) amendment)
4) Cases not covered by 1, 2 or 3 above	Condition 1 He/she is in India for a period of 182 days or more (Current PY) OR Condition 2 He/she is in India for period of - 60 days or more in the previous year AND - 365 days or more during 4 years immediately preceding the previous year RESIDENT - If any one of the above condition is satisfied

• Definition

Indian Origin	If he or either of his parent or any of grand person, was born in Undivided India.
Income from Foreign Source	Means income which accrue or arise outside India (Except income derived from business controlled from or profession set up in India) and which is not deemed to accrue / arise in India *So, Income from Foreign Source --> Income which accrue / arise outside India but shall not include:* 1. Income which are deemed to accrue or arise in India by virtue of Sec 9 2. Income derived abroad from business controlled from India or Profession set up in India

Sec 6(6) **Rule 2 -Additional Condition -** To determine if he/she is ordinarily resident

a) He/she has been resident in India for at least 2 out of 10 PY immediately preceding the PY AND			
b) He/she has been in India for period of 730 days or more during 7 years immediately preceding the relevant PY.			
If Both conditions of Rule 2 are satisfied	--> ROR	If Both conditions of Rule 2 are not satisfied	--> RNOR

Sec 6(1A) — Deemed Resident

Sec 6(1A)	Deemed Resident
Shall be deemed to resident in India	- An Individual being citizen of India. - having total income, other than the income from foreign sources, - exceeding Rs. 15 lakhs during the PY
If -->	- he is not liable to tax in any other country / territory by reason of his domicile or residence or any other criteria of similar nature.
This clause shall not apply	- In case of Individual who is said to be resident in India as per Sec 6(1)

• Residential Status of HUF

Control and Management of affairs	Status
- Wholly in India - Partly in India and Partly outside India	Resident
- Wholly in Outside India	Non Resident

Note:

Both the additional Conditions (Rule 2) as per sec 6(6)

If Karta of HUF is satisfying	--> HUF is treated as ROR
If Karta of HUF is not satisfying	--> HUF is treated as RNOR

• Residential Status of Firm / AOP / BOI / Local Authority / Other Person

Control and Management of affairs	Status
- Wholly in India - Partly in India and Partly outside India	Resident
- Wholly in Outside India	Non Resident

• Residential Status of Companies

a) Indian Companies : are always Resident in India

b) Other Companies : If its "POEM" is in India in that year then Resident otherwise Non resident.

	Company having turnover or gross receipts > **Rs. 50 cr in a FY**	Company having turnover or gross receipts **< Rs. 50 cr in a FY**
How to Identify POEM ?	If both test satisfied then POEM is not in India Test 1 - Active Business Outside India Test 2 - Majority Board meetings held outside India.	Determination of POEM would be 2 Stage Process 1. Identification / ascertaining persons who actually make key management & commercial decision for conduct of the companies business as a whole. 2. Determine of place where decision are infect being made

• Place of Effective Management [POEM]

Determination of POEM (Applicable only if Turnover > 50 crore)

Meaning	a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.
Applicability (Circular No. 8/2017)	POEM guidelines shall apply to a company having turnover or gross receipts of Rs. 50 crores or more in a financial year.
Company having Active Business outside India (ABOI)	If Both the conditions satisfied then POEM is not India i) Active Business outside India(ABOI). ii) Majority meetings of Board held outside India.
Test - Active Business Outside India Note : All conditions should be satisfied	A Company shall be said to be engaged in "Active Business Outside India" if **a. Passive Income** is not more than 50% of its total income. and b. Less than 50% of its **total assets are situated in India.** and c. Less than 50% of **Total no. of employee are situated in India / are resident in India.** And d. The **payroll expenses** incurred on such employee is < 50% of its total payroll expenditure