

Chapter Name :- Scope of Total Income & Residential Status

Concepts/Sections to be studied in this chapter :-

- Section 5 :- Scope of Total Income
- Receipt v/s Remittance
- Section 7 :- Incomes deemed to be received in India
- Accrual of Income
- Section 9 :- Incomes deemed to accrue or arise in India
- Section 8 :- Year of taxability of Dividend Income
- Section 6(1), 6(1A) & 6(6) :- Residential Status of an Individual
- Section 6(2) & 6(6) :- Residential Status of HUFs
- Section 6(2) :- Residential Status of Firms & AOP/BOI
- Section 6(3) :- Residential Status of Companies
- Section 6(4) :- Residential Status of Every Other Person

Introduction :-

The incidence of income tax on any person depends upon :-

the residential status of such person **AND** the place & time of accrual/receipt of income

Scope of Total Income - Section 5 :-

As per the provisions of Section 5, following is the taxability of various incomes in case of :-

(A) Individual & HUF :-

Nature of Income

Residential Status

ROR RNOR NR

* Indian Income :-

1.] Income received in India or deemed to be received in India

✓ ✓ ✓

2.] Income accrued/arising in India or deemed to accrue/arise in India

✓ ✓ ✓

* Foreign Income :-

1.] Income accruing/arising outside India & received outside India from a business controlled from / profession set-up in India

✓ ✓ X

2.] Income accruing/arising outside India & received outside India from any other source of income

✓ X X

(B) Any Person other than Individual & HUF :-

Nature of Income

Indian Income

Foreign Income

Residential Status

R

NR

✓

✓

✓

X

Note 1:- (✓) = Income is includible in the computation of total income.

(X) = Income is not includible in the computation of total income.

Note 2:- Past income (taxed or untaxed) which was accrued/arisen outside India & received outside India and remitted to India during the current PY does not represent current PY's income. Hence, the same is not taxable in the current PY & accordingly needs to be ignored while computing current PY's total income.

Note 3:- An income which is exempt under the provisions of the Income Tax Act'1961 shall be exempt for all types of assessee; irrespective of the residential status of the assessee.

Income

Accrued in India
and
Received

Accrued outside India
and
Received

In India

Outside India

In India

Outside India

Indian Income

Indian Income

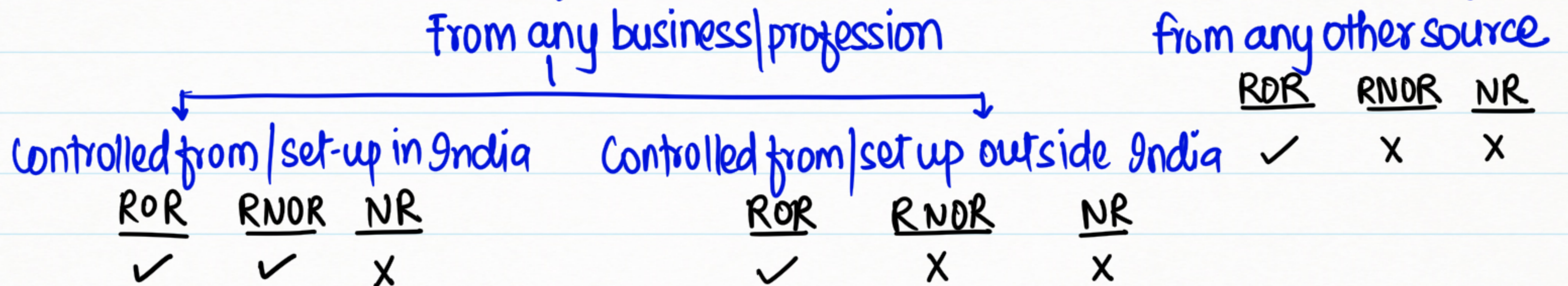
Indian Income

Foreign Income

<u>ROR</u>	<u>RNOR</u>	<u>NR</u>
✓	✓	✓

<u>ROR</u>	<u>RNOR</u>	<u>NR</u>
✓	✓	✓

<u>ROR</u>	<u>RNOR</u>	<u>NR</u>
✓	✓	✓



Receipt v/s Remittance :-

Receipt refers to the first occasion when the recipient gets the money under his control. Once the amount is received as income, any remittance or transmission of such amount to other place does not result in receipt at other place.

Eg:

Mr. Mohan
↓
Received \$20,000 in USA
on 24-12-2023

} ⇒ out of this he transfers ₹ 75000 to India
on 30-12-2023

In the above case Mr. Mohan has received income outside India on 24-12-2023.

Hence, an assessee after receiving the income outside India, cannot be said to have received the same once again when he brings or remits the same to India.

- * The position remains same if the income is received outside India by an agent (may be a bank or some other person) who later on remits the same to India.
- * Income after the first receipt merely moves as a remittance of money. The same income cannot be received twice, once outside India and again in India.

Incomes deemed to be received in India - Section 7 :-

The following incomes shall be deemed to be received in India during the PY :-

Annual accretions during the PY to the credit of RPF A/c of the employee to the extent provided in **Rule 6 of Part A of the Fourth Schedule** i.e. :-

* Employer's Contribution to the RPF A/c in excess of 12% of Salary.

* Interest credited to RPF A/c in excess of 9.5% p.a. rate

Transferred Balance in RPF A/c to the extent provided in **Rule 11(4) of Part A of the Fourth Schedule** i.e. :-

* Balances transferred from UPF A/c to RPF A/c being Employer's Contribution in excess of 12% of salary & Interest in excess of 9.5% rate.

Contributions made by the CG or any other employer in the PY, to the NPS A/c of the employee as referred to in Section 80CCD

Note :- The above section 7 shall be discussed in detail while studying '**Salaries**' head.

Accrual of Income :-

Income is said to be received when it reaches the assessee (i.e. comes in his control).

However, when the right to receive the income is vested in the assessee, it is said to have accrued or arisen.

Further, the right to enforce the payment of income arises; then, the same is said to have become due.

Eg.1: Salary for work done in January will accrue throughout the month, on a day to day basis, but will become due on the salary bill being passed on 31st Jan or 1st Feb (as the case may be).

Eg.2: Interest payable on debentures/securities on specified dates accrues during the holding period, on a day to day basis, but the same will become due on the specified dates.

Incomes deemed to accrue/arise in India - Section 9 :-

In some cases, the income is deemed to accrue/arise in India even though it may actually accrue/arise outside India. Such cases are discussed hereunder :-

1.] Income accruing/arising, directly or indirectly, through/from :-

(a) any **business connection** in India;

(b) any **property/asset/source of income** in India;

(c) **transfer of any capital asset** situated in India.

2.] Income from **Salary** shall be regarded as income earned in India; if it is payable for :-

(a) **services rendered in India;**

(b) **Rest period or leave period, which is preceded or succeeded by services rendered in India and forms part of contract of employment.**

3.] **Salary payable by the Government of India to a Citizen of India for rendering services outside India**

Note :- Allowances & Perquisites provided outside India by the Government of India to the Citizen of India shall be exempt **u/s 10(7)**.

4.] **Dividend** paid by an Indian company outside India.

5.] **Interest** payable by :-

(a) the Government

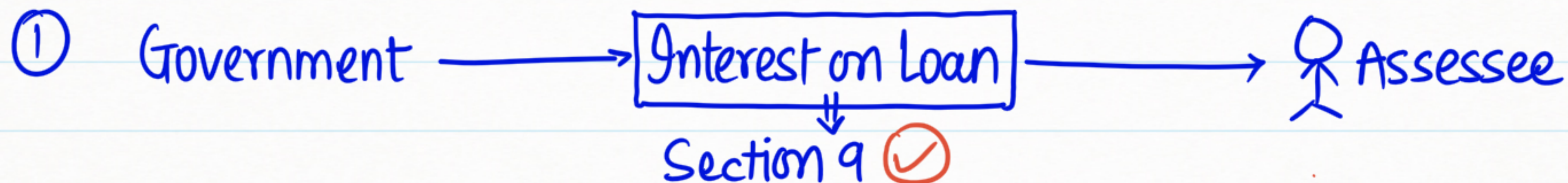
(b) a Resident

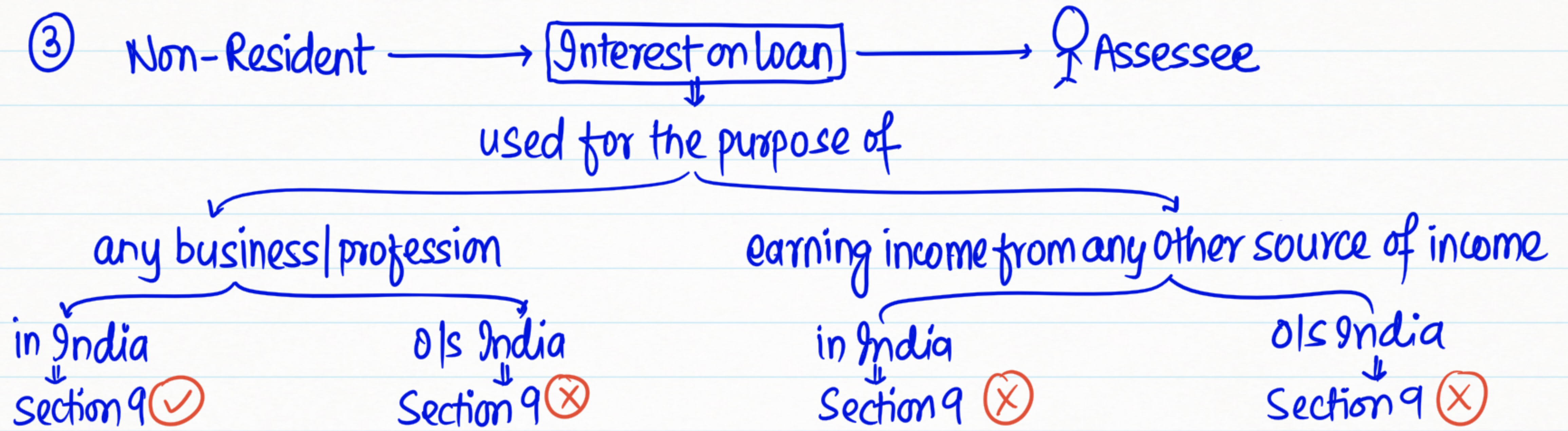
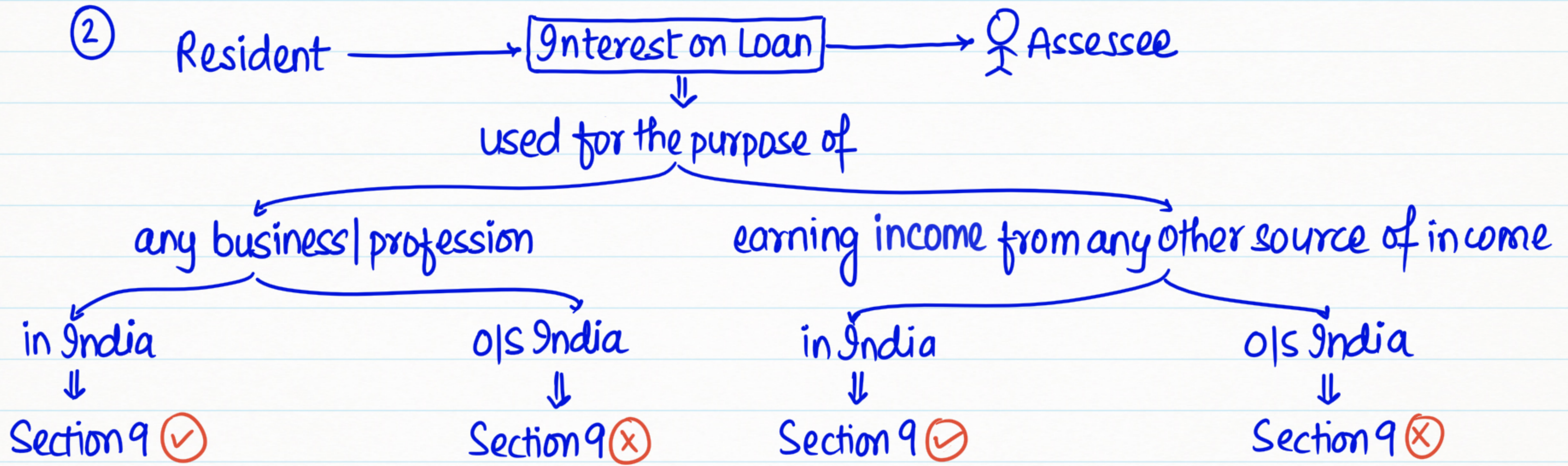
Exception:- Interest payable by a resident shall not be deemed to accrue/arise in India if it is in respect of a loan used for the purpose of :-
* any business/profession carried on by him outside India; or
* earning income from a source of income outside India.

(c) a Non-Resident

Only if:- Interest is payable in respect of a loan used by the non-resident for the purpose of any business/profession carried on by him in India.

Note:- Interest payable by a non-resident in respect of a loan used for any purpose in India other than business/profession shall not be deemed to accrue/arise in India.





6.] **Royalty** payable by :-

(a) the Government

(b) a Resident

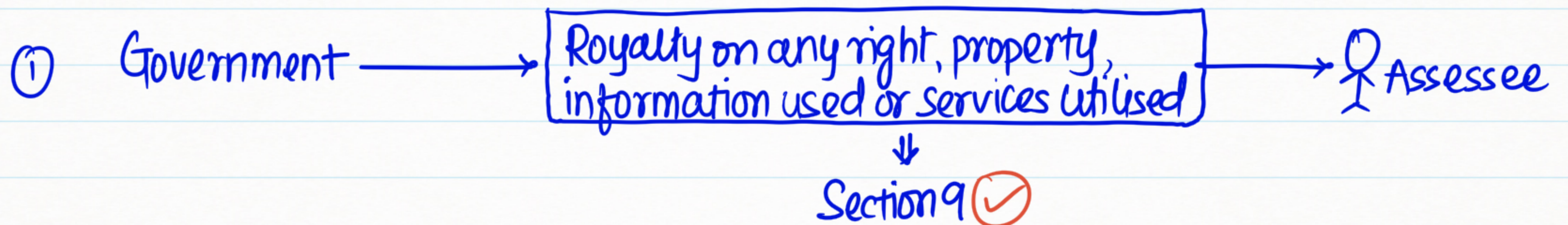
Exception:- Royalty payable by a resident shall not be deemed to accrue/arise in India if it is in respect of any right, property or information used or services utilised for the purpose of :-

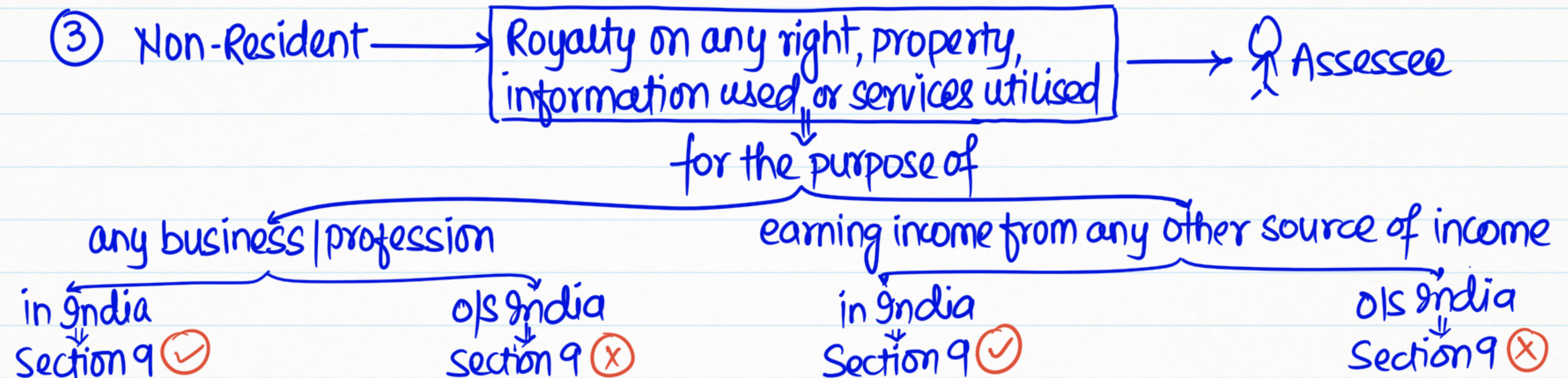
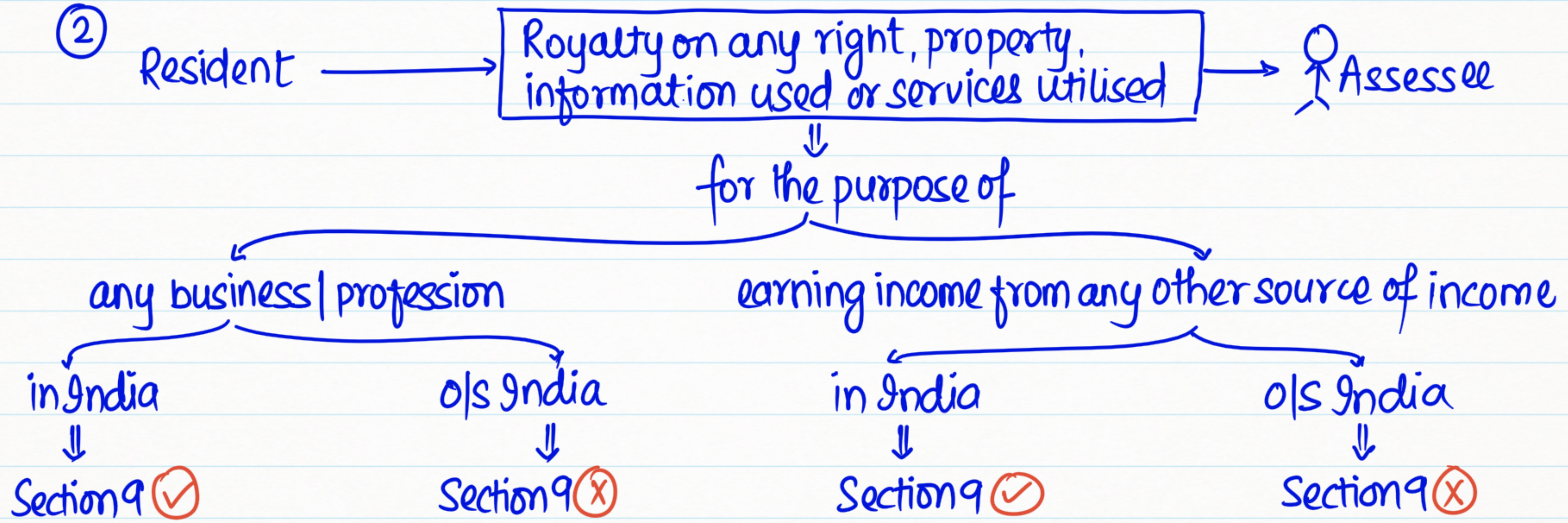
- * any business/profession carried on by him outside India; or
- * earning income from any source of income outside India.

(c) a Non-Resident

Only if:- Royalty is payable in respect of any right, property or information used or services utilised for the purpose of :-

- * any business/profession carried on by him in India; or
- * earning income from any source of income in India.





7.] Fees for Technical Services (FTS) payable by :-

(a) the Government

(b) a Resident

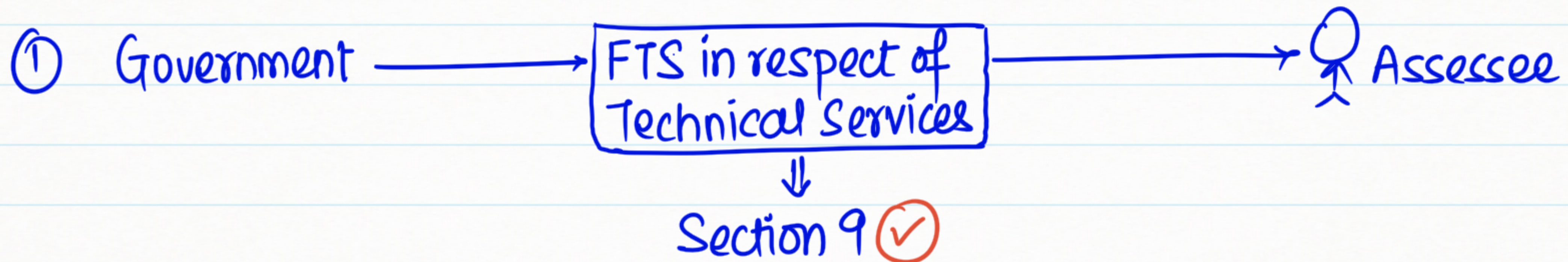
Exception:- FTS payable by a resident shall not be deemed to accrue/arise in India if it is in respect of technical services utilised for the purpose of :-

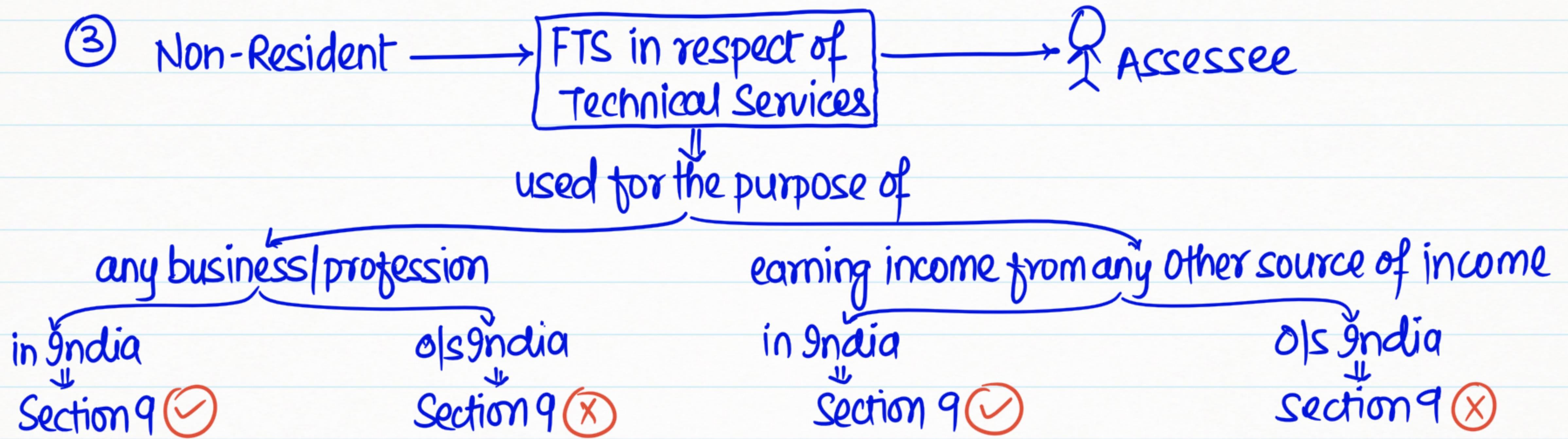
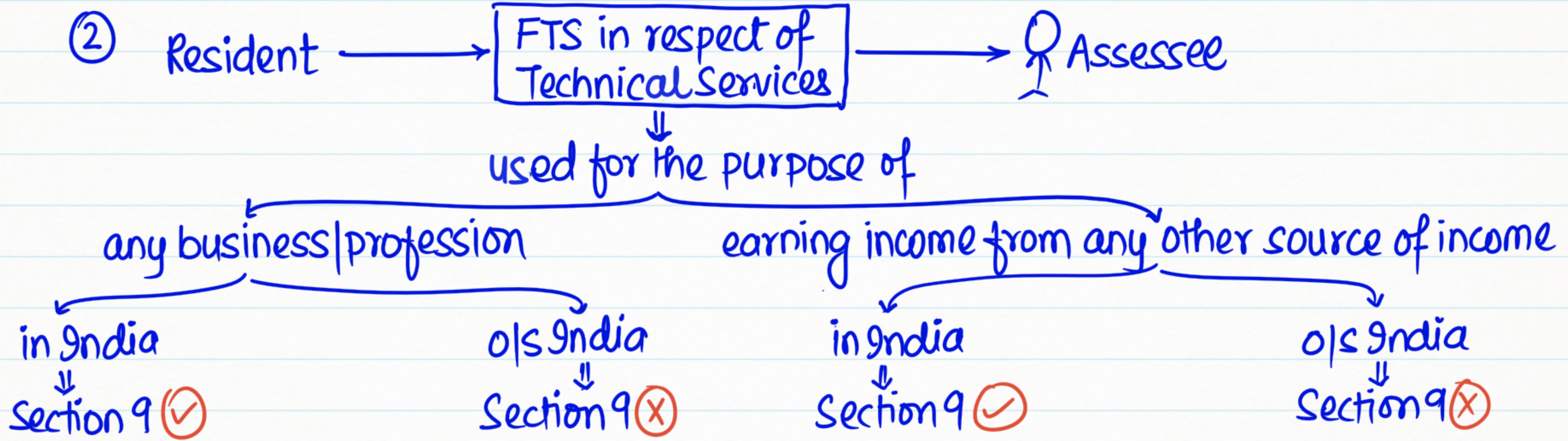
- * any business/profession carried on by him outside India; or
- * earning income from any source of income outside India.

(c) a Non-Resident

Only if:- FTS is payable in respect of technical services utilised for the purpose of :-

- * any business/profession carried on by him in India; or
- * earning income from any source of income in India.





Year of Taxability of Dividends - Section 8 :-

Interim Dividend



Taxable during the PY in which it is unconditionally made available to the shareholder i.e. paid by the company.

Final Dividend



Taxable during the PY in which it is declared by the company.

Deemed Dividends

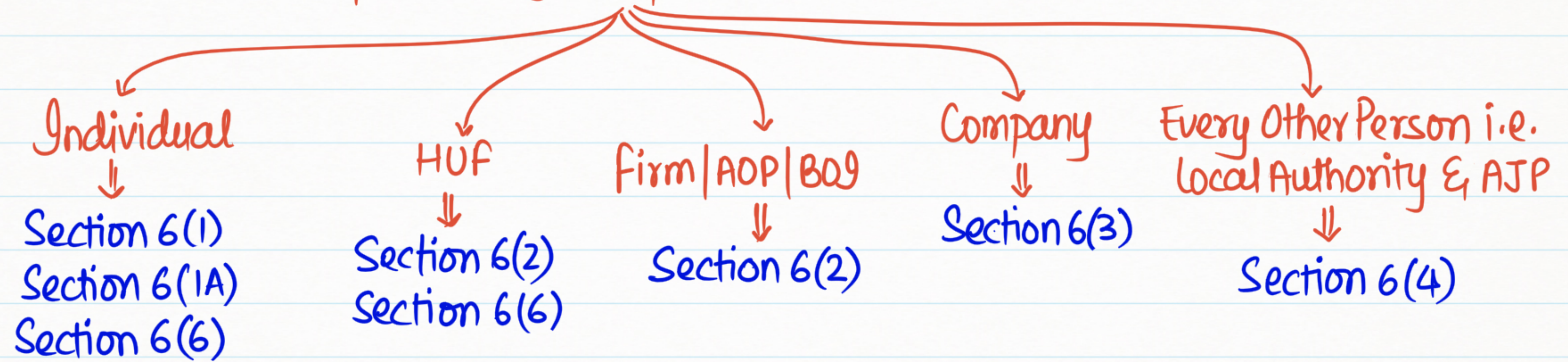
u/s 2(22)(a) to (e)



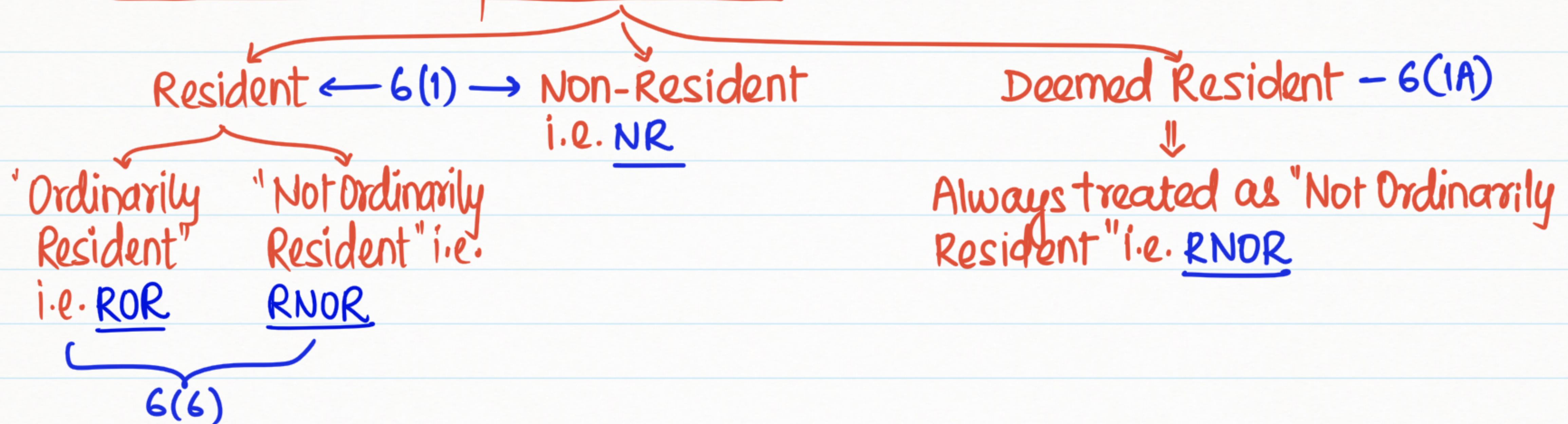
Taxable during the PY in which it is paid or declared or distributed by the company.

Note :- The above section 8 shall be discussed in detail while studying 'IFOS' head.

Residential Status of various types of Persons - Section 6 :-



Residential Status of an Individual :-



Basic Conditions u/s 6(1) :-

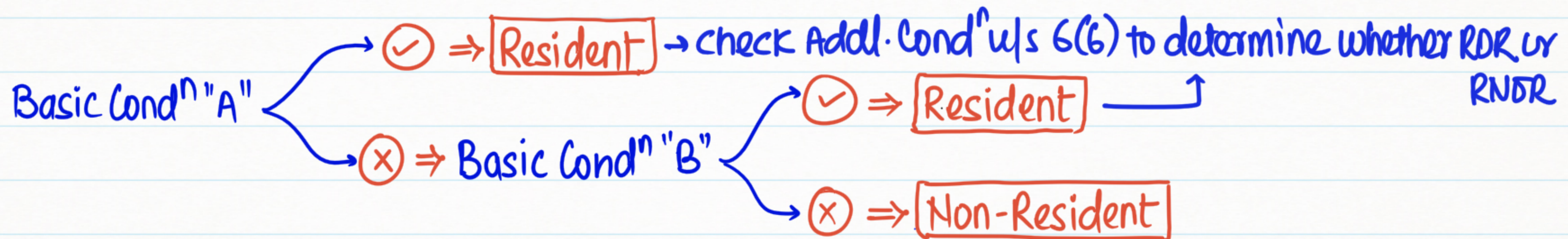
(A) Stay in India \geq 182 days during the current PY.

OR

(B) Stay in India \geq 60 days during the current PY and
Stay in India \geq 365 days during 4 PYs immediately preceding to the current PY.

* If the individual has satisfied **any one** of the above two basic conditions; then, such individual shall be treated as a **Resident**.

* If **none** of the above basic conditions is satisfied by the individual; then, such individual shall be treated as a **Non-Resident**.



Exceptions to the Basic Conditions u/s 6(1) :-

In the following exceptional cases, **basic condition "B"** shall not be applicable i.e. in such cases, to determine whether the individual is a resident or a non-resident, **only basic condition "A"** needs to be checked :-

1.] An Indian Citizen, who is leaving India during the PY

for the purpose of employment
outside India

OR

as a crew member on an
Indian ship

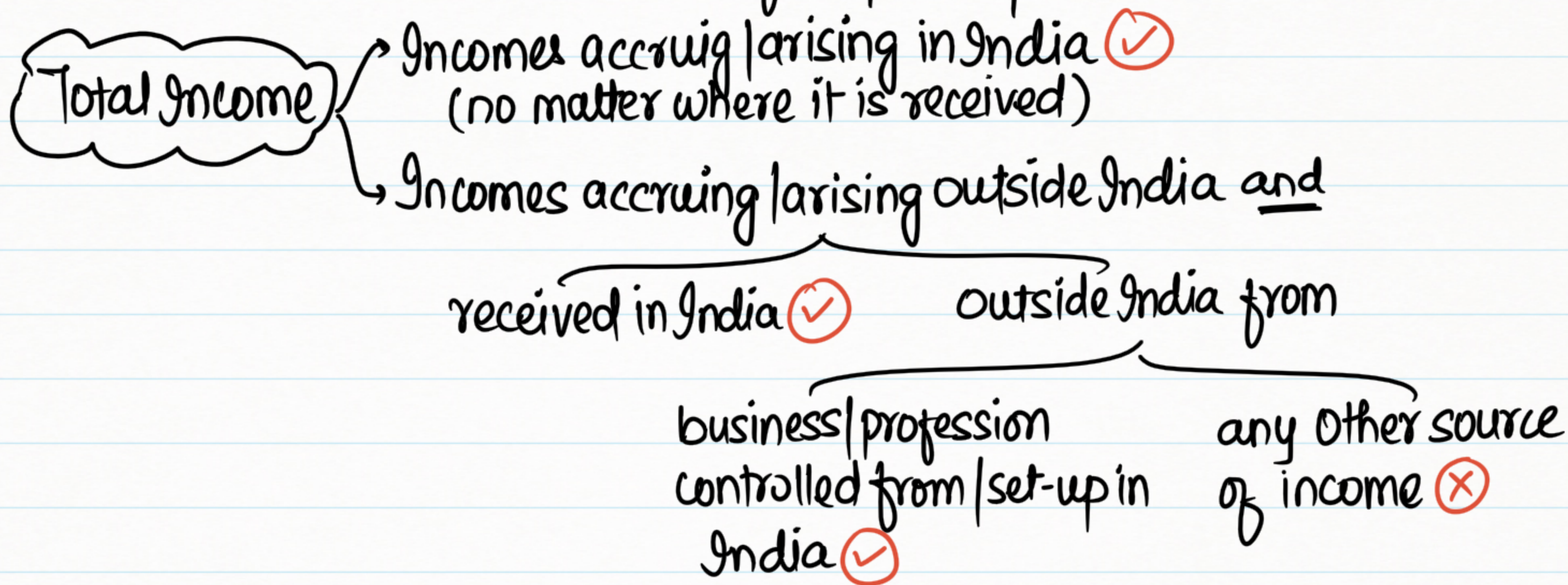
Note :- In the case of an Indian Citizen, leaving India, as a crew member of a foreign bound ship, the period of stay in India, in respect of such voyage, shall not include the period starting from the date of joining the ship & ending on the date of signing-off from the ship as per the continuous discharge certificate in respect of such voyage.

2.] An Indian Citizen / Person of Indian Origin, whose total income excluding income from foreign sources is $\leq \text{₹} 15$ lakhs and who is coming to India during the PY for the purpose of visit

Note 1 :- Person of Indian Origin means an individual who himself was born in undivided India or any of his parents or grand-parents were born in undivided India.

Note 2 :- Total Income excluding income from foreign sources

means income accruing/arising outside India from any source **Other than** from a business/profession controlled from/set-up in India.

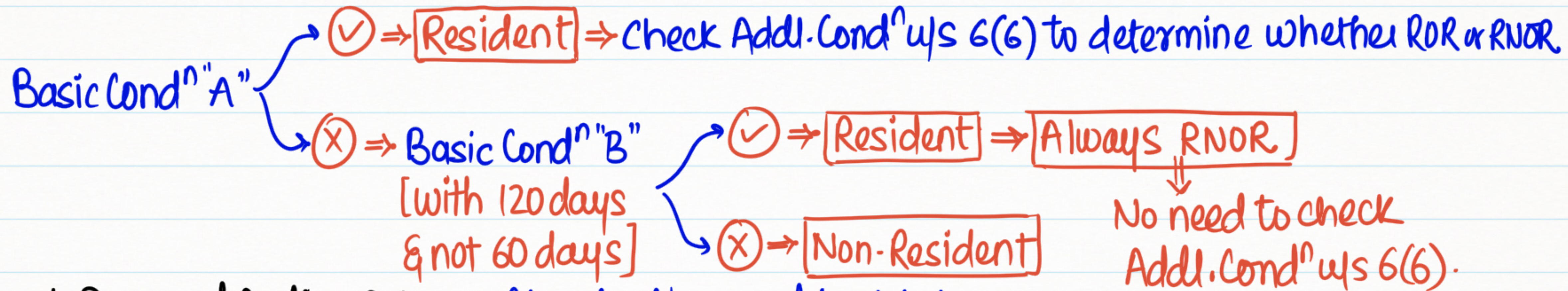


Note 3:- An Indian Citizen/ Person of Indian Origin, whose total income excluding income from foreign sources is > 15 lakhs and who is coming to India during the PY for the purpose of visit shall be treated as resident in India; if he has satisfied **any one** of the following two basic conditions:-

(A) Stay in India > 182 days during the current PY

OR

(B) Stay in India ≥ 120 days during the current PY and
Stay in India ≥ 365 days during 4 PYs immediately preceding the current PY



* Person of Indian Origin = Already discussed in Note 1.

* Total Income excluding income from foreign sources = Already discussed in Note 2.

Once the Individual becomes resident, we further move on to check whether such resident is "ordinarily resident" i.e. ROR or "not ordinarily resident" i.e. RNOR.

For this purpose, additional conditions u/s 6(6) are to be checked, which are as follows:-

Additional Conditions u/s 6(6):-

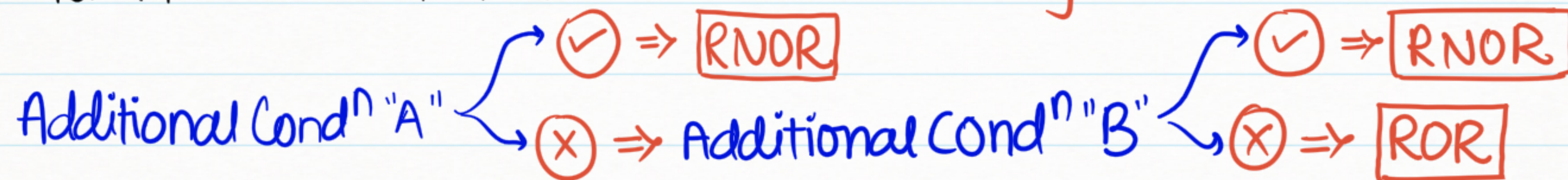
(A) The Individual must be a non-resident in India in at least 9 PYs out of the 10 PYs immediately preceding the current PY

OR

(B) Stay in India \leq 729 days during 7 PYs immediately preceding the current PY

* If the resident individual has satisfied **any one** of the above two conditions; then, such individual shall be treated as "not ordinarily resident" i.e. RNOR.

* If **none** of the above additional conditions is satisfied by the resident individual; then, such individual shall be treated as "Ordinarily resident" i.e. ROR.



Deemed Resident - Section 6(1A) :-

An Indian Citizen, whose total income excluding income from foreign sources during the PY is $> ₹15$ lakhs and who is not liable to tax in that PY in any other country or territory by reason of his residence or domicile or any other criteria of similar nature



Shall be **Deemed to be Resident** in India in that PY



Shall **always** be treated as **RNOR**. [No need to check the Addl. Condⁿ w/s 6(6)]

Note :- Total Income excluding income from foreign sources



Same as discussed earlier

Different Situations

* Indian Citizen (+) leaving India for employment / as a crew member OR Indian Citizen / P90 (+) coming to India for visit (+) T9 ≤ 15 lakhs

<u>Basic Condⁿ</u>		<u>Addl. Condⁿ</u>			
<u>(A)</u>	<u>(B)</u>	<u>(A)</u>	<u>(B)</u>		
✓	-NA-	= R →	$\left\{ \begin{array}{l} \checkmark \\ \times \\ \times \end{array} \right\}$	$\left\{ \begin{array}{l} \times \\ \checkmark \\ \times \end{array} \right\}$	RNOR
					ROR
x	-NA-	= NR	—NA—		

* Indian Citizen / P90 (+) Coming to India for visit (+) T9 > 15 lakhs

✓	-	= R →	$\left\{ \begin{array}{l} \checkmark \\ \times \\ \times \end{array} \right\}$	$\left\{ \begin{array}{l} \times \\ \checkmark \\ \times \end{array} \right\}$	RNOR
					ROR
x	(120) ✓	= R →	Always RNOR		
x	x	= NR	—NA—		

* Indian Citizen (+) T9 > 15 lakhs (+) Not a resident in any country

—NA— = DR → Always RNOR

* Any other individual

✓	-	= R →	$\left\{ \begin{array}{l} \checkmark \\ \times \\ \times \end{array} \right\}$	$\left\{ \begin{array}{l} \times \\ \checkmark \\ \times \end{array} \right\}$	RNOR
x	(60) ✓	= R →	$\left\{ \begin{array}{l} \times \\ \times \end{array} \right\}$	$\left\{ \begin{array}{l} \times \\ \times \end{array} \right\}$	ROR
x	x	= NR	—NA—		

Important Points to remember while determining the residential status of Individuals :-

- 1.] Residential status of an individual has nothing to do with his nationality or domicile or citizenship or his place of birth; it is determined purely on the basis of his stay in India during the PY.
- 2.] Stay should not be continuous and equally it is not necessary that the stay should be at the same place. Similarly, the purpose of stay is also immaterial.
- 3.] Date of Arrival in India i.e. the day on which the individual is entering in India and the Date of Departure i.e. the day on which he leaves India shall be included in the period of his stay in India.

Residential Status of a HUF :-

As per the provisions of Section 6(2);



If the control & management of the affairs of any HUF is situated

wholly outside India

wholly in India

Partly in India & Partly
outside India

then, such HUF shall be
treated as a **Non-Resident**

then, such HUF shall be
treated as a **Resident**

* Once the HUF becomes a resident; it can be further treated as a "**not ordinarily resident**" i.e. **RNOR** if the Karta/Manager of such HUF has satisfied **any one** of the following two additional conditions as specified u/s 6(6) :-

- (A) The Karta/Manager has been a non-resident in India for at least 9 PYs out of 10 PYs immediately preceding the current PY; OR
- (B) His stay in India is \leq 729 days during 7 PYs immediately preceding the current PY.

#

HUF

→ C&M of affairs

- wholly o/s India → NR
- wholly in India
- Partly in India & Partly o/s India → R

Karta/Manager

Add. Condⁿ "A"

✓

HUF is RNOR

✗

Add. Condⁿ "B"

✓

HUF is RNOR

✗

HUF is ROR

Residential Status of a Firm/AOP/BOG :-

As per the provisions of Section 6(2);



If the control & management of the affairs of any firm/AOP/BOG is situated :-

wholly outside India



then, such Firm/AOP/BOG shall be treated as a **Non-Resident**

wholly in India

Partly in India & Partly outside India

then, such Firm/AOP/BOG shall be treated as a **Resident**

#

Firm/AOP/BOG

→ C&M of Affairs

wholly o/s India

→ NR

wholly in India

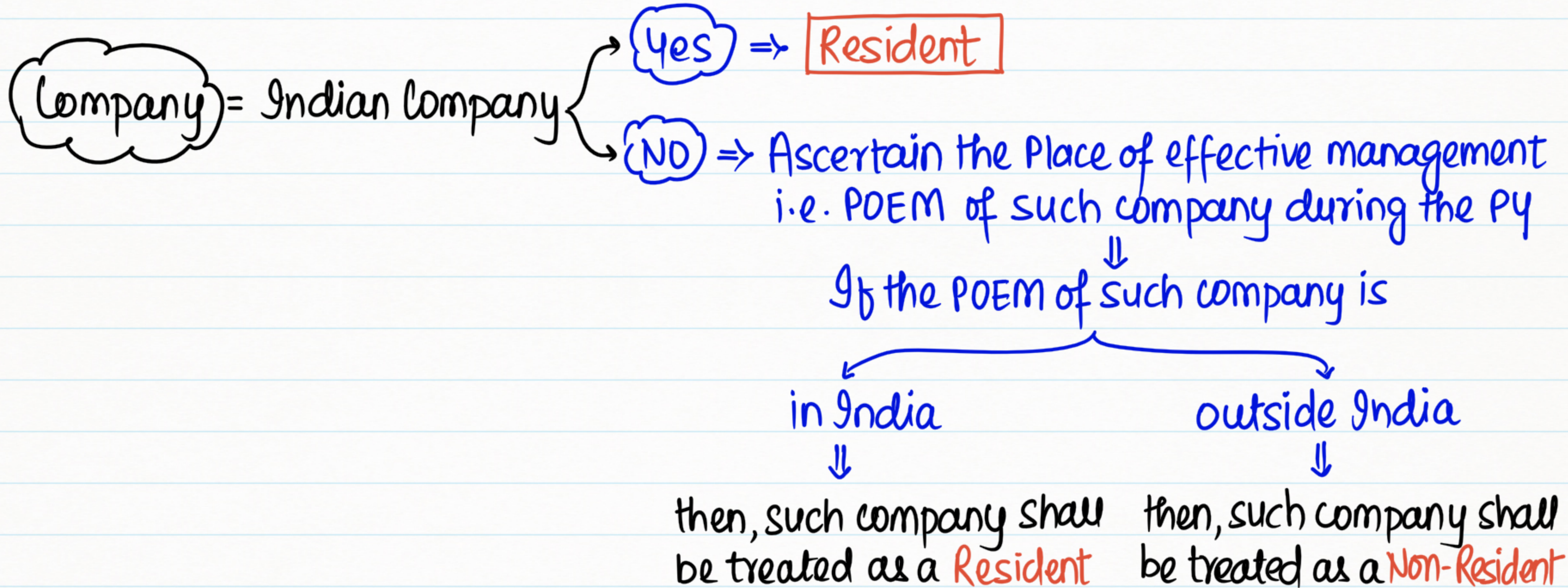
Partly in India & Partly o/s India

→ R

Residential Status of a Company :-



As per the provisions of **Section 6(3)**; the residential status of a company shall be determined in the following manner :-



Residential Status of Every Other Person i.e. Local Authority & AJP :-

As per the provisions of Section 6(4);



If the control & management of the affairs of any local Authority / AJP is situated :-

wholly outside India



then, such local Authority / AJP shall be treated as a **Non-Resident**

wholly in India

Partly in India & Partly outside India

then, such Local Authority / AJP shall be treated as a **Resident**

#

Local Authority / AJP

→ C&M of Affairs

wholly o/s India

→ (NR)

wholly in India

Partly in India &

Partly o/s India

→ (R)

Important Points to remember while determining the residential status of Every Person; Other than an Individual :-

- 1.] Control & Management is said to be situated at a place where the head & brain of the entity is situated.
It means functioning of the controlling & directing power at a particular place with some degree of permanence.
- 2.] Place of Effective Management (POEM) means a place where the key management and commercial decisions that are necessary for the conduct of the business of the company as a whole are, in substance made.
- 3.] In the case of a person other than Individual & HUF there is no concept of "not ordinarily resident" i.e. RNOR. Hence, their residential status would either be resident (always ordinarily resident) or non-resident.

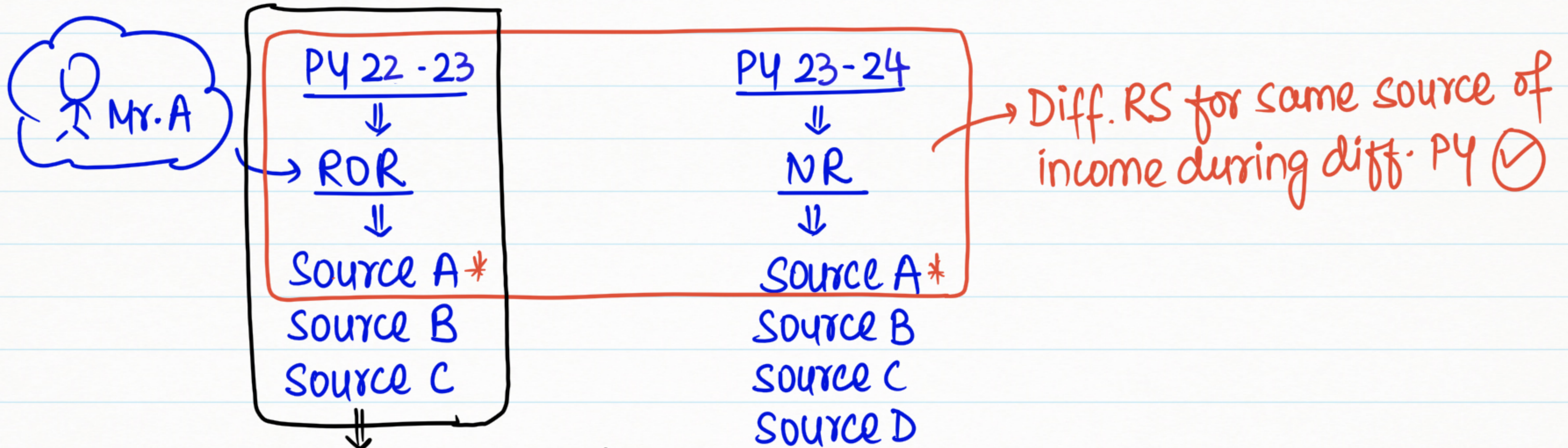
Residential Status of

- Individual/HUF → ROR/RNDR/NR
- Every other Person → R/NR

Section 6(5) :-

* Different Residential Status for Different sources of income during the same PY → **Not Possible**.

* Different Residential Status for same source of income during different PYS → **Possible**.



Diff. RS for diff. sources of income during the same PY (X)

— END OF NOTES —