Income Tax DT

Date 3/4/25

Ch-2 :- Residential Status

Sec-6/5/7/8/9

In India Total income & tax liability is not determined on the basis of citizenship but it is determined on the basis of Residential status.

In india, we have Citizenship Act-1955, which gives us Conditions to be a citizen of India. Some of 3 conditions are:-

a.) If Individual was born in India & at the time of birth of his parents were citizen of India then such Individual is also citizen of India

b.) If individual was not born in India, but marries an Indian citizen & stays in india for more than 5 years then individual can apply for citizenship after 5 year.
Eg. Sonia Gandhi.

c.) If individual stays in India for period > 12 years then he can apply for citizenship.

Conditions → Sec-6

6(1)	6(2)	6(3)	6(4)
Individual	HUF	Company	Local Authority
	Firm		AJP
	AOP-BOI		

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Residential Status of Individual :-

Resident

Sec-6(1)

If individual satisfies any one of Basic condition.

Non-Resident

Sec-2(30)

If Individual fails Both of basic conditions

Basic condition

Stay in India ≥ 182 days during Relevent Previous year.

OR

Stay in India ≥ 60 days During Relevent previous year.

&

Stay in India ≥ 365 days during preceeding 4 PYs from Relevent PY.

Notes :-

1. Relevent PY means PY for which we have to do all calculation.
2. It is not necessary that Stay should be for continious period.
3. India - has same meaning as we done in 1st chapter [12 NM]
4. Stay can be anywhere in India & not necessary that it should be at one location.
5. If exact time of arrival & Departure is known then we will add no. of Hours & group of 24 hours will be taken as one day.

Eg. Mr x is pilot with US Airlines & comes to india

March	Arrival	Departure	Total.
2nd	3 Am	diff. 11 pm	20
5th	8 Am	2 pm	6
18th	1 pm	11 pm	10
25th	12 Noon	10 pm	10
31st	5 Am.	5 pm	12
			58 HRS

↓

2days & 10hrs

6. If time of Arrival & time of departure is not given to us then day of arrival & day of departure (Both) will be Counted as stay in india.

Eg. Mr. Jhon is a Citizen of USA & comes to India for first time for holiday. He arrives on 15/8/18 & departures on 26/1/19. Calculate no. of days in India for PY 2018-19.

2018-19

April	0	Oct	31
May	0	Nov	30
June	0	Dec	31
July	0	Jan	26
August [31-14]	17	Feb	0
Sep.	30	Mar.	0
			165

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If an individual is Resident, then it is compulsory to bifurcate (divide) him into Resident & ordinary Resident [ROR] or Resident but not ordinary Resident [NOR]

To check if individual is ROR or NOR, we have 2 additional conditions :-

Resident Individual

ROR

Sec- 6(6)(a)

If individual satisfies both of additional conditions.

NOR

if Individual satisfies any one or fails to satisfy any of additional condition

Additional condition

Individual is Resident in at least 2 out of 10 preceeding P.Y.

&

Stay in India ≥ 730 days in preceeding 7 previous years.

Eg. Chris Gayle comes to India every year for 105 days to play in IPL. This has been his practise since 2007-8 calculate the Residential status for PY - 18-19.

PY	Days in India	Status
18-19	105	R
17-18	105	R
16-17	105	R
15-16	105	R
14-15	105	R
13-14	105	R
12-13	105	R
11-12	105	R
10-11	105	NR
9-10	105	NR
8-9	105	NR

* Chris Gayle has satisfied 2nd Basic condition of Sec-6(1) & that is why he is Resident of India.

He satisfies both of additional conditions & thus given u/s 6(6)(a), he is ROR of India.

Summary.

1 BC + 2AC → ROR
1 BC + 1AC → NOR
1 BC + 0AC → NOR
0 BC → NR.

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Exceptions to Basic conditions :-
we have 3 Exceptions to 2nd Basic conditions. In all 3cases 2nd basic condition is not Relevant. Individual is R/NR depend on 1st Basic condition

Case-1 :- Individual is citizen of India & leaves India for the purpose of Employment outside India.

NOTE :- ① Employment means doing business /professional Activity / Job.
② Employee may be in India or may be outside India, but Employment should be outside India.
Eg. Sachin qualifies as CMA in feb19. He gets Jobs with A Ltd. of Australia & leaves India on 10/7/19. Calculate RS of Sachin for PY 19-20. - if :-
a) He is citizen of India.
b.) He is not citizen of India.
Sol-> a) if sachin is citizen of India then we will apply Exceptional case since he goes outside India for purpose of Employment.

	PY -19-20
April	30
May	31
June	30
July	15
Aug to March	0
	$\boxed{106}$

His stay is less than 182 days & thus he is NR of India & we will not apply 2nd Basic condition.

b) If Sachin is not citizen of India, then we will apply 2nd Basic condition.

RS of Sachin

19-20	106	— R
18-19	365	— R
17-18	365	— R
16-17	365	— R
15-16	366	— R

We assume that Sachin was always in India before leaving on 15/7/19 - Thus he is ROR of India.

Case-II - If Individual is Either a) citizen of India or b) Person of Indian origin. Who ordinarily stays outside India but visits India for any purpose then we will not check 2nd Basic Condition. RS will depend on 1st Basic Condition.

Sec 115C(e) Individual is person of India origin.
if a) he OR
b) Either of his parents OR
c) Either of his grandparents.
was Born in undivided India.

Case 3- Individual is citizen of India & is employed on an Indian ship going outside India.

Note :- (1) Ship can be passanger ship / Cargo ship.
(2). The date of signing in the continious discharge certificate & date of signing off of continious Discharge certificate shall be counted as stay outside India.

Ill-3 2018-19

April to Sep	1
Oct [31-10]	21
Nov	30
Dec	31
Jan	31
Feb	28
March	31
	173

Her stay in India < 182days thus she is NR of India, we will not apply condition of 60days since she left India for employment outside India.

If an Individual is going out of India only for business meeting then it will not be considered as employment outside India.

Eg. X Ltd. is a company based at Noida & has main business of exporting garments from India. Mr A works as export marketing manager & leaves India to meet various client in USA. He left on 15th may & 18 & come back on 30/11/18. Calculate his no. of days in India & his RS assuming he left India for the first time

Sol-> Calculation of No. of days.

April	30
May	15
Jun-oct	0
NOV	1
Dec	31
Jan	31
Feb	28
March	31
	167

We will apply 2nd basic condition since he leaves India for Business meetings. Thus he is Resident as per 2nd Basic condition. He is also ROR as he satisfies both of Additional conditions.

HUF

Resident

If full/Partial control & Management of business affairs of HUF is located in india.

Non-Resident

* If full control of Management of business affairs of HUF is located outside india

1. Control & Management refers to day to day decision Regarding working of Business of HUF.
2. These decisions are in Hands of Karta.
3. Sometimes Karta delegates business decisions to some other person. Such other person is called as De-facto (acting) Karta.
4. If Karta or De-facto Karta was physically present in India while taking decisions then we say that HUF is Resident of India.
5. If atleast 1 decision is taken in India then HUF is Resident & if all decisions are taken outside India then HUF is NR.

★ If HUF is Resident :-

Sec-6(6)(b)

ROR	NOR
If Karta has satisfied both of additional conditions given U/S 6(6)(a) then HUF is ROR of India.	If Karta has satisfied only one or could not satisfy any of additional condition then HUF is NOR.

Additional conditions for Karta & not for de-facto Karta

Eg. Mr. X is Karta of HUF having business in Delhi. He is 70 years of age & delegates all his power to his 40yrs old Son & leaves India on 15/5/18. Son has full control on business of HUF. Son takes some decisions in India & some in USA. X left India for the first time in his life.
Calculate RS of -
a.) Mrs X b.) HUF

Calculation of RS of Mr X for PY-18-19

PY	Days	Status
18-19	45	NR

Mr X, the Karta, is NR of India.

Calculation of RS of HUF for PY-18-19.
Mr X delegated powers to his Son & thus Son is Defacto Karta.
Son has taken few decision in India & thus HUF is Resident of India.

Determination of RS of HUF
Additional Conditions.

PY	Days	Status
18-19	Not Required....	
	365	R
17-18	365	
16-17	365	
15-16	365	

14-15	365	R
13-14	365	
12-13	365	
11-12	365	
10-11	365	
09-10	365	
08-09	365	

Karta has satisfied both of additional conditions & thus HUF is ROR in India

Notes:- It is possible that ~~Karta~~/De-facto Karta is NR but HUF is R.

* ★ Residential Status of partnership firm / AOP / BOI } Sec-6(2)
* ★ Residential status of AJP / LA } Sec-6(4)

Resident
if full/partial control of management of business affairs is located in india

Non-Resident
if full control & management of Business Affairs is located outside India

* ★ we will not bifurcate into ROR/NOR since control & management is not in hands of any on Individual.

Date
Page

Residential status of company
[Sec-6(3)]

Resident

If Co. is a
a.) Domestic co.
b) foregin co. having Place of effective management (POEM) in india.

Non-Resident

A foregin co. not having POEM in india is NR.

Note :- Domestic co. can never be NR.

★ POEM → Govt has issued guidlines Regarding POEM which will be discussed in CMA final. one Eg. can be meeting of BOD. If all meetings is of BOD take place in india then we say that POEM is in India & foregin co. will be Resident of India.

Eg. D Ltd. is co. Reg. in India having head office in Delhi. it holds all BOD meetings in Nepal.

★ K Ltd. is co. Reg. in Nepal having head office in Kathmandu. it holds all BOD meetings in Delhi.

what is the RS of D ltd & K Ltd.

- D Ltd is always Resident of India since it is an indian / Domestic co.
- K Ltd. is Resident of India, since it holds all BOD meetings in india as foregin co.

Date ______
Page ______

Types of companies

Indian company 2(26)	Domestic Company 2(22A)	Foregin Company 2(23A)	Company in which public is Intrested. 2(18)

* Indian Co:-

Co. is an Indian co. If both of Conditions Satisfied.

a.) it is registered in india

b.) it has Registered office in india

* Domestic Co:-

a.) Co. hold AGM (Annual general Meeting in india)

Meeting of Shareholders of Co.

b.) Co. maintains Records of Shareholders in India

c.) Co. Declears Dividends in India & pays. Dividends out of Such Income which is taxable In india.

Note:- India Co. is always a Domestic Company.

* Foregin Co:-

A Co. which is not a domestic Co. is foregin Co.

Section-5

~~India~~ Income

Indian Income	Foregin Income
Income which is Earned in India wheather received In india or not OR Income which is Received in India wheather Earned in India or not	Income which is Earned outside India & Income which is Received outside India.

Eg. Mr. A is a citizen & Resident of USA but he is a Shareholder of R Ltd of India. The Company declares dividends in india which is Received by him in USA.

→ Dividend was Earned in India & therefore it is an Indian Income even if it is not Received in india.

Eg. Mr. is a citizen & Resident of India & he is a Shareholders of Microsoft Ltd of USA. The Co. Declares dividend in USA which is Received by him in india.

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* Dividend was Received in India thus it is an Indian Income Even through it was Earned outside India.

Eg. Mr. A is a owner of a house in London. House is letout & Mr. A receives Rent in London.

→ Rent has been Earned & Received outside India & thus Rent is a foregin Income.

Data	ROR	NOR	NR
	Sec-5(1)	Provisio to sec-5(1)	Sec-5(2)
Indian Income	Taxable	Taxable	Taxable.
foregin Income	Taxable*	Salary, HP, CG, IOS } Not Taxable PGBP → Taxable a) if business is Controlled from india b) If prof. is set up in india.	Not taxable

* Double Taxation :- ROR has to pay tax in india on Indian Income & on foregin Income. He will be paying tax on such Income. Even in foregin Country.
Such income on which Tax is charged

In 2 countries is Called as Double Taxed Incomes.
For Such Incomes Indian govt gives Relief [Discount] & for this we have 3 sections i.e. Sec 90/90A/91 which we will dicuss in CMA final.

Extra points:-

1. Divided Earned by Shareholder:-

- Domestic co. → Exempt upto 10L U/S 10(34) Taxable beyond 10L
- Mutual fund → Exempt U/S 10(35)
- Society
- Foregin co.

Society / Foregin co. → Taxable as IOS.

Eg. Dividend 12L

- 10L Exempt
- 2L Taxable.

2. Agricultural Income from Land:-

- India → Exempt U/S 10(1)
- outside India → Taxable as IOS

3 Gifts Received

- Relative
  - Monetary
  - Non-Monetary
  - → Exempt
- Non Relative
  - Monetary
    - Exempt if Amt ≤ 50000 p.a.
    - Taxable if Amt > 50000 p.a.
  - Non-monetary
    - Exempt value ≤ 50000
    - Taxable if Value > 50000

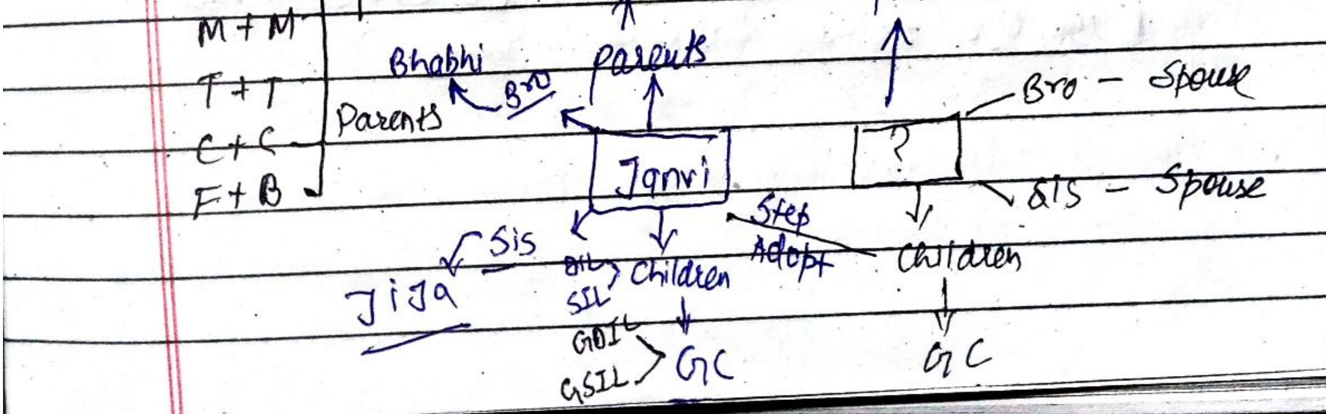
Always Remember :-

1.) Gifts received on marriage are fully exempt wheather received from Relative/non-Relative, weather monetary or non-Monetary

2.) Gifts received due to will or due to inheritance are always exempt.

For detailed discussion Refer ch- of IOS

Eg. Manav has 3 GF Era, Mina, Dika & all 3 have gifted him ₹20000 Each on his Bday on 3/12/18 - full 60000 will be Taxable for Manav as IOS.



4. Income of Remittance:-

When a person has 1st control on the money wheather directly or Indirectly & where consideration is Involved then it is called as Income Received (sec-7)

When person has subsequent i.e. 2nd or beyond control of money & where no consideration is Involved then it is called Remittance.

Eg- prashant (Delhi) $\xleftarrow{\text{Sends}}$ Parents (Lucknow)
POCKet Money

10000 — 50000 from business

↓ Remittance for prashant

↓ Income for Parents.

★ Income is taxable for the person who Earns Income
Remittance is not taxable for the person who receives the remittance.

In above Eg.- 50000 is taxable for parents & 10000 is not taxable for prashant.

Remittance ka paisa Jisko milta hai uske liye Taxable nhi hota hai. lekin Jo bheJta hai uskeliye taxable hota hai.

1. CMA prashant (Job in USA) → Earns 200000 pm.

100000 pm	40000 pm	60000 pm
↓ Spent	↓ to parents in Lucknow	↓ Saves.

Income Earned ⇒ 200000

Remittance ⇒ 40000 → Not taxable for parents but taxable for prashant

Prashant → India

60000
×24

$\boxed{1440000}$

prashant Comes to India & brings all his Saving to india.

This is also called as Remittance & this amount is also not taxable.

Sec-7 - Income Received in India:-

When a person has 1st control on the money weather directly or Indirectly & where consideration is Involved then it is called as Income Received.

Sec-7 :- Incomes which are deemed to be received in India:-

Deemed & Compulsory Assumption.

following cases:-

a) Employer's contribution toward RPF in ~~exc~~ Excess of 12% of salary

b.) Intrest on RPF in Excess of 9.5% of salary.

c.) Transfered Balance.

d.) contribution of Employer towards NPS U/S 80CCD.

e.) Amount of TDS done on Income.

f) Deemed profit U/S 41.

Sec-8 :- Incomes Accrue [Arising In india]

Accuring } — ~~Source~~ of Income.
Arising }   or
Birth of Income

if Income Accrues or arises in India then it is taxable In India.

* it is Regarded as Indian Income.

Sec-9 - Incomes which are deemed to accrue/ arise In India.

Case I – As a normal case 'Salary' accures at a place where services are performed.
However in case of Citizen of India who is Employee of C.G or S.G, 'Salary' is always deemed to accure in india.

Allowances & perquisites Earned outside India are fully Exempt U/S 10(7).

Case – II :- If House property is located in India then Rental income is deemed to accrued in India.

- Since HP is located in India, Income is deemed to accrue / arise in India Even though Income is Receive outside India in foregin currency.

Case III :- Capital Gains is deemed to accrue (arise in India) if asset is located in India.

* Capital gain of 50L will be taxable in India.

Case – IV :- If services are performed in India then Salary is deemed to accrue in India.

Case – V – Dividends of Indian co. are always deemed to accrue in India.

Case – VI :- Intrest :-

a) Payble by govt → Always deemed to accrue In india.

b.) Payble by Resident :- Intrest will be deemed to accrue in India Except when:-
- Money is used for doing business outside India
- Money is used for Earning any Income outside India.

c.) Payable by Non-Resident → Intrest will be Deemed to accrue in india only if money is used in india, for doing a business activity.

Case - VII :- Royality :-
a.) payble by govt :- Always deemed to accrue In india.
b.) Payble by Resident :- Always deemed to accrue In india Except when it is used for :-
- Business outside India
- Earning Income outside India.

c.) Payble by NR → Deemed to accrue in India if it is used for business in India.

Case - VIII - Fee for technical services.
Same as Case - VII

Case - IX - if business connections are in India then Income is deemed to accrue in india

Date
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Business Connections:-

1.) If a person has authority to conclude contract in India on behalf of NR

2.) if Person maintains stock of goods in India on behalf of NR

3.) If a person takes order in India on behalf of NR.

Exceptional cases of Business connections:-

In following cases Income is not Deemed to accrue/arise. In India:-

a) A person purchases goods in India for NR & then Exports such goods to NR.

b) A person collects news in India for transmission outside India

c) Shooting of movie takes place in India & it is produced by NR.

→ → →