

Scope of Total Income & Residential Status

Concepts & Sections to be studied in this Chapter :-

- Section 5 :- Scope of Total Income
- Concept of Accrual of Income
- Concept of Receipt of Income & Remittance of Income
- Section 7 :- Incomes deemed to be received
- Section 9 :- Incomes deemed to accrue/arise in India
- Section 8 :- Taxability of Dividend Income
- Section 6 :- Residential Status of various types of persons

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

Residential Status of the person

Place & Time of accrual or receipt of income i.e. type of income

Section 5 :-

Scope of Total Income :-

(A) In case of Individuals / HUFs :-

<u>Nature of Income</u>	<u>Residential Status</u>		
	<u>ROR</u>	<u>RNOR</u>	<u>NR</u>
→ <u>Indian Income</u>			
* Income accrued in India or Deemed to accrue or arise in India u/s 9; or	✓	✓	✓
* Income received in India or Deemed to be received in India u/s 7	✓	✓	✓
→ <u>Foreign Income</u>			
Income accrued and received outside India from :-			
(a) Business / Profession controlled from / set-up in India	✓	✓	X
(b) Any Other source of income	✓	X	X

(B) In case of Persons Other than Individuals & HUFs :-

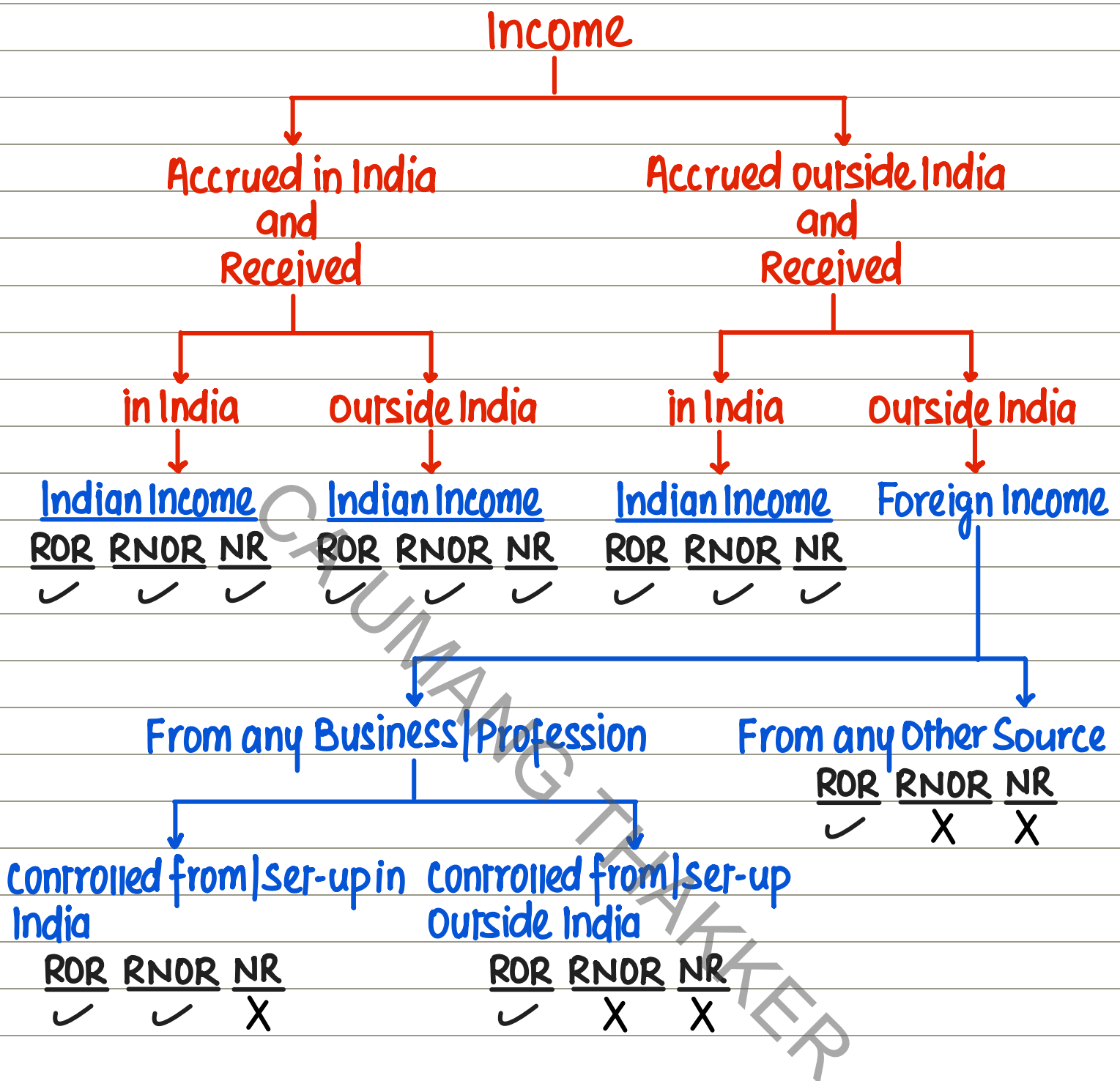
<u>Nature of Income</u>	<u>Residential Status</u>	
	<u>R</u>	<u>NR</u>
→ <u>Indian Income</u>		
* Income accrued in India or Deemed to accrue or arise in India u/s 9; or	✓	✓
* Income received in India or Deemed to be received in India u/s 7	✓	✓
→ <u>Foreign Income</u>		
Income accrued and received outside India from any source of income	✓	X

Note :-

- ✓ : Income is includible in the computation of total income
X : Income is not includible in computation of total income

Note :- Past income (taxed or untaxed) which was accrued and 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 & the same needs to be ignored while computing the total income of the PY.

Note :- 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 such assessee.



Concept of Receipt of Income & Remittance of Income :-

Receipt refers to the **first occassion when the receipient gets the money under his control.**

Once the amount is received as income, any transmission of such amount to other place does not result in receipt at other place but the same is treated as remittance of income.

* **Example** :- Mr. Amar got \$20,000 in his control for the first time on 02.12.23. Out of this he transfers ₹50,000 to India on 10.12.23.

In the above example, Mr. Amar has received \$ 20,000 outside India on 02.12.23.

Hence, the 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 remittance of money. The same income cannot be received twice, once outside India and again in India.

Concept of Accrual of Income :-

- * Income is said to be received when it reaches the assessee i.e. comes in his control for the first time.
- * However, when the **right to receive the income is vested in the assessee**, it is said to have accrued / arisen.
- * Further, when the right to enforce the payment of income arises, then the same is said to have become due.
- * **Examples :-**
 - 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 January or 1st February (as the case may be).
 - 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 specified date.

Section 7 :-

Incomes deemed to be received :-

Following incomes shall be deemed to be received during the PY :-

Annual accretions in the PY to the balance at the credit of the RPF A/c of the EE' to the extent provided in Rule 6 of Part A of the Fourth Schedule i.e.

- * ER's Contribution to RPF A/c of the EE' in excess of 12% of EE's salary ; and
- * Interest credited to the RPF A/c of the EE' in excess of 9.5% rate of interest

Transferred Balance in the 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 ER's contribution in excess of 12% of salary & Interest credited in excess of 9.5% rate of interest

Contributions made by the CG or any other ER' in the PY to the NPS A/c of the EE' as referred u/s 80CCD.

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

Section 9 :-

Incomes deemed to accrue/arise in India :-

Following incomes shall be deemed to accrue/arise in India :-

- 1) Income accruing/arising directly/indirectly through/ from :-
 - (a) any business connection in India ; or
 - (b) any property/asset/source of income in India ; or
 - (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; or
(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 fully exempt u/s 10(7).

4.) Dividend paid outside India by an Indian Company.

5.) Interest Payable by :-

(a) The Government - Section 9 ✓

(b) a Resident - Section 9 ✓

Exception :-

Interest on loan taken by the resident is i.r.o. any business or profession or any other source of income outside India - Section 9 ✗

(c) a Non-Resident -

Only if :-

Interest on loan taken by the non-resident is i.r.o. any business or profession in India - Section 9 ✓

6.) Royalty payable by :-

(a) The Government - Section 9 ✓

(b) a Resident - Section 9 ✓

Exception :-

Royalty is i.r.o. right, property or information used or services utilised by the resident for any business or profession or any other source of income outside India - Section 9 ✗

(c) a Non-Resident

Only if :-

Royalty is i.r.o. right, property or information used or services utilised by the non-resident for any business or profession or any other source of income in India - Section 9 ✓

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

(a) the Government - Section 9 ✓

(b) a Resident - Section 9 ✓

Exception :-

FTS is i.r.o. technical services utilised by the resident for any business or profession or any other source of income outside India - Section 9 ✗

(c) a Non-Resident

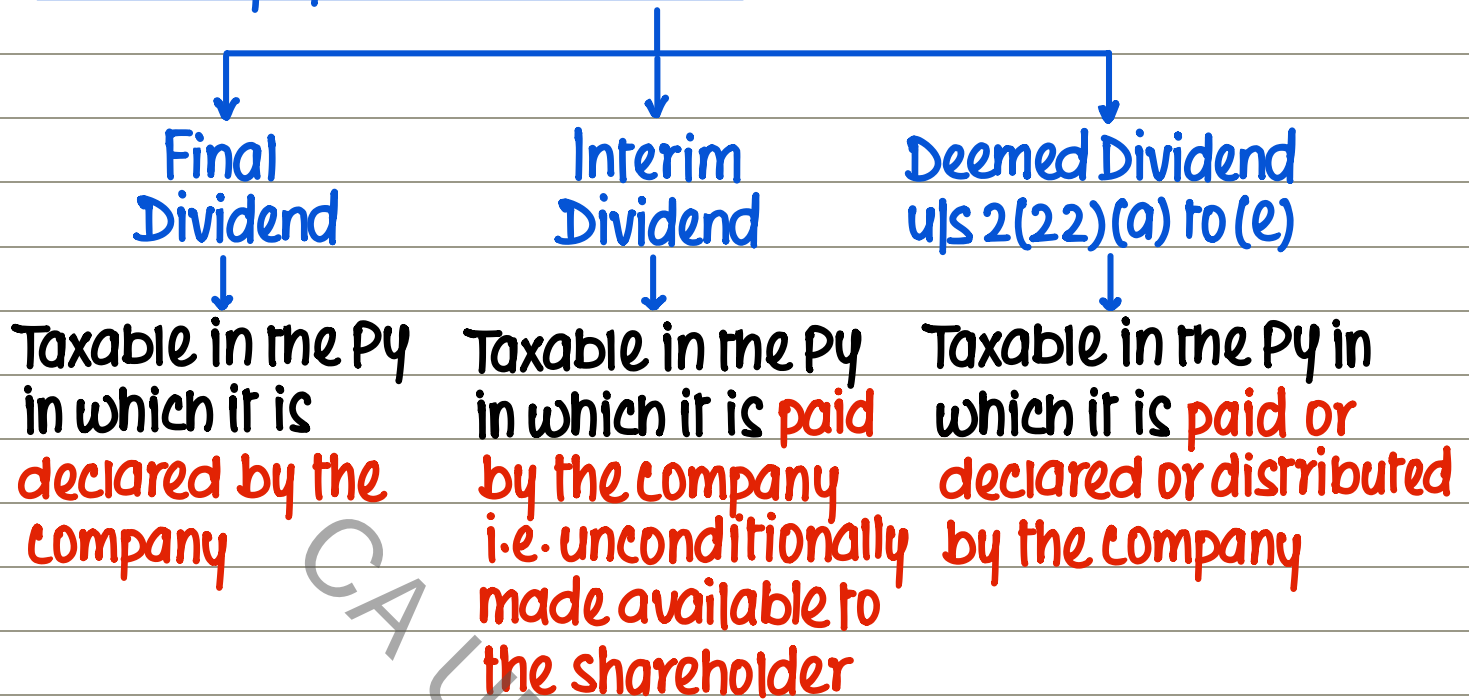
Only if :-

FTS is i.r.o. technical services utilised by the non-resident for any business or profession or any other source of income in India - Section 9 ✓

8.) Any sum of money received outside India without consideration (i.e. gift) by a NR or a RNOR from any Resident.

Section 8 :-

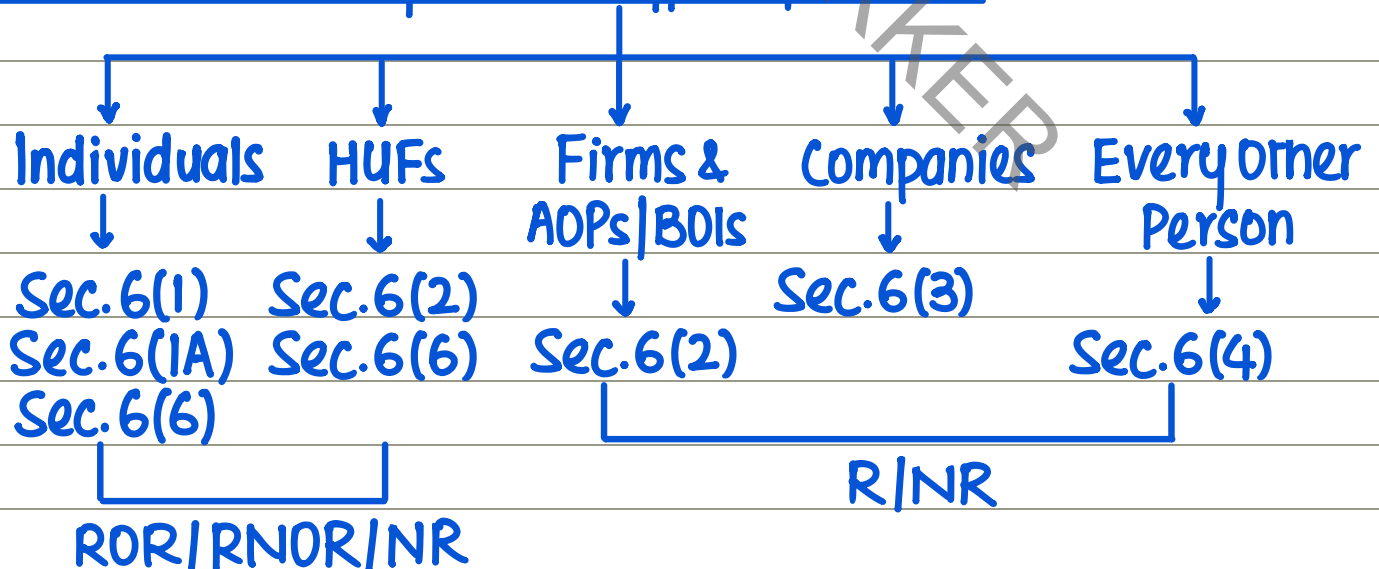
Taxability of Dividend Income :-



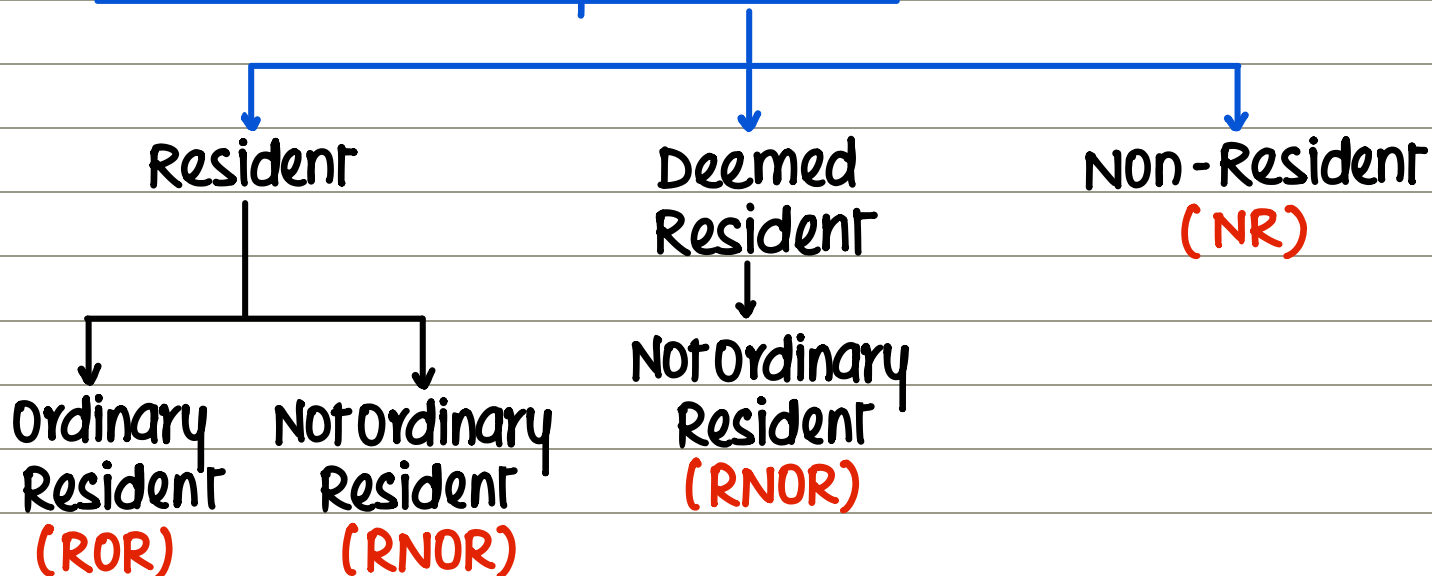
Note :- The above section 8 shall be discussed in detail while studying 'Other Sources' head.

Section 6 :-

Residential Status of various types of Persons :-



Residential Status of Individuals :-



* In order to determine whether the individual is a **resident**; such individual has to **satisfy any one** of the following two **Basic Conditions u/s 6(1) :-**

(A) Stays in India for a period of **≥ 182 days** during the relevant PY

OR

(B) Stays in India for a period of **≥ 60 days** during the relevant PY

and

Stays in India for a period of **≥ 365 days** during **4 PYs** immediately preceding to relevant PY

Exceptions to the Basic Conditions :-

* In the following **exceptional cases**; the individual shall be treated as a **resident only if he has satisfied the basic condition 'A'** of section 6(1). Hence, in the following exceptional cases if the basic condition 'A' is not satisfied; then the **basic condition 'B'** is not to be verified :-

(a)  An Indian Citizen \rightarrow leaving India during the PY \rightarrow for the purpose of employment outside India

(b)  An Indian Citizen → leaving India during the PY → as a crew member on an Indian ship

Note :-

The period of stay in India for such individuals i.r.o. 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 (CDC) in respect of such voyage

(c)  An Indian Citizen

OR

 A Person of Indian Origin

→ coming to India during the PY

→ for the purpose of visit

and

Total Income of such individual excluding the incomes from foreign sources (except the income from any business or profession outside India but controlled from or set-up in India) is \leq ₹15 lacs.

Note :-

An individual shall be treated as a Person of Indian Origin if he himself or any of his parents or grand parents were born in undivided India.

Special Case :-

 An Indian Citizen

OR → coming to India during the PY → for the purpose of visit

 A Person of Indian Origin

and

Total Income of such individual excluding the incomes from foreign sources (except the income from any business or profession outside India but controlled from or set-up in India) is $> ₹15$ lacs.

↓
such individual shall not be covered by the exception (C) as given above and in such case, if the basic condition 'A' is not satisfied, then the basic condition 'B' shall also be verified in order to determine whether such individual is a resident or not.

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However, in such case the basic condition 'B' shall be modified and the same shall be as follows :-

Stay in India for a period of ≥ 120 days during the relevant PY


and

Stay in India for a period of ≥ 365 days during 4 PYs immediately prior to the relevant PY

* From the above discussion, it is clear that if the individual has not satisfied any of the basic conditions of section 6(1); then, such individual shall be treated as a Non-Resident.

But, if such individual is covered up to 6(1A); then, he would be treated as a Deemed Resident & not a Non-Resident.

Section 6(1A):- Deemed Resident :-

 An Indian Citizen → not liable to tax in any other country or territory by reason of his residence or domicile or any other criteria of similar nature

and

Total Income of such individual excluding the incomes from foreign sources (except the income from any business or profession outside India but controlled from or set-up in India) is $> ₹15$ lacs.



Deemed Resident u/s 6(1A) ✓

* Once an individual becomes a resident by satisfying any one of the basic conditions of section 6(1) and he has also satisfied any one of the following two Additional conditions of section 6(6); then such individual shall be treated as a Resident but not Ordinary Resident i.e. RNOR :-

(A) Non-Resident in India for at least 9 Pys out of 10 Pys immediately preceding to relevant Py
OR

(B) Stays in India for a period of ≤ 729 days during 4 Pys immediately preceding to relevant Py

If the individual has not satisfied any of the above mentioned additional conditions of section 6(6); then, such individual shall be treated as an Ordinary Resident i.e. ROR.

Note :-

- 1) An individual who is a **Deemed Resident** as per section 6(1A) shall be **directly treated as a RNOR** without verifying the additional conditions of section 6(6).
- 2) An individual who is **not covered by the third exception** to the basic conditions **and he has become a resident by satisfying the basic condition 'B'**; then, he would also be **directly treated as a RNOR** without verifying the additional conditions of section 6(6).

Summary :-

Different Situations	Basic Condition			Addl. Condition		
	(A)	(B)		(A)	(B)	
3 Exceptions	✓	-NA-	R	✓	✓	RNOR
				✓	X	RNOR
				X	✓	RNOR
				X	X	ROR
	X	-NA-	NR	-NA-	-NA-	NR
Special Case	✓	-	R	✓	✓	RNOR
				✓	X	RNOR
				X	✓	RNOR
				X	X	ROR
	X	✓	R	-NA-	-NA-	RNOR
	X	X	NR	-NA-	-NA-	NR
Normal Case	✓	-	R	✓	✓	RNOR
				✓	X	RNOR
				X	✓	RNOR
				X	X	ROR
	X	✓	R	✓	✓	RNOR
				✓	X	RNOR
				X	✓	RNOR
				X	X	ROR
	X	X	NR	-NA-	-NA-	NR

* From the above discussion, it is clear that if the individual has **not satisfied any of the basic conditions** of section 6(1); then, such individual shall be treated as a **Non-Resident**.

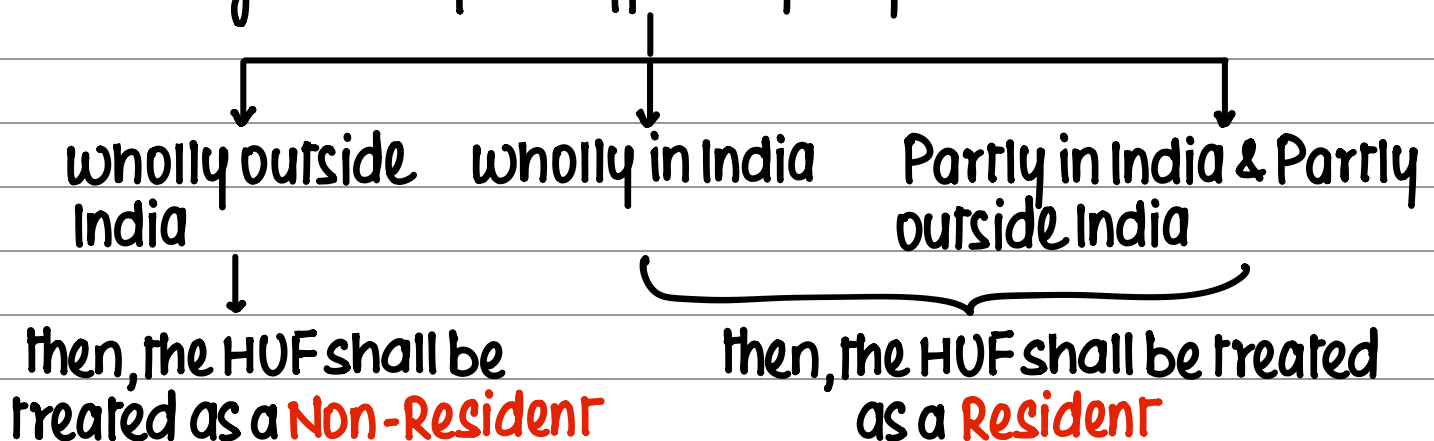
But, if such individual is **covered u/s 6(1A)**; then, he would be **treated as a Deemed Resident** & not a Non-Resident.

Important points to remember while determining the residential status of an individual :-

- 1.) Residential status of an individual has nothing to do with the citizenship or nationality or domicile or place of birth etc. However, it is determined purely on the basis of his stay in India.
- 2.) The purpose of stay in India is immaterial and also the period of stay should not be continuous or confined to a single place in India.
- 3.) Date of Arrival i.e. the day on which the individual is entering in India and the Date of Departure i.e. the day on which the individual is leaving from India both the days shall be included in the period of stay in India.

Residential Status of HUFs :-

As per the provisions of **section 6(2)**; if the control & management of the affairs of any HUF is situated :-



* Once the HUF becomes a Resident and the **Karta (manager)** of such HUF **has also satisfied any one of the following two additional condition of section 6(6)**; then, such HUF shall be treated as a **RNOR** :-

(A) Karta (manager) was a **Non-Resident** in India for at least **9 PYs out of 10 PYs** immediately preceding to relevant PY

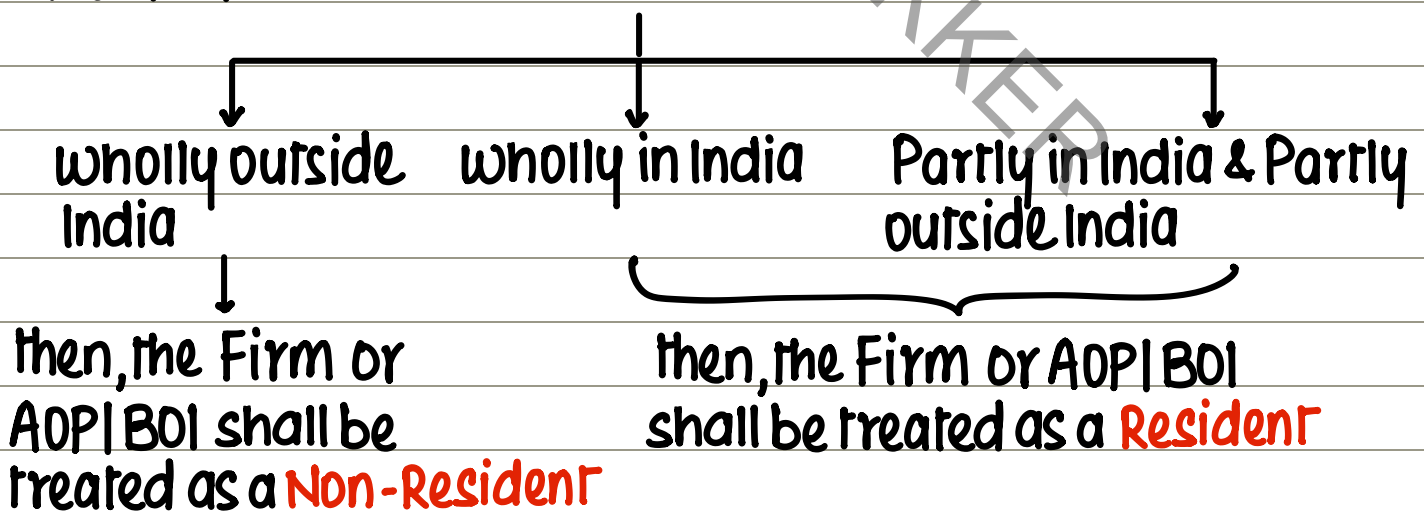
OR

(B) Karta (manager) stays in India for a period of **≤ 729 days** during the **7 PYs** immediately preceding to the relevant PY

However, if the **Karta (manager)** of the HUF **has not satisfied any of the above two additional conditions of section 6(6)**; then, the **HUF shall be treated as ROR**.

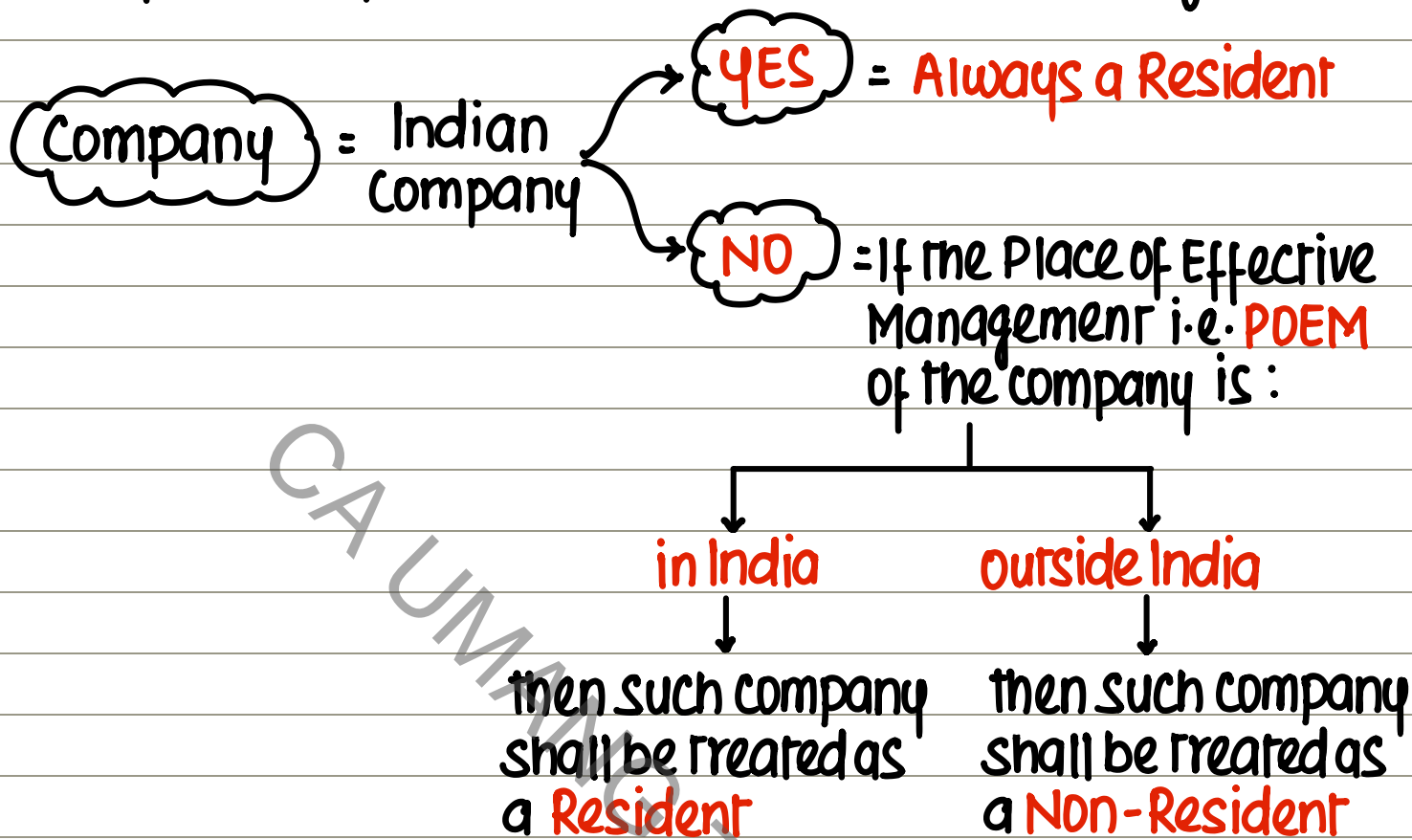
Residential Status of Firms & AOPs / BOIs :-

As per the provisions of **section 6(2)**; if the control & management of the affairs of any Firm or AOP/BOI is situated :-



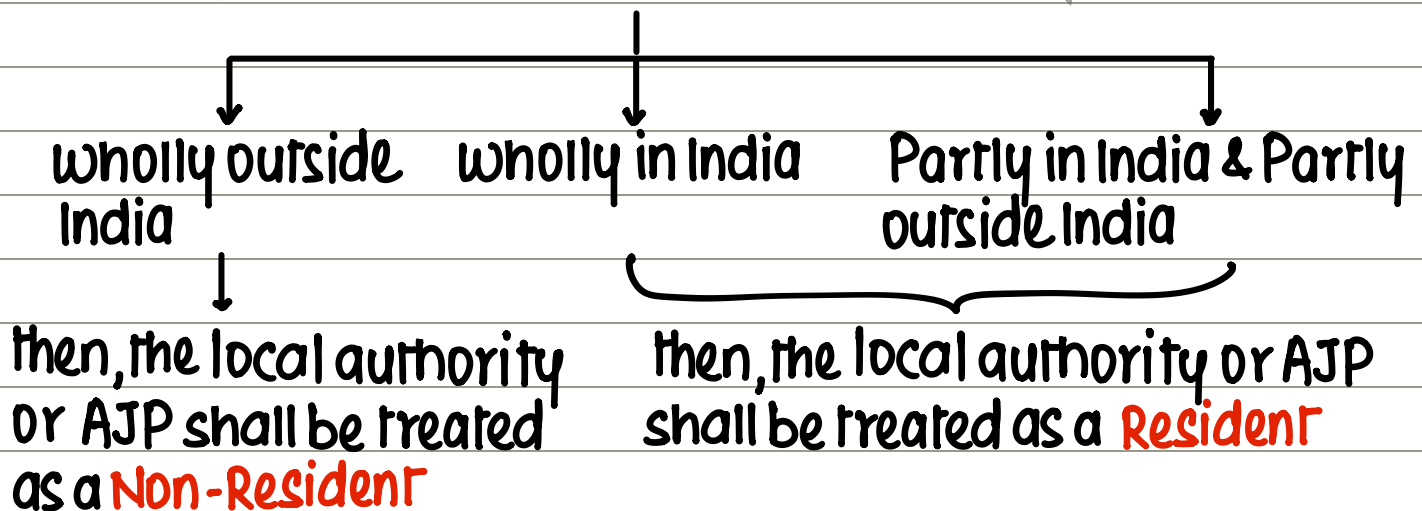
Residential Status of Companies :-

As per the provisions of **section 6(3)**, the residential status of any company shall be determined in the following manner:



Residential Status of Every Other Person i.e. Local Authorities or AJP's :-

As per the provisions of **section 6(4)**, if the control & management of the affairs of any local authority or AJP situated :-



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 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 & commercial decisions that are necessary for the conduct of the business of the company as a whole are in substance made.

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 PY - **Possible**