Sec. 6: Residential Status

Total income of an assessee cannot be determined without knowing his residential status. Scope of Total income is based on Residential status. If any person become Resident then his whole world income is taxable in India but if person become Non-Resident, then only Indian Income is taxable for that person. Residential status shall be determined for every person for each previous year independently.

- Residential Status of Individual

Basic Conditions as per Section 6(1)	No. of days stay in India	Satisfied or Not satisfied
1. Stay in India for 182 days or more in P.Y. (Current PY) OR 2. Stay in India for 60 days or more in P.Y. and 365 days or more in Last 4 P.Y.'s		
Additional Conditions Section 6(6)		
1. Resident for 2 P.Y. or more in Last 10 P.Y.'s AND 2. Stay in India for 730 days or more in Last 7 P.Y.'s		

If any individual satisfies any One Basic condition (at least one) then he is treated as Resident in India otherwise Non-Resident in India. If any individual become Resident in India, then we have to check that such person in Resident and ordinarily resident (ROR) in India or Resident but Not ordinarily (R but NOR) Resident in India. If the such assesse satisfy both the additional conditions then he is treated as R and OR otherwise R but NOR.

Notes:

1. The day on which he enters India, as well as the day on which he leaves India, shall be taken into account as the stay of Individual in India.
2. In the following cases only Basic condition no. 1 is applicable for Determination of residential status (2nd Basic condition should be Ignored).
   a. Indian Citizen, Leave India during the P.Y. for an employment outside India.
   b. Indian Citizen being a crew member of Indian Ship, leave India during the P.Y.
   c. Indian Citizen or Person of Indian origin engaged outside India in any employment or a Business or Profession, and Visiting India during P.Y.& his total income (excluding income from foreign source) is upto ₹ 15 Lakhs in P.Y

Note : Person of Indian Origin means, he or either of his parents or either of his grandparents were born in undivided India.

➤ In case of Indian citizen or person of Indian origin having total income (other than foreign source income) of more than ₹ 15 lakhs then 2nd basic condition applicable and instead of 60 days in PY, 120 days are considered, if stay in India 120 days or more but less than 182 days in current PY & stay in India for 365 days or more in last 4 PY's then he will be treated as resident but not ordinary resident. (In this case no need to check additional conditions)

Note: Income from foreign sources (FSI) means income which accrues or arises outside India except income derived from a business controlled in or a profession set up in India.

➤ Summary - How many days an Indian Citizen or a Person of Indian origin visits in India during PY

Less than 120 days	120 days or more but upto 181 days	182 days or more irrespective of Total Income
NR in India	If he satisfied both the conditions then R but NOR otherwise NR (i) Stay in India for 365 days or more in last 4 PY, and (ii) His Total Income (other than foreign income) more than ₹ 15 Lakhs.	If he satisfied both the conditions then R&OR otherwise R but NOR (i) Resident in India for 2 PY or more in last 10 PY's, and (ii) Stay in India for 730 days 1or more in last 7 PY's

➤ In case of Indian citizen, crew member of a foreign bound ship (originated from India and destination outside India or vice versa) leaving India, followings days shall be treated as stay outside India; - "From the date entered into the continuous discharge certificate (CDC) is respect of joining the ship & ending on the date entered into CDC in respect of signing of the ship."

Sec. 6(1A): Deemed Resident

In case of Indian citizen, having total income (other than foreign source income), exceeding ₹ 15 lakhs during the PY shall be deemed to be resident in India in that PY, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature & he is always treated as R but NOR.

- ⊗ However, this provision will not apply in case individual resident in PY as per section 6(1).
- ✓ Liable to tax means that there is an income-tax liability on such person under foreign country tax law. It also includes a person who has subsequently been exempted from such liability under the law of that country.

Sec. 6(2): Residential Status of Hindu Undivided Family (HUF)

If Control and Management of its affairs is

Wholly or Partly in India	Wholly Outside India
Resident	Non-Resident

Note: If Karta of HUF is satisfying both the additional Conditions as per sec 6(6) the HUF is treated as R and OR otherwise R but NOR.

Sec. 6(2): Residential Status of FIRM/AOP/BOI/Local Authority/AJP

If Control and Management of its affairs is

- Wholly or Partly in India → Resident
- Wholly Outside India → Non-Resident

Sec. 6(3): Residential Status of Company

- Indian Company → Always Resident
- Other Company (Foreign Company) → If its "place of effective management" [POEM] in India in that year then resident otherwise NR

➢ POEM means 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".

Sec. 5: Scope of Total Income

Total Income

- Indian Income
  Income Received or deemed to be received in India
  OR
  Income accruing or arising or deemed to be accrue or arise in India
- Foreign Income
  Income other than Indian Income

➢ Taxability of Income for Individual & HUF

S.No.	Income	R & OR	R but NOR	NR
1.	Indian Income	Taxable	Taxable	Taxable
2.	Foreign Income - Income from Business or Profession Controlled / setup from India	Taxable	Taxable	Not Taxable
	- Other foreign Income	Taxable	Not Taxable	Not Taxable

➢ Taxability of Income for Other Assessee

S.No.	Income	Resident	NR
1.	Indian Income	Taxable	Taxable
2.	Foreign Income	Taxable	Not Taxable

Notes:

1. Income received means, received for the first time. After receiving income outside India, subsequently if it is remitted into India, it cannot be treated as Receipt of Income.
2. Income may be in Cash or in Kind.
3. Any income already taxed on accrual basis, consequently remitted to India, is not chargeable to tax at the time of remittance irrespective of the residential status.
4. Income accrual in India means, income generated in India or source of Income situated in India.

Sec. 7: Income deemed to be received in India

(i) Contribution in excess of 12% of salary to Recognised provident fund or interest credited in excess of 9.5% p.a (Annual accretion to the credit of RPF).

(ii) Contribution by employer under a pension scheme referred u/s 80CCD (NPS).

(iii) Amount transferred from URPF to RPF (being the employer's contribution and interest thereon).

Sec. 9: Income deemed to accrue or arise in India

➢ Sec 9(1)(i): Through or from any Business Connection in India or any property in India or any asset or source of income in India or transfer of a capital asset situated in India

⊗ Following shall not be treated as Business Connection in India

A. Purchase of goods in India for export.

B. Collection of news and views in India for transmission out of India.

C. Shooting of cinematograph films in India if such NR is Individual, who is not a citizen of India or a firm which does not have any partner who is a citizen of India or who is resident in India or a company which does not have any shareholder who is a citizen of India or who is resident in India.

D. In case of a foreign co. engaged in the business of mining of diamonds, from the activities which are confined to display of uncut and unassorted diamonds in any special zone notified by the CG.

☞ Income from property, Asset or source of Income is situated in India, then it is treated as deemed to be accrued or arise in India.

☞ Income through transfer of Capital asset situated in India whether registration of documents of transfer in India or outside India or consideration received in India or outside India.

- Sec 9(1)(ii): Salary Income for service rendered in India, whether such Income before or after service rendered like Gratuity, Pension, Profit in lieu of Salary.

- Sec 9(1)(iii): Salary received by Indian Citizen from Govt. for service rendered outside India.
  - ✓ As per section 10(7) perquisite & allowances are Exempt.

- Sec 9(1)(iv): Dividend paid by Indian Company Outside India

- Section 9(1)(viii) : Deemed accrual of gift made to a person outside India

  Gift of any money made by resident to;-
  - NR or foreign company on or after 5th July 2019 or
  - R but NOR on or after 1st April 2023,

  shall be deemed to be accrued or arise in India.

- Sec 9(1)(v): If interest is payable by: -

a. Government, or

b. Resident person [Exception: where money borrowed and used, for the purposes of a business or profession carried on by him outside India or for the purposes of earning any income from any source outside India], or

c. NR when money borrowed used for the purpose of business or profession carried in India by him,
   - then such interest is treated as deemed to be accrued or arise in India.

E.g.: If a NR 'Lobo' borrows money from a NR 'Hobo' and invests the same in shares of an Indian company, interest payable by 'Lobo' to 'Hobo' will not be deemed to accrue or arise in India.

- Sec 9(1)(vi): If royalty payable by: -

a. Government, or

b. Resident person [Exception : Where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of earning any income from any source outside India]

c. NR in respect of transfer of any right, use of any property or information or utilization of service for purpose of business or profession carried in India or earning any Income from any source in India
   - then such Royalty is treated as deemed to be accrued or arise in India.

Notes:

1. Lumpsum Royalty by resident to NR for supply of computer software along with computer hardware under the scheme of CG shall not be treated as deemed to be accrued or arise in India.
2. If transfer of property is already taxable "Capital gain" then it is not covered under "Royalty".
3. "Royalty" means consideration (including any lump sum consideration) for —
   (i) Transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
   (ii) Imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
   (iii) Use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
   (iv) Imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
   (v) Use or right to use any industrial, commercial or scientific equipment;
   (vi) Transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting;
   (vii) Rendering of any services in connection with the activities referred in above clauses.

4. Consideration for use or right to use of computer software is covered under Royalty.

➢ Sec 9(1)(vii): If fees for technical service (FTS) payable by: -

a. Government, or
b. Resident person [Exception : Where the fees is payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of earning any income from any source outside India.]
c. NR in respect of Technical service utilised in business or profession carried on by such person in India or such service utilise for earning any income from any source in Indian,
   - then such FTS is treated as deemed to be accrued or arise in India.

FTS means: any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel). However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'.