



DETERMINATION OF RESIDENTIAL STATUS


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AGENDA

- Applicable Acts in India to determine residential status.
 - Brief of FEMA.
 - Importance of determining Residential Status.
 - Scope of total income and its taxability in India.
 - Residential status as per Income Tax Act, 1961.
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APPLICABLE ACTS IN INDIA

FEMA Act

- This Act empowers the Reserve Bank of India to regulate foreign exchange transactions in India.
 - It enables Indian residents and entitles to acquire, hold or transfer foreign exchange in accordance with provisions of the act.
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IMPORTANCE OF RESIDENTIAL STATUS

- Taxability of different incomes in India.
 - Applicability of special rate of taxation for NRIs.
 - Repatriation/foreign remittances (as per FEMA ACT).
 - Applicable TDS rates.
 - Disclosure requirements of foreign assets.
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SCOPE OF TOTAL INCOME

INDIAN INCOME

- Accrued in india or received in India.
- Deemed to be accrued in India as per provisions of section 9 of Income Tax Act, 1961.

FOREIGN INCOME


- Accrued as well as received outside India.
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TAXABILITY OF TOTAL INCOME

	ROR	RNOR	NR
INDIAN INCOME(actual received or accrued or deemed received or accrued)	TAXABLE	TAXABLE	TAXABLE
FOREIGN INCOME (from a business controlled from India or from a profession set up in India)	TAXABLE	TAXABLE	NON TAXABLE
FOREIGN INCOME (i.e., income which has no relation with India)	TAXABLE	NON TAXABLE	NON TAXABLE



RESIDENTIAL STATUS AS PER INCOME TAX ACT, 1961

- Section **6(1)**: Whether individual is **resident** in India.
 - Section **6(6)**: Whether individual is **ordinarily resident** in India.
 - ROR : Resident and ordinarily resident
 - RNOR : Resident but not ordinarily resident
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SECTION 6 (RESIDENCE IN INDIA)


6. For the purposes of this Act,—

(1) **An individual** is said to be **resident in India** in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to **one hundred and eighty-two days or more ; or**

(b) (***)

(c) having within the **four years preceding** that year been in India for a period or periods amounting in all to **three hundred and sixty-five days or more**, is in India for a period or periods amounting in all to **sixty days or more** in that year.




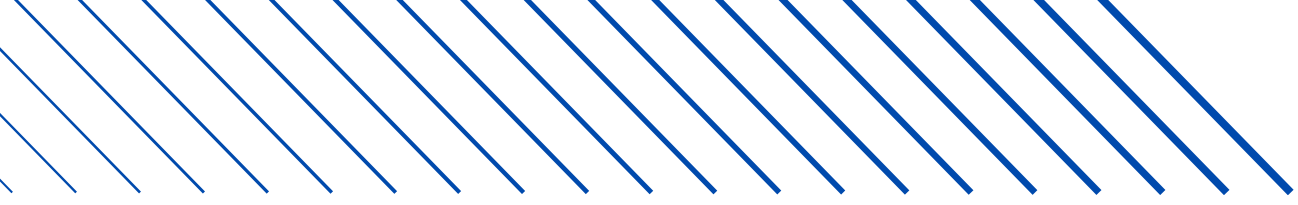


Explanation 1.—In the case of an individual,—

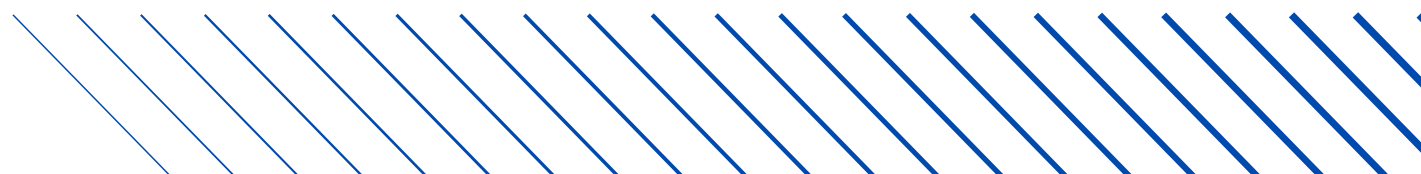
(a) **being a citizen of India**, who leaves India in any previous **year as a member of the crew of an Indian ship** as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), **or for the purposes of employment outside India**, the provisions **of sub-clause (c)** shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) **being a citizen of India, or a person of Indian origin** within the meaning of Explanation to clause (e) of section 115C, who, **being outside India**, comes on **a visit to India** in any previous year, the provisions of **sub-clause (c)** shall apply in relation to that year as if for the words "**sixty days**", occurring therein, the words "**one hundred and eighty-two days**" (**had been substituted and in case of such person having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words one hundred and twenty days had been substituted.**)





6(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year **shall be deemed to be resident in India in that previous year, 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.





An Individual is **resident** in India if :

a) Stays in India for 182 days or more;

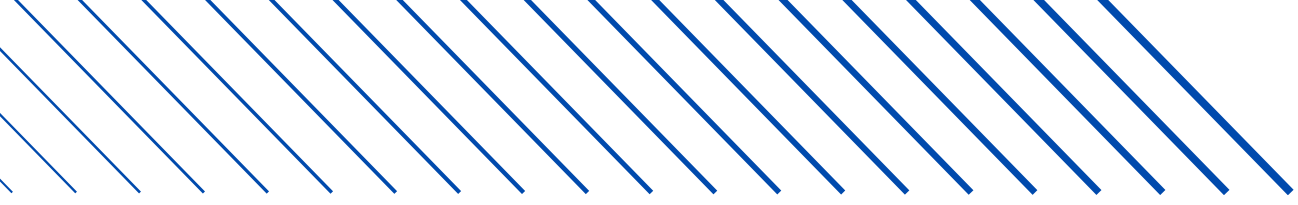
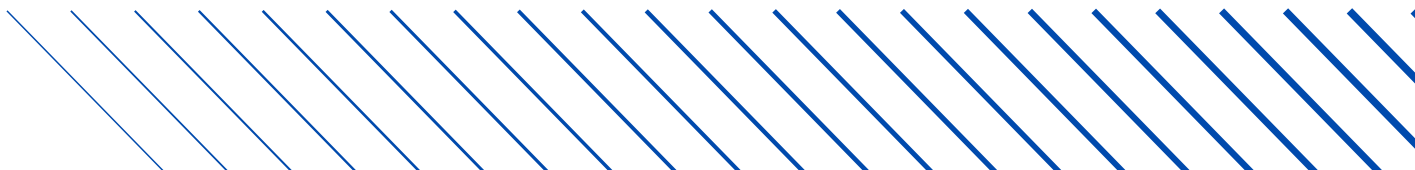
b) Stays in India for 60 days or more in previous year AND 365 days or more in last 4 years.

Clause (b) not applicable in case of :

Indian Citizen leaving India as a crew member of **Indian ship** or for **employment** outside India.

Indian Citizen or **PIO** came to **visit** India.



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- In case of an **Indian citizen or PIO**, came to **visit India**, income from **Indian sources** exceeds Rs. 15 lakhs, would become resident, if stays in India for **120 days or more** in current P.Y. and 365 days or more in last 4 P.Y. (Provided, in case of an **Indian citizen**, individual not liable to pay taxes in any other country or territory).
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SECTION 6(6) ORDINARILY RESIDENT OR NOT ORDINARILY RESIDENT

(6) A person is said to be "**not ordinarily resident**" in India in any previous year if such person is—

(a) an individual who has been a **non-resident** in India in **nine out of the ten previous years preceding that year**, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, **seven hundred and twenty-nine days or less**; or

(c) **a citizen of India, or a person of Indian origin**, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, **as referred to in clause (b) of Explanation 1 to clause (1)**, who has been in India for a period or periods amounting in all to **one hundred and twenty days or more** but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).





If Individual becomes resident in India as per section 6(1), shall be **ROR** if both the conditions are fulfilled **cumulatively**:

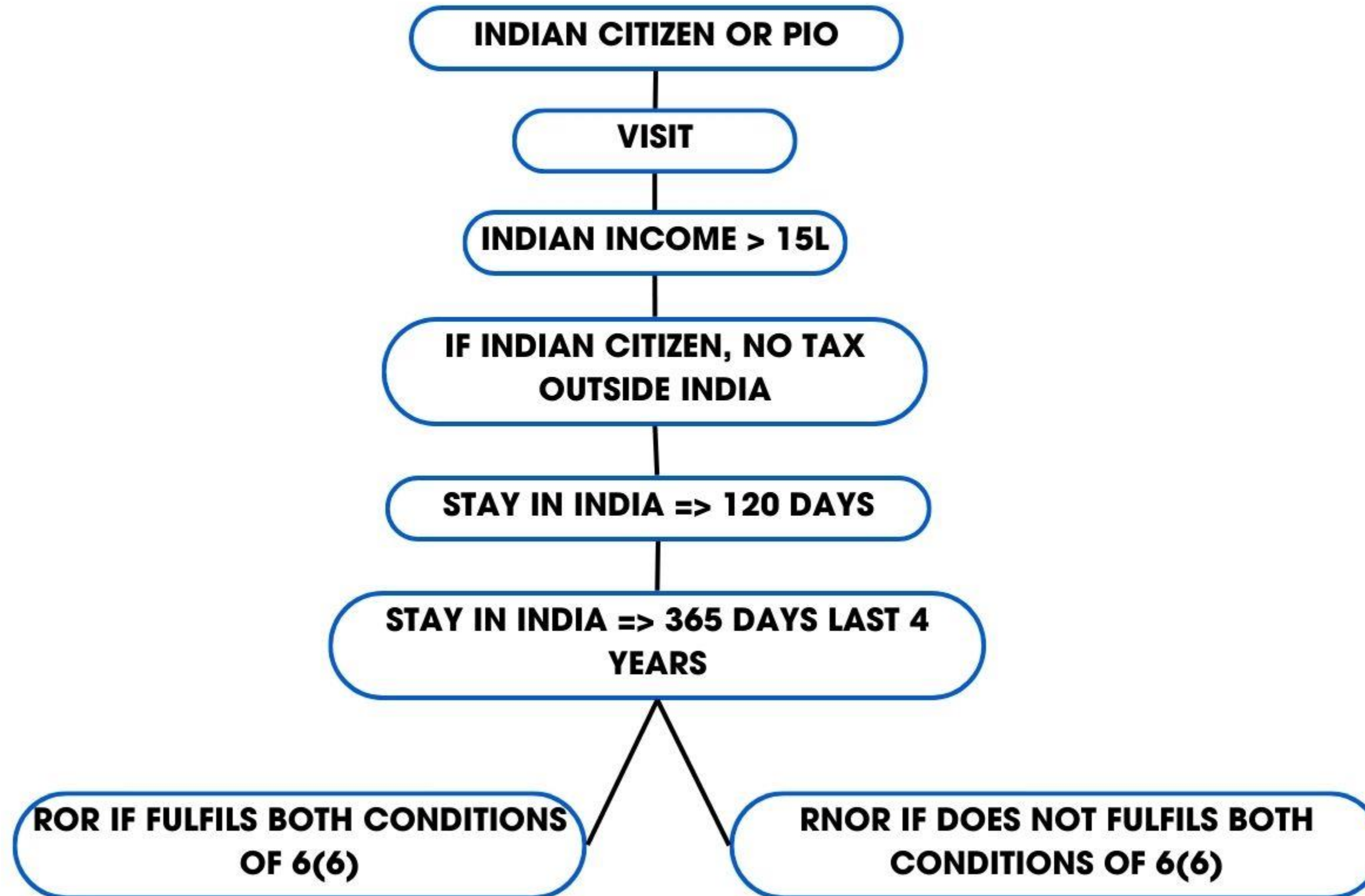
a) Has been resident in India for **atleast 2 years out of 10 years** immediately preceding the previous year. and

b) Has stayed in india for **730 days or more in 7 years** immediately preceding the previous year.

If an Individual (citizen or PIO) came to visit India, becomes resident on account of amendment, does not fulfils both the above conditions, would become RNOR.



Amendment FA 2020





EXAMPLES :

A) Mr. A is an Indian citizen, going for a world tour, leaves India on 1st of June 2022 and comes back on 1st April 2023.

B) Mr. A leaves India for job in USA in FY 2022-23 for on 28th September.

C) Mr. A is a Citizen of India, settled in USA. Came to visit India on 11th November 2022 and left on 1st April 2023. (141 days in FY 2022-23).

D) Mr. Williams USA Citizen came to visit India on 11th August 2022 and did not return till 31 March 2023.



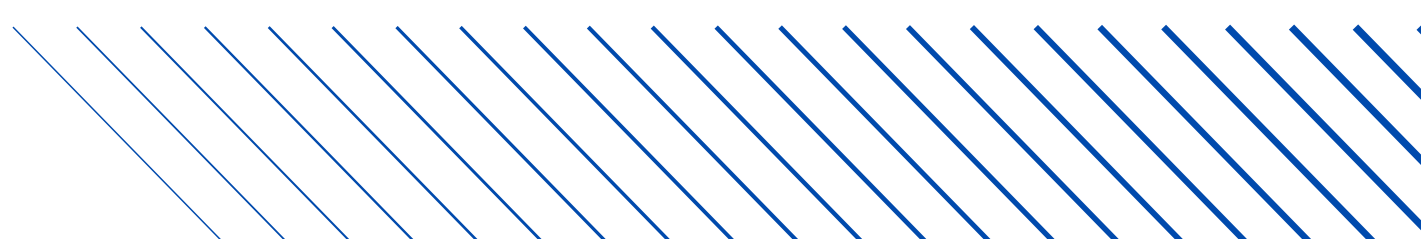


EXAMPLES :

E) Mr. A is a Citizen of India, settled in UAE. Came to visit India on 11th November 2022 and left on 1st April 2023. Having 4 properties in India and earning rental income of Rs. 30 Lakhs. Have stayed in India for 120 days in last four financial years.

F) Mr. A is a Citizen of India, settled in UAE. Came to visit India on 11th November 2022 and left on 1st April 2023. Having 4 properties in India and earning rental income of Rs. 30 Lakhs. Have stayed in India for 400 days in last four financial years.

G) Mr. A not holding Indian passport is a person of Indian origin, is settled in UAE. Came to visit India on 11th November 2022 and left on 1st April 2023. Having 4 properties in India and earning rental income of Rs. 30 Lakhs. Have stayed in India for 400 days in last four financial years.





Thank You

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CHARTERED ACCOUNTANTS

