

Determining Residential Status for Individuals

INTRODUCTION

Residential Status of an individual is of utmost importance since it determines the scope of taxable income under Indian Income Tax Act, 1961 ("the Act"). There are following three types of Residential Status in India:

1. Resident and Ordinarily Resident in India ("ROR")
2. Resident but Not Ordinarily Resident in India ("RNOR")
3. Non-Resident in India ("NR")

The above residential status is determined primarily by number of days' stay of an individual in India during a financial year (i.e. 1st April – 31st March) along with other prescribed conditions which are discussed in this note. Residential status is determined for each financial year separately.

This article seeks to highlight the residential status and the scope of taxable income and also provides a simplified flow chart to determine residential status.

BASIC CONDITIONS

An individual is said to be a Resident in India for a financial year if he satisfies any of the following two basic conditions:

- If the individual has stayed in India for a period of 182 days or more or,
- If an Individual has stayed in India for a period of 60 days or more in that year and a period of 365 days or more in the preceding four financial years.

ADDITIONAL CONDITIONS

Once an individual becomes a Resident on satisfying any of the above basic conditions, he shall be further classified into ROR or RNOR, depending on satisfaction of additional conditions. An Individual shall be classified as RNOR if he satisfies any of the following conditions, else he shall be regarded as ROR.

- Stay in India is for a period of 729 days or less in the preceding 7 financial years or
- Has been a Non-Resident in India for at least 9 financial years out of the 10 preceding financial years.

DEEMED INDIAN TAX RESIDENT

- An Indian Citizen having Indian Income¹ exceeding INR 15 lakhs in a financial year shall be deemed to be a Resident in India if he is not liable to tax in any other country by way of residence or domicile or any other similar criteria.
- However, such deemed Indian residents shall be treated as Resident but Not Ordinary Resident (RNOR) for tax purposes in India.

RELAXATIONS IN DETERMINING RESIDENTIAL STATUS

A. For Indian Citizens leaving India

- An Indian Citizen leaving India for the purpose of employment outside India or as a crew member of Indian Ship will be a Resident in India only if he has stayed in India for a period of 182 days or more in the financial year in which he is leaving India.
- Once such individual is considered to be a Resident, the additional conditions for further classification of the residential status shall apply.

B. For Indian Citizen / Person of Indian Origin coming on visit to India

- Indian Citizens/ Persons of Indian Origin² (PIOs) shall be regarded as Resident in India on satisfaction of any one of the following conditions:
 1. Stay in India \geq 182 days in a financial year or
 2. Stay in India \geq 120 days in a financial year and \geq 365 days in preceding four financial years and Indian Income exceeds INR 15 lakhs in the financial year
- However, individuals who become resident since their stay is 120 days or more but less than 182 days as per above condition shall be considered as RNOR for Indian tax purposes.

Note:

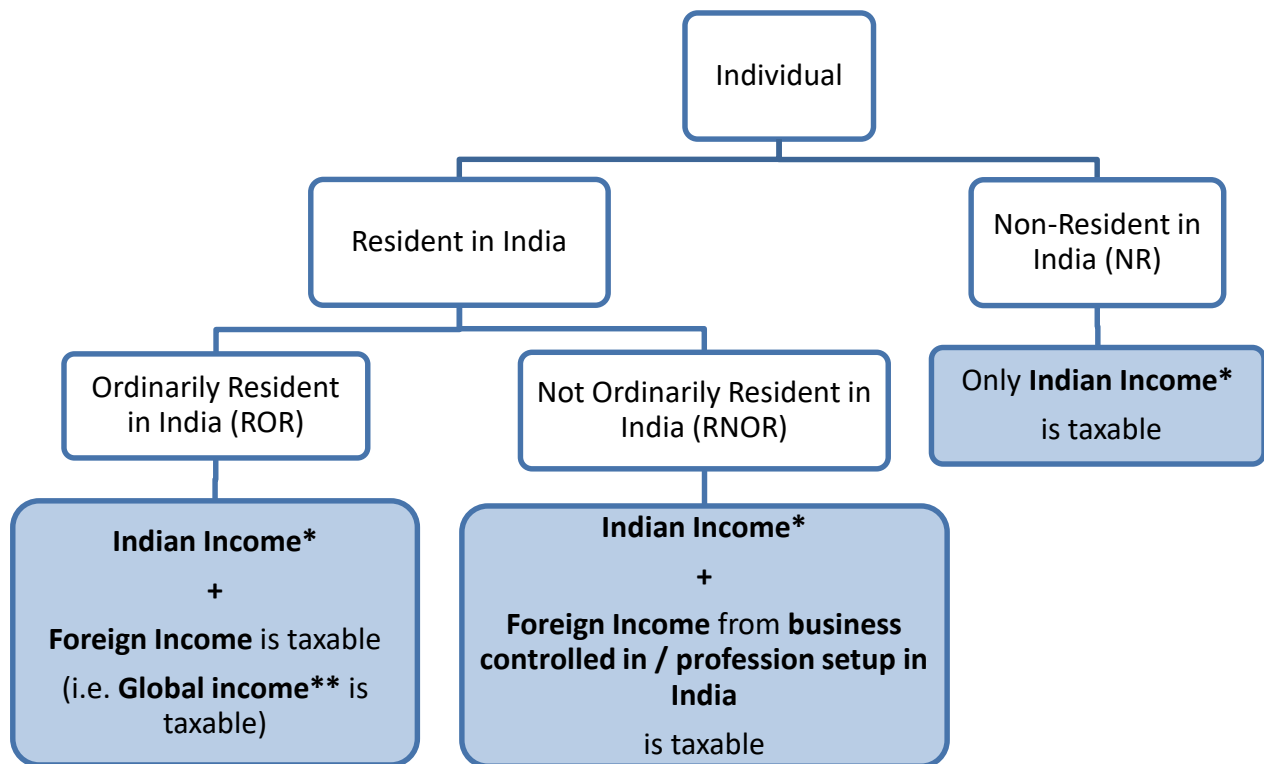
The day of entry into India and the day of exit from India both shall be considered as stay in India, even if it is for a part of the day.

¹ Indian Income refers to income which is received/accrued in India or deemed to be received/accrued in India. For the purpose of this condition, foreign income derived from business controlled in or profession set up in India shall also be considered for the threshold limit.

² Person of Indian Origin is a person who himself or any of his parents or any of his grandparents was born in undivided India.

IMPLICATIONS OF RESIDENTIAL STATUS ON SCOPE OF INCOME

Once the residential status is determined, the scope of total taxable income of an individual can be broadly laid down as under:



Thus, it is important to correctly determine residential status in order to ascertain scope of taxable income in India.

Disclaimer:

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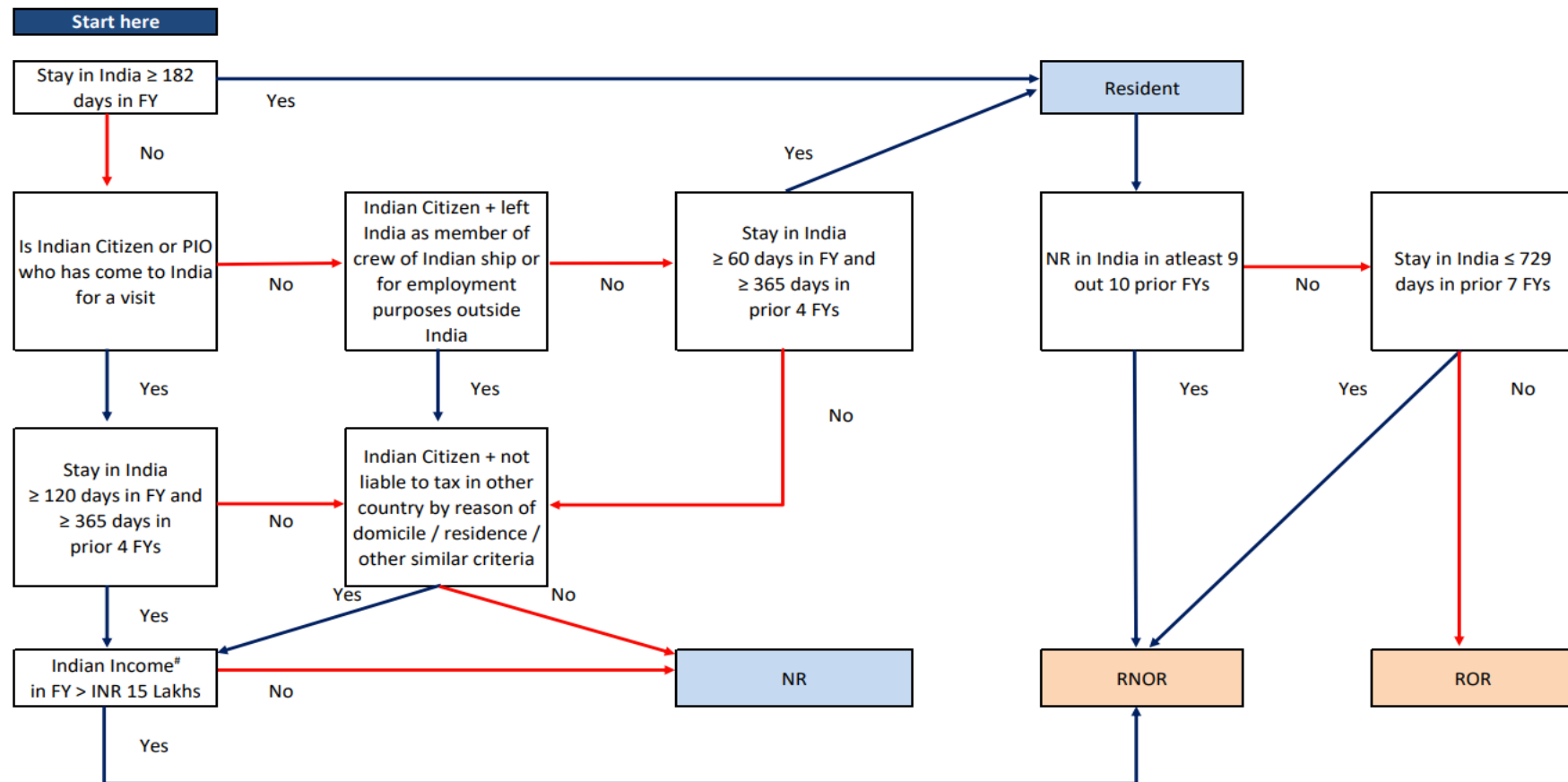
*Indian Income means any income accrued / received or deemed to be accrued / received in India.

**In addition to taxation of global income, individual also has to give disclosure for all Foreign Assets and Incomes failing which, there can penal consequences under Black Money Act.

FLOWCHART FOR DETERMINING RESIDENTIAL STATUS OF INDIVIDUALS

The complex conditions and its application have been simplified and provided in the form of a Flowchart below:

RESIDENTIAL STATUS OF INDIVIDUALS



Note: This flow chart has been prepared based on our understanding of the law

Indian Income shall also include foreign income derived from business controlled in or profession set up in India