



Gurgaon Branch
Northern India Regional Council
The Institute of Chartered Accountants of India

Scope of total Income

Presentation by

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Three basic rules of Taxation:



SOURCE RULE



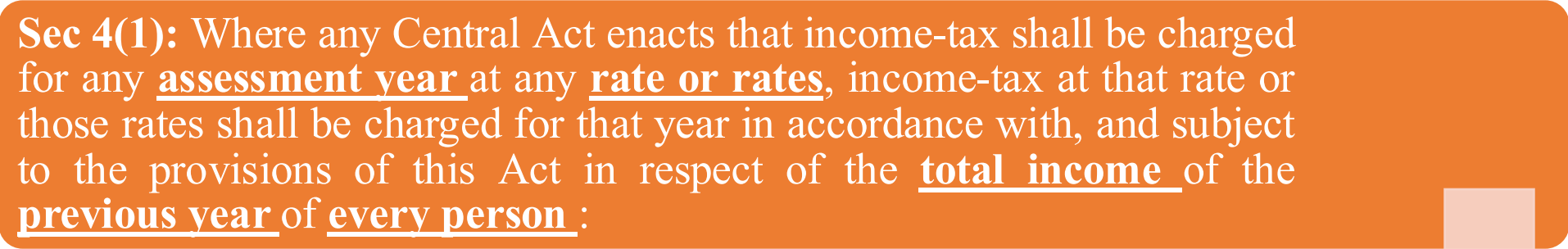
RESIDENCE RULE



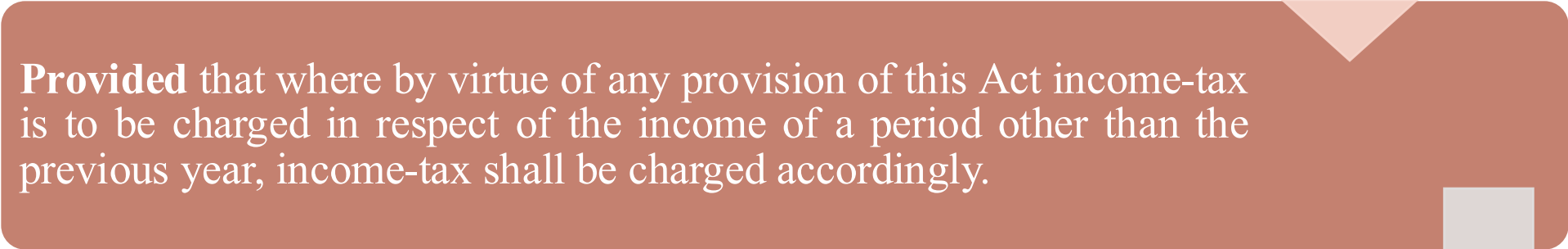
CITIZENSHIP RULE

Section 4 – Basis of Charge

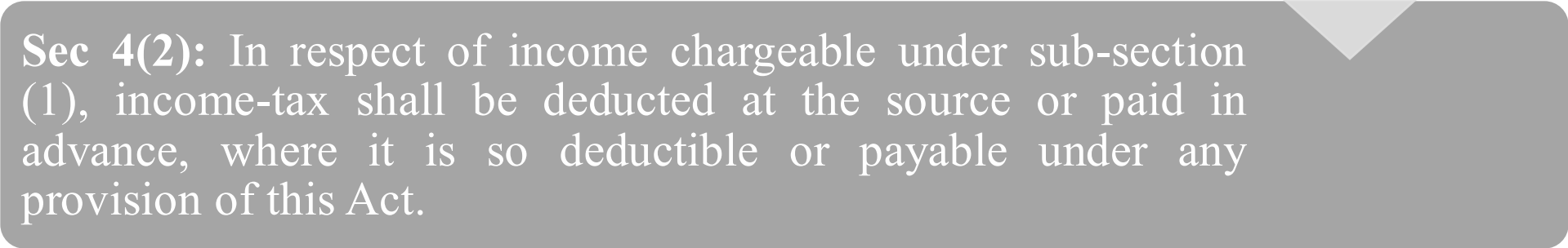
Sec 4(1): Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every person :



Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.



Sec 4(2): In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.





Case study 1

- Mr. X, citizen of India residing outside India for his job purpose and as per IT Act provisions, he is NR. As per the terms with employer, 90% of his salary is paid to his wife in India and 10% to him outside India.
- 100% will be taxed in the hands of Mr. X in India.
 - 90% will be taxed in the hands of Mrs. X in India.
 - 100% will be taxed in the hands of Mr. X outside India.
 - 10% will be taxed in the hands of Mr. X in India

A close-up photograph of a desk with financial documents, a tablet, glasses, and a pen. The tablet displays a 'BUDGET VS. ACTUAL' chart. The documents include a 'Summary By Category' table and a 'DESCRIPTION' table with 'Product 1' and 'Product 2' listed. A pair of glasses and a black pen are also visible.

Total Income

- Sec 2(45) defines total income as the total amount of income referred to in section 5, computed in the manner laid down in the Act.

Section 5 – Scope of Total Income - Resident

- 5.** (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—
- (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
 - (b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or
 - (c) accrues or arises to him outside India during such year.

Section 5 – Scope of Total Income – Not Ordinarily Resident

Proviso to section 5(1)

Provided that, in the case of a person who is RNOR in India within the meaning of Sec 6(6), the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

- NOR individuals are taxed similarly to ROR with one key exemption.
- Global income is taxable only if:
 - It is derived from a business controlled in India, or
 - A profession/vocation set up in India.
- Foreign income not connected to such business/profession is not taxable in India.

Sec 5 – Scope of Total Income – Non-Resident

5 (2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

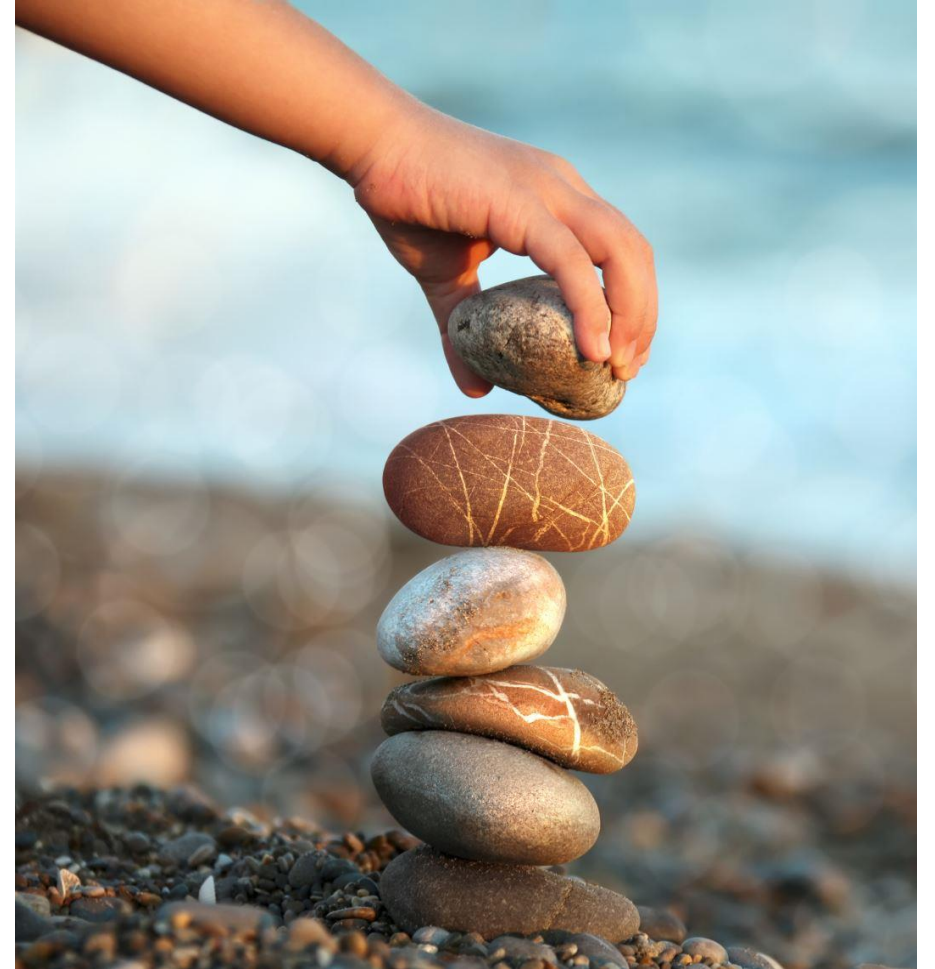
‘Accrues’, ‘arises’ or ‘is received’ - distinction

- Income is said to be received when it reaches to the assessee.
- Income is said to accrue or arise when the right to receive the income becomes vested in the assessee.
- Ashok bhai Chiman bhai (1965) 56 ITR 42 (SC)
- The basic concept is that the assessee must have acquired the right to receive the income. There must be a debt owed to him by somebody.
- E. D. Sassoon & Co. (1954) 26 ITR 27 (SC)



Subject to the provisions of this Act

- Sec 5 starts with “subject to the provisions of this Act”.
- Generally speaking, the income cannot be taxed unless it falls within Sec 5.
- Further, it is not necessarily be taxed because it falls within this section. The other section may operate to save from taxation which is within the purview of this section.



From whatever source derived

- These words indicate that if the conditions regarding accruing, arising or receipt are set out in this section are satisfied, the income, profit or gain will not escape by reason of any quality or circumstances of the source.





Case study 2

- Mr. X (practicing Chartered Accountant) citizen and resident of India, visited Singapore for vacation and gave some consultancy to a Singapore Company and charged USD 5000. Received in cash in Singapore and used the same for his vacation.
- Whether your answer would be different if Mr. X is not practicing as Chartered Accountant in India.

Case study 3

- M/s X Ltd, an Indian co purchased by M/s Y Ltd which is also an Indian Co. as per the payment terms, Y Ltd will pay Rs. 100 Cr.
- Out of which Rs. 60 Cr paid in the year of transfer i.e. FY 2024-25.
- Rs. 20 Cr is to be paid in the FY 2025-26 if turnover achieve Rs. 300 Cr
- Remaining Rs. 20 Cr is to be paid in the FY 2026-27 if the turnover achieve Rs. 400 Cr.

Sec 9- Income Deemed to Accrue or Arise in India

Section 9(1): Lists **incomes deemed** to accrue/arise in India under clauses (i) to (vii)

Clause (i) – Key Sources: Income deemed to arise in India if it arises:

- a) Through **business connection in India**
- b) Through **property in India**
- c) Through **asset/source of income in India**
- d) Through **transfer of a capital asset situated in India**

Income Not Deemed to Accrue or Arise in India – Clause (i) Specific Cases

Exceptions under Explanation 1 to Section 9(1)(i):

1. Partial Operations Outside India

Only income attributable to operations **carried out in India** is taxable (excludes business with Significant Economic Presence).

2. Purchase for Export

No tax on income from operations confined to **purchase of goods in India for export** by a non-resident.

3. News Agencies & Publications

No tax on income from **collection of news/views in India for transmission abroad** by non-residents in media.

Income Not Deemed to Accrue or Arise in India – Clause (i) Specific Cases

4. Film Shooting in India

No tax on income from operations confined to shooting cinematograph films in India by non-resident individuals, firms, or companies with no Indian partners/shareholders.

5. Diamond Display in Special Zone

No tax on income from display of uncut, unassorted diamonds (without sorting/sale) by foreign mining companies in notified special zones.

Business Connection - Section 9(1)(i)

Definition (Explanation 2)

A **‘business connection’** includes business activity carried out through a person acting on behalf of a **non-resident**, if such person:

1. **Habitually concludes/contracts or plays principal role** in conclusion of contracts for:
 - Sale of property
 - Granting usage rights
 - Provision of services
2. **Maintains stock in India** & regularly delivers goods on behalf of non-resident
3. **Secures orders** mainly for the non-resident or group companies

Aligned with international tax treaty standards (MLI route)

Business Connection - Section 9(1)(i)

Not a Business Connection

When carried out through:

- **Independent agents** (e.g., broker, commission agent)
- **Acting in ordinary course of business**

But NOT considered independent if they act mainly for a single or related non-resident group

Business Connection - Section 9(1)(i)

Significant Economic Presence (SEP) – Explanation 2A

Introduced **w.e.f. AY 2022-23**, SEP shall constitute a business connection if:

- a) Transactions > Prescribed threshold (goods, services, downloads)
- b) Systematic interaction/solicitation with users in India (volume-based)

Income taxable **even without physical presence or contract in India**

Business Connection - Section 9(1)(i)

Income Attributable to India – Explanation 3 & 3A

Taxable income limited to operations in India, including:

1. Ads targeting Indian customers/IP addresses
2. Sale of data collected from Indian users
3. Sale of goods/services using such data

Business Connection

Tax Rate for Foreign Companies

- **Base Rate:** 35%
- **Effective Rate (incl. surcharge & cess):** 38.22%
- **Lower Rates** may apply under **DTAA** for interest, royalty, and FTS.

Salaries – 9(1)(ii)

Main Provision

- Income under the head “**Salaries**” is deemed to accrue or arise in India **if it is earned in India**.

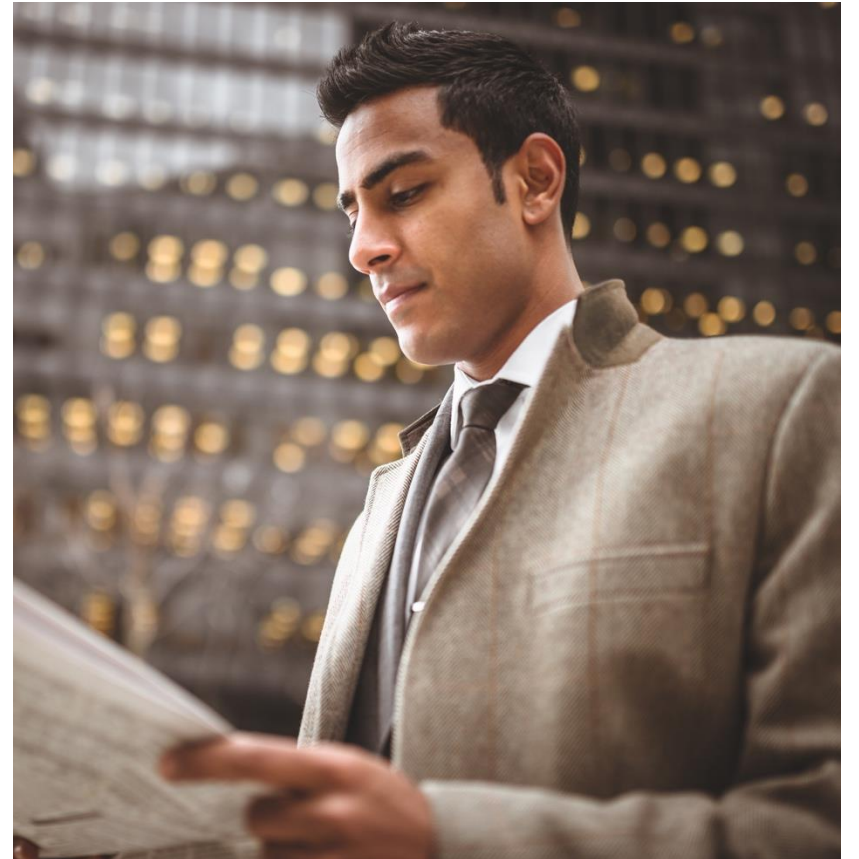
Explanation (Inserted by Finance Act, 1999 | AY 2000-01 onwards)

- The following are **considered income earned in India**:
 - (a) Salary for **services rendered in India**
 - (b) Salary for **rest/leave period** if:
 - It is **preceded and succeeded by service in India, and**
 - It **forms part of the employment contract**

Note: Even if leave is spent outside India, income is taxable if linked to services rendered in India.

Case study - 4

- Mr. X is resident of India. He was in USA in FY 2024-25 for 5 months and earned salary of Rs. 30 Lakhs.
- He was in India for remaining 7 months and earned salary of Rs. 40 Lakhs.
- Assume Mr. X is ROR in FY 2024-25.
- Whether your answer would be different if Mr. X is RNOR in FY 2024-25.



Salaries and Perquisites Payable by the Government to Citizen of India – 9(1)(iii) & Sec 10(7)

Deemed to Accrue in India

- Salaries paid by Government of India to a citizen of India for services rendered outside India
- Deemed to accrue/arise in India, taxable in India

Exemption – Section 10(7)

- Allowances or perquisites paid outside India by the Government
- Fully exempt from tax
- Applies only to citizens of India rendering services outside India

Dividend - Section 9(1)(iv)

Deemed to Accrue or Arise in India

- **Dividend paid by an Indian company**, even if paid **outside India**
- Deemed to accrue/arise **in India**

Applies to

- **Residents**
- **Non-Residents**

Interest - Section 9(1)(v)

Deemed to Accrue or Arise in India When:

(a) Interest payable by the Government

(b) Interest payable by a Resident, except when:

- Used for business/profession outside India,
- Or Used to earn income from a source outside India

If actually used in India → Taxable in India (as per Circular No. 202)

(c) Interest payable by a Non-Resident, if:

- Used for business/profession in India

Not taxable if used to earn income from source outside India

Interest - Section 9(1)(v)

Special Case: Banking Business

- **If PE in India pays interest to HO/another PE outside India:**
 - **Deemed income in India**
 - **PE treated as separate and independent entity**
 - **Subject to Indian tax computation & collection provisions**

Royalty - Section 9(1)(vi)

Deemed to Accrue or Arise in India When:

1. Royalty payable by the Government

2. Royalty payable by a Resident, except when:

1. Used for **business/profession outside India**

2. Used to **earn income from source outside India**

3. Royalty payable by a Non-Resident, if:

1. Used in a **business/profession in India**

2. Used to **earn income from source in India**

Royalty - Section 9(1)(vi)

Key Definitions of “Royalty” (Explanation 2)

Includes consideration for:

- Transfer of rights in **patents, designs, trademarks**, etc.
- Use or right to use **IP, technical info, equipment**
- Licensing of **copyrighted works**, excluding sale of films
- Services related to above

Exclusions:

- Income chargeable under **Capital Gains** not included

Royalty - Section 9(1)(vi)

Computer Software – Special Treatment

- Definition includes: Disc, tape, digital storage
- **Explanation 4:** Includes **license to use software**
- **Explanation 5:** Taxable **regardless of use, control, or location**
- **Explanation 6:** “Process” includes **transmission tech** like satellite, fiber, etc.

Exceptions – Not Deemed to Accrue in India

1. **Agreements before April 1, 1976**, approved by CG
2. **Software supplied with hardware** by NR under **1986 Govt. Policy**

Fees for Technical Services (FTS) - Section 9(1)(vii)

Deemed to Accrue or Arise in India When:

1. FTS payable by the Government

2. FTS payable by a Resident, except where:

- Services are utilized in **business/profession outside India**
- Services are used to earn **income from source outside India**

3. FTS payable by a Non-Resident, if:

- Services are utilized in a **business/profession in India**
- Services are used to earn **income from source in India**

Fees for Technical Services (FTS) - Section 9(1)(vii)

Definition of "Fees for Technical Services"

Includes consideration for:

- **Managerial services**
- **Technical services**
- **Consultancy services**
- **Provision of technical or other personnel**

Exclusions (Not FTS):

- **Construction, assembly, mining or similar projects**
- **Salaries** taxable under "Income from Salaries"

Gifts to Non-Residents - Section 9(1)(viii)

W.e.f. AY 2019-20 (via Finance Act 2019):

Any sum of money paid without consideration by:

- **A resident** 🙌
- **To a non-corporate non-resident / foreign company**

Deemed to accrue or arise in India and hence, taxable in India

Pension Outside India - Section 9(2)

Pension NOT taxable in India if:

1. Payable to persons under **Article 314** of the Constitution
2. Payable to judges appointed **before 15 August 1947**, who continued post-Constitution under:
 1. Federal Court / High Court (Govt. of India Act, 1935)

Place of Residence / Business / Services – Immaterial

As per Explanation to Section 9

Income **deemed to accrue/arise in India** is taxable, even if:

- Non-resident **does not have**:
 - Residence in India
 - Place of business in India
 - Business connection in India
- Non-resident **does not render services in India**

Applicable to:

- Interest [Clause (v)]
- Royalty [Clause (vi)]
- Fees for Technical Services [Clause (vii)]



Heads of Income - Salaries

- Section 15 provides that the current salary is taxable on due basis, advance salary is taxable on receipt basis and arrear salary is taxable on receipt basis, if not charged earlier on accrual basis.



Heads of Income – House property

- Section 22 provides A notional annual value, determined in accordance with Sec 23 is charged to Income Tax, presumably on accrual basis, although it is not, in some circumstances, exactly that.



Case study -5

- Mr. X, tax resident of India, owns a house property in Australia. He also owns some house property in India which is let out.
- He has profit from India property and loss from Australia property.
- Whether setoff is allowed?



Heads of Income – Capital Gain

- Sec 45 – any profit or gain arising from the transfer of a capital asset effected in the previous year shall be chargeable to tax u/h capital gain and shall be deemed to be the income of the previous year in which transfer took place.

Heads of Income – Other sources

- Dividend, chargeable on declaration, distribution or payment, i.e. accrual basis for declared dividends and receipt basis for deemed dividends.
- Gifts are chargeable to tax on receipt basis.



Sect 5 *vis a vis* sec 9

- The concept of actual accrual or arising of income in India, although not dependent upon the receipt of income in India, is quite distinct and apart from the notion of deemed accrual.
- The accrue or arising follows the general principal of law while deemed accrual has to be tested against the deeming provision of section 9.
- *Carborandum Co. 108 ITR 335 (SC)(1977)*



Sec 5 *vis a vis* Sec 64

- Section 5 defines the scope of total income with reference to the different residential status of the assessees. Section 64 enacts deeming provisions for inclusion of others income in the income of the assessee. If a particular income does not fall within the ambit of section 5, the same can not be made taxable by invoking section 64.



Case study -6

- Mr. X is a non-resident of India. His minor son is resident of India. Mr. X invested some amount in third country in the name of his son and the son is getting income from such investment.
- How the clubbing provisions would be applied?



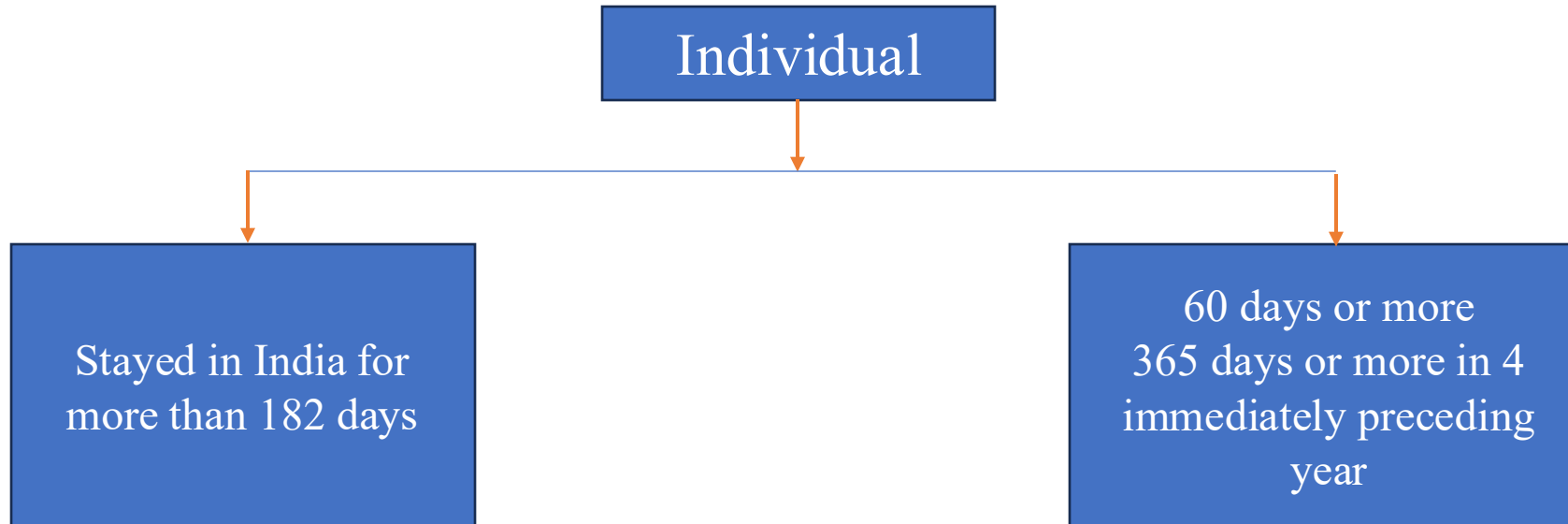
Case study - 7

- Mr. X (Resident of India) visited USA to meet his friend Mr. Y. Mr. Y gifted a painting worth Rs. 1 lakh.
- Whether Rs. 1 lakh is taxable in India?

Residential Status



Residential status - Individual



being a citizen of India, who leaves India in any PY as a crew member of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 or for the purposes of employment outside India, the words “60 days” shall be substituted with the words “182 days”

being a citizen of India, or a PIO who, being outside India, comes on a visit to India in any PY, the words “60 days” shall be substituted with the words “182 days” and in case such person having total income, other than the income from foreign sources, exceeding Rs. 15,00,000 during the PY, for the words “60 days” shall be substituted with the words “120 days”.



Case study - 8

- Mr. X is a Non-resident residing in US since last 20 years and every year he visit to India for 130 days. His only income from India is interest from NRE Account which is Rs. 20 Lakhs.

Stay in India

- The term stay in India includes stay in the International waters of India.
- It is not necessary that the period of stay must be continuous or active nor it is essential that the stay should be at the usual place of residence, business or employment of the individual.
- Both the date of departure as well as the date of arrival shall be considered for counting the number of days stayed in India.

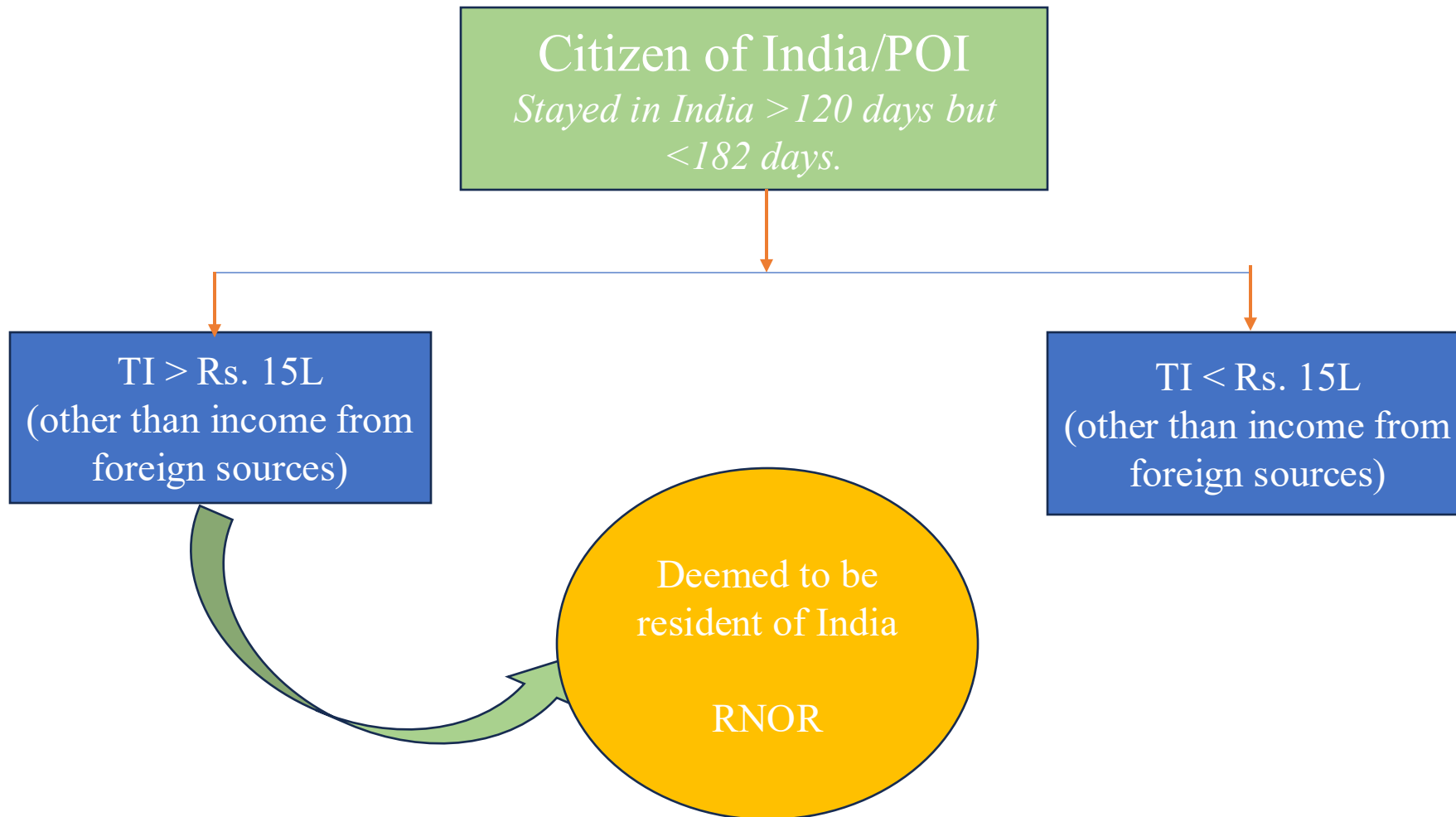


Case study - 9

- What is the timing of testing of residential status?
 - A. At the beginning of the year.
 - B. During the year.
 - C. At the end of the year.



Residential status – Individual



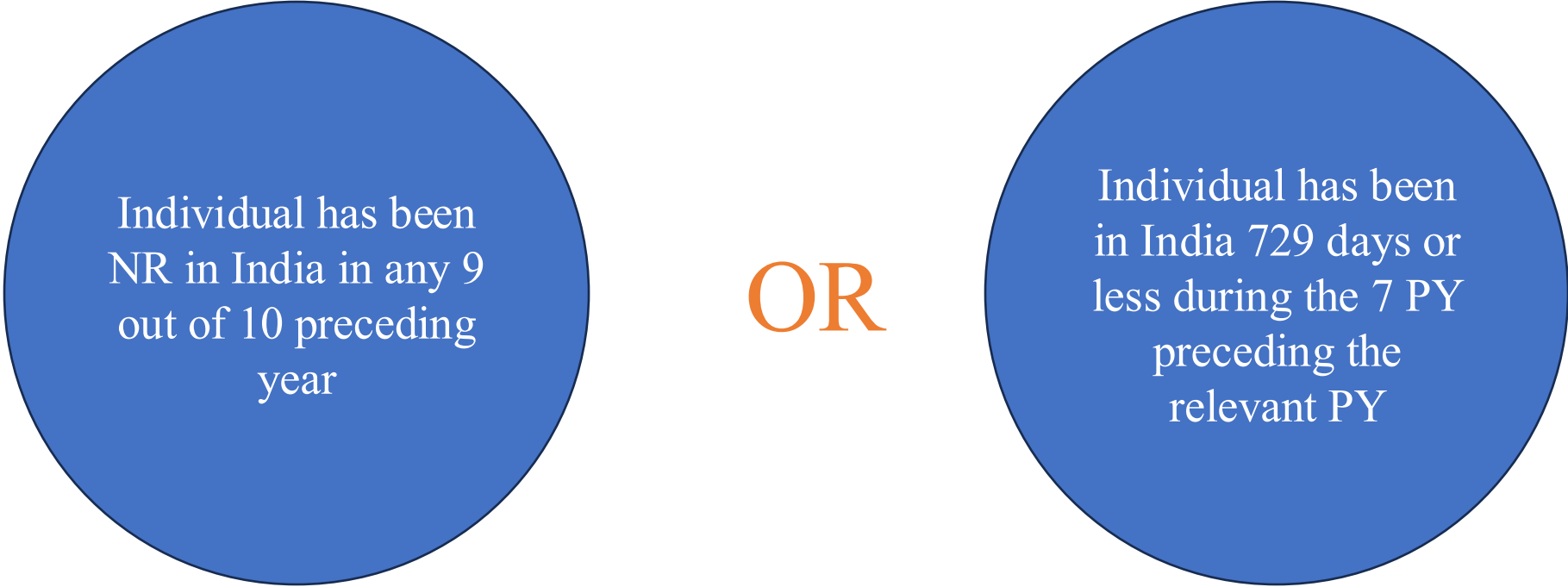
Income from foreign sources

- Income which accrues or arises outside India.
- This does not cover income derived from a business controlled in or a profession set up in India.
- This also does not include income which is deemed to accrue or arise in India.



Resident but not ordinary resident (RNOR)

- Only individual and HUF can be resident but not ordinary resident in India. All other call of assessee can be either resident or non-resident.



Individual has been
NR in India in any 9
out of 10 preceding
year

OR

Individual has been
in India 729 days or
less during the 7 PY
preceding the
relevant PY



Resident but not ordinary resident (RNOR)

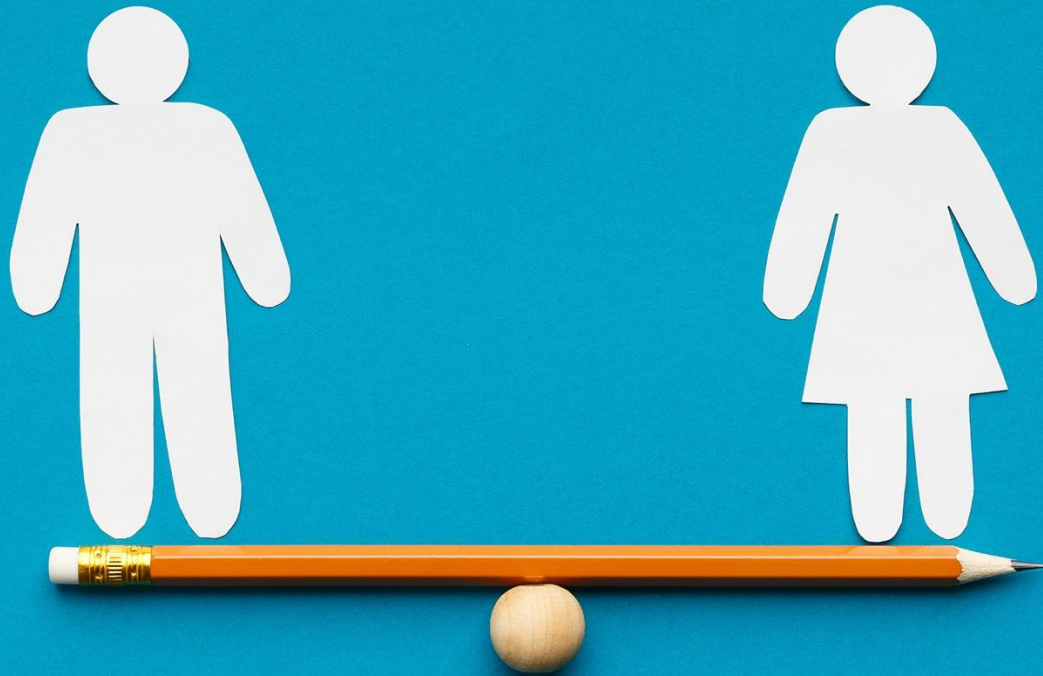
- If such individual is an Indian Citizen or person of Indian origin having total income, other than income from foreign sources i.e. income which accrues outside India exceeding Rs. 15 Lakhs during the PY who has been in India for a period amounting in all to 120 days or more but less than 182 days.

Explanation to Section 6

- For the purposes of this section, the expression “income from foreign sources” means income which accrues or arises outside India, and which is not deemed to accrue or arise in India, except income derived from a business controlled in or profession set up in India.



Deemed resident Sec 6(1A)



- An Individual being an Indian citizen having total income (other than income from foreign sources) > Rs. 15 Lakhs during the PY would be deemed to be resident in India in that PY, if *he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.*
- A deemed resident u/s 6(1A) would always be a RNOR.

Case study – 10

- Whether it can be considered that Sec 6(1A) would not be applicable to Indian citizens residing in a country where there is no income tax law since such persons do not have liability because of the non-existence of law.?



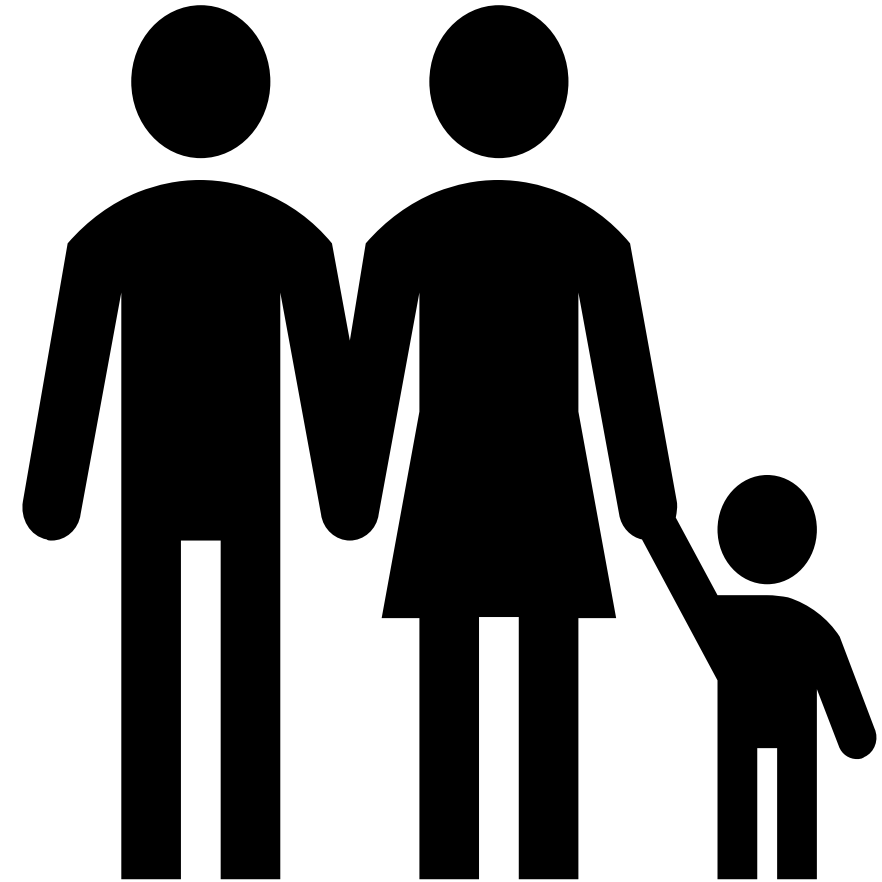
Residential status of crew members



- Sec 6(1) Expl 2 Provides that in the case of an individual, being a citizen of India and a member of a crew of a foreign bound ship leaving India, the period or periods of stay in India shall in respect of such voyage shall be determined as per Notification No. 70/2015 dated 17.08.2015

Residential status – HUF, Firm, AOP

- A HUF, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.



Control and management

- The expression Control and management refers to the central control and management and not to the carrying of day to day business by the staff.
- Control and management means *de facto* control and management and not merely having the right to control and manage.
- The business may be done from outside India and yet its control and management may be wholly within India.
- The control and management of a business is said to be situated at a place where the head and brain of the adventure is situated.

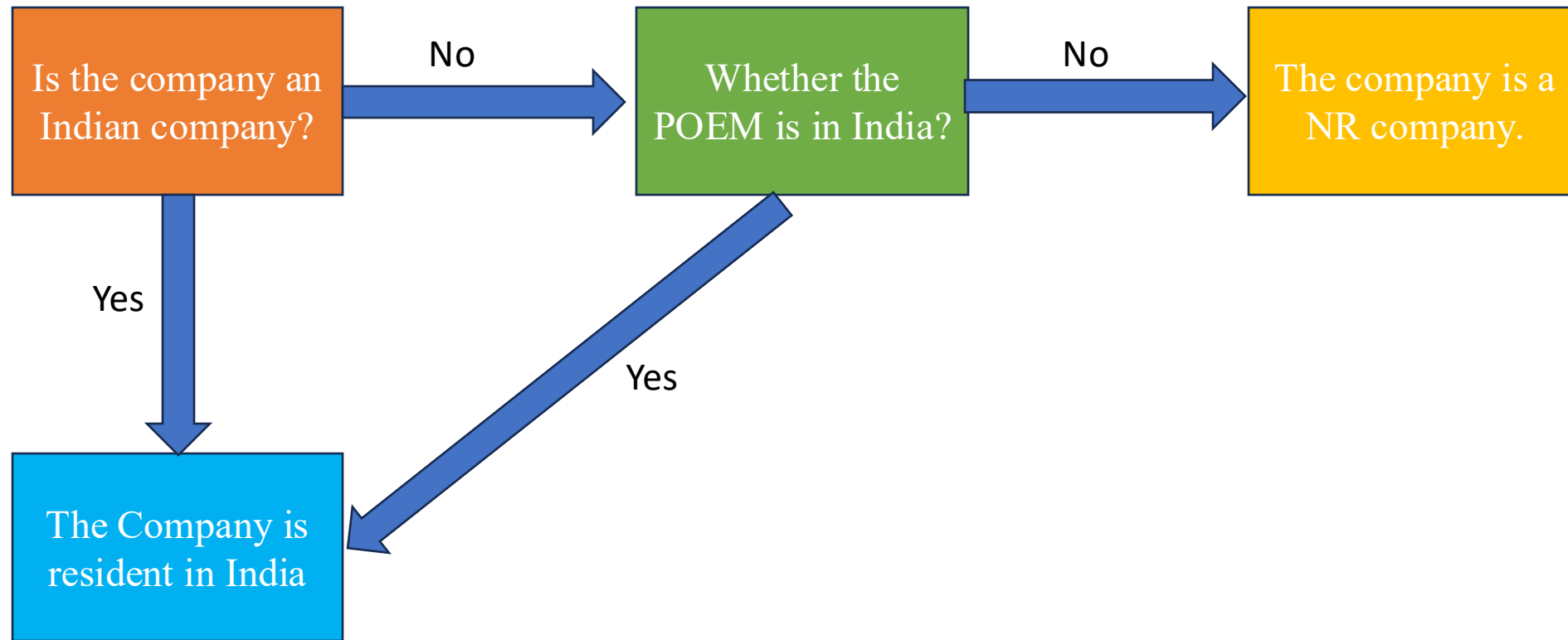


Residential status – Company

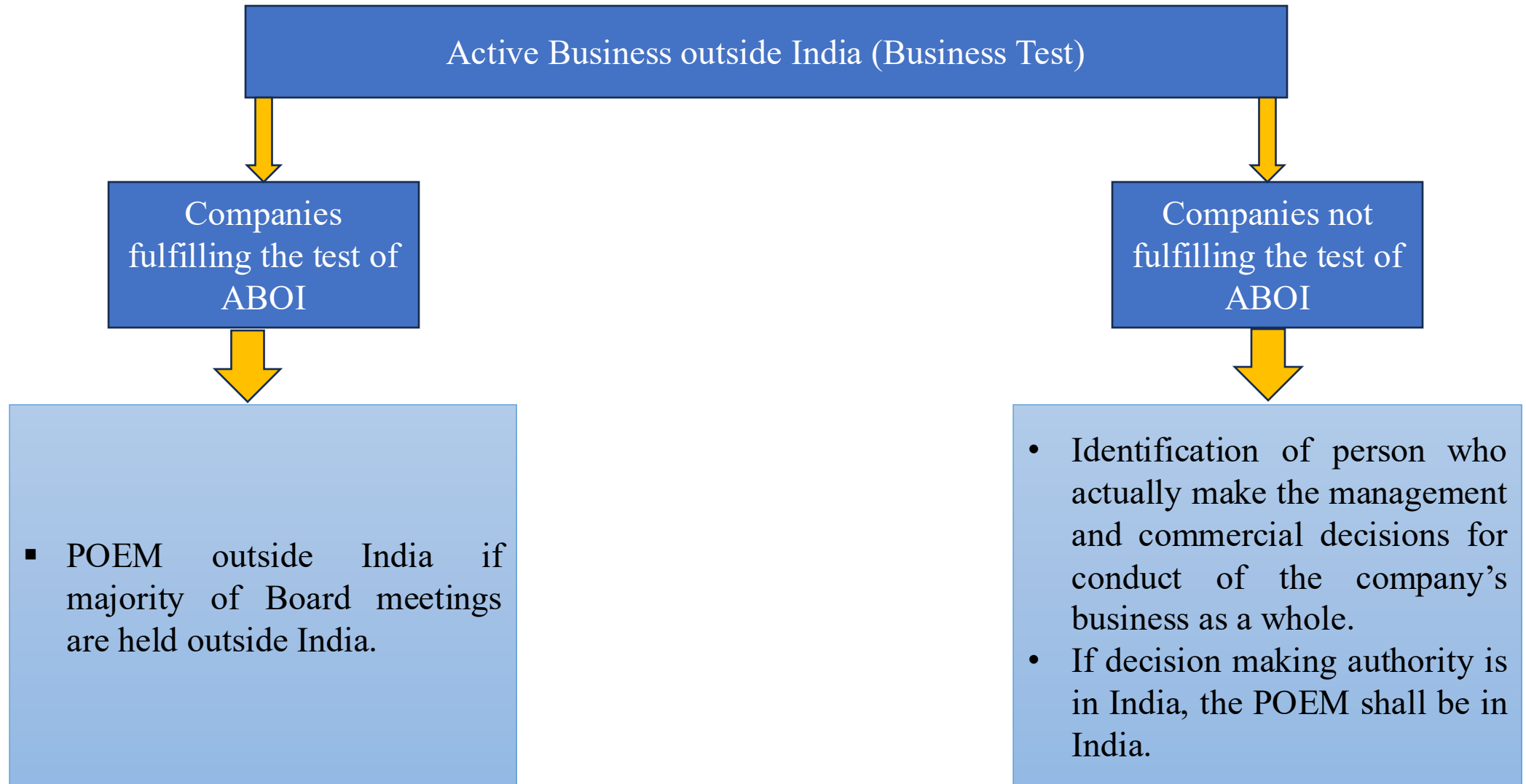
- A company is said to be a resident in India in any previous year, if—
 - it is an Indian company; or
 - its place of effective management, in that year, is in India.
-
- *Explanation.*—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.



Residential status – Company



Determination of POEM



ABOI test

A company is said to be engaged in ABOI if it fulfils the cumulative conditions:



Its passive income is 50% or less of its total income.

Less than 50% of its total assets is situated in India.

Less than 50% of the total number of employees are situated in India or resident in India.

Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure.

Passive Income

Passive income of a company shall be aggregate of:

Income from the transactions where both the purchase and sale of goods is from/it's AE;

Income by way of royalty, dividend, capital gain, interest, (except from banking companies and public financial institutions) or rental income whether or not involving AE.

Threshold of POEM

- CBDT vide circular number 8/2017 dated 23.02.2017 clarified that POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 Crore or less in a financial year.



Case study - 11

- M/s XYZ LLC, company incorporated in ~~USA~~ Mauritius having POEM in India. While Indian company making payment of FTS to M/s XYZ LLC, under which section TDS is required to be deducted.
- How the Transfer pricing provisions would be applied.
- How the DTAA is to be applied.
- How to apply 9(1)(vi) or 9(1)(vii) if the payment is made by M/s XYZ LLC to any other company in India.



Residential status – Every other person

- Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.



Some Practical Life Scenarios



- Mr. X, a NR, who is working in Dubai for an Indian Company and receiving salary from Indian company and the salary paid without TDS deduction u/s 192.
- Whether TDS is deductible in this case?



- Mr. X, a resident on India, working in IBM Ltd and received ESOP from parent company which is in US.
- As per ESOP agreement, you can not sell, gift or transfer those shares for next five years.
- Whether such ESOP is taxable in India?
- If yes, in which year.?



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