

**Provisions of Income-tax Act,
1961 relevant to International Tax
in India & some basic concepts of
International Taxation**

SECTION 5 & 7

- Global income of a **“tax resident”** is taxable in India. It includes income received or accrued or arising or deemed to be received or accruing or arising in India and also includes income accruing or arising outside India.
- Whereas a non resident is liable to pay tax only on income received or accrued or arising or deemed to be received or accruing or arising in India.
- However, in the case of a person not ordinarily resident in India, 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.
- The incomes deemed to be received in the previous year includes the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in rule 6 of Part A of the Fourth Schedule, the transferred balance in a recognised provident fund, to the extent provided in sub-rule (4) of rule 11 of Part A of the Fourth Schedule & the contribution made, by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.

Section 6 – RESIDENCE IN INDIA

- An individual is tax resident in India in any previous year, if –
 - ❖ is in India for 182 days or more; or
 - ❖ Having been in India in the PY for 60 days or more and for 365 days or more within 4 years preceding the PY. However if a citizen of India has left India as crew member of Indian ship or *for the purposes of employment outside India*, than 60 days will be substituted by 182 days. Similarly if a citizen of India or Person of Indian Origin who is outside India and comes on visit to India in any PY, than 60 days will be substituted by 182 days. W.e.f. 01.04.21, if the aforesaid visitor to India earn more than Rs. 15 lakhs excluding the income from foreign source than 120 days will replace 60 days.
 - ❖ W.e.f. 01.04.21, an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the PY 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;
- A HUF, firm or AOP non resident, if control and management of its affairs is situated wholly outside India.

Section 6 – RESIDENCE IN INDIA

- A company is said to be resident in India in any PY, if
 - ❖ It is an Indian company; or
 - ❖ Its place of its place of effective management, in that year, is in India. "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.
- An individual or HUF is said to be "not ordinarily resident" in India in any PY if that individual or manager of HUF 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. W.e.f. 01.04.2021, an Indian Citizen or Person of Indian origin having income exceeding 15 lakhs in the previous year excluding the foreign source of Income, who is in India for more than 120 days but less 182 days in a year is a non ordinary resident and a deemed resident shall also be a non ordinary resident.

Section 9 –Income deemed to accrue or arise in India

- All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.
- Business connection shall include any activity carried out through a person who has the authority to conclude contracts on behalf of the non-resident or who maintain a stock on behalf of the non resident or who habitually secures orders wholly or mainly for the non resident. However it will not include broker/agent of the independent status.
- In the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.
- In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

Section 9 –Income deemed to accrue or arise in India

- W.e.f. 01.04.2019, significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—
- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:
- **Provided** that the transactions or activities shall constitute significant economic presence in India, whether or not,—
- (i) the agreement for such transactions or activities is entered in India; or
- (ii) the non-resident has a residence or place of business in India; or
- (iii) the non-resident renders services in India.

Section 9 –Income deemed to accrue or arise in India

- Income from salaries earned in India or salary payable by the Government to a citizen of India for service outside India.
- Dividend paid by an Indian company outside India.
- Income by way of interest payable by the Government, or a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or
- Income by way of interest payable by a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India.
- In case of a Foreign bank, interest paid by branch to its head office in addition to any income attributable to such branch.
- Interest income is taxable irrespective of non resident having a residence or place of business or business connection in India.