Handbook on Residential Status for NRIs - Tax and FEMA Aspects

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Basic draft of this publication was prepared by CA. Uday Ved

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Foreword

In India, the determination of individual's residential status has assumed increasing significance in view of the growing cross-border movement of professionals, investments, and businesses. While the legal framework governing residential status is well established, the circumstances in which it must be applied have grown increasingly complex. Indian professionals today often pursue employment opportunities abroad and return within relatively short periods. Families may divide their time between two or more countries, while individuals increasingly hold investments, property, and business interests across jurisdictions. The traditional assumption that a person belongs to one country throughout a financial year no longer adequately reflects the realities of an increasingly interconnected world.

Residential status determines the very scope of a person's liability to tax in India which governs entitlement to treaty relief, the availability of foreign tax credit, and the obligations that follow under the exchange control regime. An incorrect determination may result in unintended tax exposure, reassessment, interest, or penalties. The enactment of the Income-tax Act, 2025, has added a new dimension to this area by restructuring and renumbering the provisions governing residential status that had stood for more than sixty years. Members and taxpayers must now work with two statutes in parallel: the Income-tax Act, 1961 for earlier years and the Income-tax Act, 2025 for the years ahead- while understanding both the substantive continuity and the changes introduced in the law.

It is to meet this objective, the **International Taxation Committee of ICAI** has brought out this publication**, "Handbook on Residential Status for NRIs: Tax and FEMA Aspects"**. This Handbook comprehensively explains the principles governing residential status under both the Income-Tax Act and FEMA, enabling readers to address practical issues with greater clarity and confidence.

I would like to place on record my sincere appreciation for the efforts of CA. Satish Kumar Gupta, Chairman, CA. Vishnu Kumar Agarwal, Vice-Chairman, and all the members of the International Taxation Committee and of the Study Group constituted for this publication, for their dedication in bringing out this valuable publication.

I am confident that this Handbook will serve as a useful and practical guide for our members as well as for the professionals, corporates, expatriates, and non-resident Indians who must navigate this important area while furthering ICAI's commitment to knowledge dissemination, professional excellence and quality in professional practice.

CA. Prasanna Kumar D
President, ICAI

Preface

The determination of residential status is the foundation upon which the whole edifice of taxation of an individual in India is built. It decides whether a person is taxed on income arising in India alone, or on income arising anywhere in the world. In an environment marked by the increasing cross-border movement of individuals, overseas employment, foreign investment, and the international mobility of Indian citizens, this foundational question has assumed an importance that extends well beyond its apparent simplicity.

The subject acquires a further dimension when viewed alongside the FEMA. Residence under the Income tax law is determined principally by reference to physical presence, while residence under FEMA turns upon the intention and purpose of a person's stay. The two enactments may, and frequently do, reach different conclusions in respect of the same individual for the same year. An integrated understanding of both is therefore indispensable for any professional advising on the affairs of non-resident Indians and returning Indians.

This Handbook has been arranged to follow the natural order in which the question of residence presents itself in practice. It opens with the foundational framework, proceeds through the determination of status and the transition between the two enactments, then turns to the treaty overlay, the mobility and pricing dimensions of cross-border employment, the position in the principal foreign jurisdictions, and finally the exchange-control regime, before closing with a set of worked case studies.

This Handbook focuses on the determination of residence under the Income-tax Act, 2025, and the FEMA, as they apply to non-resident Indians. Its scope is confined to the residential status of Individuals; the residential status of entities is not addressed. Likewise, the Handbook does not extend to investment opportunities available to non-resident Indians, or to the tax and regulatory implications of such investments, which lie outside its scope.

Chapter 1 sets out the framework, why residential status matters, the classification of resident and ordinarily resident, resident but not ordinarily resident, and non-resident, and the matrix of what becomes taxable under each status. Chapter 2, on individual residency, forms the core of the Handbook. It works through Sections 6(1) to 6(6) of the Income-tax Act, 2025 clause by clause, the 182-day test, the 60 day / 365 day test, the carve-outs for citizens leaving for employment and for visiting non-residents, the special threshold for high-income visitors, and the rule for crew of foreign-bound ships, in each case citing the corresponding provision of the Income-tax Act,1961.

Chapter 3 addresses the transition from the Income-tax Act,1961 to the Income-tax Act, 2025 the comparison of the old and new provisions, the transitional position, and the changes in the prescribed forms. Chapter 4 turns to the treaty framework and foreign tax credit: the relationship between domestic residence and residence under a Double Taxation Avoidance Agreement, the tie-breaker rules that resolve cases of dual residence, the evidentiary value of a Tax Residency Certificate, and the mechanism of foreign tax credit.

The global mobility, the residence and tax consequences that attend secondment, deployment, and the engagement of expatriates are the subjects covered in Chapter 5. Whole gamut of transfer pricing is discussed in Chapter 6: an overview of the regime, the arm's length principle, documentation requirements, the safe harbour rules, and the mutual agreement procedure. Chapter 7, on taxability, sets out the scope of total income for each class of resident and the manner in which Indian and foreign income is brought to tax.

Chapter 8 compiles the judicial precedents that bear on the determination of residence, decided principally under the Income-tax Act, 1961, but of continuing relevance to the corresponding provisions of the Income-tax Act, 2025. Chapter 9 examines the residency laws of the principal foreign jurisdictions to which Indians most frequently move, the United Kingdom, the United States, the United Arab Emirates, Singapore, Canada, Australia, and the Netherlands, together with the relevant Double Taxation Avoidance Agreements, so that the reader may understand the position on both sides of the border. Relevant inputs have been obtained from the tax experts in the respective jurisdictions, as necessary.

Chapter 10 sets out residence under the FEMA: the intention-based test under Section 2(v), the rules of repatriation, and the disclosure and reporting requirements that follow, with particular attention to the divergence between residence under the exchange-control law and residence under the income tax law.

Chapter 11 brings the analysis together through a set of worked case studies on both the tax and FEMA aspects, in which the law is applied to illustrative facts step by step, including the manner in which the Income tax and FEMA determinations may diverge for the same individual in the same year. The question-and-answer format has been adopted throughout, so that a reader may turn directly to the issue at hand and find it stated, explained, and applied.

We extend our sincere gratitude to **CA. Prasanna Kumar D, President, ICAI, and CA. Mangesh Pandurang Kinare, Vice-President, ICAI**, for their continued guidance and encouragement in furthering the initiatives of the Committee.

We place on record our deep appreciation for the dedicated efforts of **CA Uday Ved, CA Wrutuja Soni, CA Hetav Vasani, CA Dimple Thakker and CA. Cotha Srinivas** for authoring this publication, whose commitment, technical insight, and hard work have been instrumental in the preparation of this Handbook. Valuable inputs have been provided by S P Singh, Ex-IRS, with his enriching experience over decades.

Our special thanks go to all Committee members: CA. Jay Chhaira, CA. Umesh Ramnarayan Sharma, CA. Vishal Doshi, CA. Sridhar Muppala, CA. Sripriya Kumar, CA. Sanjib Sanghi, CA. Gyan Chandra Misra, CA. (Dr.) Rohit Ruwatia Agarwal, CA. Hans Raj Chugh, CA. Rajesh Sharma, CA. Sanjay Kumar Agarwal, and Justice (Retd.) Shashi Kant Gupta/ Co-Opted Members/ Invitees/ Experts to the committee for their valuable involvement and support.

We acknowledge the efforts of CA. Rohit Kumar, Secretary, International Taxation Committee, CA. Prachi Jain, Project Associate, CA. Manish Goyal, CA Professional, CA. Saloni Sharma, CA Professional, and other members of the Secretariat of the Committee in efficiently coordinating the work and providing essential secretarial assistance.

We are confident that this Handbook will prove to be a useful and dependable reference for members and other professionals engaged in advising on the residential status, taxation, and regulatory compliance of non-resident Indians.

CA. Satish Kumar Gupta	**CA. Vishnu Kumar Agarwal**
Chairman	Vice Chairman
International Taxation Committee	International Taxation Committee
ICAI	ICAI

Place: New Delhi
Date: July 2026

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Taxability Matrix

The liability of a person to be taxed in India begins with a single, foundational question: what is that person's residential status for the year in question?

Everything that follows- the scope of income brought to tax, the basis of charge of tax, tax liability quantum, compliance requirements, eligibility for treaty relief, restrictions and obligations under the exchange control law turns on that answer.

Overview of the ITA, 2025

With Effect from April 01, 2026 (Tax Year 2026-27), the ITA, 2025 (hereinafter referred to as 'ITA, 2025') is applicable. The ITA,1961 (hereinafter referred as ITA 1961), has been repealed on April 01, 2026, by the ITA, 2025, the ITA, 2025, subject to the savings contained in section 536.

The intent behind replacing the ITA,1961 with the ITA, 2025 is to:

- Simplify statutory language
- Improve structural clarity
- Reduce interpretational disputes
- Align drafting style with modern legislative standards
- Enhance voluntary compliance

The New ITA, 2025, aims to present the same tax policy in a more logical, accessible, and reader-friendly format.

The ITA, 2025, codifies the transition from the earlier ITA, 1961, to the New ITA, 2025 through Section 536, the repeal and savings clause.

- Section 536 of the ITA, 2025: Contains 22 sub-clauses addressing various transitional situations
- Ensures the old tax framework continues to apply to earlier years
- Aligns terminology between the two Acts
- Allows the law to be modernized without unsettling established positions

In summary, Section 536 of the ITA, 2025 provides for the continuation of proceedings initiated under the erstwhile Act, thereby ensuring that there is no disruption in pending matters and facilitating a smooth transition. Further, Section 536 (2)(c) provides that any assessment, scrutiny, or related tax consequences pertaining to income prior to the tax year of Financial Year 2026–27 shall be governed by the provisions of the Old Act, i.e. ITA,1961.

Table-1.2: The Comparison of the New and ITA, 1961s

Parameter	ITA, 1961	ITA, 2025	Change
Sections	819	536	35% reduction
Schedules	14	16	2 added
Rules	511	333	35% reduction
Forms	399	190	52% reduction

Section 3: The Tax Year

Q1	**What is a tax year under the ITA, 2025, and why does it matter for the residency determination?**
A	The terms “Previous Year” and “Assessment Year” under the ITA, 1961 have been done away with. Now the ITA uses the term “Tax Year”. Section 3(1) defines the Tax Year as a twelve-month period of the financial year commencing on 1st April. This replaces the concept of the previous year that ran through the ITA, 1961. However, the underlying period is unchanged; only the terminology has shifted. The definition matters for the residency determination because residential status is determined year by year, and the year by reference to which it is determined is the tax year as defined in Section 3. A person is resident or non-resident for a particular tax year, not in the abstract. An individual may be resident in one year and non-resident in the next, and their tax liability changes accordingly. Section 3(2) addresses the position where a business, profession, or source of income comes into existence partway through a financial year. In such cases, the tax year begins on the date the business or profession is set up or the source first arises and ends with the close of that financial year. This is relevant where the residency question arises in the context of a newly established Indian business or a newly acquired Indian income source: the tax year for that source is shorter than twelve months, and the residency determination applies to that truncated period.

Section 4: The Basis of Charge of Income Tax

Q2	**What does Section 4 establish, and how does it connect residential status to the tax liability of an individual?**
A	Section 4 is the charging provision for the Income-tax. Sub-section (1) enacts the basis of the charge of income tax for a tax year at the rate or rates specified by the relevant Finance Act. Sub-section (2) then provides that the charge is on the total income of the tax year of every person, as per the provisions of this Act. What Section 4 charges is total income of the tax year, not gross receipts, turnover, or collections. Total income is a defined term (Section 2(108)): it is income computed in accordance with this Act i.e. as per Section 5 of the ITA, 2025; the scope of total income, and what covers the scope of total income, and what enters that computation depends primarily on the person's residential status. A resident and ordinarily resident (ROR) individual are charged on worldwide income. A resident but not ordinarily resident (NOR) individual and a non-resident are charged only on Indian source income, subject to limited exceptions. The charge under Section 4, therefore, cannot be understood without first establishing residential status, which is what Section 6 addresses. The practical implication of Section 4 is this: the charge attaches to total income; what total income comprises depends on residential status, as Section 5 clarifies. The charging provision and the scope provision must always be read together.

Section 5: Scope of Total Income

Q3	**What does Section 5 say about the scope of total income, and how does it differentiate between residents and non-residents?**
A	Section 5 is the scope provision. It determines which income enters the computation of total income, and it does so differently depend on residential status. For a resident, Section 5(1) brings into total income all income from whatever source derived that is received or deemed to be received in India, accrues or arises or is deemed to accrue or arise in India, or accrues or arises outside India. The final limb is the most significant.

	As a general principle, the foreign income of a resident is subject to tax in India. However, in the case of a resident who is not ordinarily resident, as defined under Section 6(13), foreign income is taxable in India only if it is derived from a business controlled from India or from a profession set up in India. Accordingly, any other foreign income earned by such a person remains outside the scope of taxation in India. For a non-resident, Section 5(2) limits total income to income that is received or deemed to be received in India, or accrues, arises, or is deemed to accrue or arise in India. Foreign income has no place in the total income of a non-resident. Section 5(3) provides a safeguard against double-counting: income accruing or arising outside India is not treated as received in India merely because it is reflected in the books of account prepared in India. Section 5(4) prevents the same income from being included twice, once on an accrual basis and again on a receipt basis. The result is a three-tier structure driven by residential status. A Resident and Ordinarily Resident individual are taxed on worldwide income. A Resident but Not Ordinarily Resident individual is taxed on Indian-source income and India-linked foreign income. A Non-Resident is taxed only on India source income. That structure is set out in the taxability matrix that follows. It may be noted that the ITA,2025 has preserved the same three categories of residential status as in the ITA,1961.

Section 6: The Three Categories of Residential Status

Section 5 draws different boundaries of taxation for residents and non-residents and draws a further distinction within residents between those who are ordinarily resident and those who are not. To apply Section 5, it is necessary first to know which category an individual falls into. That determination is made under Section 6 of the ITA, 2025, which is addressed in detail in Chapter 2. At this stage, it is sufficient to identify the three categories and the provision from which each flow (see Figure 1.1)

Figure-1.1: Three Categories of Residents

Resident and Ordinarily Resident (ROR)		Not Ordinarily Resident (NOR)		Non-Resident (NR)
• Taxed on worldwide income • Satisfies Section 6(2)(a) or 6(2)(b) • Does not meet any NOR condition under Section 6(13) • Broadest scope of tax liability under this Act		• Taxed on India-sourced income and India-linked foreign business or profession • Resident under Section 6(2) but satisfy one of the two conditions in Section 6(13)(a) • Common for returning NRIs in their transitional years		• Taxed only on income received, accruing or arising in India, or deemed to accrue or arise in India • Does not satisfy either test under Section 6(2) • Normally, no Indian tax liability on foreign income under any circumstances

The conditions for establishing each status, the day-count tests, the carve-outs for citizens leaving for employment, the position of non-residents on a visit to India, and the NOR conditions are examined provision by provision in Chapter 2. What follows immediately is the taxability matrix, which translates the three-tier classification into a direct statement of what is, and what is not, within the scope of tax for each category.

The Taxability Matrix

Table-1.3 sets out, for each of the three residential categories, whether a given type of income falls within the scope of total income as defined in Section 5. The reference provision in each column header is the sub-section of Section 5 that governs inclusion or exclusion.

Table-1.3: Three Residential Categories

Source of Income	ROR Section 5(1)	NOR Section 5(1) read with Section 6(13)	NR Section 5(2)
Income received or deemed received in India	✔ Taxable	✔ Taxable	✔ Taxable
Income accruing, arising, or deemed to accrue or arise in India	✔ Taxable	✔ Taxable	✔ Taxable
Foreign income from business controlled in India	✔ Taxable	✔ Taxable	✘ Not taxable
Foreign income from a profession set up in India	✔ Taxable	✔ Taxable	✘ Not taxable
Other foreign income (salary, rent, investments, capital gains)	✔ Taxable	✘ Not taxable	✘ Not taxable

Box-1.1: Advisory

The scope of total income under Section 5 is determined at the level of the tax year. A person who changes residential status during an engagement, returning to India permanently or departing for long-term employment, may face a different scope of income for different tax years, even where the underlying income source is unchanged.

The NOR category provides a transitional window that can result in a materially lower tax liability for returning non-residents. Whether that window is available, and for how long, depends on the conditions in Section 6(13), which are examined in Chapter 2.

Where a person is also treated as a resident in another country under that country's domestic law, the applicable Double Taxation Avoidance Agreement may modify which income India can tax and at what rate. That overlay is addressed in Chapter 4.

BOX-1.2: TAKEAWAY

The charge to income tax in India rests on three interlocking provisions. Section 3 defines the tax year as the twelve-month financial year from 1 April, which is the period by reference to which residential status is determined. Section 4 imposes the charge on total income; a concept whose content depends on that status. Section 5 sets out what total income means for each category of person.

For a ROR individual, total income includes world income. For a NOR individual, it covers Indian-source income and income from a business or profession with an Indian connection, but not other foreign income. For a NR, normally, it is limited to income sourced in India.

The three categories, ROR, NOR, and NR, are established under Section 6, the subject of Chapter 2. Understanding which category applies, and why it applies, is the starting point for every question of individual taxation that follows.

Chapter 2
Individual Residency

ITA, 2025 | Sections 6(1) to 6(8), 6(13) and 6(14) |

Table-2.1: Different Sections and Their Governing Clauses

Section 6(1)	The governing clause
Section 6(2)(a) and 6(2)(b)	The 182-day and 60/365-day tests (formerly Section 6(1)(a) and 6(1)(c))
Section 6(3)	Crew of Indian ship and employment departure carve-outs (formerly Explanation 1(a) to Section 6(1))
Section 6(4) and 6(5)	Visiting Indian citizen and PIO carve-out; the ₹15 lakh threshold (formerly Explanation 1(b) to Section 6(1))
Section 6(6)	Day-computation for crew of foreign-bound ships (formerly Explanation 2 to Section 6(1))
Section 6(7) and 6(8)	Deemed residency (formerly Section 6(1A))
Section 6(13)	NOR conditions (formerly Section 6(6))

The question of whether an individual is resident in India for a given year is deceptively simple on the surface and genuinely complex in practice. This chapter works through the determination under Section 6 of the ITA, 2025, in the form of questions and answers directed at the practitioner, taking each provision in turn and addressing the practical and interpretational issues that arise.

The Extract of Section 6 of the ITA, 2025 is as under:

Residence in India

6. *(1) For the purposes of this Act, residential status in India in a tax year of a person shall be determined as per the provisions of this section.*

(2) An individual shall be resident in India in a tax year if he:

(a)	*is in India for a **total period** of one hundred and eighty-two days or more in that tax year; or*
(b)	*is in India **cumulatively** for sixty days or more during that year and has been in India cumulatively for three hundred and sixty-five days or more in the four years preceding such tax year.*

(3) The provisions of sub-section (2)(b) shall not apply in the case of an individual who is a citizen of India and leaves India in any tax year:

(a)	*as a member of the crew of an Indian ship, as defined in section 3(18) of the Merchant Shipping Act, 1958 (44 of 1958); or*
(b)	*for the purposes of employment outside India.*

(4) The provisions of sub-section (2)(b) shall not apply, subject to the provisions of sub-section (5), in the case of an individual:

(a)	*who is a citizen of India or a person of Indian origin; and*
(b)	*who being outside India, comes on a visit to India in any tax year.*

(5) Where the person referred to in sub-section (4) has a total income exceeding fifteen lakh rupees during the tax year referred therein, other than the income from foreign sources, sub-section (2)(b) shall apply as if the words "sixty days" had been substituted with "one hundred and twenty days".

(6) For the purposes of sub-section (2), if the individual is:

(a)	*a citizen of India; and*
(b)	*a member of the crew of a foreign-bound ship leaving India,*

the total number of days in India, in respect of that voyage, shall be determined in such manner and subject to such conditions as may be prescribed.

(7) Irrespective of the provisions of sub-sections (2) to (6), an individual shall be deemed to be resident in India for a tax year, if he:

(a)	*is a citizen of India;*
(b)	*is not liable to tax in any other country or territory due to his domicile, residence, or similar criteria; and*

(c)	*has total income exceeding fifteen lakh rupees during such tax year (other than the income from foreign sources).*

(8) Sub-section (7) shall not apply to an individual who is resident in India for a tax year under sub-sections (2) to (6).

(9) A Hindu undivided family, firm or other association of persons shall be resident in India in any tax year unless the control and management of its affairs is situated wholly outside India during such tax year.

(10)(a) A company is said to be a resident in India in any tax year if:

(i)	*it is an Indian company, or*
(ii)	*its place of effective management is in India in that tax year;*

(b) For the purposes of this sub-section, "place of effective management" means a place where key management and commercial decisions necessary for the conduct of the business of the company as a whole are, in substance, made.

(11) Every other person is resident in India in any tax year unless during that tax year the control and management of the affairs of such person is situated wholly outside India.

(12) If a person is resident in India in a tax year for any source of income, he shall be deemed to be resident in India in that tax year for each of his other sources of income.

(13) A person is not ordinarily resident in India in any tax year if that person is:

(a)	*an individual who has been, or a Hindu undivided family, whose manager has been:*
(i)	*a non-resident in India in nine out of the ten tax years preceding that year; or*
(ii)	*in India cumulatively for seven hundred and twenty-nine days or less in seven tax years preceding that year; or*
(b)	*a citizen of India or a person of Indian origin,*
(i)	*whose total income, excluding income from foreign sources, exceeds fifteen lakh rupees during the tax year, as mentioned in sub-section (5); and*

(ii)	*who has been in India cumulatively for one hundred and twenty days or more but less than one hundred and eighty-two days during the tax year; or*
(c)	*a citizen of India who is deemed to be resident in India under sub-section (7).*

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

Section 6(1): The Governing Clause

Q4	**What is the nature and effect of Section 6(1), and what legal consequence does flow from the manner in which it is drafted?**
A	Section 6(1) states that the residential status of an individual in India for a tax year shall be determined as per this section. It is a governing clause, not a test. Its function is to establish that residency for an individual is entirely a creature of Section 6.

Section 6(2)(a): The 182-Day Test

Q5	**An individual has been physically present in India for, say, 195 days during the relevant tax year. What is the nature of the determination required to be made, and what evidentiary standard applies?**
A	Section 6(2)(a) provides that an individual is resident in India if they are in India for a total period of 182 days or more in the tax year. *Note: Under the ITA,1961, the expression used was "period or periods amounting in all", whereas the ITA, 2025 uses the words "total period". The change appears to be merely a drafting simplification and may not alter the legal position.* The Bureau of Immigration maintains entry and exit records that constitute the primary official record of an individual's presence in India. Where an Assessing Officer examines residential status, the immigration data provides the baseline count against which the individual's self-reported position is tested. A day count that differs

	from immigration records, even by one or two days, requires explanation and supporting evidence. Passport stamps, boarding passes, and travel itineraries are the documentary record on which the determination rests. Days spent in transit and overnight crossings can affect the count; the date recorded by immigration authorities governs, not the traveller's own recollection. A day in India, for this purpose, is any part of a calendar day spent within India. A person who lands at 11:55 PM has been in India on that date. A person who departs at 12:05 AM has been in India on that date as well. Neither the hour of arrival nor the hour of departure changes the count. For the purpose of counting the number of days of stay in India, there are conflicting decisions regarding "day of arrival" and "day of departure” and considering both days for the purpose of counting physical stay in India. Hence, one should be careful about the plan of stay in India. However, recent decisions of the ITAT Bangalore in Manoj Kumar Reddy v. ITO [2009] 34 SOT 180 [affirmed by the Hon’ble Karnataka HC, [2011] 12 taxmann.com 326 (Karnataka)] and the ITAT Ahmedabad in Pradeep Kumar Joshi v. ITO [2022] 192 ITD 577, suggests that on the facts of the respective cases, that the day of arrival in India (being only a fractional stay) could be excluded while computing the period of stay for determining residential status.

Q6	**In what circumstances does the inclusive counting of arrival and departure days have a material bearing on the residency determination?**
A	The question of inclusive versus exclusive counting arises most critically in cases where the individual's presence in India is proximate to the 182-day threshold. An individual who arrives in India on 1 April and departs on 30 September has been in India for 183 days. An exclusive count of intermediate days yields 181. The difference is 2 days, and where the total presence is in the range of 180 to 182 days, those 2 days determine the outcome of the residency determination. There is no provision for approximation or rounding. The count is to be made precisely and on the basis of verified documentation.

	Multi-leg journeys add a further layer. Consider an Individual flying from Mumbai to Singapore via Dubai: if there is no Indian immigration entry on the Dubai leg, those hours do not count. But a missed connection that results in clearing Indian immigration for an overnight stop may add a day. Each leg of a complex itinerary needs to be examined, not assumed. Time zones create a subtler issue. Consider an Individual departing India at midnight on 31 March, arriving in London in the early hours of 1 April: the Indian immigration record shows a 31 March departure. That day counts toward the India total. The destination country's date is irrelevant. The day-count operates on Indian calendar days as recorded by Indian immigration. It is important to note that the physical stay is relevant, which will include business working days, weekends or vacation days.

Section 6(2)(b): The 60/365-Day Test

Q7	**An individual has been present in India for 130 days during the relevant tax year, which is below the 182-day threshold. Is the residency determination thereby concluded?**
A	The determination is not concluded. Section 6(2)(b) provides a second and independent test for residency: an individual is resident in India if they have been present in India for a period or periods amounting in all to 60 days or more in the current tax year and have been present in India for 365 days or more during the four tax years immediately preceding the year in question. At 130 days, the individual satisfies the 60 days limb. The operative question is the rolling preceding four-year total. For a professional based abroad who visits India two or three times a year for business, family, or medical reasons, that total accumulates steadily and quietly. Many taxpayers track only the current year. The preceding four-year rolling count is where residency surprises happen, and they happen precisely because no one was watching. The two tests are independent. Satisfaction of either is sufficient to constitute residency. An individual who does not satisfy the 182-day test may nonetheless be a resident by virtue of the second test. Both tests must be applied with respect to every year under review, and the analysis must not be limited to the current-year count alone.

Section 6(3): Crew of Indian Ship and Employment Departure

Q8	**An Indian citizen has departed India during the tax year for the purpose of taking up employment abroad and has been present in India for 90 days during that year. Is the second test applicable to her?**
A	The second test does not apply. Section 6(3) provides that the second test shall not apply to an Indian citizen who leaves India in the tax year as a member of the crew of an Indian ship, or for the purposes of employment outside India. For both categories, the applicable test is solely the 182-day test. At 90 days, she does not satisfy the 182-day test and is accordingly a non-resident for that year. The rationale is that an individual who departs India for purposes of employment abroad ought not to be treated as a resident on the basis of accumulated prior presence. Crucially, the term "employment" in this context is interpreted broadly. It is not restricted to a traditional master-servant relationship. Relying on the principles laid down by the Kerala High Court in ***CIT vs. O. Abdul Razak (2011)***, "employment" includes self-employment, setting up a business, or establishing a professional practice outside India. Therefore, an entrepreneur or freelancer leaving India to establish their enterprise abroad is equally entitled to this carve-out and will only be tested against the 182-day threshold for the year of departure. However, the provision requires that the departure for employment takes place in the same tax year that is in question. An individual who departed India for employment in an earlier year and who, in the current year, returns to the country of employment following a visit to India, is not departing India for employment in that current year. Whether the exclusion is available in a subsequent year requires examination of the specific facts of the case and whether the condition is satisfied afresh in each such year. The above position is reconfirmed in the case of ***Binny Bansal vs DCIT, IT(IT) A No. 571/Bang/2023***, wherein it was held that the benefit under Section 6(3) is to be accorded only in the first year in which the Assessee leaves India for employment. The exclusion of the 60-day

	threshold under Section 6(3), leaving only the 182-day test, is strictly confined to the specific year in which the Individual first departs from India for employment.

Section 6(4): Visiting Citizens and Persons of Indian Origin

Q9	**A Person of Indian Origin ordinarily resident outside India has visited India for 140 days during the relevant tax year and derives income from investments in India. What is the applicable residency test, and what determination is to be made?**
A	The applicable test and the determination to be made depend upon the composition of the individual's income for the year under review. Section 6(4) governs this category. Section 6(4) excludes visiting Indian citizens and Persons of Indian Origin from the application of the second test. The applicable test for such persons is, in the first instance, the 182-day test alone. At 140 days, the individual does not satisfy the 182-day threshold and would be a non-resident on that basis. However, Section 6(5) qualifies this exclusion. Where the visiting person has a total income exceeding Rs. 15 lakhs during the tax year, other than income from foreign sources, the second test applies as if the words 'sixty days' are substituted with 'One hundred and twenty days'. At 140 days, the individual satisfies the substituted 120-day threshold. If they have also been present in India for an aggregate of 365 days or more during the four preceding tax years, the conditions are satisfied, and they are to be treated as resident in India for that year. Persons of Indian Origin with total Indian-source income exceeding Rs. 15 lakh who visit India for a period of 120 days or more fall within the scope of the residency provisions. It may be noted that Section 6(5) only modifies the *threshold* (from 60 days to 120 days); the condition of a 365-day stay in the preceding four years under Section 6(2)(b) must *also* be satisfied. In ***Binny Bansal v. DCIT (IT(IT)A No. 571/Bang/2023***, The Hon'ble Bangalore Tribunal held that the scope of the relaxation available to an

	Indian citizen who, being outside India, comes on a visit to India under the Explanation 1(b) to Section 6(1) of ITA, 1961. The Tribunal held that, on the facts of the case, the benefit of the relaxed day-count test was not available to the assessee, observing that the provision was intended to apply to Indian citizens already settled abroad and not to an individual who had only recently relocated overseas.

Q10	**How is income from foreign sources defined for the purposes of the Rs. 15 lakh threshold, and what categories of income are included or excluded?**
A	Income from foreign sources is defined in Section 6(14) as income that accrues or arises outside India, except income derived from a business controlled in or a profession set up in India, and which is not deemed to accrue or arise in India. The total income to be reckoned against the ₹15 lakh threshold is total income other than income from foreign sources as so defined, that is, income accruing or arising in India together with income derived from a business controlled in India or a profession set up in India, and income deemed to accrue or arise in India. Income from salaries received in India, rental income from immovable property situated in India, interest on deposits with Indian banks (except Interest on NRE deposits), dividends declared by Indian companies, capital gains arising on transfer of assets situated in India, and income deemed to arise in India under Section 9 are to be included in the computation and therefore fall outside the definition of income from foreign sources. Income by way of foreign salary, rental income from property situated outside India, interest on deposits with foreign banks, and capital gains on transfer of assets situated outside India are excluded as income from foreign sources. **Example:** An individual with ₹18 lakhs of Indian rental income and ₹2 crores of salary from employment in the United Arab Emirates exceeds the ₹15 lakh threshold. The foreign salary does not operate to reduce the Indian-source income for purposes of the comparison. Conversely, an individual with ₹12 lakhs of dividend income from Indian companies and ₹50 lakhs of employment income from Singapore remains below

	the threshold; the Singapore income is not brought into the computation. Particular attention is required in relation to income deemed to accrue or arise in India under Section 9. Royalties, fees for technical services, and interest paid by Indian residents or by the Government of India are deemed to accrue or arise in India and fall within the Indian-source side of the computation, irrespective of the contractual or payment structure. ***Note:*** *An interpretational issue arises as to whether the expression "total income, other than income from foreign sources" for the ₹15 lakhs threshold refers only to taxable total income computed after giving effect to exemptions under section 11 and relief under section 159, or whether it includes all Indian-source income, irrespective of its taxability. While sections 2(108), 5, 11 and 159 support the former view, the definition of "income from foreign sources" underlying section 6 may support the latter. In the absence of any CBDT clarification or judicial precedent directly on this issue, the matter may remain open to interpretation.*

Section 6(6): Crew of Foreign-Bound Ships

Q11	**An Indian citizen is employed as an officer on a cargo vessel engaged in international voyages departing from Indian ports. How are the days of presence in India to be determined?**
A	Section 6(6) introduces a provision specifically applicable to this category. It provides that, in the case of an Indian citizen who is a member of the crew of a foreign-bound ship leaving India, the days of joining the ship and leaving the ship shall be determined in the manner prescribed by rules framed under the Income-tax Act. The provision addresses a pattern observed in the context of the merchant navy. Members of the crew of vessels engaged in international voyages depart India on each sailing and re-enter on each return, thereby generating a sequence of short periods of presence in India. When applied mechanically against the standard tests, this pattern could produce outcomes inconsistent with the practical connection of the crew member to India. The prescribed rules mechanism enables the Central Government to specify an appropriate

	counting methodology for this category without resort to statutory amendment. The specific computation methodology is prescribed under Rule 8 of the Income-tax Rules, 2026. The Computation Mechanism prescribed under Rule 8(1) and 8(2) provides a precise, documentary-based formula to ensure seafarers are not penalised for operational time spent in Indian ports. For an Indian citizen who is a crew member of a foreign-bound ship, the period of stay in India in respect of an "eligible voyage" shall completely exclude the period computed as follows: <u>Commencement of Exclusion:</u> The period begins on the exact date entered into the Continuous Discharge Certificate (CDC) in respect of joining the ship for the eligible voyage. <u>Cessation of Exclusion:</u> The period ends on the exact date entered into the CDC in respect of signing off from the ship for that same voyage.

6(7) Deemed Residency

Q12	An Indian citizen resident in the United Arab Emirates (UAE) has Indian rental and dividend income of ₹22 lakhs in a tax year and is present in India for 40 days during that year. She pays no income tax in the UAE, which does not tax individuals on income or residence. Is she resident in India?
A	Yes. She may be deemed to be a resident in India under Section 6(7), because she does not satisfy ordinary conditions either the 182-day test under Section 6(2)(a) or the 60-day / 365-day test under Section 6(2)(b). Section 6(7) is an independent and residual deeming provision that operates irrespective of the ordinary tests of residence contained in Sections 6(2) to 6(6). It is not an extension of the physical presence tests but creates a separate basis for residence. The provision applies where all of the following conditions are cumulatively satisfied: (a) the individual is a citizen of India; (b) the individual is not liable to tax in any other country or territory by reason of domicile, residence or any other criterion of a similar nature;

	and (c) the individual's total income, other than income from foreign sources, exceeds ₹15 lakhs during the relevant tax year. The provision is intended to address situations where Indian citizens arrange their affairs so that they are not tax resident in any jurisdiction, particularly by residing in countries that do not impose tax on individuals by reference to residence or domicile or any other means of similar nature, meets the criteria of tax residency. It seeks to prevent such individuals from becoming "stateless" for tax purposes while continuing to earn substantial income from India. On the facts stated, all three statutory conditions are satisfied. She is an Indian citizen, her Indian-source income comprising rental income and dividends amounts to ₹22 lakhs, which exceeds the prescribed threshold of ₹15 lakhs, and she is not liable to tax in the UAE by reason of residence, domicile or a similar criterion. Accordingly, notwithstanding that she is physically present in India for only 40 days during the tax year, she may be deemed to be a resident in India under Section 6(7). Her low day-count, which would ordinarily keep her outside the scope of the residence tests under Section 6(2), is irrelevant because physical presence in India is not an element of the deeming provision contained in Section 6(7). The expression "not liable to tax" requires careful interpretation. The provision does not ask whether tax has actually been paid in the foreign jurisdiction. Rather, it examines whether the individual is subject to tax under the domestic law of that jurisdiction by reason of residence, domicile or a similar connecting factor.

Q13	Section 6(8) provides that Section 6(7) does not apply to an individual who is resident in India under sub-sections (2) to (6). What is the practical effect of this qualification, and how does deemed residency interact with the ordinarily resident determination?
A	Section 6(8) clarifies that Section 6(7) is a residual or fallback deeming provision. It applies only where an individual is not otherwise resident in India under the ordinary residence tests contained in Sections 6(2) to 6(6). Consequently, where an individual qualifies as a resident under any of those provisions. For example, by satisfying the

	182 days test under Section 6(2)(a) or the applicable 60 days test under Section 6(2)(b), there is no occasion to invoke Section 6(7). The individual is simply treated as a resident under the applicable provision, and the question of deemed residency does not arise. The practical significance of Section 6(8) is that it prevents any overlap or duplication between the ordinary residence provisions and the deeming provision. Section 6(7) is intended to operate only in cases where an Indian citizen would otherwise be a non-resident under the ordinary day-count tests but satisfies the conditions prescribed for deemed residency. The interaction between Section 6(7) and the determination of Ordinarily Resident (ROR) or Not Ordinarily Resident (NOR) status under Section 6(13) is particularly significant. Section 6(13)(c) provides that an Indian citizen deemed resident under Section 6(7) is Not Ordinarily Resident (NOR) for that tax year. No separate conditions are required to be satisfied for this purpose. Thus, deemed residency under Section 6(7) and NOR status under Section 6(13)(c) operate together. This substantially limits the scope of taxation applicable to such individuals. Although they are regarded as residents of India by virtue of Section 6(7), they are taxed as Not Ordinarily Residents, and therefore their total income does not include income accruing or arising outside India unless it is derived from a business controlled from India or a profession set up in India. Accordingly, foreign-source income that has no nexus with India generally remains outside the Indian tax net notwithstanding the deemed resident status.

Section 6(13) Residency Is Not the End of the Analysis

Q14	**An individual satisfies the conditions for residency. Is the residency determination complete at that stage?**
A	The determination is not complete. Establishing that an individual satisfies the conditions for residency does not conclude the inquiry. For a person so determined to be resident, the further and equally material question is whether they are Resident and Ordinarily Resident or Resident but Not Ordinarily Resident. That further

	determination is made under Section 6(13). The distinction between ROR and NOR status has direct and material consequences for the scope of an individual's tax liability. A ROR individual is liable to tax in India on their Global income. A NOR individual is liable to tax in India only on income sourced in India and income from a business or profession controlled from India. Income accruing or arising outside India, including salary from a foreign employer, interest on foreign deposits, and capital gains on transfer of foreign assets, does not form part of the taxable income of a NOR individual. In the case of an individual who returns to India after an extended period of non-residence and whose presence first satisfies the residency conditions, NOR status for the transitional period may result in a substantially reduced tax liability relative to that of an ROR individual. A residency determination that does not proceed to the determination of ordinary residency is, in all cases, an incomplete determination. The conditions for NOR status and the tax planning considerations that attend them are examined later in this handbook. Under Section 6(13)(a), a resident individual is treated as NOR if either of the following conditions is satisfied: 1. The individual was non-resident in India in 9 out of the 10 tax years immediately preceding the relevant tax year; or 2. The individual's aggregate stay in India during the 7 tax years immediately preceding the relevant tax year does not exceed 729 days. These conditions are alternative and not cumulative. Satisfaction of either condition is sufficient to qualify as NOR. <u>Illustration</u> An individual returns to India on 1 April 2026 and remains in India throughout Tax Year 2026-27, thereby becoming a resident. During the immediately preceding 10 tax years, the individual was non-resident in 9 years, although the aggregate stay in India during the preceding 7 years exceeded 729 days. Even though the 9 out of 10 condition is satisfied, the individual qualifies as Resident but Not Ordinarily Resident (NOR) for Tax

	Year 2026-27, due to the failure to satisfy the 729 days test.

Q15	**An individual is resident in India and is also treated as a resident under the domestic tax law of another country. What is the effect of the applicable Double Taxation Avoidance Agreement on the domestic determination?**
A	The domestic determination is not displaced by the fact of the individual's residence in another country under that country's domestic law. The applicable Double Taxation Avoidance Agreement (DTAA) operates upon and alongside the domestic determination; it does not override or substitute for it. Where an individual is resident in India and is also resident under the domestic tax law of the other contracting state, the individual is a dual resident. Article 4(2) of the DTAA, most of which is modelled on Article 4 of the OECD Model Tax Convention, provides for a tie-breaker mechanism that allocates treaty residency to one of the two contracting states. The criteria are applied in sequence, each considered only if the one before it does not resolve the matter. A Tax Residency Certificate from the other state is the starting point for invoking treaty protection, but it is not conclusive of the tie-breaker outcome. An Individual also has an option under section 159(4) of the ITA, 2025. A resident Individual has an option to select the provisions of the Indian domestic Act or the DTAA entered into by the Indian Government, to which such agreement applies, for granting relief from tax, or avoidance of double taxation, to the extent they are more beneficial to that Individual assessee. **The first test: Where is the individual's permanent home?** The first criterion is the permanent home. The individual is treated as a resident of the state in which a permanent home is available to them. A permanent home is one that the individual has arranged and retained for continuing use, as distinct from a place taken for a short stay. As per OECD Commentary, the term "permanent home" generally refers to a place of dwelling that is continuously available to the individual, not necessarily owned by them, but it must be a fixed and habitual abode. The availability of such a home is a

	factual question and does not depend on the individual's intention to retain it. If a permanent home is available in only one of the two states, that state is the state of treaty residence, and the analysis goes no further. **The second test: Where is the individual's centre of vital interests?** If a permanent home is available in both states, the next question is where the individual's personal and economic relations are closer, that is, the centre of vital interests. Family and social relations, occupation, the place from which property is administered, and the place of business or employment are all weighed together. The state with which the individual's personal and economic ties are closer is the state of treaty residence. **The third test: Where does the individual have a habitual abode?** If the centre of vital interests cannot be determined, or if no permanent home is available in either state, the test moves to habitual abode. The individual is treated as a resident of the state in which they stay more frequently, taking into account stays at all places in that state over a sufficient period of time. **The fourth test: In which state is the individual a national?** If the individual has a habitual abode in both states or in neither, nationality decides the matter, and the individual is treated as a resident of the state of which they are a national. If the individual is a national of both states and of neither, the question is resolved by mutual agreement between the competent authorities of the two states. **What is the effect of the tie-breaker, and how is double taxation relieved?** The allocation of treaty residency under the tie-breaker determines which contracting state holds the primary right to tax under the Convention. It does not extinguish the individual's domestic tax liability in the other state; rather, double taxation is relieved through the exemption or credit method provided in the applicable DTAA. A Tax Residency Certificate (TRC) establishes the fact of residence in

	the other state but does not, of itself, determine the tie-breaker outcome, and the substance of the individual's connections remains open to examination by the Assessing Officer. The treaty framework, tie-breaker criteria, and the evidentiary standards applicable to a TRC are addressed in Chapter 4 of this handbook.

Box-2.1: TAKEAWAY

Residency turns on physical presence, counted precisely. Both the day of arrival and the day of departure count, and there is no rounding. At the margin, a day or two decides the outcome, so a verified travel record is the starting point of any opinion.

The two tests are alternatives. Falling short of 182 days does not settle the question; the 60/365-day test, and the four-year history it rests on, must always be checked. That four-year total is recomputed every year and is where regular visitors are most often caught.

For visiting Indian citizens and Persons of Indian Origin, the threshold rises from 60 to 120 days once Indian-source income crosses Rs. 15 lakhs. Establish the income position before selecting the threshold, because a single receipt near year-end can move it.

Residency is only the first determination. Whether a resident is ordinarily resident or not ordinarily resident decides whether foreign income is taxed at all and must always follow. Where another country also treats the person as a resident, the treaty tie-breaker and the value of a Tax Residency Certificate come into play.

Chapter 3

Income-tax Act, 1961 vs. Income-tax Act, 2025

What each provision meant, and what it now means

This section maps out every relevant provision of Section 6 across both Acts, identifies where the wording shifted, and flags where those shifts leave genuine interpretive points open.

Box-3.1: Reading the Impact Column.

How to read the Impact column

Renumbered - Citation changed, wording identical. All prior case law applies without qualification.

Cosmetic - Minor drafting difference, no change in meaning or effect. Prior case law applies.

Mechanism - Same legal outcome, different statutory path. Prior case law may not bind directly.

Open Point - A word change, or the absence of rules, leaves the position genuinely uncertain.

Table-3.1: Provisions in ITA, 1961 and ITA, 2025

Provision	ITA, 1961	ITA, 2025	Word Change	Impact
Governing clause	None	6(1)	New text, no counterpart in the ITA, 1961	**Cosmetic**
182-day test	6(1)(a)	6(2)(a)	None	**Renumbered**
60/365-day test	6(1)(c)	6(2)(b)	'Period or periods amounting in all' → 'cumulatively'; order reversed	**Open Point 1**

Crew & employment carve-out	Explanation 1(a) to 6(1)	6(3)	Substitution mechanism → direct exclusion ('shall not apply')	**Mechanism**
Visiting citizen & PIO carve-out	Explanation 1(b) to 6(1)	6(4)	Section 115C cross-reference dropped; PIO undefined in ITA	**Open Point 2**
Rs. 15 lakh / 120-day modification	Explanation 1(b) to 6(1)	6(5)	Now standalone; express cross-reference from 6(4)	**Cosmetic**
Crew of foreign-bound ships	Explanation 2 to 6(1)	6(6)	'Period or periods of stay' → 'total number of days'; rules not notified	**Open Point 3**
Deemed residency	6(1A)	6(7) & 6(8)	'Notwithstanding clause (1)' → 'Irrespective of sub-sections (2) to (6)'	**Open Point 4**
Resident for all sources	6(5)	6(12)	None	**Renumbered**
Not Ordinarily Resident	6(6)	6(13)	Individual & HUF consolidated; 'period or periods' → 'cumulatively'	**Cosmetic**
Income from foreign sources	Explanation to 6(6)	6(14)	Moved to standalone sub-section; 'income which' → 'the income, which'	**Cosmetic**

SECTION 1: Renumbered Only, No Change

These provisions have moved to a new citation. Every condition, threshold, and day-count are identical under both Acts. All case law and practice under the ITA, 1961 carries forward without qualification (see Table-3.2).

Table-3.2: Provisions under ITA, 1961 & ITA 12025

Provision	ITA, 1961	ITA, 2025
182-day test	6(1)(a)	6(2)(a)
Resident for all sources	6(5)	6(12)

SECTION 2: Mechanism Changes, Same Outcome, Different Legal Path

These provisions changed how the rule is expressed, not what it says. The practical outcome is the same under both Acts. However, because the legal mechanism differs, a court interpreting the ITA, 2025 provision cannot automatically rely on decisions under the ITA, 1961 phrasing.

Table-3.3: Crew & Employment Carve-Out

Explanation 1(a) to Section 6(1) of ITA, 1961	Section 6(3) of ITA, 2025
"...the provisions of sub-clause (c) shall apply in relation to that year as if for the words 'sixty days'...the words 'One hundred and eighty-two days' had been substituted."	*"The provisions of sub-section (2)(b) shall not apply in the case of an individual who is a citizen of India and leaves India in any tax year as a member of the crew of an Indian ship or for the purposes of employment outside India."*
What this means: The ITA, 1961 kept the 60-day test alive but raised its threshold by substitution. The ITA switches the test off entirely. Same result: only the 182-day test applies, but the mechanism is different.	

SECTION 3: Where the ITA Leaves Room for Interpretation

These are the provisions where a change in wording or the continuing absence of notified rules means the position under the ITA, 2025 cannot simply be read as a carry-forward of the ITA, 1961. Each open question is set out with the specific change in the ITA, 2025 as compared with the provisions of the ITA, 1961, with a practical illustration.

1. Does replacing 'period or periods amounting in all' with 'cumulatively' change how broken stays are counted?

The change

Section 6(1)(c) of the ITA, 1961 used the phrase 'period or periods amounting in all' to describe the day-count for both the current year and the four-year look-back. By construction, 'periods' in the plural and 'amounting in all' left no room for doubt: broken stays were to be aggregated. Courts never had to interpret this because the statute said it on its face. Section 6(2)(b) of the ITA replaces this with a single word, 'cumulatively', which appears twice in the provision but is not defined anywhere in Section 6. The word has no prior interpretation in Indian income tax law. The ITA, 1961 never used it in the context of residency.

The illustration

Priya is an NRI who visits India in three separate trips during the tax year: 25 days, 20 days, and 20 days, totalling 65 days. She has been in India for 370 days in the preceding four years. Under the ITA, 1961, the answer was straightforward. 'Periods amounting in all' covered her three trips in aggregate; she crossed the 60-day mark, and she was resident. No interpretation was needed. Under the ITA, the practical answer should be the same. Her 65 days, cumulatively counted, satisfy the threshold, and the legislative intent appears unchanged. The difficulty is that 'cumulatively' is a first-impression question under the ITA. If a contrary reading were advanced, arguing that cumulative requires a continuous period, there is no prior tax ruling to dismiss it.

The Analysis

The word 'cumulatively' does not appear in the ITA, 1961's residency provisions at all. It is new to the ITA. Elsewhere in Indian legislation, FEMA, the Companies Act, and SEBI regulations have all used 'cumulatively' to mean in aggregate rather than continuously, and courts have not required continuity when the word appears. If continuous stay were intended, the ITA could have said 'continuously' or ' at a stretch'. The drafting choice of 'cumulatively' supports an aggregation reading. Even so, this is a first-impression question under the ITA, and the absence of the explicit 'period or periods' language of the ITA, 1961 is a gap.

2. The ITA, 1961 anchored 'person of Indian origin' to Section 115C. The ITA uses the phrase without a definition. What does it mean?

The change

Explanation 1(b) to Section 6(1) of the ITA, 1961 defined the persons to whom the visiting citizen carve-out applied as 'a person of Indian origin within the meaning of Explanation to clause (e) of section 115C'. That Explanation defined PIO as an individual born in undivided India, or either of whose parents or grandparents was born in undivided India. Section 6(4) of the ITA simply uses 'a person of Indian origin' with no cross-reference and no definition anywhere in Section 6.

The illustration

Rohan holds a foreign passport. His parents were born in India. He visits India for 130 days in the tax year and earns Rs. 18 lakhs from Indian sources. Under the ITA, 1961, the Section 115C definition confirmed he was a PIO; his parents were born in India, squarely within the definition. The 60-day limb did not apply, and at 130 days, he was below the 182-day threshold and was Non-Resident. Under the ITA, whether Rohan is a PIO depends on where the ITA locates its equivalent of the Section 115C definition, if it does at all. If no equivalent definition exists or applies, 'person of Indian origin' is undefined, and the scope of the carve-out in Section 6(4) is uncertain.

The Analysis

The definitional anchor has been removed without a visible replacement. If the provision under the ITA, 2025 equivalent of Section 115C carries the same definition, the position is unchanged. If it does not, or if that definition differs, individuals whose PIO status was settled under the ITA, 1961 may need to re-establish it under the ITA. Those whose PIO status is marginal, grandparents born in undivided India, for instance, face the greatest uncertainty.

3. The prescribed rules for counting Indian days of crew on foreign-bound ships were settled under the ITA, 1961. Have they been carried forward under the ITA, 2025?

The change

Explanation 2 to Section 6(1) of the ITA, 1961 provided that for an Indian citizen who is a crew member of a foreign-bound ship leaving India, the period of stay in India in respect of such voyage shall be determined in the manner prescribed. Rule 126 was inserted into the Income tax Rules, 1962, by Notification No. 70/2015 with retrospective effect from 1 April 2015. It provided a precise mechanism: the period of stay in India shall not include the period beginning on the date entered in the Continuous Discharge Certificate (CDC) for joining the ship and ending on the date entered in the CDC for signing off. An eligible voyage was defined as a voyage in international traffic originating from an Indian port and destined for a foreign port or vice versa. The position under the ITA, 1961 was therefore settled and specific.

Section 6(6) of the ITA, 2025 elevates Explanation 2 to a standalone numbered sub-section and carries the prescribed-rules mechanism forward. The phrasing shifts slightly from "period or periods of stay in India" to "total number of days in India", a minor drafting difference with no apparent change in scope. Rule 8 of the Income-tax Rules, 2026 mirrors Rule 126 exactly: the excluded period runs from the CDC sign-on date to the CDC sign-off date for an eligible voyage. Rule 8 of the Income-tax Rules, 2026 mentions "period or periods of stay in India" the same as Rule 126 of the Income-tax Rules, 1962, not aligning with Section 6(6) of the 2025, which mentions "total number of days in India" a minor drafting difference with no apparent change in scope.

The Analysis

The substantive position remains unchanged, as Rule 8 of the Income-tax Rules, 2026 mirrors Rule 126 of the Income-tax Rules, 1962 by excluding the period between the CDC sign-on and sign-off dates for an eligible voyage. Although Section 6(6) of the ITA, 2025 refers to the "total number of days in India" while Rule 8 retains the expression "period or periods of stay in India," this appears to be a drafting difference without any substantive impact. Care should also be taken when referring to Section 6(6), as it dealt with the Not Ordinarily Resident (NOR) provisions under the ITA, 1961 but now governs the crew-member provision under the ITA, 2025.

Box-3.1: The Position In Short

The ITA, 2025 changes no substantive residency condition for individuals. Every threshold and day-count are preserved. The aforesaid mentioned points identify where word-level changes or regulatory silence mean the ITA, 2025 position cannot simply be read as a carry-forward of these, the PIO definition is the most significant gap. The Section 115C anchor has been removed without a visible replacement.

4. The deemed residency override has expanded from 'notwithstanding clause (1)' to 'irrespective of sub-sections (2) to (6)'. Does this change who it catches?

The change

Section 6(1A) of the Old Act opened with 'Notwithstanding anything contained in clause (1)', meaning the deemed residency rule overrode only the tests in Section 6(1). Section 6(7) of the ITA opens with 'Irrespective of the provisions of sub-sections (2) to (6)', a broader override that expressly covers the carve-outs in Sections 6(3), 6(4), 6(5), and 6(6) as well. Section 6(8) then separately states that Section 6(7) does not apply to a person already resident under sub-sections (2) to (6).

The illustration

Vikram is an Indian citizen who was outside India for the entire year. He earns ₹20 lakhs from Indian sources and has no tax liability abroad. He also satisfies the crew carve-out, as he left India as a member of the crew of an Indian ship. Under the Old Act, Section 6(1A) overrode clause (1), which included Explanation 1(a), so the deemed residency provision overrode the crew carve-out, and Vikram was deemed resident. This was the settled interpretation. Under the ITA, Section 6(7) expressly overrides sub-sections (2) to (6), which include Section 6(3), the crew carve-out. Reading Sections 6(7) and 6(8) together, if Vikram is not resident under sub-sections (2) to (6), the deemed residency provision still applies despite the carve-out. Same outcome, now written into the statute directly.

The Analysis

The practical outcome for most cases is unchanged, as deemed residency overrides the carve-outs under both Acts. What changed is that the ITA states this expressly on the face of the provision, removing the interpretive step that was required under the Old Act. The shift from 'notwithstanding' to 'irrespective of' is also worth recording. Courts have generally treated them as equivalent, but there is no binding authority under the ITA yet. The combination of a broader override and a new exclusion clause in Section 6(8) may generate fresh litigation on the precise boundary of who is caught.

Thus, Sections 6(3) to 6(6) provide carve-outs which should be verified separately to make the deemed residency provision applicable; The ITA, 2025 makes this a two-step analysis explicitly.

Chapter 4
Treaty and Foreign Tax Credit

DTAA framework, tie-breaker rules, Tax Residency Certificate, and FTC mechanics

Table-4.1: TOPICS COVERED IN THIS CHAPTER

Section 159	Agreements with foreign countries; DTAA override of domestic law
Section 159(2)	Agreements with specified associations
Section 159(4)	Taxpayer may choose whichever is more beneficial, the Act or the treaty
Section 159(7)	How an undefined treaty term gets its meaning
Section 159(8)	No treaty benefits without a Tax Residency Certificate
Section 160	Unilateral relief where no DTAA exists
Article 4(1) of DTAA	Treaty residence and its link to domestic law
Article 4(2) of DTAA	Tie-breaker tests for dual residents

Residential status under Section 6 of the ITA, 2025, determines the scope of an individual's liability to Indian tax. It does not, by itself, determine the final tax outcome where that individual is also treated as a resident by another country. That question is addressed by the applicable Double Taxation Avoidance Agreement (DTAA). The DTAA operates on the domestic determination, not in substitution of it: the Act provides the starting point, and the treaty either confirms or modifies the result.

SECTION A: The DTAA Framework and Domestic Law

Q16	**What is the relationship between a DTAA and the Income-tax Act, and which prevails where they conflict?**
A	Section 159(4) of the ITA, 2025 provides that where the Central Government has entered into a DTAA, the provisions of the Act apply to the extent they are more beneficial to the taxpayer. In other words, the DTAA and the Act sit alongside each other, and the taxpayer is entitled to whichever is the better result. This is not a blanket treaty override; it is a taxpayer-specific comparison on the facts of each case. Where the Act provides a lower rate or a wider exemption than the treaty, the Act applies. Where the treaty restricts the taxing right or provides a lower rate, the treaty applies. Section 159(2) of the ITA, 2025, extends the same treatment to agreements between specified associations in India and corresponding bodies in foreign countries, operating in the same manner as a DTAA. Section 160 of the ITA, 2025 covers the residual case: where no DTAA exists with the country in which the foreign income arises, the Act permits a unilateral credit equal to the lower of the Indian rate and the foreign rate on the doubly taxed income. The credit under Section 160 is not as broad as the relief available under a DTAA, but it ensures that in the absence of a treaty, the individual is not taxed twice on the full amount of the same income. Section 159(7) of the ITA, 2025 provides that where a term is defined in the DTAA, that definition governs. Where a term is used in the DTAA but not defined, the meaning under the Act applies, unless the context of the DTAA requires otherwise. This is directly relevant to the term 'liable to tax', which has a specific statutory meaning under Section 2(29A) inserted by the Finance Act 2021, and whose interaction with the DTAA definition has generated significant controversy, addressed in Section B below.

Q17	**What access does a NOR individual have to India's DTAAs, and can a NOR claim treaty protection in the same way as a fully ordinarily resident individual?**
A	A NOR individual is a resident under Section 6 of the Act. The question of treaty access, therefore, turns on whether the NOR is a 'resident' for the purposes of the applicable DTAA. Article 4(1) of most Indian DTAAs defines a resident by reference to the domestic law of the contracting state, so a person who is resident in India under the Act is generally also a resident of India under the DTAA. A separate question arises from the second sentence of Article 4(1), which is present in some DTAAs, and which excludes from treaty residence any person who is liable to tax in a state only in respect of income sourced in that state. A NOR is not in that position: the NOR is liable to tax on Indian source income and on income from a business controlled in India or a profession set up in India, regardless of where that income arises. A NOR is therefore not a source-only taxpayer and is not excluded by the second sentence. The NOR accordingly has access to Indian DTAAs on the same footing as an ROR individual. The practical consequence is that a NOR who is also treated as a resident in another jurisdiction under that jurisdiction's domestic law will need to go through the same tie-breaker analysis as any other dual resident.

SECTION B: Treaty Residence and Dual Residence

Q18	**How is treaty residence determined under Article 4(1), and what is the significance of the term 'liable to tax'?**
A	Article 4(1) of a DTAA defines a resident of a contracting state as a person who, under the laws of that state, is liable to tax by reason of their domicile, residence, place of management, or any other criterion of a similar nature. The definition is linked to the domestic tax law of each state, not to any independent treaty test. For India, a person who is resident under Section 6 is generally also a resident of India under Article 4(1) of the applicable DTAA. The term 'liable to tax' has been the subject of significant controversy

	in the context of jurisdictions that impose no tax on individuals, most prominently the UAE, before the introduction of its corporate tax regime. The issue is whether a person can be liable to tax in a jurisdiction that does not actually impose a tax. The Supreme Court in ***Union of India vs Azadi Bachao Andolan [2003] 263 ITR 706*** and ***the AAR in Mohsinally Alimohammed Rafik, In re [1995] 213 ITR 317*** established the distinction between 'liable to tax' and 'subject to tax', holding that a sufficient nexus between the taxpayer and the jurisdiction, combined with the jurisdiction's right to tax, satisfies the test even where no actual tax is levied. Section 2(29A), introduced by the Finance Act 2021 [Section 2(66) of the ITA, 2025], now defines 'liable to tax' in the Act as meaning that an income tax liability exists under the law of the relevant country, including where the person has been subsequently exempted from that liability. Explanation 4 to Section 90 provides that where a term is not defined in the DTAA, the Act's definition applies unless the context otherwise requires. Whether this domestic definition can be read into the treaty test remains an open question, and its resolution will depend on whether the courts hold that the DTAA context requires a different meaning. For the UAE and Kuwait, the treaty itself uses an objective days-of-stay test rather than a domestic law reference, so the 'liable to tax' controversy has limited relevance to those DTAAs. It remains live for other treaties where no tax on individuals exists, and the residence article refers back to domestic laws.

Q19	**When does the question of dual residence arise, and what triggers the need for a tie-breaker analysis?**
A	Dual residence arises when an individual is treated as a resident by two different countries under their respective domestic laws in the same tax year. For an Indian professional on an overseas assignment, this most commonly occurs in the year of departure from India, where days spent in India before departure may satisfy the Indian residency tests, and days spent in the new country after arrival may simultaneously satisfy that country's residency tests. It also arises for returning NRIs

	who have not yet lost residency status in the country they are leaving. Under Article 4(1), dual residence means the individual is a 'resident' of both contracting states for the purposes of the DTAA. Without a mechanism to resolve this, the distributive articles of the DTAA cannot be applied because both countries would claim residence country taxing rights over the same person. Article 4(2) provides the tie-breaker: a sequential set of tests that allocates treaty residence to one country, determining which state holds the residence-country right and which holds only the source-country right for that individual in that period.

SECTION C: The Tie-Breaker Tests under Article 4(2)

Article 4(2) resolves dual residence through a cascade of five tests applied in strict sequence. Each test is applied only if the preceding test fails to resolve the question. The tests are not weighted; the sequence is fixed. Reaching the next test is only possible where the current test yields no clear answer. Each test is examined below.

Q20	**What is the permanent home test, and what does 'available' mean in this context?**
A	The first tie-breaker test asks in which contracting state the individual has a permanent home available to them. If the individual has a permanent home in only one state, that state is the state of treaty residence and the cascade stops. The word 'available' is the operative one. The OECD Model Commentary makes clear that what matters is whether the individual has the right to use the accommodation at their discretion, not whether they own it. A home taken on a long-term lease, a property belonging to the individual's parents in which the individual has an established right to stay, and, in certain circumstances, even a hotel where accommodation is always reserved for the individual as a matter of right, can each constitute a permanent home. The availability must be for a continuing period; a hotel room booked for a short visit does not qualify. The converse also applies. An individual who owns a property in India

	but has let it out under a lease that prevents personal occupation does not have that property available as a permanent home for the duration of the lease. Ownership without availability is not sufficient, while availability without ownership is sufficient. The test is applied at the time the income in question arises, not at a single point in the year, because the tie-breaker determines which state holds the taxing right for a particular stream of income at a particular time. An individual may therefore be a treaty resident of one state for income earned in the first part of the year and a treaty resident of another for income earned in the second part, a principle addressed separately under split residency in Section D.

Q21	**How is the centre of vital interest test applied, and what happens when personal and economic interests point in different directions?**
A	Where the individual has a permanent home available in both contracting states, the tie-breaker moves to the second test: in which state are the individual's personal and economic relations closer. This is called the centre of vital interests. Personal interests include the location of the immediate family, where the individual's children are in school, where close social and community ties exist, and where the individual maintains a regular pattern of non-working life. Economic interests include the location of employment or primary business activity, where the principal assets are held, where the individual's bank accounts are maintained, and where the majority of investment income arises. The test is explicitly holistic. No single factor is determinative, and no hierarchy is prescribed between personal and economic indicators. Where family is in India, and employment is abroad, as is the case for many outbound Indian professionals in the first years of an assignment, the test is genuinely difficult to apply. The OECD Model Commentary acknowledges that the centre of vital interests may be impossible to determine where personal and economic connections diverge and pull in opposite directions. In that situation, the test does not yield a result, and the cascade moves to the habitual abode test. In practice, the centre of vital interests is the test that generates the

	most disputes, precisely because its outcome depends on a weighing of facts that reasonable professionals can assess differently. Thorough documentation of both personal and economic connections in each jurisdiction, maintained contemporaneously and not reconstructed after the event, is the practitioner's principal tool in managing this risk.

Q22	**What is the habitual abode test, and how is it distinguished from physical presence counting?**
A	Where the centre of vital interests cannot be determined, or where the individual has no permanent home in either state, the tie-breaker moves to the habitual abode test: in which state does the individual have a habitual abode. If the individual has a habitual abode in only one state, that state is the state of treaty residence. Habitual abode is not the same as majority presence. It refers to the jurisdiction where the individual customarily resides when present, the place that has the quality of a regular, settled base rather than a temporary or occasional stopping point. An individual who returns to a consistent address in Singapore every time they are in Asia, who has their personal possessions there, and who has organised their non-working life around that location has a habitual abode in Singapore, even if they spend more calendar days in India by reason of business travel. The OECD Commentary gives the example of a vacation home used only for holidays alongside a main residence used throughout the year. The vacation home jurisdiction does not become the habitual abode merely because visits to it are regular. Duration, frequency, and the character of the stay all feed into the assessment. A short-term furnished rental used during assignment rotations is less likely to constitute a habitual abode than a long-term residence in which the individual has established a settled pattern of living. Where the individual has a habitual abode in both states, or in neither, the test yields no result, and the cascade moves to the nationality test.

Q23	**How does the nationality test operate, and what is the position for OCI holders?**
A	The fourth tie-breaker test is the simplest: if the individual is a national of one contracting state and not the other, that state is the state of treaty residence. Nationality in this context means citizenship in the legal sense of the term. India does not permit dual citizenship. An Indian citizen who takes up citizenship of another country ceases to be an Indian citizen at that point. In practice, this means that for most Indian professionals on long-term assignments abroad who have not taken up foreign citizenship, the nationality test will resolve in India's favour: the individual is an Indian national and not a national of the other state. An Overseas Citizen of India (OCI) cardholder is not a citizen of India for the purposes of the nationality test. OCI status is a long-term visa arrangement that confers certain rights in India but does not confer nationality. This is a point frequently misunderstood in practice: OCI status does not preserve Indian nationality after Indian citizenship has been formally surrendered. Thus, OCI is classified as a foreign national under the Citizenship Act, and in such case, on applying the Nationality test, the OCI person is a resident of a foreign country of which he is a citizen as per the tax treaty.

Q24	**At what point in time must the tie-breaker tests be applied?**
A	Unlike the basic residency test, which is applied by reference to a full tax year, the tie-breaker tests are applied at the time the income in question is sought to be taxed. This is because the DTAA allocates taxing rights over specific income, and the facts on which the tie-breaker depends, principally the permanent home and habitual abode, can change during the year. An individual who departs India in October and, by March of the following year, has established a permanent home exclusively in the new country, and whose family has followed, may be a treaty resident of India for income earned before the move and a treaty resident of the new country for income earned after the move. The tie-breaker is applied at the time the income arises, and the result may differ for

	different streams of income earned at different points in the same tax year. This timing principle is the foundation of split residency under the DTAA and is addressed in Section D. It is distinct from the domestic law position, under which residential status is a whole-year determination with no partial-year carve-out.

Box-4.1: Illustration: Applying the Tie-Breaker Cascade

Facts

Arjun is an Indian citizen and a software architect employed by an Indian technology company. In September of the relevant tax year, he is seconded to the company's Singapore subsidiary on a two-year contract. He retains his flat in Pune, which he does not let out; it remains available for his use at any time. He takes a furnished apartment in Singapore on a two-year lease from October. His wife and two children remain in Pune until March of the following year, when they join him in Singapore. His salary is paid by the Singapore subsidiary from October onwards. He holds mutual fund investments and a fixed deposit in India. He visits India twice during the remainder of the tax year for a total of 28 days.

Determination of Residential Status

For the relevant tax year, Arjun has been present in India for approximately 195 days before the secondment and 28 days during it. He satisfies the 182-day test under Section 6(2)(a) and is accordingly resident in India under the Act. He is simultaneously a tax resident of Singapore under Singapore's domestic rules by virtue of his employment there. Dual residence is established, and the tie-breaker applies.

Test 1: Permanent home

Arjun has a permanent home available in India: his Pune flat, which he owns and has not leased out, is accessible to him at any time. He also has a permanent home available in Singapore: his two-year lease on the Singapore apartment gives him exclusive occupation rights for a continuing period. Both states satisfy the permanent home test. The first test does not resolve the question; the cascade moves to the second test.

Test 2: Centre of vital interests

As at the time the post-secondment income arises, Arjun's economic interests point to Singapore: his employment, his salary, and the majority of his active income are there. His personal interests at that point are divided: his family is still in Pune, his social connections are in India, but his daily working life is in Singapore. The division between personal and economic interests is real, and neither side clearly dominates. The centre of vital interests cannot be determined with confidence. The cascade moves to the third test.

Test 3: Habitual abode

Arjun's habitual abode at the time the Singapore salary arises is Singapore. His settled pattern of daily life, from October onwards, is based in Singapore. His visits to India are brief and in the nature of business trips and family visits, not a settled base of regular residence. His habitual abode is in Singapore and not in India for this period. The third test resolves the question.

Treaty residence outcome

For the period from October onwards in the relevant tax year, Arjun is a treaty resident of Singapore under the India-Singapore DTAA. India retains source-country taxing rights over his Indian-source income, including interest on his fixed deposit and distributions from his mutual funds, but Singapore holds the residence-country right over his employment income from the Singapore subsidiary. The salary earned after October is therefore not liable to tax in India under the DTAA, subject to Arjun furnishing a Tax Residency Certificate from the Singapore authorities.

Domestic law note

This treaty outcome does not change Arjun's domestic residential status. He remains a resident of India under Section 6 for the tax year. His return of income must be filed on that basis, and the treaty relief is claimed as a deduction from the Indian tax liability computed on the Global income. The fact that the DTAA allocates treaty residence to Singapore for the post-October period does not result in a partial-year Indian residency determination. In the Indian Tax return, Arjun has to report foreign assets as applicable for a Resident. There is no option to report the tie-breaker in the Indian income tax return. Therefore, Arjun will have to report global income, claim foreign tax credit, and report foreign assets in the

Indian tax return. Further, Arjun may require filing the tax return in Singapore and disclose income earned in Singapore as well as Indian income as per the domestic provisions of Singapore tax law.

SECTION D: Split Residency

Q25	**What is split residency under a DTAA, and how does it differ from the domestic law position?**
A	Split residency under a DTAA refers to the position whereby, applying the tie-breaker at the time each stream of income arises, an individual is treated as a treaty resident of one contracting state for part of the year and a treaty resident of the other contracting state for the remainder. The OECD Model Commentary explicitly recognises this outcome, and it has been applied by Indian tribunals, including the Delhi ITAT in Sameer Malhotra vs ACIT Circle 80(1), New Delhi, ITA No. 4040/Del/2019 (Delhi ITAT, 2023) and the Bangalore ITAT in DCIT vs Sanjeev Kumar Ranjan, ITA No. 1655/Bang/2017 (2019). The domestic law position is entirely different. Section 6 of the Act determines residential status for the tax year as a whole. There is no partial-year determination and no mechanism by which the scope of total income under Section 5 changes mid-year by reason of departure or arrival. An individual who is resident under Section 6 is resident for the full year, and their scope of total income is governed by that status throughout the year. The two positions coexist. Split residency under the DTAA is a treaty-level allocation of taxing rights, not a modification of the domestic determination. The individual remains a resident under the Act and must compute total income accordingly. The treaty relief is then applied on top of that computation to remove from the Indian charge the income attributable to the period of non-Indian treaty residence. The income must be reported; the tax on it is relieved.

SECTION E: Tax Residency Certificate

Q26	**What is a Tax Residency Certificate, and what does it establish?**
A	A Tax Residency Certificate (TRC) is a certificate issued by the tax authority of a tax jurisdiction confirming that the individual is a tax resident of that jurisdiction for the relevant year. Section 159(8) of the ITA, 2025 provides that a non-resident shall not be entitled to the benefits of a DTAA unless they furnish a TRC from the tax authority of the other contracting state.

	The TRC establishes the fact of residence in the other state. It does not, by itself, determine the outcome of the tie-breaker, nor does it override the substance of the individual's actual connections. An Assessing Officer is entitled to examine whether the individual genuinely satisfies the conditions for treaty residence beyond the fact of the TRC. CBDT Circular No. 789 of 2000 had taken the position in the Mauritius context that a TRC was conclusive, but the more widely applicable position is that the TRC is necessary but not always sufficient. The Bangalore ITAT in ***Binny Bansal vs DCIT, IT(IT)A No. 571/Bang/2023, [2026] 182 taxmann.com 226 (Bangalore ITAT)*** case is the leading judicial treatment of the TRC in the context of an individual. The tribunal confirmed that a TRC issued by the Singapore tax authority established treaty residence for the purposes of Section 159(8) but held that the TRC does not by itself determine the outcome of the DTAA tie-breaker analysis. A similar principle was affirmed by the Apex Court in the case of ***Authority for Advance Rulings (Income Tax) vs Tiger Global International II Holdings, 2026 INSC 60 (Supreme Court of India, 15 January 2026).*** It was held that TRC is not conclusive evidence of residency. On the facts, Binny Bansal’s centre of vital interests remained in India, and treaty residence was accordingly held to be in India notwithstanding the Singapore TRC. The TRC is therefore a strong evidentiary foundation, not a strict jurisdictional condition for treaty access.

Q27	**What are the limits of a TRC, and in what circumstances can the tax authority look behind it?**
A	A TRC establishes that the issuing authority has recognised the individual as a tax resident of that jurisdiction. It does not establish that the individual satisfies the treaty-specific conditions for residence under Article 4(1) of the relevant DTAA. Where the DTAA uses an objective days-of-stay criterion rather than a domestic law reference, a TRC issued under the general domestic rules of the foreign jurisdiction may not satisfy the treaty test.

	Anti-avoidance provisions, including the Principal Purpose Test introduced under the Multilateral Instrument and applicable to several of India's renegotiated DTAAs, provide a further basis on which treaty benefits may be denied even where a TRC is available. Where the principal purpose of an arrangement is to obtain a treaty benefit and granting that benefit would be contrary to the object and purpose of the DTAA, the benefit may be refused regardless of whether formal residency conditions are met. The UAE illustrates the practical tension. The Cabinet Decision of 2022 and Ministerial Decision of 2023 provide 90-day criteria for UAE tax residency, and the UAE tax authority issues TRCs accordingly. However, the India-UAE DTAA defines UAE treaty residence by reference to an objective 183-day presence criterion, not the domestic criteria. An individual who qualifies for UAE domestic tax residency under the 90-day rule but is in the UAE for less than 183 days does not satisfy the treaty criterion, and a TRC issued under the domestic rules may not establish treaty residence under the DTAA.

SECTION F: Foreign Tax Credit

Q28	**How is the foreign tax credit claimed under Indian law, and what is the governing framework?**
A	Foreign tax credit (FTC) is the mechanism by which double taxation is relieved, where India taxes income that has already been taxed in another country. Where a DTAA exists, the applicable article on elimination of double taxation specifies whether relief is provided by the exemption method or the credit method. India's DTAAs generally use the credit method: India taxes the full income but credits the foreign tax paid against the Indian liability. Rule 76 of the Income Tax Rules, 2026, sets out the computation and procedural requirements for FTC claims. The credit is available for foreign income that is offered to tax in India, either in the year in which the tax is deducted or paid in the foreign country or in the year in which the corresponding income is offered to tax in India, where those two years differ. The quantum of credit is the lower of the foreign tax paid on the income and the Indian tax payable on that income computed at the

	applicable Indian rate. The credit is computed separately for each source of income, not on an aggregate basis. This per-source restriction means that excess credit on one income stream cannot be set off against the Indian tax on another. Unutilised credit on a particular source cannot be carried forward to a subsequent year. The foreign tax credit is always available in the resident country of an Individual.

Q29	**What are Form 44 and Form 45, and what are the consequences of not filing them on time?**
A	Form 44 (Statement of income from a country or specified territory outside India and Foreign Tax Credit) is the prescribed form for claiming foreign tax credit under Rule 76. Only a resident assessee, having foreign income and intending to claim credit for foreign tax paid outside India on such foreign income, is required to file Form No. 44 in accordance with Rule 76 of the Income Tax Rules, 2026. This form shall also be furnished by a resident assessee under Rule 76(14) of the Income Tax Rules, 2026 in a case where the carry backward of loss of the current year or revision of return or similar statement, the case may be, of any year or any other reason results in refund of foreign tax for which credit has been claimed in any tax year or years. Form 44 shall be furnished within 12 months from the end of the relevant tax year in which the corresponding foreign income has been offered to tax in India and the return for such tax year has been furnished within the time specified under section 263(1) or 263(4) of the ITA, 2025. The form requires details of the foreign income, the foreign tax paid or deducted, the applicable DTAA article, and the computation of the credit claimed. It must be accompanied by a certificate or statement specifying the nature of the income and the tax deducted or paid, issued by the tax authority or the person responsible for withholding tax in the foreign country. The certificate or statement must be accompanied by an acknowledgement of online payment or a bank counterfoil or challan for payment of tax where the payment has been made by the taxpayer, and the proof of deduction where tax has been

	deducted. Form 44 shall be verified by an accountant in case of a company or in all other cases where the amount of foreign tax paid outside India for a tax year equals or exceeds ₹1 lakh. Form 45 (Intimation of settlement of dispute regarding foreign tax for which credit has not been claimed) is a newly introduced form to file intimation of settlement of dispute regarding foreign tax for which credit was not claimed, with a view to facilitate a structured and standardised format for filing such intimation. Only a resident assessee, having foreign income and intending to claim credit for foreign tax paid outside India on such foreign income which was not claimed in Form 44 already filed by the assessee for any particular tax year due to a dispute regarding such foreign tax, should file Form 45 to intimate the Income Tax Department regarding settlement of the dispute and claim of the foreign tax credit. Form 45 shall be filed within six months from the end of the month in which the dispute is finally settled. However, Form 44 should have already been filed for the relevant tax year before the filing of Form 45. Under the default tax regime, FTC is available in the same manner as under the old regime. The availability of the FTC is not affected by the regime election. However, the per-source credit limit under Rule 76 is computed with reference to the Indian tax rate applicable under whichever regime the individual has opted into, so the quantum of credit available may differ depending on the regime.

Q30	**How is the FTC computed when India taxes income under Section 160 in the absence of a DTAA?**
A	Section 160 of the ITA, 2025 provides unilateral relief for an individual who is resident in India and has paid tax on income arising in a country with which India has no DTAA. The relief is a deduction from Indian tax equal to the lower of the Indian rate and the foreign rate on the doubly taxed income. The Indian rate is the average rate of Indian tax applicable to the individual's total income. The foreign rate is the average rate at which tax has been paid in the foreign country. The relief under Section 160 is narrower than under a DTAA in two respects. First, it is available only to residents; a non-resident cannot

	claim unilateral relief. Second, the computation uses average rates rather than marginal rates, which, in most cases, results in a lower credit amount than the credit available under a DTAA. Where a DTAA exists, Section 160 does not apply; the treaty mechanism governs exclusively.

Q31	**Can you illustrate how the FTC computation works in practice, using a case in which a resident individual receives a share of the profits from a US entity?**
A	The following example illustrates the step-by-step FTC computation under Rule 76 for a resident individual who received a share of profit from a US entity in Calendar Year 2025, on which withholding tax was deducted in the United States. **Step A: Tax paid in the United States** Ordinary profit received from the US entity: US $9,142 Withholding tax deducted in the US: US $1,062 (effective rate: 11.62%) SBI TT Buying Rate as on 31 March 2026: ₹94.85 per USD **INR equivalent of US tax paid (A): ₹1,00,731** **Step B: Indian tax on the foreign income (average rate of tax method)** Net taxable income in India: ₹13,69,632 Total tax payable in India: ₹88,863 Average rate of Indian tax (i): 6.49% Ordinary profit in INR (ii): ₹8,67,119 **Indian tax on the foreign income [(i) x (ii)] (B): ₹56,259** **FTC available: ₹56,259 (lower of A and B)** The credit is capped at the Indian tax on the foreign income, not the actual foreign tax paid. In this case, the US withholding tax of ₹1,00,731 exceeds the Indian tax of ₹56,259 on the same income. The excess of ₹44,472 is not refundable and cannot be carried forward to a subsequent year. The individual files Form 44 with the return of income, supported by a certificate from the payer in the US confirming the tax deducted, and claims ₹56,259 as credit against the

	Indian tax liability. The conversion of foreign tax to Indian Rupees is done at the Telephonic Transfer Buying Rate at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted, in line with Rule 76(7)(b) read with the prescribed guidelines on currency conversion. The average rate of Indian tax is applied to the foreign income expressed in INR, not to the total income, so the computation isolates the tax attributable to that source alone.

Q32	**How will the foreign tax credit be available under the ITA, 1961 and ITA, 2025?**
A	**Table-4.2: Foreign Tax Credit: Rule 128 (Form 67) vs. Rule 76 (Form 44 and 45)**

Parameters	**Rule 128 of the Income Tax Rules, 1962**	**Rule 76 of the Income Tax Rules, 2026**
Governing Act	ITA, 1961	ITA, 2025
Forms Prescribed	Form 67	Form 44: It is a prescribed e-form for filing 'Statement of income from a country or specified territory outside India and Foreign Tax Credit' under Rule 76 of the Income Tax Rules, 2026. Form 45: It is a newly introduced form to file intimation of settlement of dispute regarding foreign tax for which credit was not claimed, with a view to facilitating a structured and standardised format for filing such intimation
Objective	Mechanism to claim foreign tax credit for	More structured and granular FTC reporting and

	resident taxpayers	verification framework
Due date	On or before end of relevant assessment year, subject to timely filing of ROI	Within prescribed period under Rule 76, generally linked to tax year and evidence timelines
Relaxation	Relaxed via CBDT notifications (post 2022)	Tighter procedural alignment with Act, less scope for ad-hoc relaxation
Scope and Reporting requirements	Aggregated reporting Limited break-up at: Country level and Source level Relied heavily on annexures and attachments	Source-wise and country-wise computation is mandatory Explicit linkage of: ➢ Foreign income ➢ Indian tax on such income ➢ FTC allowed (lower of two)
Declaration and Verification	Self-declaration and Verification	Self-declaration and Verification by CA
Disputed tax	Not allowed initially; allowed once dispute is settled and evidence furnished within 6 months	Same principle, but formalized reporting through Form 45
Evidence requirement	Attachment-based	Structured form - based verification

Q33	**Which taxpayers are required to disclose foreign assets in their income tax return in India?**
A	Foreign asset disclosure (Schedule FA) is mandatorily applicable to ROR taxpayers in India, who: • Hold or own foreign assets, or • Have a beneficial interest in assets located outside India, or

	• Have signing authority in any foreign account, or • Derive income from foreign sources It is pertinent to note that the disclosure is required even if the foreign asset does not generate income during the year. NR and NOR are not required to report foreign assets in the Schedule Foreign Assets of the income tax return.

Box-4.2: TAKEAWAY

A DTAA operates on the domestic determination under Section 6, not in substitution of it. Residential status under the Act is the starting point; the treaty modifies the result where it is more beneficial to the taxpayer.

Dual residence arises when two countries both treat the individual as a resident under their domestic laws. The tie-breaker under Article 4(2) resolves this through a fixed cascade: permanent home, centre of vital interests, habitual abode, nationality, and mutual agreement, applied in that order.

Permanent home means availability, not ownership. An owned property given on a long-term lease is not available. A rented property held under a long lease is available. The distinction is frequently litigated.

The centre of vital interests is the most contested test in practice. Where family is in India, and employment is abroad, personal and economic interests diverge, and the test may not yield a clear answer, requiring the cascade to move to the habitual abode.

The tie-breaker is applied at the time the income arises, not once for the whole year. The result may differ for different income streams earned at different points in the year, which is the basis for split residency under the DTAA.

Split residency under the DTAA does not change the domestic residency determination. The individual remains resident under the Act for the full year; treaty relief reduces the Indian tax on the income attributable to the period of non-Indian treaty residence.

A Tax Residency Certificate is necessary to claim treaty benefits, but it is not always sufficient. The Assessing Officer may examine the substance of the individual's connections. Anti-avoidance provisions, including the Principal Purpose Test, provide a further basis on which treaty benefits may be denied.

Foreign tax credit under Rule 76 is computed per source, not in aggregate. Excess credit on one source cannot offset Indian tax on another, and unused credit cannot be carried forward. Form 44 must be filed by the return due date.

Chapter 5
Global Mobility

Secondment, deployment, and expatriates

Note on scope. Residency on departure and return, the Section 6(3) employment carve-out, the NOR window, the rolling four-year trap, and Section 9(3) salary allocation are covered in Chapters 2 and 4. This Chapter covers questions specific to secondment and deployment: economic employer, PE risk, shadow payroll, and totalisation.

Table-5.1: TOPICS COVERED IN THIS CHAPTER

Economic employer doctrine	When the Indian entity is the real employer, and what follows
Secondment agreement structure	Three-party arrangement, cost recharge, and transfer pricing
Fixed-place PE	Working from India for a foreign employer
Dependent agent PE	Authority to conclude contracts and how risk is managed
Service PE	Longer secondments and the substance-over-form test
Shadow payroll	When required and when optional
Totalisation agreements	Countries covered: gap for the UK and the US

Table-5.2: Scenario Reference Table

Arrangement	Residential status	Employer consequence	Individual compliance	Key risk
Outbound Indian, employed by	Non-resident in subsequent	Foreign employer has a Section 392	File Indian return reporting	Four-year rolling total under 60/365-day test.

a foreign entity, visits India for less than 60 days.	years if India days stay below the threshold. See Chapter 2.	withholding obligation on India-period salary under Section 9(3).	India-period salary. Claim DTAA relief if applicable.	See Chapter 2.
An outbound Indian, employed by a foreign entity, works in India for over 182 days in a year.	Likely resident for that year. NOR conditions under Section 6(13) then apply. See Chapters 2 and 4.	The economic employer test applies. The Indian entity directing the work is the deductor regardless of which entity signs the contract.	File Indian return. Scope depends on ROR or NOR status.	Economic employer determination may be disputed. Contemporaneous records of who directs and controls the work are critical.
Formal secondment: An Indian entity seconds an individual to a foreign entity	Non-resident over time. 182-day rule needs to be verified as per Section 6(2)(a). Section 6(3) applies in the year of departure. See Chapter 2.	Indian entity runs payroll until the secondment takes effect. Post-secondment cost recharge to a foreign entity requires transfer pricing documentation. See Chapter 6.	File the Indian return for the departure year. Subsequently, file only if Indian-source income arises.	Salary cost recharge must be at arm's length. Undocumented recharge is a transfer pricing exposure.
Formal secondment: a foreign	Resident. NOR conditions	An Indian entity is likely an economic	File Indian return. World income is	EPF obligation arises where an Indian entity is

entity seconds an individual to an Indian entity	apply initially if non-resident for nine of the preceding ten years.	employer. Withholding and EPF obligations arise on an Indian salary. Shadow payroll may be required if a foreign entity pays directly.	subject to the NOR carve-out. Claim the FTC for home-country tax. See Chapter 4.	the economic employer. The totalisation position must be checked for each assignment country.
An individual abroad providing services to an Indian entity as a contractor or through a personal services company	Non-resident if India days stay below the threshold.	An Indian entity must deduct tax at source under Section 195. The rate depends on the applicable DTAA and TRC.	File an Indian return where gross receipts exceed the basic exemption. DTAA relief reduces the effective rate.	If a personal services company and an Indian entity are under common control, transfer pricing applies. See Chapter 6.

Table-5.3: Permanent Establishment: Three Routes

PERMANENT ESTABLISHMENT: THREE ROUTES	
Fixed-place PE	An individual works from India for a foreign employer over a non-transient period from a location at the employer's disposal. Duration and regularity are the primary facts. Most DTAAs set a 12-month threshold, but this is a safe harbour, not an exemption.
Dependent agent PE	An individual habitually concludes contracts in India on behalf of the foreign employer. Mitigation: contracts are finalised and signed outside India; the individual attends but does not sign.
Service PE	Employees of the foreign entity furnish services in India for

	more than 90 or 183 days (depending on the DTAA) in connection with the same or related project. Catches longer deployments that may not satisfy the fixed-place test. Generally, there is no time limit for an associated enterprise / related parties in DTAAs.

Box-5.1: Scenario 1

An Indian professional has been formally seconded from her Indian employer to a group entity in Germany for two years. Her salary is paid by the German entity. She is present in India for fewer than 60 days in each secondment year. What are her Indian tax obligations during the secondment?
In the year of departure, Section 6(3) of the ITA, 2025 removes the 60/365-day test and leaves only the 182-day test as the applicable threshold. At fewer than 60 days of presence, the individual is a non-resident in that year. In subsequent secondment years, the same Section 6(3) carve-out continues to apply, provided the individual continues to be an Indian citizen leaving India for the purpose of employment outside India, and the number of days stayed in India is below 182 days. The individual files an Indian return for the departure year, reporting any Indian source income earned before departure. In the secondment years, an Indian return is required only if Indian source income (such as interest on Indian bank deposits or rental income from Indian property) exceeds the basic exemption limit. The salary paid by the German entity is foreign income and falls outside the Indian charge for a non-resident under Section 5(2). There is no shadow payroll or withholding obligation on the Indian employer after the secondment takes effect, provided the cost of the secondee is cross charged to the German entity at arm's length. Where a cross charge occurs, the same constitutes an international transaction and should be supported by transfer pricing documentation as described in Chapter 6 for the Indian employer.

Box-5.2: Scenario 2

A foreign national is seconded to an Indian entity for 18 months. Her salary continues to be paid by the foreign parent, which then raises a monthly recharge invoice to the Indian entity. Who holds the withholding obligation on the salary, and what are the consequences if the Indian entity fails to deduct?

Where the Indian entity directs and controls the work of the secondee, it is the economic employer regardless of who signs the employment contract or who physically makes the salary payment. The withholding obligation under Section 392 follows the economic employer. An 18-month assignment where the Indian entity controls day-to-day work, sets deliverables, and provides the working infrastructure almost invariably satisfies the economic employer test. The Indian entity is therefore the tax deductor. The fact that the foreign parent pays the salary and recharges the cost does not transfer the withholding obligation back to the foreign entity. Where the Indian entity fails to deduct, it is treated as an assessee in default under Section 398. Interest under Section 398(3) accrues from the date on which the tax should have been deducted to the date of actual payment, and a penalty equivalent to the amount of tax not deducted may be levied under Section 448. The secondee also remains liable to pay the tax, with interest, and should also pay advance tax instalments as per the due dates if the obligation is not met by the Indian employer to deduct tax at source. The practical solution is a shadow payroll operated by the Indian entity, which runs the withholding computation on the full salary (including the portion paid directly by the foreign parent) and deposits the resulting tax with the Indian treasury, generating Form 130 for the individual.

The above arrangement may also constitute a Permanent Establishment (PE) of the foreign parent entity in India. Additionally, any recharge of salary costs by the Indian entity to the foreign parent may be subject to tax in the hands of the foreign entity, on the basis that the secondment arrangement could be characterised as the provision of fees for technical services (FTS), subject to the nature of services and applicability of the FTS article under the respective DTAA.

Box-5.3: Scenario 3

A senior employee of an Indian company travels to the United Kingdom four times a year to meet clients and negotiate commercial terms on behalf of his employer. He does not sign contracts in the UK, and all final approvals happen in India. Is there a risk that his visits create a permanent establishment for the Indian company in the UK?

A senior employee of an Indian company who travels to the United Kingdom four times a year to meet clients and negotiate commercial terms does not automatically create a Permanent Establishment (PE) for the Indian company. Under the fixed-place PE test, short visits without a dedicated office or facility at the employee's disposal do not amount to a fixed place of business. Meetings held at client premises or serviced offices not controlled by the Indian company fall outside this threshold.

The dependent agent PE test requires closer consideration. The India–UK DTAA, based on the OECD Model Convention, provides that a PE may arise if an individual habitually exercises authority to conclude contracts in the UK on behalf of the Indian company. While four visits a year may suggest regularity, the decisive factor is whether the employee has authority to bind the company. In this case, contracts are not signed in the UK, and final approvals occur in India. If contemporaneous records such as board approvals, email trails, and the absence of signing authority demonstrate that decisions are taken in India, the dependent agent test is not satisfied.

To strengthen the position, the employee should not hold a power of attorney or any written authority to conclude contracts in the UK, and internal documentation should clearly evidence that commercial decisions are taken in India. Although the risk of a dependent agent PE cannot be eliminated entirely for a senior negotiator with frequent visits, the absence of signing authority and robust documentation of India based approvals provide a defensible position under the DTAA.

Box-4.3: TAKEAWAY

The economic employer, not the contractual employer, determines who holds the withholding obligation in India. Where the Indian entity directs the work, it is the deductor.

Cross-charge costs between home and host entities constitutes an international transaction and is subject to transfer pricing documentation. See Chapter 6.

PE risk is most likely where the individual habitually concludes contracts in India for the foreign employer. Controlling signing authority is the primary mitigation for short visits.

Shadow payroll is operationally necessary for material India period salary where the foreign employer has a withholding obligation but does not pay through an Indian payroll.

India has no totalisation agreement with the UK or the US. Dual social security exposure on assignments to those countries must be assessed before the secondment begins.

Chapter 6
Transfer Pricing

Overview, arm's length principle, documentation, safe harbour, and MAP

Table-6.1: TOPICS COVERED IN THIS CHAPTER

Sections 161 to 177	The transfer pricing regime: scope and applicability
Section 166	Arm's length price: methods and computation
Section 171, 511 / Rule 84,123 & 124	Documentation: Local File, Master File, and CbCR
Section 167 / Rules 86-93	Safe harbour rules for outbound service providers
Section 171	Accountant's report: Form 48
Sections 168, 169	Advance pricing agreements and MAP
Article 25 of DTAA	MAP

Transfer pricing governs transactions between related parties across borders and certain transactions between related parties within the same jurisdiction. For practitioners advising NRIs and outbound Indian professionals, the most common encounter with this regime is not in the context of large multinational groups but in narrower, more personal situations: an individual who contracts through a foreign services entity that transacts with a related Indian company, a family-owned business that has both Indian and foreign entities, or a returning professional who continues to hold a consulting or advisory role with a foreign employer while resident in India.

SECTION A: Scope of the Transfer Pricing Regime

Q34	**When do the transfer pricing provisions apply, and what transactions are covered?**
A	The transfer pricing provisions in Sections 161 to 177 of the ITA,

	2025, apply to any income arising from an international transaction between associated enterprises. An international transaction is broadly defined as a transaction between two or more associated enterprises, at least one of which is a non-resident, in the nature of purchase, sale, or lease of tangible or intangible property, provision of services, lending or borrowing of money, or any other transaction having a bearing on the profits, income, losses, or assets of the enterprises. As per Section 162 of the Act, two enterprises are associated enterprises if: (a) one participates directly or indirectly in the management, control, or capital of the other, or if the same persons participate in the management, control, or capital of both; (b) at any time during the tax year, one enterprise owns 26% or more stake in the other enterprise (direct or indirect); (c) at any time during the tax year, a common enterprise owns 26% or more stake in both enterprises (direct or indirect); (d) significant lending, borrowing or corporate guarantee transactions above specified thresholds exist between them; (e) one enterprise has the right to appoint majority directors on the board of the other; (f) one enterprise makes 90% or more of its purchases from the other enterprise and such other enterprise influences the price and other conditions relating to supply; (g) sale of manufactured goods to the other enterprise where such other enterprise influences the price and other conditions relating to sales; (h) common control over the enterprises by an individual and/or his relative; or (i) 10% or more interest in a Firm, AOP or BOI, etc. For an NRI with both a foreign personal services company and an interest in an Indian entity, or a returning professional who continues to provide consulting services to her former foreign employer through an Indian entity, the connection between the two entities may well satisfy the associated enterprise test. The regime also covers deemed international transactions, where the transactions with third parties are substantially influenced by the foreign associated enterprise, or if there is a prior agreement between such third parties and the foreign associated enterprise. This provision catches group-level pricing arrangements that flow down to the Indian or foreign entity without independent negotiation.

Q35	What is the arm's length standard, and how is it applied?
A	Section 161 of the Act requires that the price charged in an international transaction between associated enterprises must be the arm's length price: the price that would have been charged in a comparable transaction between unrelated/third parties under similar conditions. The Income Tax Rules, 2026 ('the Rules') prescribe six methods for computing the arm's length price: the comparable uncontrolled price method (CUP), the resale price method (RPM), the cost plus method (CPM), the profit split method (PSM), the transactional net margin method (TNMM), and the other specified method for transactions to which none of the other five methods can be reasonably applied. The most appropriate method is selected based on the nature of the transaction and the availability of comparable data. For personal service transactions, including consulting fees paid by a foreign company to an Indian entity operated by a returning professional, the cost-plus method or the transactional net margin method is frequently used. The arm's length price is computed using the following range concept: (a) The range concept can be applied for determining the arm's length price under each of the transfer pricing methods, namely CUP, RPM, CPM or TNMM. The range concept requires the selection of at least 6 comparable uncontrolled transactions or companies. Further, the Rules provide that multiple-year data can be used for the purposes of determining the arm's length range if the MAM selected for the benchmarking analysis is either RPM, CPM or TNMM. It entails the use of data for the current year under consideration and data pertaining to 2 preceding financial years. If current year data is not available, data pertaining to the 2 preceding financial years may be used for the purposes of determining the margins and consequential arm's length range. The 35th and 65th percentile of the data set is considered to determine an arm's length range. If the transfer price of the international transaction falls within the range, then the transfer price is considered as arm's length, and no adjustments are required. (b) In cases where the range concept does not apply, the arithmetic mean concept shall apply along with the benefit of a tolerance range, being 1% for wholesale traders and 3% for all other taxpayers.

SECTION B: Documentation Requirements

Q36	**What documentation must a taxpayer maintain, and when does the accountant's report requirement apply?**
A	As per Section 171 of the Act, the taxpayer must annually obtain and file a Chartered Accountant's Report in Form No. 48 on or before the due date, i.e., at least one month prior to the due date of furnishing the return of income as per section 263(1)(c), (generally being on October 31 of the following tax year or as extended). This report certifies that the particulars of the international transactions are correctly stated and that the arm's length price has been computed in the prescribed manner. Further, Section 171 of the Act and Rule 84 of the Rules require that any person who enters into an international transaction maintain contemporaneous documentation to substantiate that the transfer price was at arm's length. Accordingly, for international transactions exceeding Rs. 1 crore in aggregate value in a year, the Transfer Pricing Documentation (local file) must be in place before the due date of filing the annual TP Certificate in Form No. 48 (i.e., October 31) and must include information about the associated enterprise, the nature of the international transaction, the method selected and the reasons for that selection, the comparable data used, and the computation of the arm's length range/price. A penalty of two per cent of the value of each international transaction under section 442 of the Act applies for failure to maintain the prescribed documentation, and a separate penalty of ₹1,00,000 applies under section 447 of the ITA, 2025 for failure to furnish Form No. 48 by the specified due date.

Q37	**When do the Master File and Country-by-Country Report requirements apply?**
A	The three-tier documentation framework introduced in 2016 requires, in addition to the transaction-level Local File described above, a Master File and a Country-by-Country Report (CbCR) for MNCs that cross specified thresholds. The Master File, prescribed under Section 171 of the Act, read with Rule 123 of the Rules, must be maintained by a constituent entity of

	an international group whose consolidated group revenue in the accounting year exceeds ₹500 crore and the value of international transactions of Indian Associated Enterprise (AE) with foreign AE(s) exceeds ₹50 Crores during the relevant accounting year (or ₹10 Crores in case of transactions with respect to intangible property). The Master File sets out the group's organisational structure, a description of its business, its intangibles, its financial activities, and its financial and tax positions. The CbCR, prescribed under Section 511 read with Rule 124, is required for MNCs whose consolidated group revenue exceeded ₹6,400 crores in the immediately preceding accounting year. The CbCR maps each entity in the group against its jurisdiction and reports revenue, profit before tax, income tax paid and accrued, and employee headcount by country. For NRIs and returning professionals who operate through personal holding structures or small family-owned cross-border groups, a family group with a combined revenue of less than ₹6,400 crores will not be required to file a CbCR. The Master File threshold, i.e., the group's consolidated revenue, at ₹500 crore is lower and may be reached by medium-sized family groups. Tax Professionals advising such groups should confirm the revenue position against these thresholds at the outset of any engagement.

SECTION C: Safe Harbour Rules

Q38	**What are the safe harbour rules, and how do they apply to an Indian entity providing services to a foreign parent?**
A	The safe harbour rules, set out in Section 167, read with Rules 86 to 93, provide that if the price charged for a specified category of international transaction is in line with the prescribed safe harbour rates, the price is accepted as arm's length without further inquiry by the Assessing Officer. This reduces the risk of transfer pricing litigation for transactions that fall within the safe harbour. As per the recent amendments, with respect to provision of IT Services comprising software development, IT-enabled services, KPO services and contract R&D services for software development provided by an Indian entity to an associated foreign enterprise, the

	prescribed safe harbour operating profit margin (on operating cost) is reduced from 17% to 15.5% of the total costs (including allocated costs), with an increase in the threshold of transaction value for safe harbour applicability from ₹300 Crores to ₹2,000 Crores. Further, a new category of data centre services has been included in the safe harbour rules effective from Tax Year 2026-27, for which the prescribed safe harbour operating profit margin (on operating cost) is 15%. Subject to conditions, the safe harbour rates are also available for other specified transactions such as provision of contract R&D services relating to generic pharmaceutical drugs, manufacture and export of core/ non-core auto components, intra-group loans, corporate guarantees, etc. The safe harbour is an elective process which is available at the option of the taxpayer. A taxpayer who opts into it will be required to file Form No. 49 and is bound by the safe harbour pricing for that year, as well as the next 4 years in the case of IT services. If the reported margin falls below the prescribed minimum, the safe harbour is not available, and the transaction is subject to the standard arm’s length analysis. For NRIs who have established Indian entities to provide consulting or technology services to their foreign counterparts, the safe harbour framework provides a straightforward compliance path: if the margin is at or above the threshold, pricing risk is effectively eliminated.

Box-6.1: The Safe Harbour

Advisory: The safe harbour is most effective where the Indian entity’s cost base is clearly defined, and the services are sufficiently routine. For unique or specialised services, or where the Indian entity generates significant value through intangibles, the safe harbour rules may not be applicable. Accepting a minimum margin below what an independent party would charge can itself create a risk if the pricing is later scrutinised under general anti-avoidance principles.

SECTION D: Advance Pricing Agreements and MAP

Q39	**What is an advance pricing agreement and a MAP, and when should one be considered?**
A	An advance pricing agreement (APA) is a binding agreement between a taxpayer and the income tax authority, determining the arm's length price, or the method for determining it, for international transactions over a fixed future period of up to five years (with a rollback facility of the previous 4 financial years subject to specified conditions). Section 168 of the Act governs APAs in India. They are unilateral, where only the Indian authority is a party, or bilateral or multilateral, where the tax authorities of both countries agree, significantly reducing the risk of double taxation in the covered jurisdictions. APAs are appropriate where the transactions are recurring, material or difficult to benchmark due to the unique nature of the services or the scarcity of comparable data. For a returning professional who has set up an Indian entity providing highly specialised advisory services to her former foreign employer, and where the pricing is likely to be a recurring point of scrutiny, a bilateral APA is the most certain resolution. The APA process is time-consuming and typically takes two to four years to conclude from application to agreement. The rollback provision allows the agreed pricing to apply to up to four years preceding the APA period, providing certainty for open years as well. As per Rule 109(13) of the Rules, basis the recent amendment in February 2026, a binding time limit of 2 years is provided to conclude a unilateral APA w.r.t IT Services. However, such time limit is subject to extension by 6 months at the request of the Assessee. MAP, or the Mutual Agreement Procedure, is the treaty-based mechanism for resolving disputes where the tax authorities of two countries have taken inconsistent positions on the pricing of the same transaction. Article 25 of most of India's DTAAs provides for MAP. Where an Indian transfer pricing adjustment results in double taxation that has not been relieved by the FTC mechanism in the other country, MAP is

	the route to seek relief from the competent authority of the other state. MAP outcomes are binding on the tax authorities but are subject to the taxpayer's acceptance.

Box-6.2: TAKEAWAY

The transfer pricing regime applies to any international transaction between associated enterprises where at least one party is non-resident. For NRIs and returning professionals with cross-border service arrangements, the key questions are whether the associated enterprise test is met and whether the pricing of the international transactions is at arm's length.

The arm's length price is determined using one of six prescribed methods, selected based on the nature of the transaction and the availability of comparable data. As part of annual compliance, filing of Form No. 48 is mandatory, and transfer pricing documentation must be maintained where the aggregate international transaction value exceeds Rs. 1 crore. Documentation must be contemporaneous and in place before the due date of filing Form No. 48 (i.e., October 31 of the following tax year).

The safe harbour rules provide a compliance simplification for specified service categories: if the operating profit margin meets the prescribed minimum, the pricing is accepted without further inquiry.

The APA mechanism provides advance certainty for recurring transactions. For most NRI and personal-services situations, the transfer pricing exposure is manageable with proper documentation and, where appropriate, a safe harbour election. The complexity of the regime scales with the size and diversity of the cross-border transactions involved.

Chapter 7
Taxability

Scope of total income; taxability of Indian and foreign income by residential status

While Section 6 of the ITA, 2025 establishes the categories of individual residential status, it does not by itself determine what income is chargeable to tax. That question is answered by **Section 5**, which defines the scope of total income, and **Section 9**, which deems certain categories of income to accrue or arise in India regardless of where they are actually received. The two provisions operate together: Section 5 draws the outer boundary of the charge by reference to residential status, and Section 9 fills in what falls within that boundary for non-residents and NOR individuals who would not otherwise have Indian source income.

This Chapter works through both provisions, income head by income head, and then addresses the situations that arise in practice when residential status changes during an engagement.

SECTION A: Scope of Total Income by Residential Status

Q40	**What does Section 5 provide, and how does it operate differently for each category of residential status?**
A	Section 5 sets the scope of total income for an individual and draws a materially different boundary depending on whether the individual is a Resident and Ordinarily Resident (ROR), a Resident but Not Ordinarily Resident (NOR), or a Non-Resident (NR). For a ROR individual, Section 5(1) brings into total income all income, regardless of where in the world it originates, covering income received or deemed to be received in India, income that accrues or arises or is deemed to accrue or arise in India, and income that accrues or arises outside India. There is no carve-out for foreign income, no minimum foreign presence requirement, and no earnings threshold below which foreign income is excluded. Once an individual is ROR for a tax year, every stream of income that year, wherever it

	arises, is within the scope of the Indian charge. For a NOR individual, Section 5(1)(c) limits the charge on foreign income to income arising from a business controlled in India or a profession set up in India. Salary from a foreign employer for services rendered entirely abroad, interest on a deposit held with a bank outside India, rental income from a property located overseas, and capital gains on the sale of foreign assets are all outside the charge for an NOR. The category provides a significant transitional benefit for individuals returning to India after an extended period as non-residents, and its availability depends on satisfying one of the conditions in Section 6(13). For a NR individual, Section 5(2) limits total income to what is received or deemed received in India, and what accrues, arises, or is deemed to accrue or arise in India. Foreign income in all its forms has no place in the computation.

Q41	**What is the role of Sections 5(3) and 5(4)?**
A	Section 5(3) provides that income accruing outside India is not treated as received in India merely because a balance sheet showing that income is prepared in India. It prevents a mechanical reading of Indian accounting records from being used to extend the charge beyond what the residency-based scope permits. Section 5(4) adds a double-taxation safeguard: the same income cannot enter the computation twice. If income is brought to charge on an accrual basis in one year, it cannot be brought to charge again when it is received in a subsequent year. This protection applies equally across all three residential categories.

SECTION B: Section 9 - Income Deemed to Accrue or Arise in India

Q42	**What categories of income does Section 9 deem to accrue or arise in India, and what is the practical significance for individuals?**
A	Section 9 creates a category of income that is treated as arising in India for tax purposes, regardless of where the contract is signed,

	where the payment is made, or where the service provider is physically located. For individuals, the most frequently encountered provisions are mentioned below. Under Section 9(3), salary for services rendered in India is deemed to accrue or arise in India. This applies whether the individual is on the payroll of an Indian entity or a foreign entity, and whether the salary is paid in India or abroad. A non-resident working in India for part of the year is taxable in India on the portion of salary that corresponds to the period of his services rendered in India. The allocation is ordinarily made on a working-day ratio, though the methodology may be adjusted where the employment contract specifies a different attribution. Salary for a leave or rest period is also deemed to arise in India where that period is both preceded and succeeded by a period of service in India and forms part of the service contract. A leave period between two Indian postings attracts Indian tax even if the individual spends that leave entirely outside India.

Q43	**What is the practical consequence of Section 9 for advising non-resident Individuals with Indian income streams?**
A	Section 9 creates a minimum taxable presence for non-residents with Indian source income. A non-resident individual who provides services in India, receives salary from an Indian employer, licenses technology to an Indian company, or earns interest from an Indian borrower has taxable income in India regardless of where they are physically located when the payment is received. The deemed accrual rule removes the opportunity to structure a payment as arising outside India through the mechanism of paying it abroad. The Section 9 analysis precedes the residential status determination. An individual who will never be resident in India may still have substantial taxable income here by reason of services rendered in India or payments received from Indian counterparties.

SECTION C: Taxability by Income Head

Income under the Act is not computed as an aggregate. It is classified into five heads, and the rules for determining what is taxable are specific to each head. For individuals with income from both Indian and foreign sources, the scope question and the computation question must be answered head-to-head.

Q44	How is salary taxed across the three residential categories?
A	Salary is the head under which all employment income is taxed. The definition is wide and inclusive: it covers wages, annuity, pension, fees, commission, perquisites, profits in lieu of salary, advance salary, gratuity, leave salary, and any payment arising out of the employer-employee relationship, whether in cash or in kind, from a current or past employer, paid immediately or on a deferred basis. For an ROR individual, the entire salary income for the year from all employers and all geographies enters the computation. For a NOR, salary paid for services rendered in India is included; salary paid for services rendered entirely outside India and received outside India is not. For a non-resident, taxability is governed by Section 9: salary for services rendered in India is deemed to accrue or arise in India and is fully taxable; salary for services rendered outside India is not within the charge unless it is received in India, in which case it is taxable on the receipt basis under Section 5(2). The allocation of salary between Indian and foreign periods is a factual exercise, ordinarily done on a working-day ratio. Where the employment contract pays different rates for the Indian and foreign periods, no allocation is required, and each rate applies directly to the corresponding period. Where an individual receives both Indian period and foreign period compensation under the same contract, a precise day-ratio allocation and contemporaneous payroll records are essential. Perquisites, including employer-provided accommodation, car benefits, interest-free loans, and stock options, are valued under the applicable rules and taxed as part of salary. For inbound employees, this can materially increase the taxable salary above the cash component of the package.

Q45	**How is house property income treated for Indian and foreign property?**
A	House property income is computed on the basis of the property's potential to generate income, not the actual rent received, except where actual rent exceeds potential income. For property located in India, all three categories of individuals are taxable, since the source is Indian. For property located outside India, only an ROR individual is taxable; the income is foreign source and outside the charge for a NOR or Non-Resident. A self-occupied property generates no taxable income but permits a deduction for interest on a home loan up to the limits prescribed in the Act. This deduction is available to resident individuals and may be relevant for returning NRIs who retain an Indian property.

Q46	**What are the capital gains rules for Indian and foreign assets, and what rates apply?**
A	Capital gains are computed on the transfer of a capital asset and are classified as short-term or long-term depending on the holding period. Listed equity shares and equity-oriented mutual fund units are long-term if held for more than twelve months; almost all other assets require a holding period of more than twenty-four months. For capital gains on assets situated in India, all three residential categories are taxable; the source is Indian, and the charge applies regardless of where the individual is resident. For capital gains on assets situated outside India, only an ROR individual is taxable. A NOR or non-resident who sells foreign assets realises income entirely outside the scope of Indian tax. With effect from 23 July 2024, short-term capital gains on listed equity shares and equity-oriented units on which securities transaction tax is paid are taxed at twenty per cent. Long-term capital gains are taxed at twelve and a half per cent without indexation, except for immovable property transferred by a resident individual or HUF that was acquired before 23 July 2024, where the individual may apply indexation and be taxed at twenty per cent and obtain a rebate of excess tax applicable

	otherwise without indexation. For non-resident sellers of Indian assets, special withholding obligations apply to the buyer. The non-resident must typically obtain a lower deduction certificate or file a return to claim a refund if the actual liability is lower than the amount withheld.

Q47	**How is business and profession income charged, and what is the PE consideration?**
A	Business and profession income is taxable in India where the business is carried on in India or the profession is exercised in India. For an ROR, income from any business or profession anywhere in the world is within the charge. For a NOR, the charge extends to income from a business controlled in India or a profession set up in India, even if some or all that income accrues abroad. For a non-resident, business income is within the charge only to the extent it is received in India or accrues or arises in India, including under the deemed-accrual provision where the activity gives rise to a permanent establishment. The presence of an individual in India with authority to conclude contracts on behalf of a foreign entity may create a permanent establishment exposure for that entity, bringing the profits attributable to the PE within the Indian charge. This is distinct from the individual's own income tax liability and is addressed in Chapter 5 in the context of global mobility.

Q48	**How is income from other sources treated, including interest and dividends?**
A	Income from other sources is the residual head and includes interest, dividends, winnings, gifts exceeding the prescribed threshold, and any income not falling under the four specific heads. Interest on deposits held with Indian banks or financial institutions is Indian source income taxable across all three categories, typically subject to withholding at source. Interest on deposits held outside India is foreign source income taxable only for an ROR.

	Dividends declared by Indian companies have been taxable in the hands of the shareholder since 2020. For a non-resident shareholder, the dividend is Indian source income within the charge. The applicable rate under a DTAA is usually lower than the domestic rate, and the non-resident must furnish a Tax Residency Certificate to invoke the treaty rate.

SECTION D: Split-Year Taxability

Q49	**Does Indian domestic law recognise split-year treatment within a tax year?**
A	Residential status under the ITA, 2025, is determined for the tax year as a whole. An individual is either a resident or a non-resident for the full twelve months. A person cannot be a resident for part of the year and a non-resident for the remainder. The status that results from the day-count for the year governs the scope of total income throughout that year. If the individual is non-resident for the year, their foreign income for the entire year is outside the charge, whether earned before or after any particular date. If they are residents, their world income for the entire year is within the scope. The determination is binary, and the year is indivisible. The position is different under many of India's DTAAs, where split residency has been recognised by tribunals as a legitimate basis for allocating taxing rights where an individual transitions from resident to non-resident status in the host country during the year. The OECD Model Commentary supports this approach, and several ITAT decisions, including Sameer Malhotra vs ACIT, ITA No. 4040/Del/2019 (Delhi ITAT, 2023) and DCIT vs Sanjeev Kumar Ranjan, ITA No. 1655/Bang/2017 (Bangalore ITAT, 2019), have applied it. However, split residency under the treaty is a treaty-level concept. It does not change the domestic determination. An individual claiming split residency under a treaty remains resident for the whole year under the Act and must report income accordingly, with treaty relief reducing or eliminating the Indian tax attributable to the period of non-Indian treaty residence.

Q50	**What are the key taxability risks in the year of departure from India and the year of return?**
A	The year of departure and the year of return are the two years in which the scope of total income shifts most materially, and in which errors in the return of income are most common. In the year of departure, the individual may be a resident for the full year on the basis of days present in India before departure. If they are ROR, the entire year's income, including salary earned in the new country of employment after departure, is within the Indian charge. If their total India days fall below the applicable threshold and they are non-resident for that year, the post-departure salary is outside the charge, and only Indian source income remains within it. In the year of return, the mirror analysis applies. An individual returning who satisfies the residency test for that year is taxable on worldwide income for the entire year as an ROR, unless the NOR conditions in Section 6(13) are met. For most returning NRIs, the NOR window applies for a transitional period depending on the duration of prior non-residence, during which the charge is limited to Indian source income and income from India-connected businesses or professions. The practical risk is underestimating the scope of the charge for an individual who moves to ROR status earlier than expected or overestimating the NOR benefit where the conditions are not, in fact, satisfied. Both errors are avoidable with a precise day-count and status determination at the outset of the year under review.

Table-7.1: Summary: Taxability Matrix by Residential Status

Income Type	**ROR**	**NOR**	**NR**
Salary: services rendered in India	**Taxable**	**Taxable**	**Taxable**
Salary: services outside India, received in India	**Taxable**	**Taxable**	**Taxable**
Salary: services outside India, received outside India	**Taxable**	Not taxable	Not taxable

Income Type	ROR	NOR	NR
Interest: Indian bank or borrower	**Taxable**	**Taxable**	**Taxable**
Interest: foreign bank or borrower	**Taxable**	Not taxable	Not taxable
Dividends from Indian companies	**Taxable**	**Taxable**	**Taxable**
Dividends from foreign companies	**Taxable**	Not taxable	Not taxable
Capital gains: Indian assets	**Taxable**	**Taxable**	**Taxable**
Capital gains: foreign assets	**Taxable**	Not taxable	Not taxable
Rental income: Indian property	**Taxable**	**Taxable**	**Taxable**
Rental income: foreign property	**Taxable**	Not taxable	Not taxable
Business controlled in India / profession set up in India	**Taxable**	**Taxable**	Not taxable *
Other foreign income	**Taxable**	Not taxable	Not taxable

** Business income of a Non-Resident is within the charge only where it is received in India or accrues or arises in India under Section 5(2), including where the activity gives rise to a business connection in India under Section 9.*

Box-7.1: TAKEAWAY

Residential status establishes the outer boundary; Section 5 defines what falls within it; Section 9 deems certain income to fall within it regardless of where it is received.

For a ROR individual, world income is within the scope. For a NOR, foreign income is outside the scope unless it flows from an India-controlled business or profession. For a Non-Resident, only India-source income, including deemed-accrual items under Section 9, is taxable.

Section 9 is the operative provision for non-residents with Indian income streams. Salary for Indian service, interest from Indian borrowers, royalties, and fees for technical services are all deemed to arise in India and cannot be removed from the charge by structuring payment abroad.

Capital gains earned by a Non-Resident or NOR are chargeable to tax in India where the gains arise from the transfer of a capital asset situated in India, since such gains are deemed to accrue or arise in India under Section 9. Conversely, capital gains derived from the transfer of assets situated outside India generally fall outside the scope of Indian taxation in the hands of an NR, unless specifically brought within the ambit of the deeming provisions. Therefore, the taxability of capital gains in the case of a NR or NOR is primarily determined by the situs of the capital asset and the deeming fiction contained in Section 9, read with the scope provisions under Section 5(2).

The default tax regime under Section 202 has applied since AY 2024-25. The rate structure and the unavailability of most exemptions and deductions under that regime must be reflected in every computation unless the individual has affirmatively opted out.

Indian law does not recognise split-year taxation domestically. Status is determined for the whole year. Where a treaty provides a more favourable position for the period of non-Indian residence, the treaty relief is applied on top of the domestic determination, not substituted for it.

The scope of total income under Section 5 is assessed year by year, not for the entire duration of an engagement. An individual who changes status mid-engagement may face a different scope of charge in the year of change than in the years on either side of it. The scope question must be answered separately for each tax year.

Where a DTAA applies, the scope established under Section 5 is the starting point. The applicable treaty may then restrict India's taxing right over particular income streams depending on where the income is sourced and where treaty residence falls.

Chapter 8
Judicial Precedents

A ready reckoner of binding and persuasive authority on individual residential status

Table-8.1: TOPICS COVERED IN THIS CHAPTER

Case / Circular	Citation	Forum	Group
ITO vs Dr M. P. Konanhalli	[1995] 55 ITD 266	Bangalore ITAT	Employment Outside India
Manoj Kumar Reddy vs ITO	[2009] 34 SOT 180 / [2010] 132 TTJ 328	Bangalore ITAT	Employment Outside India
Binny Bansal vs DCIT	IT(IT)A No. 571/Bang/2023 / [2026] 182 taxmann.com 226	Bangalore ITAT	Employment Outside India / Tiebreaker rules
ACIT vs Sudhir Sareen	ITA Nos. 3120 to 3126/Del/2011 / [2015] 57 taxmann.com 121	Delhi ITAT	Visit to India
ADIT vs Sudhir Choudhrie	[2017] 88 taxmann.com 570	Delhi ITAT	Visit to India
Smita Anand, In re	AAR No. 1091 of 2011 / [2014] 362 ITR 38	AAR New Delhi	Visit to India
Mohsinally Alimohammed Rafik, In re	[1995] 213 ITR 317	AAR	Liable to Tax vs Subject to Tax
Cyril Eugene Pereira, In re	[1999] 239 ITR 650 / [1999] 154 CTR 281	AAR	Liable to Tax vs Subject to Tax

Abdul Razak A Meman, In re	[2005] 276 ITR 306	AAR	Liable to Tax vs Subject to Tax
Union of India vs Azadi Bachao Andolan	[2003] 263 ITR 706	Supreme Court	Liable to Tax vs Subject to Tax
ADIT v. Green Emirate Shipping &Travels	[2006] 99 TTJ 988 / also cited as [2006] 286 ITR 60	Mumbai ITAT	Liable to Tax vs Subject to Tax
CBDT Circular No 554	dated 13 February 1990	CBDT	CBDT Circulars
CBDT Circular No 684	dated 10 June 1994, Para 19.2	CBDT	CBDT Circulars

Box-8.1: Note on Statutory References

All cases in this Chapter were decided under the ITA, 1961. Section numbers cited in each case refer to the ITA, 1961. For the corresponding provision under the ITA, 2025, refer to the comparison table in Chapter 3. As confirmed by the CBDT FAQ (Chapter 9), the substantive conditions for determining residential status remain unchanged; only the structural numbering has shifted.

Employment Outside India

Explanation 1(a) to Section 6(1)(c) substitutes the 60-day threshold with 182 days for an Indian citizen who leaves India for employment outside India.

The cases below define when that benefit is available and to whom.

Table-8.2: ITO vs Dr M P Konanhalli [1995] 55 ITD 266 (Bangalore ITAT)

FACT

The assessee, a medical doctor employed by a United Kingdom medical firm for six years, was in India for 162 days in the relevant previous year and for more than 365 days in the preceding four years. He claimed the 182-day concession under Explanation 1(a), treating his departure to rejoin his United Kingdom employment as a departure for employment.

ISSUE Explanation 1(a) applies where a citizen leaves India in the relevant previous year to obtain or take up employment outside India. A departure after an India visit to rejoin an existing foreign employment does not qualify.
PRINCIPLE DRAWN The decision distinguishes a departure for employment from a departure to resume existing foreign employment. The latter is governed by the visit exception, not the employment-departure exception. The 182-day threshold is a one-time relief tied to the act of departure. Once that year has passed, subsequent years are governed by the standard tests.

Table-8.3: Manoj Kumar Reddy vs ITO [2009] 34 SOT 180 (Bangalore ITAT) / [2010] 132 TTJ 328 (Bangalore ITAT)
FACT The assessee was an employee of IBM and was deputed to the United States. He left India on February 1, 2004, visited India from August 18, 2004 to September 6, 2004 while on deputation, and returned for permanent settlement on January 31, 2005.
ISSUE Whether the assessee was resident under section 6(1)(c), having regard to his temporary visit to India during the overseas assignment and his final return to India on January 31, 2005.
PRINCIPLE DRAWN Explanation 1(a) was not available, since the assessee had left India in the preceding previous year. His August to September 2004 visit was excluded while computing the 60-day period. Further, the date of final arrival, January 31, 2005, was excluded under section 9 of the General Clauses Act. His remaining stay was therefore only 59 days, and he was held to be non-resident.

Table-8.4: Binny Bansal vs DCIT IT (IT)A No. 571/Bang/2023 [2026] 182 taxmann.com 226 (Bangalore ITAT)

FACT

The assessee, co-founder of Flipkart, relocated to Singapore in February 2019. During FY 2019-20, he was in India for 141 days and had accumulated 1,237 days of presence in the preceding four years. He filed his return for AY 2020-21 claiming non-resident status and sought capital gains exemption under Article 13(5) of the India-Singapore DTAA.

The Assessing Officer rejected the claim on two grounds: first, that the 182-day benefit of Explanation 1(a) was not available because the assessee had not left India in FY 2019-20; second, that under the tie-breaker test in Article 4(2) of the DTAA, the assessee's centre of vital interests remained in India.

ISSUE

On Explanation 1(a): The benefit is strictly available only in the first year in which the assessee leaves India for employment. It cannot be extended to subsequent years.

On Explanation 1(b): The expressions being outside India and visit to India in Explanation 1(b) are protective provisions for persons who are already non-residents. They cannot be invoked by a person who is resident in India as a route to transition into non-residency.

On the DTAA tie-breaker: The assessee had permanent homes in both India and Singapore. Moving to the centre of vital interest test, the ITAT found that his economic and personal ties remained more closely connected to India during AY 2020-21. He was accordingly held to be a resident of India for DTAA purposes.

PRINCIPLE DRAWN

This case is essential reading for any relocation or exit planning matter. It establishes that Explanation 1(a) cannot carry over beyond the departure year, that Explanation 1(b) is not a residency-transition tool, and that a DTAA tie-breaker requires a rigorous year-by-year assessment of where economic and personal ties lie, not merely where the assessee has formally relocated.

For this case, the statutory concessions and the treaty test were applied to the relevant year as a whole. Article 4(2) treaty was applied sequentially; where permanent home did not resolve treaty residence, the centre of vital interests was determined from the totality of personal and economic facts.

Visit to India

Explanation 1(b) to Section 6(1)(c) replaces the 60-day threshold with 182 days for an Indian citizen or PIO who is outside India and comes on a visit. The cases below define the scope and limits of what constitutes a visit.

Table-8.5: ACIT vs Sudhir Sareen ITA Nos. 3120 to 3126/Del/2011 [2015] 57 taxmann.com 121 (Delhi ITAT)
FACT The assessee claimed that he had left India in FY 1998-99 for employment and settlement abroad. For the assessment years in dispute, he claimed stays in India below 182 days. He visited India temporarily during the relevant years. The question was whether Explanation 1(b) was available to him in the years following his original departure.
ISSUE Explanation 1(b) is available in years subsequent to the year of departure, provided the individual remains based and employed outside India and the India visit is genuinely temporary in nature. The provision is intended for persons who are already non-residents visiting India, not for those seeking to establish non-residency.
PRINCIPLE DRAWN An NRI who returns to India periodically does not lose the protection of Explanation 1(b) so long as their base remains outside India. The visit must be incidental to a life established outside India, not a step toward returning permanently.

Table-8.6: ADIT vs Sudhir Choudhrie [2017] 88 taxmann.com 570 (Delhi ITAT)
FACT During FY 2004-05, the assessee was in India for 171 days. He remitted funds from abroad into an Indian bank account and used them for investment in India, while working abroad under a United Kingdom work visa.
ISSUE Whether the assessee's investments and other economic or legal

connections with India could deny the benefit of Explanation 1(b), despite his period of stay being below 182 days.
PRINCIPLE DRAWN Residential status under section 6 is determined by the statutory day-count test. Indian investments, bank accounts and other economic or legal connections do not, by themselves, alter that result.

Table-8.7 Smita Anand, In re AAR No. 1091 of 2011 [2014] 362 ITR 38 (AAR)
FACT The applicant left India on September 22, 2007, for employment in China. She resigned from that employment with effect from January 31, 2011, and returned to India on February 12, 2011. Her stay in India during FY 2010-11 was 119 days, while her stay during the preceding four years exceeded 365 days.
ISSUE Explanation 1(a) was available only in the year of departure. The question under Explanation 1(b) was whether the applicant's return after resignation from foreign employment was a return merely on a visit to India.
PRINCIPLE DRAWN Visit is not a calendar concept. It is a purposive one. A person must demonstrate, at the time of arrival, a settled intention to leave again. This makes contemporaneous documentation of plans, employment offers, and onward travel arrangements critical in any case where Explanation 1(b) is being relied upon. On the facts, the return after resignation was not treated as a visit to India. The applicant therefore could not invoke Explanation 1(b), and the domestic day-count conditions made her resident for the relevant year. *Note: This ruling was by the AAR, not the ITAT.*

Liable to Tax vs Subject to Tax

The distinction between being liable to tax and being subject to tax is critical in the context of deemed residency under Section 6(1A) of the ITA, 1961 and treaty residence under Article 4 of applicable DTAAs.

The cases below examine treaty residence under Article 4 and the meaning given to the expression "liable to tax" in their respective factual settings.

Tabble-8.8: Mohsinally Alimohammed Rafik, In re [1995] 213 ITR 317 AAR
FACT The applicant, an Indian citizen residing in Dubai since 1976 with his family, was employed there and derived interest, dividend and capital gains from India. He sought benefits under the India-UAE DTAA although the UAE did not then levy personal income tax on individuals.
ISSUE Whether an individual resident in the UAE could be treated as "liable to tax" there for Article 4 purposes even though no personal income tax was actually imposed or paid.
PRINCIPLE DRAWN The AAR held that the fiscal and habitual-residence nexus in the UAE was sufficient for Article 4. Actual imposition or payment of individual income tax was not regarded as necessary on the facts of the ruling. However, it must be read alongside Cyril Eugene Pereira, where the same AAR reversed its own position. Rafik was effectively overruled within the AAR's own jurisprudence, though it was later cited as authority for the position that the enquiry is into legal liability and not actual payment.

Table-8.9: Cyril Eugene Pereira vs CIT [1999] 239 ITR 650 (AAR) also reported as [1999] 154 CTR 281
RELEVANCE UNDER THE ITA, 2025 *Note: Post 2023, the UAE has introduced corporate income tax. The position for individuals should be verified against the current UAE law before this case is applied without qualification.*

FACT The applicant, an Indian national residing and working in the UAE, had homes in India and the UAE and sought India-UAE DTAA treatment for Indian dividends, interest and capital gains. The UAE did not then impose personal income or capital gains tax on individuals.
ISSUE Whether an individual with no existing liability to personal income or capital gains tax under UAE law could be a treaty resident under Article 4 of the India-UAE DTAA.
PRINCIPLE DRAWN The AAR treated "liable to tax" as requiring a present legal liability under the domestic law of the other State. Residence or a possible future taxation was not sufficient; the applicant was therefore not entitled to treaty residence on the facts. It held that a person who has no tax liability in a country cannot be said to be liable to tax there. Liability to tax requires the existence of a legal obligation to pay tax under the law of that country. Since the UAE law did not impose personal income tax, UAE residents were not liable to tax there and could not claim treaty residence.

Table-8.10: Abdul Razak A Meman, In re [2005] 276 ITR 306 (AAR)
FACT The applicant, an Indian citizen settled in the UAE, earned Indian interest and dividend income and dealt in securities. He sought the benefits of Articles 10, 11 and 13 of the India-UAE DTAA although individuals were not subject to UAE income tax.
ISSUE Whether the absence of UAE income tax on individuals meant that the applicant was not "liable to tax" in the UAE and therefore was not a treaty resident under Article 4? The AAR followed Cyril Eugene Pereira and not Mohsinally Rafik. It held that where UAE law does not impose a tax obligation on an individual, that individual is not liable to tax in the UAE and cannot claim treaty residence. The conflict between the two earlier rulings was resolved in favour of the strict reading.

PRINCIPLE DRAWN The AAR held that Article 4 requires a present liability to the taxes covered by the treaty by reason of domicile, residence or a similar criterion. Since UAE law did not impose such liability on individuals, the applicant was not entitled to treaty residence on the facts. Abdul Razak Meman confirmed that Cyril Eugene Pereira represents the settled AAR position on the India-UAE DTAA. The earlier broad view in Mohsinally Rafik no longer holds within the AAR framework. This case is important because it is sometimes incorrectly cited as supporting the broad view; it does the opposite.

Table-8.11: Union of India vs Azadi Bachao Andolan [2003] 263 ITR 706 (Supreme Court) **ADIT vs Green Emirate Shipping and Travels [2006] 99 TTJ 988 (Mumbai ITAT)**
FACT Azadi Bachao Andolan arose in the context of the India-Mauritius DTAA. The Revenue challenged the entitlement of Mauritius-based entities to treaty benefits, arguing that they paid little or no actual tax in Mauritius. Green Emirate applied similar principles to a UAE entity claiming India-UAE treaty benefits.
ISSUE The Supreme Court upheld the distinction between liable to tax and subject to tax and confirmed that treaty benefits are available to persons who are liable to tax in the other contracting state under its domestic law, even if the actual tax burden is low or nil. The enquiry is into legal liability under the domestic law of the other state, not into how much tax is actually paid. Green Emirate applied this to hold that a UAE entity with sufficient nexus to the UAE jurisdiction qualified for treaty protection.
PRINCIPLE DRAWN This is the highest judicial authority on the liable to tax question and is binding on all courts and tribunals below. The Supreme Court's endorsement of the liable to tax vs subject to tax distinction means that the mere fact that an assessee pays little or no tax in the other country cannot, by itself, be the

basis for denying treaty benefits. The enquiry must focus on whether a legal obligation to pay tax exists under that country's law.

Tie-Breaker Rules under Tax Treaties

Where an individual is treated as a resident in both India and another country under their respective domestic laws, the applicable DTAA tie-breaker under Article 4(2) determines treaty residence. The Binny Bansal case, discussed under Employment Outside India above, is the leading Indian judicial treatment of this test. Its tie-breaker analysis is summarised here for ease of reference.

Table-8.12: Binny Bansal vs DCIT IT (IT)A No. 571/Bang/2023 [2026] 182 taxmann.com 226 (Bangalore ITAT) [Tie-Breaker Analysis]
RELEVANCE UNDER THE ITA, 2025 *This is the leading Indian judicial treatment of the DTAA tie-breaker. The framework follows the standard OECD Article 4(2) hierarchy and is relevant across all Indian DTAAs that incorporate equivalent provisions, including India-UK, India-US, and India-UAE.*
FACT The assessee held a permanent home in both India and Singapore. The ITAT moved to the centre of the vital interest test, examining his personal ties (family, social connections) and economic ties (business interests, assets, income sources) in each country during AY 2020-21.
ISSUE Permanent home: Available in both countries. Test inconclusive; proceed to next step. Centre of vital interests: The assessee's economic interests, including his primary business dealings and asset base, remained more closely connected to India. His personal ties also pointed to India. Vital interests held to be in India. Habitual abode and nationality: As the vital interest test was conclusive, these were addressed briefly. The ITAT noted habitual abode in both countries and Indian nationality, both of which would also have pointed to India.
PRINCIPLE DRAWN

The tie-breaker is a sequential test, not a balancing exercise. Each step is applied only if the previous step is inconclusive. The centre of vital interest assessment is intensely factual and must be conducted year by year. A relocation that is genuine in form but where economic ties remain in India will not shift treaty residence. Contemporaneous evidence of where decisions are made, where assets are managed, and where family life is centred is critical.

CBDT Circulars

CBDT circulars bind tax authorities but cannot override the statute.

Table-8.13: CBDT Circular No 554, dated 13 February 1990 CBDT Circular No 684, dated 10 June 1994, Paragraph 19.2
FACT Both circulars addressed the purpose and scope of the relaxed day-count threshold available to persons leaving India for employment and to NRIs visiting India. Circular 684 at paragraph 19.2 states the legislative intent explicitly.
ISSUE They explain the legislative amendments to the visit exception, including the 182-day amendment effective from April 1, 1995. The relaxed 182-day threshold in the employment and visit exceptions was introduced specifically to enable NRIs to maintain their non-resident status when they travel to India temporarily. The relief was not intended as a planning tool for residents seeking to exit.
PRINCIPLE DRAWN These circulars are directly useful in any dispute where the department argues that a genuine NRI should be treated as a resident because of an extended visit to India. They confirm that the legislative intent was protective of NRI status, not restrictive. They can be cited alongside the judicial precedents in this group and are binding on assessing officers.

Chapter 9
The Residential Status - Global Residency Laws

Residency laws and DTAAs: USA, UK, UAE, Singapore, Canada, Australia, Netherlands

In this section, the residential status as per the local laws of different countries is discussed.

UNITED STATES OF AMERICA

This section covers US individual tax residency, worldwide income scope, foreign account reporting, arrival and departure tax rules, and India - US DTAA.

Table-9.1: TOPICS COVERED IN THIS SECTION	
Internal Revenue Code (IRC) s.7701(b)	Citizenship / Green card test and Substantial Presence Test for individual tax residency
IRS Publication 519	US Tax Guide for Aliens; closer connection exception; dual-status rules
Worldwide income scope	US residents and citizens are subject to tax on their global income, irrespective of where it is earned or the source of such income.
FBAR and FATCA	FinCEN Form 114 and IRS Form 8938 foreign account and asset reporting obligations
First-year choice and dual-status rules	Arrival year and departure year elections

India- US DTAA	Articles 4, 10, 11, 12, 13, 15 and 16; saving clause under Article 1; Limitation on Benefits under Article 24 and Tax Sparing Clause

Determining U.S. Tax Residency

Q1	**How does the United States determine whether an individual is a tax resident?**
A	Two tests apply under IRC Section 7701(b). **The green card test:** any person who holds a US lawful permanent resident card is a US tax resident for the entire year in which it is issued and remains a resident until the card is formally surrendered or judicially abandoned. **The Substantial Presence Test (SPT):** two conditions must both be met: • At least 31 days of physical presence in the current year • A weighted three-year day count of 183 or more (all current-year days, plus one-third of prior-year days, plus one-sixth of days in the year before that) The following days do not count toward the SPT: • Days on F, J, M, or Q student visas • Days on J or Q exchange visitor visas (up to two of the past six years for non-students) • Days prevented from leaving due to a medical condition • Transit days A person who meets the SPT but spent fewer than 183 days in the current year may claim the closer connection exception by filing Form 8840, provided they maintained a tax home in a foreign country throughout the year, have a closer connection to that country than to the US, and have not applied for a green card. US citizens are taxed on worldwide income regardless of residency.

Table-9.1: US Tax Residency

Category	Condition	Notes
US Citizen	Tax resident regardless of physical presence	Taxed on worldwide income; must file a U.S. return even when living abroad; Foreign Earned Income Exclusion up to USD 130,000 (2025) or foreign tax credit available (except capital gains)
Green card holder	Lawful permanent resident status triggers residency for the entire year of issuance.	Residency continues until the card is formally surrendered or judicially abandoned.
Substantial Presence Test	At least 31 days in the current year and a weighted three-year total of 183+ days	Exempt days (student visas, medical condition, transit) do not count.
Closer connection exception	SPT met but fewer than 183 physical days in the current year; tax home in a foreign country; closer connection to that country	File Form 8840; cannot have applied for a green card
First-year choice	Not SPT-met in current or prior year but will meet SPT next year; 31 consecutive days in current year and 75% presence from start of that period to year-end.	Dual-status treatment for the arrival year; income from the arrival date is taxed as a resident

7Scope of Taxation and Foreign Account Reporting

Q2	**What income is taxable and what reporting obligations apply to Indian assets?**
A	All worldwide income must be reported on a US federal return: Indian rental income, dividends, interest, and capital gains are all included. Two additional reporting regimes apply to Indian bank accounts and assets. FBAR (FinCEN Form 114): required if the combined balance of all foreign financial accounts exceeded US $10,000 at any point during the calendar year; the threshold is aggregate, not per account. Deadline: 15 April with automatic extension to 15 October. Non-wilful non-filing penalties reach up to US $10,000 per violation; wilful penalties reach the greater of US $100,000 or 50% of the account balance. FATCA (Form 8938, filed with the IRS): covers specified foreign financial assets above: US $50,000 at year-end or US $75,000 at any point for a single filer living in the US; US $200,000 at year-end or US $300,000 at any point for a single filer living abroad. FBAR and FATCA are separate obligations; filing one does not satisfy the other. Capital gains on Indian assets are included in US taxable income; long-term gains (assets held over one year) attract preferential rates of 0%, 15%, or 20%, depending on taxable income; a foreign tax credit is available for Indian capital gains tax paid.

Tax Position on Arrival and Departure

Q3	**What happens to the tax position on arriving in or departing from the U.S.?**
A	On arrival, the year is dual-status: non-resident before the residency start date (only US -source income taxable), resident from the residency start date (worldwide income taxable). A first-year choice election may push the residency start date earlier. Certain deductions and credits available to full-year residents are unavailable in a dual-status year. On departure, a green card holder must formally relinquish the card; simply leaving without doing so leaves US tax residency intact indefinitely.

	For long-term residents (green card held for at least eight of the past fifteen years), departure may trigger the expatriation tax under IRC Section 877A if the individual's average annual net income tax for the five preceding years exceeds US $201,000 (2025) or net worth is US $2 million or more. <u>Expatriation on or after June 17, 2008:</u> If an Individual expatriated on or after June 17, 2008, the new IRC Section 877A expatriation rules apply to the Individual if any of the following statements apply - An average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than a specified amount that is adjusted for inflation ($162,000 for 2017, $165,000 for 2018, $168,000 for 2019, $171,000 for 2020, $172,000 for 2021, $178,000 for 2022, $190,000 for 2023, $201,000 for 2024, and $206,000 for 2025). As per the IRS website, the limit for 2025 is $206000.Limit for 2026 is $211000 The expatriation tax deems all worldwide assets sold at fair market value on the day before expatriation, generating a taxable deemed gain.

India - US DTAA: Taxing Rights and Withholding Rates

Q4	**How does the India-U.S. DTAA allocate taxing rights?**
A	The DTAA (in force) follows the OECD model with significant departures. The saving clause under Article 1(3) allows the US to tax its citizens and residents as if the treaty did not exist; US residents and citizens cannot use the treaty to reduce their US tax on Indian income. The Limitation on Benefits clause under Article 24 prevents treaty shopping. Note on dividends: the general treaty rate of 25% is higher than India's domestic rate of 20% (plus surcharge and cess), so individual investors receive no benefit from the treaty rate; the lower domestic rate governs. Form W-8BEN must be provided to the Indian payer to claim treaty rates; a TRC from the IRS may also be required.

India - US DTAA: Tax Sparing Clause for Foreign Tax Credit

Q5	**Whether the USA has entered into a Tax Sparing Clause under the India-USA DTAA?**
A	USA has not entered into a tax sparing clause in any of its DTAAs. This was one of the key negotiation points which India was insisting on when the DTAA with the USA was executed on September 12, 1989. While executing the DTAA, the following was finally agreed between both countries. *"Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the Convention at this time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country".* There is no tax sparing clause till now under India-USA DTAA.

Table-9.2: India-US DTAA

Income stream	Treaty rate (India as source)	Notes
Dividends from Indian companies	Article 10 of DTAA - 25% (general); 15% if the US company holds at least 10% of voting stock	The domestic Indian rate of 20% is lower than the general treaty rate, so the domestic rate governs for individual investors
Interest from Indian sources	Article 11 of DTAA - 15% (general); exempt for payments to/guaranteed by the US Government, Federal Reserve, or approved institutions	10% for bank/financial institution loans; domestic Indian rate up to 20%
Royalties and fees for included services	Article 12 of DTAA: 15% for literary, artistic, scientific, or industrial royalties and other FIS; 10%	The make-available condition applies to FIS. Important for IT professionals and

	for equipment use and ancillary services	consultants
Employment income	Article 16 of DTAA: Taxable primarily in the state where work is performed; the 183-day exception applies	Taxable basis the services rendered in India
Capital gains on Indian assets	Article 13 of DTAA: Both India and the US retain taxing rights; There is complexity in claiming a foreign tax credit on capital gains tax paid in India.	India taxes capital gains on the capital asset or property situated in India.

Box-9.1: TAKEAWAY

US residency is established by the green card test (status-based, year-long) or the Substantial Presence Test (31+ days in the current year; weighted three-year total of 183+ days, excluding student visa days and medical condition days).

The closer connection exception (Form 8840) is available to SPT met individuals with fewer than 183 physical days who maintain a tax home and closer ties abroad US citizens are taxed on worldwide income regardless of residence.

FBAR threshold: USD 10,000 aggregate.

FATCA threshold: USD 50,000 to USD 200,000 depending on filer status and location.

Long-term green card holders departing may face expatriation tax under IRC Section 877A. The saving clause prevents US residents from using the treaty to reduce US tax on Indian income.

UNITED KING7DOM

This section covers UK individual tax residency under the Statutory Residence Test, split-year treatment, and how the India-UK DTAA allocates taxing rights.

Table-A.1: Topics Covered in This Section

Finance Act 2013, Schedule 45	Statutory Residence Test (SRT), effective 6 April 2013
Part A	Conclusive non-residence conditions
Part B	Conclusive residence conditions
Part C	Connection factors and day-count thresholds
Split-year treatment	Case 3: arriving and departing mid-year
India-UK DTAA	Articles 4, 10, 11, 12, 13, 15 (in force 25 January 1994; amended 2013 Protocol; MLI 2020) and Tax Sparing Clause

The Statutory Residence Test

Q1	**How does the UK determine tax residency under the SRT?**
A	The SRT, in force from 6 April 2013, applies a three-part sequential test. Part A is checked first: if any conclusive non-residence condition is met, the analysis stops, and the person is non-resident. Part B is checked next: if any conclusive residence condition is met, the person is a resident. Part C applies only when neither Part A nor Part B is conclusive, combining connection factors (ties) with day-counts to reach a result.

Table-A-2: The Statutory Residence Test

Part A: Conclusive non-residence*	Detail
Not resident in all the previous three tax years	Fewer than 46 days in the UK in the relevant tax year
Resident in one or more of the previous three tax years	Fewer than 16 days in the UK in the relevant tax year
Leaves the UK for full-time work abroad	Fewer than 91 days in the UK in the tax year and no more than 31 days working in the UK

**Any one condition is sufficient*

Table-A.3: Conclusive Residence

Part B: Conclusive residence*	Detail
183-day presence	Present in the UK for 183 days or more in the tax year.
Only home(s) in the UK	Has one home and it is in the UK or has two or more homes and all are in the UK.
Full-time work in the UK	Works sufficient hours in the UK over a reference period where more than 75% of days fall in the tax year, with at least 3 hours of work on each working day

**Any one condition is sufficient*

Part C: Connection Factors and Day-Count Thresholds

Q2	When does Part C apply, and how does it work?
A	Part C applies when Parts A and B are inconclusive. It combines the number of UK ties with days spent in the UK. Arrivers (not UK resident in any of the previous three years) face higher permitted day thresholds than Leavers (UK resident in one or more of the previous three years). Leavers also face the country tie, which Arrivers do not.

Table-A.4: Connection Factor and Day-count Threshold

Tie	Trigger
Family	Spouse, civil partner, or minor children are UK residents.
Accommodation	Accessible UK accommodation available for 91 or more continuous days; at least one night spent there (16 nights if at a close relative's home)
Substantive UK work	40 or more days of substantive work (more than 3 hours per day) in the UK
UK presence in prior years	91 or more days in the UK in either of the previous two tax years
Country tie (Leavers only)	More time spent in the UK than in any other single country in the tax year

Table-A.5: Leavers and Arrivers

Number of ties	Leavers: max days	Arrivers: max days
1	120	182
2	90	120
3	45	90
4 or more	16	46

Split-Year Treatment

Q3	**An Indian professional arrives in the UK mid-year. Is world income taxable from the start of the tax year?**
A	Not necessarily. Split-year treatment divides the tax year into a UK part and an overseas part. Under the UK's Statutory Residence Test (Finance Act 2013, Schedule 45), this falls under Case 5, starting full-time work in the UK. It applies to someone who was not a UK resident in the prior year and comes to the UK to take up full-time work.

	The UK part of the year begins on the date that work starts. Income earned before that date stays outside UK tax. Split-year treatment is not automatic; it must be claimed. India does not recognise split-year treatment domestically. Residency under Indian law is determined for the whole year under Section 6 of the ITA, 2025, and any overlap between the two countries' positions is worked out through the DTAA.

Treaty Tie-Breaker and Income Allocation

Q4	**Where an individual is both a UK and an Indian resident, how does the DTAA resolve dual residency?**
A	The India-UK Convention (in force 25 January 1994, as amended by the 2013 Protocol and the 2020 MLI) contains a standard Article 4(2) tie-breaker: permanent home, centre of vital interests, habitual abode, then nationality. A Tax Residency Certificate from HMRC establishes UK residence but does not determine the tie-breaker outcome; the Indian tax department may examine the underlying evidence and supporting documents to independently verify the claim.

Table-A.6: Treat Tie-Breaker & Income Allocation

Income stream	Treatment under the India-UK DTAA
Employment income	Article 15: taxable primarily in the state of residence; 183-day exception applies where the employer is not resident in the host state, and the cost is not borne by a PE there
Dividends from Indian companies	Article 10: 10% in general cases; 15% where dividends are paid by a property investment vehicle (e.g., REIT) deriving income from immovable property
Interest from Indian sources	Article 11: 15% in general; 10% when the recipient is a bank or similar financial institution; government and central bank interest is exempt

Royalties	Article 13: 15% for literary, artistic, scientific or industrial royalties; 10% for payments for the use of industrial, commercial, or scientific equipment
Fees for technical services	Article 13: 15%; the make-available condition applies; services that do not transfer technical knowledge for independent use may fall outside the FTS definition
Capital gains on Indian assets	Article 13(4): India retains the right to tax gains on immovable property and shares whose value is principally derived from Indian immovable property

Domicile, Foreign Income and Gains, and the Transition from 6 April 2025

Q5	**How did the pre-April 2025 domicile rules affect UK tax on foreign income and gains, and what has changed?**
A	Until 5 April 2025, the taxability of UK residents on their foreign income and gains (FIG) depended significantly on domicile status. Individuals who were not UK domiciled (commonly referred to as non-doms) could claim the remittance basis of taxation, under which FIG was taxed only if the money was brought to the UK. This provided a material tax advantage for Indian professionals and others with substantial foreign income who had not acquired a UK domicile. The system was fundamentally reformed with effect from 6 April 2025; from that date, taxation of FIG is based on residence status rather than domicile. **The new FIG regime from 6 April 2025** Individuals who have not been UK residents in the last 10 years, who become UK residents on or after 6 April 2025 and opt into the regime, are exempt from income tax on most of their FIG for the first four years of UK residence. After those four years, they are taxable on the same basis as other UK residents. An individual who became a UK resident (following at least 10 years of non-residence) in any of the three tax years before 2025/26 can also use the FIG regime to exempt their FIG from UK tax for any of their first four years of residence that fall after 2024/25. Opting in carries trade-offs, including loss of the personal allowance; professional advice should be taken before doing so.

	Temporary Repatriation Facility Where a former remittance basis user accumulated FIG before 6 April 2025 that has not yet been remitted to the UK, a Temporary Repatriation Facility (TRF) is available for 2025/26, 2026/27, and 2027/28. The individual can elect to pay tax at a reduced rate on that pre-6 April 2025, FIG: 12% in 2025/26 and 2026/27, and 15% in 2027/28. FIG brought within the TRF must be identified on the relevant year's tax return and can then be remitted to the UK in that year or in subsequent years without further tax charges. FIG accumulated before 6 April 2025 that is remitted on or after that date outside the TRF continues to be taxable in the normal way. **Inheritance Tax** Inheritance Tax (IHT) has also moved to a residence-based regime from 6 April 2025. UK IHT now applies to worldwide assets when a person has been UK resident for at least 10 of the last 20 tax years (or, for those under 20 years old, for the majority of their life). Prior to that change, the scope of IHT on foreign assets depended on domicile status: a UK-domiciled individual's worldwide assets were chargeable, while the foreign assets of non-doms fell outside the scope. A person who leaves the UK after the new rules take effect remains within the scope of IHT for between 3 and 10 years after departure, depending on how long they were UK residents.

India - UK DTAA: Tax Sparing Clause for Foreign Tax Credit

Q6	**Whether the UK has entered into a Tax Sparing Clause under the India-UK DTAA?**
A	India-UK DTAA has provisions relating to foreign tax credit (like other countries). However, in addition to normal tax credit for taxes paid in India, the India-UK DTAA also has a Tax Sparing Clause. This means that in respect of specific income generated by a UK resident which is exempt from tax in India, the UK will allow a deemed credit as if such income was taxed in India. Therefore, such income which is taxable in the UK (though not taxed in India) will be practically exempt from tax in the UK due to the deemed tax credit, i.e., the tax sparing clause.

	As per Article 24(1) read with Article 24(3), Article 24(4)(a) and Article 24(5), tax sparing is available in respect of income earned by a UK NRI from India which is exempt under Schedule IV (Schedule IV (1), Table Column B, Sr. No. 1 and Sr.No.14) to Section 11 of ITA, 2025. It mainly relates to income earned by NRIs in the UK by way of interest in NRE accounts (as per FEMA) and interest on specified FCNR(B) deposits, as notified till June 1, 2002. It may be noted that no new notifications are permissible after June 1, 2002. Section 11 of the ITA Act, 2025 exempts interest income from deposits in NRE / FCNR(B) in accordance with the provisions of FEMA. One can state that foreign tax credit (including tax sparing) is subject to local foreign tax credit rules as per UK tax law (Article 24(1) of the India-UK DTAA). Tax sparing is rare in today's tax environment in India DTAAs. India-UK DTAA to that extent is an exception with respect to interest income earned by NRIs from NRE/FCNR deposits in India. It is pertinent to note that the change in non-dom taxation rule may impact FCNR deposit taxation going forward and the tax sparing issue may be diluted.

Box-A.1: TAKEAWAY

UK residency is determined under the three-part SRT:

Part A (conclusive non-residence, e.g. fewer than 16 days for prior-year residents), Part B (conclusive residence, e.g. 183+ days or only home in the UK), Part C (ties plus day-count thresholds, stricter for Leavers).

Split-year treatment under Case 4 limits UK tax to the UK part of the year for Indian professionals arriving for employment.

A TRC from HMRC is necessary but not sufficient; the Indian AO retains the right to examine substance.

UNITED ARAB EMIRATES

This section covers UAE individual tax residency under the 2023 rules, the effect of UAE corporate tax on treaty access, and how the India-UAE DTAA allocates taxing rights.

Table-B.1: TOPICS COVERED IN THIS SECTION	
Cabinet Decision No. 85 of 2022	UAE individual tax residency (effective 1 March 2023)
Ministerial Decision No. 27 of 2023	Implementation rules for Cabinet Decision No. 85 of 2022
Federal Decree-Law No. 47 of 2022	UAE Corporate Tax Law (effective 1 June 2023)
India-UAE DTAA	Articles 4, 7, 10, 11, 12, 13, 15 (in force 22 September 1993)

UAE Individual Tax Residency

Q1	**How does the UAE determine individual tax residency?**
A	Cabinet Decision No. 85 of 2022, in force from 1 March 2023, prescribes three independent tests; satisfying any one is sufficient. The primary residence test is fact-based: it looks at where the person has their usual home and where their financial and personal interests are centred. The 183-day test applies to any individual who is physically present in the UAE for 183 days or more in any rolling 12-month period. The 90-day test is available only to UAE nationals, UAE residence permit holders, and GCC nationals who also have either a permanent home in the UAE or employment or business there. For NRI clients on a UAE residence visa, the 90-day test is the most common route: more than 90 days of presence plus a home or employment in the UAE ordinarily satisfies it.

Table-B.2: UAE Individual Tax Residency

Test	Who it applies to	Condition
Primary residence	Any individual	Usual or primary place of residence and centre of financial and personal interests in the UAE, or conditions set by the Minister are met.
183-day test	Any individual	Physical presence of 183 days or more in any 12 consecutive months
90 days test	UAE nationals, UAE residence permit holders, GCC nationals	Physical presence of 90 days or more in any 12 consecutive months, plus a permanent home or employment/business in the UAE

UAE Corporate Tax and Treaty Access

Q2	**Has UAE corporate tax changed the liable-to-tax position for NRIs seeking treaty relief?**
A	Article 4(1)(b) of the India - UAE DTAA defines UAE treaty residency by reference to 183 days of physical presence in the calendar year, without requiring UAE domestic tax liability. For UAE-employed NRIs, the introduction of UAE corporate tax in June 2023 changes nothing - employment income, personal investment income, and real estate income earned without a trade licence remain outside the UAE corporate tax net under Cabinet Decision No. 49 of 2023. The treaty's own 183-day test remains the operative route to treaty residency. The corporate tax does create a genuine liability for natural persons who conduct a business in the UAE with a turnover exceeding AED1,000,000 in a calendar year. This resolves the liable to tax question for that category but does not affect employed NRIs.

Treaty Tie-Breaker and Income Allocation

Q3	**How does the DTAA define UAE residency and resolve dual residency with India?**
A	A tax residency certificate issued under domestic rules does not automatically establish treaty residency if the 183-day DTAA criterion is not separately met.

	Where a person is both a UAE treaty resident and an Indian resident under Section 6 of the ITA, 2025, Article 4(3) tie-breaker applies: first, permanent home; second, centre of vital interests; third, habitual abode; fourth, nationality; fifth, mutual agreement. For Indian citizens employed in the UAE whose family remains in India, the analysis typically reaches the habitual-abode stage, where daily life settled in the UAE determines treaty residence. The nationality test, if reached, points to India since India does not permit dual citizenship.

Table-B.3: Income Stream & Treatment under DTAA

Income stream	Treatment under the DTAA
Employment income	Article 15: taxable primarily in the state of residence; 183-day exception applies
Dividends from Indian companies	Article 10: up to 10% withholding tax in India at source
Interest from Indian sources	Article 11: up to 5% for bank/financial institution loans; up to 12.5% in other cases
Royalties and fees for technical services	Article 12: up to 10% in India
Capital gains	Article 13: taxable in the state where the asset is situated

Box-B-1: TAKEAWAY

UAE domestic residency is governed by Cabinet Decision No. 85 of 2022: the 183-day test (any individual), the 90-day test (UAE nationals, residence permit holders, and GCC nationals with a home or employment), and the primary residence test.

The India-UAE DTAA defines UAE treaty residency by 183 days of physical presence in the calendar year alone; a domestic TRC does not automatically establish this. UAE corporate tax applies to natural persons conducting a business with a turnover above AED 1,000,000; employment and personal investment income remain outside its scope. The UAE levies no withholding tax on UAE-source income paid to non-residents (0% rate), which is relevant for NRIs receiving UAE-sourced income.

SINGAPORE

This section covers Singapore individual tax residency, the territorial tax system, foreign income exemption, tax clearance on departure, and how the India-Singapore DTAA allocates taxing rights.

Table-B.4: Topics covered in this Section

Income-tax Act 1947, s.2(1)	Definition of resident for individuals
Section 13(7A) exemption	Foreign-sourced income remitted to Singapore: conditions for exemption
Form IR21 (tax clearance)	Required on cessation of employment in Singapore
Three administrative concessions	Straddling-year, three-year, and a valid work pass
India-Singapore DTAA	Articles 4, 10, 11, 12, 13, 15 (as amended by 2005 and 2011 Protocols)

Determining Singapore Tax Residency

Q1	**How does Singapore determine whether an individual is a tax resident?**
A	Under Section 2(1) of the Income-tax Act 1947, two categories are treated as tax residents. The first is a Singapore Citizen or Permanent Resident (SPR) who normally resides in Singapore, except for temporary absences consistent with a residency claim. The second is a foreigner physically present or exercising employment in Singapore for 183 days or more in the calendar year preceding the Year of Assessment. This rule does not apply to company directors, public entertainers, or visiting professionals. Three administrative concessions extend the basic rules: the straddling-year concession (employment spanning two calendar years with total stay of at least 183 days, treated as resident for both years); the three-year concession (three consecutive calendar years of stay or work, treated as resident for all three regardless of individual year counts); and the valid work pass concession (work pass valid for at least one year, subject to review at tax clearance). Income is assessed on a preceding-year basis.

Table-B.5: Singapore Tax Residency Determination

Category	Condition	Notes
Singapore Citizen or SPR	Normally resident in Singapore, except for temporary absences	Temporary absences must be reasonable and consistent with a residency claim
Foreigner (employment)	Physically present or exercising employment for 183 days or more in the preceding calendar year	Excludes directors, public entertainers, and visiting professionals
Straddling-year concession	Employment spans two calendar years; total stay is at least 183 days	Resident for both years, even if neither year alone reaches 183 days
Three-year concession	Stays or works in Singapore for three consecutive calendar years	Resident for all three years, regardless of individual year day-counts
Valid work pass (one year or more)	Issued a work pass valid for at least one year	Residency reviewed at tax clearance when employment ceases

Scope of Taxation

Q2	What income is taxable in Singapore for an Indian professional?
A	Singapore operates a territorial tax system. Residents and non-residents are taxed on Singapore-sourced income and on foreign-sourced income received in Singapore. However, in the context of individuals, it should be noted that under Section 13(7A) of the Income-tax Act, foreign sourced income is exempted from tax when received into Singapore, except where such foreign income is received by the individual through a partnership in Singapore. Hence, it follows that Indian-sourced income received directly into a Singapore bank account by a non-resident Indian individual qualifies for tax exemption in Singapore. Singapore does not impose capital gains tax for individuals except where the income received in the Singapore bank account is on account of the sale of shares and

	securities, whereby the individual is in the active trade of buying and selling shares and securities. Capital gains on Indian shares or other investments are not taxable in Singapore for individuals who are not share/ security trader, which is a significant advantage for Indian professionals with equity portfolios.

Tax Clearance on Departure

Q3	**What happens when an Indian professional leaves Singapore employment?**
A	The employer must file Form IR21 with IRAS at least one month before the date of cessation. IRAS reviews residency based on actual days; if total Singapore days for the departure year are fewer than 183, the individual is reclassified as non-resident for that year. Non-residents are taxed at a flat rate of 15% on Singapore-sourced employment income or at the progressive resident rates, whichever is the higher tax amount, with no personal reliefs.

India-Singapore DTAA: Taxing Rights and Withholding Rates

Q4	**How does the India-Singapore DTAA allocate taxing rights?**
A	The DTAA between India and Singapore follows the OECD model. Article 4 defines residency by reference to domestic law, and the standard tie-breaker cascade applies where dual residency arises. Singapore does not impose capital gains tax; India retains the right to tax gains on Indian shares under Article 13, subject to treaty conditions. A Certificate of Residence from IRAS must be submitted to the Indian payer before the income is remitted, so that treaty rates can apply. In practice, this certificate is renewed every year.

Table-B.6: India-Singapore DTAA

Income stream	**Treaty rate (India as source)**	**Notes**
Dividends from Indian companies	15% (all cases); 10% where the recipient company holds at least 25% of shares	Article 10: Singapore exempts dividends under its one-tier system

Interest from Indian sources	10% (banks/financial institutions); 15% in all other cases	Article 11: domestic Indian rate up to 20%; treaty rate significantly beneficial
Royalties	10%	Article 12
Fees for technical services	10%	Article 12; aligned with royalty rate
Employment income	Taxable primarily in the state of residence; 183-day exception applies	Article 15
Capital gains on Indian assets	India retains taxing rights on immovable property and shares of property-rich companies.	Article 13: No Singapore capital gains tax, so no double taxation in practice

Box-B-2: TAKEAWAY

Singapore treats as tax residents: Citizens and SPRs normally residing here, and foreigners present or exercising employment for 183+ days in the preceding calendar year.

Three concessions extend residency: a straddling-year (183 days total across two years), a three-year (three consecutive years), and a valid work pass (minimum one year).

Singapore taxes are territorial: Singapore-sourced income is fully taxable; foreign-sourced income received into Singapore is exempt from Singapore taxation for individuals (except where such income is received by the individual through a partnership in Singapore). No capital gains tax in Singapore for individuals on the buying and selling of shares/ securities except where the individual is a share trader.

NETHERLANDS

This section covers Dutch individual tax residency, the worldwide income scope and three-box structure, the expat ruling, tax position on arrival and departure, and the India-Netherlands DTAA.

Table-B.7: TOPICS COVERED IN THIS SECTION	
Wet inkomstenbelasting 2001 (ITA 2001), Art. 2.1	Definition of resident and non-resident for individuals
Territorial scope of Dutch income tax	Residents taxed on worldwide income; non-residents on Dutch-source income only.
Box 1, Box 2, Box 3 structure	Three schedular income categories with distinct rates
Expat ruling (30% ruling)	Partial tax exemption for internationally recruited employees
Migration and tax clearance	Tax treatment on arrival and departure; pro-rata year rules
India-Netherlands DTAA	Articles 4, 10, 11, 12, 13, 15; MFN clause and Supreme Court ruling of October 2023

Determining Netherlands Tax Residency

Q1	**How does the Netherlands determine whether an individual is a tax resident?**
A	Residency is determined under Article 4 of the AWR by reference to all the circumstances. Article 2.1 of the Income-tax Act 2001 then distinguishes residents, taxed on worldwide income. Whereas non-residents are taxed only on Dutch-source income under Chapter 7. The central test is whether a durable personal tie exists between the individual and the Netherlands. Nationality is irrelevant. Relevant indicators include location of the home, where the family lives, where employment is carried out, bank accounts, insurance, doctor and dentist registrations, school enrolment, BRP registration, and pattern of physical presence. No single factor is conclusive. A person becomes a resident when a durable tie is established and ceases on emigration.

Table-B.8: Netherlands Tax Residency Determination

Category	Condition	Notes
Dutch Citizen or resident	Normally resident in the Netherlands, assessed by circumstances under Art. 4 AWR.	Taxed on worldwide income across all three boxes; nationality is not decisive.
Foreigner establishing residence	Durable personal tie with the Netherlands based on facts: home, family, employment, finances	Resident from the date the durable tie is established
Non-resident with Dutch-source income	Does not live in the Netherlands but earns Dutch-source income under Chapter 7 ITA 2001	Taxed only on Dutch-source income; no personal deductions or personal tax credits.
Expat ruling holder	Hired from abroad; meets salary threshold and distance requirements; ruling applied for within four months.	Up to 30% of gross salary tax-free in 2025 and 2026 (reducing to 27% from 2027); maximum term of five years

Scope of Taxation: Worldwide Income and the Box Structure

Q2	**What income is taxable for an Indian professional moving to the Netherlands?**
A	Residents are taxed on worldwide income across three boxes. Box 1 covers employment income, business profits, and the deemed rental benefit on an owner-occupied home; progressive rates up to 49.5% in 2025 on income above approximately EUR 76,817. Box 2 covers substantial interest (holdings of 5% or more in a company); flat rates of 24.5% on amounts up to EUR 67,000 and 33% above that threshold in 2025. Box 3 covers savings and investments on a deemed-return basis; the assumed return on net assets above the threshold is taxed at 36% in 2025. The Box 3 rules are subject to ongoing legal challenge and legislative revision.

	Indian-sourced income (rental income, dividends, interest) is within scope for residents; relief is available through the DTAA or the unilateral Dutch foreign credit rules. The Netherlands does not impose capital gains tax on portfolio investments below the 5% threshold, so gains on Indian shares are not taxed here.

Tax Position on Arrival and Departure

Q4	**What happens to the tax position on arrival in or departure from the Netherlands?**
A	On arrival, residency begins on the date the durable personal tie is established. Only income from that date is taxable in the Netherlands for the arrival year; the period before arrival is assessed as non-resident. On departure, Box 1 income is assessed up to the departure date. Box 2 departure triggers a deemed disposal (exit tax) of any substantial interest; this can be deferred by request, whether for EU/EEA or non-EU/EEA departures, though deferral in non-EU/EEA cases requires the provision of security or guarantees to the Dutch tax authorities. Box 3 uses assets and liabilities on 1 January of the departure year with no proportional adjustment for part-year residency. There is no formal tax clearance process, but the Dutch tax authorities may assess the departure year and may raise queries if the individual held significant Dutch assets. A person returning to India must assess Indian residential status under Section 6 of the ITA, 2025; the DTAA Article 4 tie-breaker applies to any dual-residency overlap.

India-Netherlands DTAA: Taxing Rights and Withholding Rates

Q5	**How does the India-Netherlands DTAA allocate taxing rights?**
A	The DTAA (in force, as amended) follows the OECD model. The dividend withholding rate is 10%. The 5% rate previously claimed via the MFN clause in the treaty's Protocol is no longer available following the Supreme Court of India ruling in Assessing Officer vs Nestle SA (October 2023), which held that MFN clause benefits require a specific government notification under Section 159(1) of the ITA, 2025. No such notification has been issued. A TRC from the Dutch Government, together with Form 41, must be submitted to the Indian payer before income is remitted.

Table-B.9: India-Netherlands DTAA

Income stream	Treaty rate (India as source)	Notes
Dividends from Indian companies	10%	Article 10: 5% MFN rate unavailable without a Section 90(1) notification, which has not been issued (Nestle SA, October 2023)
Interest from Indian sources	10%	Article 11: interest to or guaranteed by the Dutch government, the Netherlands Bank, or a Dutch financial institution is exempt from Indian tax
Royalties	10%	Article 12 covers copyrights, patents, trademarks, designs, and scientific equipment.
Fees for technical services	10%	Article 12: The make-available condition does not apply under this treaty
Employment income	Taxable primarily in the state of residence; 183-day exception applies	Article 15
Capital gains on Indian assets	India retains taxing rights on immovable property and shares of property-rich companies (>75% value from Indian immovable property)	Article 13: Other Indian shares are generally taxable only in the country of the seller's residence

Box-B.3: TAKEAWAY
Dutch residency is fact-based under Art. 4 AWR: the central question is whether a durable personal tie to the Netherlands exists; no day-count rule applies. Residents are taxed on worldwide income across Box 1 (employment, up to 49.5%), Box 2 (substantial interest, 24.5%/33%), and Box 3 (deemed return on savings, 36%), no capital gains tax on portfolio investments. The expat ruling allows 30% tax-free salary in 2025-2026 (27% from 2027), for a five-year term. Departure triggers Box 2 exit tax; Box 3 uses 1 January values. DTAA benefit of a 5% MFN dividend rate is unavailable without a government notification, which has not yet been issued.

AUSTRALIA

This section covers Australian individual tax residency under four tests, the distinct temporary resident category, and how the India-Australia DTAA allocates taxing rights.

Table-B.10: TOPICS COVERED IN THIS SECTION	
Income Tax Assessment Act 1936, s.6(1)	Definition of a resident of Australia
Resides test	Ordinary meaning of residing in Australia
Domicile test	Australian domicile unless the permanent place of abode is overseas
183-day test	Presence for more than half the year
Temporary resident rules	Limited taxability for temporary visa holders
India-Australia DTAA	In force 1 January 1992; Articles 4, 10, 11, 12, 12A, 13, 15

The Four Residency Tests

Q1	How does Australia determine whether an individual is a tax resident?
A	Australian residency is determined under four tests in the Income Tax Assessment Act 1936. Satisfying any one is sufficient, and residency does not require Australian citizenship or a permanent visa. Once resident, the person is taxable on worldwide income with a foreign income tax offset for overseas tax paid. A foreign resident is taxable only on Australian-sourced income and capital gains on taxable Australian property, with no tax-free threshold and no Medicare levy. A separate temporary resident category applies to persons on a temporary visa whose spouse is also not an Australian citizen or permanent resident; temporary residents are taxed on Australian-sourced income and certain overseas employment income, but not on other foreign income or foreign capital gains.

Table-B.12: Four Residency Test

Test	How it works	Key qualifier
Resides test	Dwells in Australia permanently or for a considerable time with a settled or usual abode	Fact-based: physical presence, intention, family ties, employment, and social arrangements all weigh in.
Domicile test	Australian domicile by origin or choice, unless the Commissioner is satisfied the person's permanent place of abode is outside Australia	Retaining an Australian domicile while working abroad does not prevent non-resident treatment if a genuine permanent abode has been established overseas.
183-day test	Physically present in Australia for more than half the year, unless the usual place of abode is outside	In practice, it applies only to newcomers; already-resident persons do not lose residency by

	Australia, and there is no intention to take up residence	spending time overseas.
Commonwealth superannuation fund test	Applies exclusively to certain Australian Government employees contributing to the PSS or CSS	Person, spouse, and children under 16 are all treated as Australian residents regardless of any other factor.

Temporary Residents

Q2	**How does temporary resident status differ from full Australian tax residency?**
A	A temporary resident holds a temporary Australian visa and has a spouse (if any) who is neither an Australian citizen nor a permanent resident under the Social Security Act 1991. Even if technically satisfying one of the four residency tests, the person is taxed only on Australian-sourced income and income from overseas employment, not on other foreign income or foreign capital gains. For an Indian professional on a skilled work visa, this means income from Indian investments, rental properties, and capital gains on Indian assets generally does not enter the Australian return. When temporary residency ends and permanent residency begins, a deemed acquisition at market value applies to most foreign assets, resetting the cost base for Australian capital gains tax purposes.

Leaving Australia for an Overseas Posting

Q3	**An Indian professional on a multi-year overseas posting: do they remain an Australian tax resident?**
A	The answer turns primarily on the domicile test. An Australian domicile is retained unless the person affirmatively changes it by physically relocating with the intention to remain permanently in the new country. Where the posting involves establishing a genuine home abroad with family relocation for several years, the permanent-place-of-abode exception will likely apply, and the person is treated as a foreign resident. If simultaneously treated as an Indian resident under Section

	6 of the ITA, 2025, the Article 4 DTAA tie-breaker applies: permanent home, centre of vital interests, habitual abode, then nationality.

India-Australia DTAA: Taxing Rights and Withholding Rates

Q4	**How does the India-Australia DTAA allocate taxing rights?**
A	The DTAA (in force 1 January 1992) follows the standard OECD model. Australia imposes capital gains tax on taxable Australian property (Australian real property, business assets, and shares in companies where more than 50% of the value is from Australian real property). The DTAA does not restrict this right; Indian residents holding Australian real estate or property-rich company shares remain fully exposed to Australian capital gains tax on disposal.

Table-B.13: India-Australia DTAA

Income stream	Treatment under the India-Australia DTAA
Employment income	Article 15: taxable in the state of residence; 183-day exception applies for short assignments where the employer is a non-resident, and costs are not borne by a PE
Dividends	Article 10: source state may withhold at up to 15% (25% if the beneficial owner is a company holding more than 10% of voting power)
Interest	Article 11: the source state may withhold at up to 15%
Royalties	Article 12: the source state may withhold at up to 15%
Fees for technical services	Article 12A: The source state may withhold at up to 10%
Capital gains on Australian taxable property	Australia retains full taxing rights; the DTAA does not restrict this.
Capital gains on other assets	Generally taxable only in the state of residence of the seller

Box-B-4: TAKEAWAY

Australian residency is determined under four tests (residence, domicile, 183-day, Commonwealth superannuation fund); anyone suffices to become an Australian resident.

Temporary residents (temporary visa, no Australian citizen or PR spouse) are taxed on Australian-sourced income only, not on other foreign income or foreign capital gains.

For overseas postings, residency turns on whether a genuine permanent place of abode has been established abroad. Australia retains full capital gains tax rights on taxable Australian property.

CANADA

This section covers Canadian individual tax residency, worldwide income scope, the sojourner rule, departure tax on emigration, registered savings plan treatment, and the India-Canada DTAA.

Table-B.14: TOPICS COVERED IN THIS SECTION	
Income-tax Act (Canada), s.250	Factual residence and deemed residence (sojourner rule) for individuals
CRA Folio S5-F1-C1	Administrative guidance on determining individual residence status
Worldwide income scope	Canadian residents are taxed on worldwide income; non-residents on Canadian-source income only.
Departure tax (deemed disposition)	Deemed disposal of worldwide assets on the date Canadian residency ceases
RRSP, TFSA, and other registered plans	Tax treatment on emigration and interaction with the Indian tax
India-Canada DTAA (1996 Convention)	Articles 4, 10, 11, 12, 13, 15; make-available clause; MLI Principal Purpose Test

Determining Canadian Tax Residency

Q1	**How does Canada determine whether an individual is a tax resident?**
A	Residency is determined primarily under the common law test of ordinary residence, set out in CRA Income Tax Folio S5-F1-C1; there is no statutory definition. The most important residential tie is having a permanent home available in Canada. Other primary ties include a spouse or common-law partner and dependants living in Canada. Secondary ties considered alongside primary ties include personal property, social memberships, economic ties (bank accounts, employment), a Canadian driving licence and passport, and provincial health insurance. Section 250(1)(a) of the Income-tax Act also deems a person resident for the entire calendar year if they stay in Canada for 183 days or more, regardless of ties; a part of a day counts as a full day, and days need not be consecutive. If a tax treaty designates the other country as the country of residence, Section 250(5) overrides deemed residency, and the person is taxed only on Canadian-source income.

Table-B.15: Canadian Tax Residency Determination

Category	Condition	Notes
Factual resident	Ordinarily resident in Canada based on significant residential ties: home, spouse or dependants, personal property, social ties.	Taxed on worldwide income; having a home available in Canada is the most important single factor.
Deemed resident (sojourner)	Not factually resident but physically present in Canada for 183 days or more in a calendar year	Deemed resident for the entire calendar year; federal surtax applies instead of provincial tax in most cases.
Deemed non-resident	Factually or deemed resident in Canada, but a tax treaty designates the other country as the country of residence.	Treated as a non-resident from the point treaty residency is established; taxed only on Canadian-source income.

Non-resident	No significant residential ties to Canada and fewer than 183 days present in the calendar year	Taxed on Canadian-source income only; Part XIII withholding on passive income; Part I tax on business and employment income.
Part-year resident	Becomes a resident or ceases to be a resident during the calendar year; section 114 applies.	Taxed on worldwide income only for the portion of the year when resident; foreign income during the non-resident period is excluded

Scope of Taxation

Q2	**What income is taxable, and how does the Canadian tax system apply?**
A	Residents are taxed on worldwide income. For an Indian professional, this includes Canadian employment income, Indian rental income, dividends from Indian investments, NRO and NRE account interest (NRE interest is tax-free in India but taxable in Canada), and gains on Indian assets. TFSA contributions grow tax-free, and withdrawals are not taxed. RRSP contributions are deducted from income, and growth is sheltered until withdrawal; RRSP withdrawals by Indian residents after return to India are subject to 25% Canadian withholding under the DTAA.

Departure Tax on Emigration

Q3	**What happens when an Indian professional leaves Canada and ceases to be a Canadian tax resident?**
A	On the date of departure, the Income-tax Act deems all property owned at that moment sold at fair market value (departure tax). The deemed disposition applies to investments in non-registered accounts (stocks, bonds, mutual funds, foreign real estate), shares of a private corporation, and interests in partnerships and trusts. It does not apply to Canadian real estate (taxable Canadian property taxed on actual sale), registered plans (RRSPs, RRIFs, RESPs, TFSAs, First Home Savings Accounts), or unexercised stock options.

	The capital gain is fair market value minus adjusted cost base; the gain is included in the departure year's income at the applicable inclusion rate. Departure tax is due by 30 April of the following year and may be deferred by providing security to the CRA. Person's resident in Canada for fewer than 60 months is subject to departure tax only on assets acquired during Canadian residency; assets owned before becoming a Canadian resident are excluded.

India-Canada DTAA: Taxing Rights and Withholding Rates

Q4	**How does the India-Canada DTAA allocate taxing rights?**
A	The India-Canada Convention (1996, in force and as modified by the MLI) follows the OECD model. The DTAA carries higher withholding rates than most other treaties in India's network; the 25% portfolio dividend rate is notably above what most other countries pay. The MLI has introduced a Principal Purpose Test (PPT): treaty benefits can be denied if it is reasonable to conclude that one of the principal purposes of an arrangement was to obtain the benefit. A TRC from the CRA and Form 41 must be submitted to the Indian payer before income is remitted.

Table-B.16: India-Canada DTAA

Income stream	Treaty rate (India as source)	Notes
Dividends from Indian companies	15% if the Canadian company directly or indirectly controls at least 10% of voting power; 25% in all other cases	Article 10: individual NRI investors face 25%; the domestic Indian rate of 20% is lower, so the domestic rate governs for individual portfolio investors
Interest from Indian sources	15%	Article 11: interest to the Canadian government or central bank is exempt; domestic Indian rate up to 20%

Royalties	10% for industrial, commercial, or scientific equipment; 15% for all other royalties	Article 12: software, patent, and copyright royalties generally attract 15%
Fees for included services	15%	Article 12: make-available clause applies; services that do not transfer technical knowledge may be taxed as business profits with no withholding if no Indian PE exists
Employment income	Taxable primarily in the state of residence; 183-day exception applies	Article 15
Capital gains on Indian assets	Generally taxable only in Canada; exceptions for Indian immovable property and shares of companies deriving principal value from Indian immovable property.	Article 13

Box-B.5: TAKEAWAY

Canadian residency is determined under the common law test of ordinary residence, with home availability as the most important single factor; no day-count rule for factual residency. The sojourner rule (183+ days) deems full-year residency; a tax treaty tie-breaker under Section 250(5) can override this.

Residents are taxed on worldwide income at progressive federal rates up to 33% plus provincial tax; capital gains are included at a 50% inclusion rate in 2026, the proposed increase to 66.67% having been cancelled by the federal government in March 2025. Persons resident for fewer than 60 months is exempt on pre-arrival assets. The MLI Principal Purpose Test now applies to the treaty.

Estate and Inheritance Tax: A Cross-Country Overview

India abolished its estate duty in 1985, and it has had no wealth transfer tax since then. As a result, many Indian chartered accountants (CAs) and their clients have limited exposure to estate and inheritance taxes as a concept. For NRIs, this gap matters: several of the countries covered in this chapter levy a tax on the transfer of assets on death, and the rates and thresholds can be significant. Unlike income tax, which arises annually and is often managed through treaty provisions, estate and inheritance taxes arise at death, sometimes catch assets that the deceased considered settled, and can affect heirs who are themselves tax residents in India. The rules also differ fundamentally from country to country. Some countries tax the estate before distribution (estate tax), others tax the individual heir on what they receive (inheritance tax), and a few use a deemed disposition of assets at death to trigger capital gains tax instead. Understanding which regime applies, and at what threshold, is a basic piece of cross-border estate planning for NRIs.

Table-B.17: Estate & Inheritance Tax

Country	Estate / Inheritance Tax?	Key threshold/rate
USA	Yes (federal and some states)	40% above US $15 million (residents); 40% above US $60,000 for non-residents on US-situs assets
UK	Yes	40% above £325,000 (up to £500,000 with RNRB for home passed to direct descendants)
UAE	No	Nil; Islamic succession rules may apply for Muslims
Singapore	No	Abolished 2008
Netherlands	Yes	10% to 40% depending on relationship; partner exemption €828,035 (2026)
Australia	No	Abolished in 1979; CGT applies on later sale by foreign-resident heirs
Canada	No	Deemed disposition CGT on death instead; no separate death duty

Box B.6: USA

The One Big Beautiful Bill Act, signed on 4 July 2025, permanently raised the federal estate and gift tax exemption to US $15 million per individual (US $30 million for married couples using portability), effective 1 January 2026, with annual inflation indexing from 2027 onwards. The 40% federal rate applies to amounts above the exemption and is unchanged.

Two points are directly relevant to NRIs. First, a non-US person who owns US real estate or US-listed stocks faces up to 40% US estate tax on anything above just US $60,000 of US-situs assets, a fraction of the threshold available to US residents and citizens. Second, 12 states and the District of Columbia have their own estate taxes, with exemptions often well below the federal level. Massachusetts taxes estates above US $2 million; Oregon above US $1 million. An NRI holding US property through their own name, rather than through an appropriate structure, can face a significant and often unexpected tax exposure on death.

Box-B-7: UK

The UK charges inheritance tax at 40% on estates above £325,000 (the nil-rate band). An additional £175,000 exemption (the Residence Nil-Rate Band) is available when the family home passes to direct descendants, giving a single person an effective threshold of up to £500,000 and a married couple up to £1,000,000. Both bands are frozen at these levels until April 2030. For estates above £2 million, the Residence Nil-Rate Band tapers away at £1 for every £2 over that threshold.

From 6 April 2025, UK inheritance tax moved to a residence-based regime. Once a person has been UK resident for at least 10 of the last 20 years, their worldwide estate falls within scope at 40% above the nil-rate bands. This exposure continues for between 3 and 10 years after leaving the UK, depending on the length of prior residence. NRIs who spent a significant number of years in the UK should take advice on whether their worldwide assets, including Indian assets, remain within scope even after returning to India.

One further point: India and the UK have an Estate Duty Agreement (the India-UK Estate Duty Treaty), which remains technically in force even though India abolished its estate duty in 1985. Under this agreement, UK estate duty

does not apply to assets situated in India that belong to a person domiciled in India. While the practical scope of the treaty is limited given India has no corresponding tax, it can be relevant in cross-border estates and should not be overlooked in planning for UK-resident NRIs with significant Indian assets.
Box-B-8: UAE The UAE has no inheritance tax. However, assets held in the UAE may be subject to Islamic succession rules under UAE law for Muslim individuals. The absence of a tax does not mean the absence of succession regulation, and this distinction matters for estate planning, particularly where the deceased held UAE-registered assets or property.
Box-B.9: Singapore Singapore abolished estate duty in 2008. There is no estate or inheritance tax on assets levied in Singapore, regardless of the residency or nationality of the deceased.
Box-B-10: Netherlands The Netherlands levies inheritance and gift tax on the fair market value of what is received, after deducting an exempt amount that varies by relationship to the deceased. Rates range from 10% to 40%, also depending on the relationship. In 2026, the partner exemption is €828,035, and the threshold at which the higher rate applies is €158,669. Rates for the most common categories are partners and children, 10% up to €158,669 and 20% above; grandchildren, 18% up to €158,669 and 36% above; all other heirs, 30% up to €158,669 and 40% above. One rule that NRIs and returning professionals should note: Dutch law treats former residents as still resident for inheritance and gift tax purposes for 10 years after emigration. A Dutch national who has moved to India remains within the scope of Dutch inheritance tax for a full decade after leaving. This rule applies regardless of where the assets are located.
Box-B-11: Australia Australia abolished federal estate duty in 1979 and has no state-level inheritance taxes. The practical point for NRIs who inherit Australian assets: capital gains tax applies when a foreign-resident heir later sells an inherited asset, and foreign-resident heirs lose the principal residence exemption that would otherwise shelter gains on an Australian home. The tax therefore does not arise at death but can arise on the subsequent disposal.

Box-B-12: Canada

Canada has no federal or provincial inheritance tax. Instead, death triggers a deemed disposition: the estate is treated as having sold all assets at fair market value immediately before death, and capital gains tax applies on that basis. The capital gains inclusion rate is 50% in 2026. Registered accounts such as RRSPs and RRIFs are included in the deceased's income in the year of death, unless transferred to a qualifying spouse or dependent. Assets transferred to a surviving Canadian-resident spouse or common-law partner may roll over on a tax-deferred basis, with the gain deferred until the spouse later disposes of the asset.

Chapter 10
Foreign Exchange Management Act, 1999

Section 2(v), repatriation, and disclosure and reporting requirements

The Foreign Exchange Management Act, 1999 (FEMA), determines residence on an entirely different basis from the Income-tax Act. Where the income tax law counts days, FEMA reads intention. The same individual, in the same year, may be resident under one and non-resident under the other. That divergence is not an anomaly; it is built into the design of the two enactments and has direct consequences for how a person holds assets, moves money, and meets compliance obligations. This Part explains how FEMA determines residence, what follows from each classification, and where the two laws come apart.

The Residence Test under FEMA

Q51	**Why does FEMA have its own residence test, separate from the income tax law?**
A	FEMA and the income tax law serve different purposes, and each test is designed for the purpose it serves. The income tax law determines the scope of tax liability. It does so by reference to physical presence, because the number of days a person spends in India is an objective and verifiable fact that draws the line between residents and non-residents for tax purposes. FEMA regulates foreign exchange transactions, the holding of assets abroad, the movement of money across borders, and the maintenance of accounts in foreign currency. For these purposes, what matters is not where a person happened to be on a particular day but whether that person has made India their settled base or continues to live outside India. A person who is temporarily in India during a period of leave is not in the same position as someone who has returned to live here permanently. FEMA uses intention and purpose to capture that difference; day-counting cannot. The result is that a person's FEMA status and their income tax status

	can be, and frequently are, different. Treating them as interchangeable is one of the most common errors in NRI advisory practice.

Q52	**How does FEMA define a person resident in India?**
A	Section 2(v) of FEMA defines a person resident in India as a person who resided in India for more than one hundred and eighty-two days during the preceding financial year. The section then sets out two exclusions and one inclusion, which are intention-based. The exclusions remove from the definition a person who has gone out of India, or who stays outside India, for the purposes of employment, for carrying on outside India a business or vocation, or for any other purpose that indicates an intention to stay outside India for an uncertain period. Such a person is not resident in India for FEMA purposes, even if they were physically present in India for more than 182 days in the preceding year. The inclusion brings into the definition a person who has come to India, or who stays in India, for the purposes of employment, for carrying on in India a business or vocation, or for any other purpose that indicates an intention to stay in India for an uncertain period. Such a person is resident in India for FEMA purposes, even if they were present in India for fewer than 182 days in the preceding year. The day-count in Section 2(v) is therefore a starting point, not a test. Purpose and intention govern the outcome of the residency.

Q53	**Who is a person resident outside India under FEMA?**
A	Section 2(w) of FEMA defines a person resident outside India as a person who is not a person resident in India. There is no separate test. Once the Section 2(v) determination is made, the residual category follows automatically. In practice, a person who is living and working outside India and whose connection with India is by way of visits and family ties, rather than a settled presence, will ordinarily be a person resident outside

	India. That classification carries with it a distinct set of entitlements and restrictions: the ability to hold Non-Resident External accounts and Foreign Currency Non-Resident accounts, the right to repatriate funds without RBI approval, subject to applicable limits, and freedom from the restrictions on holding foreign exchange that apply to persons resident in India.

Q54	**How does a person's FEMA status change when they move to India or leave India?**
A	FEMA status changes at the point when a person's circumstances change in a way that satisfies or removes the intention test in Section 2(v). It does not change on a fixed date at the start or end of a financial year, as the income tax classification does. When a person leaves India for employment abroad or to carry on a business or vocation outside India, they become a person resident outside India at the point of departure, provided the purpose of their departure indicates an intention to remain outside India for an uncertain period. The change is immediate; they do not continue to be treated as residents in India for the remainder of the financial year. The position on return is symmetric. A person who comes back to India for employment or with the intention of settling here becomes a person resident in India at the point of return. The fact that they may have been resident outside India for many years before returning does not delay the change in status. Where the purpose of a visit is limited and specific, a holiday, a medical visit, or attendance at a family event, that visit does not change the person's FEMA status. The individual remains a person resident outside India throughout the visit and continues in that status on departure. Only a change in the underlying purpose and intention changes the classification.

The Divergence between FEMA and Income Tax

Q55	**Can a person be a resident for income tax purposes but a non-resident under FEMA in the same year?**
A	Yes. The two determinations proceed on different tests and frequently reach different conclusions for the same individual in the same year. Consider an Indian citizen who has lived and worked in Singapore for several years and visits India during the year for 130 days, for a combination of family and exploratory business reasons. His total income other than income from foreign sources exceeds ₹15 lakhs. Under Section 6(2)(b) read with Section 6(5) of the ITA, 2025, the applicable threshold is 120 days, and at 130 days with a prior four-year aggregate exceeding 365 days, he is resident in India for income tax purposes, likely as a NOR. Under FEMA, his stay of 130 days is for a defined and limited purpose, not employment, and not an intention to remain in India for an uncertain period. He continues to be a person resident outside India under Section 2(v) of FEMA. In that year, he was a resident for income tax and a non-resident for FEMA. His foreign exchange accounts, his repatriation rights, and his obligations under FEMA continue to be governed by his non-resident status under that Act, even as his income tax liability expands to cover Indian-source income.

Q56	**Can a person be non-resident for income tax but resident under FEMA in the same year?**
A	Yes, though this combination arises less frequently. It can occur where a person returns to India with the intention of settling here, thereby acquiring resident status under FEMA, but has not yet accumulated sufficient days of presence in India to satisfy the income tax threshold in that first year of return. A person who returns to India in February of a financial year, intending to remain permanently, becomes a person resident in India under FEMA from the date of return. If their total presence in India during that financial year is below the applicable income tax threshold, they

	remain non-resident for income tax purposes in that year. The FEMA consequences of residency, including the obligation to convert NRE accounts to resident accounts and the restrictions on holding foreign exchange, arise from the date of return, regardless of the income tax classification. Members advising returning NRIs must therefore address the FEMA consequences of return separately from, and ahead of, the income tax consequences. The FEMA obligations can arise in a year in which the person is still a non-resident for income tax.

Table-10.1 summarises the four combinations that practitioners most commonly encounter.

Table-10.1: Four Significant Combinations

Combination	When it arises and what it means
Resident (IT) + Non-Resident (FEMA)	An NRI visits India and exceeds the income tax threshold but does so for a defined purpose. Income tax liability expands; foreign exchange entitlements and account types continue under the non-resident framework.
Non-Resident (IT) + Resident (FEMA)	A returning NRI arrives late in the year with the intention to settle. FEMA obligations attach immediately; the income tax classification follows in the next year or when the day-count threshold is met.
Resident (both)	The person has returned to India, crossed the income tax threshold, and established indefinite residence. Both sets of obligations apply as a resident.
Non-Resident (both)	The person is based outside India, visits below the income tax threshold, and the purpose of the visit is limited. Non-resident under both laws; NRE and FCNR accounts, repatriation rights fully available.

Accounts and Repatriation

Q57	**What types of accounts may a person resident outside India maintain in India?**
A	A person resident outside India may maintain three types of accounts with Indian banks, each serving a distinct purpose. A Non-Resident External account, commonly known as an NRE account, is a rupee account. The principal and interest are fully repatriable, meaning they can be transferred outside India freely without RBI approval. Interest earned on NRE accounts is exempt from income tax in India. The account may be held jointly with another person resident outside India. The account may also be held jointly with a resident close relative on a former-or-survivor basis. A Foreign Currency Non-Resident account, known as an FCNR(B) account, is a term deposit held in a specified foreign currency. Like the NRE account, the principal and interest are fully repatriable, and the interest is exempt from income tax in India. The FCNR(B) account protects the holder from rupee depreciation, as the deposit is denominated in the foreign currency throughout its term. A Non-Resident Ordinary account, or NRO account, is also a rupee account, but unlike the NRE and FCNR(B) accounts, the principal is not freely repatriable. Repatriation from an NRO account is subject to an annual limit of one million US dollars per financial year, net of applicable taxes. Income earned and deposited in India, such as rent, pension, and dividends, is typically credited to an NRO account. Interest on NRO accounts is taxable in India.

Q58	**What happens to an NRE account and an FCNR account when a person becomes a resident in India under FEMA?**
A	When a person becomes a resident in India under FEMA, they are no longer eligible to maintain an NRE or FCNR(B) account. The accounts must be re-designated or converted. An NRE savings account must be re-designated as a resident rupee savings account. An FCNR(B) deposit may be continued until the

	contracted maturity date and need not be broken prematurely on a change in status. On maturity, the proceeds may be transferred to a Resident Foreign Currency account, which is available to persons who were formerly non-resident and wish to hold foreign exchange received from abroad. The RFC account is freely repatriable. The obligation to re-designate the NRE account arises at the point the person becomes resident in India under FEMA, not at the start of the next financial year. Delay in re-designation can result in a contravention under FEMA, even if it is inadvertent. Members advising returning NRIs should include account conversion in the return checklist and address it before or immediately upon return.

Q59	**What is the scope of repatriation available to a person resident outside India?**
A	A person resident outside India may repatriate funds from India depending on the nature of the funds and the account from which they originate. Funds in an NRE account are freely repatriable in full, both principal and interest. Funds in an FCNR(B) account are similarly freely repatriable. No RBI approval is required for these transfers, and there is no annual cap. Funds in an NRO account are repatriable, subject to the limit of one million US dollars per financial year, net of taxes payable on the amount being repatriated. To repatriate from an NRO account, the account holder must obtain a certificate from a chartered accountant in Form 146, certifying that applicable taxes have been paid or provided for, and file Form 145 with the income tax department. The bank will require these forms before processing the remittance. Proceeds from the sale of immovable property in India are repatriable subject to conditions. For property acquired by the NRI as a resident, repatriation is permitted up to the amount of foreign exchange originally brought into India for the acquisition or the sale proceeds, whichever is lower, in respect of up to two properties. For property acquired as a non-resident, the remittance of sale proceeds requires

	compliance with the RBI guidelines applicable to the category of property.

Q60	**How does FEMA status affect the taxability of interest on NRE and FCNR accounts, and what happens in the year a person's status changes?**
A	The income tax exemption on interest earned on NRE and FCNR(B) accounts is not governed by income tax residency. It is governed by FEMA status. Section 11 read with Schedule IV of the ITA, 2025 grants the exemption on the interest income earned on deposits from NRE or FCNR account to a person resident outside India within the meaning of FEMA. A person who is an income tax non-resident but FEMA-resident each year cannot claim the exemption. Conversely, a person who is an income tax resident, but a FEMA non-resident, continues to be entitled to it, provided the accounts remain validly maintained. Also, while NRE interest exemption requires one to be a non-resident under FEMA, FCNR interest benefits generally carry forward even when an individual returns to India and qualifies as a Resident but Not Ordinarily Resident (NOR) for the first few years. This distinction matters most in the year of return. A person who returns to India with the intention of settling permanently becomes a FEMA resident from the date of return. If that return occurs partway through the financial year, the person may still be an income tax non-resident for that year because the day-count threshold has not been crossed. In that year, the NRE and FCNR(B) accounts must be converted from the date of FEMA residency. Interest accruing after conversion, even in a year in which the person is an income tax non-resident, is taxable. The exemption ceases at the point the account is re-designated, not at the point income tax residency commences. A related tension arises on the source-of-funds characterisation. While an NRE account is validly maintained, credits and withdrawals are treated as capital movements, not income, and inward remittances carry no income tax consequence. Once the account converts to a resident account, the same flows are treated differently by the Assessing Officer. Members advising on the timing of return should be

	aware that the conversion of accounts and the income tax treatment of subsequent credits change from the date of FEMA status change, regardless of what the income tax classification is for that year.

Immovable Property

Q61	**Can a person resident outside India acquire immovable property in India?**
A	The general position under FEMA is that a person resident outside India may not acquire immovable property in India except in accordance with the applicable regulations. The Foreign Exchange Management (Overseas Investment) Rules and Regulations, 2022 permit the acquisition of residential and commercial property by a person resident outside India who is an Indian citizen or a person of Indian origin (NRI / OCI), without prior RBI approval. Agricultural land, farmhouses, and plantation property may not be acquired without specific RBI permission. An Indian citizen or person of Indian origin who is a resident outside India may acquire residential or commercial property in India by purchase and may hold, transfer, and dispose of such property. The acquisition must be funded through inward remittance from abroad or through funds in NRE or NRO accounts. FCNR(B) balances are also a permissible source for funding the acquisition of residential or commercial property in India. Payment in rupees from a resident third party's account is not a permissible mode of acquisition. Foreign nationals who are not Indian citizens and do not have Indian origin are not eligible to acquire immovable property in India other than by inheritance, and then only in accordance with the applicable regulations.

Q62	**What happens to immovable property held in India when a person returns and becomes a resident under FEMA, and what are the income tax disclosure obligations that follow?**
A	A person who acquired immovable property in India as a person resident outside India may continue to hold that property after becoming a resident in India under Section 6(5) of FEMA. There is no

	obligation to transfer or dispose of the property on a change in FEMA status. The change in status does, however, affect how the property may subsequently be dealt with. Rental income from the property, which could previously have been credited to an NRO account, will now be treated as resident income and handled through a resident savings account. If the person returns to non-resident status in a subsequent year, the property reverts to the non-resident holding framework. For property acquired by a person as a resident in India before they first left the position on a return to India is unchanged. The property continues to be held, and the FEMA framework applicable to residents governs from the date of return. The more significant consequence on return is the Schedule FA disclosure obligation under the Income-tax Act. A person who becomes an income tax resident is required to disclose all assets held outside India in Schedule FA of the income tax return, and immovable property outside India is a required disclosure. This obligation arises from the first year in which the person is an income tax resident, which may be a different year from the year in which FEMA residency commences. A person who becomes a FEMA resident in February of one financial year but crosses the income tax threshold only in the following year faces the Schedule FA obligation only from that following year. That gap does not, however, remove the obligation in any subsequent year, and the first Schedule FA filing must cover all foreign property held, including property acquired during the years of non-residence. The consequences of omission are severe. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 applies to undisclosed foreign assets of a person who is an income tax resident. Penalties under that Act are separate from and in addition to income tax penalties and can be disproportionate relative to the value of the asset. The fact that the property was legitimately acquired and the income tax non-residence in earlier years was genuine provides no protection where disclosure is omitted in the first year of income tax residency.

Disclosure and Reporting Obligations

Q63	**What are the principal income tax reporting obligations for a person resident outside India who has income in India?**
A	A person resident outside India who has income arising in India is required to file an income tax return in India if that income exceeds the basic exemption threshold. Non-residents are not entitled to the higher basic exemption thresholds available to senior citizens under domestic law, unless the applicable double tax avoidance agreement provides otherwise. Income arising in India includes salary received in India, rental income from property situated in India, interest credited on NRO accounts, dividends from Indian companies, and capital gains on transfer of assets situated in India. Interest on NRE and FCNR(B) accounts is exempt from income tax and need not be separately disclosed in the return, though members may wish to report it for completeness where the exemption status could be questioned. Non-resident taxpayers are subject to tax deducted at source on most categories of Indian income. The obligation of the Indian payer to deduct tax does not reduce the non-resident's obligation to file a return if total income exceeds the exemption threshold and does not preclude the non-resident from claiming a refund of excess deduction through the return.

Q64	**What are the FEMA reporting requirements for a person resident outside India who holds assets in India?**
A	A person resident outside India who holds assets in India does not have a general annual filing requirement under FEMA equivalent to an income tax return. However, specific transactions and holdings attract disclosure and reporting obligations. Acquisition of immovable property in India must be reported through the authorised dealer bank through which the consideration is remitted. Investment in shares or securities of an Indian company attracts

	reporting requirements under the applicable FEMA regulations. The Indian company receiving foreign investment is required to file reports with the RBI, and the non-resident investor must ensure compliance through the authorised dealer bank. There is no FEMA obligation to file an annual statement of all Indian assets comparable to the Foreign Asset Schedule in the income tax return. However, a person who is resident in India for income tax purposes must disclose foreign assets and income in Schedule FA of the return. On a change in status from non-resident to resident for income tax, the Schedule FA obligation arises from the first year of residency and must not be overlooked.

Q65	**What obligations apply to a person resident in India under FEMA who holds assets outside India?**
A	A person resident in India under FEMA is generally not permitted to hold or acquire foreign exchange, foreign currency accounts, or assets outside India except in accordance with the general or specific permissions granted by the RBI. Where a person was previously resident outside India and held foreign assets during that period, those assets may be retained on the change to resident status under a general permission. The Liberalised Remittance Scheme permits a person resident in India to remit up to US $2,50,000 per financial year for permissible purposes, including maintenance of close relatives abroad, travel, medical treatment, and investment in overseas securities. Remittances above this limit or for non-permissible purposes require specific RBI approval. A person resident in India who holds or receives foreign exchange in excess of what is permitted must surrender it to an authorised dealer within the prescribed period. Retention beyond the permissible period is a contravention under FEMA. For income tax purposes, a person resident in India must disclose all foreign assets and foreign income in Schedule FA of the income tax return, irrespective of whether those assets were acquired when the person was non-resident. The obligation applies from the first year of residency and covers bank accounts, financial interests, immovable property, and other assets held outside India.

The Returning NRI: A Practical Checklist

A person returning to India after a period of non-residence faces a structured sequence of FEMA consequences. The checklist below is not exhaustive but is intended as a starting point for any returning NRI engagement.

Table-10.2: A Checklist for Returning NRI

Item	Action required and timing
NRE savings account	Re-designate as a resident savings account from the date of return. Do not wait for the end of the financial year.
FCNR(B) deposit	May be held to contracted maturity. On maturity, transfer proceeds to an RFC account or a resident account.
NRO account	Continues as a resident account from the date of return. Interest becomes taxable as resident income. Repatriation rules change.
RFC account	May be opened to hold foreign exchange brought from abroad or received from abroad. Freely repatriable; no end-use restrictions.
Overseas bank accounts	May be retained under general permission. Large balances should be reviewed for LRS compliance and income tax disclosure in Schedule FA.
Foreign investments and securities	May be retained under general permission for assets acquired as a non-resident. Review the Schedule FA disclosure obligations from the first year of income tax residency.
Immovable property in India	Continues to be held. Rental income is handled through a resident account from the date of return.
Immovable property outside India	Held under general permission for assets acquired as a non-resident. Disclose in Schedule FA from the first year of income tax residency.
Schedule FA filing	Obligation arises from the first year of income tax residency. Cover all foreign bank accounts,

	investments, and immovable property held outside India.
LRS remittance limit	USD 250,000 per financial year from the date of FEMA residency. Remittances to maintain pre-existing overseas commitments should be reviewed for LRS compliance.

BOX-10.1: TAKEAWAY

FEMA and income tax determine residence using different tests. FEMA uses intention and purpose; income tax uses day-count. The two will frequently diverge for the same individual in the same year, and the consequences of each classification must be assessed independently.

The FEMA change of status takes effect on the date the underlying purpose or intention changes, typically the date of departure or return. It does not move at the start of a financial year. Account conversions and asset reclassifications must follow immediately.

NRE and FCNR(B) accounts carry full repatriation rights. NRO accounts are subject to a repatriation limit of USD 1 million per year, net of taxes, with Form 146 and Form 145 required. The chartered accountant certifying Form 146 must have reviewed the source of the funds, the applicable treaty position, and the withholding tax liability before issuing the certificate; an incorrect certificate creates direct exposure for the certifier and the remitter. The distinction matters for cash-flow planning before and after a return to India.

Schedule FA in the income tax return is the single most common compliance gap on the return. The obligation arises in the first year of income tax residency and covers all foreign assets held, including those legitimately acquired and retained as a non-resident. Members should treat the Schedule FA review as a mandatory first step in every returning NRI engagement.

The Black Money Act, 2015, applies to undisclosed foreign assets of a person resident for income tax purposes. Penalties under that Act are separate from and additional to income tax penalties. A returning NRI who was unaware of the Schedule FA obligation has no safe harbour under the Black Money Act for assets that should have been disclosed.

Chapter 11
Case Studies

Worked case studies: Tax and FEMA

Box-11.1: Case Study 1 –

Residency of a Returning Visitor

PIO based in UAE | Three tax years across the COVID period

FACTS

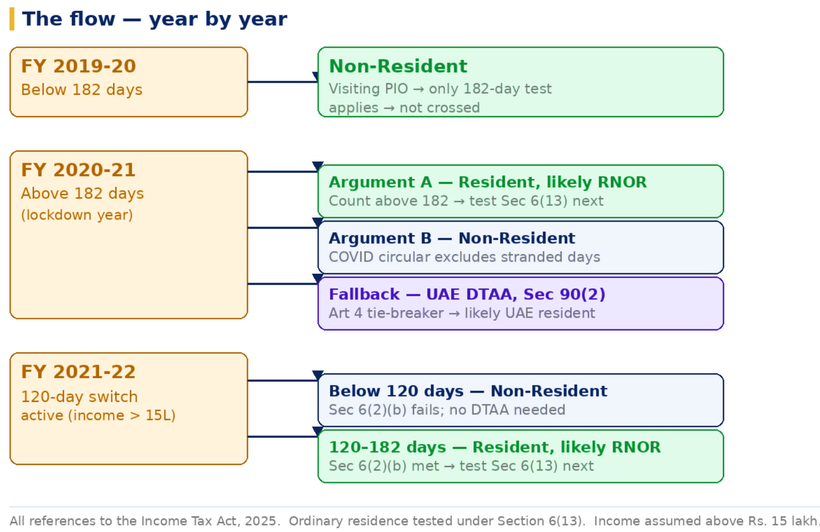
- The assessee is a Person of Indian Origin who holds a foreign passport and is employed in the United Arab Emirates.
- The assessee visits family in India on a regular basis and has been present in India for an aggregate of 365 days or more across the four preceding tax years.
- The assessee's total income other than income from foreign sources exceeds Rs. 15 lakhs in the years under review.
- During the COVID lockdown, the assessee's presence in India increased: below 182 days in FY 2019-20, above 182 days in FY 2020-21, and between 120 and 182 days in FY 2021-22.

The Analysis

Sections 6(2), 6(4), 6(5), 6(13), 159(4) of the ITA, 2025

The chart below works through each tax year to the residency outcome. The income position (above or below ₹15 lakh) must be established first, because it determines which day-count threshold applies.

Figure-11.1: The Flow – Year By Year



The income position is decisive. Because the assessee's total income other than income from foreign sources exceeds Rs. 15 lakh, Section 6(5) substitutes a threshold of 120 days for the 60-day limb of Section 6(2)(b). If that income is below ₹15 lakhs, the applicable threshold would remain 182 days, and the FY 2021-22 outcomes would differ. The income must therefore be established before the day-count threshold is selected.

For FY 2020-21, the chart shows two positions. On a plain count, the presence above 182 days makes the assessee resident under Section 6(2)(a), with Not Ordinarily Resident status the likely result under Section 6(13). Alternatively, the relief granted by the Central Board of Direct Taxes through Circular No. 11 of 2020 and the circulars that followed may exclude days attributable to the COVID-19 travel restrictions, which can reduce the effective count below 182 days. Where the assessee remains resident after that exercise, the position under Section 159(4) and the India-UAE Double Taxation Avoidance Agreement is examined, applying whichever position is more beneficial.

Box-11.2: POINTS TO CARRY FORWARD

- The Rs. 15 lakh income test selects the day-count threshold. Establish the income position before choosing between 60, 120, and 182 days.

- The four-year aggregate of 365 days is a distinct limb of Section 6(2)(b) and must be verified against the travel record, not assumed.
- The COVID-19 circular relief for FY 2020-21 is year-specific and does not travel to later years.
- Residency is the first determination only. The ordinary residence question under Section 6(13) and, where relevant, the treaty position under Section 159(4) must follow.

Box-11.3: Case Study 2 –

Residence under the Act and under FEMA

Returning Indian citizen | Where the two laws diverge

FACTS

- The assessee is an Indian citizen who moved abroad several years ago and has resided outside India since then.
- The assessee currently holds no employment in the country of residence and renders services to an Indian partnership firm, earning professional income that, together with Indian-source income, exceeds ₹15 lakhs in the year.
- The assessee pays tax in both India and the United Kingdom and holds a United Kingdom Tax Residency Certificate.
- The assessee owns residential property in the country of residence and holds partnership interests in India.
- Presence in India, by tax year: more than 182 days in the earlier years when the assessee was resident; below the applicable thresholds in most years after moving abroad; above 182 days in the pandemic year; and, in a later year, between 120 and 182 days.

- The assessee now intends to stay in India for less than six months, for family, philanthropy, and to explore the India business, and is considering whether to move residence to India or to retain residence abroad.

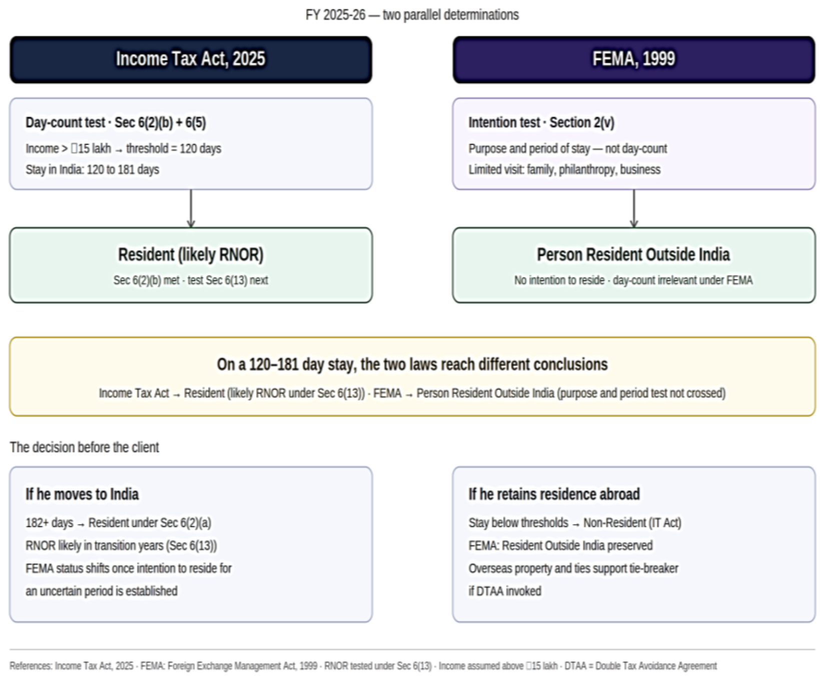
Because the assessee pays tax in both India and the United Kingdom, the deemed residency provision in Section 6(7) of the ITA, 2025 has no application; that provision is confined to an Indian citizen who is not liable to tax in any other country. The assessee's total income other than income from foreign sources exceeds Rs. 15 lakhs, with the consequence that Section 6(5) sets the operative threshold for the second test at 120 days in any year in which that test applies.

Box-11.4: THE QUERY

This case study examines a returning Indian citizen whose residential status must be determined under two separate enactments. Residence under the ITA, 2025, turns on the day-count tests in Section 6. Residence under the Foreign Exchange Management Act, 1999 turns on the intention test in Section 2(v). The two do not always produce the same answer, and this case is an illustration of that divergence. All identifying particulars have been removed.

Figure-11.2: The Analysis of Two Sections

Section 6 of ITA, 2025 and Section 2(v) of FEMA	



The chart above places the Income Tax and FEMA determinations side by side for FY 2025-26. The point where the two laws diverge, and the practical decision that follows, are set out beneath the flow.

The divergence is the teaching point of this case. On a stay of between 120 and 181 days in FY 2025-26, the assessee is a resident under the Income-tax Act, since the modified second test under Section 6(2)(b) read with Section 6(5) is satisfied, and is likely not Ordinarily Resident under Section 6(13). Yet under Section 2(v) of the FEMA, the assessee remains a person resident outside India, because a defined and limited visit for family, philanthropy, and exploratory business purposes does not establish an intention to reside in India for an uncertain period. The day-count that governs the Income Tax position has no bearing on the FEMA position.

Box-11.5: POINTS TO CARRY FORWARD

- Residence under the Income-tax Act and residence under FEMA are determined on different tests and may diverge in the same year.
- The day-count threshold under the Act is 120 days here, not 60, because Indian-source income exceeds ₹15 lakhs.

- The deemed residency provision under Section 6(7) does not apply, as the assessee is liable to tax in India and the United Kingdom.
- FEMA residence turns on the purpose and period of the intended stay under Section 2(v), not on the number of days. A limited visit preserves resident-outside-India status.
- The choice between moving to India and remaining based in the United Kingdom should be assessed against both determinations together, not the Income Tax position alone.

Box-11.6: Case Study – 3

FEMA Notice Risk Based on Income Tax Return

Indian citizen | Where the two laws diverge

FACTS

- An individual, resident in India for income tax purposes, files his return of income disclosing foreign assets, foreign bank accounts, and foreign income as required under Schedule FA of the income tax return.
- The individual has not separately assessed his position under FEMA and has continued operating his Indian bank and demat accounts as a resident.

Box-11.7: THE QUERY

This case study examines whether the Income Tax return triggers a FEMA notice or inquiry. How does FEMA enforcement actually operate, and what is the channel through which information flows between the two regimes?

The Analysis

FEMA and the Income-tax Act are distinct statutory regimes administered by different authorities. FEMA is administered by the RBI and enforced through the Directorate of Enforcement (ED), whereas income-tax compliance is governed by the Income-tax Department.

An Income Tax Return (including Schedule FA disclosures) is not a FEMA filing, and there is no automatic process by which such disclosures result in

FEMA proceedings. However, information disclosed in the ITR may form part of the evidentiary record in subsequent FEMA, tax, foreign asset, or regulatory investigations.

While the risk of FEMA scrutiny arising solely from an ITR disclosure is low, information may reach FEMA authorities through income-tax assessments, AD bank reporting, FIU inputs, intelligence sources, complaints, or inter-agency references. Accordingly, disclosures relating to foreign assets, remittances, repatriations, or account operations inconsistent with FEMA status may attract attention if a separate inquiry is initiated.

The more immediate risk is operational and bank driven. AD banks are required to monitor compliance with FEMA provisions relating to account classification, KYC, remittances, and reporting. If a person becomes a FEMA non-resident but continues to maintain or operate resident savings or demat accounts without redesignation, the inconsistency may be identified through bank reviews or regulatory reporting. Holding an NRO account itself is permissible; the concern relates to the continued use of resident accounts after becoming a non-resident.

Non-compliance may attract penalties under Section 13 of FEMA, which provides for a penalty of up to three times the amount involved (where quantifiable) or up to INR 2 lakh (where not quantifiable), together with an additional penalty of up to INR 5,000 per day for a continuing contravention. Such contraventions may, subject to eligibility, be regularised through the compounding mechanism under Section 15 of FEMA and the applicable RBI regulations.

Box-11.8: POINTS TO CARRY FORWARD

- The ITR is not a FEMA filing and does not go to the ED automatically, but it creates a documentary record that can become evidence in a subsequent inquiry.
- A person who discloses foreign assets in Schedule FA while still holding resident Indian bank or demat accounts may create a paper trail showing inconsistency between income-tax reporting and FEMA account classification.
- The safer course is to align FEMA status and account status before filing the first ITR in which foreign assets are disclosed.

- Redesignation of resident accounts to NRO or opening/using appropriate NRE or NRO accounts should precede or at least coincide with the point at which FEMA non-resident status is established.
- Compounding is available but is not a planning tool; it is a remedy for past contraventions and carries reputational and compliance cost. The person should also examine whether any remittances out of India during the period of FEMA non-residency required RBI approval that was not obtained, since those transactions may constitute separate contraventions depending on the nature of the remittance, source of funds, applicable route, documentation, and approvals

Box-11.9: Case Study – 4

Conflict Between FEMA Non-Resident Status and Income Tax Resident Status

Dubai Golden Visa

FACTS

- An Indian professional obtains a Dubai Golden Visa in, say, June of a financial year. He relocates to Dubai, acquires a UAE residence permit, opens a UAE bank account, and converts his Indian demat and bank accounts to NRI status on the basis that he is now a person resident outside India under FEMA.
- He informs his depository participant and his banks of the change in residential status, and his accounts are re-designated accordingly.
- However, because he spent 185 days in India during that same financial year before his departure, he satisfies the 182-day test under Section 6(1)(a) of the Income-tax Act, 2025, and is therefore a resident of India for income tax purposes for that year.
- If he is a Resident and Ordinarily Resident for income tax purposes, his worldwide income is taxable in India. If he is a Resident but Not Ordinarily Resident, the Indian taxability of foreign income is narrower and must be tested separately. He has also earned rental income from his Dubai apartment and interest on his UAE bank account, which he has not reported in India on the assumption that he is a non-resident.

Box-11.10: THE QUERY

This case study examines how the conflict between FEMA non-resident status and income tax resident status operates in practice. What are the specific risks from the income tax side and from the FEMA side? Does the Income Tax Act follow FEMA, or do they operate entirely independently?

The Analysis

FEMA and income-tax residency operate under different tests and can produce different outcomes. Under FEMA, residency is determined by the purpose and intention of stay. A person leaving India for employment, business, or any purpose indicating an intention to remain abroad for an uncertain period becomes a non-resident from the date of departure. The 182-day test under the Income-tax Act is not relevant for FEMA purposes. In contrast, tax residency is determined primarily based on physical presence in India under Section 6 of the ITA, 2025. Accordingly, an individual may be a FEMA non-resident while simultaneously remaining an Indian tax resident in the year of departure.

The tax implications depend on whether the individual qualifies as a Resident and Ordinarily Resident (ROR) or Resident but Not Ordinarily Resident (NOR). An ROR is taxable in India on worldwide income, including UAE rental income and bank interest. An NOR is taxable only on specified categories of income having a nexus with India. The India-UAE DTAA may provide relief but does not eliminate the obligation to correctly determine residency, disclose foreign assets and income, and comply with Indian tax filing requirements.

Further, the deemed-residency provisions under Section 6(7) may apply to certain Indian citizens with total income exceeding INR 15 lakhs (excluding foreign-source income) who are not liable to tax in any other country due to residence, domicile, or a similar criterion. This requires a detailed domestic law and treaty analysis.

From a FEMA perspective, conversion of bank accounts to NRI status is generally valid if the individual has genuinely relocated abroad with an intention to stay outside India for an uncertain period. However, if facts indicate that the individual continues to maintain significant economic and personal ties with India, the FEMA non-resident status may be questioned.

A key risk arises when funds are repatriated. While FEMA permits NRIs to repatriate funds from NRE accounts, any underlying income that was taxable in India but remained undisclosed can still be examined by the income-tax authorities. During scrutiny, the tax authorities may review foreign asset disclosures, bank statements, and source of funds and may levy tax, interest, and penalties, as applicable.

Box-11.11: POINTS TO CARRY FORWARD

- The Golden Visa situation requires a two-track analysis for the year of departure. For income tax, the individual must assess his day count and then determine whether he is Non-Resident, Resident but Not Ordinarily Resident, or Resident and Ordinarily Resident. Only if foreign income is taxable in India should treaty relief or foreign tax credit be evaluated; where foreign tax credit is claimed, the relevant procedural requirements under Rule 128 and Form 67 must be considered.
- For FEMA, the question is whether his departure satisfies the intention test, and the conversion of accounts should be documented with evidence of relocation: employment contract or business registration in the UAE, UAE tenancy agreement or property ownership, UAE utility bills, and the Golden Visa itself.
- The two analyses must be done separately and must not be conflated. A clean FEMA position does not produce a clean income tax position for the same year, and vice versa.
- The deemed residency provision under Section 6(7) warrants specific attention for UAE-based Golden Visa holders. If the individual's Indian-source income exceeds Rs. 15 lakh and he is not liable to tax in any other country by reason of domicile, residence, or a similar criterion, he should take specific advice on whether the deemed-residency provision applies and, if it does, how it affects his Indian return and treaty position.
- The India-UAE DTAA tie-breaker provisions become

relevant only if the individual is treated as a resident of both India and the UAE for treaty purposes. They should not be assumed to apply merely because the individual holds a Golden Visa or is deemed resident in India.

- For subsequent years, the income-tax position must be tested each year separately. NR status depends primarily on current-year stay and the applicable modified thresholds, while NOR status depends on prior-year residence history and the 730 days lookback test. The position generally stabilises only after the individual consistently remains outside India and applies the correct annual status test.
- The transition year is the one that carries the highest risk and requires the most careful handling. Planning the departure date, ideally before the 182-day threshold is crossed in the financial year of departure, is the most effective way to avoid the dual-status complication entirely.

List of Abbreviations

The following abbreviations are used throughout this Handbook

ALP	Arm's Length Price
AO	Assessing Officer
APA	Advance Pricing Agreement
CBDT	Central Board of Direct Taxes
CbCR	Country-by-Country Report
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act, 1999
FTC	Foreign Tax Credit
ICAI	Institute of Chartered Accountants of India
ITAT	Income Tax Appellate Tribunal
ITA, 2025	Income-tax Act, 2025
MAP	Mutual Agreement Procedure
NRI	Non-Resident Indian
OCI	Overseas Citizen of India
ITA, 1961	Income-tax Act, 1961
PAN	Permanent Account Number
PE	Permanent Establishment
PIO	Person of Indian Origin
NOR	Resident but Not Ordinarily Resident
ROR	Resident and Ordinarily Resident
TRC	Tax Residency Certificate
TP	Transfer Pricing

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