

NON-RESIDENT

Non-resident means a Person who is not a resident, it includes a Person who is RNR (i.e Resident but not ordinarily Resident).

PART(A):-Residential Status :-

① In Case of Individual :-

(A) For the Status of Resident only, following two Conditions are there out of one should be fulfill by an Individual :- (i.e Basic Conditions)

i) Such Individual must stay in India for min. 182 days or more or

ii) Such Individual must stay in India for min. 60 days or more during relevant P.Y Plus 365 days or more during 4 P.Y immediately preceding the relevant P.Y.

(B) For the Status of ROR (Resident and ordinarily resident) following all Conditions should be fulfill by an Individual:-

i) 1 Basic Condition of Resident Status.

ii) Such Individual must be "resident" of India for 2 P.Y out of 10 P.Y immediately preceding the relevant P.Y

- iii) Such Individual must be in India for 730 days or more during 3 P.Y immediately preceding the relevant P.Y.
- ② For the Status of RNR, following all the Conditions should be fulfilled by Such Individual :-
 - i) Such Individual fulfills any one condition of Resident Status.
 - ii) Such Individual if fails to fulfill both conditions of R.R.
 - iii) Such Individual should be a citizen of India.
 - iv) Income of Such Individual other than foreign Source should be in excess of ₹ 15 lakh during a relevant P.Y.
 - v) Such Individual not liable to Pay Tax in other Country because of his residency in Such other Country.
 - vi) If Such Individual comes on a Visit to India during relevant P.Y.
 - vii) Such Individual is in India for min. 120 days but less than 182 days during a relevant P.Y plus 365 days or more during 4 P.Y immediately preceding the relevant P.Y. i.e 2nd Basic condition of Resident is Revised.

→ Citizen of India means a person born in India and Parents are Indian, born outside India and 1 parent is Indian, Resides 7 years, Stay 12 years out of 14 years u/s 6.

Some Exceptions of Residential Status :-

① and Basic Condition of Resident Status is irrelevant for :-

a) An Indian citizen who leaves India during the relevant P.Y for employment purpose or as a Member of crew of an Indian ship.

Deemed Resident Status :-

An Individual shall be deemed to be resident in India if following all Conditions are fulfilled :-

① He is a citizen of India.

② His Total Income other than Income from foreign sources should exceeds ₹ 15 lakh during a P.Y and 2nd Basic condition is revised, means Such Individual must be in India min. 120 days and Max 181 days (i.e less than 182 days) plus 365 days or more during 4 P.Y immediately preceding the relevant P.Y.

If Income other than foreign Source not exceeds ₹ 15 lakh then revised Second Basic condition of Resident is :

Such Individual must be in India min. 182 days in P.Y plus 365 days in 4 P.Y immediately preceding the relevant P.Y.

Practical format related to Solve Questions of Residential Status :-

Particulars.

	ROR (F)	R NOR (F)	NR (F)
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① Income received in India or income deemed to be received in India (whether earned in India or outside India) Taxable Taxable Taxable

② Income accrue or arise in India or deemed to be accrue or arise in India. (whether received outside India) Taxable Taxable Taxable

③ Income from a business or profession outside India where :-

- Business controlled from Person who is resident in India.
- Profession which was firstly set up in India.

(whether Income received outside India) Taxable Taxable Not Taxable

(4) Income accrue or
arise outside India.
(whether received
outside India)

Taxable

Not Taxable

Not Taxable

(5) Past untaxed income Not Taxable Not Taxable Not Taxable

Total Income

₹ XXXX

₹ XXXX

₹ XXXX

According to Status.

PART (B) :- Computation of Income on Presumptive Basis of a Non-Resident Assessee :-

(A) [Section 44B] Shipping Business by a non-resident Assessee :-

(1) The Income of a Non-resident assessee engaged in the business of operation of ships in India shall be Taxable u/s PABP on Presumptive scheme basis.

(2) Presumptive Scheme means, 7.5% of the all Gross receipts of such NR shall be the Taxable Income.

(3) Gross receipts also includes demurrage or handling charges.

(B) [Section 44BB] Profits and Gains in Connection with the business of Exploration, etc. of Mineral oils by a Non-Resident Assessee :-

(1) The Income of a Non-resident from the business of Explorations of Mineral oils shall be Taxable u/s PABP on Presumptive Scheme basis in India.

(2) Mineral oil means Petroleum, natural gas etc.

(3) Activity of Providing Services / facilities or Supplying Plant & Machinery for such extraction or production of Mineral oil are relevant for such business.

- (4) Plant includes ships, aircraft, vehicles, drilling units, scientific equipments, etc.
- (5) Under Such Presumptive Scheme 10% of the Gross Receipt of Such NR shall be the Taxable Income.
- (6) Such Non-Resident may claim lower Profits and Gains if he keeps and maintains Books of Accounts u/s 44AA and get Tax Audited u/s 44AB.
- (7) However, the A.O may make Scrutiny Assessment of Such NR for determining the correct Income.
- (c) [Section 44BBA] Profits and Gains of the Business of Operation of Aircrafts:-
 - (1) The Income of a Non-Resident from the business of operation of Aircrafts shall be Taxable u/s 44BBA on Presumptive Scheme basis in India.
 - (2) Under Presumptive Scheme, 5% of the Gross Receipt of Such NR shall be the Taxable Income.
 - (3) Any receipt received outside India shall not be Taxable in India, as we learn in residential status in Intermediate, if business place situated outside India.

① [Section 44 BBB] Profits and Gains of "foreign Companies" Engaged in the Business of Civil Construction, etc in certain Turnkey Power Projects :-

- ① The Income of a foreign Company from the business of Civil Construction, erection of Plant or Machinery or Testing or Commission there of, in connection with a Turnkey Power Project approved by the C.G, shall be Taxable U/H PGBP on Presumptive Scheme Basis.
- ② Such Approval can be come from Ministry of Energy.
- ③ Under Such Presumptive Scheme, 10% of the Gross Receipt of Such NR shall be the Taxable Income U/H PGBP.
- ④ Such foreign Company may claim lower Profits and Gains if he keeps and Maintain Books of Accounts u/s 44 AA and get Tax Audit u/s 44AB.
- ⑤ However, A.O may make Scrutiny Assessment of Such foreign Company for determining the Correct Income.
- ⑥ Foreign Company is a company as prescribed in Companies Act, 2013.

(E)

[Section 44DA] Income by way of Royalty, or fees for Technical Services of a NR (except NR Company) or of a foreign Company :-

- ① All Such Incomes of a NR (except NR Company) or of a foreign Company shall be Taxable normally u/s 9ABP.
- ② Conditions Required to be fulfilled
 - (A) Such NR or foreign Company has earned these Royalty or fees for technical Services from the Government or from an Indian Company under an agreement made after 31.3.2003.
 - (B) Such NR or foreign Company Must have P.E in India.
 - (C) Right, Property, Contract should be effectively Connected with Such P.E.
- ③ No deduction shall be allowed in respect of :-
 - (A) any expenditure or allowance not wholly linked with such P.E.
 - (B) Amounts Paid (other than Reimbursement of Actual Expenses) by P.E to its head office, in excess of a Specified limit.
 - (C) And Such NR or foreign company shall keep and maintain Books of Account u/s 44AA and get his Accounts Tax Audited u/s 44AB and upload, a Report in form 3CE duly Signed and verified by a Practicing CA, one month prior to the due date of filing Return of Income.

⑤ Such Specified limit is higher of :-

- 5% of the adjusted Total Income
- or → Expenditure connected with Such P.E in India.

⑥ Adjusted Total Income is an Income before claiming any :-

- Head-office Expenditure
- Unabsorbed depreciation.
- Capital expenditure on Family Planning.
- Carry forwarded loss (except house property loss).
- Deductions u/c VI-A

PART C):-

Capital Gain on Transfer of shares / debentures by a Non-Resident :-

- ① Capital Gain whether LTCG or STCG from Transfer of shares / debentures of an Indian company to a N.R shall be Taxable in India.
- ② All cost of Acquisition, Expenditure at the time of Acquisition and the Sale proceeds shall be converted into the foreign currency.
- ③ It is because we have to deduct Purchase cost (which also in foreign currency) from Sale Proceed in order to find Capital Gain.
- ④ However Such Capital Gain shall be converted into Indian Currency for determination of Indian Income Tax liability.
- ⑤ No Benefit of Indexation shall be Available.
- ⑥ Therefore, Practical Equation is as follows :-

Sale Proceed by Average Exchange rate $\text{₹}xxx$
on the date of Transfer.

less : Expenditure on Transfer by Average Exchange $(\text{₹}xxx)$
rate on date of Transfer.

less : Cost of Acquisition by Average exchange rate $(\text{₹}xxx)$
on the date of Acquisition.

Taxable Capital Gain which shall be Converted $\underline{\text{₹}xxx}$
by using buying rate on the date of Transfer.

- ⑦ Average Exchange Rate is the Average of the Telegraphic Transfer buying and Selling Rate.
- ⑧ Buying Rate is the Telegraphic Transfer buying rate of such currency.

Exceptions :-

- LTCG arising from the Transfer of a Capital asset, being unlisted Securities or shares of a Company in which the Public are Substantially Interested shall be Taxable @ 10% Tax rate plus Surcharge and cess.
- No Conversion in foreign currency shall be made.
- No Indexation benefit shall be Taken.

PART D :-

TDS PROVISION FOR NON-RESIDENT

① [Section 194E] TDS on Payment to NR Sportsman or to NR Sports Association :-

- ① Rate of TDS is 20% + Surcharge + cess.
- ② Income by way of following, to a Sports person :-
- ① Participation in India in any Game or Sports (excluding Card game or Gambling).
 - ② Advertising in India.
 - ③ Contribution of Articles relating to any game or Sports in any newspaper, Magazine or Journal.
 - ④ Income by way of organising Games or Sports (other than Card game) in India by a Sports Association.
- ④ Time of TDS to be made, Earlier of following :-
- Time of Payment or
 - Time of crediting the Party (NR)
- whichever is Earlier.

② [Section 194 LB] TDS on Interest from Infrastructure Debt fund:-

① Rate of TDS is 5% + Surcharge + Cess.

② A person who is responsible to pay an interest amount under Infrastructure Debt fund, have to deduct Tax of such NR.

③ Time of TDS to be made, Earlier of following:-

→ Time of Payment or

→ Time of crediting the Party (NR)

- whichever is Earlier.

③ [Section 194 LBA] TDS on certain Income from units of a Business Trust:-

① A business Trust distributing Income (dividend) on its unit require to deduct Tax.

② Time of TDS to be made, Earlier of following:-

③ Rate of TDS are as follows:-

Payee (Non-Resident)
or Resident

[Section 10(23Fc)]
Payment related
to interest from
SPV or related
to dividend U/S
115-O (on which
CDT is 15%).

[Section 10(23FcA)]
Payment related
to went out
any real estate
Asset owned by
Such business Trust.

(A) Resident Person.

10%.

(B) NR (except Company)

10% on dividend, 5% other 30% + S.C + cess

(C) NR (Company)

10% on dividend, 5% on other. 40% + S.C + cess

For Resident TDS is 7.5% b/w 14.5.2020 to 31.3.2021.

④ [Section 194 LBB] TDS on Income from units of Investment fund :-

- ① The Person making Payment of such Income to NR required to deduct Tax.
- ② Time of TDS to be made, Earlier of following two:-
- Time of Payment.
 - Time of crediting the Party (NR)
- Whichever is Earlier.

③ Rate of TDS are as follows:-

Payee (NR or Resident) :

Rate of TDS :-

→ Resident

10%, but from 14.5.2020
to 31.3.2021 it is 7.5%.

→ NR (except Company)

30%.

→ Foreign Company

40%.

④ If an income which is not chargeable to Tax for NR (except Company) or for Foreign Company then no TDS will be made.

⑤ If an Application in Form 13 is made to A.O for lower Tax rate or no Tax rate applicability then No TDS u/s 194 LBP will be made.

⑤ [Section 194 LBC] TDS on Income from Investment in Securitisation funds :-

① The Person making such Income from Investment in Securitisation fund require to deduct Tax.

② Time of TDS to be made, earlier of following two :-

→ Time of Payment or
→ Time of crediting Party
—whichever is Earlier.

③ Rate of TDS are as follows :-

Payee :-

Rate of TDS :-

→ Resident :

Individual or HUF
Other Resident

25% [from 14.5.2020 to 31.3.2021] \rightarrow 18.5%
30% \rightarrow 22.5%]

→ Non-Resident :

Foreign Company
Other NR

40%
30%

④ If an Application in Form 13 is made to A.O for lower Tax rate or no Tax rate applicability then no TDS under this Section will made.

⑥ [Section 194LC] TDS on Interest to Non-Resident :-

- ① An Indian company or a business Trust responsible to deduct Tax on Interest payment to NR or to foreign company.
- ② Interest Payment in respect of :-
 - (A) Monies borrowed by Indian Company or business Trust from a Source outside India by way of Issue of Rupee denominated bond before 1.7.2023, TDS shall be 5% + Surcharge + cess.
 - (B) Monies borrowed by Indian Company or business Trust from a Source outside India by way of Issue of long term bond or Rupee denominated bond on or after 1.4.2020 but before 1.7.2023 which is listed only on a Recognised Stock exchange located in any IFSC and Interest Payment shall not exceed interest Amount approved by CG, TDS shall be 24% + Surcharge + cess.
- ③ Monies borrowed by an Indian Company or by a business Trust from a Source outside India :-
→ TDS shall be 5% + Surcharge + cess.
→ Under a loan agreement b/w 1.7.2012 - 1.7.2023
→ by way of issue of long term bond including long term Infrastructure bond b/w 1.7.2012 - 1.7.2023 and w.e.f 1.6.2013 Rule of 20%. TDS in absence of PAN not applicable on this.
- ④ Time of TDS shall be Earlier of Payment or crediting the Party, Earlier.

① [Section 194 LD] Income by way of Interest on certain Bonds, Government Securities.

① The Person making Such Interest Payment to a foreign Institutional Investor or to a Qualified foreign Investor, have to required to deduct Tax.

② Such interest Payment shall be related to :

③ Rupee denominated bond of an Indian company or related to a Government Security on or after 1.6.2013 but before 1.7.2023.

④ Municipal debt Security on or after 1.4.2020 but before 1.7.2023.

⑤ Rate of TDS shall be 5% + Surcharge + cess.

⑥ Time of TDS shall be earlier of :-

→ Time of Payment or

→ Time of crediting the Party.

- whichever is Earlier.

(8) [Section 195] TDS on other Sums Payable to N.R.:

- ① The Person making any other Sum (except Salary) to a NR, require to deduct Tax.
- ② Time of TDS shall be earlier of following:-
 - Time of Payment on
 - Time of crediting the Party- whichever is earlier.
- ③ Rate of TDS shall be the rate in force during the financial year.
- ④ If the Payer is Government or Public Sector bank / financial Institution then Tax to be deducted at the time of Payment only.
- ⑤ If a Statement in Form 13 regarding low Tax rate or no Tax is made to A.O then no TDS will Takes Place.
- ⑥ However Person making Payment require to furnish all related information to A.O, otherwise a penalty of ₹ 1,00,000 may be imposable.

⑨ [Section 196B] TDS on Income from units :-

- ① The Person Making Such Payment as Income from units to a NR, responsible to deduct Tax.
- ② Income from units related to :-

→ units Purchased in foreign currency

→ Income by way of LTCG by Transferring Such units to an offshore fund. (i.e International Mutual Fund)

③ Rate of TDS shall be 10% + Surcharge + cess.

⑩ [Section 196C] TDS on Income from foreign currency bonds or GDR (Global Depository Receipts) :-

- ① The person making Payment of Such Income to a NR responsible to deduct Tax.
- ② Such Income related to interest or dividend on foreign currency bonds or GDR, or related to LTCG on them.
- ③ Rate of TDS shall be 10% + Surcharge + cess.
- ④ Time of TDS shall be Earlier of :-

→ Time of Payment or
→ Time of crediting the Party
— whichever is Earlier.

⑪ [Section 196 D] TDS on Income of Foreign Institutional Investor (FII) from Securities.

- ① The Person making Payment of Such Income to FII, responsible to deduct Tax.
- ② Rate of TDS shall be 20% + Surcharge + cess.
- ③ No TDS shall be made on LTCG.
- ④ Time of TDS shall be Earliest of :-
 - Time of Payment or
 - Time of crediting the Party.
 - whichever is Earliest.

PART (E) :-

Recovery of Tax from Non-Resident :-

- ① In case NR assessee not making Payment of Tax then Recovery of Tax shall be made from agent or representative assessee of such Non-resident.
- ② No agent shall be Treated as deemed agent unless an opportunity of being heard is given.
- ③ Agent of Non-resident includes :-
 - (A) who is employed by or on behalf of NR.
 - (B) who has any business connection with NR.
 - (C) who receives Income whether directly or indirectly on behalf of NR.
 - (D) who is the Trustee of the NR.
 - (E) who is a mediator for Transferring Capital Asset in India, on behalf of NR.
- ④ Exceptions :- A broker in India deals with another non-resident broker not be a agent of NR if :-
 - (A) The Transaction are carried on in the ordinary course of business.
 - (B) The Non-resident broker is carrying on such Transaction in the ordinary course of his business and not as a Principal.

- (5) An agent shall be entitled to recover any sum paid by him, from NR or to retain any moneys of NR.
- (6) An agent may deduct amount of Tax from money available in his possession of NR and send balance money to NR.
- (7) If NR (being Principal) restricts the Agent regarding not to retain his money then Agent may make a statement to A.O. for asking the Tax amount to be retain only.
- (8) And Recovery of Tax from agent cannot exceed the sum determined by A.O. upon a statement.