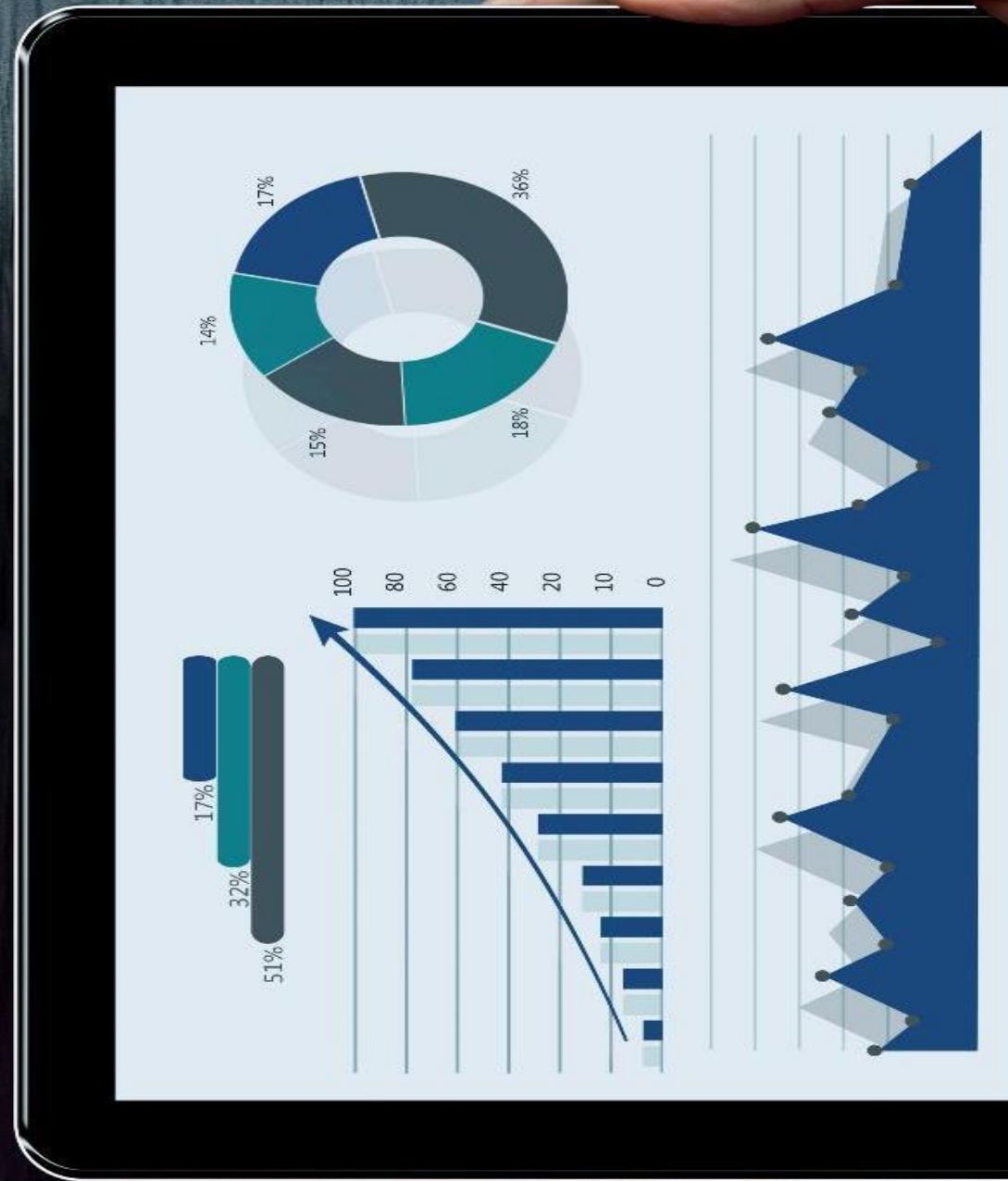


BASICS OF INCOME-TAX AND RETURN FILING

CA Vyomesh Pathak

27 August 2022



Residential Status Provisions



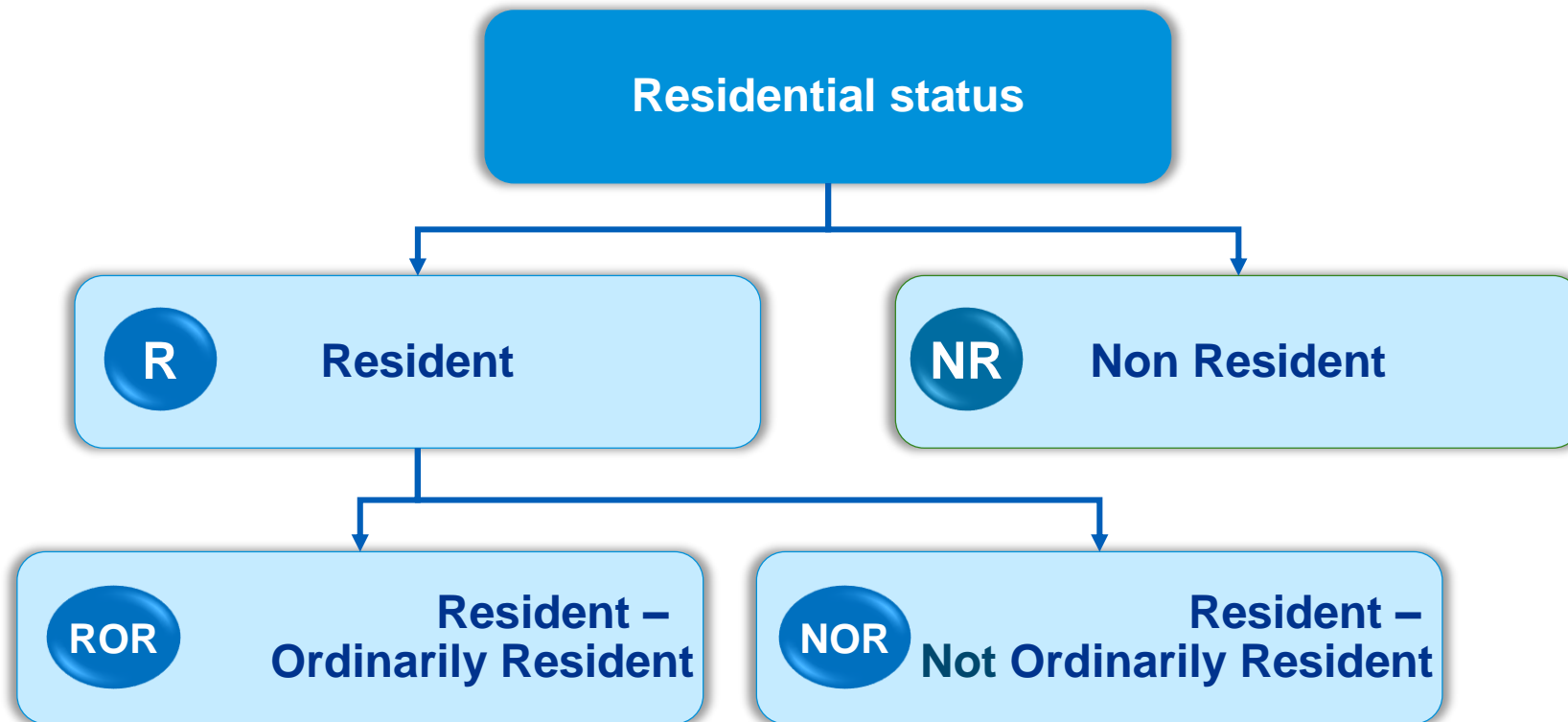
Personal Taxes - Residential Status in India

- Residency In India determined by “Physical Number of Days of Stay in India” – Day of arrival and departure considered as stay in India

FINANCIAL YEAR (FY)

01 APRIL

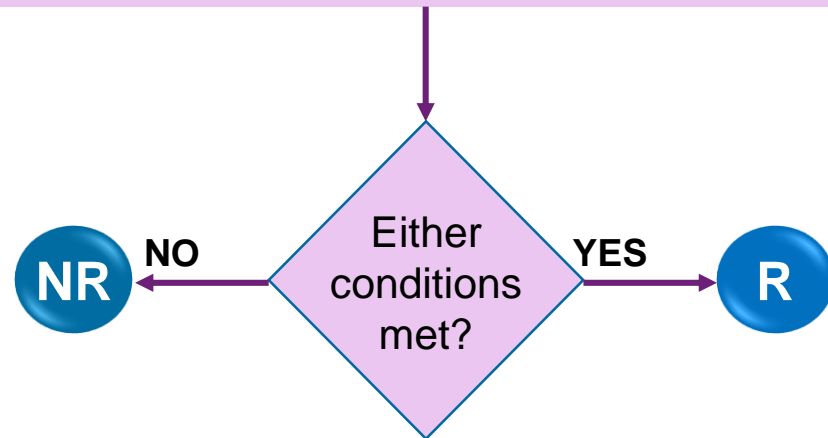
31 MARCH



Residential Status in India- Old Provisions

Basic Conditions

- 182 days or more in a FY
- 60 days* or more in a FY + 365 days or more in four FY preceding the relevant FY

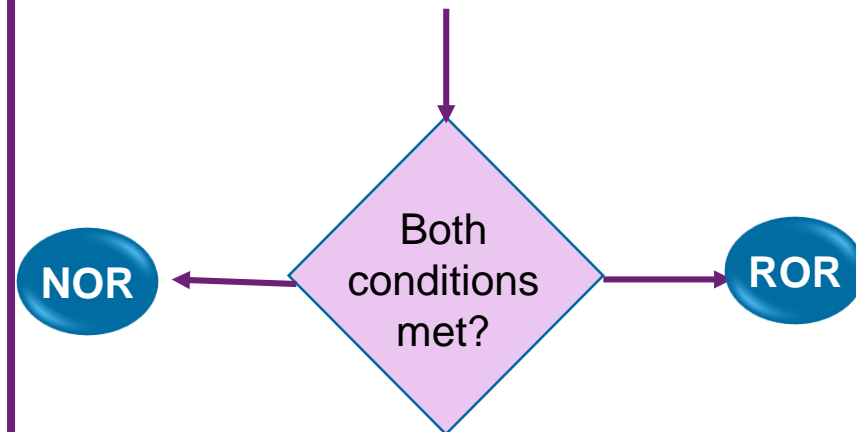


*

- a) 60 days replaced by 182 days in year of departure for Indian citizen leaving India for employment.
- b) **60 days gets replaced by 182 days** in the year of visit to India for Citizen of India / Person of Indian Origin, while being outside India

Additional Conditions

- “Resident” in India in **2 out of 10** FY preceding the relevant FY
- **Present in India for 730 days or more during the 7 FY preceding the relevant FY**



Changes in Residency conditions as per Finance Act, 2020

- For Citizen of India / PIO who being outside India comes to India on **visits**, residency triggered with reduced period of 120 days (from current 182 days)
- Test for qualifying as Not Ordinarily Resident (NOR) truncated-
 - Proposed that individual qualifies as NOR if NR in at least 7 out of 10 past years
 - Test of staying 730 days in past 7 years deleted
- Citizen of India **not liable to tax in any other country by reason of his residency / domicile / similar criteria - Deemed to be resident in India**

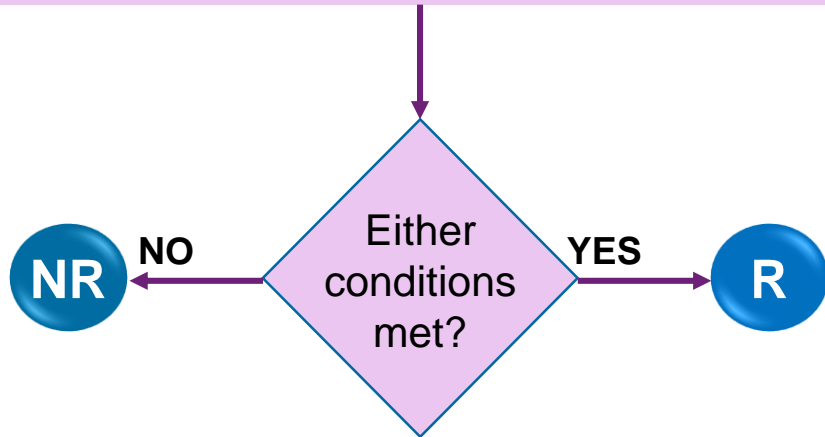
Subsequent clarifications – CBDT press release

- No intention to tax those Indian citizens who are bonafide workers in other countries, including Middle East, etc.
- Foreign income will be taxable in India only if such income is derived from a business / profession in India

Residential Status in India- Determining R / NR

Current Provision - Basic Conditions

- 182 days or more in a FY
- 60 days* or more in a FY + 365 days or more in four FY preceding the relevant FY

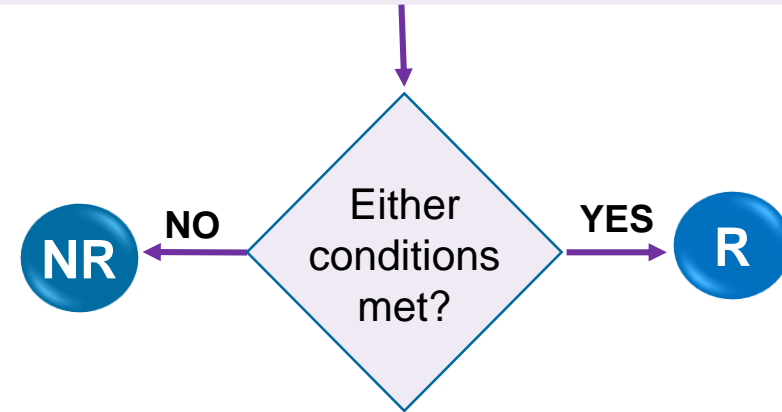


*

- a) 60 days replaced by 182 days in year of departure for Indian citizen leaving India for employment.
- b) **60 days gets replaced by 182 days** in the year of visit to India for Citizen of India / Person of Indian Origin, while being outside India

Revised Provision - Basic Conditions

- No change*



*

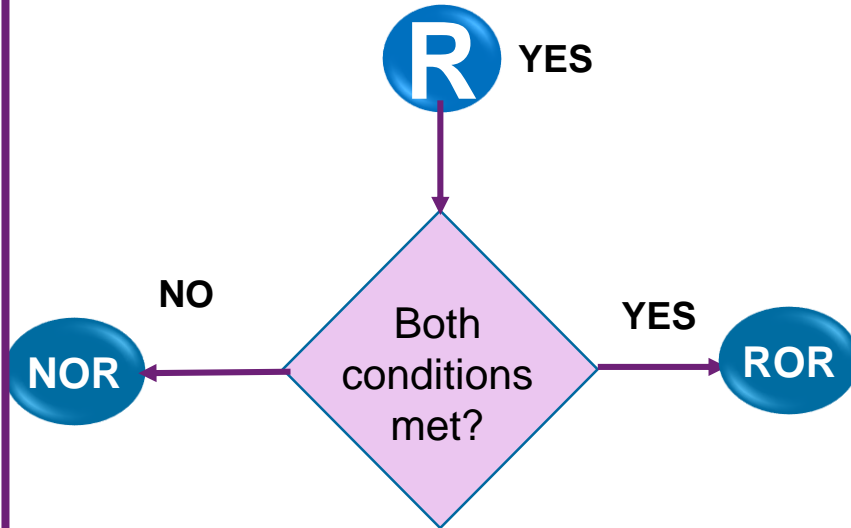
- a) No change*
- b) **60 days gets replaced by 120 days** in the year of visit to India for Citizen of India / Person of Indian Origin, while being outside India*

***Notwithstanding any of the above, Citizen of India deemed Resident in India if not liable to tax in any other country by reason of domicile/residence/similar criteria**

Residential Status in India- ROR / RNOR

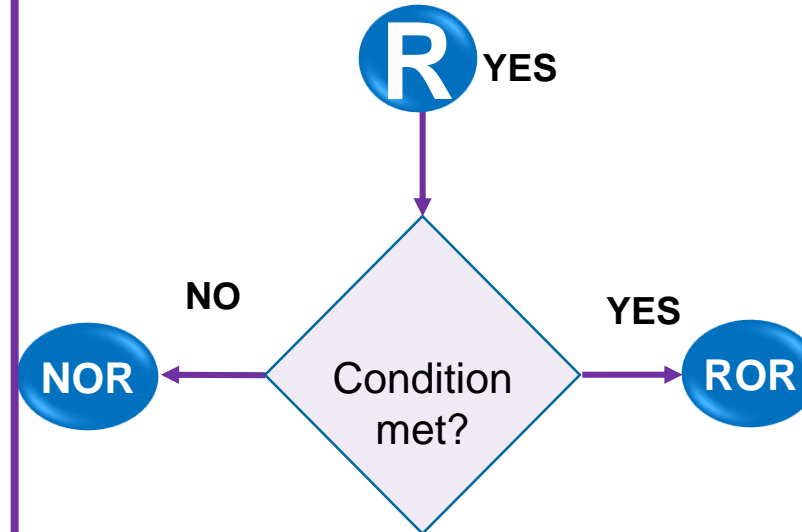
Current Provision - Additional Conditions

- “Resident” in India in **2 out of 10** FY preceding the relevant FY
- **Present in India for 730 days or more during the 7 FY preceding the relevant FY**

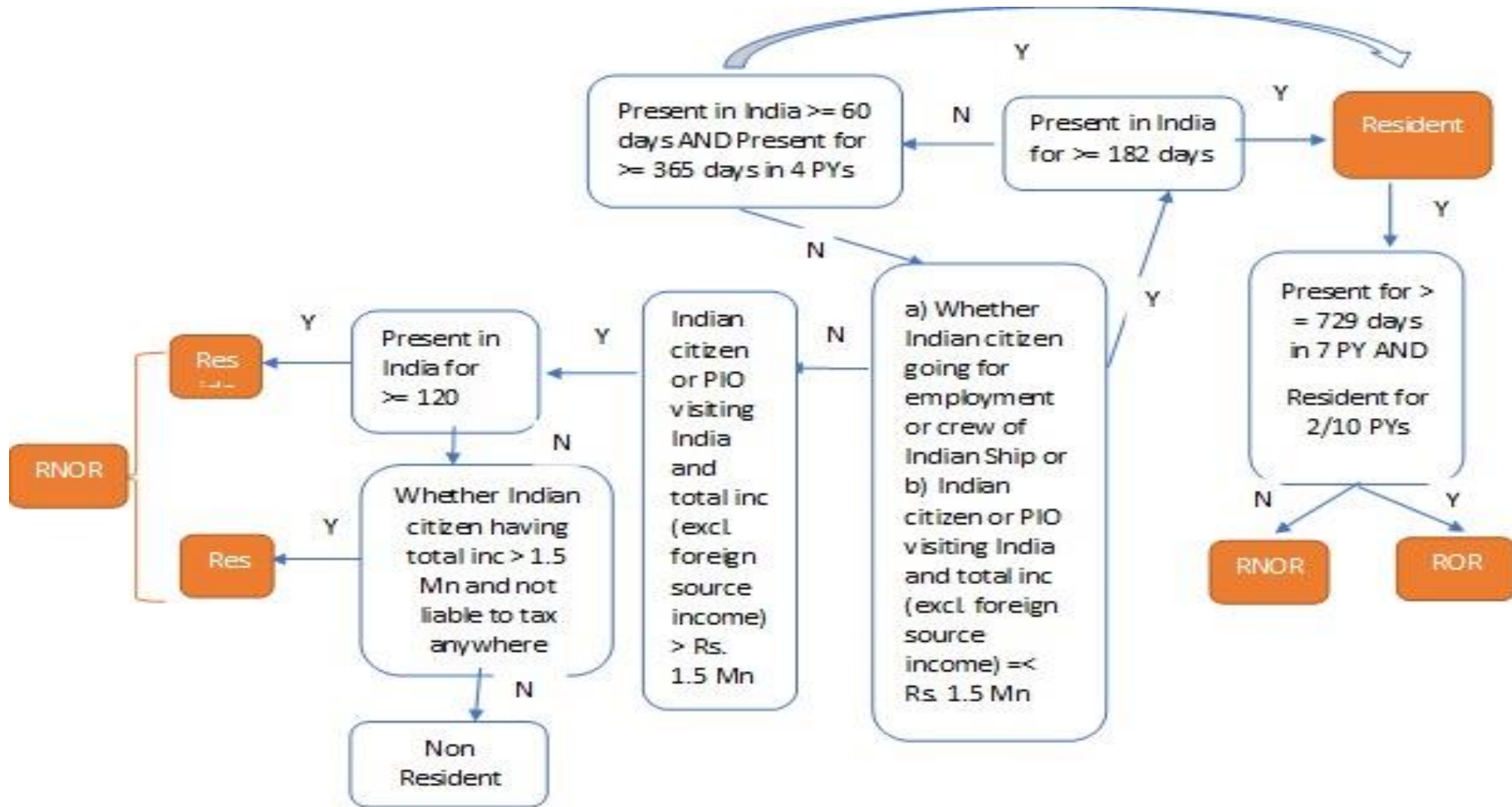


Revised Provision - Additional Conditions

- “Resident” in India in **4 out of 10** FY preceding the relevant FY
- **Second condition deleted**



Residential Status in India - After Enactment



Residency Rule for Indian Citizens/ PIO's (FY 20-21)

Residency/ extended residency rule	Pre- Budget	Budget	Post- Enactment
Indian citizen/ PIO coming a visit to India	<ul style="list-style-type: none"> Is in India for ≥ 182 in relevant FY ; or Has been in India for ≥ 365 days within 4 preceding FYs and is in India for ≥ 182 days (instead of 60 days) in relevant FY 	<ul style="list-style-type: none"> NR if < 120 days in India under second condition NR if ≥ 120 days but < 182 days & Total Income other than foreign Income \leq INR 15 Lac 	<ul style="list-style-type: none"> NR if < 120 days in India under second condition NR if ≥ 120 days but < 182 days & Total Income other than foreign Income \leq INR 15 Lac NOR if ≥ 120 days but < 182 days & Total Income other than Foreign source Income $>$ INR 15 Lac (120 Day Rule)

Residency Rule for Indian Citizens/ PIO's (FY 20-21)

Residency/ extended residency rule	Pre- Budget	Budget	Post- Amendment
<p>Indian citizen not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature</p>	<ul style="list-style-type: none"> No deemed Residency Rule 	<ul style="list-style-type: none"> Indian citizen “not liable to tax” in that country by reason of domicile/resident/ any other criteria, he may be deemed to be Resident in India. 	<ul style="list-style-type: none"> Indian citizen “not liable to tax” in that country by reason of domicile/resident/ any other criteria, he may be deemed to be Resident in India. NOR if total income other than Foreign source Income > INR 15 Lac (Deemed Residency Rule)

Scope of Total Income [Section 5]



Scope of Total Income - Section 5

Resident - Taxability

- Income received / deemed to be received in India
- Accrues / arises / deemed to accrue or arise in India
- Accrues or arises outside India

Global Income is chargeable to tax

Exemption to resident but NOT ordinarily resident w.r.t income accruing outside India unless it is derived from a business controlled in or profession setup in India

Non-Resident - Taxability

- Income received or deemed to be received in India by or on behalf of a person
- Accrues or arises or deemed to accrue or arise in India

- **Incidence of tax on income depends upon:**
 - Person's residential status
 - Place/ time of accrual of income
 - Place/ time of receipt of income
- **Residence based taxation v/s source based taxation**
- **Income once taxed on accrual/ deemed accrual basis cannot be taxed again on receipt basis.**

Taxability of Income

Residential Status

ROR

NOR

Non Resident

Income liable to tax in India

- Global income liable to tax in India

- Income sourced from India
- Income received/ deemed to be received in India
- Income derived from business controlled/ Profession set-up in India

- Income sourced from India
- Income received/ deemed to be received in India

Broadly, NOR/ NR not taxable in India on foreign sourced income unless received for working in India

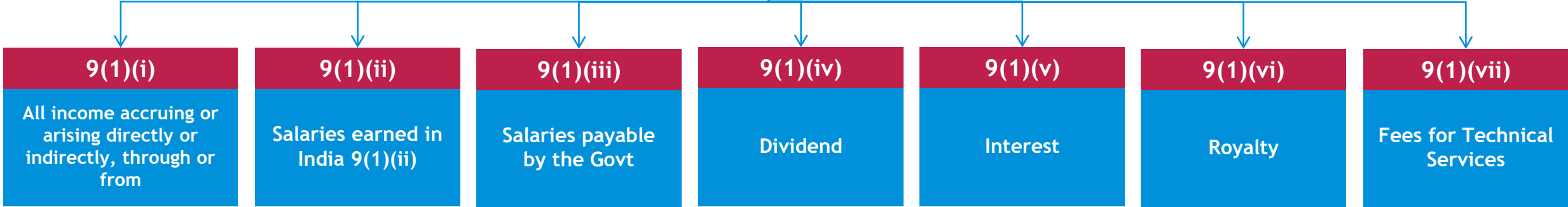


Income deemed to accrue or arise in India [Section 9]



Income deemed to accrue or arise in India -Section 9

Incomes deemed to accrue or arise in India



Only income attributable to India shall be deemed to accrue in India

- Business connection
 - Property
 - Asset
 - Source of income
 - Transfer of capital asset situated [indirect transfer cases]
- in India

Taxability of Capital Gains



Taxability of Capital Gains

PARTICULARS		RESIDENT COMPANY*	FOREIGN COMPANY*
Equity Shares, Units of Equity Oriented MF, Units of UTI, Zero Coupon Bonds	Long Term	<ul style="list-style-type: none"> Equity Shares and Units of Equity Oriented MF- Exempt if STT paid at the time of purchase and sale; Listed securities (other than units) - 10% without indexation benefit Unlisted securities or shares of closely held companies - 20% (Indexation benefit) 	<ul style="list-style-type: none"> Equity Shares and Units of Equity Oriented MF- Exempt if STT paid at the time of purchase and sale; Listed securities (other than units) - 10% without indexation benefit Unlisted securities or shares of closely held companies - 10% (Indexation and foreign currency benefit not available)
	Short Term	<ul style="list-style-type: none"> Equity Shares and Units of Equity Oriented MF-15% if STT paid Non STT - 30%# 	<ul style="list-style-type: none"> Equity Shares and Units of Equity Oriented MF-15% if STT paid Non STT - 40%#
Bonds, Debentures and Government Securities/ Units of other than Equity Oriented MF	Long Term	<ul style="list-style-type: none"> Unlisted - 20% (Indexn. not available) Listed - 10% (Indexn. not available) 	<ul style="list-style-type: none"> Unlisted - 10% (Indexn. not available) Listed - 10% (Indexn. And foreign currency benefit not available)
	Short Term	30%#	40%#
Other Assets, viz. Residential house	Long Term*	20% (Indexn. Benefit available)	20% (Indexn. Benefit available)
	Short Term	30%#	40%#

* Tax rates are exclusive of surcharge and education cess

In case of Individuals, STCG taxable at normal slab rates as may be applicable

Special Provisions for Non Residents

Nature of Income	Taxability under the Act
Dividends	20%
Interest on infrastructure bonds	5%
Interest on rupee denominated bonds	5%
Interest on loan raised in foreign exchange	20%
Royalties or Fees technical services	10%

* Tax rates are exclusive of surcharge and education cess



Income-tax Returns



Income-tax Returns- Relevant Forms

Form No.	Applicability	Due Date
ITR 1	For individuals being a resident (other than not ordinarily resident) having total income upto Rs.50 lakh, having Income from Salaries, one house property, other sources (Interest etc.), and agricultural income upto Rs.5 thousand	31 July
ITR 2	For Individuals and HUFs not having income from profits and gains of business or profession	31 July
ITR 3	For individuals and HUFs having income from profits and gains of business or profession	31 July (non-audit cases)
ITR 4	For Individuals, HUFs and Firms (other than LLP) being a resident having total income upto Rs.50 lakh and having income from business and profession which is computed under sections 44AD, 44ADA or 44AE and agricultural income upto Rs.5 thousand.	31 October (audit cases)
ITR 5	For persons other than- (i) individual, (ii) HUF, (iii) Company and (iv) person filing Form ITR-7	

Income-tax Returns- Relevant Forms

Form No.	Applicability	Due Date
ITR 6	For Companies other than companies claiming exemption under section 11	31 October (non TP Cases) 30 November (TP Cases)
ITR 7	For persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D) only	31 July (non-audit cases) 31 October (audit cases)

Q & A

