

**NRI Taxation - Recent amendments**  
**Analysis and implications**  
**- *Ved Jain***



# Taxability in India - Brief overview



## Taxability



- Under the Income Tax Act, 1961, **taxability** in hands of a person **depends on its status of residence**.

## Residence



- The status of residence can be broadly categorized as a “**Resident**” or “**Non-resident.**”
- Further, resident can further be categorized as an “**ordinary resident**” (‘ROR’) or a “**not ordinarily resident**” (‘RNOR’)

## Scope of taxability



- A **ROR** is taxed on its **global income** in India arising during the Financial Year\*
- **Non-resident** is taxed only on income that is **received in India** or the income that **accrues or arises in India** during the Financial Year. Income that accrues or arise outside India is not taxable in the hands of Non-resident
- A **RNOR** is taxed on income that is **received in India** or that **accrues or arises** in India or the **income that accrues outside India but is derived from a business controlled in or profession set up in India** during the Financial Year. Any other income that accrues or arises outside India is not taxable in the hands of RNOR

*\*Financial Year is the period of 12 months commencing on the 1<sup>st</sup> day of April every year*

## Section 6 in relation to determination of status of residence of an individual reads as under



### Residence in India.

6. For the purposes of this Act,—

(1) An individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(b) [\*\*\*]

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

*Explanation. 1*—In the case of an individual,—

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted and in case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year," for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.

***Text in red inserted vide Finance Act, 2020***

## Section 6(6) in relation to determination of status of RNOR reads as under



### Residence in India.

6. For the purposes of this Act,—

....  
(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

(a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation 1 to clause (1), who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.—For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

*Text in red inserted vide Finance Act, 2020*



Reduced period of 120 days as against 182 days for Indian citizens coming to visit India

## Reduced period of 120 days as against 182 days for Indian citizens coming to visit India – w.e.f. FY 2020-21



- **The following conditions are required to be fulfilled cumulatively** for the individual to be considered as a **resident** pursuant to the amendment:
  - **total income, other than income from foreign sources**, should **exceed INR 15 lakhs**; **and**
  - total **stay in India during the year** should be **more than 119 days**; **and**
  - and the **period of stay in India** in the **immediately preceding 4 years** should be **365 days or more**
- Such Indian citizens whose period of stay in India is 182 days or more were anyway considered as residents and will continue to be considered as residents. Thus, there will be no impact on such individuals
- The impact will be on such individuals whose period of stay is **more than 119 days during the year but less than 182 days**. Such individuals will be considered to be **“resident but not ordinarily resident”**

## Reduced period of 120 days as against 182 days for Indian citizens coming to visit India – w.e.f. FY 2020-21



- **Explanatory memorandum** explains the objective behind the amendment to reduce the period to 120 days as against 182 days as under:

*“Instances have come to notice where period of 182 days specified in respect of an Indian citizen or person of Indian origin visiting India during the year, is being misused. **Individuals, who are actually carrying out substantial economic activities from India, manage their period of stay in India, so as to remain a non-resident in perpetuity and not be required to declare their global income in India.**”*

- This period of 120 days (earlier 182 days) was earlier increased to 182 days from 150 days vide Finance Act, 1994. The Explanatory memorandum explained the objective of the amendment made vide Finance Act, 1994 as under:

*“**19.2. Suggestions had been received to the effect that the aforesaid period of one hundred and fifty days should be increased to one hundred and eighty-two days. This is because the non-resident Indians who have made investments in India, find it necessary to visit India frequently and stay here for the proper supervision and control of their investments. The Finance Act, therefore, has amended clause (b) of the Explanation to section 6(1)(c) of the Income-tax Act, in order to extend the period of stay in India in the case of the aforesaid individuals from one hundred and fifty days to one hundred and eighty-two days, for being treated as resident in India, in the previous year in which they visit India. Thus, such non-resident Indians would not lose their "non-resident" status if their stay in India, during their visits, is up to one hundred and eighty-one days in a previous year.**”*



## Illustrations - reduced period of 120 days as against 182 days for Indian citizens coming to visit India



S. No	Stay of individual in India during the financial year (Indian Citizen or Person of Indian Origin who being outside India comes to visit India during the year and stay in India in the immediately preceding 4 years exceeds 365 days)	Total Income (other than income from foreign sources)	Residence status of individual pursuant to amendment	Residence status of individual prior to amendment	Whether amendment has any Impact ?
1	Less than 120 days	More than INR 15 lakhs	Non-resident	Non-resident	No
2	Less than 120 days	Less than or equal to INR 15 lakhs	Non-resident	Non-resident	No
3	120 days or more but less than 182 days	Less than or equal to INR 15 lakhs	Non-resident	Non-resident	No
4	120 days or more but less than 182 days	More than INR 15 lakhs	Resident but not ordinarily resident	Non-resident	Yes
5	182 days or more	Any level of income	Resident*	Resident*	No

*\*In case such individual is a non-resident in 9 out of 10 preceding years or if such individual has been in India for an aggregate period of 729 days or less in the preceding 7 years, then such individual shall qualify as not-ordinarily resident*





# Income from foreign sources – Meaning and scope

## Income from foreign sources – Meaning and scope



- The new provisions will be applicable only if the **‘total income, other than the income from foreign sources, exceeds Rs 15 lakhs’**.
- **“Income from foreign sources”** has been defined to mean *income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India)*
- Thus, for computing the threshold of 15 lakhs, the **total income will include any income other than income that accrues or arises outside India** except where such income is derived from a business controlled in or a profession set up in India
- The **following incomes** will be **includible** while computing the threshold of 15 lakhs:
  - a) income that **accrues or arises in India** or is **deemed to accrue or arise in India**,
  - b) Income that is **received in India** or is **deemed to be received in India**,
  - c) Income that **accrue or arise outside India but is derived from a business controlled in or a profession set up in India**

## Income from foreign sources – Meaning and scope (contd.)



### Examples of income includible while examining the applicability of threshold of INR 15 Lakhs

- 1 **Dividend or interest income** received from a resident in India,
- 2 **Income from business** controlled in or **profession** set up in **India**
- 3 **Capital gain** arising from transfer of a an **property situated in India**
- 4 **Capital gain** arising on transfer of **shares of an Indian company**
- 5 **Capital gain** arising on transfer of a **shares** of a company which **derives its value substantially from property situated in in India**
- 6 **Rental Income** from a property **situated in India**

## Income from foreign sources – Meaning and scope (contd.)



### Examples of income not includible while examining the applicability of threshold of INR 15 Lakhs

- 1 **Salary** income received on account of **services rendered outside India**
- 2 **Dividend income arising** from a overseas sources
- 3 **Interest income arising** from a overseas sources
- 4 **Capital gain** arising on transfer of **properties situated outside India**
- 5 **Rental income** from property **situated outside India**
- 6 **Business income from overseas sources** having no nexus with India

## Income from foreign sources – Meaning and scope (contd.)



### Issues:-

- Whether **income that is exempt under section 10** will be required to be considered while computing the limit of INR 15 lakhs ?
- Examples:
  - Exemption in respect of **Interest on NRE account balance** that is available to a non-resident as per FEMA;
  - Exemption in respect of **interest on FCNR deposits** that is available to a non-resident or a RNOR
- Such income **should not be included** while computing total income for evaluating applicability of INR 15 lakhs threshold as the **term used is ‘total income’** and **exempt income does not form part of total income**

## Income from foreign sources – Meaning and scope (contd.)



### Issues:-

- Whether such income, **exemption** in respect of which is **given with reference to status of “non-resident”** under the Act is to be considered while computing threshold of INR 15 lakhs?
- **Example:** Section 10(15)(ix) provides **exemption** to a **non-resident** in respect of **any income by way of interest payable by a unit located in an International Financial Services Centre** in respect of monies borrowed by it on or after the 1st day of September, 2019
- In such cases, two views may be possible:
  - **First view: Residential status should be evaluated first**  
Under this view, the first step will be to evaluate the residential status. Accordingly, the exemption that are available to non-resident should be considered to be not available till ascertainment of residential status. Consequently, any such income should be considered while computing total income for evaluating applicability of INR 15 lakhs threshold
  - **Second view: Exemption available to non-residents to be considered to be available**  
Under this view, exemption available to non-residents should be considered to be available by considering such individuals as non-resident and accordingly any such exempt income will not be considered while computing total income for evaluating applicability of INR 15 lakhs threshold. However, if the total income still exceeds INR 15 lakhs and consequently such individual qualifies as RNOR, such exemption that are available to non-resident will not be available



Determination of status of  
'Resident' under Double Tax  
Avoidance Agreement ('DTAA')  
*[Base case – India-UAE DTAA]*



## Determination of status of residence of an individual under DTAA between India and UAE – Relevant provisions



### Article 4 Resident

1. For the purposes of this Agreement the term 'resident of a Contracting State' means:
  - (a) **in the case of India:** any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in India in respect only of income from sources in India; and
  - (b) **in the case of the United Arab Emirates:** an individual who is present in the UAE **for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned**, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE.
- ...
3. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting State, then his status shall be determined as follows :
  - (a) he shall be deemed to be resident of the State in which he has a **permanent home available to him** ; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which **his personal and economic relations are closer** (centre of vital interests)
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an **habitual abode**;
  - (c) if he has an habitual abode in both States or in either of them, he shall be deemed to be a resident of the State of which he is a **national** ;
  - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

## Determination of status of residence of an individual under DTAA between India and UAE



- India-UAE DTAA considers an individual to be resident in India if such individual is liable to tax in India by reason of his residence in India as per the Income Tax Act. Thus, **any individual who is resident under the Act pursuant to the amendment will be considered to be resident of India under the DTAA as well**
- DTAA considers an individual to be resident of UAE if his period of stay in UAE is 183 days or more in **calendar year**.
- **Tax year** as per Income Tax Act is **Financial Year (April – March)**. In such a case, **period of stay of 183 days to be seen in Financial year and not calendar year** [*Shri Bholanath PalvVersus ITO, ITAT Bangalore, ITA No.10/Bang/2011*].
- In case total period of **stay** during the Financial year in **UAE is 183 days or more**, such individual will qualify **resident of UAE as per the India – UAE DTAA**
- If **individual qualifies to be resident of both the countries** as per the test prescribed under DTAA, then **tie breaker rule to be applied**

## Determination of status of residence of an individual under DTAA between India and UAE - Tie Breaker Rule application



- 1 Permanent home** Permanent home means a home arranged and retained for permanent use; not intended for short duration
- 2 Personal and economic relations** Personal relations - family and social relations  
Economic relations - place of business, major source of income etc
- 3 Habitual abode** Frequency, duration, and regularity of stays that are part of the settled routine of an individual's life
- 4 Nationality** Country of which the individual is a national
- 5 Competent authorities** Both the countries to determine the residential status if residential status cannot be determined by applying the tie breaker rule

*Tie breaker rule to be applied in the above order. **Importance of tie breaker rule to increase** as an individual is more likely to qualify as resident of both countries pursuant to the amendment*

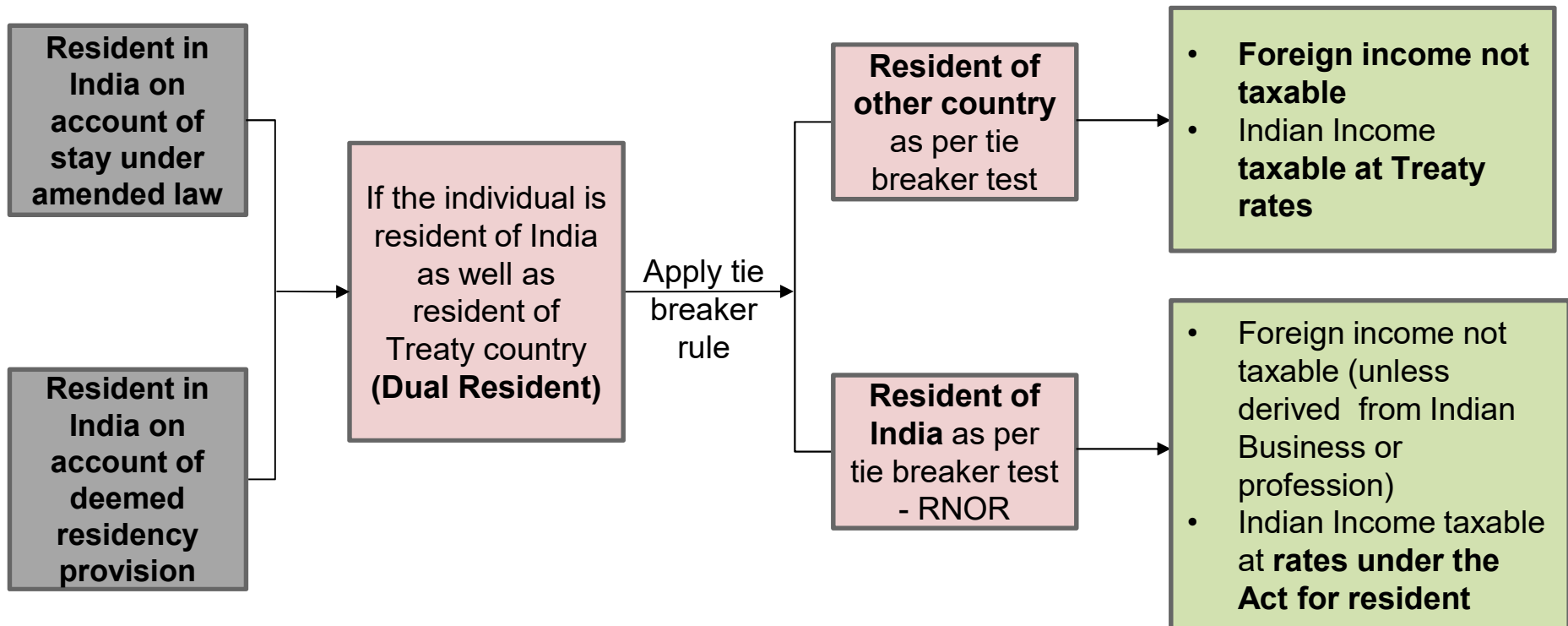
## Determination of status of residence of an individual under DTAA - Tie Breaker Rule application



### **Some Important rulings on tie breaker rule application in case of individuals:**

- DR. Rajnikant R. Bhatt versus CIT, [1996] 222 ITR 562, AAR
- DCIT v. Shri Kumar Sanjeev Ranjan, IT Appeal No. 1655 (Bang.) of 2017, ITAT Bangalore
- Mohsinally Alimohammed Rafik, In Re, [1995] 213 ITR 317, AAR
- Mrs. Shalini Seekond versus ITO, I.T.A. No. 3877/ Mum/2012, ITAT Mumbai

## Implications after determination of status of residence pursuant to application of tie breaker rule





# Determination of status of 'resident' under DTAA with UK and Singapore

## Determination of status of residence of an individual under DTAA between **India and UK** – Relevant provisions



### Article 4 - Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, **is liable to tax therein by reason of his domicile, residence**, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that
  - (a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and
  - (b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries
  
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules
  - (a) he shall be deemed to be a resident of the Contracting State in which he has a **permanent home available to him**. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his **personal and economic relations are closer (centre of vital interests)**;
  - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an **habitual abode**;
  - (c) if he has an habitual abode in both Contracting States or in either of them, he shall be deemed to be a resident of the Contracting State of which he is a **national**;
  - (d) if he is a national of both Contracting States or of neither of them, the **competent authorities of the Contracting States shall settle the question by mutual agreement**.



## Determination of status of residence of an individual under DTAA between **India and UK**

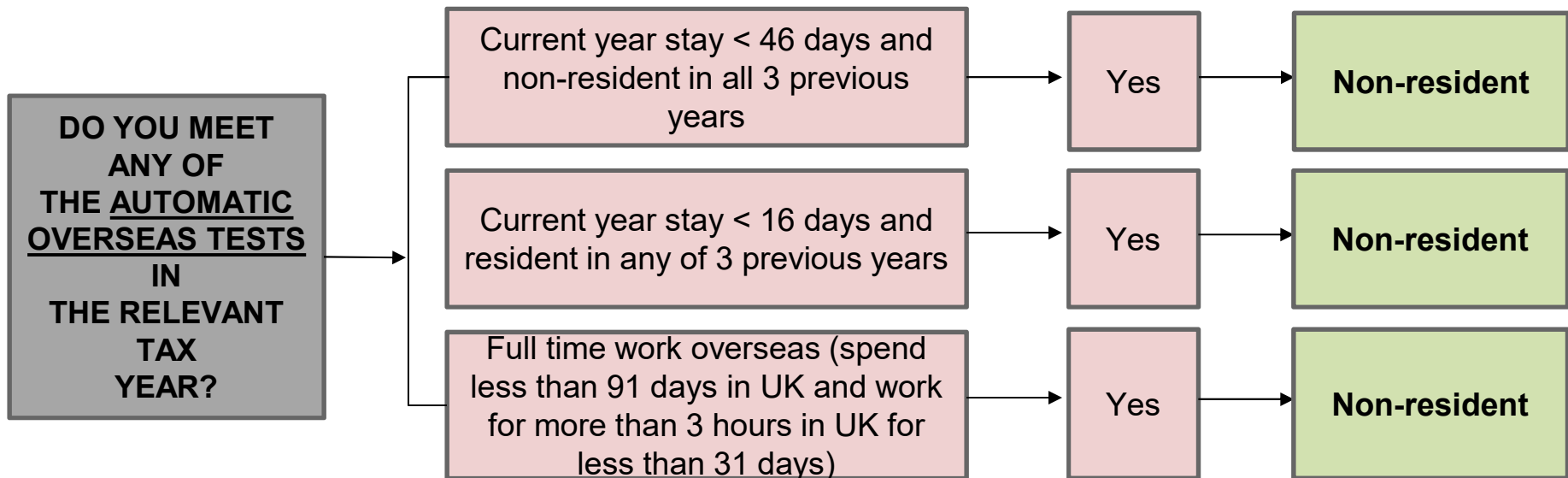


- India-UK DTAA considers an individual to be resident of a India or UK if such individual is liable to tax in India or UK by reason of his domicile or residence as per laws of the respective Country
- Any individual who is **resident under the Indian Income Tax Act pursuant to the amendment** will be considered to be **resident of India under the DTAA as well**
- An individual is considered to be a tax resident of UK under the UK Tax law if:
  1. the individual has **spent 183 days or more in the UK in the relevant tax year (6<sup>th</sup> April – 5<sup>th</sup> March)**;
  2. if **none of the automatic overseas tests** are met and **1 of the other automatic UK tests, or the sufficient ties tests are met (refer next slide)**

## Automatic overseas test



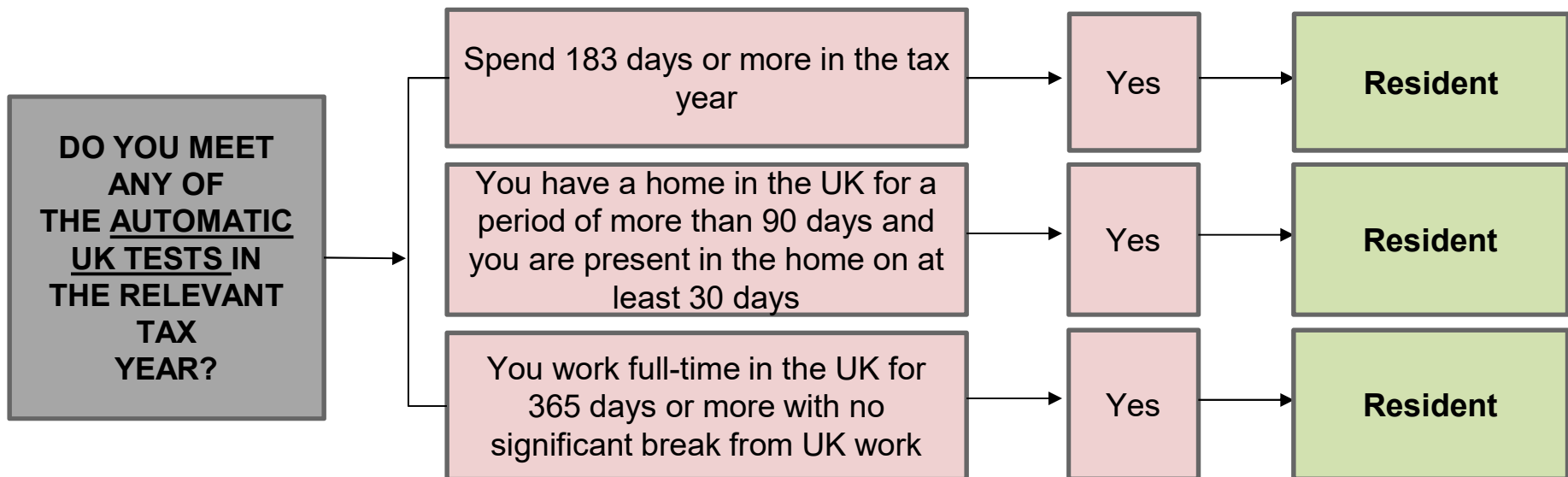
If any **one of the automatic overseas test is satisfied**, the individual will qualify as a **non- UK resident for tax purposes**



## Automatic UK test



If none of the **automatic overseas tests** is met and **one of the automatic UK test** is satisfied, the individual will qualify as **UK resident for tax purposes**



## Applicable Ties For Sufficient Ties Test



### APPLICABLE TIES FOR SUFFICIENT TIES TEST

<b>Family Tie</b>	→	Spouse, civil partner, cohabiting partner or minor child is UK resident
<b>Accommodation Tie</b>	→	Has a place to live in UK
<b>Work Tie</b>	→	Works in UK for at least 40 days
<b>91 Day Tie</b>	→	Spent at least 91 days in UK in last year or its preceding year
<b>Country Tie</b>	→	More time spent in UK than in any other country

*Country Tie is applicable only where the individual has been a tax resident in UK in any of the 3 preceding tax years*

## Sufficient Ties Test



If none of the automatic overseas tests and automatic UK test is satisfied, the individual will qualify as **UK resident for tax purposes** if the sufficient ties test is met as under (else the individual qualifies as **UK non resident**):

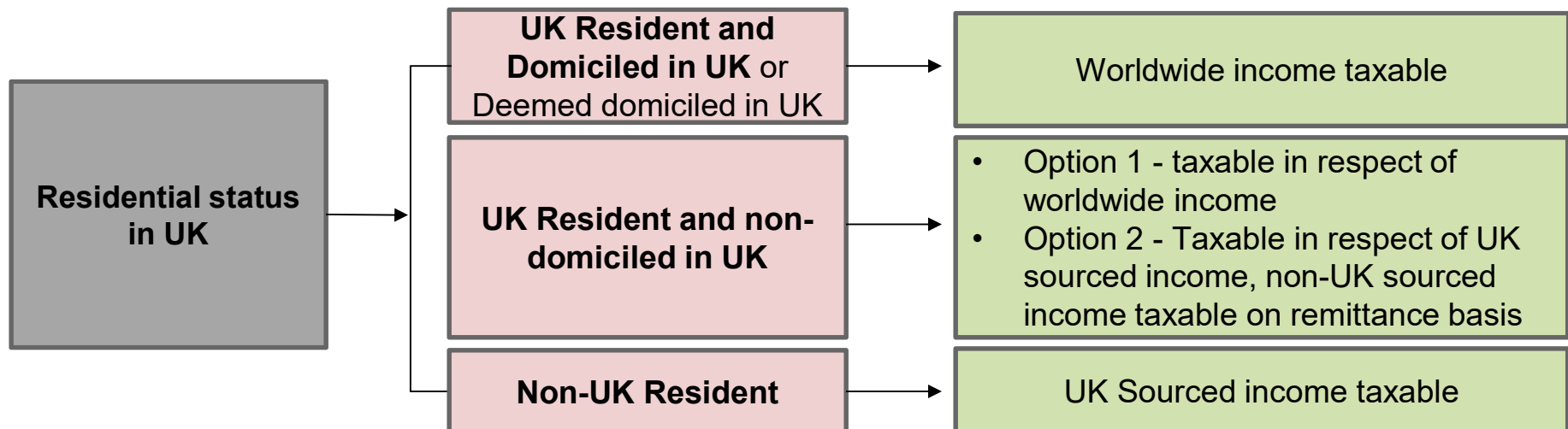
Stay in UK (in days) in the current year	Case I- Individual is resident of UK in any of the 3 previous years	Case II- Individual is non-resident of UK in all of the 3 previous years
<16	Non resident	Non resident
16-45	Resident if at least 4 ties	Non resident
46-90	Resident if at least 3 ties	Resident if all 4 ties*
91-120	Resident if at least 2 ties	Resident if at least 3 ties*
121-182	Resident if at least 1 ties	Resident if at least 2 ties*

*\* Note- Country Tie is applicable only in Case I. So for Case I there are 5 ties, while for Case II, there are only 4 ties*

## Types of residential status in UK and taxability in UK – Brief overview



UK residential status is further bifurcated into two categories based on domicile of the individual. "Domicile" means **someone's country of origin or the country where they have settled permanently** or indefinitely. If a person is a not UK Born and the **intention of the individual is not to settle in UK permanently**, he should not be said to be domiciled in UK. After an individual qualifies as a tax resident for 15 years, he is deemed to be domiciled in UK



## Determination of status of residence of an individual under DTAA between **India and UK**



- Any individual who is **resident under the Indian Income Tax Act pursuant to the amendment** will be considered to be **resident of India under the DTAA as well**
- In case total period of **stay** during the tax year in **UK is 183 days or more** or if **other conditions stated for residential status under the UK Tax law are met**, such individual will qualify **resident of UK as per the India – UK DTAA**
- If **individual qualifies to be resident of both the countries** as per the test prescribed under DTAA, then **tie breaker rule to be applied in similar fashion as discussed earlier**
- The implications that follow after determination of status of resident after application of tie breaker rule will also be the same as discussed earlier



## Determination of status of residence of an individual under India - UK DTAA – Taxability of income from a third state



### Issue:-

If the individual qualifies who qualified as a tax resident of UK domiciled in UK, pursuant to the amendment qualifies as RNOR in India and also qualifies as a resident of India after the application of tie breaker test, could the income from non-UK and non-Indian sources (say sourced in UAE) be taxed in in UK?

- As per Article 23(1) of India-UK DTAA, income not dealt in the preceding Articles “wherever arising” is taxable in the country where individual is resident. Accordingly, such income may not be taxable in UK. Further, such income should not be taxable in India as well as non-Indian sourced income is not taxable in India in the hands of RNOR. Further, there being no personal tax in UAE, such income should not be taxable in UAE as well. This may turn out to be favorable position for UK Tax resident where he is not required to pay tax on income from a third state in any Country.

## Determination of status of residence of an individual under DTAA between **India and Singapore** – Relevant provisions



### **Article 4 Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" **means any person who is a resident of a Contracting State in accordance with the taxation laws of that State.**
2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting State, then his status shall be determined as follows :
  - (a) he shall be deemed to be a resident of the State in which he has a **permanent home available to him**; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his **personal and economic relations are closer** (centre of vital interests)
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an **habitual abode** ;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a **national** ;
  - (d) if he is a **national of both States or of neither of them**, the **competent authorities** of the Contracting States shall settle the question by mutual agreement.

## Determination of status of residence of an individual under DTAA between **India and Singapore**



- India-Singapore DTAA considers an individual as a resident of a country **if he is resident of the country in accordance with the taxation laws of the relevant country**
- Any **individual** who is **resident under the Act in India pursuant to the amendment** will be a **resident of India for the purpose of India-Singapore DTAA** as well
- An **individual** is considered to be **resident of Singapore** if the individual is:
  - **Singapore Citizen (SC) or Singapore Permanent Resident (SPR) who resides in Singapore except for temporary absences** therefrom as may be reasonable and not inconsistent with a claim by such individual to be a resident in Singapore; or
  - **Foreigner who has stayed / worked in Singapore for 183 days or more** in the year preceding the year of assessment (excludes director of a company)
  - Inland Revenue Authority of Singapore may, on a concessionary basis, assess an individual to tax as a resident for all years where their **employment in Singapore** is expected to cover a **continuous period of at least 183 days straddling over 2 calendar years** (i.e. **2-year administrative concession**); or a **continuous period over 3 consecutive calendar years** (i.e. **3-year administrative concession**) notwithstanding that the period of employment in the year of arrival or departure is less than 183 days
- If individual qualifies to be **resident of both the countries** as per the test prescribed under DTAA, **then tie breaker rule to be applied in similar fashion as discussed earlier**. The implications that follow after determination of status of resident to be the same as discussed earlier



# Impact of amendments

## Impact of amendments



An individual who prior to the amendment qualified as a '**non-resident**' will pursuant to the amendment qualify as a '**resident but a not ordinarily resident**' (RNOR)

**RNOR** is considered to be a "**resident**" under the Act for exemptions, deductions, tax rates applicability, TDS applicability, etc. in view of the fact that as per definition of 'non-resident' under section 2(30) of the Act, RNOR is to considered to be a non-resident only for the purpose of section 92, 93 and 168



## Impact of amendments – Increase in scope of total income



**Increase in scope of total income:** Income that accrues or arises outside India but is derived from business controlled in or profession set up in India to become chargeable to tax in India in the hands of such individuals

S. No	Nature of income	Resident (Ordinary resident)	Resident (Not ordinarily resident)	Non resident
1	Income received or deemed to be received in India	√	√	√
2	Income accruing or arising or deemed to be accruing or arising in India	√	√	√
3	Income though accruing or arising outside India but derived from a business controlled in or a profession set up in India	√	√	X
4	Income accruing or arising outside India other than income of such nature mentioned in S. No 3 above	√	X	X
5	Income received outside India	√	X	X

## Impact of amendments – Exemptions that will not be available



Commonly availed exemptions that will not be available on change of status of residence to not ordinarily resident from non resident are as under:

Section	Nature of exemption	Who are entitled
10(4C)	Interest payable by an Indian company or business trust in respect of monies borrowed from a source outside India by way of issue of Rupee Denominated Bonds as referred to in section 194LC(2)(ia), during the period September 17, 2018 to March 31, 2019	Non-resident
10(6D)	Any income arising to a non-resident by way of <b>royalty from, or fees for technical services rendered in or outside India to, the National Technical Research Organisation</b>	Non-resident
10(15)(ix)	Interest payable by a unit located in an <b>International Financial Services Centre</b> in respect of monies borrowed by it on or after September 1, 2019	Non-Resident



## Exemption in respect of interest on NRE deposits will continue to be available



### Exemption in respect of interest on NRE account credit balance to be available despite the change in status to 'not ordinarily resident' pursuant to the amendment:

- Section 10(4)(ii) provides exemption to an individual who is a '**person resident outside India**' as defined in **clause (w) of section 2 of the Foreign Exchange Management Act, 1999** or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid Account in respect of any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999, and the rules made thereunder
- **The above said exemption is not linked to resident status under the Income Tax Act but with resident status under FEMA.** Under FEMA, a person resident outside India means a person either whose stay in India is less than 183 days or a person who has gone out of India or who stays outside India for taking an employment outside India or for carrying on business outside India or who has an **intention to stay outside India** for an uncertain period. Thus, the amendment in definition of resident under the Income Tax Act will have no bearing on such exemption which will continue to be available as long as the taxpayer is a non-resident under FEMA

## Exemption in respect of interest on FCNR deposits will continue to be available



**Exemption of interest payable on deposits in Foreign currency approved by RBI to be available despite the change in status to ‘not ordinarily resident’ pursuant to the amendment:**

10(15)(iv)(fa) provides exemption to a **non-resident** or to a **person who is not ordinarily resident** in respect of interest payable by a scheduled bank on approved deposits in foreign currency. The exemption being available in the hands of not ordinarily residents as well, such exemption will continue to be available and will not be affected by change in residency status pursuant to the amendment.

## Impact of amendments – Concessional tax rates available to non-residents under the Act – benefit lost



Section	Income	Concessional income-tax rates
115A(1)(a)(i)	<b>Dividend income</b> (subject to further reduced rates under DTA)	20
115A(1)(a)(ii)	<b>Interest received</b> from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20
115A(1)(a)(iia)	<b>Interest received</b> from an <b>infrastructure debt fund</b> referred to in section 10(47)	5
115A(1)(a)(iiaa)	<b>Interest received</b> from an Indian company on <b>rupee denominated bonds (specified in section 194LC)</b>	5
115A(1)(a)(iiab)/(iiac)	<b>Interest on rupee denominated bond referred to in section 194LD and income from units of business trust referred in section 194LBA</b>	5
115(1)(a)(iii)	<b>Income received in respect of mutual fund units</b> specified under 10(23D) or units of Unit Trust of India purchased in foreign currency (subject to further reduced rates under DTA) <i>[Dividend income from mutual funds eligible for rate prescribed under DTAA in respect of dividend income (DR. Rajnikant R. Bhatt versus CIT, [1996] 222 ITR 562, AAR)]</i>	20
115A(1)(b)	<b>Royalty or fees for technical services</b> received by a foreign company or non-resident non-corporate assessee (subject to certain conditions)	10
115AC	<b>Interest or dividend income</b> arising in the hands of a non-resident from <b>specified bonds or Global Depository Receipts</b> or income in the nature of long-term capital gains arising from transfer of the bonds	10

## Dividend Income - Taxable in the hands of the shareholder (Treaty benefit of reduced tax rate lost)



### Taxability



- Vide Finance Act, 2020, Dividend Distribution Tax has been abolished and **dividend income** has become **taxable in the hands of the shareholder/unit-holder**

### Tax rates



- In case of **residents**, tax is required to be paid at **slab rate applicable** based on total amount of taxable income of the resident individual (highest effective tax rate 35.88%)
- In case of **non-residents**, tax is required to be paid at **20% under the Act** (plus surcharge and cess as applicable). However, DTAA entered into by India with foreign nations provides for concessional rates such as:
  - **India-UK DTAA** and **India-UAE DTAA– 10%**
  - **India Singapore DTAA: 15% for individuals** (10% for companies if the companies holds atleast 25% of shares).
  - **India- Hong Kong DTAA – 5%**
- **No further surcharge or Cess** required to be paid over the **rate prescribed under DTAA** [*Capgemini SA (2016) (72 taxmann.com 58) (Mum), DIC Asia Pacific Pte. Ltd. v. ADIT [2012] 18 ITR (Trib.) 358 (Kol)*]
- **Dividend income from mutual funds also** eligible for rate prescribed under DTAA in respect of dividend income i.e. 15/10/20% (*DR. Rajnikant R. Bhatt versus CIT, [1996] 222 ITR 562, AAR*)

## Dividend Income - Taxable in the hands of the shareholder (Treaty benefit of reduced tax rate lost)



- **Dividend income** received by a non-resident from an Indian Company is
  - **not taxable in UAE, Hong Kong, Singapore**
  - **Taxable in the hands of UK Resident not domiciled in UK on remittance basis; not taxable in hands of a UK non-resident ; taxable in the hands of UK resident domiciled in UK**
- **If the Indian citizen, who qualifies as a RNOR pursuant to the amendment, also qualify as a resident of India under the DTAA after application of tie breaker rule, such dividend income will become taxable in India at normal slab rate which may be as high as 35.88%**

## Impact of amendments – Capital gain concessional treatment under India-Singapore DTAA – benefit lost



Capital gain implications on sale of shares of an Indian Company under the India Singapore DTAA is as under:-

Shares acquired	Country in which capital gain is taxable	Income-tax rates under the DTAA
Shares acquired before April 1, 2017 and sold anytime thereafter	<b>Taxable</b> in the country where the <b>investor resides</b>	100% of the capital gains tax rate applicable
Shares acquired and sold between April 1, 2017 –March 31, 2019	<b>Taxable</b> in the country where the <b>company</b> whose shares are sold is a <b>tax-resident</b>	50% of the capital gains tax rate
Shares acquired on or after March 31, 2019 and sold after March 31, 2019	Taxable in the country where the <b>company</b> whose shares are sold is a <b>tax-resident</b>	100% of the capital gains tax rate

- Thus, **capital gain arising on sale of shares acquired before 1<sup>st</sup> April, 2017 is not taxable in India** in the hands of a resident of Singapore
- Similarly, under the DTAA, **capital gain arising on transfer of various other movable properties is only taxable in the country where the transferor/alienator is a resident.** Accordingly, such gains are also not taxable in India in the hands of a resident of Singapore
- There being no capital gain tax in Singapore, such gains are not taxable in Singapore as well
- **If the Indian citizen, who qualifies as a RNOR pursuant to the amendment, also qualify as a resident of India under the DTAA after application of tie breaker rule, such capital gain will become taxable in India**

## Impact of amendments – Capital gain concessional treatment under India-UAE DTAA – benefit lost

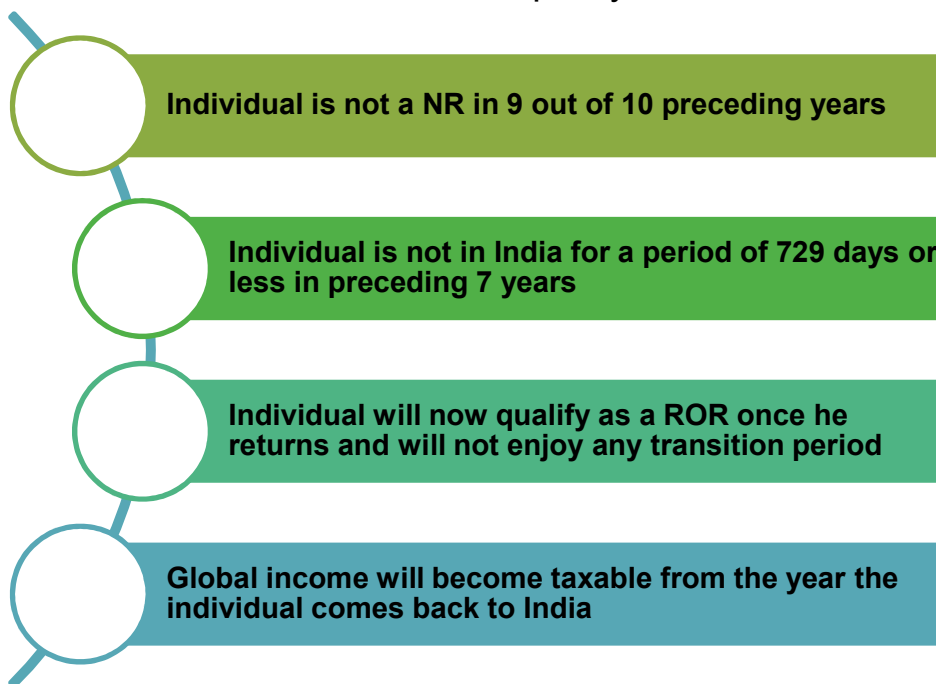


- **Capital gain arising on transfer of various properties (other than shares of a company or an immovable property) are only taxable in the country where the transferor/alienator is a resident as per Article 13(5) of India-UAE DTAA**
- Accordingly, any **such gains are not taxable in India** in the **hands of a resident of UAE** in India
- **Mutual funds and shares are not the same and thus, gain arising from sale of units** of equity oriented mutual funds and debt oriented mutual funds in the **hands of resident of UAE is taxable in UAE only** in accordance with the provisions of Article 13(5) of the India-Netherland DTAA and **not taxable in India:**
  - *[1. DCIT versus Sri. K.E. Faizal, ITA No.423/Coch/2018, ITAT COCHIN, 2. ITO v. Satish Beharilal Raheja, [2013] 37 taxmann.com 296 (Mumbai - Trib.)]*
- There being no tax in UAE, such gains are not taxable in UAE as well
- **If the Indian citizen**, who qualifies as a RNOR pursuant to the amendment, also **qualify as a resident of India under the DTAA** after application of tie breaker rule, **such capital gain, if arising from a various properties situated in India, will become taxable in India**

Impact of amendment – Benefit of RNOR status may not be available once the Indian citizen permanently moves back to India



**Illustration:** If the individual moves back permanently to India in FY 2027-28, he will qualify as a ROR:



Period of stay in India	Days	Residential status (Pre amendment)	Residential status (Post amendment)
FY 2020-21	90	NR	NR
FY 2021-22	150	NR	RNOR*
FY 2022-23	115	NR	NR
FY 2023-24	135	NR	RNOR*
FY 2024-25	110	NR	NR
FY 2025-26	60	NR	NR
FY 2026-27	80	NR	NR
<b>Total</b>	<b>740 days</b>		

\*Assuming Indian Income exceeds Rs. 15 lakhs



## Impact of amendments - summary



Once an individual qualifies as not-ordinarily resident pursuant to the amendment, the following consequences will follow:

1 **Increase in scope of total income**

Income that accrues or arises outside India but is **derived from business controlled in or profession set up in India** will now become taxable in India in the hands of such individual

2 **Loss of exemptions**

Various exemptions that are available in the hands of non-residents will be lost once the status changes to RNOR. However, exemptions in respect of interest on **NRE** account balance and **FCNR deposits will not be impacted** by the amendment

3 **Loss of concessional rate of tax/ presumptive scheme benefits:**

Various nature of income that are taxable at concessional rates in the hands of non-residents (5% to 20%) will **become taxable at normal slab rate applicable** in the hands of such individuals

4 **Treaty benefits lost**

The **importance of tie breaker rule will increase** to determine status of residence of the individual under the DTAA. If **individual qualifies as resident of India** after applying the tie breaker test, various **concessions given under the DTAA with regard to capital gain, dividend, etc will be lost**

## Other impact of amendments - summary



Once an individual qualifies as not-ordinarily resident pursuant to the amendment, the following consequences will follow:

- 5 Increased onus to substantiate non-taxability of income**

Indian Income Tax Officer will have **greater jurisdiction** on such individuals and such individuals will be required to **justify as to why income from a particular source is not taxable in India** by establishing that such income accrues or arises outside India
- 6 Benefit of RNOR status may not be available on moving back to India**

Such individuals who now qualifies as a RNOR, may not be able to fulfil the criteria to qualify as a RNOR, once they move back to India permanently, under the general rule which requires an individual to be a non-resident for 9 out of 10 preceding years or to be in India for less than 730 days in preceding 7 years
- 7 Onus on companies expanded under section 68**

**Source of source is required to be explained** by companies in case shares have been issued to **residents** whereas only source of credit is required to be explained by companies if shares are issued to non-residents
- 8 Taxability in the hands of companies under 56(2)(viib)**

On **issuance of shares to residents at premium**, a company is required to pay tax on the difference between consideration received and fair market value of shares

## Impact of amendments - Illustration



S. No.	Nature of income	Amount in INR	Whether taxable in India prior to the amendment in the hands of Non-resident	Whether taxable in India pursuant to the amendment in the hands of RNOR
1	Rental income from from property situated in India	20,00,000	Taxable	Taxable
2	Interest income from received from an Indian company on rupee denominated bonds (specified in section 194LC)	40,00,000	Taxable at special rate of 5% as per 115A in the hands of non-resident	Taxable at normal slab rate in the hands of RNOR
3	Interest payable by a unit located in an International Financial Services Centre in respect of monies borrowed on or after 1 September 2019.	40,00,000	Exempt in the hands of non-resident	Taxable in the hands of RNONR
4	Dividend income from Indian company	60,00,000	Taxable at 10% under the DTAA	Taxable at normal slab rate in the hands of RNOR
5	Interest on FCNR Account	20,00,000	Exempt in the hands of non-resident	Exempt in the hands of RNOR as well
6	Income accruing or arising in outside India say in UK or UAE or Singapore (salary, interest, dividend, etc)	60,00,000	Not taxable	Not taxable
	<b>Total Income</b>		<b>12,000,000</b>	<b>1,60,00,000</b>
	<b>Tax liability</b>		<b>13,32,500</b>	<b>55,16,550</b>
	<b>Extra tax liability</b>			<b>41,84,050</b>

## Take Away



- The impact of the amendment is only on such Indian Citizens, having total income from Indian sources exceeding INR 15 lakhs, and who being outside India comes to visit India for a period exceeding 119 days (as against 181 days earlier) and their period of stay in the immediately preceding 4 years is 365 days or more; or
- Considering the adverse impact of the amendment, an Indian citizen in order to not qualify as a not-ordinarily resident on account of stay in India exceeding 119 days, may:
  - ensure that the **period of his stay in India does not exceed 119 days**; or
  - ensure that his **income from Indian sources does not exceed INR 15 lakhs**;



# Stateless persons to be considered deemed resident

## Section 6 in relation to determination of status of residence of an individual reads as under



### **Residence in India.**

**6.** For the purposes of this Act,—

...

(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

....

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

...

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.—For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

***Text in red inserted vide Finance Act, 2020***

## Stateless persons to be considered as deemed residents – w.e.f. FY 2020-21



- An individual, **being a citizen of India**, having total income, other than the income from foreign sources\*, exceeding Rs. 15 lakh rupees during the year shall be **deemed to be resident** in India in that year, **if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature**
- **Such deemed residents** will be considered to be ‘resident but not ordinarily resident’ under the Act
- Memorandum to Finance Bill, 2020 explains the intent behind introduction of the provision as under:

*“The issue of stateless persons has been bothering the tax world for quite some time. **It is entirely possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year. This arrangement is typically employed by high net worth individuals (HNWI) to avoid paying taxes to any country/ jurisdiction on income they earn. Tax laws should not encourage a situation where a person is not liable to tax in any country.**”*

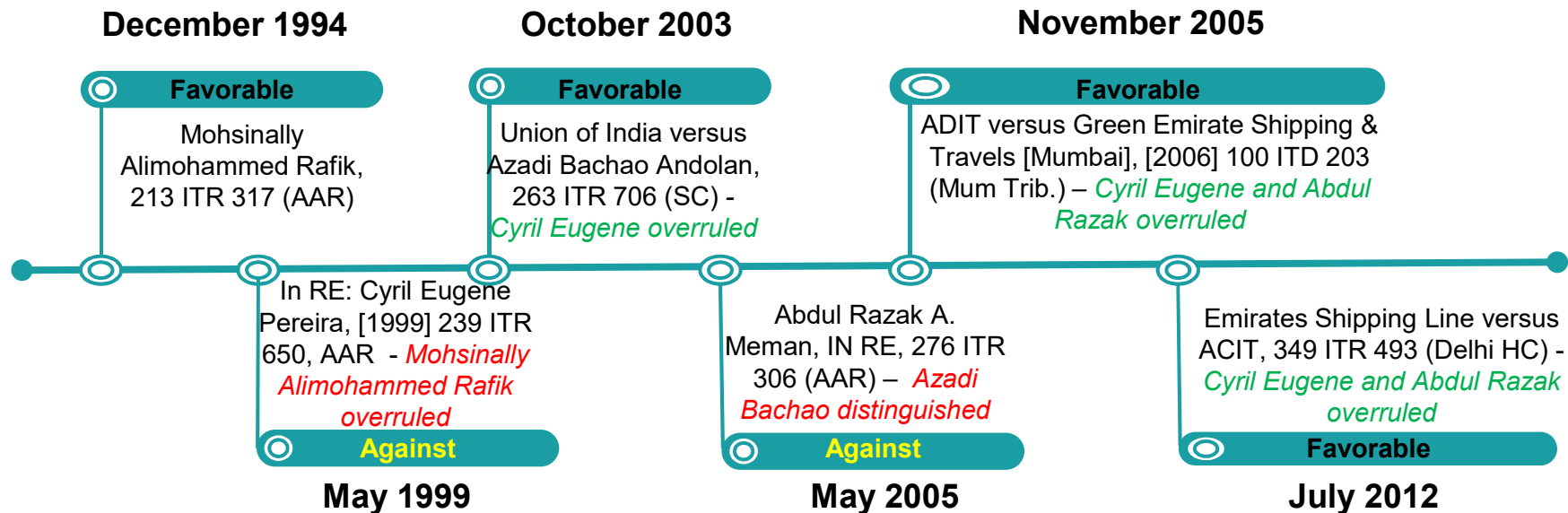
- **Objective of the provision as apparent from the Explanatory memorandum is to tax such individuals who are stateless persons and are “not liable to tax” in any country by reason of his residence**

*\*Meaning and scope of “Income from foreign sources” same as that discussed earlier*

## LIABLE TO TAX – MEANING AND JURISPRUDENCE



‘Not liable to tax’ is not the same as ‘exemption from tax’ or “non-payment of tax’ or ‘not being subject to tax’. Expression 'liable to tax' does not necessarily imply that person should actually be liable to tax; it is enough if other contracting State has right to tax such person, whether or not such a right is exercised:





## Stateless persons to be considered as deemed residents – w.e.f. FY 2020-21



- For provision to be invoked, **the individual should be not liable to pay tax by reason of residence, domicile or any other criteria of similar nature** as explained in the memorandum i.e. individual should not qualify as resident of any country and consequently not liable to pay tax in any country. It is a settled law that **deeming fiction should be construed strictly** and within the parameters of the purpose for which it is created
- The **amendment should not impact NRI's situated overseas if they qualify as resident of the country** under the laws of the State and DTAA though not being subject to tax under the local laws of the Country
- Though UAE do not levy personal income tax, however, if the individual qualifies as a tax resident of UAE under the DTAA by residing in UAE for more than 182 days, then such individuals should not be considered to be deemed resident under the provision of Indian Income Tax Act
- The **impact** of the amendment should be only on **such Indian citizens** who are **not liable to tax** in any country **by not qualifying as resident** of any country
- **However, the view of the CBDT apparently is that Indian citizens residing in such countries where there is no tax should also be considered as deemed residents as per section 6(1A)**

## Impact of amendments



- The **impact of the amendment** on such Indian Citizens who qualify as **deemed resident (RNOR)** pursuant to the amendment **will be the same** as explained earlier in respect of such Indian citizens who will now be considered as RNOR on account of **period of stay in India exceeding 119 days as against 181 days earlier**
- To reiterate, the impact of the amendment will be as under:
  - **Increase in scope of total income** that will be chargeable to tax in India i.e. income that accrues or arises outside India but is derived from business controlled in or profession set up in India will now become taxable in India in the hands of such individual
  - **Loss** of various **exemptions** that are available in the hands of non-residents will be lost once the status changes to RNOR.
  - **Loss of concessional rate of tax/** presumptive scheme benefits that are available to a non-resident
  - Benefits provided under **DTAA** lost
  - **Increased onus to substantiate non-taxability of income**
  - **Benefit of RNOR status** on moving back permanently to India **may not be available**
  - **Exposure** in the hands of companies under **section 68 and 56(2)(viib)**

## Take Away



- The impact of the amendment is only on such Indian Citizens, having total income from Indian sources exceeding INR 15 lakhs, and who are not liable to pay tax in any country other than India by reason of his residence or domicile
- Considering the adverse impact of the amendment, such person in order to not to qualify as deemed resident may possibly :
  - Ensure that the income from Indian sources does not exceed INR 15 lakhs; or
  - Ensure that individual qualifies as resident of some other country and some tax is payable in any country other than India; or
  - acquire citizenship of some other country with friendly tax structure. Citizenship is easily available in many countries, with tax friendly structure, on investment basis such as Austria, Cyprus, Cambodia, Dominica Grenada, Moldova

## Direct citizenship through investment - Summary of parameters



S. No.	Nationality	Visa-free / visa-on-arrival access	Time period for processing	Requirement to reside after grant of citizenship	Options for investment			
					Amount to be invested as one time Contribution	Investment into Real Estate	Investment into Business	Other Option
1	Austria	184 destinations, including Canada, Hong Kong, Singapore, Japan, UAE, UK, USA, Switzerland , EU countries and Nordic countries	24 to 36 months	No	NA	NA	At least € 2 to 3 million and goes upto € 10 million.	NA
2	Cambodia	53 destinations	3 to 6 months		Riels 1,000,000,000 (USD 249,000)	NA	Eligible investment of Riels 1,250,000,000 (USD 311,000 )	NA
3	Cyprus	Visa free travel to 173 countries including Hongkong, Singapore, Japan, UAE , UK, Switzerland , EU countries and Nordic countries	6 months of investment	To visit Cyprus once in seven years for citizenship to be maintained while to maintain only permanent residency visit required once in two years		€2.0 million. (The investment can be reduced down after 5 years to just €500,000). AND €75,000 to the Governments Research and Development fund and €75,000 to the Land Development Organisation.	€ 2 million	The applicant may combine real estate and business investments, provided total investment is up to at least €2,0 million. Applicant under combination may purchase special government bonds of the Republic of Cyprus, up to €500.000 to be retained for a three-year period. the applicant must possess a permanent privately owned residence in the Republic of Cyprus , the purchase price of which must be at least € 500,000 VAT extra.

## Direct citizenship through investment - Summary of parameters (contd.)



S. No.	Nationality	Visa-free / visa-on-arrival access	Time period for processing	Requirement to reside after grant of citizenship	Options for investment			
					Amount to be invested as one time Contribution	Investment into Real Estate	Investment into Business	Other Option
4	Dominica	137 countries including Hongkong, Singapore, UK, Switzerland, EU countries and Nordic countries	3 months	Not required	USD 200,000 (if is main applicant alone USD 100,000 )	USD 200,000, may sell after 5 years of receiving citizenship.	NA	NA
5	Grenada	142 destinations including Hongkong, Singapore, UAE, UK, Switzerland, EU countries , Nordic countries and China	3 to 4 months	Not required	USD 200,000 ( if it is main applicant alone USD 150,000)	USD 350,000 (can be reduced to \$220,00 for connected investor) to be kept for four years	NA	NA
6	Moldova	119 destinations, including Russia, Turkey, and Europe's Schengen Area	3 months	Not required	€ 145,000 (if it is main applicant alone € 100 000 )	NA	NA	NA

**Note:**

1. Amount of investment mentioned is required for a family of four members.
2. Other charges like processing fee, due diligence fee, biometric fee, legal fee etc. extra.

## Tax Structure of countries offering direct citizenship with investment



S. No	Country	Personal Tax Rate	Corporate Tax Rate	Capital Gain Tax Rate	Gift Tax	Inheritance Tax	Tax on Overseas Income	DTAA with India
1	Austria	0 to 55%	25%	27.50%	No	No	Yes	Yes
2	Combodia	0 to 20%	0 to 20%	Treated as normal income	No	No	Yes	No.
3	Cyprus	0 to 35%	12.50%	20%	No	No	Yes	Yes
4	Dominicia	0 to 25%	27%	Treated as normal income.	Yes	Yes	No. However residents are taxed on gains on financial investments.	No
5	Grenada	10 to 28%	28%	No	No	No	Individuals - No Corporates - yes	No
6	Moldova	7 to 18%	12%	10%	No	No	No. However, gains on financial investments are subject to tax for residents	No



# Annexure: Manner of determination of status of residence in other Gulf Countries as per DTAA with India

## Annexure: Manner of determination of status of residence in other Gulf Countries as per DTAA with India



S. No	Country	Manner of determination of status of residence in other Country as per Treaty with India
1	Qatar	Any person who under the laws of that state is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature
2	Saudi Arabia	
3	Oman	
4	Kuwait	In the case of Kuwait, an individual who is a Kuwaiti national or an Indian national and who is present in Kuwait for a period or periods totaling in the aggregate at least 183 days in the fiscal year concerned
5	Bahrain	Not Applicable - No DTAA between India and Bahrain



# Tax laws in other Gulf Countries



## QATAR

### Individual - Taxes on personal income

- Qatar operates a territorial taxation system, which means an individual is taxable in Qatar if one has generated qualifying Qatar-source income, regardless of one's tax residence.
- Income tax is not imposed on employed individuals' salaries, wages, and allowances.
- A self-employed individual may be subject to income tax if one derives qualifying income from sources in Qatar.
- The total income of Qatari and GCC nationals resident in Qatar is exempted from paying tax

### Manner of determination of residence status under Qatar Tax Law

In the Qatar tax law, a natural person is defined as resident if one meets any of the following conditions:

- has a permanent home in the State of Qatar;
- has been in the State of Qatar for more than 183 consecutive or separate days during any 12-month period, or
- has one's centre of vital interests in the State of Qatar

# Tax laws in other Gulf Countries



## SAUDI ARABIA

### **Individual - Taxes on personal income**

There is no individual income tax scheme in Saudi Arabia. Income tax is not imposed on an individual's earnings if they are derived only from employment in Saudi Arabia. Non-employment income is taxed as an entity or permanent establishment (PE).

### **Manner of determination of residence status under Saudi Income Tax Law**

An individual is considered a resident in Saudi Arabia for a taxable year if one meets any of the two following conditions:

- One has a permanent place of residence in Saudi Arabia and resides in Saudi Arabia for a total period of not less than 30 days in the taxable year (1<sup>st</sup> January – 31<sup>st</sup> December);
- One resides in Saudi Arabia for a period of not less than 183 days in the taxable year (1<sup>st</sup> January – 31<sup>st</sup> December);.

## Tax laws in other Gulf Countries



### OMAN

#### **Individual - Taxes on personal income**

There is currently no personal income tax (PIT) law enacted in Oman

#### **Manner of determination of residence status in Oman**

Since there is no PIT regime in Oman, residence is not defined for PIT purposes

## Tax laws in other Gulf Countries



### KUWAIT

#### **Individual - Taxes on personal income**

There is no personal income tax (PIT) imposed on individuals in Kuwait.

#### **Manner of determination of residence status in Kuwait**

The Kuwait tax law does not define the concept of an individual tax residence.

## Tax laws in other Gulf Countries



### **BAHRAIN**

#### **Individual - Taxes on personal income**

There is no personal income tax (PIT) regime in Bahrain

#### **Manner of determination of residence status in Bahrain**

Since there is no PIT regime in Bahrain, residence is not defined for PIT purposes.

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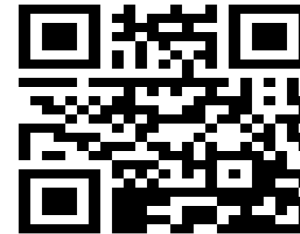


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