ONE DAY SEMINAR

NEW INCOME TAX ACT SERIES - 7

Residential Status Under Income Tax Act, 2025

A Comprehensive Seminar on Tax Residency Determination



Introduction to Residential Status

The Foundation: Ascertaining residential status is the essential first step for determining tax liability under the Income-tax Act.
Prerequisite: Must be examined before looking at the nature and taxability of income.

Categories of Status:

- Resident
- Resident but Not Ordinarily Resident (RNOR)
- Non-Resident (NR)

Primary Determination Basis:

- Individuals & HUF: Based on physical presence in India
- Others: Based on Place of Effective Management (POEM)

Made with GAMMA

Residential Status Across Different Statutes

Residential status is relevant beyond the Income-tax Act, encompassing a **multi-legislative concept** that impacts various legal frameworks.

- Foreign Exchange Management Act, 1999 (FEMA)
- Companies Act, 2013
- Citizenship laws and immigration regulations
- Black Money Act, 2015
- Double Taxation Avoidance Agreements (DTAA)

Key Distinction: The meaning and tests for "residence" differ across statutes based on legislative objectives.

Important Note: A person can be a resident under one law and a non-resident under another.

Made with GAMMA

Section 6: Relevant Sections Mapping (1961 Act vs. 2025 Act)

Concept	1961 Act	2025 Act
Time Period	Previous Year	Tax Year
Individual Tests	Sec. 6(1)(a) & (c)	Sec. 6(2)(a) & (b)
Employment/Crew (182 days)	Expl. 1(a) – Limb 1 & 2	Sec. 6(3)(a) & (b)
Citizen/PIO Visiting	Expl. 1(b) – Limb 1 & 2	Sec. 6(4)(a) & (b) / Sec. 6(5)
Crew Computation	Expl. (2)	Sec. 6(6)(a) & (b)
Deemed Residency	Sec. 6(1A)	Sec. 6(7)
HUF/Firm/AOP/BOI	Sec. 6(2)	Sec. 6(9)
Company / POEM	Sec. 6(3)	Sec. 6(10)
RNOR Conditions	Sec. 6(6)(a) to (d)	Sec. 6(13)(a) to (c)

Made with GAMMA

Section 6(2): Residential Status of Individuals

The Basic Tests: An individual is a resident in a tax year if they meet either condition:

Condition 1

Physical presence in India > 182 days

Condition 2

Physical presence > 60 days AND presence > 365 days in the preceding four years

Clarification of Terms:

- "That year" is now referred to as the "Tax year"
- "Amounting in all" is synonymous with "cumulatively"

Case Study:

Mitesh Vijay Gulati v. ITO (ITAT Mumbai)

Made with GAMMA

Section 6(3): Indian Ship Crew & Employment Exceptions

The Exception: The 60-day rule [Section 6(2)(b)] does not apply to these individuals

Issue 1: Crew Member Documentation

- Mr. Z (Indian citizen) signs off at Rotterdam and signs onto another vessel
- Conflict: Passport records show 184 days in India; Continuous Discharge Certificate (CDC) records show 179 days
- Question: Should status follow passport entries, CDC records, or the prescribed crew computation mechanism?

Issue 2: Remote Work & Deemed Residency

- Mr. X leaves for a UAE job on Sept 15 but works remotely from India until Oct 30
- Stay: 178 days. Indian Income: ₹22 lakhs. UAE has no personal income tax
- Question: Does he qualify for the "leaving for employment" exception, and do deemed residency provisions apply?

Made with GAMMA

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

The Relaxation: The 60-day rule [Section 6(2)(b)] does not apply to Citizens/PIOs visiting India

Issue: "Visit" vs. "Permanent Relocation"

- Mr. A (residing in Australia for 12 years) returns in July 2025
- He claims it is a "visit" for family/medical reasons but:
  - Resigns from his job
  - Admits kids to Indian schools
  - Shifts household goods

Case Law References:

- CIT v/s Abdul Razak (2011)
- CIT v. Avtar Singh Wadhwan

Made with GAMMA

Economic Roots and the Definition of 'Visit'

Issue: Commercial Activity during Visit

• Ms. B (PIO from UK) stays 145 days

• She negotiates business acquisitions and sets up a long-term office while claiming she is "merely visiting"

Question: Does a stay involving economic/business roots still qualify as a "visit"?

Case Law: Mrs. Smita Anand (2014 AAR)

- Principle: A "visit" presupposes a temporary stay with an intent to return abroad
- Returning after cessation of foreign employment is not a "visit"

Case Law: ITO v. Manoj Kumar Reddy (2010)



COVID-19 and Involuntary Stay Relief

The Challenge: Forced stay due to travel restrictions potentially changing residential status

CBDT Circular No. 11 of 2020 (FY 2019-20)

- Relief: Specified periods were excluded for those who came before March 22, 2020, and couldn't leave
- Included: Inability to leave by March 31, quarantine periods, and departure via evacuation flights

CBDT Circular No. 2 of 2021 (FY 2020-21)

- Shift in Policy: No blanket exclusion
- Rationale: DTAA tie-breakers and foreign tax credits address most concerns
- Hardship cases must be represented via Form-NR

Made with GAMMA

Recent Judicial Precedent: Binny Bansal (2026)

1

Fact Pattern

- Bansal relocated to Singapore but stayed in India for 141 days in FY 2019-20
- He claimed the 182-day "visit" threshold

2

Revenue's Argument

- He satisfied the 60 days + 365 days test and wasn't entitled to the concession

3

The Ruling

- The Bangalore ITAT denied the 182-day relaxation

Core Principle:

The benefit of the extended threshold may not be available to individuals who have only recently shifted abroad and were residents in immediately preceding years

Made with GAMMA

Section 6(5): Residents with Indian Income > ₹15 Lakhs

Modified Threshold: For Indian Citizens/PIOs with Indian income exceeding ₹15 Lakhs, the 60-day rule is replaced by a 120-day rule.

Issue 1: Multiple Entries & Total Stay

- Ms. Y (Singapore PIO) stays 128 days (multiple entries)
- Indian income: ₹19 lakhs
- Preceding 4 years: 372 days
- Preceding 7 years: 640 days

⚠ **Conflict:** Interaction between Section 6(5) and Section 6(13)(b)

Issue 2: Split-Year & Permanent Return

- Mrs. B returns permanently from the UK on Jan 10, 2026
- Total stay: 124 days
- Indian income: ₹17 lakhs

? **Question:** Can the relaxed threshold for "visiting citizens" be claimed after a permanent return during the same year?

Made with GAMMA

Section 6(6) & Section 6(7): Crew and Deemed Residency

Section 6(6) - Ship Crew Computation:

- Stay is determined by Rule 8
- Excludes the period from the date entered in the CDC for signing on to the date of signing off for an "eligible voyage"

Section 6(7) - Deemed Residency:

- Applies to Indian Citizens only
- Conditions:
  - Not taxable in any other country
  - Indian income > ₹15 lakhs
- Nature: It applies "Notwithstanding" other provisions

Made with GAMMA

Deemed Residency and Dual Residency Issues

Foreign Tax Liability vs. Absence of Tax

• Scenario: A UAE resident claimed Section 6(1A) shouldn't apply because UAE has no income tax laws

• Principle: Deemed residency targets "stateless" high-income individuals, not bona fide workers in no-tax regimes

Dual Residency & DTAA Tie-Breakers

• When an individual is a resident in two countries (e.g., India and UK), the DTAA Tie-breaker becomes decisive

• Factors:

- Permanent home
- Centre of vital interests
- Habitual abode
- Nationality

• Reference: Azadi Bachao Andolan principles



Section 6(9): HUF, Firms, AOP, and BOI

Determination: Based on "Control and Management"

HUF Status through Karta:

• Scenario: An HUF claimed RNOR status because the Karta recently returned from abroad

• Principle: The residential history of the Karta/manager is significant for determining if an HUF is "ordinarily resident"

Firms & Occasional Control:

- Case: Narottam & Pereira Ltd. v. CIT (Supreme Court)
- Principle: Even partial control and management in India triggers resident status
- Complete exclusion of management from India is required for NR status

Made with GAMMA



Section 6(10): Companies and the POEM Concept

Definition of POEM:

• Place of Effective Management—where key management and commercial decisions for the business as a whole are, in substance, made

The "Head and Brain" Test:

• Focuses on where the real strategic direction functions, not incorporation or routine operations

Determining Situations:

- Strategic decisions taken by promoters in India despite meetings being abroad
- Foreign subsidiaries effectively controlled by Indian parent management
- Key decisions on finance, M&A, and policy made from India
- Board merely "rubber-stamps" decisions taken in India

Made with GAMMA

POEM: Non-Relevant Factors and Scenarios

What is Generally NOT Relevant for POEM:

- Place of incorporation or registered office
- Where books of account are maintained
- Location of factories or day-to-day routine administrative decisions

Case Study: Foreign Company Control

- Reference: **De Beers Consolidated Mines Ltd. v. Howe**
- Principle: Central control and management dictate residency

- Mere conduct of board meetings abroad is insufficient if strategic decisions originate in India

- Reference: **Radha Rani Holdings (P.) Ltd.**

Made with GAMMA

Section 6(13): Resident but Not Ordinarily Resident (RNOR)

The "Any One" Rule: • An individual is RNOR if they satisfy any one of the prescribed conditions (connected by "or")

1

Condition 1: "Not resident in 9 out of 10 previous years"

- This is read literally
- To satisfy this, one must be a non-resident in at least 9 of the 10 preceding years
- Example: Being NR in 2 years and Resident in 8 years does not satisfy this requirement

2

Condition 2: Stay in India does not exceed the prescribed threshold during the preceding 7 years

Result:

If an individual fails all RNOR conditions, they are treated as Resident and Ordinarily Resident (ROR)

Key Takeaways

Residential status is the foundation for determining tax liability under Indian Income Tax Law

Three primary categories: Resident (R), Resident but Not Ordinarily Resident (RNOR), and Non-Resident (NR)

Determination varies by entity type:

- Individuals & HUF: Based on physical presence in India
- Companies: Based on Place of Effective Management (POEM)

Recent judicial precedents emphasize substance over form in determining residential status

DTAA tie-breakers are critical in cases of dual residency

Deemed residency provisions target high-income individuals not taxable elsewhere

Each case requires careful analysis of facts and applicable legal provisions

Made with GAMMA



Venkatraman Kumar
+91 96772 61006 || venkat@kvkassociates.co.in