

## Chapter - 1

# Introduction of International Taxation

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International taxation governs the tax principles for cross-border income (how cross-border income is taxed), aiming to prevent double taxation and evasion while determining taxing rights between countries. It involves taxing foreign income of residents and domestic income of non-residents, often managed through treaties to mitigate double taxation or non-taxation.

### Meaning of International Taxation

International taxation deals with the tax treatment of cross-border transactions and income involving:

- Non-residents earning income in India, and
- Residents earning income outside India.

It addresses who has the right to tax, how much to tax, and how to avoid double taxation when income flows across jurisdictions.

### What is International Taxation?

International taxation refers to the rules and regulations that govern how income, profits, and assets are taxed when there is a cross-border element involved. It addresses two key issues: how domestic tax laws apply to non-residents earning income in the country, and how countries tax their residents' foreign income.

There are two main categories of case that international tax rules have to deal with. First, there is the taxation of persons from outside a country who work, enter into transactions, or have property or income in the country. Second, there is taxation of persons who belong to a country and work, enter into transactions, or have property or income abroad. The usual term used in international taxation to denote the concept of a person's belonging to a country is "residence" ("resident" and "nonresident" being used to indicate whether a particular person belongs to a country or not); similarly the usual term for income arising in a particular place is "source" ("domestic" and "foreign" being used to indicate whether particular income is sourced inside or outside a country). The two categories arise in virtually all areas and types of taxation. For the income tax, the issues are the taxation of domestic income of non-residents and the taxation of foreign income of residents.

## Historical Context of International Taxation

The origins of international taxation can be traced back to the early 20th century when the League of Nations first proposed methods for the international coordination of tax policy to avoid double taxation and ensure fair distribution of tax revenue among countries. Since then, the legal framework surrounding international taxation has evolved significantly, particularly through the work of the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN).

## Objectives of International Taxation

The objectives of international taxation are varied, but all work towards creating a balanced system for taxing global trade and investment. Key objectives include avoiding double taxation, preventing tax evasion, ensuring fairness in taxation, and facilitating cross-border economic activity.

## Why is International Business Taxation Important?

International taxation is important for several reasons:

- **Avoidance of Double Taxation:** Makes sure the same income is not taxed twice by two nations.
- **Equitable Revenue Allocation:** Assists nations in getting their equitable portion of tax income from foreign companies conducting business in their territory.
- **Global Compliance:** Incentivises companies to comply with global standards and escape sanctions.
- **Support for International Business:** Brings certainty and confidence to businesses conducting international business taxation.

## Countries with Different Tax Systems

Different countries have diverse approaches to international taxes:

Residence-based Tax System (Worldwide Income Taxation) Principle:

### [1] Residents are taxed on global income (domestic + foreign).

Non-residents are taxed only on source income.

Countries (examples):

- **India** (Residence-based Global income of residents taxed)
- **USA** (Citizenship + Residence - Unique worldwide taxation)

Tax based on citizenship, not merely residence.

*Examples:*

- Uses a global taxation system but provides foreign tax credits.
- US citizens taxed on worldwide income even if living abroad.
- **UK(United Kingdom)**Residence-based + Remittance basis [for Non-domiciled (Non-dom)]

UK tax on worldwide income and gains

Same as UK-domiciled residents

[Taxes residents on worldwide income with reliefs for foreign income]

REMITTANCE BASIS (SPECIAL REGIME FOR NON-DOMS)

UK tax on:

- UK - source income, and
- Foreign income only if remitted (brought) into the UK
- Foreign income kept outside the UK is not taxed in the UK

This is a classic example of a hybrid system (residence + remittance).

EXAMPLE (FOR CONCEPT CLARITY)

An Indian citizen becomes UK tax resident but remains Indian-domiciled:

- ❖ Salary earned in the UK Taxable in UK
- ❖ Interest earned on bank deposits in India:
  - Not taxable in UK if not remitted to the UK (under remittance basis)
  - Taxable in UK if remitted to UK

DEEMED DOMICILE (ANTI-ABUSE RULE)

UK law treats long-term residents as “deemed domiciled”:

If resident in the UK for 15 out of the last 20 years

- Then taxed like UK-domiciled persons on worldwide income

This curtails perpetual use of the non-dom remittance basis.

NOTE : A non-dom is a person who is resident in the UK for tax purposes but whose domicile (permanent home or origin) is outside the

UK.

- **Canada**

Canada follows a residence-based system of taxation.

☞ Residents of Canada are taxed on worldwide income.

☞ Non-residents are taxed only on Canadian-source income.

- **Australia**

Australia follows a residence-based system of taxation.

☞ Residents of Australia are taxed on worldwide income.

☞ Non-residents are taxed only on Australian-source income.

- **Germany**

Germany follows a residence-based system of taxation.

☞ Residents of Germany are taxed on worldwide income.

☞ Non-residents are taxed only on German-source income.

- **France**

France follows a residence-based system of taxation.

☞ Residents of France are taxed on worldwide income.

☞ Non-residents are taxed only on French-source income.

- **Japan**

Japan follows a residence-based system of taxation, with certain territorial/remittance features for individuals.

☞ Residents of Japan are taxed on worldwide income.

☞ Non-residents are taxed only on Japanese-source income.

Japan is sometimes described as a mixed system because special rules apply to foreign income of certain resident individuals.

## [2] Source-based Tax System (Territorial Taxation)

- Only income sourced within the country is taxed.
- Foreign income is exempt, even if earned by residents.

**Countries (examples):**

- **Hong Kong** (Territorial - Only Hong Kong - sourced income taxed)
- **Singapore** (largely territorial with exemptions - Foreign income mostly exempt)

Singapore follows a territorial system of taxation, under which only income sourced in Singapore is taxable. Foreign-sourced income is generally exempt, even when received in Singapore, subject to conditions under the Foreign-Sourced Income Exemption regime. Singapore levies a corporate income tax on business profits, does not tax capital gains [However, if gains are revenue in nature (i.e., frequent trading), they may be taxed as business income. Applies withholding tax on certain payments to non-residents. It has an extensive DTAA network, including with India, and is compliant with OECD BEPS standards, thereby distinguishing it from classic tax havens.

**FOREIGN-SOURCED INCOME EXEMPTION**

Foreign income received in Singapore is exempt if:

- It is foreign-sourced (dividend/branch profit/service income), and
  - The income was subject to tax in the source country (headline tax  $\geq$  threshold), and
  - The arrangement is not for tax avoidance
  - This makes Singapore attractive for :
    - ❖ Holding companies
    - ❖ Regional HQs
    - ❖ IP structures (Intellectual Property) [subject to substance]
- **Panama**
  - **Malaysia (largely territorial)**
  - **Costa Rica**

**[3] Mixed/Hybrid Tax System**

- Combination of residence and source rules.
- Certain foreign incomes may be taxed; others exempt.

**Countries (examples):**

- Japan (Mixed - Exemptions for certain foreign income)
- China
- South Africa
- South Korea

**Scope of International Taxation (India-centric)**

International taxation deals with:

- Taxation of cross-border income
- Allocation of taxing rights between countries
- Avoidance of double taxation
- Anti-avoidance (BEPS, GAAR)
- Taxation of non-residents & MNEs

Under the Income-tax Act, 2025:

Residents: Global income taxable in India

Non-residents: Only income received/deemed received/accrues or arises/deemed to accrue or arise in India

**Why International Taxation Arises**

International taxation issues arise due to:

- Source-based taxation (country where income arises), and
- Residence-based taxation (country where taxpayer is resident).

When both countries claim taxing rights over the same income, it results in Double Taxation, necessitating legal and treaty-based relief mechanisms.

**Source vs Residence Taxation**

<i>Parameter</i>	<i>Source-Based Taxation</i>	<i>Residence-Based Taxation</i>
Who taxes?	Country where income arises	Country where taxpayer resides
Scope	Limited to domestic-source income	Global income
Typical for	Non-residents	Residents
DTAA Role	May restrict source taxation	May require credit/exemption

Example	India taxing royalty paid to US Co.	India taxing global income of Indian resident
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**NOTE**

- Source rule dominates for non-residents under the Income Tax Act, 2025.
- Residence rule dominates for residents, subject to foreign tax credit.
- DTAA allocates taxing rights and may restrict source taxation (e.g., business profits taxable in source only if PE exists).
- Character of income (business income vs royalty/FTS vs capital gains) determines source taxation.

**Example:**

An Indian resident earns interest from a bank account in the USA.

Flow:

- Cross-border income
- Resident of India
- Global income taxable in India
- USA taxes interest as source country
- India grants Foreign Tax Credit under DTAA.

**Role of Double Taxation Avoidance Agreements (DTAA)**

India has DTAA with 92 countries. DTAA:

- Allocates taxing rights between two countries
- Prescribes reduced tax rates
- Defines Permanent Establishment (PE)
- Prevents double taxation through:
  - Exemption method, or
  - Foreign Tax Credit method

As per Indian law, DTAA overrides the Act if beneficial to the taxpayer.

**Importance in Practice**

- International taxation is critical for:
  - Multinational enterprises (MNEs)
  - Cross-border investments

- Foreign companies operating in India
- Indian companies expanding abroad
- Structuring of inbound & outbound investments

### Key International Tax Provisions

Core international taxation concepts incorporated in the new Act include:

<i>Area</i>	<i>Concept</i>
Taxability trigger	Business connection/Permanent Establishment (PE)
Residence rules	Section 6 (residential status)
Treaty override	DTAA provisions override domestic law if more beneficial
Transfer Pricing	Arm's Length Price for AE transactions
Withholding tax	TDS on payments to non-residents
Equalisation Levy/SEP	Digital economy taxation
GAAR	Anti-avoidance in cross-border structures

### OECD Model Tax Convention & International Tax Architecture

The OECD Model Tax Convention is one of the most widely used frameworks for negotiating tax treaties. It provides guidelines for allocating taxing rights between countries, with a focus on preventing double taxation and tax evasion. The OECD Model is typically used by developed countries that rely on residence-based taxation.

The Model Convention establishes key principles such as the arm's length principle for transfer pricing, the concept of permanent establishment, and mutual agreement procedures for resolving tax disputes. Many bilateral tax treaties are based on the provisions of the OECD Model, and its principles are often incorporated into domestic tax laws.

India aligns its international tax framework with OECD Model Tax Convention and OECD Transfer Pricing Guidelines, especially in:

- Permanent Establishment rules
- Transfer Pricing (ALP, methods, comparability)
- BEPS Action Plans (Base Erosion & Profit Shifting)
- Digital economy taxation (Pillar One & Pillar Two)

### Chargeability of Income of Non-Residents

Under the Act, non-residents are taxable in India only on income that:

- Accrues or arises in India, or
- Is deemed to accrue or arise in India, or
- Is received in India.

This forms the source rule of Indian international taxation.

**Example:**

A UK company provides software services to Indian clients.

Tax implications:

- If the UK company has a PE in India, India can tax business profits attributable to the PE.
- If no PE exists, business profits are taxable only in the UK (as per DTAA).
  - However, payments like Royalty/Fees for Technical Services (FTS) may still be taxable in India at treaty rates.

<i>Nature of Income</i>	<i>Taxability in India (Non-Resident)</i>
Business profits	Taxable only if PE in India
Interest/Royalty/FTS	Taxable if source in India, subject to DTAA
Capital gains	Taxable if capital asset situated in India (incl. indirect transfer)
Salary	Taxable if services rendered in India

NOTE : India follows wider source rules than OECD

**International taxation**

Taxing Rights (Who can tax?)	2. Jurisdiction (Where taxed?)	3. Double Tax Avoidance
↓	↓	↓
Source Rule (Income arises)	Residence Rule (Taxpayer resides)	DTAA Relief - Exemption - Foreign Tax Credit (FTC)
		↓
		Treaty overrides Act (if more beneficial)

**Core Concepts & Triggers**

Residential Status	Permanent Establishment (Fixed place, Agent, Service)	Business Connection/ Significant Economic Presence (SEP)/(Digital presence)
↓	↓	↓
Global vs India-source income taxability	Business profits taxable in source state only if Permanent Establishment (PE)	Nexus for taxing Non- resident

**Income Character**

Business Profits	Royalty/FTS	Interest/ Dividends	Capital Gains
↓	↓	↓	↓
PE required for source taxation	Source tax even without PE	Withholding tax + DTAA rates	Source rules +DTAA alloca- tion

**OECD Framework**

OECD Model Convention (PE, Articles 7, 12, 13)	OECD TP Guidelines (Comparability, ALP)	BEPS Actions (Pillars 1 & 2)
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## Chapter - 2

# Scope of Total Income of Non-resident

[Section 5(2)]

{Corresponding to Section 5(2) of the Income Tax Act, 1961}

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Taxation of any person, in any Country, is dependent on his Residential Status. Under the Indian Income Tax Laws, Global Income of a Resident Person is Taxable in India. However, in respect of a Non-Resident only that Income which is received or deemed to have been received in India by or on his behalf and income that accrues or arises or is deemed to accrue or arise in India is Taxable.

As per Section 5(2) of the Income Tax Act, 2025, a non-resident's total income for a tax year in India includes only the following, irrespective of where the income is earned globally:

- Income received or deemed to be received in India by or on their behalf.
- Income that accrues or arises, or is deemed to accrue or arise, in India during the relevant tax year.

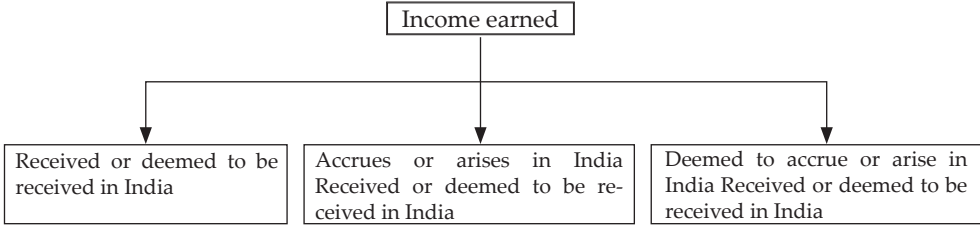
Income that accrues or arises outside India is generally not taxable for a non-resident in India, unless it is from a business controlled in or a profession set up in India (in which case it might be for a "Resident but Not Ordinarily Resident" individual, but generally not for a pure non-resident).

*Text of Section 5(2) of the Income Tax Act, 2025*

*(2) Subject to the provisions of this Act, the total income of a tax year of a person, who is a non-resident, includes all income from whatever source derived, which —*

- (a) is received or deemed to be received in India in that year by or on behalf of such person; or*
- (b) accrues or arises, or is deemed to accrue or arise, to such person in India in that year.*

## Non-Resident & Not ordinarily Resident is taxable in India if



There are three different principles adopted internationally to identify the tax jurisdiction of the income of an individual. These principles – citizenship principles, source principle and residence principle are adopted by different countries as per their choice.

In the US, income is taxed based on citizenship and source based principles, whereas India follows the residence based and source based taxation system. Under citizenship based taxation, income is taxed on the basis of citizenship of the taxpayer, whereas under residence based taxation system, income is taxed on the basis of residential status of the taxpayer.

### Charge ability of Income

#### (1) Determine - Chargeability Under Income Tax Act

##### (a) Scope of Total Income – In case of Non-Resident [Section 5(2)]

- (i) Income received or deemed to be received in India; or
- (ii) Income accrues or arises or deemed to accrue or arise to him in India.

#### **Incidence of tax in the case of non-resident assessee [Section 5(2)]**

Section 5(2) of the Act provides that a non-resident is assessable to tax in respect of –

- (a) Income which is received or deemed to be received in India in the previous year by him or on his behalf.
- (b) Income which accrues or arises or is deemed to accrue or arise to him in India during the previous year.

In other words, as per Section 5(2) – Income from any source which:

- accrues in India.
- is deemed to be received in India (*Section 7*).
- is deemed to accrue in India (*Section 9*).
- is received in India.

“RECEIVED IN INDIA” : Receipt means first receipt when recipient gets the money under his own control.

“DEEMED TO BE RECEIVED IN INDIA”

- When employer’s contribution to RPF is more than 12%.
- When interest credited to RPF is in excess of 9.5%.
- Transfer of balance of unrecognized provident fund to RPF.
- Contribution of employer is under notified pension scheme as in section 124.

**(b) Income deemed to accrue or arise in India [Section 9]**

Section 9 provides for situations where income is deemed to accrue or arise in India. All incomes accruing or arising, whether directly or indirectly, through or from any business connection in India, or from any property in India, or from any asset or source of income in India, or through the transfer of a capital asset situated in India, i.e., if the source of income is in India, income shall be accruing/arising in India.

“**Accrue or arise in India**” : Any income received in India or the law deems it to be received in India by you or on your behalf or any income that accrues or arises in India or income that the law believes accrues or arises in India.

“**Deemed to Accrue or Arise in India**”: If your answer to any of these is a YES the law will consider these incomes to have accrued in India:—

- (a) Income from a business connection in India
- (b) Income from any property, asset or source of income in India
- (c) Capital gain on the transfer of a capital asset situated in India
- (d) Income from salary if the services are rendered in India
- (e) Income from salary which is payable to you by the Government of India for services rendered outside of India when you are an Indian citizen
- (f) Dividend paid by an Indian company even though this may have been paid outside India
- (g) Interest, royalty or technical fees received from the Central or the State Government or from specified persons in certain circumstances. A non-resident Indian having (Indian) income of more than basic exemption limit (i.e. 2,50,000/- for Tax year 2026-27 for individual, except income from certain specified assets, is liable to pay income-tax at the same rates as are applicable in case of resident assesseees. Accordingly, in the case of Non-

Resident Indian (NRI):-

- (i) Only income accruing in India, or
- (ii) Received in India, or
- (iii) Deemed to accrue in India is taxable.

Consequently, a non-resident may be assessed to tax in India in respect of his taxable income, either directly or through agents. The following persons may be treated as an 'agent' of the non-resident: —

- (a) Employee or trustee of the non-resident
- (b) A person who has any business connection with the non-resident
- (c) A person from or through whom the non-resident is in receipt of any income
- (d) A person who has acquired a capital asset in India from the non-resident

If the source is partly in India and partly outside India, income shall be accruing/arising in India only to the extent the source is in India.

FOR EXAMPLE:—

Mr. 'A' is employed in Bank of Baroda and is posted in Delhi branch on the remuneration of Rs. 50,000/- p.m. In this case, his income shall be deemed to be accruing/arising in India but if he is transferred to the London branch with effect from 01.01.2026, his income accruing/arising in India shall be 4,50,000/- i.e., salary upto 31.12.2025 and the income which is accruing/arising abroad shall be Rs. 1,50,000/- (i.e., salary from 01.01. 2026 to 31.03.2026).

An income is said to be deemed to accrue or arise in India if the same is accruing or arising directly or indirectly, through or from—

- a business connection in India or
- from any property in India or
- from any asset or source of income in India or
- the transfer of a capital asset in India which derives its value from assets in India.
- it also includes any share or interest in a company or entity registered or incorporated outside India which derives its value from assets in India.

**Income deemed to accrue or arise in India**

S. No.	Income	When deemed to accrue or arise in India
(i)	Salaries	Income by way of salary, if it is earned in India, i.e., when paid for service rendered in India Paid by the Government to a citizen of India for service outside India
(ii)	House Property Income	Income though, or from, any property in India
(iii)	Capital Gain	Income through situated in India transfer of a capital asset
(iv)	Business Income	Net profit earned in India when business connection is in India or source of income is in India
(v)	Dividend	When paid by an Indian company outside India
(vi)	Interest	When payable by— Government of India A person who is a resident except where moneys borrowed used for business outside India A person who is a non-resident except where moneys borrowed used for business in India
(vii)	Royalty & fees for technical services Income payable by way of royalty or fees for technical services by an Indian Company or from an Indian source	

**(2) Determine - chargeability as per Double Taxation Avoidance Agreement (DTAA)**

The provisions of the Double Taxation Avoidance Agreement (DTAA) will override the provisions of the Income-tax Rules of both countries. The DTAA is a treaty that India has signed with the US and several other countries to ensure that its residents and citizens do not end up paying tax in two countries on the same income. For the purpose of the two cases above, since they are on contract basis and not on employment, we need to refer to Article 15 of the India-US DTAA."

Article 15 deals with Independent Personal Service that include independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

In such cases, if a person is resident of one country and earning income from a source in another country, then that income would be taxed only in the country of his or her residence.

What this means is that in the case of Mr. "A", he owes taxes only in India and he can tell his US payer not to withhold taxes in the US. In order to do that, he must submit Form W8BEN to his US payer. Form W8BEN is a declaration that he is a tax paying resident of India.

Where a non-resident's income arises in India but is also covered by a Double Taxation Avoidance Agreement (DTAA) between India and another country, the DTAA may override domestic tax treatment or provide relief such as reduced rates or credits, subject to treaty provisions and conditions. (This is a general principle in Indian tax law and relevant to non-resident tax incidence, though not part of Section 5(2) itself.)

- Royalty or Fees for Technical Services
- Business Income
- Independent Personal Services
- Dependent Personal Services
- Other Incomes

### **Indian Income and Foreign Income**

Taxability of any Non-Resident in India is governed by the provisions of Income Tax Act and provisions of DTAA, whichever is more beneficial. A Non-Resident Indian (NRI) pays tax only on "Indian Income" and his foreign income (income earned and received outside India) is totally exempt from income-tax in India.

In order to understand the relationship between residential status and tax liability, one must understand the meaning of "Indian income" and "foreign income".

#### **'Indian Income'**

'INDIAN INCOME' means income which accrues/arises (or deemed to accrue or arise) in India or which is received (or deemed to be received in India) though it accrues/arises outside India and is taxable in the hands of non-resident.

Any of the following three is an Indian income:—

- (i) If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

- (ii) If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year.
- (iii) If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

### Foreign Income

“FOREIGN INCOME” means income which accrues or arises (or deemed to accrue or arise) outside India and received (or deemed to be received) outside India.

If the following two conditions are satisfied, then such income is “foreign income”:—

- (i) Income is not received (or not deemed to be received) in India; and
- (ii) Income does not accrue or arise (or does not deem to accrue or arise) in India.

NOTE:

- Foreign income is taxable in the hands of resident (in the case of a firm, AOP, Company and every other person) or resident and ordinarily resident (in the case of an individual or a Hindu Undivided family) in India.
- Foreign income is not taxable in the hands of non-resident in India. In the hands of resident but not ordinarily resident taxpayer.
- Foreign income is taxable only if it is—
  - (a) business income and business is controlled from India, or
  - (b) professional income from a profession which is set up in India.

**In brief : Tax incidence of different taxpayer is as follows:-**

FOR INDIVIDUAL

Source	Resident and ordinarily resident in India	Resident but not ordinarily resident in India	Non-resident in India
INDIAN INCOME Indian income is always taxable in India irrespective of the residential status of the taxpayer.	Taxable in India	Taxable in India	Taxable in India

<p><b>FOREIGN INCOME</b></p> <p>If the following two conditions are satisfied, then such income is foreign income:—</p> <p>(a) income is not received (or not deemed to be received) in India; and</p> <p>(b) income does not accrue or arise (or does not deem to accrue or arise) in India.</p> <p>Foreign income is taxable in the hands of resident or resident and ordinarily resident in India. Foreign income is not taxable in the hands of non-resident in India.</p>	<p>Taxable in India</p>	<p>Only two following types of foreign income are taxable:</p> <p>(i) If it is business income and business is controlled wholly or partly from India.</p> <p>(ii) If it is income from profession which is set up in India. No other foreign income (like salary, rent, interest, etc.) is taxable in India in the hands of a resident but not ordinarily resident taxpayer.</p>	<p>Not Taxable in India</p>
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### **Non-Resident Indians (NRIs) as a consultant to Indian companies**

The income received in India by Non-Resident Indians (NRIs) is taxable.

#### **TAX IMPLICATIONS FOR INDIAN CONSULTANTS WORKING FOR US CLIENTS**

Mr. "A" is a 40 years old ENT Doctor. After spending 9 long years in the US, he moved back to India in 2013 and now lives in Pune, India. In 2015, he started working on contractual basis as a consultant with a US based clinic and his payment is wired to his bank account in India.

Mr. "X", a freelancer for a publication in India. He lives in San Francisco, California, and writes on technological developments for a digital magazine in India. His pay too gets wired to the US from India.

#### **WHO SHOULD PAY TAX IN INDIA**

Every person who is a resident of India must pay taxes in India on his or her global income. A resident of India is defined as a person who has been in India for a period of 182 days or more in the financial year or who has been in India for 60 days or more in a financial year and 365 days or more in the 4 years before that financial year (Section 6).

Since Mr. "A" has been in India for the entire time since 2013, by this definition, it is clear that he is a resident of India and must file his tax return of income in India for the year 2015-16.

A non-resident, that is, a person who is not a resident by the above criteria, must pay taxes in India on any income that is earned from a source in India (Section 9). By that definition, since Mr. "A" earns income from a source in India, he must pay tax on that income in India.

### **WHO SHOULD PAY TAX IN THE US**

According to the US tax code, any person who is a resident of US must pay taxes in the US. The IRS defines resident as one who meets either of the following two tests:—

(i) **GREEN CARD TEST:**

If at any time during the calendar year you were a lawful permanent resident of the United States according to the immigration laws, you are considered to have met the Green Card test.

(ii) **SUBSTANTIAL PRESENCE TEST:**

To meet the substantial presence test, you must have been physically present in the United States on at least 31 days during the current year, and 183 days during the 3-year period that includes the current year and the 2 years immediately before.

- To satisfy the 183 days' requirement, count all of the days you were present in the current year, and one-third of the days you were present in the first year before the current year and one-sixth of the days you were present in the second year before the current year.

Since Mr. "X" has lived in the US for the whole of 2015, he must file his taxes in the US.

A non-resident alien, that is, a person who is not a citizen or resident of the US but has a US source income on which tax has not been fully withheld at source, must file his taxes in the US. By that definition, Mr. "A" must file his taxes in the US since his source of income is in the US.

**Scope of Total Income liable to Tax according to Assessee's Status [Section 5]**

S. No.	Type of Income	Resident and ordinarily Resident	Resident and non-ordinarily Resident	Non-Resident
(i)	Income received in India, (whether accrued in India or outside India)	Taxable	Taxable	Taxable
(ii)	Income deemed to be received in India, whether accrued in India or outside India)	Taxable	Taxable	Taxable
(iii)	Income accruing or arising in India (whether received in India or outside India)	Taxable	Taxable	Taxable
(iv)	Income deemed to accrue or arise in India, whether received in India or outside India)	Taxable	Taxable	Taxable
(v)	Income received and accrued outside India, from a business controlled from India or a profession set up in India	Taxable	Taxable	Taxable
(vi)	Income received and accrued outside India, from a business controlled from India or a profession set up outside India	Taxable	Not Taxable	Not Taxable
(vii)	Income (other than business or profession) received and accrued outside India and is also received outside India	Taxable	Not Taxable	Not Taxable
(viii)	Income earned (accrues or arises) and received outside India and remitted to India	Taxable	Not Taxable	Not Taxable

**PROVISIONS ILLUSTRATED – 1:—**

Mr. 'X' has income as under:—

- He has income from a business in Germany amounting to Rs. 6,00,000/- and half of it was received in India.
- He has interest income of Rs. 2,00,000/- from UK Development Bond and entire interest income was credited to a bank account in UK. Subsequently, the amount was transferred to India.

- He has a business in Mumbai and entire income of Rs. 6,00,000/- was received in UK.
- He has one house property in Delhi and income of Rs. 10,00,000/- was received in UK.
- He has received salary income of Rs. 10,00,000/- (computed) in India and half of the services were rendered in UK and half in India.
  - Presume all the above incomes are computed incomes.
  - Compute his income presuming that he is NOR, NR and ROR.

S. No.	Particulars	ROR	NOR	NR
(i)	Income received in India	3,00,000	3,00,000	1,50,000
	Income accruing/arising abroad and received abroad	3,00,000	-	-
(ii)	Income accruing/arising abroad and received abroad	2,00,000	-	-
(iii)	Income accruing/arising in India	6,00,000	6,00,000	6,00,000
(iv)	Income accruing/arising in India	10,00,000	10,00,000	10,00,000
(v)	Income received in India	10,00,000	10,00,000	10,00,000
	<b>Total</b>	<b>34,00,000</b>	<b>29,00,000</b>	<b>29,00,000</b>

#### PROVISIONS ILLUSTRATED – 2:—

Mr “A”, a non-resident who has different sources of income in India, U.K., and USA. He wants to return to India and settle here. He wants to ascertain his tax liability if he is (i) Resident, (ii) Not ordinarily resident, or (iii) Non-resident in India in respect of the following incomes:—

- (i) Salary income earned in U.S.A., but brought into India
- (ii) Salary income earned in U.S.A., but received in India
- (iii) Income from house property in U.S.A., but received in U.K.
- (iv) Income from let out property in India
- (v) Income from the U.S.A. Government securities, 85% of which is received in India
- (vi) Pension from an Indian company and received in U.K.
- (vii) Dividend paid by Indian Companies and received in U.K.
- (viii) Share of profit (60% of which is received in India) from a business in U.S.A., which is controlled from U.K.

#### SOLUTION:—

The position regarding chargeability of tax in India on the above income is as under:—