Chamber of Income Tax Consultants
Residence of an Individual under FEMA and Income-tax laws

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1. Background:

Residential status is the starting point to determine:

- the extent to which is a person regulated for cross border transactions; and
- the extent of the income-tax liability.

Two laws where residential status is most relevant are Income-tax Act (ITA) and Foreign Exchange Management Act (FEMA). There is a tendency to mix up the concepts of the two laws which leads to confusion. In this article, the focus will be:

i) To understand the meaning of "residence" under FEMA and Tax laws.

ii) To understand differences under both laws and reasons for the same.

iii) Practical issues.

This article covers residential status of an individual. Other persons' residential status is not covered.

2. Basic difference between Income Tax and FEMA law:

2.1 Understanding the purpose of residential status under both laws will help to understand the issues better. FEMA and ITA have different purposes.

Under Income Tax law, the purpose is to determine taxability of income. It is a revenue law. The income is determined for the full year. If a person is a resident, his global income is taxable in India. If a person is a non-resident, only his Indian income will be taxable. Income earned and received outside India is not taxable in India. For earning income, no approval is required under the Income tax act. Income tax law is only concerned with taxable income and the tax thereon.

FEMA is a regulatory law. There are regulations for undertaking transactions. For example, if non-resident wants to keep deposits in bank accounts in India, he has to consider Deposit regulations. Under

these regulations, only NRIs can keep the deposits in NRE / FCNR accounts. Other non-residents (Non-NRIs) cannot keep deposits in such accounts. Or if an Indian resident wants to borrow from a bank in USA, he has to consider loan regulations. There are several restrictions on residents wanting to avail of loan from a non-resident. Hence it is necessary to know the residential status at the time of undertaking a transaction. One cannot wait for the year to be completed and then know whether he can do a transaction or not. If that were the situation, then there will be several difficulties.

Example 1

A person comes to India for taking a job on 1st May 2018. Under FEMA he becomes a resident from the day he comes to India. As a resident he can do several transactions. But as a non-resident, there will be restrictions. If such a person had to wait till 31st March 2019 to know whether he is a resident or vice-versa, there will be difficulties.

Therefore under FEMA, a person's residence is from a particular date. Under Income-tax the residential status is for a full year. This a fundamental difference between residential status as per Income Tax Act and FEMA.

2.2 The meaning under the ITA is based on number of days stay in India. Purpose and intention have almost no relevance (except as discussed later).

Under FEMA, the purpose and intention of stay in India is relevant. Number of days stay is only one of the factors which can help to determine the status.

Example 2

A foreigner comes to India for tourism. He falls ill and has to stay longer. This results in his stay exceeding 182 days in a year. Such a person will become a resident under the ITA.

The person has not come for undertaking employment or business in India. Nor does it amount to a situation where his stay in India is uncertain. He will go back once he is better. Under FEMA, such a person will be a non-resident.

More details are discussed later.

3. Different categories of residence under ITA:

3.1 Under ITA, a person can be a (i) resident, (ii) non-resident or (iii) resident but not ordinarily resident.

As a non-resident, a person can be a (i) Non-resident Indian (NRI) or (ii) Non-NRI (outright foreigner).

3.2 Under FEMA, a person can be a (i) resident, (ii) non-resident or (iii) not permanently resident.

As a non-resident, a person can be a (i) Non-resident Indian (NRI), (ii) Person of Indian Origin (PIO), or (iii) Non-NRI/PIO (i.e. outright foreigner).

3.3 Different categories of residential status give different rights under FEMA. Under ITA, tax treatment is different for different categories of residential status.

3.4 The meaning of NRI / PIO is discussed in details by another author in another article. It is not discussed here in details.

4. **Residence under ITA:**

4.1 Residence is defined under S. 6(1). It is the number of days which determine the residential status. If any of the two conditions are satisfied, the person will be considered as an Indian resident.

i) A person stays in India for 182 days or more in a year (S.6(1)(a)).

OR

ii) A person stays in India for 60 days or more in a year;

and

stays for 365 days or more in the preceding four years (S.6(1)(c)). (cumulative conditions).

This second test (which includes 365 days test) is generally forgotten by many people. It is a common belief amongst many people that if a person stays outside India for more than 181 days (more than half the year), he is a non-resident. This is a misconception.

4.2 The definition is to determine "residence". Therefore the converse of the conditions is the meaning of "non-resident". A client will most of the times come and ask you "what should I do to become a non-resident?" We need to apply the converse test. If any of the following conditions are satisfied, a person will be a non-resident.

i) A person stays in India for less than 60 days.

OR

ii) A per stays in India for less than 365 days in the preceding four years;

and

stays for less than 182 days in the relevant year. (cumulative conditions).

4.3 **Employment outside India of Indian citizen:**

4.3.1 For an Indian citizen who is resident in India and he leaves India for the purpose of employment outside India, relief is provided in Explanation 1(a) to S.6(1). The number of days up to which a person can stay in India and still be a non-resident is increased to 181 days. In other words, if the person leaves India for employment in a year, even if he is India for up to 181 days in that year, he will be considered as a non-resident. The condition of 365 days in the preceding four years becomes irrelevant. S.6(1)(c) is equivalent to S.6(1)(a).

Similar relief has also been provided for Indian citizen who leaves India as a member of ship crew. This is discussed in para 7 below.

4.3.2 **Some issues with reference to employment:**

i) It is not necessary that once the person goes for employment, he has to stay continuously outside India in the relevant year. What is relevant is that the person should "leave" for employment. Once having left India for employment, he can come back to India for visit, vacation or work. As long as his stay in the entire year is less than 182 days, he will be a non-resident.

ii) It is not necessary that the day he lands abroad, he should begin employment. He has to "leave" India for employment. Then he can commence his employment after a few days / weeks. However he cannot leave India in "search" of employment and then claim the relief. Even if gets employment later, it will be difficult to say that he "left India for employment". It means that he should have an employment contract ready before he leaves. See point (iv) below for more details.

iii) It is not necessary that if he leaves India for employment that should be his first departure from India. For example, a person could have gone abroad in June and July 2017 for 45 days. He comes back and then leaves India on 30th October 2017 for employment abroad. He continues to stay abroad till 31st March 2018. In this situation his

number of days abroad will be 197. He will be a non-resident for FY 2017-18.

iv) One must appreciate that one has to establish that there is a proper employment. Following will help in establishing that the employment is bona fide:

- employment contract.
- employment visa (by whatever name called. The visa should permit the person to work.)
- regular deposit of salary in his bank account.
- salary certificate.
- income-tax returns in the country of employment showing salary income.

The above is a guide. It does not mean that all the above should be there. Essentially one has to establish the fact that he had gone for employment.

v) Having left for employment, is it necessary that the employment should continue? The section nowhere provides that employment should continue. However if a person leaves Indian for employment abroad in August 2017 and leaves the employment in Sept 2017, he will be challenged on the bona fides of employment.

Consider another illustration where the person leaves India in April 2017 on employment, and leaves his employment in December 2017 and comes back to India. His stay in India is less than 181 days. Such a person will be considered as a non-resident.

Thus one will have to look at the facts which lead to employment, those which lead to termination if employment, etc.

4.3.3 **"Year" in which person leaves for employment:**

Should a person who wants to claim relief for employment abroad, leave for employment in the relevant year, or he could have left for employment in an earlier year?

For example, a person leaves India for employment in Nov. 2016. He is in India for more than 182 days in FY 2016-17. For FY 2017-18, he continued to be employed outside India. His stay in India in FY 2017-18 was less than 182 days but was more than 60 days. In this situation, will a person be considered to be a non-resident for FY 2017-18?

This issue arises due to the language in Explanation 1(a) to S. 6(1). The relevant extract is reproduced below:

> *In the case of an individual, –*
>
> *being a citizen of India, who leaves India in any previous year ..... 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 ;*

See the underlined words above. It states that a person who leaves India in any previous year, the relief will apply in relation to that year.

In the case of M P Konanhalli 55 ITD 266 (Bangalore ITAT), it was held that the person will be entitled to relief if he left in that relevant year. If he left India in an earlier year for employment, he will not be entitled to the relief. Similarly in case of Manoj Kumar Reddy (Bangalore ITAT 132 TTJ 328), it was held that person should have left India in the year in which relief is claimed.

If one looks at the purpose of Explanation 1(a), it is to provide relief for employment abroad. It should not matter whether the person leaves India in that year or the earlier year. However the tribunal decisions have taken a different view.

4.3.4 **Self-employment:**

If a person goes abroad for his own business / profession, will such a person get any relief for employment? In the case of O Abdul Razak (337 ITR 350 Kerala High Court 2011) it was held that employment includes "self-employment". Subsequent tribunal decisions also have taken a similar view. With due respect, I cannot agree with the judgement. The Kerala High Court decision relies in CBDT circular no. 346 dated 30.6.1982 which states as under:

"7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations outside India, the Finance Act has made the following modifications in the tests of residence in India : – "

Difference between employment and business is well known. In my view the circular cannot travel beyond the law.

4.4 **Visit to India:**

4.4.1 For an Indian citizen or a Person of Indian Origin (PIO) who are outside India, relief is provided for visit to India (Explanation 1(b) to

S.6(1)). Under S.6(1)(c), the number of days up to which a person can stay in India and still be a non-resident is increased to 181 days. In other words, if the person visits India in the previous year, even if he is in India for up to 181 days, he will be considered as a non-resident. The condition of 365 days in the preceding four years becomes irrelevant. S.6(1)(c) is equivalent to S.6(1)(a).

This relief is not available to an outright foreigner.

In general parlance the above relief is considered as a relief for NRIs. However there is no mention of "NRI" in explanation 1(b). It only states that relief will be available to an Indian citizen and PIO. NRI is defined in Section 115C(e). Please refer to para 4.4.3 below for more discussion.

The meaning of PIO has been given in explanation to section 115C(e). A PIO means a person who himself, or either of his parents, or either of his grandparents, was born in undivided India.

Thus foreign citizens up to 3 generations can be considered as NRIs.

There is no reference to spouse of a person. Under FEMA, in some situations, a spouse of a PIO is also considered as a PIO.

4.4.2 **Meaning of visit to India:**

Relief is available to a person who is on a visit to India. "Visit" has not been explained. One has to give a common meaning. Visit means going to a place for a short stay – to go to the place and come back. How "short" has not been stated. There is no condition about the number of visits also. Legally if a person makes even one visit to India in a year, the condition is satisfied.

The decision is the case of Mrs. Smita Anand (42 taxmann.com 366 (AAR - New Delhi) throws some light. In this case, an employee came back to India after her foreign employment was over. She was in search of another job. Her stay in India was less than 182 days but was more than 60 days in the year in which she returned to India. The ITAT held that the person cannot be considered to be on a visit India. The person's job has ended. She has returned to India. It cannot be termed as a visit. Hence the relief for visit to India was denied to her. This shows that visit means that the person has not come to stay back in India. He has come with the intention of returning, and actually returns to India. He has to establish that he had a plan to go back even before he came to India.

Manoj Kumar Reddy's case (132 TTJ 328 Bangalore Tribunal) also has observed that the use of the phrase "a visit" applies to all visits. Hence even if the person has come for one or more visits to India in a year, but his last visit is such that he comes for settling down in India, then the relief in explanation 1(b) will not be available.

However the judgement also provides that for the purpose of counting the days for S. 6(1)(c), the days of visit to India will be excluded! The High Court has also accepted this argument in an appeal filed by the department (12 taxmann.com 326 Kerala High Court).

4.4.3 **Being a non-resident prior to coming on a visit to India:**

The section nowhere states that a person should be a "non-resident" in order to claim relief under explanation 1(b) (visit to India). It simply states that a person who is "outside India" can get the relief.

As stated in para 4.4.1 above, the explanation 1(b) also does not refer to an NRI. The definition states in S. 115C(e) states that an NRI means an individual …. who is a non-resident. If explanation 1(b) had referred to an NRI, then one could clearly conclude that a person should be a non-resident and an NRI / PIO. Explanation 1(b) however refers to an Indian citizen and PIO.

Let us see an example. There can be cases where a person has settled abroad. He has set up his business abroad. He never takes up employment abroad. Later he takes up foreign citizenship. His family also moves and stays abroad. He however regularly visits India. His visits to India are such that his stay in India in the preceding 4 years is more than 365 days. His stay is the relevant year is more than 59 days but less than 182 days. He could not have got relief under explanation 1(a) (leaving for employment outside India). In such a case, the person legally never becomes a non-resident, although he is now very much "outside India". In such a case, will the person be entitled to relief of a "visit" to India under explanation 1(b)? In substance such a person should be entitled to the relief.

Explanation 1(b) was introduced in the year 1989. NRIs represented that they were being invited to invest in India. They have to therefore come to India to look after their investments. The 60 day period was too short. Hence the limit was initially raised to 90 days. Subsequently it was raised to 150 days and now it is 181 days. CBDT circular no. 554 dated 13.2.1990 and 684 dated 10.6.1994 state that the relief has been provided so that NRIs can maintain their "non-resident" status. Considering the intention given in the circulars, it is clear that relief for

a visit to India is available to a person who is a non-resident. Only then he qualifies for relief for visit to India.

4.5 **Days of arrival and departure:**

One issue which comes up is regarding the day of arrival and departure. Should such days be considered as "in India" or "outside India"? In Advance Ruling No. 7 of 1995 (223 IT 462), it has been held that both the days – arrival and departure – will be considered as in India.

There is a contrary view given in an old Tribunal decision of Jaipur bench (No. 1230 of 1985 dated 22.8.1986 (ITO Vs. Dr. R. K. Sharma) which has held that the day of assessee's arrival has to be excluded for the purpose of counting the number of days in India. Normally a day should mean a day of 24 hours and a part of a day should be excluded. This was keeping in line with section 6 of General Clauses Act. There are other decisions also to this effect.

Manoj Kumar Reddy's tribunal judgement states that the day of arrival has to be excluded. Fausta C. Cordeiro tribunal judgement also provides the same view (24 taxmann.com 193 (Mum ITAT).

For practical purposes and to avoid undue controversy, one may plan on a conservative basis and count both days as "in India".

5. **Residence under FEMA:**

5.1 Residence under FEMA has been defined u/s. 2(v)(i) of FEMA. A person is considered as an Indian resident if he has been in India in the preceding financial year for more than 182 days. This is provided in the main limb.

Then there are two exceptions in clauses (A) and (B). Exception means, even if a person is resident due to the fact that he was in India for more than 182 days in the preceding year, he will be a non-resident if he satisfies conditions in any of the exceptions in clause (A) or clause (B). Clause (A) is for persons leaving India. Clause (B) is for persons coming to India. Let us discuss the two clauses separately.

5.2 **Persons leaving India – Clause (A):**

If a person leaves India for any of the following purposes, he will not be a resident. He will be a non-resident. The purposes are:

- for taking up employment outside India; or

- for carrying on any business outside India; or
- for any purpose which indicates his intention to stay outside India for an uncertain period.

5.3 **Persons coming to India – Clause (B):**

5.3.1 Clause (B) provides that if a person comes to India for employment, or carrying on business, or for an uncertain period, he will be an Indian resident. However clause (B) is not happily worded. If one analyses technically, the meaning cannot be in line the intention. Therefore it is analysed more in details.

Section 2(v)(i) with reference to clause (B) has two exceptions. The section is reproduced below only with reference to clause (B).

"(v) "person resident in India" means –

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year <u>but does not include</u> –

(A) …

(B) a person who has come to or stays in India, in either case, <u>otherwise than</u> –

(a) for or on taking up employment in India, or
(b) for carrying on in India a business or vocation in India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;"

5.3.2 The main limb states that person resident in India <u>does not include</u> … (1st exception). Hence even if a person has been in India for 182 days or more in the preceding year, he will not be included (i.e. not be considered) as a resident if the person is covered by clause (B). Person covered by clause (B) will not be considered as an Indian resident. He will be a non-resident.

Which person is covered by Clause (B)? "That person who comes and stays in India <u>otherwise than</u> …" (2nd exception). Thus there is an exception to exception. They cancle each other.

Thus there are two categories of person in clause (B). The first category of person covered by clause (B) will normally be excluded from the

main limb. He will be a non-resident even if his stay in India in the preceding year is more than 182 days in India.

However the second category of person covered by the 2nd exception is excluded from clause (B). Hence he is included in the main limb. Therefore he is a resident.

To put in other words, a person who is covered by 1st exception only, will not be considered as resident. He will be a non-resident. If a person is covered by both exceptions, the second exception will result in converse position of 1st exception. He will be considered as a resident.

The net result is that if a person comes for any of the following purposes, he will be considered as an Indian resident:

- for taking up employment in India; or
- for carrying on any business in India; or
- for any purpose which indicates his intention to stay in India for an uncertain period.

If the person comes to India for any purpose other than the above, he will be a non-resident (as he will be covered by the 1st exception only).

5.3.3 However there is a lacunae in the language. It is explained below:

The main limb refers to a person residing in India for more than 182 days. Then there are two exceptions in clause (A) and (B). One can fall within the exceptions only if one is covered by the main limb.

If a person has resided in India for less than 182 days, he is not covered by the main limb. He is not a resident. If he is not covered by the main limb, can he be covered by the exceptions (A) or (B)? One can consider the exceptions only if a person is first of all covered by the main limb. If he is not covered by the main limb, he does not have to even consider the exceptions! What difficulties does this interpretation create? Let us consider an example.

Example 3

A person has been a non-resident of India for 10 years. In Nov. 2017, he comes to India on employment. Will such a person be an Indian resident? If yes, from when?

In FY 2016-17 (preceding financial year for 2017-18) he was in India for less than 182 days. First limb is not satisfied. Hence he will continue to be a non-resident for FY 2017-18.

Will such a person be covered by clause (B) and be considered as an Indian resident? As we have seen, if a person does not get covered within the first limb, he

cannot even go to that exception. Hence from Nov. 2017 to 31st March 2018 also the person continues to be a non-resident.

Going forward, in FY 2017-18 (preceding financial year for 2018-19) he was in India for less than 182 days. First limb is not satisfied. As we have seen, if a person does not get covered within the first limb, he cannot even go to that exception. Hence for FY 2018-19, he will continue to be a non-resident.

From 1st April 2019 the person will be a resident as in preceding year 2018-19, he would be in India for more than 182 days.

This would mean that the person continues to be a non-resident from Nov 2017 till 31st March 2019 although he has come to India for on employment. This will create difficulties. His dealings with Indian residents can amount to violations.

This cannot be the purpose. Therefore one has to consider a logical interpretation discussed in para 5.3.2 above. (Kindly note this controversy is not there for person who leaves India – covered by clause (B)).

5.3.4 Therefore the condition of residing in India for 182 days in the preceding financial year is almost redundant. As we have seen in the earlier para, the purpose of Income Tax and FEMA law is different. If one has to wait for such a long time (17 months in example 3 above) to be considered as an Indian resident, things will become difficult.

5.3.5 Clause (B) can apply in cases where a person has neither come for employment, nor for business nor for an uncertain period. For example a person comes on a holiday in India and falls sick. His stay exceeds 182 days in the preceding year. Now he has not come for employment, or for business or for a certain period. He will go back once the treatment is over. He is covered by the exception to the first limb (clause (B)).

5.4 At this stage it may not be out of place to mention that several NRIs are of the view that the "intention" determines the residential status under FEMA. People would like to stay in India for 8 to 10 months, but state their "intention" is to go back. Hence they claim a status of NRI. This is my submission is not correct. Merely intention does not determine anything. If a person has come for employment or doing business in India, he is a resident. There is no question of intention. It is only if he comes in India under any other situation, the intention comes into picture. Here also it is the facts which should indicate his intention to go back. If he stays in India for more than six months every year say for two years, then the prima facie conclusion will be that a person has become an Indian resident.

6. Different residential status under FEMA and Income Tax:

Due to different definitions under Income Tax and FEMA, there could be situations, where a person can be a resident under Income tax Act,

and non-resident under FEMA, or vice-versa. Some examples are given below:

Example 4

A person who is an Indian resident, takes up a job in the USA in November 17. From Nov. 17, he has become a non-resident under FEMA. He will be free from FEMA as far as transactions abroad are concerned. However under Income Tax Act, the person will be a resident. His US Salary from Nov. 17 to March 18, will be liable to tax in India – subject to DTA relief.

Example 5

An NRI has FCNR / NRE fixed deposits. He returns to India for good in Nov. 17. Under FEMA he becomes a resident from Nov. 17. However under Income Tax Act, such a person is a non-resident for FY 17-18 (assuming that he was in India for less than 365 days in the preceding four years). Under FEMA, such a person can continue his FCNR / NRE fixed deposits until maturity. Is interest which he earns after returning to India taxable? While he can continue the deposits until maturity, for income tax relief, section 10(4)(ii) states that the person should be a non-resident under FEMA. As the person becomes a resident under FEMA, he will loose the primary benefit of exemption from tax. (Other provisions like S. 10(15)(iv)(fa), and chapter XII-A will have to be looked at independently).

This difference in the residential status as per both laws becomes relevant especially in the year of arrival or departure.

7. Persons employed on a ship:

7.1 An interesting issue arises in case of persons who are employed on ships. Ships keep traveling to different ports around the world including India.

Under the Income tax Act (explanation 1(a) to S. 6(1)), if an Indian citizen leaves India in any year as a member of crew of an Indian ship, then instead of 60 days, even if he is India for upto 181 days, he will be a non-resident. CBDT circular no. 572 dated 3.8.1990 has further clarified that crew members who are already employed on the Indian ship, will also be considered as a non-resident if he is India for upto 181 days. CBDT circular no. 586 dated 28.11.1990 has further clarified that Indian ships operating beyond Indian territorial waters, will not be considered as operating in India. Thus a person on an Indian ship which is operating outside the territorial waters of India, will be considered as outside India. (Indian territorial waters means a distance of upto 12 nautical miles from the nearest point of appropriate baseline).

7.2 Finance Act 2015 has inserted explanation 2 to S. 6(1). It states that the period of days in India for an "eligible voyage" in case of foreign bound ship leaving India will be determined as per rule 126.

Rule 126 states that the period between the date of joining the ship and date of signing off that ship will not be considered as period of stay in India.

These dates will be considered as per "Continuous Discharge Certificate" issued under Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001 made under Merchant Shipping Act, 1958.

Eligible voyage has been explained to mean voyage undertaken by a ship:

i) where the voyage originates in India, the destination is a port outside India;

ii) where the voyage originates outside India, the destination is a port in India;

Thus in some situations, where the person has signed on the ship but the ship sails after a few days, the person will be considered as outside India.

7.3 Under FEMA the situation is different. There is a decision reported in 45 Taxman 94 in the case of Paul H Rodrigues Vs. Director of Enforcement. In the decision it has been held that a ship flying an Indian flag is a floating Indian island. Therefore Mr. Paul was an Indian resident. Thus there could be a situation for Indian crew on ships, where the person is considered as "outside India" under income tax act, and "in India" under FEMA.

Such a person can have foreign income which may be tax free as he will be a non-resident. However as he will be a resident under FEMA, he will have to bring all his income in India; he may not be able to open NRE accounts and in general not enjoy facilities available to NRIs.

8. **Persons in Nepal**

Several persons go to Nepal and claim the status of a non-resident. Legally there is no legal difficulty. If a person is outside India, he can be a non-resident under Income Tax Act and FEMA (subject to other criteria being fulfilled as discussed above). However there is a practical difficulty. How does one prove that he has been to Nepal? The border between India and Nepal is porous. Further there is no requirement of any passport or visa for traveling to Nepal. It will be useful to make a reference to the decision of Raj Kumar Dhanuka in 252 ITR 205. Though the decision was mainly on the matter of search and seizure,

an observation has been made by the Honorable High Court that *"Only because there is an open border between India and Nepal and a passport is not required to … … …, it cannot be presumed that anyone who claims to be an Indian national residing in Nepal, is a non-resident India. Simply because it is difficult to prove in such a case whether a person was residing for a particular period in Nepal or India, it does not mean that the claim of a person who claims to be residing in Nepal that he is a non-resident Indian, has to be accepted by the authorities."*

The observations show that the facts have to be proved that a person was staying in Nepal. Preferably the passport should be carried and stamping done. Further there should be utility bills, house tax receipts, receipts for visiting places in Nepal, etc.

9. Intermediate Residential Status

Normally a person is either a resident or a non-resident. However under Income Tax Act, a person can be a "Resident but Not Ordinary Resident". Under FEMA also, a person can be "Not Permanently Resident". These concepts are discussed below.

9.1 Resident but Not Ordinarily Resident (RNOR) under the ITA:

Under section 6(6), an individual can be a Resident but Not Ordinarily Resident (RNOR) if he satisfies any of the following conditions:

i) If a person is a non-resident for 9 preceding years concerning the relevant year, he can be a RNOR for 1 year.

ii) If a person is a non-resident for 10 years or more, he can be a RNOR for 2 years.

iii) If within the 7 preceding years, his stay in India is for less than 730 days, he will be a RNOR for the relevant year. Thus practically it is possible to be a RNOR for 3 years.

As a RNOR, foreign income received outside India, is exempt from tax. Once the RNOR status period expires, his foreign income will be taxable in India. Some other benefits like tax exemption on foreign currency deposits will be available till a person is a RNOR.

9.2 Not Permanently Resident under FEMA:

For a very limited purpose, there is a concept of "Not Permanently Resident" (NPR). NPR mean a person who has come to India for

employment of a specified duration (irrespective of the period), or for a specific job or assignment not exceeding 3 years.

Under Regulation 4 of Possession and Retention of Foreign Currency regulations (FEMA Notification No. 9(R) dated 29.12.2015), a NPR can hold foreign currency notes and travelers cheques in India without any limit if the same was acquired while the person was a non-resident. Normally an Indian resident can hold foreign currency upto US$ 2,000 (subject to conditions).

An NPR can also remit his net salary abroad after payment of taxes, contribution to provident fund, etc.

10. **Summary**

This article deals with some issues. With tax rates being moderate and government trying to curb extra reliefs for NRIs, one may have to plan the affairs well in advance so as not to fall into avoidable difficulties.