

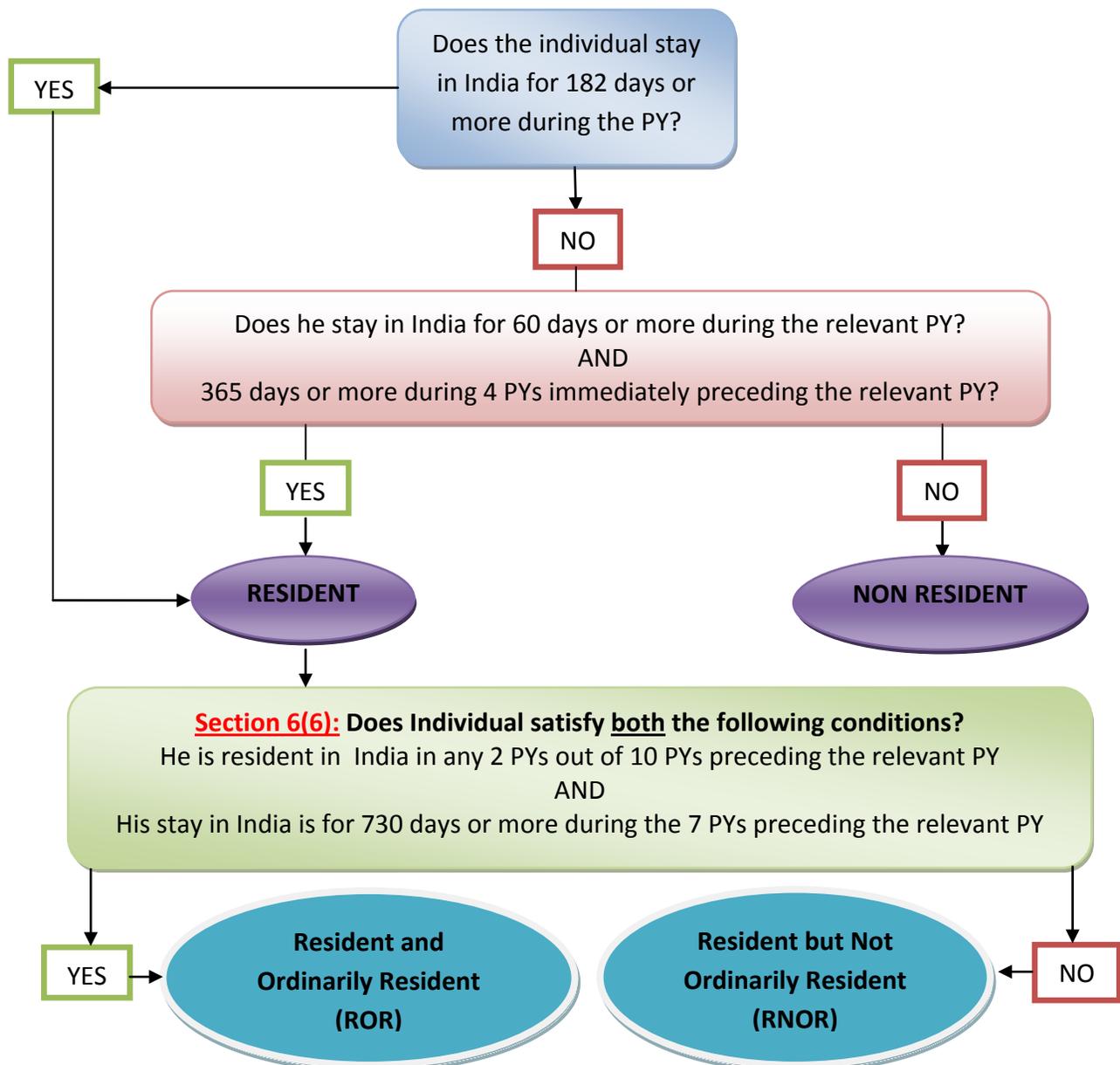
Residential Status and Scope of Total Income

Section 6: Residential Status:

The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers are classified into three broad categories on the basis of their residential status viz.

- ✓ Resident and ordinarily resident
- ✓ Resident but not ordinarily resident
- ✓ Non-resident

Section 6(1): Residential Status of Individual



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Exceptions:-

The following categories of individuals will be treated as residents only if the period of their stay during the relevant previous year amounts to 182 days or more. i.e. only first condition of Section 6(1) should be checked.

- (1) For an Indian citizen, leaving India during the previous year as a *member of the crew* of an Indian ship
- (2) For an Indian citizen, leaving India during the previous year for the purpose of *employment (job) outside India, or*
- (3) For an Indian citizen or person of Indian origin (i.e. born in undivided India) engaged outside India in an employment or a business or profession or in any other vocation, who comes on a visit to India in any previous year

Note:-

- The term “stay in India” includes stay in the territorial waters of India (i.e. 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.
- For counting no. of days, we should take both day of arrival and departure.
- The stay need not be continuous and also the purpose of stay is immaterial.
- The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.

Notification No.70/2015 dated 17.8.2015 - Determination of period of stay for an Indian citizen, being a crew member

W.e.f. 01.04.2016 in the case of an individual, being an Indian citizen and a Member of the Crew of a Foreign-bound Ship leaving India, the period(s) of stay in India shall, in respect of such voyage, be determined in the manner and subject to such prescribed conditions. For determining the period of Stay in India, the following period shall **not** be included

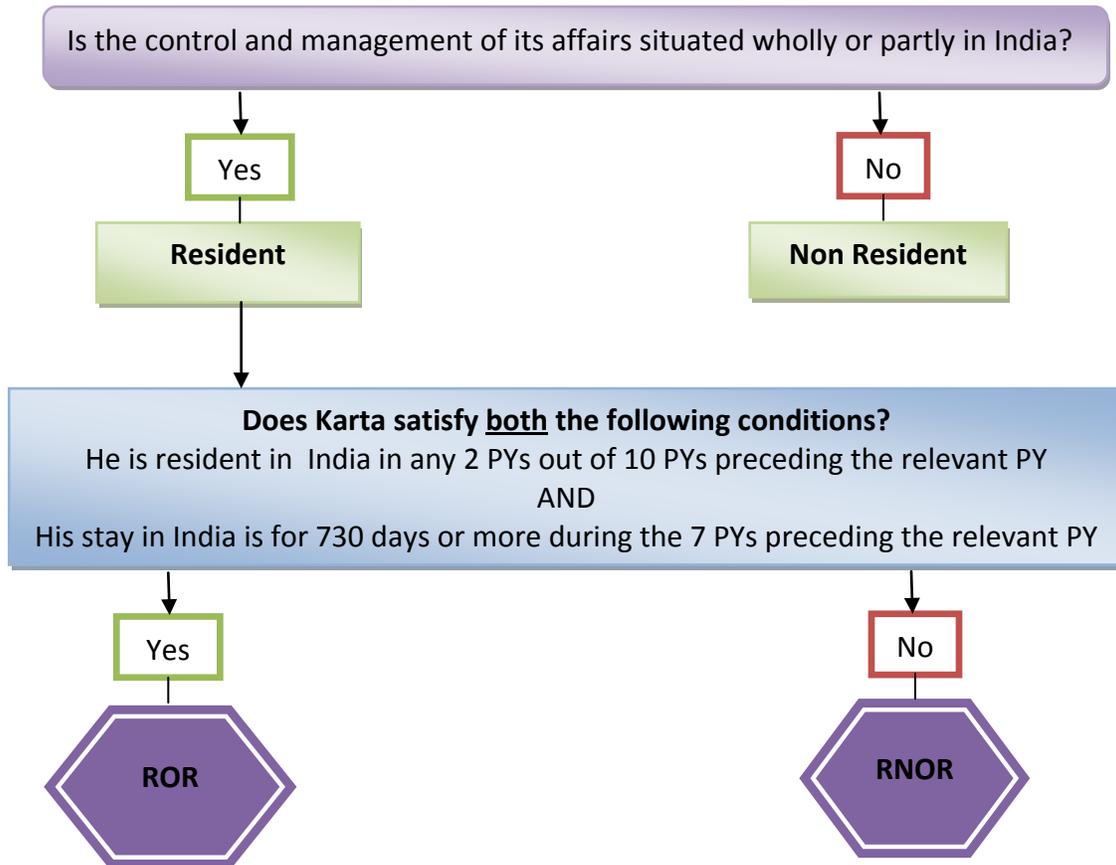
Period beginning from	Period ending to
Date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage.**	Date entered into Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

****Eligible voyage** means a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where –

- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and
- (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

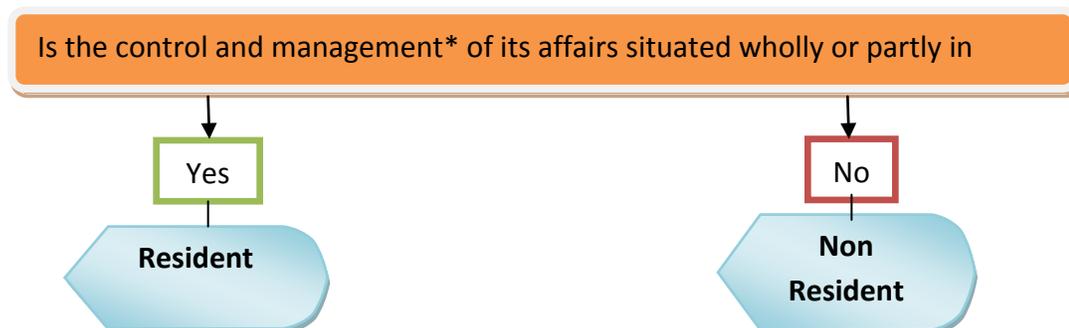
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Section 6(2): Residential Status of HUF



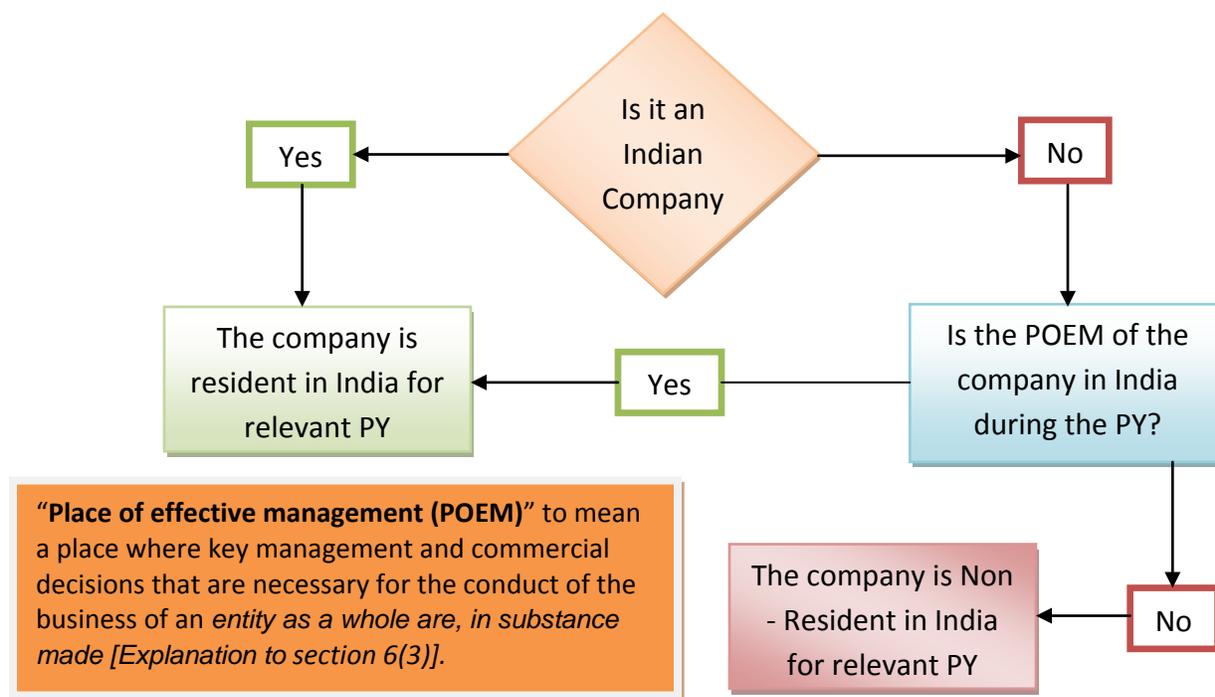
***Control and management of a business** is said to be situated at a place where the head and brain of the adventure is situated. The business may be done from outside India and yet its control and management may be wholly within India. It is not to the carrying on of day-to-day business by servants, employees or agents. But control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.

Section 6(3): Residential Status of Firms/AOPs/BOIs/Every other person



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Section 6(4): Residential Status of Company



Section 5: Scope of Total Income

Particulars	ROR	RNOR	NR
Income received or deemed to be received in India during the previous year	Yes	Yes	Yes
Income accruing or arising or deemed to be accruing or arising in India during the previous year	Yes	Yes	Yes
Income accruing or arising outside India	Yes, even if such income is not received or brought into India during the previous year	Yes, if income is derived from a business controlled from or profession set up in India; Otherwise, No.	No

Income received in India

If the place where the recipient gets the money (on first occasion) under his control, is in India, it is said to be received in India. Remittance to India will not be taxable if it is received outside India.

Note:-

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Income by way of salary, received by non-resident seafarers, for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) and received into the NRE bank account maintained with an Indian bank shall not be included in the total income.

Section 7: Income deemed to be received in India

The following incomes shall be deemed to be received in the previous year :—

- a. Contribution in excess of 12% of salary to Recognised provident fund or interest credited in excess of 9.5% p.a.
- b. Contribution by the Central Govt. or other employer under a pension scheme referred u/s 80CCD.
- c. Amount transferred from URPF to RPF (being employer's contribution & interest thereon)

Income accruing or arising in India

Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For example, Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.

It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

Section 9: Income deemed to accrue or arise in India

- i) Income from business connection in India
- ii) Income through or from any property, asset or source of income in India
- iii) Income **through***** the transfer of capital asset situated in India
**** “through” shall mean and include and shall be deemed to have always meant and included “by means of”, “in consequence of” or “by reason of”. Further, an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.*
- iv) Income chargeable under the head Salaries if such income is payable for service rendered in India & the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment.
- v) Salary paid by the Government to a citizen of India for services outside India. However, allowances and perquisites paid outside India by the Government is exempt u/s 10 (7). Pension payable outside India by the Government to its officials and judges who permanently reside outside India shall **not** be deemed to accrue or arise in India.

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- vi) Dividend paid by an Indian Company outside India.
- vii) Interest, Royalty and fees for technical services as indicated below:

If Payable by:	Govt.	Resident	Non Resident
Interest on borrowed money	Deemed to accrue or arise in India	Deemed to accrue or arise in India except when used for business/ profession carried on outside India or for any source of income outside India.	Deemed to accrue or arise in India only when used for purpose of business/ profession carried on in India.
Royalty	-Do-	-Do-	-Do- or for any source of Income in India
Fees for technical services	-Do-	-Do-	-Do-

Sec 9(1)(i): Income from business connection in India

‘Business connection’ shall include any business activity carried out through a person acting on behalf of the non-resident [*Explanation 2* to section 9(1)(i)]. For a business connection to be established, the person acting on behalf of the non-resident –

(i) must have an authority which is habitually exercised to conclude contracts on behalf of the non-resident or However, if his activities are limited to the purchase of goods or merchandise for the non-resident, this provision will not apply.

(ii) In a case, where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or

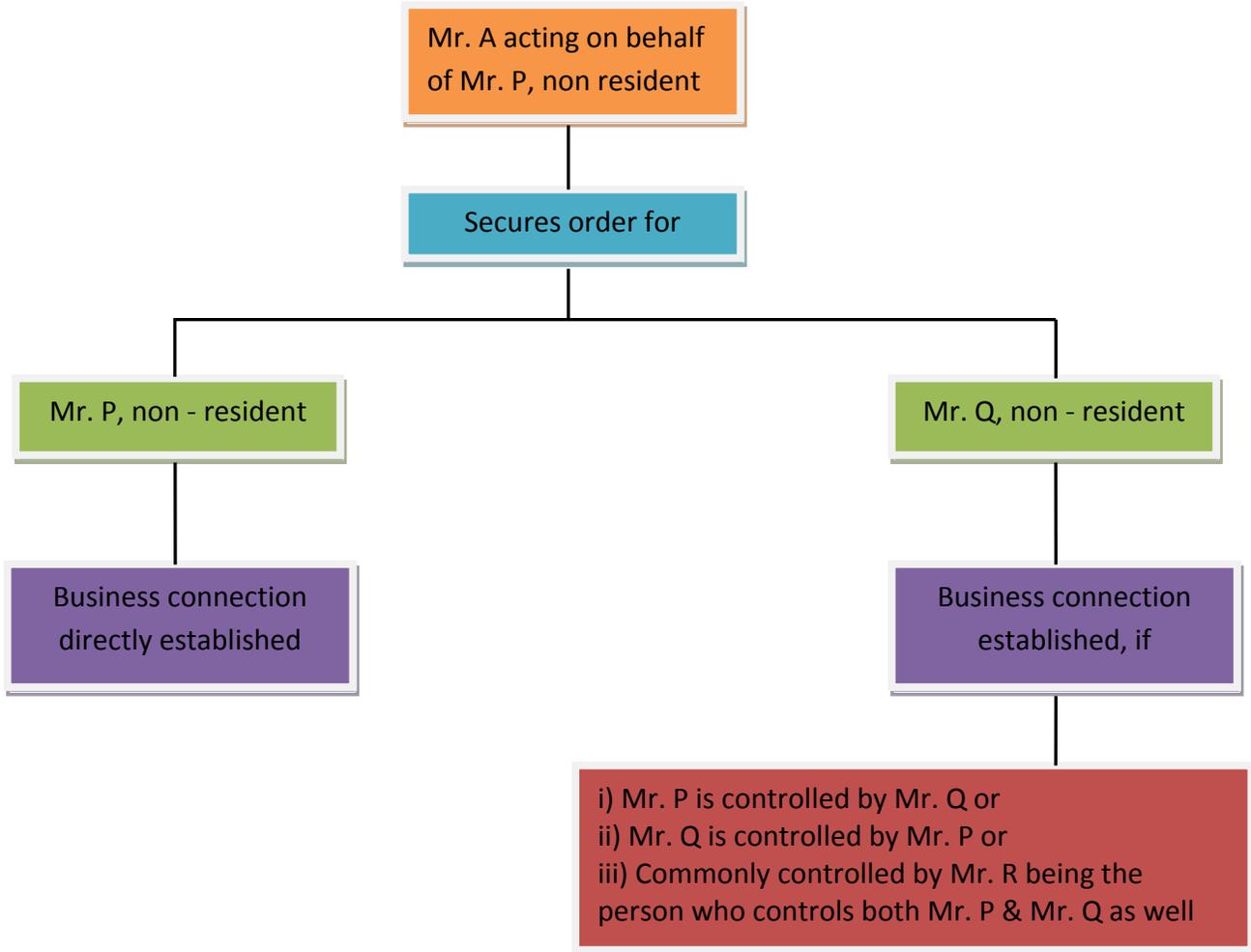
(iii) habitually secures orders in India, mainly or wholly for the non-resident. Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,

(a) such other non-resident controls the non-resident or

(b) such other non-resident is controlled by the non-resident or

(c) such other non-resident is subject to same control as that of non-resident. In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.

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Exceptions:-

- i) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India
- ii) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are **confined to the purchase of goods** in India for the purpose of export
- iii) in the case of a non-resident, being a person engaged in the business of running a **news agency or of publishing newspapers, magazines or journals**, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India
- iv) in the case of a non-resident, being
 - an individual who is not a citizen of India or

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- a firm which does not have any partner who is a citizen of India or who has resident in India
- a company which does not have any shareholders

no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the **shooting of any cinematograph film in India;**

- v) in the case of a foreign company engaged in the business of mining of **diamonds**, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf.
- vi) in the case of a business which are operated through a broker, general commission agent or any other agent having independent status, if such a person is acting in the ordinary course of business, will not be treated as business connection in India.

Meaning of Royalty

The term 'royalty' means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains') for:

- the transfer of all or any rights (including the granting of licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
- the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
- the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
- the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
- the use or right to use any industrial, commercial or scientific equipment;
- the transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films;
- the rendering of any service in connection with the activities listed above.

Note:-

- ✓ The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

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- ✓ Income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India shall be included in the total income of the non-resident, whether or not –
 - (i) the non-resident has a residence or place of business or business connection in India; or
 - (ii) the non-resident has rendered services in India.

- ✓ The term “process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.