

### **The NRI, as per the IT Act, 1961**

The definition of Non-Resident under FEMA is different from that given in the Income Tax Act. Chapter XI of the Act defines a non-resident Indian as an individual, being a citizen of India or a person of Indian origin, who is not a resident. A person is of Indian origin if he or either of his Indian parents or any of his grandparents was born in undivided India. To avail of tax sops extended to NRIs, an individual must satisfy the following criteria

- A person who has been in India for 60 days or more during a financial year and 365 days or more during the preceding four financial years qualifies as a 'Resident' of India. This has been relaxed and can be extended to 182 days. Not meeting this criterion qualifies the individual for a "non-resident" status.
- NRIs based outside India can continue to enjoy non-resident status in India if their presence in India is more than 60 days but less than 182 days, even if their stay in India during the past four financial years is 365 days or more
- Having been deputed overseas for over 6 months also qualifies an individual for NRI status.

### **The relaxation to 182 days applies to**

- Indian crew members sailing overseas on Indian ships - their stay abroad is treated as employment outside India
- In the case of Indian citizens as well as in the case of "Persons of Indian Origin" who are settled abroad but visit India for personal reasons.

The concession of extended stay is available only to Indian citizens or to "persons of Indian origin" A "Person of Indian origin" is a person who is not an Indian citizen, but was born, or either of his parents or grandparents was born in India.

Any other company or Association of Persons is treated as non-resident when the control and management of its affairs is situated throughout the year wholly outside India.

It follows that in cases of non-Individual categories of persons, it is the control and management that determines whether that person is Non-resident or otherwise. If the control and management is in India, the status is Resident, if outside India, it is non-resident.