

RESIDENTIAL STATUS OF NRI
UNDER THE INCOME TAX
ACT, 1961 AS PER THE
FINANCE ACT, 2020

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RESIDENTIAL STATUS OF NRI UNDER THE INCOME TAX ACT, 1961 AS AMENDED BY THE FINANCE ACT, 2020

Recently, the criteria for determining the residential status of an NRI for the purpose of Income Tax Act, 1961 (“Act”) has been amended by the Finance Act, 2020. The below mentioned changes are effective from Financial Year 2020-21 (01.04.2020).

At the outset, it is important to note the tax implications of being a resident/non-resident of India:

- i. The taxable Income of a “**Resident**” of India is the total income of previous year which includes all income from whatever source derived which:
 - a. is received or is deemed to be received in India in such year by or on behalf of such person; or
 - b. accrues or arises or is deemed to accrue or arise to him in India during such year; or
 - c. accrues or arises to him outside India during such year.

- ii. The taxable Income of a “**Non-Resident**” of India is the total income of previous year which includes all income from whatever source derived which:
 - a. is received or is deemed to be received in India in such year by or on behalf of such person ; or
 - b. accrues or arises or is deemed to accrue or arise to him in India during such year.

Further, the period of days counted for the purpose of residential status of an individual are as per the Financial Year i.e. 1 April to 31 March. For example, for the Assessment Year 2019-2020, the Previous Year would be 1 April 2018 to 31 March 2019.

The income accrued, arisen, received or deemed to accrued, arisen or received in the said previous year will be assessed for the purposes of the Assessment Year 2019-2020.

Also, the period of days to be spent by an individual in India to be qualified as a resident of India need not be continuous. The total no. of days spent in India are calculated to determine the residential status of an individual, without regard to the fact that the duration of stay was in the nature of a single visit to India or in multiple visits to India.

1. Who is a “Resident” of India?

For **an individual** to be qualified as a resident in India in any previous year, the following condition(s) need to be satisfied:

- i. Any individual who is in India for more than 182 days will be treated as resident in India; **or**
- ii. Any individual is in India for 60 days or more in the current financial year and 365 days or more in the preceding 4 financial years.

However, in the case of an **Indian Citizen or a Person of Indian Origin**¹, who being outside India, comes to India for a visit, will be qualified as a resident of India if:

- i. he stays in India for a period of 182 days or more in the current financial year; **and**
- ii. 365 days or more in the preceding 4 financial years.

¹ Defined under the *Explanation* to clause (e) of Section 115C.

The Finance Act, 2020 added a further category for **Indian Citizen or a Person of Indian Origin** who have a total **Indian income² exceeding ₹ 15 Lakh during the previous year**. For such individuals, the qualifying criteria shall be as under:

- i. he stays in India for a period of 120 days or more in the current financial year; **and**
- ii. 365 days or more in the preceding 4 financial years.

In other words, if you are an NRI and you have income in India more than ₹ 15 lakhs, then you have to restrict your stay in India to 120 days in the previous year, to not attract tax liability for your global income under the Income Tax Act.

However, if you are an NRI, whose taxable Indian income exceeds ₹15 lakh and you stayed in India for 182 days or more in the previous year and had also stayed for 365 days or more in India in the immediately preceding four years, you will be treated as a resident of India for income tax purposes.

2. **Who is a “Deemed Resident” of India?**

A **resident of India**³ in a previous year to an assessment year **in respect of any source of income**, is **deemed** to be a resident in India in the previous year relevant to the assessment year **in respect of each of his other sources of income**. [Section 6(5) of the Act]

The Finance Act, 2020 added clause (1A) to Section 6, whereby it introduced the concept of deemed citizen for a new category of persons, other than that mentioned under Section 6(5) of the Act.

² Indian income means income excluded from foreign sources i.e. income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

³ Determined by the mechanism explained in the above section of the note.

As per the amendment, **an Indian Citizen**,

- i. having a total Indian income exceeding ₹ 15 lakh during the previous year;
and
- ii. if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

then, that individual is **deemed to be a resident of India**.

In other words, if you are an Indian citizen with income more than ₹ 15 lakh and you are not liable to pay tax in any other country for reasons such as domicile, you will be deemed as resident of India, and your Indian income will come under the scope of the Act.

3. **Who is “Not Ordinary Resident” in India in any previous year?**

The pre-amendment condition of being qualifies as a not ordinary resident in India (“NOR”) is that **the individual**:

- i. Must have been non-resident in India in 9 out of the 10 previous years preceding that year, or
- ii. has during the 7 previous years preceding that year been in India for a period of, or periods amounting in all to, 792 days or less.

In addition to the forestated, a new condition has been added for an individual to qualify as NOR, which is as under:

An **Indian citizen or a Person of Indian Origin** can be qualified as a NOR if:

- i. he has a total Indian income exceeds ₹ 15 lakh during the previous year; and
- ii. he has been in India for a period of 120 days or more but less than 182 days.

Or,

- i. An Indian citizen is deemed resident of India as per clause (1A) to Section 6.⁴

Thus, if you are an “Ordinary Resident” then your global income is taxable in India. However, if you are “Not Ordinarily Resident”, your income which accrues or arises to you outside India shall not be included in the taxable income unless it is derived from a business controlled in or a profession set up in India.

Note: The specific provisions pertaining to a company or an HUF are not discussed in this note.

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⁴ As explained in the above sections of the note.

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