

Impact of Finance Act, 2020 on Residential Status of Individuals

(12 May 2020 | CA Ashish Karundia)



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AGENDA FOR WEBINAR.

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in Days

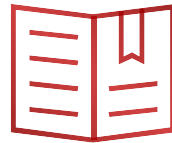
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01. INTRODUCTION



INTRODUCTION.



Under the provisions of Income-tax Act, an individual becomes a resident of India based on, his/her number of days of stay in India. The condition of 'number of days' is relaxed in case of Person of Indian origin (**PIO**) / Citizen of India (**COI**), visiting India. Also, India unlike other countries, classifies residents into Resident & Ordinary Resident (**ROR**) and Resident but Not Ordinary Resident (**RNOR**)

In few countries an individual becomes tax resident based on citizenship irrespective whether he/she lives in that country or not. Examples: USA, Eritrea

The Finance Act, 2020 (**FA 2020**) has introduced citizenship-based residency provisions for Indian citizens apart from restricting the relaxations granted to COI/PIO visiting India. Further, the FA 2020 has also increased the criteria of qualifying RNOR

PIO – If (s)he, or either of her/his parents or any of her/his grand-parents, was born in undivided India

COI – As per Citizenship Act, 1955

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02. IMPORTANCE OF SECTION 6



IMPORTANCE OF SECTION 6.

Particulars	Received/deemed to be received, in India	Accruing or arising / deemed to accrue or arise, in India	Accruing or arising Outside India
ROR	✓	✓	✓
RNOR	✓	✓	✓ (only if business controlled or professional set up in India)
NR	✓	✓	✗

- ▶ Income to be included in the 'total income' (TI) of an individual, depends upon the residential status
- ▶ Benefit of DTAA entered by India can be availed only by a resident
- ▶ Certain compliances (FA schedule etc.) depends upon the residential status

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03. PRE-AMENDMENT LAW (SECTION 6)



SECTION 6. (Till 31.03.2020)

Particulars	Individuals (other than COI/PIO visiting India)	COI/PIO visiting India
Number of days in India	182 days or more during the PY	182 days or more during the PY
	OR	
	60 days or more during the PY + 365 days or more during four years, preceding the PY	182 days or more during the PY + 365 days or more during four years, preceding the PY

Previous Year (PY) = 1st April to 31st March

SECTION 6 – CONTROVERSIES.

CALCULATION OF NUMBER OF DAYS

- ▶ Number of days to be calculated based on Passport entries. In case of loss of passport, notarized copy of passport can be the basis
- ▶ Day of arrival as well as departure – to be counted. However, in few specific situations day of arrival to be excluded while calculating number of days
- ▶ Forced Stay – To be counted or not ? No – Delhi HC. However, specific facts to be seen
- ▶ Forced Stay due to COVID-19 Pandemic – CBDT issues Circular 11/2020 to provide certain relaxation

VISIT TO INDIA

- ▶ Purpose of visit to India – Temporary or Permanent? Permanent – Not visit to India

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04. POST AMENDMENT – COI/PIO



SECTION 6. (From 01.04.2020)

Particulars	COI/PIO visiting India	COI/PIO [TI (other than foreign sources) \leq 15 lakhs]	COI/PIO [TI (other than foreign sources) $>$ 15 lakhs]
Number of days in India	182 days or more during the PY	No Change	No Change
	OR		
	182 days or more during the PY + 365 days or more during four years, preceding the PY	No Change	120 days or more during the PY + 365 days or more during four years, preceding the PY

Income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India)

POINTS TO PONDER.

RATIONALE BEHIND THE AMENDMENT

- ▶ Relaxation granted to COI/PIO is being misused i.e. such individuals are actually carrying out substantial economic activities from India but **manage** their period of stay in India for a period of less than 182 days so as to remain a NR in perpetuity and consequently not required to declare their global income in India

ISSUES

- ▶ Meaning of TI
- ▶ View 1: Section 2 (45)? Section 2(45) → Section 5 Residential status. Income in the nature of capital gains etc.
- ▶ View 2: Section 2 (45) cannot be referred – Unless the context otherwise requires. Thus, threshold to be calculated on standalone basis
- ▶ Better approach – To be calculated on standalone basis. However, the same needs to be clarified by the Government

05. DEEMED RESIDENT (SECTION 6 (1A))



SECTION 6(1A).

- ▶ An individual
- ▶ citizen of India
- ▶ Total Income (other than income from foreign sources) > Rs. 15 lakhs; and
- ▶ Not **liable to tax** in any other country or territory due to

Domicile; or

Residence; or

**any other criteria of
similar nature**

POINTS TO PONDER.

RATIONALE BEHIND THE AMENDMENT

- ▶ The issue of stateless persons has been bothering the tax world for quite some time and accordingly, India as part of BEPS commitment amended the law
- ▶ Stateless Person – An individual to arrange his/her affairs in such a fashion, that he/she is not liable to tax in any country or jurisdiction during a year

ISSUES

- ▶ Whether deemed resident actually covers only 'stateless' person?
- ▶ Meaning of liable to tax? In case of a country who does not levy income tax on individuals, can it be said that individuals are not liable to tax?
- ▶ 'Liable to tax' is a legal situation, 'Payment of tax' is a fiscal fact. Merely because exemption has been granted in respect of taxability of a particular source of income, it cannot be postulated that the entity is not 'liable to tax' (SC)
- ▶ Liable to tax vis-a-vis subject to tax

POINTS TO PONDER.

- ▶ **India-UAE DTAA:** An individual who is present in the UAE for a period or periods totaling in the aggregate at least 183 days in the calendar year concerned.....resident of UAE
- ▶ **India-Hong Kong DTAA:** any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment

LIABLE TO TAX – ILLUSTRATIONS

- ▶ A, an individual (citizen of India) is living in UAE since many years. The individual earns salary income of Rs. 20 lakhs from UAE. During the PY 2020-21, A has not visited India. It may be noted that UAE doesn't levy income tax on individuals. **No**
- ▶ B, an individual (citizen of India) is living in Singapore since many years. The individual earns capital gains on transfer of shares of Rs. 20 lakhs during the PY 2020-21. During the said year, B has not visited India. It may be noted that Singapore levies income tax but exempts capital gains on share transfer. **Yes**

TIE BREAKER TEST.

- ▶ A, an individual (citizen of India) is living in UAE since many years. The individual earns salary income of Rs. 10 lakhs from UAE and consultancy income from India of Rs. 20 lakhs. During the PY 2020-21, A has not visited India and was in UAE throughout the year and thus became, tax resident of UAE.

Deemed resident u/s 6(1A) ? Resident in India as well as UAE?

Permanent Home (owned/rented)

Resident of country in which he/she has a permanent home

**Centre of Vital Interest
(business/family/social)**

If permanent home available in both countries, resident of country in which his/her personal or economic relations are closer

Habitual Abode

If his/her center of vital interest cannot be determined, resident of the country in which he/she has an habitual abode

**National
(Green card/residency visa)**

If he/she has an habitual abode in both countries, resident of country of which he/she is a national

Competent Authorities

If he/she is a national of both the countries, competent authorities of both countries shall settle by mutual agreement

06. RESIDENT BUT NOT ORDINARY RESIDENT

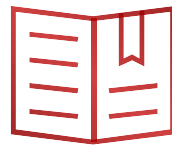


RESIDENT BUT NOT ORDINARY RESIDENT.

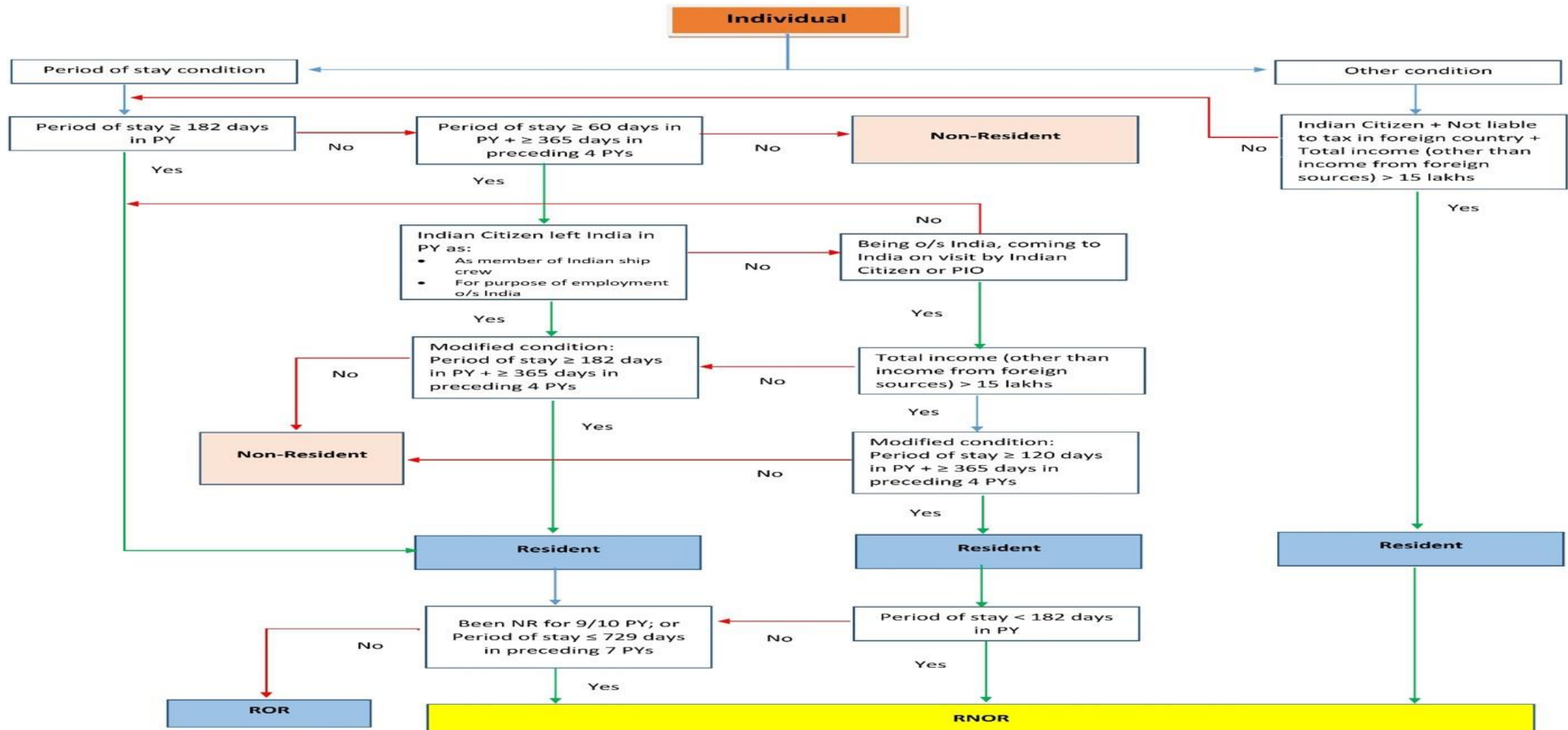
Particulars	Till 31.03.2020	01.04.2020 onwards
<p>Individuals (including COI/PIO) -182 days or more during the PY</p> <p>or</p> <p>COI/PIO – visiting India [TI (other than foreign sources) \leq 15 lakhs]</p> <p>- 182 days or more during the PY + \geq 365 days during days during 4 years preceding PY</p>	<p>NR – 9 out of 10 PY <i>preceding</i> the relevant PY</p> <p>or</p> <p>Stay \leq 729 days in 7 PY <i>preceding</i> the relevant PY</p>	<p>No Change</p>
<p>COI/PIO visiting India [TI (other than foreign sources) $>$ 15 lakhs]</p> <p>- \geq 120 days in relevant PY</p> <p>+ \geq 365 days during 4 years preceding PY</p>	<p>NR – 9 out of 10 PY <i>preceding</i> the relevant PY</p> <p>or</p> <p>Stay \leq 729 days in 7 PY <i>preceding</i> the relevant PY</p>	<p>No Change</p> <p>+</p> <p>Stay \geq 120 days \leq 181 days in relevant PY</p>
Deemed resident	Not Applicable	Automatic

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06. OVERVIEW



INDIVIDUALS – RESIDENTIAL STATUS – AT A GLANCE.





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