

Key amendments in Sec.6 – Residential Status – Finance Act 2020**a. Amendment No.1**

Applicable for Individual Assessee only

Existing provision:

Sec.6(1) – An individual shall be resident in a taxation year, if:-

1. He is in India in that year – for a period equal or more than 182 days; OR
2. He is in India for atleast 60 days in that year – and for atleast 365 days in aggregate in the preceding 4 years to the present year

Explanation 1 – Clause (b) – states that, if the individual

- Being a Citizen of India or Person of Indian Origin – who being outside India comes on a visit to India in that year – He shall be a resident if he is in India for atleast **182 days**. {If his stay is upto 181 days he would be Non-Resident}

Amendment proposed in Finance Bill 2020:

Explanation 1 – Clause (b) – has been amended to state that, if the individual

- Being a Citizen of India or Person of Indian Origin – who being outside India comes on a visit to India in that year – He shall be a resident if he is in India for atleast **120 days**. {If his stay is upto 119 days he would be Non-Resident}

Amendment finalized in Finance Act 2020 – dt.23-Mar-2020:

Explanation 1 – Clause (b) – has been amended to include the following:

If the individual

- Being a Citizen of India or Person of Indian Origin – who being outside India comes on a visit to India in that year
- **and having Total Income (other than Income from Foreign sources), exceeding Rs.15 Lakhs during that year**
- He shall be a resident if he is in India for atleast **120 days**. {If his stay is upto 119 days he would be Non-Resident}

What is Income from Foreign Sources?

- Income which accrues or arises outside India
- Except income derived from a business controlled in or a profession set up in India

In other words,

Total Income = Income accruing or arising in India + Income from business controlled in or Profession set-up in India

Illustration:

Q. Mr.A, a person of Indian Origin, comes to India during the current year and his Total Income in India is Rs.16 Lakhs. His stay in India is 119 days. What is his Residential Status?

A. Non-Resident

Q. Mr.A, a person of Indian Origin, comes to India during the current year and his Total Income in India is Rs.13 Lakhs. His stay in India is 119 days. What is his Residential Status?

A. Non-Resident, because for such person who is having Total Income less than Rs.15 Lakhs the condition of 182 days still apply.

Q. Mr.A, a person of Indian Origin, comes to India during the current year and his Total Income in India is Rs.16 Lakhs. His stay in India is 125 days. What is his Residential Status?

A. Resident

b. Amendment No.2

Applicable for Individual Assessee only

Deemed Resident – Residential Status of a ‘Stateless Person’ who is not liable to pay tax in any country

Amendment proposed in Finance Bill 2020:

New clause 1A inserted under Sec.6:

Notwithstanding anything contained in clause (1), an individual, being a citizen of India, ***shall be deemed to be resident in India*** in any previous year, 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.

Amendment finalized in Finance Act 2020 – dt.23-Mar-2020:

A non-resident will be deemed to a Resident if he is subject to the three conditions given below:

- He is an Indian Citizen; AND
- His Total Income (refer definition in a.above) ***exceeds Rs.15 Lakhs***; AND
- He is not liable to income-tax in any country other than India by reason of his domicile or residence or any other criteria of similar nature

Deemed Residents shall be treated as Resident But Not Ordinarily Resident (RBNOR) {Refer amendment No.3}.

Illustration:

Q. Mr.A, an Indian citizen, residing in Cayman Islands, and doesn't pay tax in his residence country, has a Total Income in India as Rs.16 Lakhs. What is his Residential Status?

A. Resident But Not Ordinarily Resident in India

Q. Mr.A, an Indian citizen, residing in Cayman Islands, and doesn't pay tax in his residence country, has a Total Income in India as Rs.13 Lakhs. What is his Residential Status?

A. Non-Resident

c. Amendment No.3

Applicable for Individual & HUF Assessee only

Existing Provision Sec.6(6):

A person (Individual or HUF) is said to be a Not-Ordinary Resident (NOR), if such person:

- a. An Individual is a Non-Resident in India in 9 out of 10 preceding years; OR he has been in India for a period less than or equal to 729 days;
- b. For a HUF, if the Karta is a Non-Resident in India in 9 out of 10 preceding years; OR he has been in India for a period less than or equal to 729 days

Amendment proposed in Finance Bill 2020:

Existing Sec.6(6) has been replaced to read as follows:

A person (Individual or HUF) is said to be a Not-Ordinary Resident (NOR), if such person:

- An Individual is a Non-Resident in India in ***7 out of 10 preceding years***;
- For a HUF, if the Karta is a Non-Resident in India in ***7 out of 10 preceding years***.

Amendment finalized in Finance Act 2020 – dt.23-Mar-2020:

Done away with the amendment proposed in Finance Bill 2020 and amended the existing provision to have 2 more additional sub-clauses c & d, as follows: {Following will also be termed as NOR }

- c. Indian Citizen or Person of Indian Origin – having Total Income (refer definition in a.above) exceeds Rs.15 Lakhs – who has been in India for 120 days or more and upto 181 days.
- d. A citizen of India who is deemed as Resident in India as per Sec.6(1A) {Refer amendment no.2}

Illustration:

- Q. Mr.A, an Indian citizen, residing in UAE, has a Total Income in India as Rs.16 Lakhs. His stay in India during the current year was 150 days. What is his Residential Status?
 - A. Resident But Not Ordinarily Resident in India

- Q. Mr.A, an Indian citizen, residing in UAE, has a Total Income in India as Rs.16 Lakhs. His stay in India during the current year was 182 days. What is his Residential Status?
 - A. Resident But Ordinarily Resident in India, assuming he has not fulfilled the additional conditions in Clause (a) of Sec.6(6), i.e., he is not a NR in 9 out of 10 preceding years OR stayed in India for less than 729 days.