



New residency rules for Indian citizens staying abroad

Are you impacted?

India has always followed a physical presence test to determine the tax residency of individuals in India. In respect of Indian Citizens visiting India, a presence of 182 days was provided to ensure that they can attend to personal and social affairs in India without being regarded as a resident. However, recently, vide Indian Budget 2020 and Budget 2021, certain amendments have been made in Indian residency rules, which may impact Indian citizens, especially the ones living in countries where there is no personal tax.

Determining the right residential status is extremely important since the taxability of various incomes of an individual – Indian as well as overseas – depends on the residential status.

We have summarized below the taxability of in case of different types of residents:

Sr. No.	Particulars	Residential status and taxability in India		
		Resident and Ordinary Resident (ROR)	Resident but Not Ordinary Resident (RNOR)	Non-Resident (NR)
1	Income received or deemed to be received in India	✓	✓	✓
2	Income which accrues or arises or is deemed to accrue or arise in India	✓	✓	✓
3	Income which accrues or arises outside India from:			
	• Business controlled in or a profession set up in India	✓	✓	✗
	• Other Income	✓	✗	✗
4	Foreign assets disclosure requirement under the Income Tax Act (ITA)	✓	✗	✗

What are the changes made in residency rules?

In addition to reducing the number of days' presence criteria, a unique yet interesting concept of 'Deemed Residency' has been introduced in the Indian legislature for the first time. The incorporation of this concept has created a hue and cry among the Indian citizens living outside India (specifically in gulf countries like UAE, where there are no taxes).

Criteria for the number of days reduced from 182 to 120

- Earlier, for any individual to be a resident in India, the period of stay in the country had to be at least 182 days;
- Post the amendment, an Indian citizen or a person of Indian origin would be considered as an Indian resident if:
 - a) his total stay in India is more than 120 days in India; and
 - b) The individual's Indian sourced income is more than INR 1.5 Million;
- In effect, the number of days of stay in India has been reduced from 182 days to 120 days for Indian citizens/ persons of Indian origin, where taxable income sourced from India is more than INR 1.5 Million.

Deemed residency

- Budget 2020 also introduced the concept of 'Deemed Resident' - an individual shall be considered as an Indian resident if **all** of the following conditions are satisfied:
 - a) The individual is an Indian citizen; and
 - b) The Indian sourced income exceeds INR 1.5 million; and
 - c) The individual **is not liable to income tax** in any other country or territory by reason of his domicile or residence.
- 'Liable to income tax' has been defined to mean that tax is liable on such person under any law for the time being in force in any country and shall include a case where subsequent to the imposition of tax liability, an exemption has been provided. Thus, the countries with no income tax would be squarely covered by the aforementioned provisions.

Both the previously mentioned categories have been specifically included in the residency category of '**Not Ordinarily Resident.**'

Who will be affected by these amendments?

- Indian citizens, working in foreign territories and simultaneously earning Indian sourced income exceeding INR 1.5 Million.
- NRIs who are residing in a country where there is no personal income tax (e.g., UAE, Saudi Arabia and other countries).

What is the government's intention behind the proposed amendment?

- The Central Board of Direct Taxes (CBDT), pursuant to various representations, had issued a clarification¹ stating the intention behind the amendments.
- According to the clarification, the provisions introduced are anti-abuse in nature since it was noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid tax payment in India.
- Further, the new provision is not intended to include in Indian citizens who are bonafide workers in other countries in the tax net.
- It was clarified that in the case of an Indian citizen who becomes a Deemed Resident of India under this proposed provision, income earned by him outside India shall not be taxed in India unless it is derived from a business controlled or a profession set up in India.

1. Press release dated 2 February 2020. https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/822/PressRelease_CBDT_issues_clarification_on_the_new_provision_pertaining_to_residence_in_India_03022020.pdf

What are the implications of the new rules?

At first blush, the above changes appear to have significant implications on Indian citizens abroad, especially in countries like UAE, Saudi, etc. Many Indians fear that their global income would now be taxable in India. However, the effect of the above changes is not as catastrophic as it is made out to be. As shown in the table above, the global income of ROR is taxable in India. For Not Ordinary Residents, only Indian sourced income or income from business/profession controlled from India is taxable (and not their global income).

This is the care that the government has taken while passing the final regulations. They have provided that a person would be considered as RNOR if any of the following conditions have been satisfied (**clause (c) and (d)** have been added along with amendment in residency rule):

A person would be considered as Resident but Not Ordinary Resident (RNOR), if any of the following conditions have been satisfied (clause C and d have been added along with amendment in residency rule):

- a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, **or** has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; **or**
- b) a Hindu Undivided Family (HUF) whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, 729 days or less; **or**
- c) *a citizen of India, or a person of Indian origin, having a total income, other than the income from foreign sources, exceeding INR 1.5 million (~USD 20000)² during the previous year, who has been in India for a period or periods amounting in all to 120 days or more but less than 182 days; **or***
- d) *a citizen of India who is deemed to be resident in India.*

Basis this amendment, the question that arises is whether in cases where the condition mentioned in clause (a) above is not satisfied, then whether the individual will become an Ordinary Resident or he will be considered as RNOR by virtue of specific provisions provided under clause (c) and clause (d).

In our view, all four conditions have to be applied

independently to determine whether an individual is an RNOR or not. Accordingly, where an individual satisfies a condition under clause (c) or clause (d), he should be treated as RNOR irrespective of the fact that the condition under clause (a) is not satisfied.

The above view is supported by the clarifications provided by the government on various occasions, wherein it has been mentioned that the new categories of residents, including Deemed Residents, would always be regarded as 'RNOR' (as specific provisions are inserted in law) and one need not look at the above two existing conditions unless the stay is more than 182 days.

Our Comments

Recent amendments have created a lot of confusion and fear for Indian citizens staying outside India. However, in our view, there is no big impact on the majority of NRIs as nothing changes for them.

These amendments target individuals who have a business interest in India and were planning their affairs in such a manner that they are treated as non-residents. From now onwards, Indian citizen residents of other countries having business controlled or profession set-up from India would come under the tax net.

Overall, we recommend that individuals with business interests in India and residing in 'no tax' countries may need to do a fact-based analysis of this amendment to understand the impact. Individuals can explore options of ring-fencing their investments through a formal corporate structure, trust structure, or foundations.

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Reach out to us at ThinkNext@nexdigm.com

www.nexdigm.com

www.skpgroup.com

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