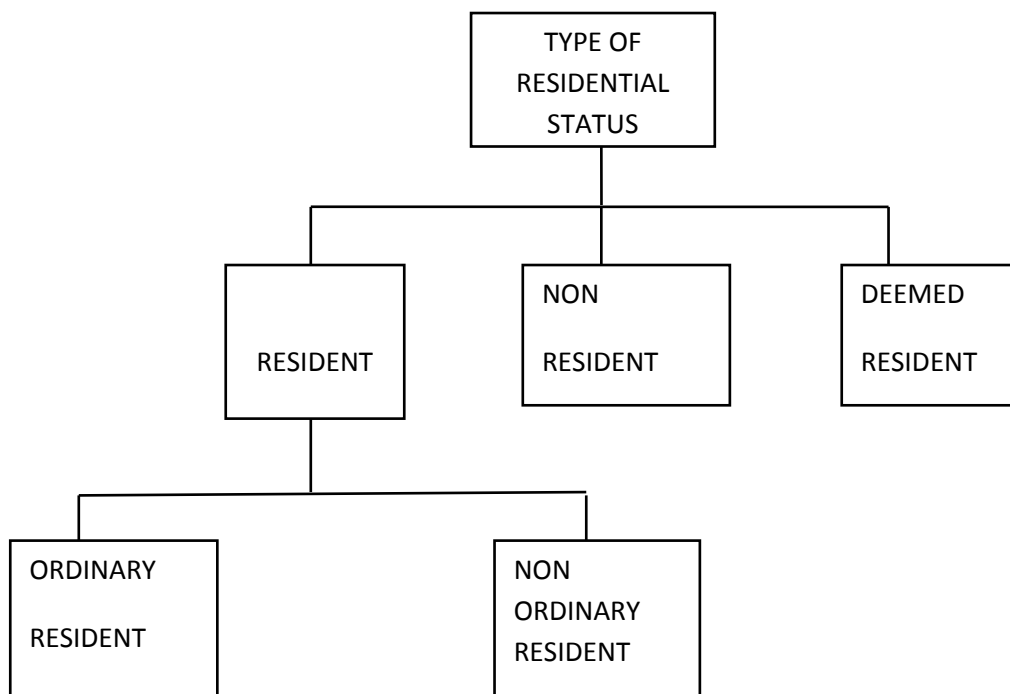


Section 6 related to Resident in India including Concept of Deemed Resident

Residence In India

Introduction:

Determination of the residential status under Income Tax Act plays a vital role in to determine whether a person comes under the tax net or not. Section 6 of the Income Tax Act, 1961 deals about the concept of resident for Income tax purposes. Finance Act 2020 dated 23.03.2020 amends Section 6 of the Income Tax Act. This article will throw light on the amendments to Section 6 vide Finance Act 2020 dated 23.03.2020. The said amendment will come into effect from 1st April, 2021.



Section 6 of Income Tax Act, 1961:

(i) An Individual is said to be resident in India,

- (a) If he is in India in that year for a period or periods in amounting to all 182 days or more; **or**
- (b) If he is in India for 365 days or more in the four years preceeding to that year **and** 60 days or more in that relevant previous year.

Explanation 1:

- (a) For an crew who is citizen of India, who leaves India in any previous year,
 - (i) as a member of crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958, or
 - (ii) For the purpose of employment outside India will be resident if he is in India for 182 days or more.
- (b) For an Citizen of India or as person of Indian Origin defined in Explanation to clause (e) of Section 115C who being outside India & comes to visit to India in any previous year will be resident if he is in India for 182 days or more.

(c) For an Citizen of India or as person of Indian Origin having total Income, other than the income from foreign sources exceeding 15 lakhs during the previous year will be resident if he is in India for 120 days or more.

Deemed Resident:

(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that 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.

This Clause shall not apply in case of an individual who is said to be resident in the previous year under clause (1).

(2) A HUF, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs situated wholly outside India.

(3) A company is said to be a resident in India in any previous year, if-

(i) It is an Indian company; **or**

(ii) Its place of effective management, in that year, is in India.

Explanation – For the purposes of this clause “place of effective management” means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

(4) Every **other person** is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be **Not ordinarily resident** in India in any previous year if such person is –

(a) An Individual who has been non- resident in India in nine out of ten previous years preceeding that year, **or** during preceeding seven previous year has been in India for a period of, or periods amounting in all to **729 days or less**.

(b) A 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**.

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in **clause (c) of Explanation 1 to clause (1)**, 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** under clause (1A).

Explanation:

For the purposes of this section, the expression “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**) and which is not deemed to accrue or arise in India.

Conclusion:

The change in definition of the resident is brought to widen the tax base. The confusion which prevailed earlier when budget was announced is clarified after passing of Finance Act dated 23.03.2020. Now it has attain clarity. Indian Citizen/ Indian origin have to plan their travel stay in India limited to **120 days** to not to come under the tax net.

Source : Taxguru

