



BUDGET 2020: MODIFICATION OF RESIDENCY PROVISIONS [SECTION 6]

CA Saurabh Tibrewal
Practicing Chartered Accountant

Section 6(1) of the Act provide for situations in which an individual shall be resident in India in a previous year. The individual shall be Indian resident in a year, if he,-

- i. has been in India for an overall period of 365 days or more within four years preceding that year, and
- ii. is in India for an overall period of 60 days or more in that year.

An Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year. This provision provides relaxation to an Indian citizen or a person of Indian origin allowing them to visit India for longer duration without becoming resident of India.

Further, section 6(6) states that an individual shall be not-ordinarily resident if an individual who has been non-resident-

- In 9 out of the 10 previous years preceding that year, or
- During the 7 previous years preceding that year been in India for an overall period of 729 days or less.

Now in the Finance Bill 2020, it has proposed that -

- a) the exception provided in section 6 for visiting India in that year be decreased to 120 days from existing 182 days.
- b) an individual or an HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in 7 out of 10 previous years preceding that year. This is a new condition.
- c) An Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

According to the proposal, if an individual has been a resident in atleast 4 out of last 10 financial years, then the individual will qualify as an ordinarily resident. This is bad news for the taxpayers as they will be required to pay tax on their foreign income and report foreign assets in their income tax return (ITR) in India.

The Budget 2020 has proposed to remove the second condition that the individual should be physically present for more than 729 days in last 7 years to become ordinarily resident. Further, second condition has been tweaked. Currently, first condition says that a person becomes resident individual if he/she has been resident individual in atleast 2 out of last 10 years. It has been proposed to hike this 2 year to 4 years.

Further Budget 2020 also proposes that if an individual who is a citizen of India or person of Indian origin visits India for 120 days or more in a financial year and had spent more than 365 days in last four years, then such an individual will also become ‘resident’ in India.

Hence,

- Indian Citizens or Person of Indian origin living outside India: Residency test for individuals reduced to 120 days from 182 days in a fiscal year.
- Individuals: to qualify as ordinary resident if presence in India is 4 out of 10 fiscal years.
- Deemed Residency: Indian citizens deemed to be a resident in India if not liable to tax in any other country or territory by reason of their domicile, residence, etc.

Applicability: From 1st April, 2021 i.e. Assessment Year 2021-22