

## RESIDENCY RULE DILEMMA

Determining the residential status for income tax purposes is a big challenge for this financial year and a part of the previous financial year. This has been a topic of debate as many non - residents had to extend their stay in India, in view of the lockdown and resultant suspension of international flights due to the outbreak of COVID-19. Central Board of Direct Taxation (CBDT), on 8<sup>th</sup> May 2020, have issued guidelines regarding this and provided some clarity on this subject. In this article, we have discussed briefly about the concept of residential status, the amendments as per Budget 2020 and the circular issued by CBDT.

### ERSTWHILE PROVISIONS RELATED TO RESIDENTIAL STATUS

#### TEST 1: - IDENTIFICATION WHETHER A PERSON IS AN INDIAN RESIDENT

An Individual is considered to be a resident if he satisfies any of the following conditions:

- whose period of stay in India is 182 days or more in the previous year or;
- whose period of stay in India is 365 days or more in 4 years preceding the previous year and 60 days or more in the previous year.

#### TEST 2: - IDENTIFICATION WHETHER RESIDENT BUT ORDINARY RESIDENT OR NOT ORDINARY RESIDENT

An Individual shall be considered as RNOR in the previous year if he satisfies any of the following:

- who has been a Non-Resident (NR) in India in 9 out of the 10 previous years preceding that year, or
- who has stayed in India for a period of 729 days or less during the 7 previous years preceding that year.

### AMENDED PROVISIONS AS PER BUDGET 2020

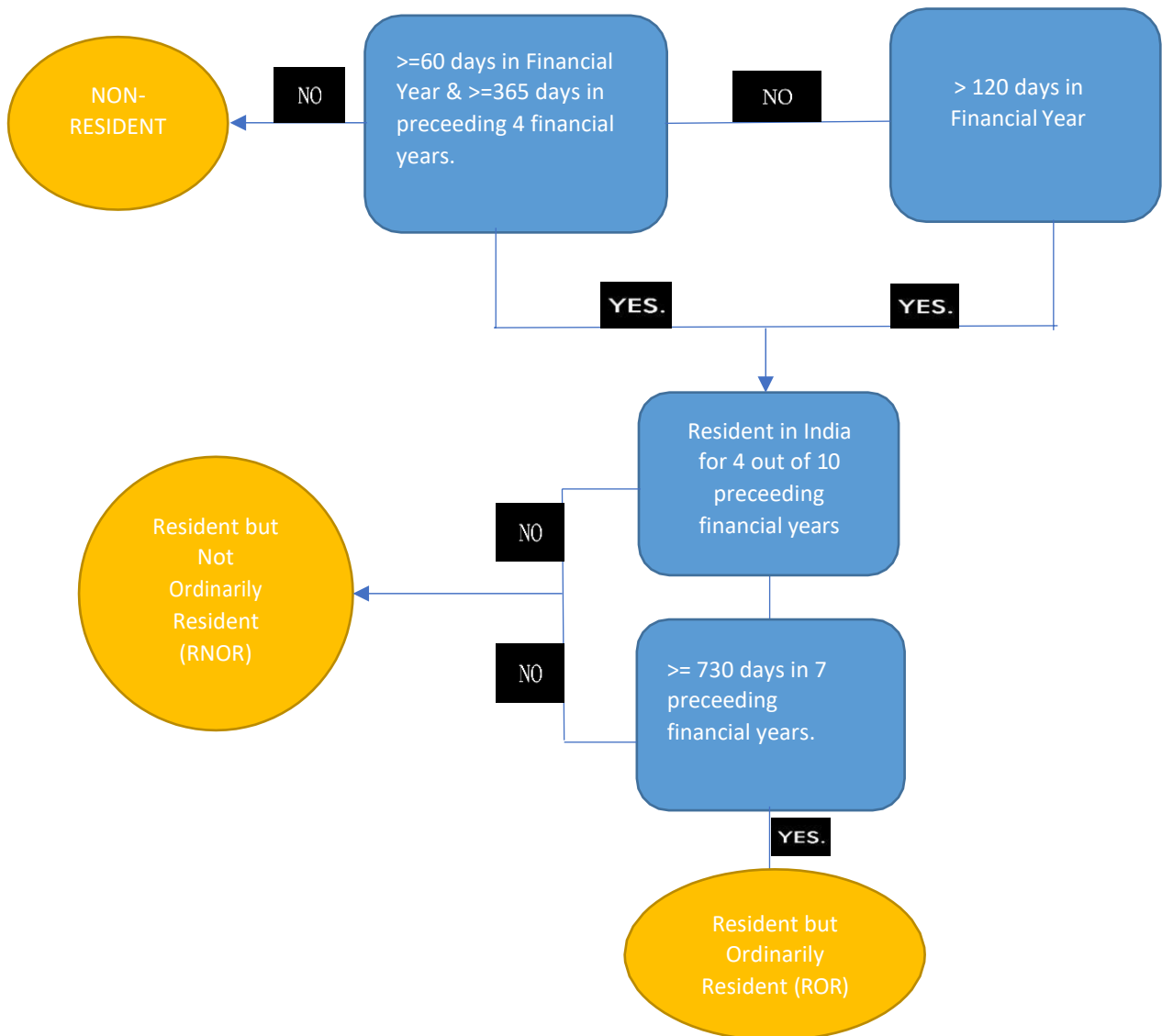
The government noticed that since the 182 days spread was a long time, there were individuals who were misusing the provisions by managing their stay in India so as to remain a non-resident and not get the income accrued in India taxed. Thus, there were few amendments proposed in Budget 2020:

- In test 1, period of stay which was 182 days has been substituted with 120 days.
- In test 2, non-resident should be in India 7 out of 10 previous years to be considered as RNOR.
- If an Indian citizen is not liable to pay tax in any other country, he will be considered a Resident in India.

**Another amendment was proposed which has been explained in the table below:**

Cases	Period of stay	Income > INR 15 Lakhs	Income <= INR 15 Lakhs
1.	< 120 days	Non-Resident	Non-Resident
2.	>120>182 days	Non-Resident	Resident but not ordinary resident
3.	>182 days	Resident	Resident

**Explaining the new provisions with the help of a flowchart:**



**ANNOUNCEMENTS REGARDING RESIDENCY PROVISIONS DURING COVID 19**

The Central Board of Direct Taxes (CBDT) issued Circular No. 11 of 2020, dated 8 May 2020, that clarifies the residency situation of non-resident Indians (NRIs) whose stay in India during the tax year 2019-20 lasted longer than they expected due to the COVID-19 lockdown. CBDT clarifies that certain days would not be considered for determining their tax residency<sup>1</sup> for the FY 2019-20 as follows:

Scenario	Period of stay in India to be excluded for FY 2019-20
If he/she has/was:	
<b>unable to leave India on or before 31 March 2020</b>	From 22 <sup>nd</sup> March 2020 to 31 <sup>st</sup> March 2020
<b>Departed on evacuation flight on or before 31 March 2020</b>	From 22 <sup>nd</sup> March 2020 to date of his/her departure from India
Quarantined in India on account of COVID-19 on 1 <sup>st</sup> March 2020 - <b>and has been unable to leave India on or before 31<sup>st</sup> March 2020</b>	From 1 <sup>st</sup> March 2020 to 31 <sup>st</sup> March 2020
- <b>Departed on evacuation flight on or before 31<sup>st</sup> March 2020</b>	From 1 <sup>st</sup> March 2020 to date of his/her departure from India
Quarantined in India on account of COVID-19 after 1 <sup>st</sup> March 2020 - <b>and has been unable to leave India on or before 31<sup>st</sup> March 2020</b>	From beginning of his/her quarantine to 31 <sup>st</sup> March 2020
- <b>Departed on evacuation flight on or before 31<sup>st</sup> March 2020</b>	From beginning of his/her quarantine to date of his/her departure from India

## **CONCLUSION**

This circular provides relief to taxpayers who have been forced to remain in India due to the COVID-19 outbreak, and whose residential status for FY 2019-20 could have been changed as a consequence of the nationwide lockdown. Further, no such circular has been issued till now by the CBDT regarding the period of stay in India due to COVID-19 in FY 20-21 and is expected to be issued once the lockdown period has ceased. But, we hope that as non-residents are stuck in India due to nationwide lockdown, this period of stay shall remain excluded till 31st May (the date when Lockdown Phase Vended)



S-217, Panchsheel Park,  
New Delhi -110017



**Mail Us**  
info@ibadvisors.co



**Call Us**  
+91-11-40946000



**Visit Us**  
www.ibadvisors.co