

CA AURA FOUNDATION  
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# SECTION 6 AMENDMENTS

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## SECTION 6 – CHARGING PROVISIONS

**Section 4** – enables charging of tax on income of every person

**Section 5** – provides scope of total income depending upon the residential status of a person

**Section 6** – provides tests for determining the residential status of a person

*Section 6 is the bridge between section 4 and section 5*



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Section 6 classifies an individual into 3 categories:

- *Ordinary resident*
  - *Not-ordinary resident*
  - *Non-resident*
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- *Residential status is different from Citizenship*
  - *Tax is levied on an individual irrespective of his citizenship*
  - *Post Finance Act 2020, citizenship is relevant for determining residential status, not tax incidence*

Section 5 (1) for Ordinary Residents:

- *All income from whatever source which is:*
  - a) Received or deemed to be received in India;*
  - b) Accrues or arises or deemed to accrue or arise in India;*
  - c) Accrues or arises outside India*

Section 5 (1) with proviso: For Not-Ordinary Residents:

- *All Income from whatever source which is :*
  - a) Received or deemed to be received in India;*
  - b) Accrues or arises or deemed to accrue or arise in India;*
  - c) Only that income arising from or accruing outside India which is derived from a business controlled or profession set up in India*

Section 5 (2) for Non-Residents:

- *All income from whatever source which is:*
  - a) Received in India or deemed to be received in India;*
  - b) Accrues or arises or deemed to accrue or arise in India;*

## TESTS FOR APPLYING SECTION 6

- *Tests under section 6 applicable to the previous year for which status is to be determined;*
- *Residential status under the Income Tax Act, 1961 to be computed every year;*
- *Residential status for one year cannot be presumed for the subsequent year;*
- *Residential status under the Income tax Act is different from residential status under other enactments like Foreign Exchange Management Act, Companies Act. Etc.*
- *Consecutive stay in India is not required, aggregate stay is relevant;*
- *Purpose of stay in India is not relevant*

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- DTAA overrules Income tax Act;
- DTAA is applicable only if person is resident of at least one of the Contracting States (Article 1)
  - Treaty also provides tests for determining residential status;
  - Treaty benefits to be denied if person is not resident of either of the Contracting States
- If a person is resident of both of the Contracting States, then 'tie-breaker' test is to be applied

- Section 6(1) – An individual is said to be resident in India in a previous year if he satisfies either of the following two conditions:
  - a) If he stays in India in that year for an aggregate period of 182 days or more ; or
  - b) [\*\*\*]; or
  - c) If he stays in India
    - a) Within 4 years preceding that year for an aggregate period of 365 days or more; and
    - b) In that year for an aggregate period of 60 days or more



- Explanation 1(a) carves out exception to clause (c ) of section 6(1)
- Any citizen of India, who leaves India in the previous year:
  - a) As a member of crew of an Indian ship; or
  - b) For the purposes of employment outside India,

The period of 60 days in sub-clause (c ) shall be substituted by 182 days for the previous year in which he / she leaves India

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  - b) [\*\*\*]; or
  - c) If he stays in India
    - i. Within 4 years preceding that year for an aggregate period of 365 days or more and
    - ii. In that year for an aggregate period of 60 days or more.

- Existing Provision:

Any individual being a citizen of India, or a person of India Origin (PIO), who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c ) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty two days” had been substituted.

- Finance Bill 2020:

Any individual being a citizen of India, or a person of India Origin (PIO), who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c ) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and twenty days” had been substituted.

- Finance Bill 2020:

Any individual being a citizen of India, or a person of India Origin (PIO), who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c ) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty days” had been substituted **and in case of the citizen or PIO having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, “for the words “sixty days” occurring therein, the words “one hundred and twenty days” had been substituted.**

- Finance Bill 2020 (new residency test):

“(1A) 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.”.

- Finance Act 2020 (new residency test):

“(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.”

- Existing provision:

A person is said to be “not ordinarily resident” in India in any previous year if such person is-

- An individual who has been a non-resident in India in 9 out of 10 previous years preceding that year; or
- Has during 7 previous years preceding that year been in India for aggregate period of 729 days or less



- Finance Bill, 2020:

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 a non-resident in India in 7 out of 10 previous years preceding that year;

- Finance Act, 2020:

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 a non-resident in India in 9 out of 10 previous years preceding that year or has during 7 years preceding that year been in India for aggregate period of 729 days or less; or

(c) a citizen of India, or a PIO, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) 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).

- Finance Bill, 2020 (new residency test):

“(1A) 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.”

- Finance Act, 2020 (new residency test):

“(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.”

- Finance Act, 2020 (new residency test):

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 a non-resident in India in 9 out of 10 previous years preceding that year or has during 7 years preceding that year been in India for aggregate period of 729 days or less; or
- (b) A citizen of India, or a PIO, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation 1 to clause (1), who has been in India for a period or periods amounting in all to 1290 days or more but less than 182 ; or
- (c) A citizen of India who is deemed to be resident in India under clause (1A).

- Taxability of foreign sourced income?

An Indian citizen, if has Indian income of 15 lacs and is not liable to tax in any other country, then now he will be a “deemed resident” u/s 6(1A) irrespective his stay in India

- (a) New clause (1A) specifically overrules clause (1) of section 6. by virtue of section 6(6)(d), such deemed residents will always be a NOR. It means foreign sourced income of such deemed residents will be non-taxable in India

- CASE STUDY:

- Mr. A is an Indian citizen
- He stays in India whole of the year and never visited abroad
- Mr. A has Indian income of Rs. 20 lacs and foreign income of 50 lacs which is not taxed abroad

**Position under existing law:** Since section 6(6)(a) is not applicable, If a person stay in India more than 182 days, section 6(1) applies. Also, if he is resident for at least 2 out of 10 previous years and stay in India is more than 730 days in last 7 years, then he is an ordinary resident in India and hence the worldwide income is taxable in India.

- CASE STUDY:
  - Mr. A is an Indian citizen
  - He stays in India whole of the year and never visited abroad
  - Mr. A has Indian income of Rs. 20 lacs and foreign income of 50 lacs which is not taxed abroad

**Position under new law:** Since the stay in India is more than 182 days, section 6(1) applies. Since this is an Indian citizen having India sourced income exceeding 15 lacs and is not liable to tax in any other country, section 6(!A) overrules section 6(1). Therefore, section 6(6)(d) shall apply, resulting in such individual being considered not ordinary resident in India. Further, the foreign sourced income of such person shall not be taxable, only Indian income shall be taxable.



- An Indian citizen who stays outside India becomes 'deemed resident' if he has Indian income of 15 lacs and is not liable to tax in any other country;
- Under Article 4(1) of most of DTAA's, an individual is resident, if, under the laws of that Contracting State, he is liable to tax therein by reason of his domicile, residence, or any other similar criterion
- Tie-Breaker applies only if an individual is resident of both Contracting States as per Article 4 (1)
- Most DTAA do not have citizenship as a test for determining residency

*THANK YOU!!!*

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