

Residential Status – Changing Landscape for Individuals

INTRODUCTION

Residential Status of an individual is of utmost importance since it determines the scope of taxable income under Indian Income Tax Act (“the Act”). You would have come across following three types of Residential Status in India:

1. Resident and Ordinarily Resident in India (“ROR”)
2. Resident but Not Ordinarily Resident in India (“RNOR”)
3. Non-Resident in India (“NR”)

The above residential status is determined primarily by number of days’ stay of an individual in India along with other prescribed conditions which are discussed in this note. The most common condition of 182 days was widely used by certain individuals to pre-plan their residential status for a particular financial year with a motive to restrict their scope of income taxable in India.

This was one of the trigger points to bring in amendments in the conditions pertaining to Residential Status of an Individual which is the crux for taxation of any individual in India. With such amendments coming vide Finance Act, 2020, it is of utmost importance for you to get acquainted with such changes and know how it shall impact your residential status in India from current financial year onwards i.e. from FY 2020-21 itself. This article seeks to highlight the intent, impact of such amendments and provides a simplified flow chart to determine residential status post the amendment enacted by Finance Act.

INDIAN CITIZEN/PERSON OF INDIAN ORIGIN COMING ON VISIT TO INDIA

- Earlier, Indian Citizens or Persons of Indian Origin¹ coming to India for a visit were considered residents only if their stay in a Financial Year was 182 days or more.

¹ Person of Indian origin is a person who himself or any of his parents or any of his grandparents was born in undivided India before 15th August 1947

- For instance, in order to remain a non-resident in perpetuity and not be required to declare global income in India, sometimes individuals used to manage their period of stay in India but actually carry out substantial economic activities from India. Such instances have come to the notice of the Government where the provision in relation to period of 182 days was being misused.
- To prevent this, the provisions have been amended vide Finance Act, 2020 which requires such individuals to satisfy any one of the following conditions to become a resident in India:
 1. Stay in India \geq 182 days in Financial Year
 2. Stay in India \geq 120 days in Financial Year and \geq 365 days in prior 4 Financial Years and Indian Income² is above INR 15 lakhs in the Financial Year
- However, individuals who become resident since their stay is 120 days or more but less than 182 days as per above condition have been accorded status of RNOR.

DEEMED INDIAN RESIDENT

- With the existing tax laws, it is entirely possible for an individual to arrange his business affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year.
- Accordingly, Finance Bill 2020 proposed that an “Indian Citizen” who is not liable to tax in any other country or territory shall be deemed to be resident in India. This raised concerns amongst NRIs based in Middle East that foreign income earned outside India would also now become taxable in India. Hence, Government had to clarify its intention through Press Release³ that only income from a business or profession derived from India shall be taxable.
- With this intention in backdrop, Finance Act 2020 has been passed wherein it is provided that: “Any Indian Citizen having Indian income above INR 15 lakhs in any Financial Year would be deemed to be a resident in India if he is not liable to tax in any other country by way of residence or domicile or any other similar criteria.”
- However, such deemed Indian residents shall be treated as Resident but Not Ordinary Resident (RNOR).

² Indian Income shall also include foreign income derived from business controlled in or profession set up in India

³ Press release dated 2nd February, 2020

PURPOSE AND BENEFITS OF THESE AMENDMENTS

- The main purpose of these amendments is to bring to tax only the foreign income derived from a business controlled in or a profession set up in India by individuals abusing tax provisions. There is no intention to tax their global income and hence such individuals are given the benefit of qualifying as a Resident but Not Ordinarily Resident.
- Hence, apart from their Indian Income, only foreign income derived from business controlled in or profession set up in India shall become taxable.
- Such individuals do not need to disclose their foreign assets and foreign incomes in the Indian Income Tax Returns.
- Also, TDS provisions relating to Non-Residents shall not apply. Hence, such persons would not be required to obtain lower withholding certificate in cases of rental income, sale of property, etc.

CONDITIONS FOR FOREIGN NATIONAL/CITIZEN REMAIN UNCHANGED

In case of a Foreign National/ Citizen, the earlier conditions for determining the residential status in India as per the Act shall prevail.

FLOWCHART FOR DETERMINING RESIDENTIAL STATUS & SCOPE OF TAXABLE INCOME

Such complex amendments and its application have been simplified and provided in the form of a Flowchart at the end of the Article.

Annexure A - Determining Residential Status

Annexure B - Scope of Income Taxable in India based on Residential Status

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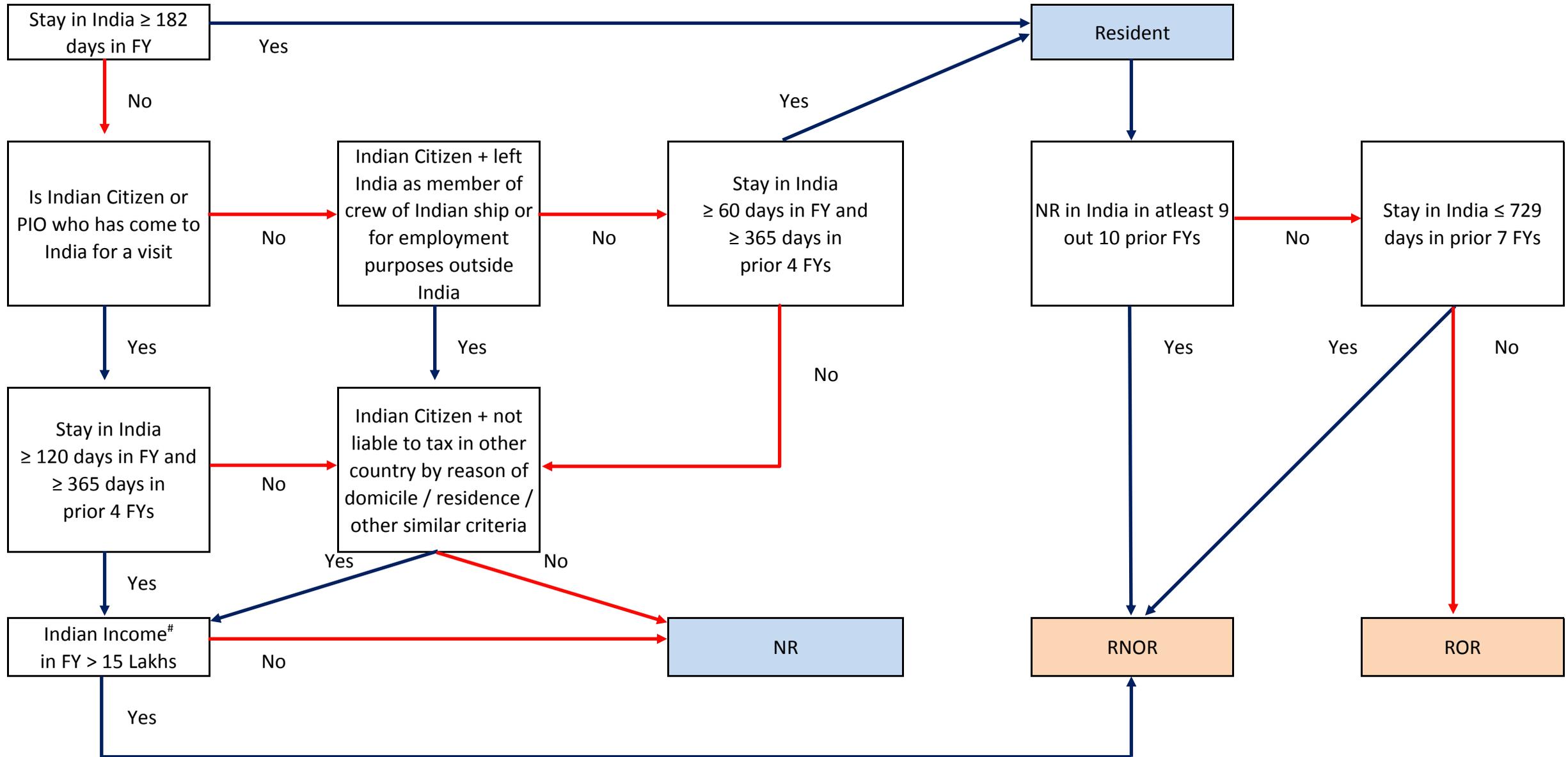
12th May, 2020

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ANNEXURE A - RESIDENTIAL STATUS OF INDIVIDUALS

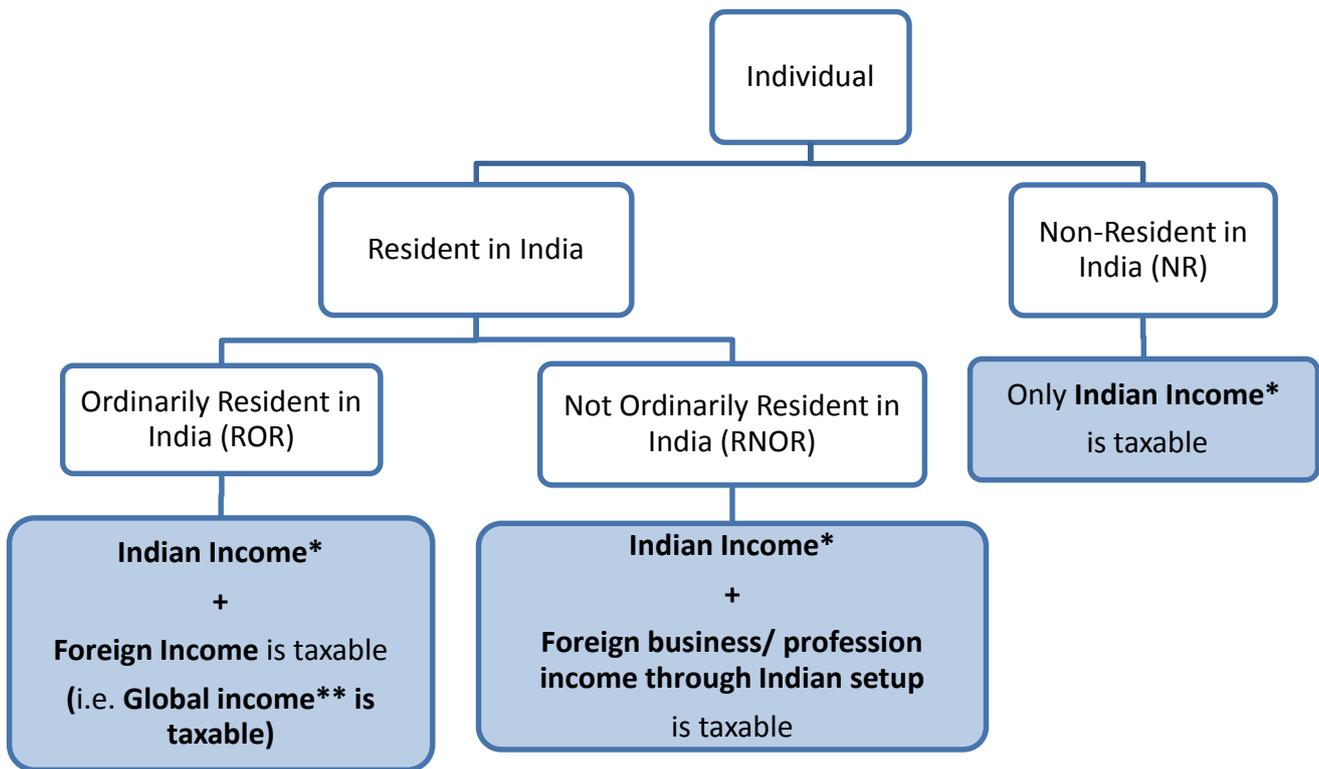
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Note: This flow chart has been prepared based on our understanding of the law and about intentions of the legislature.

Indian Income shall also include foreign income derived from business controlled in or profession set up in India

ANNEXURE B: SCOPE OF INCOME TAXABLE IN INDIA



* Indian Income means any income accrued, received or deemed to be accrued or received in India.

** Along with the global income, individual also has to give disclosure for all Foreign Assets and Incomes.