

Residential Status

CBDT Clarification

- May 19, 2020 •
- CBDT Circular 11 of 2020 dtd.
May 8, 2020 •

CBDT vide aforesaid circular has clarified that various non-residents who came to India before the COVID-19 lockdown situation but could not leave the country due to suspense of international flights, be allowed to exclude specified period of stay in India for determination of their residential status.



Section 6 of the Income-tax Act, 1961, provides for criteria by which Residential status of an Individual is determined for the purpose of levying Income tax in India. Relevant provision for FY 2019-2020 is given below –

An Individual is said to be “**Resident**” in India in any previous year, if he –

1. Is in India in that year for a period or periods amounting in all to 182 days or more; or
2. In four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year.

A Person is said to be “**Not Ordinarily Resident**” in India in any previous year if an Individual who –

1. has been a non-resident in India in 9 out of the 10 previous years preceding that year, or
2. has during the 7 previous years preceding that year been in India for a period of, or periods amounting in all to, 729 days or less

Individuals who had come on a visit to India during the previous year 2019-20 for a particular duration and intended to leave India before the end of the previous year 2019-20 for maintaining their status as non--resident or not ordinarily resident in India. However, due to the declaration of the lockdown and suspension of international flights owing to the outbreak of the COVID-19, they are required to prolong their stay in India. Concerns have been expressed that this extra stay in India may make them a resident of India under section 6 of the Act. In order to avoid genuine hardship in such Individuals, Clarification has been in that respect as follow –

Sr. No.	Situation	No. of days to be excluded in Residency Test
1	Individual who has come to India on a visit before March 22, 2020 and has been unable to leave India on or before March 31, 2020	March 22, 2020 to March 31, 2020

2	Individual has been quarantined in India on account of COVID-19 on or after March 1, 2020 and has departed on an evacuation flight on or before March 31, 2020 or has not been able to leave India on or before March 31, 2020	Stay from the beginning of his quarantine to his date of departure or March 31, 2020
3	Individual has departed on an evacuation flight on or before March 31, 2020	March 22, 2020 to his date of departure

Although, the clarification gives some relief to those who were stuck in India in last few day of closing of Financial Year i.e. March 2020 but similarly there are many individuals who had visited India in February and March 2020 have not been able to go back to their place of residence or work hitherto and their return would not only be dependent upon permission of international air travel but situation in both the countries viz. India and where they normally reside or work. Given this difficulty coupled with stringent amendment made by Finance Act 2020-21 in residential status, we at ConsultingEdge, believe that CBDT should have been more generous in clarifying this position for FY 2020-21 also very much in advance. However, as it stands, such individuals will have to wait for now and see how Finance Ministry overcomes their hardship.

(views expressed are personal)

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