Residency rules get tricky for tax filers

Those who managed them smartly to take tax benefits will find it much more difficult to do so

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Budget 2020 changed the residency rules that determine how a person's income is taxed. Once these rules are implemented, non-residents Indians (NRIs) who visit India every year, and businessmen and professionals whose jobs require them to travel overseas for a considerable period in a year, will need to keep track of the number of days spent in the country, and file their tax returns depending on their status. Failure to do so will mean falling foul of the income-tax authorities.

182-day limit reduced: Residency rules are significant as they determine how a person is taxed. At present, a person is considered to be a resident of India if he stays in the country for 182 days or more, or if he stays in India for 60 days in one year and cumulatively for 365 days in the past four years. If a person fulfils either of these two conditions, he is considered a resident of India.

In the case of Indian citizens who leave India for the purpose of employment, only the 182-day condition applies. They are not tested on the 60-cum-365-day criterion. The same holds true for Indian citizens and persons of Indian origin (PIOs) settled outside India when they visit the country.

The Budget proposals apply to Indian citizens and PIOs visiting India. Such a person will be treated as a resident of India for tax purposes if he visits the country for more than 120 days in a financial year and 365 days in the past four years.

Once this rule is implemented, PIOs will be able to spend a smaller number of days in the country if they wish to keep their non-resident status intact.

This change is being introduced as people were misusing the 182-day provision. "Many people would stay in India for a substantial part of the year and conduct their business from here. But they would manage their stay in such a manner that they would escape paying tax in India. The threshold has been reduced to basically curb this practice," says Shailesh Kumar, director, Nangia Andersen Consulting.

In last year's income-tax forms, the tax authorities had introduced a column. PIOs and Indian citizens who are non-resident have to mention the number of days spent in India. The Immigration Department also captures this information. "The details that you file in your income tax form about your stay in India could be validated by the information available with the immigration authorities, hence make sure that you make the correct disclosure," says Kuldip Kumar, partner and leader, personal tax, PwC India.

730-day clause removed: Once it has been decided whether a person is a resident, it needs to be tested whether he is a resident ordinarily resid… ROR) or resident-but-not-ordina… resident (RNOR). At present, h… eemed to be RNOR if he fulfils ei… these two criteria: He should ha… yed in India for less than 730 day… ing the past seven financial year… e should have been a non-resid… nine out of the past 10 years.

The Budget propo… ave dropped the 730-day criterion. A person will become RNOR if he has been non-resident in India in seven out of the past 10 years.

This change will affect expatriates who come to work in India. Earlier, they used to become ROR in the third or fourth year. Now they will become ROR only in the fifth year, which means that they will get an extra year before their global income is taxed in India. "The government has basically relaxed the rules for expatriates coming to work in India," says Rupali Singhania, partner, Arete Consultants LLP.

Concept of deemed residency introduced: If an Indian citizen is not liable to pay tax in any overseas jurisdiction by virtue of his domicile or residence, he will be deemed to be a resident of India. "This provision has been introduced to bring stateless persons into the tax net," says Kumar of Nangia Andersen Consulting.

A large number of people from India work in the United Arab Emirates. They could have become liable to pay tax in … their income … After there … and cry, the government clarified that it does not intend to tax such people on their overseas income. Further details are awaited.

The deeming provision could give rise to the issue of dual residency. "In such cases, the tie-breaker rules under the double taxation avoidance agreement (DTAA) will have to be applied to determine the person's residence," says Singhania. Some of the key parameters under the tie-breaker rule are permanent home, centre of vital interest, habitual aboard, and nationality.

Who gains and who loses: Those who run businesses that span multiple geographies tend to spend a considerable part of the year outside the country. They will need to plan their schedules carefully.

Many NRIs, especially older ones, who live in geographies that have very harsh winters, spend almost half the year in India. They may need to reduce the amount of time spent in India if they wish to retain their non-resident status.

When a person loses his non-resident status, he has to make changes to his finances. "Interest income on non-resident external (NRE) and foreign currency non-resident (FCNR) accounts becomes taxable once you become a resident," says Vishal Dhawan, chief financial planner, Plan Ahead Wealth Advisors. These accounts have to be converted into resident accounts.

On the plus side, … ancial products … re not accessible t… on-residents, bec… vailable, such … 7.75 per cent Sa… Taxable) Bonds … the Reserve B… f India and the … Public Provident … (can be extended … nd 15 years).

The impact of change … come-tax rate will depend on … ountry he lived in. "In the UA… ere is no taxation, so tax rates … dia will be higher. On the ot… nd, certain European coun… ve even higher tax rates … dia, so a person becomi… ndian resident will sta… ," says Dhawan.

RESIDENCY DETERMINES TAXATION

- **Non-residents are taxed in India** only on their India-sourced income, not on their global income
- **RNORs (an interim stage for those coming or returning to India) are taxed** on their India-sourced income but not on their global income
- **RORs are** taxed both on their India-sourced and global income
- **RORs also have to report their foreign assets,** like bank accounts and properties, when filing their income-tax return

"The … t you file in you… tax form abou… stay in India coul… validated by the information available with the immigration authorities, hence make sure that you make the correct disclosure"

KULDIP KUMAR
Partner and leader, Personal Tax, PwC India