



NEWSLETTER

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MVDCO Advisory Services Pvt. Ltd.

www.mvdco.com



- Company Law (Page 2-10)
- Charitable Trust - Tax inference (Page 11-15)
- Residential Status of an Individual under The Income Tax. (Page 16-17)

COMPANY LAW

COMPANIES FRESH START SCHEME 2020

Initiative taken by Ministry of Corporate Affairs to give a chance to all the Defaulting Companies who have made a default in filing in MCA-21 registry so as to enable them to file the belated documents in the MCA-21 registry.

Ordinarily, all companies are required to make annual statutory compliance by filing relevant forms, documents, returns etc. within a prescribed time limit failing to which additional fees is charged.

However, in the name of above-mentioned scheme MCA has granted one-time opportunity to all the Defaulting Companies to complete their belated documents by filing the relevant forms, documents, returns etc without any payment of additional fees.

The scheme also gives opportunity to inactive companies who has not filed financial statement and annual returns during last two years to get their companies declared as **Dormant Company** or apply for **Strike Off** name of company.

The Details of the scheme are as under:

- The scheme shall come into force w.e.f. 01.04.2020 to 30.09.2020.
- Applicable to all defaulting companies.
- No additional fees, only normal filing fees shall be payable.
- Immunity shall be provided against prosecutions and proceedings for imposing penalty only if they pertain to delay associated with belated filing of documents.
- Application for seeking immunity from penalty and prosecution in respect of specified documents filled under the scheme may be made in Form CFSS - 2020, after closure of the scheme upto March 31, 2020.

- If Appeal is in operation for violation of the provisions under the Companies Act, 1956/2013, in respect of which the application is made under this scheme, the applicant shall before filing an application for issue of immunity certificate, **withdraw the appeal** and furnish proof of such withdrawal along with the application.
- If **no appeal** has been filed with Regional Director u/s 454(6) and last date for filing appeal falls between March 1, 2020 to May 31, 2020, additional 120 days is given to file an appeal.

Forms Covered

http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf

All forms related to compliance except authorized capital (SH-7) and charge related (CHG) form are covered.

Application for issue of immunity in respect of document(s) filed under this scheme

- Application to be made electronically in form **CFSS-2020**.
- No fees payable on filing of this form.
- Form can be filed in maximum 6 months from the date of closure of scheme.
- Immunity shall not be provided for any cases pending before the court.
- **Immunity** from the launch of prosecution/proceedings for imposing penalty shall be provided only to the extent such prosecution/proceedings for imposing penalty under the Act pertain to any delay associated with

the filings of belated specified documents. Any other consequential proceedings would not be covered by such immunity.

INC-22A (ACTIVE) without any filing fee.

Non-Applicability of Scheme

- Action for Final notice for Striking off u/s 248 has already been initiated
- Application already filed by the companies for striking off.
- Companies which have amalgamated.
- Application already been filed for obtaining **Dormant Status**
- Vanishing Companies
- Cases Involving increase in authorized capital and charge related documents.

Effect of Immunity

- Any pending prosecutions related to filing of belated documents shall be withdrawn by the Designated Authority.

Scheme for Inactive Companies

The scheme also gives opportunity to inactive companies who has not filed financial statement and annual returns during last two years to get their companies declared as **Dormant Company** or apply for **Strike Off** name of company.

Key points

- DIN Holders of DINs marked as 'Deactivated', are allowed to file form DIR-3KYC/ DIR-3KYC Web without any filing fee.
- Companies Marked as 'ACTIVE non-complaint', are allowed to file form

COMPANIES (INCORPORATION) RULES 2014

The Companies (Incorporation) Rules, 2014 introduces a new simplified form SPICe+ for incorporation of companies w.e.f 23rd February, 2020.

APPLICABILITY

Applicable to all companies incorporated on or after 23rd February, 2020. The Approval Authority shall remain same i.e, Registrar, Central Registration Centre, Haryana.

FORMS TO BE FILED:

- AGILE – PRO
- SPICe+ AoA
- SPICe+ MoA

CHANGE OF NAME OF COMPANY

RUN Form shall still prevail in case a company wishes to change its name.

MANDATORY REQUIREMENTS

- EPFO Registration No.
- ESIC Registration No.
- Profession Tax for new companies incorporated in Maharashtra.
- Company's Bank Account
Note- EPFO and ESIC relevant returns to be filed only when they have increased the threshold limits under the act.

OPTIONAL REQUIREMENT

- GST Registration

PROCEDURE

- Apply for name of the company.
- A hyperlink will be generated in the new dashboard.
 - Option 1 - Submit Name application and make payment of the same for name approval.
 - Option 2 - Click on "Proceed for Incorporation- After clicking on "Proceed for Incorporation" Spice + Part B will open.
Part B of SPICe+ form for GSTIN / EPFO / ESIC/ Profession Tax/ Bank Account.

COMPANY'S BANK ACCOUNT

- Mandatorily required to apply for opening the company's Bank account through
- the AGILE-PRO linked web form.
- As of now, MCA has tied up with PNB bank, bank branch to be provided by MCA as per the registered office of the company.
- If company is willing to change the bank, it can be done by closing the existing bank through MCA and apply for other bank.

Comparison between Old and New Rule of Companies (Incorporation) Rules, 2014

| S.No | Basis | Existing Rule | New Rule |
|------|--|--|--|
| 1 | Name Application | web service available at www.mca.gov.in by using web service Run (Reserve Unique Name) Form | web service available at www.mca.gov.in by using web service SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) |
| 2 | Approval Authroity | Registrar, Central Registration Centre, Haryana | Registrar, Central Registration Centre, Haryana |
| 3 | Came into force | Already their | 23rd February, 2020 |
| 4 | Forms Name | Run Form / Spice/ Agile | Spice+ Part A/ Spice + Part B/ Agile Pro |
| 5 | After name application | SRN generated which is to be entered in spice form offline for incorporation | Hyperlink will be generated in the new dashboard |
| | | | Option 1-Submit Name application and make payment of the same for name approval |
| | | | Option 2- Click on "Proceed for Incorporation- After click on "Proceed for Incorporation" Spice + Part B will open |
| 6 | Incorporation process | Spice form to be filled and uploaded along with Agile- AGILE form is part of Spice eform for GSTIN / EPFO / ESIC | Spice + Part B form along with linked form Agile Pro - AGILE- PRO form is part of SPICE+ form for GSTIN / EPFO / ESIC/ Profession Tax/ Bank Account |
| 7 | INC-9 Declaration by Directors and Subscribers | Manual file to be attached in form | If Dir and Subs. Having valid DIN and PAN numbers, then through Agile pro form it will be pre- fill (web based form) |

| | | | |
|----|--|------------------------|--|
| 8 | EPFO/ ESIC | Not mandatory to apply | Mandatory to apply or companies no EPFO & ESIC Registration nos. shall be separately issued by the respective agencies - <i>provided they will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts. W.e.f 15 Feb, 2020</i> |
| 9 | GST Number | Optional | Optional |
| 10 | Professional Tax for Maharashtra incorp. Companies | Optional | Mandatory for all new companies incorp. In MH |
| 11 | Company's Bank a/c | No Provision | Mandatorily required to apply for opening the company's Bank account through the AGILE-PRO linked web form. |
| | | | Right now, MCA having tie up with PNB bank, bank branch to be provided by MCA as per the registered office of the company |
| | | | If company willing to change the bank, it can be done by closing the existing bank through MCA and apply for other bank. |
| 12 | Change of Name | of RUN Form to be used | RUN Form to be used |

Relief Measures for Corporates in View of COVID-19 Outbreak

1. Moratorium Period Declared from 1st April to 30th September 2020 for Companies & LLP's and hence no additional fees will be levied on late filings of any document, return, statement etc. required to be filed with MCA-21 Registry.
2. Additional 6 months period to New Companies Incorporated for Filing of Form INC-20 A regarding Declaration for Commencement of Business.
3. Companies (Auditor's Report) Order, 2020 is deferred to F.Y. 2020-21.
4. Companies spending of CSR Funds for COVID-19 to be considered as part of Corporate Social Responsibility (CSR) Activity.
5. Introduction of Form CAR-20, a Voluntary form, to build confidence and assess readiness of companies to adopt work from home policy to fight COVID-19.
6. Relaxation in respect of mandatory staying in India for period of 182 days for atleast one director in the Company (Resident Director) for the F.Y.2019-20.
7. Relaxation of restriction for conducting Board Meeting through Video Conferencing or other audio video means from 19th March 2020 to 30th June 2020.
8. Requirement of holding of Board Meetings within prescribed interval of 120 days, shall be extended by additional 60 days for next 2 quarters upto 30th September, 2020.
9. If No Independent Directors Meetings held during F.Y. 2019-20, it shall not be viewed as Non- Compliance.
10. Requirement to create deposit reserve of 20% of Deposits maturing during F.Y. 2020-21 before 30th April 2020 for companies having deposit of debentures can now also be complied with by 30th June, 2020.
11. Similarly requirement of investment of 15% of debentures maturing during a particular year in specified instruments before 30th April, 2020 can now be complied with by 30th June, 2020.
12. Government raise the threshold of default under IBC to Rs. 1Cr. from existing Rs. 1 Lakh.
13. MCA-21 has introduced a Scheme namely 'Companies Fresh Start Scheme, 2020 (CFSS-2020) for defaulting companies who has not filed Annual Return and Financial Statements, has only have to pay normal filing fee as per section 403 of the Companies Act, 2013. The CFSS-2020 shall start from 1st April 2020 to 30th September, 2020.
14. MCA-21 has introduced LLP Settlement Scheme, which shall be effective from 1st April 2020 to 30th September, 2020. Due to ease of doing business Central Govt. decide to give ' Onetime relaxation in additional fees to the defaulting LLP's to make good their default by filing pending documents, i.e. LLP-3 (LLP Agreement and change therein), LLP-8 (Statement of Account and Solvency), LLP-11 (Annual Return of LLP)

INDEPENDENT DIRECTOR -DATABANK

The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 for person eligible and willing to be appointed as an Independent Director. The rule states the compliances to be carried out before the appointment of independent director as well for those who are already appointed.

KEY FEATURES:

- Empanelment of professional acting as Independent Director
- Online courses.
- Newsletter and knowledge resources for professional development
- Help the corporates in appointment of well trained and informed independent director

APPLICABILITY:

These rules are applicable to:

Every Individual-

- Who has been already appointed as an Independent Director in a company;
- Who intends to get appointed as an Independent Director in a company.

COMPLIANCES:

- All existing Independent directors or proposed individuals are required to register themselves with the Databank within a period of 5 months effective from 1st December, 2019.
- Apply online to institute IICA (<https://iica.nic.in/>) for inclusion of his

name in the data bank for a period of one year or five years or his life time till he continues to hold the office of an Independent Director.

- Membership to be renewed within 30 days from the date of expiry of period upto which the name of the individual was applied for inclusion in the data bank;
- Every Independent Director to submit a declaration of compliance with these rules to the Board, each time he submits the declaration required under sub- section (7) of section 149 of the Act.
- Every individual whose name is included in data bank shall pass an online proficiency self-assessment test within one year from inclusion of his name in the data bank. failing which, his name shall stand removed from the databank .

Notes :

- An individual not having any DIN may also apply for inclusion of his name voluntarily;
- No renewal required for individual who has paid life time fees;
- An individual who has served 10 years or more as on date of inclusion of name in the databank as director or KMP in a listed company or in an unlisted public company having a paid-up capital of Rs. 10 crore or more shall be exempted from passing online proficiency self-assessment test

PROCESS OF REGISTRATION:

- Log in to MCA website mca.gov.in and insert your MCA credentials;
- Go to MCA services and click on ID databank service- Individual registration;
- Enter your DIN/Pan number;
- Send OTP to your mobile number;
- After entering OTP, you will receive your ID and password;
- Go to independentdirectorsdatabank.in and login with the id and password received in your mobile number;
- Fill up all the mandatory details and click on submit;
- Pay the prescribed fees.

Note: Currently the fees for 1 year/ 5 year/ lifetime subscription is Rs. 5000/15000/25000 plus 18% GST.

- Individuals can make multiple attempts for self-assessment even after passing it with minimum score of 60%.

IMPORTANT TIMELINES:

- End Date for empanelment of existing Independent Directors – April 30, 2020
- Start date for online proficiency self-assessment test – March 01, 2020
- Start date for corporate access and search facility – March 01, 2020.

PROFICIENCY SELF ASSESSMENT TEST AND SUBJECTS:

- Every individual is required to an online proficiency self-assessment test within one year from inclusion of his name in the data bank.
- An individual who has obtained a score of not less than sixty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test.

LLP SETTLEMENT SCHEME – 2020

Basic Concepts of LLP

- Governed by Limited Liability Partnership Act, 2008.
- Combines features of both Limited Liability Company and Partnership.
- Preferred option for small enterprises owing to its flexible structure.

Settlement Scheme

- The scheme shall come into force w.e.f. 01.04.2020 and shall remain in force upto 30.09.2020.
- Applicable to all defaulting LLPs. They are permitted to file belated documents, which were due for filing till 31.08.2020.
- Scheme provides filing with payment of normal fees only. No Additional fees shall be payable.
- Additionally, defaulting LLP's which are filing under the scheme are free from prosecution by Registrar for such defaults.
- Any other consequential proceedings would not be covered by such immunity.

Note: Registrar shall take necessary actions against those LLPs, who are in default, and have not availed the scheme.

Forms covered

All belated compliance related documents.

Scheme not applicable to

- LLPs who have made application in Form-24 for strike off.

Compiled by CS Shalini Pandey DNV & Co

Charitable Trust – Tax inference

Income from property held for charitable or religious purposes.

Section 11 of Income Tax Act,1961 provides exemptions for Income earned from property held under charitable trusts for the activities carried out on charitable or religious purposes subject to certain terms and conditions.

- **Key points: -**

- The expression “property” includes any immovable property like lands, buildings etc. and movable properties like money, shares, securities etc.
- Income earned from property held under charitable trusts includes income from above properties and voluntary contribution / donation received by charitable trust.
- The exemption under section 11 is available only to public trust but not to private trust.
- **Section 2(15)** of Income-tax Act 1961, says charitable purposes include –
 - Relief to poor
 - Education
 - Yoga
 - Medical Relief
 - Preservation of Environment
 - Preservation of monuments or places or objects of artistic or historic interest
 - Advancement of any other object of general public utility.

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- **Who can claim the tax exemption?**

- Any trust or institution which is registered under section 12AA of Income Tax Act, 1961 can claim the tax exemption under this section.

- **Incomes that can be claimed as exemption:**

- Income received/derived from property held by charitable trusts, and if it is utilised for charitable or religious purposes exemption can be claimed under section 11.
- Voluntary contribution / donation received by charitable trust and utilised for charitable or religious purposes.
- Income received in the form of voluntary contributions with a specific direction that they shall form part of corpus of the trust or the institution.

- **Conditions for claiming exemption:**

- Income should be received from property held under trust wholly or in part (for the properties held in part, exemption can be claimed only if trust has been created before commencement of this act) for charitable or religious purposes in India.
- The aforesaid income should either be applied or accumulated for such purposes in India.
- The income accumulated or set apart for charitable or religious purposes should not exceed 15% of the total income received/derived during the previous year.

- Donation to other charitable trust registered u/s. 12AA in the year in which income is derived will be allowed for exemption. However, donation to such other charitable trust out of the accumulated fund under explanation of section 11(1) will not be allowed as exemption.
- In computing income under this section, any contributions referred in Section 12 of Income Tax act shall be deemed to be part of the income. Section 12 deals with voluntary contributions other than received with a specific direction that they shall form part of corpus of trust or institution.
- The income applied for charitable purposes which tends to promote international welfare can also be claimed as exemption subject to the following:
 - Trust created on or after 01-04-1952: To the extent such income is applied to promote international welfare in which India is interested;
 - Trust created before 01-04-1952: To the extent such income is applied for charitable or religious purposes outside India.
- Any income paid to any other trust registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of trust shall not be treated as application of income for charitable or religious purposes.
- For determining the amount of application under this section, the provisions of 40(a)(ia) for deduction and payment of tax at source, 40A (3) & (3A), for incurring cash expenditure

above a specified amount, shall apply as they apply in computing the income chargeable under the head profits or gains of business or profession.

Example:

If a trust named “X” registered u/s 12AA received an income of Rs.1,00,000 and utilised Rs.80,000 and created a reserve of Rs.20,000.

Can the trust claim exemption under section 11?

Not fully, because 85% of the income should be utilised for the religious or charitable purposes and 15% can be created as reserve, but here only Rs.80,000 has been utilised i.e. 80% which is less than the prescribed limits and therefore, the unutilised amount of Rs. 5,000 will be regarded as taxable income.

• **If Income applied < Income Derived:**

- If the income applied for charitable or religious purposes, during the previous year, falls short of 85 per cent of the income derived during the year because of the reasons given in column 1 of the table, the charitable trust has been given the option to spend such income for charitable or religious purposes in the manner given in column 2 of the table—

| <i>Application of income falls short of 85 % of income because of the reasons given below—</i> | <i>Consequences</i> |
|--|--|
| (a). Income, to the extent not received during the relevant previous year | i. By exercising Option of application under explanation to section 11(1) and expending the same in the next year. |
| (b). Because of any other reason | ii. By offering short fall of income applied from 85% of the income derived as taxable income . |

- The above option can be exercised by uploading **Form No. 9A** under Explanation (2) to section 11(1) before the expiry of time allowed for submission of return of income under section 139(1).
- Income applied to such purposes during the extended time is deemed to have been applied to such purposes during the previous year in which it was derived.
- If the income so deemed to be utilised for charitable or religious purpose is not utilised for such purpose on its receipt, then such income shall be added back as income of the trust in the year in which it is violated.

Example:

For example, a trust named “X” has derived an amount of Rs.1,00,000 but has received only Rs.80,000 in that previous year and also utilised the total amount of Rs.80,000 in that year. Can the trust claim an exemption under section 11?

Usually the **answer would be NO**. Because, trust **failed** to utilise the 85% of the amount derived i.e. Rs.85,000. However, by **submitting form 9A** trust can claim additional exemption of Rs. 5,000 since 15% is already allowed to be accumulated or set a part for charitable purpose.

- **If Income utilised < 85% of income received/ derived**

Sometimes it may happen that the trust may receive more income than it needs to utilise in that year i.e. the expenses trust needs to incur in the year may be less than the income received/derived during the year and the trust may want to set aside an amount in excess of 15% of income derived, for some specific purpose for the object of the trust.

In such circumstances that trust can do so subject to the **following conditions:**

- **Form 10** is required to be furnished stating the purpose and period for which the income is held for accumulation.
- The period of such accumulation shall not exceed 5 years.
- Form 10 should be furnished **on or before the due date** specified in section 139 (1) for furnishing the return of income for the previous year.
- The money so accumulated or set apart should be in excess of **15%** and should be **invested** in the specified modes u/s. 11(5) as follows: -
 - Investment in specified savings and other securities or certificates issued by Central Government
 - Deposit in any account with Post office savings bank
 - Deposit in any account with a scheduled bank, or a co-operative bank;
 - Investment in units of UTI
 - Investment in any security issued by the Central or State Government
 - Investment in Debentures issued by or on behalf of company or corporation which are guaranteed by central or state government
 - Investment or deposit in any public sector company.
 - Investment in bonds issued by a financial corporation engaged in providing long-term finance for industrial development in India and eligible for deduction section 36 (1);
 - Investments in bonds issued by public company formed and registered in India with an objective of providing long term

finance for urban infrastructure or purchase of residential house

- Investment in Immovable property (other than Plant or machinery)
 - Deposits with IDBI
 - Investments in the any other mode or forms as said in rule 17C like investment in mutual funds, acquiring shares of incubate by an incubator, acquiring shares of National Skill Development Centre etc.
- If any income as referred above: -
 - Is applied for purposes other than charitable or religious purposes or
 - Is not utilised before the expiry of 5 years or
 - Ceases to remain invested in the above-mentioned forms or modes or
 - Credited or paid to any institution or trust registered under section 12AA or mentioned u/s 10(23C).

Shall be deemed to be income of the trust in the previous year in which there is a breach of any of such condition.

Clarification on filing Form 9A and Form 10:

Although in both the cases as discussed above, although the amount spent for charitable purposes is less than 85% of the total income, one should understand the reason for the set aside of income in order to file the correct form. In case the income derived in the current year is being set aside by the trust for some specific purpose and objective. Eg. To build an additional building or expansion in future then the trust must file Form no 10. However if it is to be spent for regular object of the trust and the income could not be applied due to some reason and is expected to be applied in the next year, in that case the trust must file Form

9A and specify the reason for the non-utilisation of funds in the current year.

Exemption on sale of Capital Asset:

Capital gain arising on the sale of capital asset held wholly under trust for religious or charitable purposes is exempt to the extent specified here under:

| Amount used to buy 'other capital asset' | Exemption |
|--|---|
| Whole Net Consideration | Whole of the capital gains |
| Part of the consideration | Exempted Capital gain = Cost of new asset - Cost of transferred asset |

| | Description | Case 1 | Case 2 |
|--------|--|---------|---------|
| Year 1 | Income actually received | 90,000 | 90,000 |
| | Income accrued – not received | 10,000 | 10,000 |
| | Total income | 100,000 | 100,000 |
| | Spent for charity purpose | 70,000 | 50,000 |
| | Other trust towards corpus | NIL | 10,000 |
| | Form 9A | | |
| | Form 10 | | |
| Year 2 | Remaining amount received | 10,000 | 10,000 |
| | Spent for charity purpose | 5,000 | 5,000 |
| | Other trust towards general purpose | NIL | 5,000 |
| | Compute income in both the cases for 2 years | | |

Case 1:

| Particulars | Amount | Remarks |
|---------------------------------|----------|---|
| Year 1 | | |
| Income actually received | 90,000 | |
| Income accrued but not received | 10,000 | |
| Total Income of the year 1 | 1,00,000 | |
| Amount to be utilised | 85,000 | |
| Less: Amount actually utilised | (70,000) | |
| Less: Income short utilised | 15,000 | Form 9A should be furnished before the filing of ITR u/s 139 with the reason specified for non-utilisation. |
| Taxable income | Nil | |

| | | |
|--|--------|--|
| Year 2 | | |
| Income of previous year received in current year | 10,000 | |
| Less: Income spent towards charitable purpose | 5,000 | |
| Unutilised amount | 5,000 | Since, the amount not spent in the extended period, this part will be taxable. |
| Taxable income | Nil | |

Case 2:

| Particulars | Amount | Remarks |
|---|-----------------|---|
| Year 1 | | |
| Income actually received | 90,000 | |
| Income accrued but not received | 10,000 | |
| Total Income of Year 1 | 1,00,000 | |
| Amount to be utilised | 85,000 | |
| Less: Amount actually utilised | 50,000 | |
| Less: donation made to other trust towards corpus | 10,000 | The trust will not be able to avail exemption under section 11(1), donation given with a specific direction that they shall form part of the corpus of other trust. |
| Remaining amount | 25,000 | Form 9A should be furnished before the filing of ITR u/s 139 with the reason specified for non-utilisation. |
| | | |
| Taxable income | 10,000 | |

| | | |
|--|---------------|--|
| Year 2 | | |
| Income of previous year received in current year | 10,000 | |
| Less: Income spent towards charitable purpose | 5,000 | |
| Donation to other trust towards general purpose | 5,000 | Not allowed as deduction |
| Remaining (25k-5k-5k) | 15,000 | Since, the amount not spent in the extended period, this part will be taxable. |
| Taxable income | 20,000 | |

Compiled by Income Tax Team, DNV & Co.

Residential Status of an Individual under The Income Tax

Section 6 of The Income Tax Act defines parameters to determine residential status of an assessee. The key determinant factor is the physical stay of a person in India, during the previous year and preceding few years. The Finance Act 2020 has brought about some key changes in the residential status of an individual specially the Non-Resident Indians. It is important to understand and assess these changes and to find out if it is altering their status and consequently their tax implication in India.

Residential Status:

India recognises 3 kinds of residential status under The Income Tax Act viz:

1. Resident and Ordinary Resident (ROR)
2. Resident but Not Ordinary Resident (RNOR) and
3. Non-Resident (NR).

Scope of taxability:

Depending up on the residential status of a person, the scope of his income that is subject to Indian taxation will be determined.

ROR:

Income of a ROR, whether the source of such income is in India or any place in the world, is wholly taxable in India. If such person has paid tax in any other country from where such income is earned, he will be eligible to claim credit of such tax paid against his tax liability in India, albeit subject to the limitations of the Double Tax Avoidance Treaty with such other country.

RNOR:

If the income accrues or arises in India ie. if the source of income is in India, the income is taxable in India. Further, if he controls and manages any business which is situated

outside India while his stay in India, such income is also taxable in India.

NR:

For NR it is only the income which accrues and arises to them in India is taxable in India. All their other global income is not taxable in India. Further, they are required to disclose only the Indian income and Indian assets in their Tax return in India.

How do we determine the residence status of an individual?

Section 6(1) defines Resident in India. If any one of the following two conditions are satisfied, he becomes a **Resident in India**.

Condition 1:

If any person stays in India is for **more than 182 days** in the previous year, he will be regarded as Resident in India, or

Condition 2:

a) For foreign citizens:

If their stay in India exceed 60 days in the previous year and exceeds 365 days in 4 preceding previous years. (No change made for foreign citizens, in the finance Act 2020)

b) For Indian Resident who is leaving India for the purpose of employment or business:

If their stay in India exceed 182 days in the previous year and exceed 365 days in 4 preceding previous years.

Basically, there is no change made (in Finance Act 2020) in this clause too. For an Indian resident who is leaving India for the purpose of employment or business, the same condition of 182 days in the previous year continue to apply.

c) For Indian citizens (OCI) or for Person of Indian origin (PIO):

They are normally referred to as 'Visiting Indians'. This is where the changes are made. These changes have impacted many NRIs who have some close connection with India.

If such an OCI or PIO has Indian income exceeding Rs. 15 Lakhs per year and if his stay in India exceed **120 days** in the previous year and 365 days in 4 preceding previous years, he will be regarded as Resident in India.

If such person becomes resident in India by virtue of this clause, he will always be regarded as Resident but Not Ordinary Resident (**RNOR**) in India as mentioned in Section 6(6) below.

Section 6(1A) on 'deemed resident':

This is a new sub section and new concept of 'deemed resident' inserted by the Finance Act, 2020. This clause was introduced since it was noticed that some Indian citizens shifts their stay in low or no tax jurisdiction to avoid payment of tax in India.

It states that, regardless of what is mentioned in clause 6(1) above, an Indian citizen if he is not liable to be taxed in any other country by the reason of his domicile or residence or any other criteria of such nature, shall be 'deemed to be resident in India'.

The above clause is applicable only if his Indian income exceeds Rs. 15 Lakhs per year.

The CBDT has clarified that an Indian citizen who becomes deemed resident in India under this provision, the income earned by him outside India will not be taxable in India unless it is derived from a business or profession in India.

If such person becomes resident in India by virtue of this clause, he will always be regarded as Resident but Not Ordinary Resident (RNOR) in India as mentioned in Section 6(6) below.

Section 6(6) defines Resident but not ordinary resident status (RNOR):

Having satisfied test of Resident in India, a person will be regarded as a RNOR if any of the following conditions are satisfied:

- 1) A person is Non-Resident in India in 9 out of 10 years preceding the previous year or
- 2) A person has been in India for 729 days or less in 7 years preceding the previous year or
- 3) A non-resident but an OCI or a PIO, whose total Indian income exceeds Rs. 15 Lakhs in a year and whose stay in India is for 120 days or more but less than 182 days in the previous year or
- 4) An Indian citizen who is a 'deemed resident in India' in accordance with Section 6(1A) as mentioned above.

Thus, due to the amendment in the definition of Residence Status of an individual, it is important to reverify and reassess the residential status of specially the NRIs who visits India for less than 182 days but more than 120 days in a year since it could have wide implication on their scope of income being liable to be taxed in India.

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