

NRI Professional



- Definition of Resident & Not Resident
- Interpretations
- Difference Between FEMA 1999 & IT Act 1961
- Budget 2020 Impact Over Residency Status

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DEFINITIONS

**RESIDENT
&
NON-RESIDENT**

Section 2 (v): Person Resident in India Means—

(i)	a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—	
	(A)	a person who has gone out of India or who stays outside India, in either case—
(a)		for or on taking up employment outside India, or
(b)		for carrying on outside India a business or vocation outside India, or
(c)		for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
	(B)	a person who has come to or stays in India, in either case, otherwise than—
		(a) for or on taking up <u>employment</u> in India, or
		(b) for carrying on in India a <u>business or vocation</u> in India, or
		(c) <u>for any other purpose</u> , in such circumstances as would indicate his intention to stay in India for an uncertain period;
(ii)		any person or body corporate registered or incorporated in India,
(iii)		an office, branch or agency in India owned or controlled by a person resident outside India,
(iv)		an office, branch or agency outside India owned or controlled by a person resident in India;

Section 2 (w): Person Resident outside India Means

	"person resident outside India" means a person who is not resident in India;

DEFINITIONS

**Interpretation
of**

RESIDENT & NON-RESIDENT

INTERPRETATIONS

PFY-Previous FY, FC-Foreign Citizens/Nationals, IC-Indian Citizen or PIO/OCI, R=Resident,
NR=Non-Resident, D=Domicile

<u>D</u>	<u>PFY/Stay FY/Stay in India</u>	<u>Purpose of Going Abroad/Coming to India</u>	<u>Status</u>
IC	18-19/182 19-20/183	NA	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is < or =182 Day hence NR (c) 20-21: Stay in PFY 19-20 >182 Days Hence R
IC	18-19/183 19-20/182	NA	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is >182 Day hence R (c) 20-21: Stay in PFY 19-20 < or =182 Days Hence NR
IC	18-19/165 19-20/61	First Two Purpose-certainty Irrelevant, 3rd purpose – relevant-Left India on 1-6-19	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is < or =182 Day hence NR for whole year date of leaving India 1-6-19 does not have any substance (c) 20-21: Stay in PFY 19-20 >61 Days Hence NR also gone for three purpose Outside India

INTERPRETATIONS

PFY-Previous FY, FC-Foreign Citizens/Nationals, IC-Indian Citizen or PIO/OCI, R=Resident, NR=Non-Resident, D=Domicile

<u>D</u>	<u>PFY/Stay FY/Stay in India</u>	<u>Purpose of Going Abroad/Coming to India</u>	<u>Status</u>
IC	18-19/250 19-20/61	First Two Purpose- certainty Irrelevant, 3 rd purpose –relevant-Left India on 1-6-19	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is >182 Days usually R but as he has gone for three purpose outside India on 1-6-19 he will be NR for 1-6-19 to 31-3-20 but if he would have gone for certain purpose then R not NR (c) 20-21: Stay in PFY 19-20 < or =182 Days Hence NR also gone for three purpose Outside India
IC	18-19/250 19-20/275	First Two Purpose- certainty Irrelevant, 3 rd purpose –relevant-Left India on 1-1-20	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is >182 Days usually R but as he has gone out for Three Purpose on 1-1-20 he will be R for 1-4-19 to 31-12-19 & N for 1-1-20 to 31-3-20 (c) 20-21: Stay in PFY 19-20 <182 Days Hence Usually R but as he has gone out of India for three purpose-NR
FC	18-19/165 19-20/304	First Two Purpose- certainty Irrelevant, 3 rd purpose –relevant- Coming in India on 1-6-19	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is < or =182 Day hence NR-Period-1-4-19 to 30-05-2019 and Resident-Period-01-06-2019 till 31-03-2020 as condition 182 days not applied 20-21: Stay in PFY 19-20 >182 Days Hence R

INTERPRETATIONS

<u>D</u>	<u>PFY/Stay FY/Stay in India</u>	<u>Purpose of Going Abroad/Coming to India</u>	<u>Status</u>
FC	18-19/250 19-20/61	First Two Purpose- certainty Irrelevant, 3 rd purpose – Coming in India on 1-6-19	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is >182 Days & also fulfil three purpose in India hence for whole year-R (c) 20-21: Stay in PFY 19-20 < or =182 Days Hence NR
FC	18-19/0 19-20/275	First Two Purpose- certainty Irrelevant, 3 rd purpose Irrelevant – Came in India-India on 1- 1-20	(a) 18-19-Depends on PFY 17-18 (b) 19-20: Stay in PFY 18-19 is <182 Days = NR for 01-4-19 to 31-12-19 & he will be Resident for the period from 01-01-2020 to 31-03-2020
IC	18-19/0 19-20/305	AOI/BOI/Firm/Body Corporate Registered/Incorporated in India on 01-06-19	Resident from 01-06-19 to 31-3-20 & R for subsequent years as well...
IC	18-19/0 19-20/91	AOI/BOI/Firm/Body Corporate/Local Authority Registered/Incorporated in India on 01-01-20	Resident from 01-01-20 to 31-3-20 & R for subsequent years as well...as you can see there is no parameter like residing more than 182 days existing here

INTERPRETATIONS

<u>D</u>	<u>PFY/Stay FY/Stay in India</u>	<u>Purpose of Going Abroad/Coming to India</u>	<u>Status</u>
FC	18-19/0 19-20/60	Branch/Office or Agency (Registered only as Prior Approval cum licence is required to be obtained from RBI) of Foreign Entity in India owned or controlled (FULL) by a person resident outside India. Licence received from 1-2-2020	Resident for the period 01-02-2020 to 31-03-2020 & subsequent years.
FC	18-19/0 19-20/60	Branch/Office or Agency outside India owned or controlled (FULL) by a person resident in India. Branch office of BOI established on 31-12-2019.	Resident for the period 01-01-2020 to 31-03-2020 & subsequent years till the time full control over the management being exercised.
IC	18-19/365 19-20/	Student going out of India for Education i.e. any other purpose for a course of two years on 01-01-2020	In the present case, in normal situation, intention of staying abroad is certain that he is pursuing course for two years then the said person would be resident if he has been residing in India in PFY for more than 182 days, in our case >182 days i.e. 365 days in PFY 18-19 but according to circular RBI Ap (DIR) Circular No 45 dated 8-12-2003 student would become Not Resident because usually person going for education abroad does not return many a times back to India for the reason that he wanted to have employment out there or want to pursue higher course or want to avail scholarship etc hence RBI has made it clear that now onwards said student would become NR for the period 01-01-20 to 31-03-2020 till the time he returns to India.