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NRIs should apply to I-T dept for relief from double taxation

If they have lost non-resident status because of enforced stay in India, this can bring them some reprieve

BINDISHA SARANG

HOW VARIOUS TYPES OF INCOME ARE TAXED BASED ON STATUS

Particulars	ROR	RNOR	NR
INDIAN INCOME			
Income received or deemed to be received in India	Taxable	Taxable	Taxable
Income accruing or arising or deemed to accrue or arise in India	Taxable	Taxable	Taxable
FOREIGN INCOME Income accruing or arising outside India from			
· Business controlled in India or profession set up in India	· Taxable	· Taxable	· Not taxable
· Other Foreign Income	· Taxable	· Not taxable	· Not taxable

ROR : Resident and Ordinarily Resident; RNOR: Resident but Not Ordinarily Resident; NR: Non-Resident

Source: RSM India

With the September 30 deadline for filing income tax returns for 2020-21 (assessment year 2021-22) fast approaching, non-resident Indians (NRIs) who were forced to overstay in India because of the pandemic are worried about whether they should file their tax return as 'resident' or 'non-resident'.

How is residential status determined?

According to Kapil Rana, founder and chairman of HostBooks: "The taxability of a person's income depends on his residential status in the country." That in turn depends on the number of days spent in India in the relevant financial year. A person's residential status is tested every financial year.

A person can fall into one of three categories: Resident, non-resident, and resident but not ordinarily resident (RNOR).

Rana adds, "A resident has to pay tax in India on income earned in India and outside India from any source and in any manner. On the other hand, a non-resident or RNOR has to pay tax only on his income earned from India or through a source in India."

YOUR MONEY

An individual is treated as a resident if he stays in India for 182 days or more during the previous year; or if he stays for 60 days or more during the previous year and 365 days or more during the four years preceding the previous year.

In the case of an Indian citizen and a person of Indian origin (PIO) who visits India during the year, the period of 60 days as mentioned in the second condition above gets substituted with 182 days.

Gopal Bohra, partner at NA Shah Associates, adds, "The 60 days in the second condition gets replaced by 120 days in the case of an Indian Citizen or a PIO who resides outside India and comes on a visit to India, and whose total income from Indian sources exceeds ₹15 lakh."

From AY22, an Indian citizen earning total income in excess of ₹15 lakh (other than from foreign sources) shall be deemed to be resident in India if he is not liable to pay tax in any country.

The Income Tax Act, 1961, only defines who will be considered a resident. Aditya Chopra, managing partner, Victoriam Legalis-Advocates & Solicitors, says, "Someone who does not qualify based on the criteria for resident is considered an NRI."

RNOR status is given to individuals who have been non-resident in India during nine out of ten financial years preceding that year, or if the individual has been in India during seven previous years preceding that year for a total of 729 days or less.

If NRI status is relinquished

"Once the NRI becomes a resident, the global income earned by him will become taxable in India. This is a concern especially for those based in countries like United Arab Emirates and Bahrain, which do not have such income tax implications. The other disadvantage includes disclosing details about ownership of stocks and properties abroad," says Chopra.

Relief from double taxation

Double taxation occurs when an individual's income is taxed both in the country of residence and in the source country. "To provide relief from it, many countries have entered Double Taxation Avoidance Agreements (DTAAs)," says Suresh Surana, founder, RSM India.

If an NRI got stranded in India, and his physical stay exceeded the prescribed number of days, making him a resident, he may apply to the Central Board of Direct Taxation for relief from double taxation.

Says Moiz K Rafique, managing partner, Privy Legal Service LLP: "To claim relief from double taxation, he will have to obtain a Tax Residence Certificate (TRC)."