

RELAXATION FOR INDIVIDUALS IN RESIDENTIAL STATUS FOR FY 2019-20

INTRODUCTION

Determination of residential status of a person under Income Tax Act, 1961 is based on the number of days stayed in India in a financial year. Due to Novel Corona Virus, India has taken unprecedented measures such as restricting travel and implementing strict quarantine requirements. This has led to various hardships for individuals who had come to India on a visit and had to extend their stay in India on account of nationwide lockdown and suspension of international flights which could make some of them “Residents” in India. In order to eliminate tax issues arising due to this crisis, India has been proactive in providing relief to such individuals by excluding the number of days of forced stay in India due to such lock down emergency while determining the residential status¹ which are discussed in this note.

CLARIFICATION REGARDING DAYS OF STAY IN INDIA

CBDT has clarified that if an Individual who had come to India on a visit before 22nd March 2020, then the following days are to be excluded for determining the total stay in India for FY 2019-20:

Situation after Visit to India	Number of Days to be excluded from total stay in India
Has been unable to leave India on or before 31 st March, 2020	Number of days from 22nd March, 2020 to 31st March, 2020
Has been quarantined in India due to COVID-19 on or after 1st March, 2020 and has departed from India on an evacuation flight on or before 31 st March, 2020 or has been unable to leave India on or before 31 st March 2020	Number of days beginning of his quarantine to his date of departure or 31st March, 2020 as the case maybe
Has departed from India on an evacuation flight on or before 31 st March 2020	Number of days from 22nd March, 2020 to his date of departure

¹ Vide Central Board of Direct Taxes (CBDT) Circular No. 11/2020 dated 08.05.2020

GBCA COMMENTS

- As a result of this Circular, days for the above period shall be excluded for determining residential status of individuals who intended to leave India before the end of the previous year for maintaining their status as “Non-Resident” or “Not Ordinarily Resident”.
- Hence, their foreign income will not be taxed in India. However, they will continue to be liable for tax on Indian income and tax return filing, if applicable.

CONCLUSION

This is indeed a welcome move for individuals whose stay in India got prolonged due to the COVID-19 situation. This will help them in determining the residential status for FY 2019 in a just manner. India has also been proactive in stating that suitable relief will be provided for FY 2020-21 depending upon normalization and resumption of international flights.

Similar difficulties may also rise due to forced stay of such individuals as well as Indians who could not travel outside India. This exceptional and temporary change of location of employees working from home or temporary conclusion of contracts or taking decisions in the home or by agents in India because of COVID-19 crisis may create Permanent Establishment (PE) or Place of Effective Management (POEM) for foreign companies in India. We hope Government provides similar relaxation to avoid any adverse tax implications arising due to this crisis situation.

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