

### **India clarifies on tax residency of individuals due to COVID-19 lockdown**

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India has been under a nation-wide lockdown since 22 March 2020 due to COVID-19 pandemic which has also resulted in cancellation of international flights. As the COVID-19 lockdown has extended over two financial years in India i.e. financial year 2019-20 (1 April 2019 to 31 March 2020) and financial year 2020-21 (1 April 2020 to 31 March 2021), questions have arisen on how the tax residency will be determined for individuals, who are as such non-residents, but are staying in India only due to these circumstances.

At the outset, it is important to note that an individual will be considered 'resident' in India under the Income-tax Act, 1961 ('the Act'), if:

- a) The Individual is in India for an aggregate period of 182 days or more in the financial year;  
*or*
- b) The Individual is in India for an aggregate period of 60 days or more in the financial year and the total stay in India in the preceding 4 financial years was 365 days or more.

For non-Indian individuals visiting India, both the above conditions need to be tested to determine their tax residential status in India. However, Indian citizens or persons of Indian origin, who are based outside India and visit India, will be treated as 'resident' in India only if they are in India for an aggregate period of 182 days or more in the financial year.<sup>1</sup>

Due to the COVID-19 lockdown, there could be cases where individuals may become 'resident' in India during financial year 2019-20 and 2020-21 on account of their involuntary extended stay in India. To address hardships of genuine cases, on receipt of representations, the Indian authorities have issued a Circular<sup>2</sup> on 8 May 2020. The Circular clarifies how the number of days of stay in India would be computed for the financial year 2019-20 in cases of Individuals who came to India on a visit before 22 March 2020. A summary of the same is as under:

<b>Situation</b>	<b>Circumstances</b>	<b>Period of stay in India to be excluded:</b>
1	Unable to leave India on or before 31 March 2020	22 March 2020 to 31 March 2020
2	Quarantined in India due to COVID-19 on or after 1 March 2020 and departed on an evacuation flight on or before 31 March 2020	From date of beginning of quarantine to date of departure
3	Quarantined in India due to COVID-19 on or after 1 March 2020 but unable to leave India on or before 31 March 2020	From date of beginning of quarantine to 31 March 2020
4	Departed on an evacuation flight on or before 31 March 2020	22 March 2020 to date of departure

<sup>1</sup> From 1 April 2020 onwards, separate residency conditions are provided for certain Indian citizens and Indian-origin individuals. Our notes on the impact of the updated residency provisions were circulated earlier.

<sup>2</sup> Circular No. 11 of 2020 dated 8 May 2020 issued by the Central Board of Direct Taxes (CBDT)

Essentially, the Circular provides that based on the facts of the case, 1 to 31 days would be excluded (period between 1 March 2020 to 31 March 2020) while determining the tax residency of such individuals for financial year 2019-20.

Broadly speaking, the relief under this Circular would have to be considered as under:

Sr. No.	Particulars	Relief
1	Non-Indian individual visiting India for work	Depending on facts, 1 to 31 days of stay in India would be excluded while considering the residential status threshold of: - 182 days stay in India in financial 2019-20; or - 60 days stay in India in financial 2019-20 if the stay in India for the financial years 2015-16 to 2018-19 was 365 days or more.
2	Non-Indian individual visiting India for leisure  <i>(Assuming that stay in India for the financial years 2015-16 to 2018-19 would be less than 365 days)</i>	Depending on facts, 1 to 31 days of stay in India would be excluded while computing the residential status threshold of 182 days stay in India in financial 2019-20.
3	Indian citizens or persons of Indian origin visiting India for work or leisure	Depending on facts, 1 to 31 days of stay in India would be excluded while computing the residential status threshold of 182 days stay in India in financial 2019-20.

The Circular does not deal with determination of the residential status for the financial year 2020-21 (1 April 2020 to 31 March 2021). In this context, by way of a press release of 9 May 2020, the Indian authorities have clarified that while a suitable Circular shall be issued after international flight operations normalise, the period of stay of these individuals up to the date of normalisation of international flight operations will be excluded.

On a separate note, as per the Act:

- A firm is resident in India if even a part of its management or control is exercised from India.
- A foreign company is resident in India if its 'place of effective management' is in India.

It would be desirable that the tax authorities also clarify on the tax residency of such foreign entities in India if a part of their management or control has been exercised from India on account of the extended involuntary stay of its concerned decision maker, owner, etc. in India due to the lockdown.