

Impact of Covid-19 on Tax Residency of an Individual

Introduction

Financial Year 2019-2020 came to an end on March 31, 2020 with several nations of the world suspending air travel and closing borders to prevent spread of COVID-19 which caused mayhem in the last quarter. India was no exception, as the Government of India imposed lockdown with effect from March 25, 2020 leaving number of individuals trapped in India or stranded outside India contrary to their will and plans. Most of these individuals would, at present, be least bothered about their tax filings except few who planned their stay inside India or outside India to avail tax benefits for the Financial Year 2019-2020. However, the Income Tax Act, 1961, just like tax statutes in other nations, does not in itself distinguish between intended or unintended stay in India while determining the 'residential status' of an Individual which is pivotal in determination of the tax liability of such individual for the relevant financial year under Indian law.

Residential Status and Scope of Income

As per the Indian tax laws an individual can have one of the three types of residential status for a financial year. An individual can be:

- 'Non-Resident' in India – who would generally be liable to pay tax on income having source in India; or
- 'Resident' in India who would generally be liable to pay tax on global income irrespective of its source; or
- 'Resident but Not Ordinarily Resident' who would generally be liable to pay tax on income having source in India as well as income from a business controlled or a profession in India even through the source of such business/professional income is outside India

Clearly, the residential status of an individual in India determines the quantum of the income that gets caught in the Indian tax net. The residential status of an individual is to be determined for each financial year after taking into account the aggregate number of days of such individual's stay in India. For example, if an individual visited India in first quarter and third quarter of the Financial Year 2019-20 for 20 and 50 days, respectively, his stay in India for the Financial Year 2019-20 would aggregate to 70 days.

Determination of Residential Status

An individual is treated as 'Non-Resident' in India for a financial year (hereinafter referred to as the 'Relevant Financial Year') in case such individual fails to fulfill both the following 'Primary Conditions'. On the other hand, an individual is treated as 'Resident' in India for

the Relevant Financial Year in case such individual though fulfilling one or both of the 'Primary Conditions' , fails to fulfill both the 'Additional Conditions'.

Primary Conditions

- First Primary Condition – such individual stays in India for 182 days or more during that Relevant Financial Year, or
- Second Primary Condition – such a person stays in India for a period of 60 days or more during the Relevant Financial Year, while having already stayed in India for an aggregate period of 365 days or more during the 4 financial years immediately preceding the Relevant Financial Year.[1]

Additional Conditions

- First Additional Condition – individual was 'Non-Resident' during 9 financial years out of 10 financial years immediately preceding the Relevant Financial Year, or
- Second Additional Condition – individual was in India for 729 days or less during the 7 financial years immediately preceding the Relevant Financial Year.

In case an individual fulfills one or both of the 'Primary Conditions' along with one or both of the 'Additional Conditions' such individual is generally treated as 'Resident but not Ordinarily Resident' in India.

An Indian Citizen having total income (except income from foreign sources) exceeding INR 15 lakhs during the Relevant Financial Year is deemed to be 'Resident but not Ordinarily Resident' provided such Indian Citizen is not 'liable to tax' in any other country or territory by reason of domicile or residence or any other criteria of similar nature.

The period of actual stay in India determines the residential status of an individual which in turn is determinative of the scope of total income of such individual liable to tax in India. The present travel restriction can impact the residential status of an individual. Take for example a businessman/ professional controlling a business/ profession from India who originally planned to spend only 179 days in India during the Financial Year 2019-2020 to maintain his residential status in India as 'Non-Resident'. Where he gets stuck in India due to travel restriction imposed on March 25, 2019 he has now been in India for more than 182 days and would therefore stand to lose his status as 'Non-Resident' in India. As a likely consequence, some of the income arising outside India may be subjected to tax in India.

It is to overcome such difficulties that the Indian Revenue vide its Circular No. 11 of 2020 dated May 08, 2020 [2] has granted relief to individuals who had come to India on a visit before March 22, 2020 and intended to leave India before the end of Financial Year 2019-2020 for maintaining their status as a non-resident or not ordinary resident in India. It has clarified that, while determining the tax residency status of such an individual under Section 6 of the Act for the Financial Year 2019-2020, it will not include the period of his stay:

1. From March 22, 2020 to March 31, 2020, where he was unable to leave India on or before March 31, 2020; or

2. From the day of beginning of his quarantine to the date of his departure, where he was quarantined in India on account of Covid-19 on or after March 1, 2020 and has departed from India on an evacuation flight on or before March 31, 2020; or
3. From the day of beginning of his quarantine to March 31, 2020, where he was quarantined in India on account of Covid-19 on or after March 1, 2020 and has been unable to depart from India on or before March 31, 2020; or
4. From March 22, 2020 to the date of his departure, where he has departed from India on an evacuation flight on or before March 31, 2020.

Not only India but also multiple countries including Singapore,[3] Australia[4], United States of America[5] and United Kingdom[6] have granted some form of relief to taxpayers in this context.

The present situation has given rise to a whole new set of issues that would be faced by the taxpayers, tax administrations and regulators around the world. For now, the Indian Government has chosen to ignore the impact of the present disruptions treating the same as temporary in nature. But, what would happen if the present state of affairs becomes the new norm is another issue waiting to arise.

[1] In case of an individual being Indian Citizen or a Person of Indian Origin, with the object of permitting longer stay in India before being treated as 'Resident' in India, a higher threshold limit of 120 days or 182 days (instead of 60 days) has been provided in the Second Primary Condition. In case total income (excluding income from foreign sources) does not exceed INR 15 Lakhs during the Relevant Financial Year, higher threshold limit of 182 days (instead of 60 days) exists whereas in case total income (excluding income from foreign sources) exceeds INR 15 Lakhs during the Relevant Financial Year higher threshold limit of 120 days (instead of 60 days) has been provided. Similar benefit has been extended to an individual who leaves India as a crew member of a ship or for employment as their stay in India must be for 182 days or more during the Relevant Financial Year in case they are to be treated as 'Resident' in India.

Please note that an individual being Indian Citizen or Person of Indian Origin fulfils the Second Primary Condition but his period of stay in India during the Relevant Financial Year is less than 182 days but is for 120 days or more, such an individual is also treated as 'Resident but not Ordinarily Resident' in India.

[2] Department of Revenue, Central Board of Direct Taxes, Ministry of Finance, Government of India, Circular No. 11 of 2020, accessible at https://www.incometaxindia.gov.in/news/circular_no_11_2020.pdf

[3] Inland Revenue Authority of Singapore, Government of Singapore, COVID-19 Support Measures and Tax Guidance for Individuals, accessible at <https://www.iras.gov.sg/irashome/COVID-19-Support-Measures-and-Tax-Guidance/Tax-Guidance/For-Individuals/>

[4] Australian Taxation Office, Australian Government, Covid 19 Guidance, Covid 19 Individuals' Frequently Asked Questions, accessible at <https://www.ato.gov.au/General/COVID-19/COVID-19-frequently-asked->

[questions/Individuals-frequently-asked-questions/#NonresidentstemporarilyinAustraliaasares](#)

[5] Internal Revenue Services, Department of the Treasury, Federal government of the United States, Revenue Procedure 2020-20, accessible at <https://www.irs.gov/pub/irs-drop/rp-20-20.pdf>

[6] Her Majesty's Revenue and Customs, Government of the United Kingdom, Guidance Note RDRM11005.