

CBDT prescribes procedure for seeking relief from double taxation for expats stranded in India

Introduction

Under the Income-tax Act, 1961 (the Act), the residential status of an individual taxpayer is determined on the basis of physical presence in India. In view of the lockdown and suspension of international flights due to COVID-19, many individuals could not return from India, triggering concerns around tax residency in India. To address genuine hardships caused to such individuals, the Central Board of Direct Taxes (CBDT), vide Circular No. 11 of 2020 dated 8 May 2020, had relaxed the residency conditions for prescribed individuals in relation to the financial year 2019-20 (FY20). Click [here](#) to read our tax update on the circular.

Thereafter, the government received various representations requesting similar relaxation to determine the residential status for FY21 as well. Recently, the Supreme Court (SC), in one of the cases, directed the petitioner to make a representation before the CBDT for FY21. The SC also directed CBDT to consider such representation within three weeks of the receipt thereof.

CBDT's observations on the possibility of double taxation

The CBDT has now issued Circular No. 2 of 2021 dated 3 March 2021. It has analysed the following aspects and **concluded that there does not appear the possibility of double taxation of income for FY21:**

Provisions under the Act

An individual taxpayer qualifies to be a resident if he/she is in India for:

- 182 days or more during the FY, or
- 60 days or more during the relevant year along with 365 days or more in previous 4 FYs

The above is subject to certain exceptions based on whether the individual is a citizen of India/person of Indian origin or a foreign national.

Accordingly, the CBDT is of the view that a short stay in India during a financial year will generally not trigger residency in India for FY21. Further, the CBDT opined that giving a general relaxation for the stay period of 182 days might result in double non-residency in FY21 since most of the countries have the condition of stay for 182 days or more for determining residency.

Provisions under the tax treaties

- The CBDT noted that the application of the tie-breaker rule as provided in tax treaties should address cases relating to dual-residency. Further, it also noted that a tax treaty generally distributes the taxation rights between the employee's country of residence and the place where the employment is exercised. Accordingly, salaries, wages, and other similar remuneration are taxable only in the country in which the employee is resident unless the employment is exercised in the other country.
- It also made a reference to OECD Policy Responses to Coronavirus (COVID-19) document wherein the OECD has recognised that tax treaties contain the necessary provisions to deal with the cases of dual residency arising due to COVID-19 situations.

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Other aspects

- CBDT noted that a resident is also entitled to claim a foreign tax credit in India for taxes paid in any other country in accordance with the Income-tax Rules, 1962.
- It also analysed relief given by certain countries and noted that some countries have provided relief for a certain number of days subject to the satisfaction of prescribed conditions, whereas some of the countries have not provided any relief.

Procedure to be followed for seeking double taxation relief

- The circular states that in case an individual still faces double taxation due to his/her forced stay in India, such an individual can approach the CBDT.
- For this purpose, such person is required to furnish **Form – NR by 31 March 2021** by **electronic mode** to the Principal Chief Commissioner of Income-tax (International Taxation).
- The form requires individuals to submit their basic information, details of their stay in India, residence in other countries, etc. together with details of doubly taxed income (if any).
- Upon receipt of such form, the CBDT shall examine:
 - i. Whether any relaxation is required to be provided; and
 - ii. Whether general relaxation is required to be provided to a class of individuals.

Our comments

The CBDT has sought to assure individuals, who were stuck in India during FY21, that instances of double taxation of income would be addressed through the domestic tax laws or the tax treaty framework. A mechanism has been provided to intimate CBDT regarding cases where an individual faces double taxation.

However, it is imperative that individuals, especially those who qualify as residents in India, evaluate their tax liability and eligibility for the foreign tax credit for FY21 so that any balance tax liability in India can be discharged accordingly.

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