



CBDT seeks information from Non-residents facing double taxation owing to COVID-forced stay in India

In view of the various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights, CBDT issued Circular No. 2 of 2021 today. It has been provided that if any individual is facing double taxation even after taking into account the relief provided by the relevant Double Taxation Avoidance Agreement (DTAA), he may furnish specified information to the Board.

The Circular mentions that there are less chances that a non-resident person would acquire residential status in India, referring to the provisions of Section 6 (as amended from financial year 2020-21). The Circular lists down the situations where an individual (COI/PIO or non-COI/non-PIO) may become resident in India. Even if resident, the individual will most likely become RNOR in India unless he derives income from business controlled in or profession set up in India.

The circular states that since most countries have a condition of stay of 182 days for determining residency, there may be situations where a person may not become a tax resident of any country in FY 2020-21. In such case of double non-taxation, he may end up not paying tax in any country. Alternatively, in case of dual residency, the tie-breaker rule in DTAA is available.

Further, as per DTAA, employment income would be taxed in only one of the contracting states in which employee is resident, unless the employment is exercised in the other country or employer has a PE in source jurisdiction that bears the remuneration. Credit of taxes paid in any other country can be claimed in accordance with rule 128 of the Income-tax Rules, 1962. OECD in its OECD Policy Responses to Coronavirus (COVID-19), has also recognized that DTAA contain the necessary provisions to deal with cases of dual residency arising due to COVID-19.

Referring to reliefs provided by other countries, and acknowledging possible situations where a particular tax payer may be facing double taxation owing to his forced stay in India during the COVID-19 pandemic, the Board in the circular has concluded that it shall examine whether:

- any relaxation is required to be provided and;

- general relaxation for a class of individuals or specific relaxation needs to be provided.

Specified information needs to be furnished by March 31, 2021 in Form “NR” provided by the Board in this respect, electronically to the Principal Chief Commissioner of Income-tax (International Taxation).

Source: Circular No. 2 of 2021 dated March 3, 2021

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