



COVID-19 induced stay in India

Tax and regulatory considerations



Brief overview

COVID-19 has impacted businesses globally in all possible ways and tax is no exception. While the measures undertaken by countries across the globe has resulted in curtailment of cross border travel, employees who had to travel on work or personal visits to a country other than their country of residence or employment have been stranded in such locations.

Unprecedented situations such as suspension of international flights, extended periods of lockdown(s), quarantine restrictions, delay in processing of visa applications, non-operational embassy(ies), medical treatment or personal exigencies resulted in employees' being stranded in various countries including India. Such challenging situations have resulted in employees being left with no option but to work remotely from their homes/other temporary locations in India for a prolonged period of time.

As travel restrictions are being eased, the pandemic has resulted in a fundamental shift in how workplaces will function in the future with organisations adopting

flexible working models such as 'Work From Anywhere'. While hybrid models have gained ground, the need of the hour is to examine and ensure that remote working by employees is compliant and efficient from a tax and regulatory standpoint both in the country of employment as well as in the country from where such employees are working from remotely.

The Organisation for Economic Co-operation and Development (OECD) has issued two separate sets of guidance for Revenue administrations which prescribe relaxation in terms of employee taxability, creation of Permanent Establishments and change in residency status (place of effective management) of a company in current challenging economic circumstances, on such aspects.

From an India perspective, the Central Board of Direct Taxes (CBDT) has issued two circulars so far clarifying the residential status of individuals due to COVID-19 induced overstay in India.

Possible scenarios:

- Employee/member of Board of Directors of Foreign Company (F Co) on business travel to India - working remotely for the F Co from India due to air travel restrictions
- Foreign national seconded to/employed in India and stranded outside India while on a business or personal travel - working remotely in overseas jurisdiction for the Indian entity
- Indian national/Non-resident Indian employed/seconded outside India, stranded while on a visit to India for personal reasons/family health exigency- working remotely for the F Co from a home office in India
- Indian nationals who have taken up new employment outside India – unable to initiate their secondment/relocation- working remotely for the F Co from India.

Key impact areas - tax and regulatory

Personal income tax



- Possible change in the residential status in India due to prolonged stay
- Tax liability in India owing to change in residential status
- Whether temporary dislocation/working from home office for prolonged period tantamount to employment exercised in India
- Does the residential status change and taxability cease in the country of employment?
- Availability of exemption/relief if any, under applicable tax treaty to avoid double taxation in the country of employment and India
- Depending upon the taxability in India, tax return filing obligation in India.

Corporate tax



- Does the F Co have tax withholding obligation in India where its employees are taxable in India?
- Does remote working by employees stranded in India result in creation of business connection of F Co in India? Where tax treaty applies, does presence of such employees create risk of creation of Permanent Establishment of F Co. in India?
- Potential change in the place of effective management of a company as a result of temporary dislocation or inability to travel of senior executive(s)/member(s) of Board of Directors
- Transfer Pricing implication of any transaction between Indian entity and a F Co with respect to stranded employees.

Indirect tax



- GST implications on reimbursement of salary cost if any, by India entity to F Co with regard to stranded employees
- Possibility of F Co having a fixed establishment in India and corresponding implications.

Foreign exchange regulations



- Permissibility of receipt of salary income in/outside India
- Maintenance of bank accounts in/outside India
- Remittance of salary income outside India.

Social security



- Contribution towards Provident Fund either by the Indian entity or F Co with regard to stranded employees working remotely in India?

Immigration



- Impact of force majeure/prolonged stay on the validity of Visas.

What should organisations do?



Track travel history of all employees stranded in India from the onset of pandemic



Maintain requisite documentation for the nature of work performed/business activities carried out in India by stranded employees



Take cognizance of the legislative updates issued by the Government/tax authorities in India and the country of employment respectively regarding any clarification/relief on stranded employees



Ascertain compliance requirements that need to be adhered to from tax, immigration, social security and other regulatory aspects

How we can help

Advisory

- Undertake review of stranded employees' situation/arrangement and existing documentation
- Basis such review, assess potential risks and implications from tax and regulatory perspective
- Sensitize F Co/Indian entity and the stranded employees about tax and regulatory risks and implications
- Identifying possible approaches, if any, on the identified risk areas in alignment with the provisions of applicable tax treaty, legislative updates and administrative guidance issued by Indian tax authorities and available judicial precedents.

Compliance

- Assistance in obtaining Indian tax registrations (TAN & PAN) of F Co and of the stranded employee as relevant
- Assistance in withholding tax compliances on salary payment and related tax filings for the employer
- Assistance in payment of advance tax/self-assessment tax by the employees
- Tax services on company tax filings (including transfer pricing compliances) and employee tax filings.

At KPMG in India, we provide a wide range of tax and regulatory services aligned to client specific facts, business considerations and related nuances.

The KPMG in India advantage

- We work with a multi-disciplinary team involving professionals from direct tax, global mobility services, indirect tax, transfer pricing and foreign exchange regulations to proactively engage in finding a tax and regulatory compliant approach
- In depth technical knowledge and experience delivered through a competent and dedicated client service team
- Long standing global relationship with various multi-national clients, including servicing globally mobile employees and CXOs, thus, aware of their working/internal processes and service expectations from us
- Leverage our global network of member firms to address cross border tax/regulatory issues
- Vast experience in assisting various clients with advisory on tax and regulatory matters on this topic
- Strong dispute resolution team supported by ex-senior officials of apex government agencies such as CBDT, RBI, etc.

KPMG in India contacts:

Rajeev Dimri
National Head of Tax
T: +91 124 307 4077
E: rajeevdimri@kpmg.com

Ajay Mehra
Partner and Head
Tax Markets and Strategy
T: +91 22 3090 2701
E: ajaymehra@kpmg.com

Naveen Aggarwal
Partner and Head
North India Tax
T: +91 124 307 4416
E: naveenaggarwal@kpmg.com

Parizad Sirwalla
Partner and Head
Global Mobility Services, Tax
T: +91 22 3090 2010
E: psirwalla@kpmg.com

home.kpmg/in

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.

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