



# GMS Flash Alert

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## India - COVID-19: Clarifying Tax Residency for Individuals Staying More Days

Many nonresidents have had to extend their stay in India, in view of the lockdown and suspension of international flights owing to the outbreak of COVID-19. This may have resulted in a change of their residency status.

The Central Board of Direct Taxes (CBDT) issued Circular No. 11 of 2020, dated 8 May 2020, that clarifies the residency situation of Nonresident Indians (NRIs) and foreign visitors whose stay in India during the tax year 2019-20 lasted longer than they expected due to the COVID-19 lockdown.

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### WHY THIS MATTERS

Many taxpayers and their employers are concerned about the impact that additional unplanned days spent in India may have on their India tax residency status.

CBDT's additional guidance provides some welcome clarity in cases where individuals have needed to spend additional days in India due to COVID-19-related travel and "stay at home" restrictions.

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### Background

Section 6 of the Income-tax Act, 1961 (the Act) deals with provisions relating to the residency of an individual. The residency status of an individual in India ("Ordinarily resident" or a "non-resident" or a "not ordinarily resident") is dependent, *inter-alia*, on the period of the individual's stay in India during a particular Financial Year (FY) or past FYs.

## Key Points of the Clarifications Issued by CBDT

CBDT had stated that for individuals who had come to India on a visit before 22 March 2020, and had intended to leave India on or before 31 March 2020, certain days would not be considered for determining their tax residency<sup>1</sup> for the FY 2019-20 as follows:

- Where an individual had not been able to leave India from 22 March 2020 during the FY 2019-20 (the days when international flights were suspended) until 31 March 2020 (end of the FY);
- Where an individual had been in quarantine in India on or after 1 March 2020, and had departed on an evacuation flight on or before 31 March 2020, the days from the beginning of the quarantine until the date of departure;
- Where an individual had been in quarantine in India on or after 1 March 2020, and had been unable to leave India on or before 31 March, the days from the beginning of the quarantine to 31 March 2020;
- Where an individual had departed on an evacuation flight on or before 31 March 2020, the days from 22 March 2020 until the date of departure.

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### KPMG NOTE

The Circular issued by CBDT aims to clear up the ambiguity around the residency status of individuals by taking on board concerns of NRIs and other foreign nationals who arrived in India but could not return to their countries. This is crucial as the taxability of overseas income and disclosure of overseas assets in a FY depends on the individual's residency status, which, in turn, depends on his/her number of days of stay in India.

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### FOOTNOTE:

1 Section 6 of the Act.

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### RELATED RESOURCE:

This article is excerpted, with permission, from "Period of Stay in India During Lockdown Not to Be Counted for Determining Residential Status of NRIs, Foreign Nationals," in *Tax Flash News* (11 May 2020), a publication of the KPMG International member firm in India.

## Contact us

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