Relief for NRIs, foreign visitors as tax residency rules eased

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'DISCOUNTING' THE STAY

- NRIs, foreign nationals stuck in India due to Covid lockdown allowed tax residency relief
- There were apprehensions that extended stay could lead to these individuals becoming Indian residents in accordance with Section 6 of the I-T Act
- An individual who has come to India on a visit before March 22, his period of stay from March 22 to March 31 shall not be taken into account
- Circular for FY21 to be issued once international flights resume

In a relief to Non-Resident Indians (NRIs), the government on Friday allowed keeping out the period of their forced stay in the country in determining their tax residency status.

The government imposed a lockdown on March 24 and is yet to open up travel, including international flights.

Various NRIs/Persons of Indian Origin who had travelled to India before the commencement of the lockdown are not able to return and had expressed their worries over their tax residency status.

"Considering various representations from people who had to prolong their stay in India due to the lockdown and suspension of international flights, expressing concern that they will be required to file tax returns as Indian residents, Finance Minister Nirmala Sitharaman today (on Friday) allowed discounting of prolonged stay period in India for the purpose of determining residency status," the Central Board of Direct Taxes (CBDT) said in a release.

While the relief has been provided in the case of 2019-20, a follow-up circular will be issued for 2020-21 once international flights resume.

Turn to Page 10

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"... it is not yet clear as to when international flight operations would resume, a circular excluding the period of stay of these individuals up to the date of normalisation of international flight operations, for determination of the residential status for the financial year 2020-21 shall be issued after the flight are resumed," it said.

The circular said an individual who came to India on a visit before March 22, 2020, and had been unable to leave India on or before March 31, 2020, his period of stay in India from March 22 to March 31 would not be taken into account. Also, in cases where a person has been quarantined in India on account of Covid-19 on or after March 1 and has departed on an evacuation flight on or before March 31 or has been unable to leave India on or before March 31, his period of stay from the beginning of his quarantine to his date of departure would not be taken into account.

"In line with the OECD (Organisation for Economic Cooperation and Development) suggestion, India has chosen to exclude the unintended stay in the country due to quarantine/lockdown ... This was an expected relaxation and it is good that the government has quickly moved to clarify this. Hopefully the same is done for FY21," said Amit Maheshwari, partner, AKM Global.

Shailesh Kumar, director, Nangia Andersen Consulting, said it was welcome. "One may expect a similar circular for FY21." Tax residency for individuals is determined on the basis of the number of days spent in India during a financial year.

Any individual staying in India for a minimum of 182 days in any financial year qualifies to be "resident" in India for that year. A person who stays in India for a minimum of 60 days in a financial year may also qualify as a "resident" for tax purposes if his aggregate stay in India in the immediately preceding four financial years exceeds 365 days.

However, in the case of NRIs and PIOs, the minimum period of stay has been reduced from 182 days to 120 days for qualifying to be a resident if the aggregate stay of such NRIs or PIOs in the immediately preceding four years exceeds 365 days and the aggregate taxable income exceeds ₹15 lakh (excluding income from foreign sources).