



# Zinzuwadia & Co.

## Chartered Accountants

**Issues in Residential Status of  
Indian held up outside India**

An Independent member firm of



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# Introduction

**Pandemic situation can cause Two Situations for people travelling abroad:-**

- Non Resident held up in India
- Resident Indians held up outside India

# Non Resident held up in India

- Indian Government has issued a clarification circular for the Non Residents stuck in India by giving the notification as on 8th May, 2020 stating the criteria for the same.

<b>Situation</b>	<b>Period of Stay to be Ignored</b>
Departed on an evacuation flight on or before 31 March 2020	22nd March, 2020 to the Date of Departure
Unable to leave India on or before 31 March 2020	22nd March, 2020 to 31st March,2020
Quarantined in India on or after 1 March 2020 and departed on an evacuation flight on or before 31 March 2020	Date of Beginning of his Quarantine to Date of Departure
Quarantined in India on or after 1 March 2020 and unable to leave India on or before 31 March 2020	Date of Beginning of his Quarantine to 31st March,2020

# Resident Indians held up outside India

## Whether any Notification is declared?

No, Government has not declared any clarification or notification in this regards.

### »» There are two possibilities in this case:-

#### Indian Citizen becomes resident in both the countries :-

- **Where India has entered into DTAA Treaty :-** The Residency Article of DTAA will make him resident of India as he is closely connected with India.(Economically and Permanent Residence basis)
- **Where India has not entered into DTAA Treaty :-** The Tax paid on the Double Taxed Income will be allowed as credit in India as per the criteria defined in the Income Tax Act,1961.

#### In case if he does not become resident of any country :-

Section 6 of Income Tax Act,1961 states that if any Indian Citizen or person of Indian origin is not liable to pay tax in any country due to any reason and his income in India exceeds Rs. 15 lakhs then he will be considered as deemed resident of India.\*

\* **Majorily will Apply to people in Tax Heaven Countries.**

## Case Study

- All Directors of Indian company ABC PVT LTD are Resident Indians went to Australia for Business Purpose as on 15th March, 2020 and due to pandemic they were stranded there only. They took the business decisions of ABC PVT LTD from Australia only by conducting Board Meetings, making Australia as its effective place of management as per law defined.

According to the Indian Laws, Indian Company i.e. company incorporated in India will become resident of India by its incorporation

and

By virtue of place of effective management, the company will become resident of Australia

Considering the situation in which country, Company shall be considered as resident of and taxed?

## Our Analysis

- Which are the tax residency test in India & / or in Australia ABC PVT. LTD. is subject to?
- In COVID 19 situation, are there any specific relief measures India & / or Australia have been announced for assessing tax residency?
- If no such specific relief measures, then:  
As per updation of International Treaties of virtue of “MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING”, in case of dual Residency, the Authorities of the respective countries will mutually decide the residential status of the company and taxed accordingly and  
In case of no such agreement, the income will be taxed in both the countries as resident and the tax on double taxed income can be claimed as credit in the country where return of income is filed later.

# THANK YOU!!



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