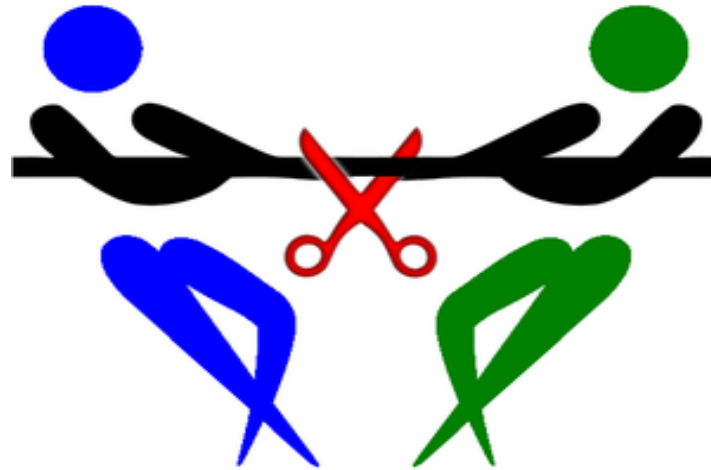


SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

Tie-Breaker Rule





MR. A (Citizen of USA) is a salaried employee in USA

Came in India in MARCH 2020 to meet family



Stucked in India till 31st OCTOBER 2020 Due to COVID-19

Every Citizen (Green Card Holder) is treated as resident of USA for tax purpose.

So, MR. A is resident of USA.

Hence, for the period from APRIL 2020 to MARCH 2021, MR. A will be the Resident of both the Countries as per Domestic Laws.

(DUAL-RESIDENCY)

So, MR. A is resident of INDIA.

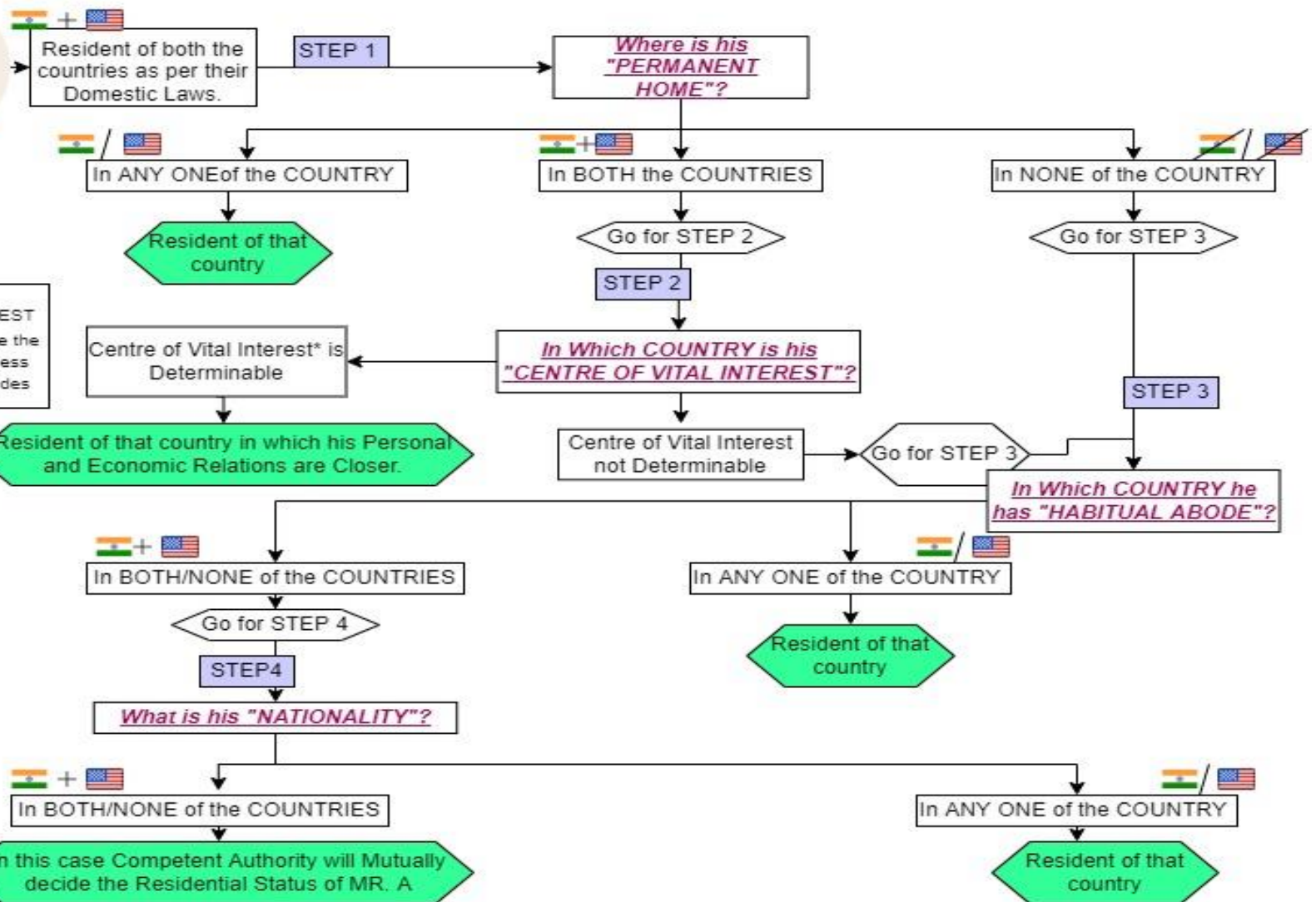
As per Indian Law, if any person resides in India for more than 182 days in previous year, then he is treated as resident in that previous year.

Now the Question arises that in which country MR. A will be called as Tax Resident?

Determination of Residency

- ❑ Section 6 decides residency under Income Tax Act.
- ❑ Section 90 provides for applicability of Beneficial Provision between Income Tax Act and DTAA in case of Double Taxation of an Income.
- ❑ Generally, Article 4 deals with determination of Residency of a Person under DTAA.
- ❑ Article 4 also provides for Tie-Breaker Rule in case a person becomes Resident of both the Countries.





Note- This Tie-Breaker Rule is as per OECD Model and respective DTA needs to be seen for taking a decision.

Our Comments

- ❑ In the current Covid period we have seen various individuals who were stuck in India as the flights were not operating and hence, they were working for their foreign company by sitting in India because of which they became resident of both the countries and became liable to pay tax in India. However, this tie breaker rule can help them in saving tax in one of the countries.
- ❑ However, In Indian Income Tax Return , there is no column to mention if an assessee is a tax resident as per IT Act, but not as per DTAA. Due to this it is difficult to practically apply tie breaker, where the Tie breaks in favor of a foreign nation.
- ❑ Adequate proofs should be kept for claiming residency as it would be handy during the assessment time. Nothing can be uploaded while filing the return of income in India.

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