

TAXABILITY OF RENTAL INCOME EARNED FROM INDIA



FOR
RENT



Income Tax Department

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Taxability of rental income earned from India

1. Income that accrues or arises in India is taxable in the hands of both Resident taxpayers as well as Non-Resident taxpayers. Thus, if a Non-Resident has a property located in India, he is liable to be taxed in India on the rental income from that property, as that income accrues or arises in India.
2. The owner of this property who is Non-Resident in India, would obviously be resident in some other country (say "X") and would therefore, be liable to tax in that country on rental income from this property located in India. Thus, there would be double taxation. To avoid this double taxation, we need to see whether there is any Double Taxation Avoidance Agreement (DTAA) between India and X.
3. If there is no DTAA between India and country X, India has the right to tax this rental income in India. It depends on the local taxation of law of country X, regarding how the double taxation is to be avoided. To illustrate, in case of Indian Residents there is Section 91 of the Income-tax Act, which seeks to avoid double taxation in the cases of Indian Residents on account of income earned in non DTAA countries. This is done through the credit mechanism (that means income will be taxed again but credit will be given to taxes paid in the source country). It is likely that country X may have similar provisions. Thus, double taxation would be avoided according to local laws of country X. If there are no such laws in that country then double taxation cannot be avoided as Indian right to tax this income is well established.

Therefore, in countries with no DTAA, the rental income will be taxable in India.

4. However, in case there is DTAA between India and country X, one needs to see the DTAA to first examine whether India has a right to tax this rental income. In all DTAA's that India has signed, the source country (in this example, it is India) has a right to tax income arising from immovable property located in that country. Now the question is whether the right of India (source country) to tax income from immovable property located in India is an exclusive right, or whether this right is also there with the country in which this Indian Non-Resident is a Resident.

5. Most of the DTAA's that India has with other countries allow both India (source country) as well as country X (resident country) to tax the rental income from immovable property located in India (source country). However, there are a few exceptions like DTAA's with Bangladesh, Greece and UAR (Egypt), only the source country where the immovable property is situated has the right to tax the income arising from such property. So in these three cases, in the given situation, only India would have right to tax rental income from immovable property since the property of the Non-Resident (Resident of Bangladesh or Greece or UAR) is situated in India. Thus, in these three cases double taxation is automatically eliminated.
6. For the DTAA's which also give country X (resident country) the right to tax immovable property located in India, one needs to see the Article on Elimination of Double Taxation in the relevant DTAA. This Article would state how India or country X would eliminate double taxation for their residents. Since in this case, the Indian Non-Resident is Resident of country X, we need to examine how country X has agreed to remove double taxation in the DTAA. Some countries would follow the exemption method (that means they agree not to tax that income again) or some countries follow credit mechanism. Thus, double taxation would be eliminated in accordance with the provisions of the relevant DTAA.
7. Thus, income derived by a Non-Resident from immovable property located in India is to be taxed in India in all cases, in accordance with Indian domestic taxation law. Under the Income-tax Act, such income is to be taxed under the head "Income from House Property".
8. The provision of TDS will also apply on such rental income of Non-Resident. Therefore, the person paying the rent to the NR will withhold tax @30% in accordance with the Section 195 of the Income Tax Act.
 - The tax amount so deducted needs to be deposited in the Government account by the deductor as per the timelines specified below:

Period of credit/ payment of rent	Date of deposit of TDS
In case the rental amount is credited or paid in the month of March	On or before April 30th of succeeding financial year
In any other case	On or before 7th day of end of month in which deduction is made

- The deductee also needs to issue a certificate in form No 16A in each quarter to the NR i.e. deductee within the time limit specified below :

Sl	Quarter Ending	Due date
1	30th June	30th July of the F.Y.
2	30th September	30th October of the F.Y.
3	31st December	30th January of the F.Y.
4	31st March	30th May of the F.Y. immediately following the financial year in which deduction is made.

- Further, in case the non-resident deductee considers that TDS at 30% is more than his actual tax liability for the year, he may apply for a lower deduction certificate (LDC) u/s 197 to the assessing officer. No application for LDC can be made by the taxpayer in the absence of PAN.
9. A refund, if required, can be claimed by the non-resident letting out property in India, by filing a tax return in India for which he needs to have a PAN number.
10. Other aspects :
- If there is a loss arising under head House Property, it can be set-off with incomes under other heads. If the loss cannot be set-of with incomes under other heads, it can be carried forward for a maximum of 8 years and set-off against house property income arising in future years.
 - The rent proceeds will have to be deposited in the NRO Account of the Non-Resident owner of the property. It cannot be deposited in an NRE account, unless the person depositing the amount is also an NRI and the rental amount is being transferred from his NRE account.