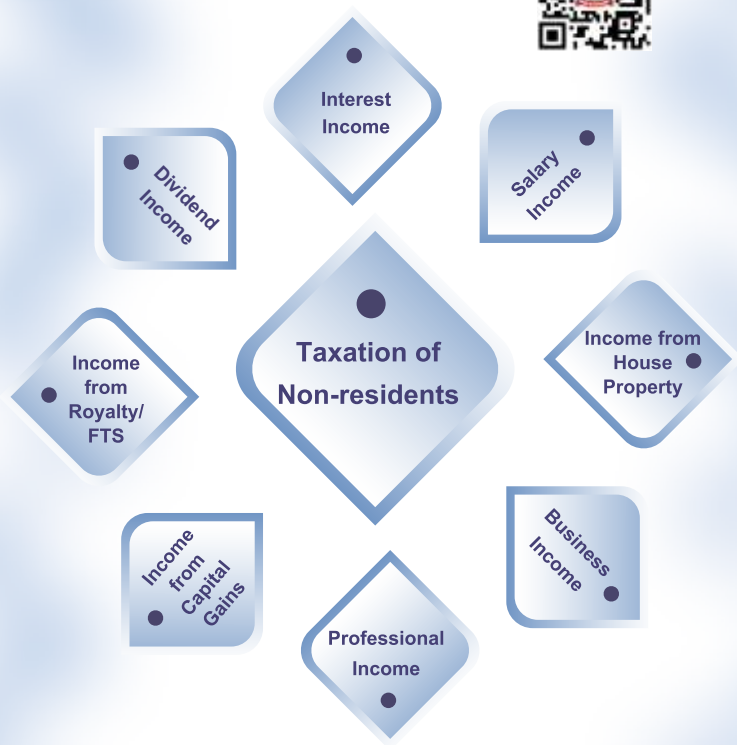


TAXATION OF NON RESIDENT



Income Tax Department

www.incometaxindia.gov.in

Taxation of Non Residents

Non Residents (hereafter referred to as NR) having a source of income in India are required to comply with the Indian tax laws which has certain beneficial provisions specific to them for facilitating their participation in the Indian economy. A NR, for the purposes of Income-tax Act, is used quite differently for the purposes of exchange control rules such as FEMA and due care must be taken of differences in definition of NRI under different legal provisions.

The income of each financial year from 1st April to 31st March, known as “previous year” is assessed under the Income-tax Act and the taxpayers need to report income of the previous year in an Income Tax Return by a specified date in the next financial year known as “assessment year”. The taxpayers also need to obtain Permanent Account Number (PAN). The return of income of an assessment year can be filed online, taxes can be paid digitally and the details regarding taxes withheld by any person on behalf of the NR is available online.

Determination of Residential Status

For details on determination of residential status, please refer to separate Taxpayer Information Series titled as "Residential Status under Income Tax Act, 1961".

Taxability of various sources of Income:

Salary Income

The salary income of NR is taxable in India for services rendered in India irrespective of the place of receipt of the salary or the residential status of the individual. Salary income paid by Government to a citizen of India, such as diplomats, for services rendered outside India would also become taxable in India. All components of salary including allowances, perquisites and non-cash benefits are taxable unless specifically exempted. Certain deduction is available on salary income.

Income from House Property

The rental income received by an NR from property owned in India is taxable in India as its source is in India. On the rental income, the taxpayers are eligible for various deductions.

Business Income

The business income of a NR is taxable in India if it accrues or arises, directly or indirectly, through a “business connection” in India (including having substantial economic presence). However certain categories of business are not taxable.

If a DTAA is applicable, the business income of a Non-resident will be taxable in the source country, i.e., India only if there is a PE or Permanent Establishment. In general, there would be a PE if the business is carried through a fixed place of business, place of management, branch, office, factory, workshop, mine, construction site or through a dependent agent. If there is a PE, only the income attributable to the PE would become taxable in India and the NR would be able to claim all the deductions incurred for the purposes of business.

In addition, under the Income-tax Act, presumptive scheme of taxation deeming a specific portion of gross revenues (or actuals as claimed) as taxable profits are applicable for certain specified businesses.

Professional Income

The professional income of NRs such as that of teachers, physicians, lawyers, engineers, architects, dentists, accountants etc. is taxable in India if their income accrues or arises in India, for example, if the services are performed in India, subject to provisions of applicable DTAA.

Income from Capital Gains

Income of an NR in the nature of capital gains arising from transfer of a capital asset situated in India is taxable in India as it is sourced in India. Sale of shares or interest of companies/ other entities incorporated outside India, but having their value substantially derived from assets in India are also subject to tax. A capital asset is “long-term” or “short-term” on the basis of period of holding. For securities listed on a stock exchange in India, units of UTI/equity-oriented fund or a zero-coupon bond, if the period of holding is more than 12 months, it would be a long-term capital asset. For shares of a company not listed in a stock exchange in India and immovable property in the nature of land or building, the period of holding for treating the asset for long-term capital asset is 24 months and in all other cases, the period of holding would be 36 months.

There are certain special provisions for NRs on taxation of long-term capital gains on shares/debentures/Government securities acquired or purchased in convertible foreign exchange. The capital gains in such cases is computed at the rate of 10%, without giving benefit of indexation, but after computing the gain in the same foreign currency as was used at the time of investment.

There are certain deductions which can be claimed from long-term capital gains such as re-investment in residential properties in India, agricultural land, specified securities, etc. on fulfillment of certain conditions.

Income from Royalty/FTS

Income by way of Royalty is deemed to accrue/arise in India and thus taxed in India if it is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on in India or for the purposes of making or earning any income from any source in India. Income by way of Fees for Technical Services or FTS is deemed to accrue/arise in India and thus taxed in India if the fees are payable in respect of services utilized in a business or profession carried on in India or for the purposes of making or earning any income from any source in India. Even if the services are rendered outside India, Royalty/FTS is taxable in India if the payer is the Government or an Indian concern. However, there is special exception where (i) the royalty or fees are payable in respect of service utilized in a business or profession carried on by such person outside India; or (ii) for the purposes of making or earning any income from any source outside India.

Dividend Income

The dividend income received from Indian companies and mutual fund, is exempt from tax.

Interest Income

The interest income is taxable in India if it is receivable in respect of any debt incurred in India or if the money is borrowed and used for the purposes of a business or profession carried on in India. The income derived by the NRs from assets, in the nature of debentures/deposits/Government securities, acquired or purchased in convertible foreign exchange, is taxed at a concessional rate of 20%. A further concessional rate of 5% is available on interest received from certain long-term infrastructure bonds. Interest income from NRE and FCNR deposits are exempt from tax, but only if the person is a Non-Resident under FEMA provisions.

Claiming credit of taxes paid under DTAA

The Government of India has entered into ninety-four DTAAAs with a view to avoid double taxation of the same income in the country of residence of the taxpayer and the country of the source of income and can be availed by the NRs to get relief from double taxation. If the taxpayer has paid taxes in other country or if the taxes are withheld on his behalf under the tax laws of another country, he can claim credit of taxes in India for taxes so paid/withheld under the provisions of the DTAAAs. Similarly, if the taxes are withheld in India on behalf of a person who is resident of any other country with which India has a DTAA or if taxes are paid by him in India, the credit of taxes so withheld/paid in India can be claimed while filing return of income in the NRs home country under the applicable DTAA or domestic tax laws of that country.

Transfer Pricing and other anti-avoidance laws

Transactions between an NR and his associated enterprises in India are subject to Transfer Pricing Regulations in India whereby the Income-tax Act mandates that such transactions should be at arm's length. The Income-tax Act provides for Safe Harbour Rules and Advance Pricing Agreements. India has also enacted GAAR and other anti-avoidance provisions to counter the erosion of tax base. Further, India has entered into FATCA and Agreements for Automatic Exchange of Information whereby data of income earned in India is regularly shared with the Government of the NR's country of tax residence.

Filing of Income Tax Returns

The return of income can be filed electronically at the website of the Income Tax Department using digital signature. The due date of filing the return of income subject to Transfer Pricing regulations is 30th November and it is 30th September, where the books of accounts need to be audited and in all other cases, the due date is 31st July following the end of relevant tax year. Tax returns are processed electronically and refunds in general are now paid within a very short duration of time. Further, a NR can opt for providing his foreign bank account for receiving the refunds directly in his overseas bank account.

The basic exemption of Rs 3,00,000 is available only for resident senior citizens and resident super senior citizens. Hence, an NRI even a senior citizen or super senior citizen cannot get the benefit of enhanced exemption limit.

A Non Resident Indian citizen or person of Indian origin (“Non Resident Indian”) is not required to file a return of Income in India if his total income in respect of which he is assessable under the Income Tax Act during the previous year consists only of certain specified investment income or/and income by way of long term capital gains and if taxes are deducted in India from such incomes.

Disclaimer and Additional Information

The information in this brochure is summary of the provisions and the taxpayers are advised to go through the provisions of law before taking any decision. Additional information on various aspects of taxation in India and further assistance can be obtained on the website of the Income Tax Department at <https://www.incometaxindia.gov.in> and e-filing website of the Income Tax Department at <https://www.incometaxindiaefiling.gov.in>

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This brochure should not be construed as an exhaustive statement of the law. For details - reference should always be made to the relevant provisions in the Acts and the Rules.