

Taxation of Salaries

earned abroad by residents
and relief from

Double Taxation



Income Tax Department

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Taxation of Salaries Earned Abroad By Resident and Relief From Double Taxation

1. Salary means all remuneration paid or due under an express or implied contract of employment except that received by a partner of a firm from the firm. It includes wages, annuity or pension, gratuity, fees, commission, perquisites or profits in lieu of or in addition to any salary or wages or any advance of salary or leave salary encashment.
2. Salary received by or accrued or arisen in India to a resident is taxable in India. Also, salary payable for services rendered in India is regarded as income earned in India, even though the employment contract is executed outside India and the salary is also payable outside India. "Salaries" payable by the Government to a citizen of India for service outside India, is also taxable in India.

3 Tax reliefs on the foreign income of the residents

The Income-tax Act provides a number of reliefs, either by way of complete exemption or by way of deduction from the gross total income, in respect of the foreign income of the residents. Further, income-tax exemption is provided under the United Nations (Privileges and Immunities) Act, 1947 on the salaries of the officers of the United Nations, its specialised agencies and certain other international organisations notified by the Central Government.

4. The exemptions and deductions available on the foreign income by way of salaries:

(a) Exemption on the allowances paid by Government

Any allowance or perquisite paid or allowed as such, outside India by the Central Government or a State Government to a citizen of India for rendering service outside India, is exempt from income-tax. The relevant provisions are contained in section 10(7) of the Income tax Act.

(b) Exemption of foreign income of persons assigned to duties in India under cooperative technical assistance programmes :

In the case of individuals who are assigned to duties in India in connection with any cooperative technical assistance programmes and projects, in accordance with an agreement between the Central Government and the Government of a foreign State, their foreign income is exempt from income-tax if they pay any income or social security tax on such income to the foreign State. To qualify for the exemption, such income should not be deemed to have accrued or arisen in India. Further, the terms of the agreement between the two governments must provide for such exemption. The relevant provisions of this exemption are contained in section 10(8) of the Income-tax Act.

Income-tax exemption on the aforesaid lines has also been provided on the foreign income of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and an international organisation. The exemption is available only if the following conditions are satisfied, namely:

- (a) the individual is an employee of the consultant referred to in section 10 (8A) which provides that a consultant means a person engaged by an international organisation in connection with any technical assistance programme in accordance with an agreement between that organisation and the Central Government;
- (b) he is either not a citizen of India or being a citizen of India, is not ordinarily resident in India; and
- (c) the contract of service of the individual is approved by the Additional Secretary, Department of Economic Affairs, in the Ministry of Finance, Government of India in concurrence with Member (Income-tax) of the Board.

The relevant provisions of this exemption are contained in Section 10(8B) of the Income-tax Act.

(c) Exemption under the United Nations (Privileges and Immunities) Act, 1947

The United Nations (Privileges and Immunities) Act, 1947, provides exemption from income-tax on the

salaries and emoluments paid by the United Nations to its officials. Thus, the individuals who are resident in India in any financial year and are in receipt of income by way of salaries and emoluments from the United Nations as officials thereof, are exempt from income-tax on such income. As the expression “salaries” under the Income-tax Act includes pension also, the pension received from the United Nations by its former officials, is also exempt from income-tax.

Under section 3 of the United Nations (Privileges and Immunities) Act, 1947, the Central Government has the power to extend the benefit of the income-tax exemption to the officers of other international organisations on the lines of such exemption to U.N. Officials. The benefit of Income-tax exemption has been extended to the representatives and officers of the following specialised agencies of the United Nations or other international organisations.

Specialised agencies of United Nations

- (i) International Civil Aviation Organisation;
- (ii) World Health Organisation;
- (iii) International Labour Organisation;
- (iv) Food and Agriculture Organisation of the United Nations;
- (v) United Nations Educational, Scientific and Cultural Organisation;
- (vi) International Monetary Fund;
- (vii) International Bank for Reconstruction & Development (World Bank);
- (viii) Universal Postal Union;
- (ix) International Atomic Energy Agency;
- (x) International Telecommunication Union;
- (xi) World Meteorological Organisation;
- (xii) Inter-Governmental Maritime Consultative Organisation;
- (xiii) United Nations Industrial Development Organisation;

- (xiv) United Nations Conference on Trade and Development;

Other International Organisations

- (i) League of Arab States;
- (ii) Asian African Legal Consultative Committee;
- (iii) Afro-Asian Rural Reconstruction Organisation;
- (iv) Commonwealth Secretariat (applicable to non-Indian nationals who are visiting India and to Indian nationals who are on assignment outside India with the Commonwealth Secretariat or other bodies constituted by it for furtherance of its objectives);
- (v) Asian Development Bank (applicable to the Indian Executive Directors, Alternate Executive Directors, officials and experts who are posted outside India);
- (vi) International Jute Organisation, Dhaka (applicable to the Indian nationals only);
- (vii) African National Congress Mission;
- (viii) International Court of Justice;
- (ix) Palestinian Liberation Organisation;
- (x) Customs Cooperative Council;
- (xi) International Committee of Red Cross.

The Ministry of External Affairs has also clarified that the United Nations officials and the technical assistance experts may be treated at par. Moreover, the procedural distinction in the matter of extending privileges between officials and experts on mission has been dispensed with. As a result, experts on mission are also entitled to the same privileges and immunities as are enjoyed by the officials of the United Nations.

The administration of the United Nations (Privileges and Immunities) Act vests in the Ministry of External Affairs (U.N. Division).

5. Double taxation relief

The foreign income of the residents i.e. the income accruing or arising outside India generally becomes

liable to tax in India as well as in the country in which the income accrues or arises or is received. The double taxation of such income is avoided by means of double taxation avoidance agreements (DTAA) entered into by the Government of India with the Governments of other countries. Where the income accrues or arises in a country with which no agreement exists, unilateral tax relief can be provided to the doubly taxed income under the provisions of section 91 of the Income-tax Act.

(A) Double taxation avoidance agreements

- (i) The Government of India has entered into comprehensive agreements for avoidance of double taxation with 93 countries. The list of such countries and certain details of the agreements including the assessment year from which they take effect, are available at the official website of the department incometaxindia.gov.in. Besides, the Government of India has also entered into agreements which cover limited areas of activity like aircraft and shipping business.
- (ii) One must look at the particular DTAA involved. If the DTAA says that a particular income shall be taxed only in source/resident country, it means that the income cannot be taxed by the other country. However, if the DTAA says that the income may be taxed in source country, it means that both source and resident country have the right to tax that income. However, resident country would then relieve double taxation in accordance with the provision in the DTAA concerning this. In most of our treaty India has provided that it would eliminate double taxation in such situation by following credit method. That means it would allow credit of tax paid in source country by the Indian resident while taxing that income in India.

(B) Unilateral relief from double taxation

Section 91 of the Income-tax Act contains provisions for the grant of unilateral relief in the case of resident taxpayers on incomes which have suffered tax both in India and in the country with

which there is no agreement for the avoidance of double taxation. The relief is worked out as follows:

- (i) The amount of doubly taxed income is first ascertained. This consists of such income as has accrued or arisen to the taxpayer in a foreign country and has been subjected to income-tax in that country as well as in India. It does not include income which is deemed to have accrued or arisen to the taxpayer in India even though it has been charged to income-tax in a foreign country.
- (ii) On the amount of the doubly taxed income so ascertained, the income-tax is calculated at:
 - (a) the Indian rate of tax; and
 - (b) the rate of tax of the foreign country.
- (iii) Relief is granted by allowing to the taxpayer a deduction from the tax chargeable on his total income of an amount equal to the tax calculated at the Indian rate of tax or the amount of tax calculated at the rate of tax of the other country on the doubly taxed income, whichever is lower. Such tax relief is deducted from the total amount of tax payable by the assessee and the balance alone is to be recovered from him. If the assessee has already paid the tax, he becomes entitled to a corresponding refund.

The Indian rate of tax means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of the Income-tax Act but before deduction of any relief due under sections 90 and 91, by the total income. For example, if deduction under section 80RRA of the Income-tax Act has been allowed in computing the total income, the assessee will be entitled to the double taxation relief, under section 91, only on the amount of the tax paid on 25% of the remuneration received in foreign currency from an employer.

The rate of tax of the foreign country means income-tax and super tax actually paid in that country in accordance with the corresponding laws in force there after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in that country.

6. Rate of exchange for conversion into rupees of salary income expressed in foreign currency

The rate of exchange is to be the telegraphic transfer buying rate of the foreign currency, as on a specified date, which is adopted by the State Bank of India.

The specified date for salary income is the last day of the month immediately preceding the month in which the salary is due or is paid in advance or in arrears. For example, if the salary of US \$ 10,000 for February, 2006 due on 28th February, is paid on 7th March, 2006, together with arrears of salary for the months of October, 2005 to January, 2006, of US \$ 2,000, the conversion rate for \$ 10,000 would be the TT buying rate of U.S. dollars on 31st January, 2006 while for the arrears of U.S. \$ 2,000, it would be that of 28th February, 2006, except if the arrears of salary have already suffered tax on 'due' basis.

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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 Act and the Rules.