



TAXATION OF GIFTS TO NRIs AND CHANGES IN BUDGET 2023-24

Dear Friends,

As you are aware that “A Gift” is a voluntary transfer of Cash, Movable /Immovable property by one person to another person without consideration in lieu of love and affection. A gift may be given by a person to his/her relatives or to friends or to any other person without consideration. Some of gifts are exempted from tax and some of gifts are taxable. Gifts given by a person to his relatives is exempted and gifts received by an individual from friends and other persons are exempted if it exceeds Rs. 50000/- in a Financial Year.

The Gifts are taxed under The Gifts Tax Act, 1958 and from 1st October 1998 the Gifts Tax has been abolished. All types of gifts had been exempted from taxation and in 2004 a special provisions has been added in the Income Tax Act, 1961 in which all types of gifts(except gifts to closed blood relatives) in excess of Rs. 50000/- has become taxable and even HUFs has brought under taxation.

Donor means a person who is making or giving the gift.

Donee means a person who acquires the asset either movable or immovable from a donor. When gifts are made to a Trust, then the Donee are the Trustees and the beneficial owner, of that asset. The beneficial owner is those, who enjoy the asset which is under the gift.

SOURCES OF GIFTS

Under the provisions of the law, a person can receive the gift under the following circumstances:

- i) Gifts from close or blood relatives.*
- ii) Gifts received at the time of Marriage.*
- iii) Gifts that are received by legacy or inheritance.*
- iv) Gifts received in contemplation of Death of the Donor.*

GIFTS EXEMPT FROM TAX

Certain gifts are not taxable or exempt from this tax. They are:

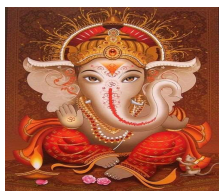
- i) Gifts given by blood or close relatives, irrespective of the value.*
- ii) property located outside India.*

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RESTRICTIONS ON MOVING GIFTS ABROAD

- i) Any individual cannot take his or her movable asset out of India unless the donor:
- ii) Is an Indian Citizen, who was originally a resident of India or the individual received the gift when he or she was not a resident of India in that financial year.
- iii) Gifts the balance of the Non-Resident Bank Account.
- iv) Foreign Currency gifts of convertible foreign exchange, sent from abroad by a non-resident Indian to a resident Indian.
- v) Foreign Exchange asset gifts by a non-resident to his or her relatives.
- vi) Special Bearer Bonds 1991.
- vii) Savings Certificates issued by the central government.
- viii) Capital Investment Bonds up to Rs 10 lacs or Rs 1 million in a year.
- ix) Relief Bonds gifts by an original subscriber.
- x) Gifts of certain bonds from NRIs to his or her relatives, which are subscribed in foreign exchange and are specified by the central government.
- xi) Gifts to Government or Local Authority.
- xii) Gifts to any charitable organizations.
- xiii) Gifts to notified temples, mosques, churches or other places of worship.
- xiv) Reasonable amount of gifts to children for educational purposes.
- xv) Gifts by employers to their employees in the form of a bonus, gratuity or pensions.
- xvi) Gifts under Will.
- xvii) Gifts in contemplation of death.

GIFTS PERTAINING TO NON-RESIDENT INDIANS

When a non-resident Indian parent, child or relative transfer cash or property as a gift, it is not taxable in the hands of the resident recipient.

- i) Gifts of immovable property abroad are not taxable.
- ii) Gifts to parents from NRE accounts of children are not taxable.

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AN NRI CAN HAVE THE INTEREST IN THE FOLLOWING ASSETS IN INDIA, WHICH HE RECEIVES BY GIFT OR BY INHERITANCE-

- i). Money or Liquid funds;
- ii). Immovable properties;
- iii). Jewellery, painting, art piece or other valuable goods
- iv). Shares in companies registered in India;
- v). Interest in Limited Liability Partnerships (LLPs).

Any such receipt through gift of inheritance is regulated by FEMA and also by the Income Tax Act, 1961.

IMPLICATIONS OF FEMA ON SUCH ASSETS ARE AS UNDER-

MONEY/ LIQUID FUNDS- *An NRI is allowed to receipt money as gift from a resident Indian under the Liberalized Remittance Scheme (“LRS”), within the limit of USD 250,000 in a financial year as prescribed therein. The donor and the recipient need not be close relatives. It is allowed under the FEMA provisions, however, the gift will be taxable in the hands of the NRI recipient (if exceeding INR 50,000) under the Income Tax Act. A resident individual can also gift money to a close relative NRI vide a cheque or net banking to his NRO account in India, subject to overall limit of USD 250,000 in a financial year.*

The NRI can take out the money already lying in his NRO account subject to a limitation of USD 1 million per financial year. Definition of Relative in FEMA to mean the definition as per the Companies Act, 2013 which include- spouse, father, mother, son, son’s wife, daughter, daughter’s husband, brother and sister of the individual.

IMMOVABLE PROPERTY *Gift of immovable property located in India, is permitted to NRI. Exceptions to the immovable properties to be received on gift by NRI are*

- agricultural land;
- farm house;
- plantation property.

The gift of immovable property is allowed even to the NRI who is not a relative, however, in case of Income Tax Act, if the gift is without a consideration and to a non-relative, the receipt of the gift is taxable in the hands of the recipient where the stamp duty value would be the basis for computing deemed income.

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The NRI can take out the sale proceeds of such properties out side India, from is NRO account within the allowed limit of USD 1,000,000 per financial year. This is also applicable where the property has been received by the NRI/ PIO by way of inheritance/ legacy.

SHARES AND SECURITIES IN AN INDIAN COMPANY- *A resident individual can gift the securities held in an Indian company, such as equity shares, debentures, preference shares, share warrants etc) to an NRI subject to a prior approval from the Reserve Bank of India.*

Also the following conditions need to be fulfilled;

- The NRI recipient is eligible to hold such a security under relevant Regulations;*
- The gift does not exceed 5% of the paid-up capital of the Indian company;*
- The applicable sectoral cap in the Indian company is not breached;*
- The donor and the recipient are ‘relatives’ within the meaning in section 2(77) of the Companies Act, 2013; and*
- The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of Rs. 50,000.*

Gift of securities are regulated by the FEMA provisions which puts bar to a certain quantum and also prior approval from the Reserve Bank of India is required and the parties to the gift transaction are required to be “relatives”. The gift of securities between the relatives are exempt from taxes, however if between the non-relatives, its is taxable where the fair market value of such shares is the basis for computing the deemed tax liability in the hands of the NRI recipient. The NRI can receive the Securities on inheritance and no such restrictions are there.

The remittance of sale proceeds (post capital gains tax) should be within the USD 1 million limit.

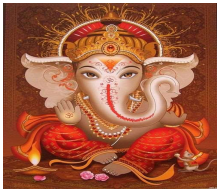
INTEREST IN LLP *NRI can contribute to the capital of an LLP, however the LLPs should be engaged in sectors where 100% FDI is allowed under automatic route. There is no clear provision on transfer of an interest in LLP from resident to NRI under the FDI policy. Unless specifically permitted, gift of an interest in LLP to an NRI is prohibited.*

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CHANGES IN TAXATION OF GIFTS TO NRIs IN BUDGET 2023;

SHARE ISSUANCE

In a move to sync the Indian foreign exchange regulations with Income Tax Act, the government proposed to bring issuance of shares to non-residents above the fair market value within tax purview. This will prevent generation and circulation of unaccounted money from non-resident investors in a closely held company in excess of its fair market value.

The purpose of that provision seems to be to ensure that the shares issued to the non-resident shareholders are not at a substantial premium that is not justifiable. Any such excess premium would be brought under the tax net and would become taxable as 'income from other sources' in the hands of the Indian company.

The adjusted book value method or the discounted free cash flow method would have to be complied with starting April 1, 2024 and would apply to all years starting assessment 2024-25.

TDS

Unit holders of wealth and pension funds have been facing the brunt of a small technical issue, whereby a business trust was deducting and depositing tax at source (TDS) on the interest income of non-resident Indians at 5% percent.

The income tax department has received representations that in some cases, a lower rate of deduction may be required, for instance, for notified Sovereign Wealth Funds and Pension Funds. But this exemption was not available at the time of tax deduction as a certificate for lower deduction under section 194LBA couldn't be obtained under section 197 of the Act.

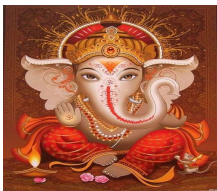
The Union Budget has proposed to extend the scope for lower or nil tax deduction at source if the Assessing Officer is satisfied that the total income of the recipient justifies the lower rate.

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Starting April 1, 2023, sums on which tax is required to be deducted under section 194LBA would be eligible for deduction at a lower rate.

TDS/ Tax Filing

In a bid to bring more individuals under the tax-filing net, the government had been levying double the rate of tax collection and deduction at source (TCS and TDS) for non-filers of income tax.

But this move affected the non-resident Indians, who did not have TDS and TCS of more than Rs 50,000 during a year.

The Union Budget 2023 provides a relief from these special provisions to non-resident Indians, who don't have a permanent establishment in India, starting April 1, 2023.

GIFTS

Often Indian residents would offer gifts to non-residents, who would claim these to be non-taxable. As a result, any amount exceeding Rs 50,000, received by an NRI without consideration on or after July 5, 2019, was deemed to accrue or arise in India.

But to avoid misuse by not-ordinarily resident Indians, starting April 1, 2024 all gifts above Rs 50,000 to not-ordinarily resident – without consideration from an Indian resident – would be deemed to arise in India and would be chargeable to tax.

POINTS TO BE REMEMBERED BY THE DONOR

- i) Money gifted to someone, no tax is payable;
- ii) No deduction is available of the gifted amount from the Total Income, in the financial year;
- iii) If your wife and or daughter-in-law are unemployed and they have gift income, the income earned from the gift can be clubbed in the income from the earning person in the family.
- iv) Income from investments from gift income is taxable in the hands of the receiver alone.

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HOW TO BE STRESS-FREE DO EVERYTHING WITHIN THE LEGAL AMBIT

- i) Always document keep the receipt of the gift and the gift certificates.
- ii) If you are receiving a movable asset as a gift, ensure that the donor provides a signed and stamped gift deed.
- iii) If immovable asset is gifted, it is important to ensure that the donor transfers the same in your name with registration and a gift deed is obtained.
- iv) If you have loaned a friend or relative in excess of Rs 50000, and it had been repaid back to you, keep the bank statements and relevant documentary proofs like IOUs, etc. Additionally, if the loan was given in cash via an ATM withdrawal, keep the ATM slip for records, so as to satisfy any subsequent question regarding the same if it were a gift or not.
- v) Always advise your friends and family while making the gift that it may be taxable and they get it checked by their accountants.

CONCLUSION: NRIs community are always special for our government, they are the major source of foreign exchange earnings. The Budget 2023 has also not disturbed taxation regime of NRIs except some provisions have been changed. The Shares generally issued to NRIs are of higher value and issuer's explanation to valuation is not satisfactory and hence the excess value above FMV will be taxable and any property gifted to NORI above Rs. 50000/- is chargeable to tax in India.

DISCLAIMER the article presented here is only for sharing knowledge and information with readers. The views are personal shall not be considered as professional advice. In case of necessity do consult with tax professional for more understanding and clarity on subject matter.

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FREQUENTLY ASKED QUESTIONS

1. Are Gifts subject to tax in India?

Ans. -As per provisions of the Act, any sum of money/ property which is received without consideration or for an inadequate consideration by **any person** shall be chargeable to tax in the hands of the recipient subject to certain exceptions as specified in the below FAQs.

It may be of relevance to note that transfer of funds as Gift by Non-Resident (NR) to a Resident /NR and vice versa may attract taxes. Accordingly, a person should examine the taxability of such a transaction prior to entering the same.

2. What is the meaning of the term property?

Ans- Property has been defined to mean the following assets:

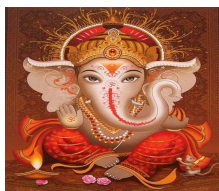
- i. Immovable Property being Land or Building or both
- ii. Property other than immovable property i.e. Movable Property being:
 - Shares and Securities
 - Jewellery
 - Bullion
 - Archaeological collection
 - Drawings
 - Paintings
 - Sculptures
 - Any work of art

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3. What are the provisions with respect to taxation of Gifts under the Act?

Ans- Gifts received from a person are chargeable to tax in the hands of recipient and the provisions relating to taxation of said gifts are tabulated below:

Kind of gift covered	Monetary threshold	Quantum taxable
i. Any sum of money without consideration	Sum > Rs 50,000	Entire sum of money received
ii. Any immovable property without consideration	Stamp Duty Value* >Rs 50,000	Stamp duty value of the property
iii. Any immovable property for inadequate consideration	Difference between Stamp duty value and consideration, is higher of following amounts: • Rs 50,000 and • 10%** of consideration	Stamp duty value Minus Consideration
iv. Any movable property without consideration	Fair market value (FMV)*** > Rs 50,000	FMV of such property
v. Any movable property for an inadequate consideration	FMV exceeds consideration by > Rs 50,000	FMV Minus Consideration

*Value adopted by stamp duty authority for the purpose of stamp duty

** As per proposed amendment in Budget 2020.

***Value is to be determined as per Rules prescribed for the purpose of calculating FMV for each property.

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4. Stamp duty value on immovable property as on which date should be considered for the purposes of complying with the provisions of the Act specified in FAQ c., point ii and iii above?

Ans- Stamp duty value prevailing on the date of Registration of the immovable property has to be considered.

However, where the date of Agreement and Registration are not the same, Stamp duty value as on the date of Agreement may also be taken, if the amount of Sale consideration or part thereof, has been paid by way of an account payee cheque / account payee bank draft/ use of electronic clearing system through a bank account /through such other electronic modes as may be prescribed on or before the date of Agreement for transfer of such immovable property.

5. Are there any exemptions to the Gifts received which are taxable as mentioned in FAQ c. above?

Ans- The Gifts received by the recipient shall not be taxed if the said gift is received:

- i) from a relative (refer **FAQ** for meaning of relative); or
- ii) on the occasion of marriage of the individual; or
- iii) under a WILL or by way of inheritance; or
- iv) in contemplation of death of the payer; or

From an individual by a trust created or established solely for the benefit of relative of the individual; etc.

6. Definition of relative as per the provisions of the Act.

Ans - **In case of an Individual:**

- i) spouse of the individual;
- ii) brother or sister of the individual;
- iii) brother or sister of the spouse of the individual;
- iv) brother or sister of either of the parents of the individual;
- v) any lineal ascendant or descendant of the individual;
- vi) any lineal ascendant or descendant of the spouse of the individual;
- vii) spouse of the person referred to in clauses (ii) to (vi);
- viii) **In case of a HUF:** Any Member thereof

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7. What is the rate at which the gifts received by a person (which are not exempt) subject to tax in India?

Ans. Gift received by a person (which are not exempt) are taxed under the head "Income from Other Sources" at slab rate applicable to such person.

8. Can a gift of money made by a person resident in India to a NR be taxed in India?

Ans - Gift of any sum of money, by a person resident in India to a NR (not being a gift to a relative etc. which is otherwise exempt), on or after 5th day of July 2019, shall be taxed in India.

Further, the person giving gift to such a NR shall be liable to deducted tax at source (TDS) at the highest rate applicable i.e. 30% on the amount of gift made to the NR.

9. A NRI receives a Gift of Rs.5,00,000/- from his grandfather on his 18th birthday. Will this amount of Gift be taxed in NRI's hands?

Ans. No. Since the Gift is received from his lineal ascendant, that is, a relative, there will be no tax implication in the hands of NR. (Now this will taxable in case of NORI)

10. A NRI receives a Gift of Rs.1,00,000/- from his neighbour, who is on his death bed. Will this Gift be taxed in the hands of the NRI?

Ans. No. Since the Gift is received on contemplation of death of the neighbour, there will be no tax implication in the hands of NR.

11. A NR receives a Gift of Rs.5,00,000/- from his friend who is a resident, on his 18th birthday. Will this amount of Gift be taxed in NR's hands?

Ans- Yes. Receipt of such gift of Rs. 5,00,000/- will be taxable in NR's hands.

Further, the NR's friend is liable to deduct TDS at the rate of 30% on Rs. 5,00,000/-.

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- 12. NR receives an immovable property in India from a Non-relative. Brief facts are as under: Date of Gift: June 25, 2019 Consideration paid by NR: Rs. 24,20,000/- Stamp Duty Value: Rs. 27,00,000/- What shall be the tax treatment in the present case?**

Ans- If an individual receives an immovable property and the difference between Stamp duty value and consideration, is **higher** of following amounts Rs 50,000 and 10% of consideration, then the excess of Stamp duty value over the consideration shall be charged to tax under the head 'Income from Other Sources' in the hands of NR.

In the present case, Stamp duty value exceeds the actual consideration by Rs.2,80,000/-, which is higher than Rs. 50,000/- and 10% of the actual consideration of Rs. 24,20,000/- i.e. Rs. 2,42,000/-. Accordingly, the difference of Rs. 2,80,000/- (Rs. 27,00,000/- less Rs. 24,20,000/-) shall be treated as income of NR.

- 13. what shall be the tax treatment in case the consideration paid by Non Resident is Rs. 26,00,000?**

Ans. The difference between actual consideration and Stamp duty value is of Rs. 1,00,000/- (Rs. 27,00,000 less Rs. 26,00,000), which is higher than Rs. 50,000/-, but it does not satisfy the other condition i.e. difference between Stamp duty value and consideration should be more than 10% of consideration of Rs. 26,00,000/- i.e. Rs. 2,60,000/-. Accordingly, said difference of Rs. 1,00,000/- shall not be considered as income in the hands of NR.

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