

## **International Taxation**

### **Emigrating Indians – Tax and Regulatory Considerations**

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#### **Indian Migration - Overview**

India has been a key contributor to global migration. Indians migrate for a variety of reasons such as better work opportunities, family reunification, higher education, access to a better quality of life such as better health, education and infrastructure and obtaining citizenship. The most popular destinations for Indian migrants include USA, UK, Canada, Malaysia, Singapore, Australia, Germany and the Gulf countries. India has a large population of highly skilled immigrants which contributes to the economy of the host countries where they migrate. Also, a large number of the emigrating Indians comprise of High Net Worth Individuals ('HNWI's'). The preferred destinations for HNWI's are Europe, UAE, Singapore and USA. Further, since India does not allow dual citizenship, a considerable number of Indians have given up their citizenship in the past 12 years which is expected to multiply in the future years. Having said the above, starting life afresh in a new land is not an easy task compounded by the stringent income tax rules across the countries.

#### **Steps to be taken by a person leaving India**

- **Planning of Residential Status:** It is important to plan departure out of India to ensure that the residential status of the individual is Non-Resident ('NR') as per Income-tax Act, 1961 ('ITA') pursuant to relocation to an overseas country. This helps to limit taxability to "Indian income" only and any overseas income shall not be taxable in India in the year of departure (i.e. 1st April to 31st March).
- **Bank accounts in India:** One should refrain from holding multiple bank accounts after leaving the country. It is advisable to retain a maximum of two accounts and update contact details with the bank. Also, from a Foreign Exchange Management Act, 1999 ('FEMA') perspective, one is required to intimate bankers regarding change in status to "Non-Resident Indian" under FEMA and re-designate resident bank account to Non-Resident Ordinary (NRO) Account.
- **Tax deduction rates for NR:** The rates of deduction of TDS for NR's is generally higher than rates applicable to Residents. Thus, one must inform the payer (Bank/Broker, etc.) regarding his/her change in residential status from Resident to NR for appropriate TDS deduction.
- **Double Taxation Avoidance Agreement (DTAA):** If a NR's income is chargeable to tax in India and the foreign country in which he / she resides, such individual may claim benefit of the DTAA, if available. Where there is no DTAA or if the said income is taxable in both the countries, one may be eligible to claim 'Foreign Tax Credit' in the country of residence. A NR shall be required to obtain a 'Tax Residency Certificate' from his country of residence (i.e. foreign country) in order to claim the benefits of the DTAA.
- **Reporting Obligations in India and foreign country:** A NR shall be required to adhere to reporting obligations in India i.e. income tax return filing (if he / she derives taxable income in India), reporting of global bank accounts etc. as well tax filing obligations in the foreign country of which he / she is a tax resident.
- **PAN Migration:** When a person becomes NR, his PAN jurisdiction must be transferred from Domestic Taxation Ward to International Taxation Ward. This process of transfer is typically referred to as 'PAN Migration'.
- **Insurance Policies:** One must keep the concerned insurance company informed about their residential status, new address and check whether the chosen plan will cover the country of residence. Further, no permission is required for payment of premium in India.
- **Public Provident Fund:** A NR can continue holding and making fresh investment in his / her existing PPF account, which was opened when he / she was a Resident. However, a NR cannot open a new PPF account on change of residential status from Resident to NR.

- Employee Provident Fund: A NR should be mindful regarding his / her Employee Provident Fund ('EPF') A/c in India. An EPF account becomes inoperative if the subscriber does not apply for withdrawal within 36 months of quitting the job and relocating to a foreign country. Thus, it is advisable to close down the EPF account within 3 years of going to a foreign country for an indefinite period of time.

### Tax considerations on leaving India and becoming NR

Broadly, the key tax issues consist of change in residential status, taxability of global income, tax deduction at source, reporting and disclosure requirements in income tax return forms and outward remittances among others.

#### 1. Scope of taxability in India under Section 5 of the ITA based on residential status:

Sources of income	Resident but Ordinarily Resident	Resident and Not Ordinarily Resident	Non-Resident
<b>Indian Income</b>			
Income received or deemed to be received in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise outside India, but first receipt is in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
<b>Foreign Income</b>			
Income accruing or arising or deemed to accrue or arise outside India and received outside India, during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising or outside India from a Business/ profession controlled in/from India during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising outside India from any source other than Business Profession controlled from India	Taxable in India	Not Taxable in India	Not Taxable in India

- A “resident but ordinarily resident” pays tax in India on his entire world income, wherever accrued or received.
- A “not ordinarily resident” pays tax on taxable Indian income and on foreign income derived from a business controlled in or a profession set up in India
- A “non-resident” pays tax only on his taxable Indian income and his foreign income (earned and received outside India) is totally exempt from Indian taxes.

## 2. Taxability of global income

In case of a Non-Resident, only income from Indian sources shall be taxable in India. However, such individual may be liable to tax on income earned in the foreign country or global income since (i.e. including income from Indian sources) he / she shall become a tax resident / citizen of such foreign country upon leaving India. The individual can take recourse to the beneficial provisions of the DTAA between India and the foreign country in order to avoid double taxation of income. As per the DTAA’s between India and foreign countries, a NR individual can claim foreign tax credit in respect of doubly taxed income in his / her country of residence.

## 3. Tax implications for a NR in India from various sources of income in India

Particulars	Taxability in India
Remuneration from LLP’s in India (if the Individual has partnership interest in LLP’s in India)	An Indian LLP shall be liable deduct withholding tax on payment of salary, remuneration, commission, bonus, interest to partners of LLP @10% on payments in excess of ` 20,000 (during the financial year) under Section 194T of the ITA or beneficial rate under the DTAA, if applicable, whichever is lower. The provisions of Section 194T are applicable from AY 2025-26.
Share of profit from LLPs in India (if the Individual has partnership interest in LLP’s in India)	Share of profit received by partner of LLP is exempt from tax in the hands of the partners under Section 10(2A) of the ITA. The profit share is taxable in the hands of the LLP.
Interest Income	Interest income received by NR from Indian sources shall be liable to withholding tax at the rate of 30% [except covered by Section 115A(1)]. Further, such income shall be included in the total income while filing the return of income and taxable at the applicable slab rates.
Dividend income from shareholding in Indian companies	Dividend distributed by an Indian company to NR is liable to withholding tax at the rate of 20% (10% in case of dividend received from IFSC) or the rate specified under the DTAA, whichever is lower. Further, such income shall be included in the total income while filing the return of income and taxable at the applicable slab rates.
Rental Income	Rental income received by a NR from immovable property located in India shall be taxable in India at the applicable slab rates.

## Taxability of capital gains for a NR in India

Nature of Capital Gains	Description	Applicable Tax Rate	TDS Rates
<b>Immovable Property (House Property, Commercial property, Vacant Land)</b>			
Long Term Capital Gain	Held for more than 24 months	12.5% (No Indexation Benefit)	12.5% on the sales consideration
Short Term Capital Gain	Held for less than 24 months	As per the applicable slab rates; highest slab rate being 30%	30% on the sales consideration
<b>Listed Equity Shares</b>			
Long Term Capital Gain	Held for more than 12 months	12.5% (in excess of ` 1,25,000) [No indexation]	12.5%
Short Term Capital Gain	Held for less than 12 months	20%	20%
<b>Listed Securities</b>			
Long Term Capital Gain	Held for more than 12 months*	12.5% (No Indexation Benefit)	12.5%
Short Term Capital Gain	Held for less than 12 months	Applicable slab rates	30%
<b>Unlisted Shares and Securities</b>			
Long Term Capital Gain	Held for more than 24 months	12.5% (No Indexation Benefit)	12.5%
Short Term Capital Gain	Held for less than 24 months	Applicable slab rates	30%

## 4. Filing and Reporting requirements in India

### Income Tax Slab Rates in India

Income slab	Rate
Up to ` 3 Lakh	Nil

₹ 3 Lakh – ₹ 7 Lakh	5%
₹ 7 Lakh – ₹ 10 Lakh	10%
₹ 10 Lakh – ₹ 12 Lakh	15%
₹ 12 Lakh – ₹ 15 Lakh	20%
Above ₹ 15 Lakh	30%

#### Income Tax Surcharge Rate in India

Income slab	Rate
Up to ₹ 50 Lakh	NIL
₹ 50 Lakh - ₹ 1 Cr	10%
₹ 1 Cr - ₹ 2 Cr	15%
Above 2 Cr	25%

#### When is a NR required to file Return of Income in India?

It is important to **determine the residential status** of an individual depending on his / her stay in India. A NR is required to file a return of income if he / she has **taxable income in India**. A NR is required to file a return of income in India in the following situations:

- If the total **Income from all sources in India exceeds the basic exemption limit** for the financial year. The basic exemption limit for the financial year 2023-2024 is ₹ 300,000 for NRI irrespective of the age.
- **Seeking a refund** from the tax authorities for the excess taxes paid in India.
- Avail the benefit of **carrying forward of losses**

However, there are certain exceptions applicable to a NR with respect to the requirement of filing return of income in India.

#### Exception 1

NRI earning below mentioned income shall be liable to file returns in India, irrespective of their Total Income being less than the Basic Exemption limit.

- Income from Short Term Capital Gains on equity shares or units of equity oriented mutual fund.
- Income from Long Term Capital Gains.

#### Exception 2

It shall not be necessary for a Non-Resident Indian to furnish a Return of Income if the income comprises only Special Investment Income and TDS on the same has been deducted. Special Investment Income is income derived from the following Indian assets acquired in foreign currency:

- Shares in a public or private Indian company
- Debentures issued by a publicly listed Indian company (not private)
- Deposits with banks and public companies
- Any security of the Central Government
- Other assets of the central government as specified for this purpose in the official gazette.
- Regulatory considerations while leaving in India

#### Filing of Return of Income in India by a NR

Sources of Income	<p>India follows “source rule” basis of taxation, i.e. all the income which accrue or arises from or through a source in India is taxable in India. If it is established that the income has its source in India, whether direct or indirect, such income would become taxable in India. List of such incomes are:</p> <ul style="list-style-type: none"> <li>• Any salary received in India</li> <li>• Any salary received for services rendered in India</li> <li>• Rental income (if any) received from a property situated in India</li> <li>• Capital gain (if any) arising on account of transfer of property or asset in India</li> <li>• Any income from deposits in India such as interest on fixed deposits</li> <li>• Any interest received on savings bank account, etc.</li> </ul>
Due Date	<p>31st July of the assessment year is the due date for filing a return of income tax in India. In case NR is associated with a business / firm in India whose accounts are required to be audited (Example - Working Partner of a Firm or LLP) – 31st October 2023.</p>
Advance Tax	<p>If a NRs tax liability exceeds ` 10,000 in a financial year, they must pay advance tax otherwise interest, as prescribed under ITA, shall be applicable.</p>

#### Impact under FEMA for Emigrating Indians

NRI Investments in India	<p>As per Section 6(5) of the FEMA, a PROI may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India</p> <p>ü Assets (Share / Securities, Immovable Property and Indian Currency) which were acquired at time when a person was resident</p>
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	<p>in India can be continued to be held even after he turns out non – resident.</p> <ul style="list-style-type: none"> <li>ü The same can even be transferred or invested.</li> <li>ü Further, NR can inherit the same from a resident u/s 6(5) of FEMA</li> </ul> <p><u>Investment in immovable property and agricultural land</u></p> <ul style="list-style-type: none"> <li>ü NRI cannot invest in agricultural land and plantations. They may continue to own existing agricultural land acquired before attaining NRI status.</li> <li>ü NRI cannot continue to be a partner in a partnership firm which is involved in agricultural/plantation activity or real estate business, i.e. dealing in land and immovable property</li> </ul>
	<p><u>Investment in LLP / Partnership Firm</u></p> <ul style="list-style-type: none"> <li>ü NRI can continue even as partner of Indian LLP / Firm even after becoming NRI.</li> <li>ü Fresh investment in LLP / Firm towards capital may be made through NRO Account to make it distinctively clear that fresh investment is also on non-repatriation basis.</li> <li>ü Fresh investment in form of loan cannot be made to LLP / Firm.</li> <li>ü Existing Loan to LLP / Firm may be continued. However, repayment of loan by LLP or firm shall be made to NRO Account.</li> </ul>
<p>Bank Accounts and Demat Accounts in India</p>	<p>Bank Accounts</p> <ul style="list-style-type: none"> <li>ü Existing resident account should be re-designated to NRO account if person leaves India for uncertain period (for employment or business or vocation outside India).</li> <li>ü NRI's are eligible to open Non-Resident External Account and Foreign Currency Non-Resident (FCNR) account. Detailed characteristics of NRO, NRE and FCNR accounts for NRI's are provided in the table below.</li> <li>ü Balances in EEFC and RFC(D) can be credited to NRE/FCNR(B) accounts</li> </ul> <p><u>Demat Accounts</u></p> <ul style="list-style-type: none"> <li>ü Securities in Demat account can be continued to be held by NRI</li> <li>ü NRI needs to Intimate Depository regarding change in residential status</li> </ul>

	<ul style="list-style-type: none"> <li>ü Schedule 3 and 4 of Non-Debt Instrument Rules permits NRI to make portfolio investment on repatriation and non-repatriation basis</li> <li>ü The investment in securities (Demat Account) existing on date of becoming NRI will be characterized as non-repatriable investment</li> <li>ü For making fresh investment on repatriation basis, new Demat Account needs to be opened</li> </ul>
Remittances by NRI / PIOs	<p>Authorised Dealer ('AD') Banks may allow NRIs/ PIOs to remit up to USD one million, per financial year:</p> <ul style="list-style-type: none"> <li>ü out of balances in their NRO accounts/sale proceeds of assets/assets acquired in India by way of inheritance/legacy;</li> </ul>
	<ul style="list-style-type: none"> <li>ü in respect of assets acquired under a deed of settlement made by either of his/her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler. In case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would be as remittance of balance in the NRO account.</li> </ul> <p>The NRI or PIO should make such remittances out of balances held in the account arising from his/her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account.</p> <p>Foreign Remittances are required to be reported in Form 15CB with respect to payments made to non-residents or foreign companies which are taxable and exceed ` 5,00,000 during the financial year. The transfer from NRO to NRE / foreign bank account may fall within one of the purposes under the category of remittances which may not contain an income element and thus would not be chargeable to tax in India. However, certain Authorised Dealer banks insist on furnishing Form 15CB for source of funds from which remittance is sought to be made in order to process the remittance. Form 15CB is required to be obtained from a Chartered Accountant who certifies the details of the payment, TDS rate, TDS deduction and other details of nature and purpose of remittance. Further, Form 15CA is also required to be submitted by the remitter along with Form 15CB. Form 15CB which is a declaration by the remitter that contains all the information in respect of payments made to non-residents.</p>
Repatriation of Funds	<p>Funds in NRE and FCNR accounts can be freely repatriated abroad, including the principal and the accrued interest. Funds held in NRO account can be repatriated only to the extent of USD one million, per financial year as stated above.</p>



(Source : AIFTP Journal December 2024)