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TAXATION OF EXPATRIATES

MAY 2020

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I. Introduction

<u>Meaning of an expatriate:</u>

An expatriate is a person temporarily residing and employed in another country while still remaining citizen of his home country.

Types of expatriates

Inbound	Outbound
(Resident of foreign country working in India)	*(An Indian resident working abroad)*

In instances where a person is resident in one country and derives income from another country, there are chances of that person getting taxed in both countries. In other words, there can be 'double taxation' of the same income.

There are two cases as regards an expatriate in which double taxation can arise:

- He is a resident of two countries and each state seeks totax the individual on worldwide income;
- He is a resident of one country deriving income fromanother country.

II.Double Tax Avoidance

1) [Section 90]

In order to prevent double taxation, the Central Government of India is empowered under Section 90 of the Income Tax Act, 1961 to enter with other countries Double Taxation Avoidance Agreements/ Tax Treaties (DTAA). There are two types of Bilateral DTAA's:

- Comprehensive DTAA, which covers all income flows;

  &
- Limited DTAA that cover only shipping and/ or air transport income.

So far, India has entered into comprehensive DTAA's with over 90 other countries. These can be referred to here:
https://www.incometaxindia.gov.in/pages/international-taxation/dtaa.aspx

India has also entered into ‘Tax Information Exchange Agreements’ with few countries namely Bermuda, Isle of Man, British Virgin Islands,Bahamas and Cayman Islands.

Where the provisions of a DTAA are more beneficial to any assessee, the assessee would be governed by such provisions of the treaty. Where there is no specific provision in the agreement, it is the Income-tax Act that will govern the taxation of income. One must further note that beneficial provisions amongst the two (DTAA and Act) shall prevail.

Considering large scale profit shifting (between less favourable countries) action plans were undertaken so as to streamline DTAAs. Based on Action Plan 15 of Base Erosion Profit Shifting, on 25th June, 2019 India deposited its formal consent to OECD along with final positions in terms of Covered Tax Agreements (CTAs). As a result of this the DTAA between Indian and the countries which have signed the Multilateral Instruments (MLI) and notified India will be affected from FY 2020-2021.

2) [Section 91]

If in any country with which there is no DTAA under Section 90,and any person if he has earned income from such country in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India, he has paid income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is lower. In short, such person will not pay tax on same income at two different places. If he does so, he will be given credit for the tax paid in other country.

3) The most common methodology for avoidance of double taxation used in Indian tax treaties are:

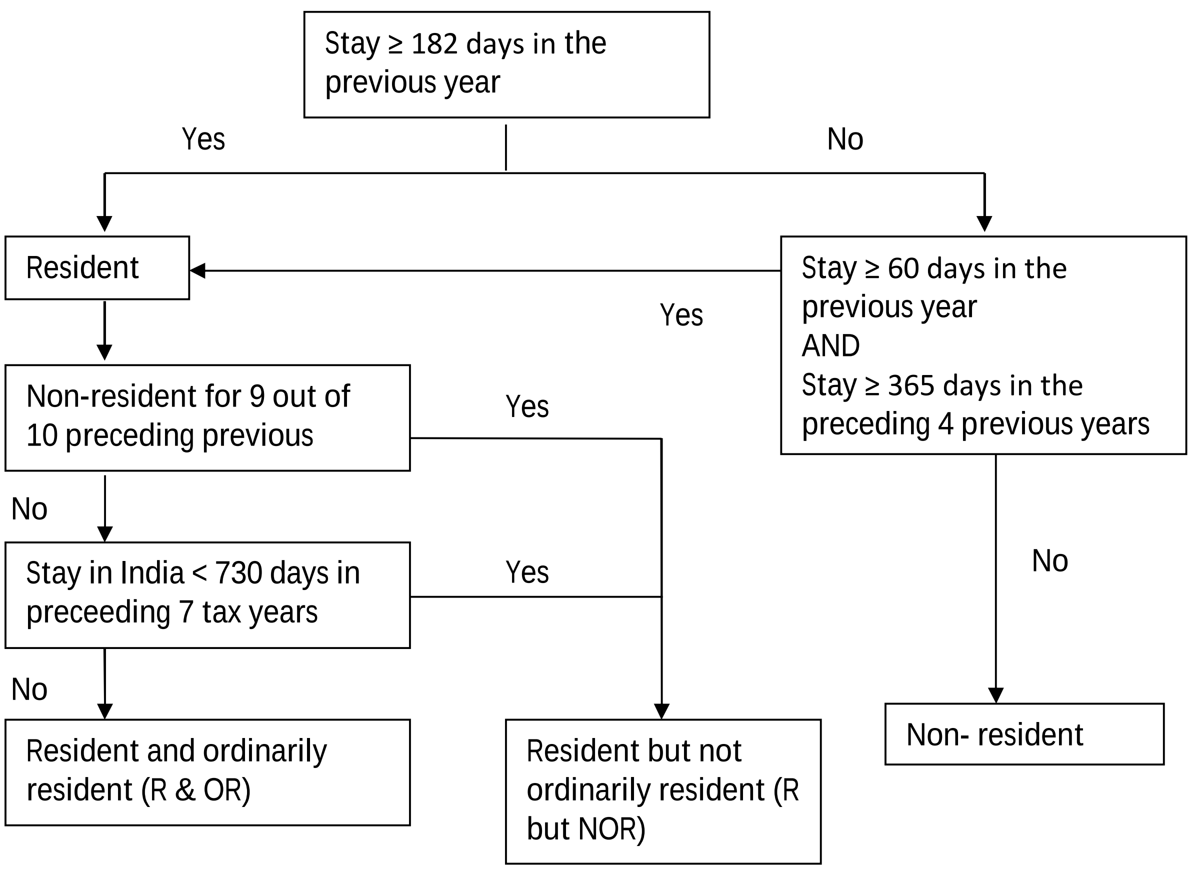
- Exemption method — under this method, the Country of Residence(COR) does not tax the income, which according to DTAA may be taxed in the Country of Source(COS) of income. Alternatively, the Country of Source limits its right to tax income from sources within it.

- Credit method — under this method, Country of Residence includes income from Country of Source in the taxable total income of the tax payer and calculates its tax on the basis of such taxpayer’s total income (including income from Country of Source). It then allows a deduction from its own taxes an amount equal to the taxes paid in Country of Source with respect to income earned therein.

III.Basic Residency Test

The foremost step is to determine whether the assessee is a resident in India or not. This is important since residential status of an assessee determines taxability of the income.

[Section 6]
Determining residential status as per Income Tax Act, 1961



However, above rules for determination of residential status in India have undergone partial change w.e.f 1st April, 2020 for **two classes of Individuals returning to India which is explained below:**

i. ** While determining the residential status of an Indian citizen or person of Indian origin, visiting India as mentioned above as 60 days in the second limb will need to be tested as follows: -

Level of income from Indian source and/or from business/profession set up in India (even if received outside India)	If liable to pay tax in resident domiciled country
More than Rs. 1.5 million	120 days
Less than Rs. 1.5 million	182 days

ii. Deemed Resident of India:

An individual who is a citizen of India or a person of Indian origin will be considered as deemed resident in India if he is not liable to tax in any other country or territory by reason of domicile or residence or any other criteria of similar kind. He will be liable to tax only on the income like that of a resident but not ordinarily resident (RBNOR) as mentioned below.

In order to determine residential status in India for FY 2019-20 of those individuals who are stranded in India due to the global pandemic (Covid-19) & have come to India on or before 22.3.2020, then the following days will not be considered as present in India:-

i. The period between 22.3.2020 and 31.3.2020.
ii. The period of quarantine between 1.3.2020 to date of departure or 31.3.2020 or from date of quarantine to 31.3.2020.
iii. The period of stay between 22.3.2020 to date of evacuation on a flight.

Note:
[Section 3]
Previous year = Financial year in which income is earned, from 1st April – 31st March.

Determining residential status as per DTAA

Usually in most treaties Article 4 of a treaty (DTAA) defines the term 'resident'.

In order to qualify as a resident under a DTAA entered into by India an expatriate should enjoy residential status either in the overseas country or in India **under the respective domestic laws** by reason of his domicile, residence, place of management or criteria of a similar nature.

However, if by virtue of the above provision, an individual is a resident of both the contracting countries, Clause 2 of Article 4, provides fora '*Tie-breaker test'* for determining which of the two contracting countries' the person would be deemed to be a resident as per the treaty. The relevant factors to be considered are as follows:

- In which country does the assessee have a PERMANENT HOME?
- In which country are his personal and economic RELATIONS closer?
- In which country does the assessee have a HABITUAL ABODE?
- NATIONALITY of the assessee?
- In case the residential status of the assessee cannot be determined based on the above factors, then the COMPETENT AUTHORITIES of both the countries shall settle the question by way of mutual agreement.

Recent Multilateral instruments have led to negotiations between the countries with which India has a DTAA. Due to this, new DTAA termed as Covered Tax Agreements are created. In case the taxpayer wishes to claim treaty benefit under a CTA then his principle purpose of earning income in the source country should not be to obtain treaty benefits. The objective of this rule is that no taxpayer is able to take an undue advantage of the treaty benefits by undertaking such commercial transactions.

IV.Scope of Income

[Section 5]

Section 5 of the Act has been explained in table format given below:

Nature of income	Taxability in case of		
	ROR	RBNOR	NR
Income received or deemed to be received in India	√	√	√
Income accruing or deemed to be accrued in India	√	√	√
Income from a business controlled from India or from a profession set up in India but not received or accrued in India	√	√	X
Income not received or not deemed to be received in India	√	X	X
Income not accruing or not deemed to be accrued in India	√	X	X

V.Nature of Income

As per the provisions of Section 14 of Income Tax Act, 1956, there are 5 heads of Income under which the income of a person can be classified. These are:

(A) Salary
(B) Income from House Property
(C) Income from Business and Profession
(D) Capital Gains
(E) Income from Other sources

Analysis of income under each head for expatriates has been done with respect to the domestic tax laws and provisions given in the Double Tax Avoidance Agreements of India with other countries.

(A) SALARY

Salary income of expatriates would be taxable inIndia under the provisions of the Income Tax Act, in case the same is eitherreceived or deemed to be received in India or in case it accrues or isdeemed to be accrued in India.

SALARY	ROR	RBNOR	NR
Salary received in India	√	√	√
Salary received outside India for services rendered in India	√	√	√
Salary received outside India for services rendered outside India	√	X	X

The taxability of income from salary for expatriates is discussed in detail below:

Salary components
1) Basic Salary and allowances
Taxable salary is within the scope of Section 17(1) of the Income Tax Act'1961 (the Act).

2) Perquisites
Perquisites are taxable as per Section 17(2) of the Act.

Provident fund as applicable to Expats:
It is mandatory for international workers to contribute to Provident Fund in India. International workers are non-Indian passport holders working in India or Indian

employees going for work in a foreign country with which India has entered into a **Social Security Agreement (SSA),**and who are employed with an establishment to which the provisions of the Provident Fund Act apply.

An international worker, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms as specified in such agreement are not required to contribute to Indian social security schemes.

Countries with which India has Social Security Agreements can be found here: https://www.epfindia.gov.in/site_en/International_workers.php

The balance held in the provident fund (i.e., employer's contribution plus employee's contribution plus accrued interest thereon) can only be withdrawn on retirement or after the expatriate reaches 58 years of age or becomes incapacited to work and not at the time of repatriation to home country.

But the International Workers who are covered under an operational SSA between India and any other country/territory can withdraw their accumulated PF balances on ceasing to be an employee in an establishment covered under the PF Act.

Further, the claim for withdrawal of lumpsum pension is possible only if India has entered into SSA with the country of residence of the expatriate and not completed 10 years of service or he is from SSA as well as non SSA territories having completed 10years or more of contributory service to Family Pension Scheme.

<u>Exemptions</u>

1) [Section 10(6)(vi)]

Short-stay exemption: In case of an individual who is not a citizen of India, the remuneration received by him asan employee of a foreign entity, for services rendered by him during his stay in India is exempt from tax subject to fulfillment ofall conditions hereunder:

- The foreign enterprise is not engaged in any trade or business in India;
- His stay in India does not exceed in the aggregate a period of 90 days in such previous year; and
- Such remuneration is not deductible from the income of the employer chargeable under the Act.

2) [Section 10(7)]

Allowances and perquisites paid or provided to a citizen of India outside Indiaby the Government for rendering service outside India are fully exempt.

3) [Section 10(10CC)]

Expatriates coming into India and working in various companies generally demand ***'tax equalization'*** i.e., the tax payable in India on their salary and perquisites is borne by the employer. It means that the employee pays no more and no less tax while on assignment than they would have paid had they remained in their home country. This is to ensure that they remain tax neutral in respect of their Indian assignment.

This amount is the Indian taxes in respect of income from employment in India would be borne by the employer and not by the employee and the expatriate employees are assured net-of-tax salary income.

Notwithstanding Section 200 of the Companies Act, 1956the employer could, at his option pay taxes on the non-monetary perquisites provided to employees, and such taxes need not be grossed up i.e. shall not be included in the taxable income of the employee. The downside of such relief is that the employer is not eligible to claim corporate tax deduction for such tax paid by it.

4) [Section 10(14)]

Allowancesspecifically grantedto the expatriate, to meet necessary expenses exclusively incurred in the performance of his duties, or to meet his personal expenses incurred at the place of office or place of residence or to compensate for increased cost of living; are exempt to the extent to which such expenses are incurred for that purpose.

Dependent Personal Services - Article 15 of DTAA

Generally, Article 15 or 16 of the tax treaties deal with taxation of employment income.

The said Article provides that salaries, wages and other similar remuneration derived by a resident in respect of employment exercised in the host country would be taxable in the host country; however, such income would be taxed exclusively in the home country/country of residence provided:

- The employee is present in the host country for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned depending upon the relevant clause of the respective DTAA;

- The remuneration is paid by, or on behalf of, an employer who is not a resident of the host country; and

- The remuneration is not deductible in computing the profits of an enterprise chargeable to tax in the host country. In other words, such remuneration is neither deductible nor borne by the PE of the foreign employer in the host country.

The aforesaid conditions may differ from country to country and the relevant treaty should be referred to before application. A claim for the beneficial provisions under this Article should also be substantiated with evidence.

Thus, inbound expatriates whose presence in India is for a short-term duration could be exempt from tax in India under the relevant treaty subject to fulfilment of all the conditions mentioned in the relevant clause of the respective tax treaty.

Foreign currency income

Generally, expatriates receive part of their salaries in foreign currency especially when they continue to remain on the payroll of the foreign employer. In such cases, the salary denominated in foreign currency is to be converted to Indian rupees using the telegraphic transfer buying rate of such foreign currency as on the following dates:

- In case where tax is deductible at source by the employer-the date on which tax is required to be deducted at source i.e. at the time of payment of such salary[1]

- In other cases — the last day of the month immediately preceding the month in which the salary is due, or is paid in advance or in arrears.[2]

Telegraphic Transfer Buying Rate in relation to a foreign currency means the rate of exchange adopted by the State Bank of India for buying such currency having regard to the guidelines specified from time to time by the Reserve Bank of India.

[1] Rule 26 of the Income Tax Rules
[2] Rule 115 of the Income Tax Rules

A situational analysis of most common expatriate employment contracts has been done in the table below:

Nature of assignments		**India Tax implications**	
	Characteristics	**Inbound expatriate** [SOURCE country -Foreign HOST country - India]	**Outbound expatriate** [SOURCE country - India HOST country - Foreign]
Business Visits	▪Employee visiting HOST country for short business visits of 20-30 days spread over the year.	▪No tax implications for foreign entity as well as for the expatriate.	▪Employee would remain a resident in India and hence salary in respect of period of foreign visits
	▪Purely for the limited purpose of attending meetings/ conferences in the capacity of employee of SOURCE country.		▪Would continue to be taxable in India. ▪No distinct tax implication for the Indian employer as well as for the employee.
Short term	▪Employee would be sent to HOST country for short periods of 6-8 months. ▪He/ she would be working in HOST country but as an employee of the company of SOURCE country & would continue to be on its payroll. ▪Normally entity in HOST country would compensate the foreign counterpart for the services rendered by the expatriate. ▪Generally, such arrangement is made for performing training or supervisory functions.	▪There could be Service Permanent Establishment exposure for the foreign entity depending upon the relevant clause of the tax treaty entered into between India and the respective country. ▪Consequently, the foreign entity would be taxable in India & will have to comply with the local tax laws including withholding tax Formalities. ▪Employees will be taxable on the salary income earned. They may be eligible for short stay exemption subject to fulfilment of certain conditions under the Treaty or under the domestic law.	▪There could be Service Permanent Establishment exposure for the Indian entity in the foreign country depending upon the relevant clause of the tax treaty entered into between India and the respective country. ▪Outbound expatriate may qualify as non-resident in India under the domestic law in which case tax credit can be claimed. ▪However, if salary is received in India, the same may be taxable and accordingly subjected to withholding tax in India. ▪In case the employee continues to be resident in India, short stay exemption can be claimed in the host country.

Nature of assignments		India Tax implications	
	Characteristics	**Inbound expatriate** [SOURCE country- Foreign HOST country - India]	**Outbound expatriate** [SOURCE country - India HOST country - Foreign]
Medium-term & Long-term Assignments- Secondment	▪Employee would be deputed to HOST country for rendering services to the entity in HOST country for a period of 2 – 3 years or more. ▪He/ she would be working in HOST country in the capacity of Employee of Company of that country. He/ she would be on thepayroll of the entity in HOST country and the remunerationwould be solely borne by that entity	▪Indian entity will have to comply with all the regular legal formalities in respect of the expatriate. ▪By and large the foreign entity will not have any Permanent Establishment exposure in India. Since economic employment& supervision lies with the Indian entity the expatriate would be taxable on the salary income earned.	▪Host country will have to comply with all the local formalities in respect of the employee. ▪Generally, such outbound expatriate would qualify as non-resident in India under the domestic law during such term. ▪Possibility of dual residency in the year of transfer depending upon their stay pattern in the year of leaving or repatriating back. Salary for the period services rendered abroad would not be taxable in India.

(B) INCOME FROM HOUSE PROPERTY

(Sections 22 to 27) deal with Income from House Property under the domestic laws. The scope of income covered depending on the residential status of an assessee is as under:

SITUATION	ROR	RBNOR	NR
House property is situated in India, income is received in India	√	√	√
House property is situated in India, income is received outside India	√	√	√
House property is situated in foreign country, income is received in India	√	√	√
House property is situated in foreign country, income is received outside India	√	X	X

Thus, if the house property is situated in a foreign country –

1) A Resident assessee is liable to tax under section 22 in respect of the annual value of a property situated in a foreign country.Its *annual value* will be computed as if the property is situated in India.

2) A RBNOR or NR is, however is liable to tax under section 22 in respect of income of a house property situated abroad; if income is received in India during the previous year.

Non-residents should be careful about taxation of *deemed let out property*. If they own more than two residential houses, and if any property barring any two properties is not given on rent, it will be still be taxable as deemed let out property. This condition applies to immoveable properties owned globally. Say, if two self-occupied houses were owned abroad, and another house was in India, the assessee would have to pay tax on deemed rent in India if it is not let out.

Article 6 of DTAA

Article 6 of the DTAA explains taxation of Income from immoveable property, which includes Income from house property.

1) If incomeis derived by an assessee from COR from immovable property (including income from agriculture or forestry) situated in the COS, it may be taxed in that COS. Here, the location of the property is the determinant for the right of the Contracting state to tax income from such property.

2) The provisions of this Clause also apply to income derived from the direct use, letting, or use in any other form of immovable property.

(C) INCOME FROM BUSINESS OR PROFESSION

According to the domestic law, the taxation of business profits of non-residents in India is kicked off with a **business connection** in India. The inference of business connection in India as per the Income Tax Act is quite wide and would lead to deeming the Income *'to accrue or arise'* for the foreign enterprise in India.

1) Global Income is taxable for Residents.

2) For RBNOR and NR, taxability of Income from business or profession depends on whether such business or profession is carried out through a "Permanent Establishment" (PE) situated in India.

The existence of a PE determines the right of a contracting state to tax the profits of an enterprise of the other contracting state. There are three major types of PE which usually exist in double tax treaties:

- Fixed PE
- Agency PE
- Service PE

Article 7 of the Double Taxation Avoidance Agreements

Article 7 covers income from business.

It states that the profits directly or indirectly attributable to the Permanent Establishment in India would be taxed in India. Hence, the Permanent Establishment that generates income due to business connection in India will be taxable in India. The Permanent Establishment of the foreign enterprise in India may use its assets and resources to earn income both in India and outside India, butonly **the proportion of Income that relates to the business connection in India is taxed in India**.

Deductions in relation to business expenditure incurred to earn such income can be claimed as illustrated in clause 3 of this Article.

The term business profits mean income derived from any trade or business including income from providing of services other than technical/included services as defined in Article 12 or Article 13 (Royalties and Fees for Technical/Included Services).

In the absence of business connection in India, the Permanent Establishment would just be a taxable entity and not a tax paying entity. The meaning of business connection in the domestic law would be a blend of Fixed Place Permanent Establishment and Agency Permanent Establishment as set out in the Double Taxation Avoidance Agreements.

Article 14 or 15 of the DTAA

Income from Profession is covered under Article 14 or 15 – for Independent Personal Services.

Here, professional services include independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

Professional income of the service provider will be taxable in the country of residence unless:

a. There is a fixed base regularly available in the other country for the purpose of performing activities by the service provider

OR

b. The assessee's stay in the other country is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of twelve months;

In either of the above cases, so much of the income as is attributable to that fixed base or derived from his activities performed in that other country may be taxed in that other country.

(D) CAPITAL GAINS

Capital gains are taxable as per domestic law as follows:

SITUATION	ROR	RBNOR	NR
Capital Asset is situated in India, income is received in India	√	√	√
Capital Asset is situated in India, income is received outside India	√	√	√
Capital Asset is situated in foreign country, income is received in India	√	√	√
Capital Asset is situated in foreign country, income is received outside India	√	X	X

Non-Residents are subject to capital gains tax in India only in respect of capital gains accruing or arising or received in India (including capital gains deemed to be accruing, arising or received in India).

1) [Section 48]

<u>In case of shares or debentures of an Indian company acquired in foreign currency by non residents</u>, the cost of acquisition, expenditure incurred wholly and exclusively in connection with the transfer and full value of consideration is converted into foreign currency. The gains arising thereon are taxed at a rate of 20%.

This provision intends to protect non-residents from fluctuation of rupee value against foreign currency, in order that he pays tax only on the actual capital gains in foreign currency and not on the gains computed in rupees.

However, the benefit of cost indexation is not available to non resident Indians who claim special tax rate of 10% and to other non residents where capital gains on the transfer of shares in, and debentures of, Indian companies are determined in foreign currency.

2) [Section 112]

The amount of income-tax calculated on <u>long-term capital gains</u> arising to non-residents will be calculated at the rate of 20%.

From 01.04.2013, the amount of income-tax on long-term capital gains arising from the transfer of a capital asset, being <u>unlisted securities</u>, will be calculated at the rate of 10% on the capital gains in respect of such asset as computed without giving effect to the first and second proviso to Section 48.

3) [Section 112A]

Long term capital gains arising from sale of shares and securities on which securities transactiontax has been paid at the time of purchase or sale, is taxed at the rate of 10% on the amount exceeding Rs. 1,00,000.

4) [Sec. 115AC]

Special Rate of Tax on Income and Capital gains from Euro Issues/ Global Depository Receipts.

5) [Sections 115C to 115I]

The **Non Resident Indians** are offered special provisions under the Income-tax Act, 1961 whereby they are -

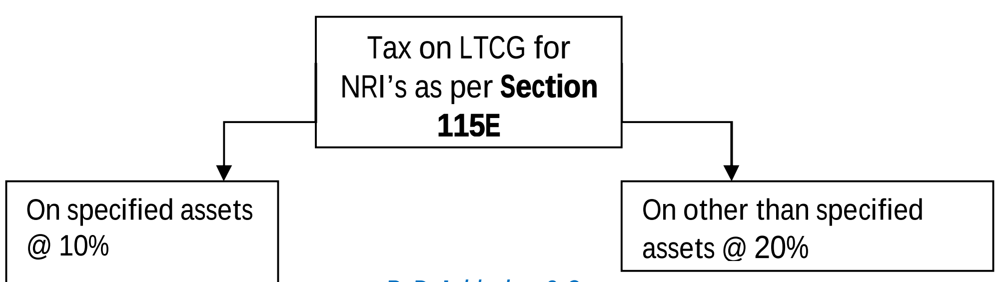
- Offered procedural simplification

- Fixed rate of taxation.

- Tax on real income i.e. income is computed in Foreign Exchange (so that rupee depreciation do not increase taxes)

- Deduction of tax at source from the amount at which he is liable for taxation.

NRIs have been offered a separate concessional tax regime in respect of certain types of income under Chapter XIIA comprising section 115C to 115I. The said chapter has been introduced in the Income tax Act with a view to encouraging and inviting Non-residents Indian to invest their foreign earnings in India.



Specified assets are defined under Section 115C(f) as:

i. Shares in an Indian company.

ii. Debentures and deposits in an Indian private limited company.

iii. Any security of the Central Government.

iv. Any other asset notified by the Central Government.

[Section 115D]
The following shall be denied from the Gross Total Income of a Non-Resident if it only consists of investment income or income from long term capital gains.

- Any deduction in respect of any expenditure or allowance under any provisions of this Act (like interest on over draft, Bank charges for collection).

- Deduction under Chapter VIA (like section 80C).

- Benefit of cost indexation for capital gains.

Article 13 or 14 of DTAA
Capital gains derived from immoveable property are covered under Article 6 of DTAA, while capital gains from property other than immoveable properties are covered under this separate Article 13 of the agreement.

Taxability either depends on the location of the capital asset or the residence of the alienator of the Capital Asset. In most cases, it is the country in which the Capital Asset is situated, which has the right to tax capital gains from transfer of such asset.

In case there is a Multilateral instrument signed by the treaty countries, then there will be certain conditions which need to be fulfilled in order to claim the treaty benefit under the respective CTAs.

(E) INCOME FROM OTHER SOURCES

1) Income from other sources includes interests, dividends , fees for technical services, etc not covered under the other heads of income.

2) As per the domestic tax law, they are taxable as provided under Section 56 of the Act.

3) Income of Non-residents will be taxable if it arises in India.

Exemptions

Exemptions that can be availed by non-residents are:

1) [Section 10(4)(ii)]

Interest on Non-resident (external) account maintained in accordance with the Foreign Exchange Management Act in the hands of individual non-resident is exempt.

2) [Section10(15)(iv)(fa)]

Interest on approved foreign currency (FCNR) deposits is exempt in the hands of individualwho are non-resident or resident but not ordinarily resident.

3) [Section 10(15)(viii)]

Interest received by a non-resident or resident but not ordinarily resident from deposit made in an Offshore Banking Unit. Offshore banking unit (OBU)is the branch of an Indian bank located in a special economic zone (SEZ), which undertakes international banking business aimed at facilitating exports from the region.

Articles covering Other Income in the DTAA

The manner and rate of tax is given in respective clauses of the DTAA.

The Articles covering major types of income from other sources are:

Article 10	Dividend	Definition and taxation of dividends; concessional rate of tax in certain situations;
Article 11	Interest	Definition and taxation of interest; concessional rate of tax in certain situations; Taxation of interest paid in excess of reasonable rate, on account of special relationship;
Article 12	Royalties	Definition of Royalties- what it includes and covers, and its taxation; Treatment of excessive payment of royalties due to special relationship; country where taxable.

VI.SECTION 195 OF THE ACT

Procedure for remittance to the non-resident — issued vides CBDTcircular no. 4/2009 dated 29th June, 2009[3]:

- Obtain certificate in Form No. 15CB from a Chartered Accountant
- Obtain PAN for the Non-Resident else 20% rate u/s 206AA. The Non Resident can opt for rate under the specific provision of the Income Tax Act, 1961 on fulfilment of conditions mentioned in new Rule 37BC of the Income Tax Rules, 1962.
- Tax calculated should be increased by surcharge& cess except where treaty rates are applied and except being taxed at 20% under section 206AA.
- Tax has to be grossed up u/s 195A for all agreements entered after 2.6.2002 where tax is agreed to be borne by the payer.
- Tax has to be deducted only if it is required to be deducted on sums chargeable to tax in India under the Income-tax Act. Circular No. 786 dated 7th February, 2000.
- TDS on salary to non-residents (including Indian NR) is governed by sec. 192 and not 195.
- Non-residents making payments to non-residents are liable to TDS if the payments are chargeable to tax in India (228 ITR 487-AAR).
- Exchange rate on the day on which TDS is required to be deducted has to be considered.
- Payer can make a reference by simple letter on letter head/plain paper to Assessing Officer u/s. 195(2) of the Act (under Rule 10) if he opines that only portion of payment is going to be taxed and hence a request is made for determination of the amount on which tax has to be deducted.
- An application u/s 195(3) can be made by the payee to the AO for no deduction of tax for receipt of sums other than dividends or interest. (Form 15D). Certificate is valid for the financial year specified therein unless cancelled by AO anytime before the expiry of the financial year.
- An application u/s 197 can be made by the payee to the AO for no deduction of tax or at a lower rate of tax than rate prescribed to be deducted. (Form 13).

[3]As per WIRC Reference Manual

- Orders passed u/s 195(3) and u/s 197 are not appealable.
- U/s 195 a non-resident is not entitled to basic/threshold exemption in respect of LTCG.
- Tax has to be deducted at rates prescribed under relevant Finance Act or at the rates prescribed/specified in treaty, whichever are beneficial to the assessee. Treaty is an option to the assessee.
- In case treaty rates are opted by the remittee/payee/recipient, take residency certificate of payee/receiver to determine applicability of specific DTAA of such country.
- Furnish the information in Form 15CA, verified in the manner prescribed. Rule 37BB.
- Form No. 15CA to be then electronically uploaded on designated website.
- Take printout of Form No. 15CA along with the acknowledgement, sign and manually file with bankers/authorized dealers of the payee along with copy of Form 15CB. Approach Bank and ask them for remittance with cheque/account debit. In case, Form 15CA is digitally signed, manual signatures are not necessary while submitting it to the banker.
- Refund of TDS u/s 195 in certain circumstances – Circulars 790/20.4.2000 & 7/23.10.2007.